

MISSOULA COUNTY COMMISSIONERS' JOURNAL: AUGUST, 2016

BCC = BOARD OF COUNTY COMMISSIONERS

NR = Commissioner Nicole ("Cola") Rowley, Chair

JC = Commissioner Jean Curtiss

SR = Commissioner Stacy Rye

The following claims lists were signed during the month of August, 2016:

Date Signed	Claims List Dated	Who Signed	Amount
August 2, 2016	July 28, 2016	JC, SR	\$7,876.26
			\$789.29
			\$2,250.00
			\$19.83
			\$3,674.00
			\$5,365.55
			\$1,333.62
August 2, 2016	July 29, 2016	JC, SR	\$221,432.43
			\$43,805.96
			\$3,931.93
			\$25,431.92
			\$412.50
			\$47.95
			\$614.00
			\$11,236.37
August 3, 2016	August 1, 2016	NR, SR	\$30,937.36
August 3, 2016	August 1, 2016	BCC	\$87,146.64
			\$4,855.85
			\$5,426.30
			\$41,115.14
			\$6,992.06
			\$17,840.00
			\$32,632.35
			\$1,055.17
August 4, 2016	August 3, 2016	BCC	\$116,535.73
			\$35,520.08
			\$143.86
			\$100.00
			\$7,310.12
			\$28,995.00
Total Report for August 5, 2016			\$1,133,940.10
July 28, 2016	PHC Smartfill ACH		\$111,271.13
July 29, 2016	PHC Amerisource ACH		\$65,005.21
August 3, 2016	PHC Smartfill ACH		\$85,496.73
August 5, 2016	PHC Amerisource ACH		\$31,191.26
August 8, 2016	August 4, 2016	BCC	\$158,658.60
August 8, 2016	August 5, 2016	BCC	\$472,628.68
		JC, SR	\$48,152.90

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 Tyler R. Gernant, Missoula County Clerk & Recorder
 eRecording

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Date Signed	Claims List Dated	Who Signed	Amount
August 8, 2016	August 8, 2016	BCC	\$1,527.85
			\$18,582.45
			\$518.99
			\$4,448.20
			\$5,055.72
			\$8,788.34
			\$348.80
			\$379.60
		JC, SR	\$49,454.73
			\$6,125.24
			\$45.00
			\$2,015.49
			\$83,513.15
			\$2,128.62
			\$1,606.01
			\$1,341.95
			\$1,733.57
			\$2,384.00
			\$2,459.40
			\$663.03
			\$453.10
			\$43.22
			\$420.00
			\$1,360.34
			\$152,475.78
August 9, 2016	August 3, 2016	NR, JC	\$1,473.64
August 9, 2016	August 9, 2016	NR, JC	\$2,336.04
			\$2,527.62
			\$1,945.78
			\$25.50
August 10, 2016	August 9, 2016	JC, SR	\$2,055.00
			\$4,200.00
			\$8,166.54
			\$5,342.64
			\$7,393.24
			\$3,688.00
			\$111.50
			\$1,790.58
			\$474.42
August 12, 2016	August 11, 2016	NR, JC	\$40,167.57
August 15, 2016	August 10, 2016	NR, JC	\$653.00
			\$23,358.63
August 15, 2016	August 11, 2016	NR, JC	\$11,623.75
			\$3,087,590.78
			\$3,220.28
			\$7,784.47
			\$18,775.40
			\$450.00
			\$234.67
August 15, 2016	August 12, 2016	NR, JC	\$61.00
			\$7,037.08
			\$29,390.59
			\$20,000.00
			\$525.20
			\$190.72
			\$43,990.86

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FISCAL YEAR: 2017

Date Signed	Claims List Dated	Who Signed	Amount
August 15, 2016	August 15, 2016	NR, JC	\$92,540.00
August 15, 2016	August 12, 2016	BCC	\$5,237.03
August 15, 2016	August 14, 2016	BCC	\$100.00
			\$7,200.00
August 15, 2016	August 15, 2016	BCC	\$11,984.41
			\$1,877.00
			\$293.00
			\$362.00
			\$311.79
			\$305.51
			\$1,659.17
			\$1,742.92
August 15, 2016	August 15, 2016	NR, JC	\$38,062.80
August 16, 2016	August 16, 2016	NR, JC	\$17,450.00
August 10, 2016	PHC Smartfill ACH		\$129,041.99
August 12, 2016	PHC Amerisource ACH		\$40,056.28
August 18, 2016	August 17, 2016	BCC	\$1,352.28
			\$1,968.50
			\$12,861.50
			\$178,916.85
			\$137.42
			\$809.00
			\$2,815.12
			\$1,132.59
			\$6,605.91
			\$272,812.20
			\$24,715.39
			\$191.41
			\$197,526.90
Total Report for August 18, 2016			\$5,706,930.56
August 22, 2016	August 18, 2016	NR, JC	\$378.54
			\$26,023.81
			\$1,408.31
			\$1,465.00
			\$3,241.66
			\$28,480.76
			\$186,432.37
			\$2,502.37
			\$5,019.92
			\$1,509.00
			\$5,240.45
			\$642.00
			\$6,295.00
\$15,804.13			
August 22, 2016	August 22, 2016	NR, JC	\$18,623.88
			\$10,536.62
			\$17,516.50
			\$19,812.49
			\$30,000.00
			\$5,572.60
			\$246.49
			\$3,475.02
			\$4,720.95
			\$5,542.88
\$1,189.00			
			\$185,227.60

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FISCAL YEAR: 2017

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Date Signed	Claims List Dated	Who Signed	Amount
August 17, 2016	PHC Smartfill ACH		\$94,155.97
August 19, 2016	PHC Amerisource ACH		\$21,434.67
August 24, 2016	August 23, 2016	NR, JC	\$4,421.36
			\$17,149.30
			\$6,897.11
			\$319,772.55
			\$4,766.03
			\$46,275.00
			\$26,684.00
August 25, 2016	August 23, 2016	NR, JC	\$68,230.40
August 25, 2016	August 24, 2016	NR, JC	\$32,260.10
			\$1,620.50
			\$10,608.96
			\$1,730.43
			\$47.00
			\$14,354.81
			\$3,444.25
			\$147.44
August 29, 2016	August 25, 2016	BCC	\$4,320.52
			\$21,041.31
			\$17,915.35
			\$602.80
			\$533.00
			\$2,020.00
			\$3,860.00
			\$2,088.40
			\$492.83
			\$351.75
August 29, 2016	August 26, 2016	JC, SR	\$278.06
			\$24,746.40
August 29, 2016	August 26, 2016	JC, SR	\$271.90
August 30, 2016	August 26, 2016	NR, JC	\$11,440.47
			\$1,036.04
			\$38,538.82
			\$20,981.35
			\$34,357.80
			\$1,091.45
			\$750.00
			\$1,205.19
			\$150.00
August 30, 2016	August 30, 2016	NR, JC	\$44,950.66
			\$600.00
			\$8,127.78
			\$4,969.48
			\$4,893.87
			\$632.46
			\$1,797.00
			\$1,500.00
			\$500.00
August 31, 2016	August 31, 2016	NR, JC	\$1,424.96
			\$2,882.20
			\$29,212.05

Date Signed	Claims List Dated	Who Signed	Amount
August 31, 2016	August 31, 2016	NR, JC	\$10,447.36
			\$2,689.11
			\$9,457.43
			\$4,976.00
			\$3,085.94
			\$456.40
			\$25.00
			\$25.00
			\$1,979.08
			\$16,500.00
August 24, 2016	PHC Smartfill ACH		\$93,333.60
August 26, 2016	PHC Amerisource ACH		\$23,002.24

All claims lists were returned to the Financial Services Department.

MONDAY, AUGUST 1, 2016

BCC did not meet in regular session. NR out through Wednesday, August 3. SR out of office.

TUESDAY, AUGUST 2, 2016

BCC met in regular session; quorum present. NR out through Wednesday, August 3.

Indemnity Bond – JC signed. Lisa Thomas, Missoula, Principal for MCPS Warrant #27146154, issued July 13, 2016 on General fund. Amount/\$343.16 (for travel). Warrant lost.

Indemnity Bond – JC signed. Tyrek Demetrius Becote, Anaconda, Principal for Detention Facility Warrant #60043408, issued July 7, 2016 on 2308 fund. Amount/\$326.64 (for funds on account at time of release). Warrant lost.

Letter – BCC signed, dated August 2, 2016. To Jason and Lacinda Hanenburg. Confirming approval of Hanenburg Family Transfer at public meeting on July 27, 2016.

Letter – BCC signed, dated August 2, 2016. To Jon Lee, c/o Territorial Landworks. Confirming approval of Emerald Estates Subdivision Phasing Plan Amendment at administrative meeting on July 26, 2016.

ADMINISTRATIVE MEETING

Resolution No. 2016-103 – BCC signed, dated August 2, 2016. Emergency Proclamation for Wildland Fire Season 2016. To Adriane Beck/Emergency Management.

Employment Agreement – BCC signed Employment Agreement between Missoula County-Partnership Health Center (PHC) and Bernadette Roy for services as Director of Clinical Operations. Term/July 1, 2016-June 30, 2017. To Ellen Leahy/Missoula City-County Health Department (MCCHD).

Agreement – BCC approved, JC signed. Agreement with City of Missoula to provide law enforcement services at 2016 Western Montana Fair. Amount/Salary costs, including overtime, plus percentage for benefits and administrative costs. Term/August 9, 2016-August 15, 2016. To Chris Lounsbury/Chief Operating Officer.

License Rights Form – BCC approved, JC signed. Retired License Rights Form releasing rights to the Novell file manager product that the Missoula County no longer uses and ending maintenance fees. To Jason Emery/Technology Department.

Contract Amendment – BCC approved, JC signed. Amendment One to Federal Highway Safety Contract No. 108554 Buckle Up Montana (BUMT). Adds required language regarding a single audit provision required by 2 CFR 200. Contract supports BUMT coordinator and outreach activities to increase seat belt use in Missoula County. Term/October 1, 2015-September 30, 2016. To Lonie Hutchison/MCCHD.

Service Level Agreement – BCC approved, JC signed Service Level Agreement with State of Montana Department of Administration State Information Technology Services Division for SummitNet. County and State have agreed to share conduit and fiber optic cables at no cost to connect Youth Court to the State network. County will maintain current level of cost for SummitNet connection. Amount/\$138.27 per month. Term/Effective July 20, 2016. To Jason Emery/Technology Department.

Professional Services Agreement – BCC signed Professional Services Agreement between PHC and Nathan Hoyme, LCSW to provide counseling services to clients in PHC's Ryan White Program. Amount/Determined case-by-case. Term/June 1, 2016-May 31, 2017. To Lindsey Cromwell/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Danielle Chapin, PA-CC for services in capacity as Physician Assistant. Term/July 1, 2016-June 30, 2017. To Lindsey Cromwell/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Joseph Byington, DMD for services in capacity as Dentist. Term/July 1, 2016-June 30, 2017. To Lindsey Cromwell/PHC.

Contract – BCC signed Contract 16-001-PPD between Montana Department of Corrections and PHC. PHC will be primary referral source of outpatient mental health services for offenders at the Missoula Prerelease Center and offender referrals from Adult Probation and Parole in Missoula. Amount/Not to exceed \$55,000.00 per contract period. Term/Upon execution through June 30, 2017. To Lindsey Cromwell/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Todd Fife, MD for services in capacity as Physician. Term/July 1, 2016-June 30, 2017. To Lindsey Cromwell, PHC.

Additional discussion item(s): Upcoming board meetings and review of meetings.

WEDNESDAY, AUGUST 3, 2016

BCC met in regular session; quorum present. NR out through Wednesday, August 3. Morning: JC participated in conference call for Crown of the Continent. Afternoon: BCC met with Missoula Economic Partnership and BitterRoot Economic Development District. Evening: JC attended Missoula Resource Advisory Council meeting.

ADMINISTRATIVE MEETING

Professional Services Agreement – BCC signed Professional Services Agreement between Missoula County-Partnership Health Center (PHC) and Bugless Pest Control to complete two applications of bug spray and/or repellent to exterminate bugs at Superior Clinic. Amount/\$250.00 for each application, \$500.00 total. Term/June 1, 2016-November 15, 2016. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Raina White, RPH for services as Pharmacy Manager. Term/July 1, 2016-June 30, 2016. To Bernadette Roy/PHC.

Professional Services Agreement – BCC signed Professional Services Agreement between PHC and University of Montana Family Medicine Residency of Western Montana for 0.40 FTE of John B. Miller, MD for services as Medical Director. Term/July 1, 2016- June 30, 2017. To Bernadette Roy/PHC.

Business Associate Agreement – BCC signed Business Associate Agreement between PHC and StarWind Software for server purchase. Amount/\$48,240.60. Term/Upon execution for one year. To Bernadette Roy/PHC.

Agency Agreement – BCC signed United Way of Missoula County 2016-2017 Agency Agreement. PHC will receive \$4,000.00 grant for Lowell School Program and \$932.82 in donor-designated funds. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Grant Agreement – BCC signed Montana Healthcare Foundation Grant Agreement for PHC Care Management for Super-Utilizers Program. Teams deliver comprehensive care through home visits and partnership of community resources. Amount/\$148,183.00 Term/June 13, 2016-May 31, 2018. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Sarin McKenna, DMD for services in capacity as Dentist. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Lynne Rogers, FNP-C for services in capacity as Advanced Practice Nurse. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Kevin Chin, DO for services in capacity as Physician. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Alexander Chaloux, PA-S for services in capacity as Physician Assistant. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Letter – BCC signed, dated August 3, 2016. To Seeley Swan Cemetery District Board. Regarding receipt of bylaws. Asking County Attorney's Office to work with Board in reviewing and drafting new bylaws.

Letter – BCC signed, dated August 3, 2016. To Cabin Lessees. Noting that Snowmass Drive part of access to cabin site lots in Seeley Lake Outlet West neighborhood is not a County road. Maintenance falls to lessees. Montana Department of Resources and Conservation (DNRC) and Missoula County can discuss options to facilitate group maintenance.

Letter – BCC signed, dated August 3, 2016. To Cabin Site Lessees. Noting that DNRC and Missoula County have been working to resolve access and road maintenance issues to and within Clearwater River East Shore (Dogtown) cabin site neighborhood. Until issues resolved, obligation for road maintenance is with cabin site lessees. Hoping to resolve access issues prior to 2016-2017 winter season.

Additional discussion item(s): 1) Authorization to sign engagement letters: 2) Fair tickets.

PUBLIC MEETING – AUGUST 3, 2016

MISSOULA BOARD OF COUNTY COMMISSIONERS

PUBLIC MEETING MINUTES

Room B14-County Administration Building

If anyone attending the public meeting is in need of special assistance, please provide advance notice by calling 258-4877. Missoula County is happy to provide auxiliary aids and services.

WEDNESDAY, AUGUST 3, 2016 – 1:30 PM

1. CALL TO ORDER

Commissioners Present:

Chair Nicole "Cola" Rowley
Commissioner Jean Curtiss
Commissioner Stacy Rye

Staff Present:

Jamie Erbacher, Planner, Community and Planning Services
Erik Dickson, County Engineer, Public Works-Road
Jennie Dixon, Planner, Community and Planning Services

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS

None

4. PUBLIC COMMENT

None

5. CURRENT CLAIMS LIST



Total claims from July 22, 2016-July 28, 2016 = \$599,346.72

6. HEARINGS

a. Caitlin's Estates Plat Amendment



Jamie Erbacher, Planner, Community and Planning Services – This is a request from Cory Laird and Walt Muralt, Cory is unavailable today but Jason with Territorial Landworks is here to represent him. Caitlin's Estates is a 10 lot subdivision approved October 17, 2001 and was filed on May 5, 2003. All of the lots in Caitlin's Estates are approximately five acres in size.

Wentland Estates subdivision is to the north, specifically adjacent to the two separate properties which are lots six and seven of Caitlin's Estates is lot three of Wentland Estates. Lot three of Wentland Estates is approximately 12 acres in size and this subdivision was filed on May 31, 2006. There are large vacant tracts of land that abut Wentland Estates to the north and Caitlin's Estates to west and to the south. As you can see here Wentland Estates is just a little over 12 acres. To the north of that is a 24 plus acre piece; to the west is an 81 acre piece and to the south of Caitlin's Estates is a 98.5 acre piece. The current zoning and zoning at the time of the subdivision of Caitlin's Estates and Wentland Estates and their surrounding tracts of land is and was C-RR1 which allows for one dwelling unit per acre. There is a potential for 265 units that could be proposed within the existing Caitlin's Estates and proposed surrounding properties. The comprehensive plan of Caitlin's Estates and the vacant land to the south and to the west recommends one dwelling unit per acre in a cluster development design. The comprehensive plan recommends two dwelling units per acre also in cluster development design from Wentland Estates and four dwelling units per acre for the land to the north of Wentland Estates. This would allow for potentially 349 units.

Within the finding of facts Caitlin's Estates and Wentland subdivision it indicates that sewer is nearby and future slits with increased density may require sewer and this is also suggested by the comprehensive plan. The green lines represent sewer that is in, the red lines represent dry laid sewer that goes down Wentland Court and then the two lots that we were talking about today are lots six and seven of Caitlin's Estates and those are highlighted in blue (referring to map).

When Caitlin's Estates had gone to planning board they had recommended denial of the subdivision to the county commissioners partly based on the lack of future planning and connections to the north and to the south. Prior to the commissioners meeting the applicants, the

developer and staff met and agreed on a revised plan which provided a conditional access easement to the north and south between lots six and seven and lots four and five (circled on map in red).



Commissioner Curtiss – This spot though, there was one going to the west as well, right?

Jamie Erbacher – There is; there is also a 60 foot wide conditional access easement headed west which goes between lots five and six.

With the approval of Caitlin's Estates subdivision a variance was approved for the length of the proposed cul-de-sac. Prior to the subdivision, Haven Heights Road was 1,100 feet long. The variance for Haven Heights Road extended the cul-de-sac 1,900 feet for a total of 3,000 feet. From Cote Lane all the way to the end of the cul-de-sac that length is 3,000 feet. The subject properties, lots six and seven of Caitlin's Estates, are both approximately five acres size. The conditional access easement extends 30 feet on each side of the property boundary running north and south. The owner of lot six, built a home on the property in 2006, there is a small portion of the driveway accessing the home that extends onto lot seven and that is within the conditional access easements.

The nearest pedestrian easement to make a north south connection to the conditional access easement between lots six and seven is approximately 1,500 feet east. That easement is approximately 536 feet long. That connection then intersects the pedestrian easement on Cresthaven drive a 1,230 foot road which eventually leads to the common area of Kona East phase one and Wentland Estates. The distance from the intersection of Cresthaven Drive and the park to the northern intersection of lots six and seven is approximately 2,050 feet. Without the conditional access easement between lots six and seven connections to neighboring families would legally be required to have to travel this extended route which is essentially a mile long.

Again, if this easement that is in question here, if that was vacated, they would have to travel this longer colored route that I have highlighted.

Plat adjustments have been granted in the past; however, as noted in the minutes in the 2001 BCC hearing, future connections in a grid pattern are highly desirable. This subdivision and surrounding area is just outside the area adopted resolution 2001-005 which people refer to as the grid resolution. However, you can see grid like patterns have been established in neighboring subdivisions such as El Mar Estates. As shown above, there are several conditional access easements and pedestrian easements noted between Wentland and Caitlin's Estates. The conditional access easement in question seems crucial for making future pedestrian and roadway connections in the land to the north and to the south. Currently we are not seeing growth in this area, the planning documents that we refer to definitely see growth in this area and making connections is very important in those documents.

The current 2015 Missoula County subdivision regulations allow for the governing body to require that the applicant demonstrate how the full residential density allowed for this subdivision and later be accommodated and how subdivisions shall be designed to maximize connectivity to adjoining subdivided lands or connectivity potential to adjoining undeveloped lands. On the screen are sections of the current regulations that talk about future connections and connecting developments to each other. Obviously this subdivision was not under these regulations but it is an example of what we are looking for moving forward.


In addition, when reviewing other east west connections that could potentially connect to north south connections, we reviewed Wentland Estates subdivision. The east west connection was provided along the northern portion of Wentland Estates; however, it is only 30 feet wide which does not meet the urban area of road standards for new subdivisions. This could cause potential issues if lot three of Wentland Estates subdivision was further subdivided. Currently legal access appears only to exist via the conditional access easement between lots six and seven of Caitlin's Estates. Again, this is assuming that three is developed possibly even before the parcel to the north of lots three of Wentland. This is an aerial photo showing the existing conditions of the land, lot six, lot seven and lot three of Wentland Estates. Here is an expanded view of the area, it is truly unknown what is to be developed first and given the fact that once an easement or a conditional access easement is removed it is very difficult to obtain again. Staff was recommending denial of this request, since then we have worked with public works, we have also worked with the applicant to look at different options for moving the conditional access easement. Potentially looking to keep a pedestrian easement on lot seven which would be Cory's lot and that would be 20 feet wide and then potentially moving the vehicular access easement to the west side of lot six.

Working with public works, Jennie Dixon and Erik Dickson went out on a site visit and I am going to try to fill in as much as possible but I may refer to both of them. Here are some photos that were taken; this is an aerial photo for reference, and all of these photos I have given you also as a handout. When I refer to Robin Drive, it is in El Mar Estates, and there is a little finger road connection for future connection right here, off of Mourning Dove

 **Commissioner Curtiss** – How wide of an access is that one?

Jamie Erbacher – 60, I believe.

Commissioner Curtiss – On the aerial it looks like Warbler has an access, does it or not?


 **Jamie Erbacher** – Yes, it does. Warbler is here to the north. There is also another connection off of Nuthatch as well.


Lot six and seven, I also circled on your sheet; they are on the southern portion of the screen. Going into the photos: This is a photo looking west, in the distance is a large 80 acre piece. This is lot five, which is not in question as far as having an easement. The west conditional access easement currently runs basically up this property boundary right here. On the right hand side of the fence, that would be lot six or Muralt's property.


Stacy Rye – That is what is there now, 30 feet on each side?

Jamie Erbacher – Yes, 30 feet on each side. This picture is taken approximately 30 feet back from the intersection of lot six, seven and the larger parcel to the west.

Commissioner Curtiss – So the same thing just a little back further.

 **Jamie Erbacher** – Right. So there is one from 60 feet. So this is looking north along the west boundary of lot six, on the far side of the fence that would be the larger parcel. This is looking north from Robin Drive which is in El Mar Estates. Then this is looking south from that same intersection essentially with the fences of the three properties but it looks south down the property line of lot five. This is looking south if you were standing on that Robin Drive extension in El Mar Estates looking south and then in the distance would be Caitlin's Estates. If you are standing at that fence intersection and then looking back at Haven Heights.


 **Walt Muralt, property owner** – I don't know if this has been discussed in the past but just for clarification for me being the property owner out there of course. The only way, we have already commented on the 3,000 foot cul-de-sac, that the property to the west would be developed is if there was some good north south connectivity like back to El Mar Estates or back to Cote Lane or whatever it turns in to, to the south, because you can't continue to extend that without some north south connectivity.

 **Jamie Erbacher** – Right, if there was future subdivision of the property to the west, we would look for a north south connection.


Walt Muralt – Or all the way out to Kona Ranch type thing, or I mean Mullan, because I believe there is some connectivity through to Mullan on these open parcels. I don't mean to open another bag, but there is no way there would be further development to the west without some significant north south connectedness, not just between the extension of Lazy H and Hayden Heights. Does that make sense? Lazy H is what serves the little Wentland Estates cul-de-sac.

Jamie Erbacher – Okay, so you are talking if we go back to this map here.

Walt Muralt – (Referring to map) Lazy H is right here, Wentland comes down this little dead end. It is a total dead end because there is no easement through here to get here, so that leaves you with this east west corridor. The only way to develop this, is even if this was a little square, it is highly unlikely that this would be developed unless there was connectivity up into these sections or down south here to where Cote Lane wraps around.


 **Jamie Erbacher** – I think we would definitely look for those connections. It is hard to say what would be developed first, so there may be some conditional access requirements, too.


(Referring to maps) This is again, looking west with the larger portion farthest in the distance in this picture, lot five on the left hand side and lot six on the right hand side. These pictures here are to illustrate what they found out in the field and my understanding is, sure, you could probably do a connection that would loop up through this parcel and connect into Warbler, however looking at the topography of the land out there, a connection running along the property boundary on the west side of lot six does seem to make sense. I believe the commissioners had asked staff to look at the feasibility of moving that road easement to the west. Potentially also keeping a pedestrian easement on lot seven of Caitlin's Estates. I think in finding, staff, including public works, found that having a 60 foot wide connection on that west side of lot six was feasible. Jennie and Erik do you have anything additional to add?


 **Erik Dickson, County Engineer, Public Works-Road Department** - As Jamie mentioned we have looked at the feasibility of these north south connections and this a rough idea of what I thought would be a feasible north south connection. That red line (referring to map) would be as an


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extension of Haven Heights. If we go along that east west conditional access easement then the connection to existing off site north south connections would be that extension of Robin where it intersects Mourning Dove. That is a lot to ask of Mr. Muralt. I know it was discussed at a previous admin meeting whether or not he would be willing to consider that connection solely on his property, but if you look at the property lines, you have straight north south connections to an existing dedicated easement and as Mr. Rice had mentioned at that same admin meeting, with the sewer already to the north, development is likely going to come from the north. These connections can work their way to the south. As sewer is available to increase the density of those lots, if those future owners so desire, that is where the connections will be made to make a major north south connection that allows direct access onto Mullan Road through an existing road network. If we were to consider utilizing the conditional access easement between lot six and seven, across lot three of Wentland Estates, it is still going to have to wind its way to the north somehow and the most logical connection would be as an extension of Nuthatch but then you are just inducing a lot of traffic on these interior roads and still going east west to north south. So it is either going to create a loop between Lazy H and Haven Heights or a short connection to the north that requires a lot of east west movement to get out of the development. In my opinion, from public works, again extending Haven Heights and going north would relieve some of the traffic on Cote and ultimately, in a very long range plan, another connection to Mullan Road farther west would be very nice, whether or not it is feasible or likely is a big guess but it would allow a third access to this area that relieves a lot of that north south pressure that is on Cote right now as the sole access to the area.

 **Commissioner Rye** – Is the idea to have 30 feet on the edge of lot six?

 **Jamie Erbacher** – Staff would be recommending doing the full 60. However, we don't know, we haven't had much communication with Walt Muralt to see how he feels about that. There was maybe some interest from the commissioners in doing 30 feet only on the west side and then keeping the easement.

 **Commissioner Rye** – With the idea that future development could have the other 30 feet, that makes sense.

 **Jennie Dixon** – That would be contingent upon the 80 acre piece developing first in order to create enough right-of-way. If you only do 30 feet on lot six it is not sufficient to actually make a road.

 **Commissioner Rye** – Right, but the road wouldn't be needed until the 81 acres were potentially developed.

Jennie Dixon – It could be needed for lot three of Wentland, but I don't know that Walt or we are here to solve everybody's access problem by making some right-of-way available. We felt like 60 feet might be the most logical to provide that north south connection in the absence of any other development on the 80 acre piece.

Commissioner Rye – I see what you are saying Jennie.


 **Commissioner Rowley** – What is north of Wentland, do we call that anything?

Jennie Dixon – 24 acres.


Commissioner Rowley – That is potentially most likely to develop first. This access could still be there but it couldn't go down this far until the property to the west is developed. Correct?


Jennie Dixon – Yes, that 24 acre piece which is just south of El Mar, and in fact on the El Mar plat is identified as future development; has some of those connections, Nuthatch, Robin, Warbler (more to the west). Envision it connecting to those road easements (right-of-ways) to the 24 acre piece, if it does start and in a domino fashion (one after the other etc.) we don't always see it that way so if Wentland lot three were to develop before the 24 acre piece or even before the 80 acre piece that right-of-way on the west side of lot six (Mr. Muralt's piece) would potentially allow that connection to happen. Lot three also created their own constraints with only dedicating a 30 foot right-of-way through that driveway. I am not suggesting that Mr. Muralt needs to solve that problem necessarily but for future planning and public access to that area; you might need the 60 feet.


Commissioner Rye – I can see from strictly, purely planning if this were to come in and this weren't you know, so and on and so forth, I can see that, on the other hand, I can also see that these property owners would be bearing all of the responsibility for access that the large lot would benefit from that they wouldn't have to contribute to and I struggle with that both from a planning perspective, a philosophical perspective I struggle with that.

 **Commissioner Rowley** – With the current easement, is only 30 feet on Mr. Muralt's property and 30 feet is on Mr. Laird's property is that how it is laid out?

Jennie Dixon – Yes.

 **Commissioner Curtiss** – But we would giving up 60 for 30, unless, and we haven't heard yet whether Mr. Laird is interested in doing at least a 20 foot pedestrian.


 **Jason Rice, Territorial Landworks** – Cory is not here today and he has been doing a lot of thinking and the difficult position that we are in is that he has decided that, if he were to buy it, he doesn't want any easement on the property. So therefore, Walt still wants to pursue his opportunities, where Cory was is that he may be essentially saying that his contingency will be exercised and he will walk from the property. Where we are at, and I have explained to Walt, if the only way that we can get Walt's 30 foot moved is with the 20 foot easement, which is your prerogative, it would just been an approval and then he would have to approach the neighbor, the Roper's, and see if they would accept those positions as well; instead of Cory. So that is the position that puts me in which complicates things but I do think that we could move forward and process it with whatever you felt is appropriate.

 **Commissioner Rowley** – Could you go back and explain the Roper's and what neighbor that is?

Jason Rice – So, the seller.

Commissioner Rowley – Oh, okay so it is that same property.

Jason Rice – The seller didn't acknowledge this easement was there when they bought the property because there is no road there. People don't look at their plats all the time. The neighbor to the south of Walt didn't know that he had two easements on his property; he was going to build a barn in one of those easements. This happens, it is unfortunate because if they ever want to develop they would have had to tear the barn down and it would have been a controversy. I do think we can move forward, I just think that it would be nice for everybody to know that. Certainly if it went away then he would be on the hook to still purchase the property but he just has been doing some soul searching and that is where he landed with it. Is that acceptable to move forward then and just understand that it is more of a Walt situation. No one signed any applications or anything anyway so I don't know why we couldn't. It is just the owner of lot seven.

 **Commissioner Rye** – I guess I do not fully understand what is what for what. So currently there is an easement between lots six and seven, 30 feet on each side. Neither one of you wants that but we all understand that we want some sort of pedestrian easement through there, correct?


Jason Rice – That is where we got to, that was a compromise from when it was first pitched by planning before they said no before we even talked to the commissioners.

Commissioner Rowley – They were recommending denial of vacating this easement.

Jason Rice – There was a time before the recommendation of denial when they called and floated the idea of this 20 foot pedestrian easement by us. We said, "I don't know" and then through the conversation could see their point and now that it has gone out to where it is and the stress that Cory has gone through and I have had to go to his office and I feel like I am consulting him. He had to go away and do some searching and thinking about it and he is pretty sure that he will not go forward with any easement. Now, if he doesn't buy it, the current landowner can certainly always accept the offer as well; being a good neighbor to Walt they have to work that out. With that all being said, can we just call, instead of Cory, the owner of lot seven would be the conversation and then decide how important that 20 foot pedestrian easement is. It is just a development. I heard the final decision was literally made today of his feelings on that, maybe it was Friday. Today is the day I got the interpretation of it.

With that, can we move forward with that, is that okay?


Commissioners (unanimously) – Sure.

 **Jason Rice** – I really feel like the owner of lot three of Wentland Estates should come in with a subdivision application right now. It sounds like we are all just ready to roll out the red carpet for this lot that is sitting out in the middle of nowhere to start being developed. This is the point that I have been hearing, is it really ready to be developed. As we have covered in the past, we have talked about pedestrians having to go way around, a mile. They are going to have to go around a mile until lot three gets developed and so with the offer what I have explained to Walt is that I am pretty sure from the feedback I have gotten that we need to get a 20 foot pedestrian easement in exchange for the lot seven 30 foot. So we are going to proceed as if that is the case that is a benefit. The question I still have is whether that is conditional, similar to what it was before, is there a need for that pedestrian access until lot three develops or do you want it right now, so I would need clarification on that. The second one was because I didn't hear until I think we had a good follow up is whether this was a 60 foot or 30 feet. We strongly to encourage you to consider only 30 feet on

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the north side, it just seems like the fair thing to do. When I read any planning document that this county produces in any other community it talks about growth in a consistent, predictable pattern that doesn't just hop scotch around. Creating an opportunity to go and do a weird little cluster development in the middle of all of these open spaces seems odd to me. The rules that were in place when Wentland Estates was subdivided didn't require any 60 foot easements to these developable parcels, that is a new rule. I understand that we want to think about that and that it makes good practice, but like Jennie said, it is their own doing. They had opportunities to put 60 foot easements in from the end of their cul-de-sacs if they wanted to set lot three up for development. On top of that, this 30 foot easement that we keep talking about how inhibiting it is, it was intended to be collaboration. If this ever were developed it was probably going to be after this and they would also dedicate their 30 feet on the other side of Wentland Estates. This area has been developed in a certain pattern of collaboration, there was a 30 foot easement that could be matched to the north, all we are asking is that we do a 30 foot easement on Walt's property that can be matched to the west. It seems like that is what has happened in the past. We have talked at length about how we had to provide a variance or somebody had to provide a variance for the road length, they had to provide a variance for the road length here. We are now talking about you would need another variance if you developed this before this was developed. I was telling Walt, if I am representing lot three, I am going to present the variance and say that I have 30 foot emergency access easement that you can use along my old driveway and that is my mitigation for my variance. We have a good chance of getting that variance approved, but there is no guarantee there. The rules in place, we are not violating any rules, there was barely any consideration to the 60 foot easement. I found one reference in the staff report and it was about the pedestrian potential and that is why the pedestrian easement, it was from the park board, was extended down to that line. There were no other findings of fact about the 60 foot easement, therefore we don't need to require them anywhere else, it just wasn't considered in the findings of fact that I could find. Maybe it was in other places, maybe it was discussion, but it wasn't part of the actual record that I could see, other than for this pedestrian easement. I need to know if it is 30 feet or 60 feet, we'd prefer 30 and we would prefer that it remain conditional just like all of the other easements. It doesn't make sense to make an official easement until it is ready to be used. We think that it would be an easy sell to whoever owns lot seven and therefore it is a pedestrian easement is what is needed we prefer that it was conditional, much like the current state of it. We would accept either way. The result of not doing this if this road ever were to be built, which is unlikely, is cost prohibitive. That is why I was partially joking about lot three. I wouldn't even take it on because it is a project that we would maybe get approvals for, it is not a place that you develop right now, it doesn't make sense.


Commissioner Curtiss – As we learned earlier, part of Walt's driveway actually is over into the 30 foot easement on the other property, with permission, but would you then propose that we somehow if there was a pedestrian there in trade that we allowed for where the road is so that Walt doesn't have to change that?

 **Jason Rice** – The road isn't that far over, it is straddling the lot line.


Walt Muralt – Inaudible.


Commissioner Curtiss – Right into Mr. Roper's property, you said your driveway goes...

Walt Muralt – My driveway is maybe one or two feet (inaudible).

 **Commissioner Curtiss** – I'll just recap. I was asking about the fact that Mr. Muralt's driveway bumps over the line a little ways into Mr. Roper's lot seven. So my question was, I don't know how far it went in. I just wondered if we are going do twenty feet if we should take that into allowance but if it is only a couple of feet we can figure that out.

Walt Muralt – If you take the 20 feet from the eastern edge of the current 30 foot easement and end, I guess there is a decision on where within that 30 feet.

 **Jason Rice** – So to answer the question, when you look at where the 20 feet would be you are talking to mean a 10 foot wide trial max and you have 20 feet to work that driveway isn't more than 10 feet on the neighbor's property, a couple feet, certainly not ten feet. There is room to go next to it along there.

 **Commissioner Rye** – Erik, go we go back to the map with the blue and red lines? The one egress and ingress in and out of El Mar, when that was done, I don't know when that was done, I assume by the architecture it was the 70s. Why weren't there more access points to Mullan other than the one?

Erik Dickson – I couldn't say, I guess just because most of the development was north around Robin Drive. It is kind of cluster on that. I guess it depends on what the original property boundaries were, but because most of the concentrated development is closer to Mullan it does have actually three access points. Quail and another one. I am sorry there are two. And then there is a short loop

right in here. The fact that Cote was the only long access to anything to the south that was maybe offsite of the owners who developed El Mar, I couldn't say.



Commissioner Curtiss – The other is there are some properties along Mullan Road to this day that did not belong to the people who developed it. There are a couple businesses and houses, so they didn't own all the way to Mullan either, on the east side. Is there two going on to Mullan and two onto Cote?



Commissioner Rowley – And she said three, Quagmire, Quail and Cote all hit Mullan.



Commissioner Curtiss – Mourning Dove and Robin both come onto Cote, right?

Erik Dickson – Robin does, Mourning Dove connects back into Quail and then back to Mullan.

Commissioner Rye – It is neither here nor there, we don't have to look it up. I was just curious; it looks like the one straight Cote connects to Mullan and not anything else.

Erik Dickson – I don't know when the adjacent subdivisions to the east come in but like Homestead Drive and Frey Lane.

Commissioner Rye – No, I was talking to the west.

Erik Dickson – Right, so that I can only assume was depending on who the property owner was and where their frontages were, but I know that those subdivisions to the east after Cote and Douglas Drive and some of those were in there were no connections made to Homestead Drive or Frey Lane that connected back into Council that provided an alternate access back over to Cote. The development and the connections out there with subsequent subdivisions have never really been that great.

Commissioner Curtiss – There is one other one there, see it; by that shop.

Erik Dickson – Oh Ptarmigan, there are three: Quail, Ptarmigan and Cote.



Commissioner Curtiss – And then going onto to Cote they all come together on Mourning Dove, no there is a second one, Robin and Mourning Dove come back onto Cote.

Erik Dickson – Yes.

Commissioner Rye – Okay, so what we are talking about for this though is potentially 30 or 60 on the west side of lot six and moving forward with some sort of 20 foot on the eastside of Mr. Muralt's property with the idea that it will overlap the driveway that is already there, is that correct?

Erik Dickson – It would be the west side of lot seven.

Jamie Erbacher – Not Muralt's property.

Commissioner Rye – Oh, sorry.



Commissioner Curtiss – So I have one more question in regard to the pedestrian access, could you show us again where the current pedestrian, I know between Wentland and Caitlin there is a park there and I just wanted to how far west the current pedestrian access or permission for it goes. Does it go right there to the lot?



Walt Muralt – It is on the west side of lot one. It runs along the boundary of lot one and two. Aren't you talking about the connection of Caitlin and Wentland?

Commissioner Curtiss – I am talking about the fact that there between Wentland and Haven Heights. So we have a park but it seems like the pedestrian goes to here, right, is that how far it goes?

Walt Muralt – Yes, the only pedestrian in Haven Heights is right between lot one and lot two.

Commissioner Curtiss – So it goes a little west of the boundary of the lots seven and eight.

Jamie Erbacher – Nine and ten.



Commissioner Curtiss – So Jamie could you show me on this (referring to handout); so this a park, does it go to there?

Jamie Erbacher – Yes and there is public pedestrian easement to this point, from here to here it is a private pedestrian easement.

Commissioner Curtiss – Alright, so if we did the 20 foot on lot seven on the Roper's property it would touch that other one?

Jamie Erbacher – Yes.

Commissioner Curtiss – That is conditional or permanent?


Inaudible comment from crowd.

Commissioner Curtiss – It is a public easement, okay.


Jamie Erbacher – If we did a non-conditional 20 foot pedestrian easement on the west side of lot seven then that would give connection now, essentially to the pedestrian easement on lot three of Wentland.

Commissioner Rye – Say that again.


Jamie Erbacher – So, if we did a non-conditional 20 foot wide pedestrian easement on the west side of lot seven that could connect now then to the public pedestrian easement on the south side of lot three.


 **Commissioner Curtiss** – Mr. Muralt, Jason spoke for you, but I would like you to tell us on the record if you are in favor of us considering the 30 foot conditional easement that's on the eastside of your property to the west side.

Walt Muralt – This has been really driven by Cory, but I guess for good reason, he opened my eyes for sure. I just learned today, just before here, it sounds like he is quite uncertain moving through on this, so I don't know that it changes a whole lot for me. Can I say yes, I don't know that I am ready to say yes. I'm I in favor of moving that, yes. I can't give an unconditional yes and obviously lot seven providing the pedestrian easement is their decision obviously, but they are interrelated.

 **Commissioner Rowley** – Really, I mean the only way we would change the plat is because someone is requesting it. So you are not at the point right now, you need some time to think about...

 **Walt Muralt** – Today?

 **Commissioner Curtiss** – I mean the reason we are meeting today, kind of in a hurry...

 **Walt Muralt** – Was because of Cory, right?

Commissioner Curtiss – Because of Cory's closing.

Commissioner Rowley – Just so you know, I cut my vacation short to come back this meeting because it is a special meeting.

(Group laughter)

Commissioner Rowley – If that is the situation we are at now...absolutely.

Walt Muralt – My wife is somewhat aware of this and I don't know that I want to make a decision like this without making sure she understands it. There could be a road right back there where we are looking but here is the other side of it.


Commissioner Curtiss – I guess what makes sense to us is to discuss it and say that we would consider it if we had this and this so that he go back and talk to his wife and then we can continue the hearing.

Walt Muralt – And I guess that would be a lot more comfortable for me if I knew, okay this is what they are willing to do.


Jason Rice – After he heard about what Cory was saying we have been talking about this whole thing wondering what the neighbor is going to do.


Commissioner Curtiss – Right, it gives you time to talk to them, too.

Jason Rice – But there has also been this due process thing the whole way along that I have been wondering about. Which is, let's just say Cory was here today and he said yes 20 and Walt said yes I'll move the 30, what do we get? We get an approval of intent, that if you guys bring us these new easement documents that say this other one is hereby vacated and this one is hereby created that it is now all good, right? So it is just like a subdivision preliminary plat approval. I kind of wonder if we could have that deliberation now and then if he doesn't bring an easement forward the whole thing kind of just dies.


 **Commissioner Rowley** – I think that would mean that we are vacating the current one though which we are not.

Commissioner Curtiss – Well, it would be conditional because they are going to have to do all the things.

 **Jason Rice** – You can't vacate it until you have his new easement. So it would kind of be like a swapping of victims. But we bring the new one in then you could do the official vacate. We wouldn't be prepared to hand it over today. So if we have intent to vacate, considering that you provide these documents, then when we bring the documents by we would have the official vacation.


 **Commissioner Rowley** – My only concern with that is keeping the record clean and the fact that sometimes when we do that and then it doesn't come in people think that we voted on it, that it did happen, but technically it didn't. As long as it gets recorded and we are clear with our motion what the intent and when it becomes official.

Jason Rice – My fear would be going and helping Walt explain this to Mr. Roper and saying that we still need to go get a final decision, would be difficult. I would love to have a letter saying, we have intent to vacate this right-of-way if you provide these documents. Then if we don't we don't need to waste your time anymore and if we do then we get to come back and we will all be happier because we know where we are going with it.

 **Commissioner Rye** – So I can say that I would be fine with the proposed kind of solution that we have all sought out which is the 20 over here on seven and the 30 on the west side of six.


Walt Muralt – Clarification on the 30, that portion is a conditional easement.


Commissioner Rye – Correct, I would be okay with that and then vacating the 30 on the eastside of your property. I guess my last question is what kind of, other than voicing my support for the proposed solution that needs further time to settle, if you need anything else, such as a letter or anything.

 **Jennie Dixon** – Just two things for you to consider, I don't know that I have the answers necessarily, I like the idea of taking the action today while we are all here and lets them move forward, in the past having two plat approvals active at one time has been problematic and it might be worth talking to the attorneys if that is possible. I know in the past that has been a problem, but this may be a different scenario and then it is fine.

Commissioner Curtiss – Of course the one is already filed, right? So it is different than having two of them hanging out there?

Jennie Dixon – That is true, that may be the difference.

 **Jason Rice** – There is no plat approvals out there right now. All we would be saying is yes we have intent to make this deal with you guys and I don't know if there is any other way to do it when it becomes conditional. I think the reason we actually steered away from this concept originally was how do we do it because in theory if we didn't have any condition and you guys were like, oh that makes 100 percent sense, you know there is a big huge drainage in the way let's just get rid of that easement, no trades, then I would assume it would be a done deal after today's meeting, but that is not the case. No matter what, even if we had Cory in here and we are saying yes this is exactly what we want to do, we don't have those easements ready to file. I think until we have them signed and ready to be recorded, you can't get that final resolution, but on the other hand, we have to go talk to people who probably have no idea what we are doing. We need to show them that we have support. So we don't have two more hearings just to get to the final version. I am not trying to push it; I am just trying to think of the logistics when we go to someone who hasn't been following this.

 **Commissioner Rowley** – Another concern I might have, that maybe you can address, is if Mr. Lair is not going to own lot seven because we do want a pedestrian easement there, it feels odd altering a plat without these landowners even being aware of what is going on.


Jason Rice – They have been aware it they just don't know all of the ins and outs and the negotiations.

Commissioner Rowley – They will be the ones that will have to agree to it.


Jason Rice – I don't think anything is agreed upon today even if you did do some sort of motion. It would bind you guys to approve it, once we brought the documents for it. But it wouldn't bind them to move it forward necessarily. They could just leave it and let it die and it would just be the same the way the plats are.

Commissioner Rowley – Right.

Commissioner Rye – I think we are all kind of on the same page, as long as we don't let any attorneys near it.

 **Jennie Dixon** - The other thing I wanted to mention and especially while Erik is here is part of the reason that we came forward today with a recommendation that you consider 60 feet on the west side of lot six, rather than 30 is because right beyond that fence line is a significant topographic feature that might make it challenging to get 30 feet on both sides, but I leave that to Erik and the public works department to ultimately to tell you if it is technically feasible to do it but it definitely appeared that that hill could present some challenge to 30 feet on either side.

Commissioner Curtiss – So could you go to the one that was looking north. So we would be getting 30 on this side of the rail fence and we would need 30 on the other side. Can you build a road there Erik?


 **Erik Dickson** – That is why it is difficult when you ask what's feasible. Yes a straight north south along centered on that property line is feasible. It is feasible to be strictly on the east side of that fence line. It is feasible to run it east west and follow the contour of the hill once you get onto that 81 acre parcel. It is all feasible, it is going to be driven by if there is sewer there, is there going to be a lot density to make the costs benefit there. Physically, yes you could build there. It is going to come out to be a cost benefit ratio and that is going to be based on the density, based on the sewer, based on the buildable lots.


Commissioner Rowley – Is the topography such that it would be quite cost prohibitive or do you have any sort of concept of how expensive and difficult that would be in order to mitigate with density.

Erik Dickson – I don't think it is because when we look at Ponderosa Heights down off Ridgeway in Lolo, they built that whole subdivision on a hill, we had Bank Grass Meadows off the Frenchtown Frontage Road. Most of the El Mar Estates itself, if you look at all the roads off of Sharp Tail, which lots front on Mullan Road, Sharp Tail Drive itself is on the backside and every one of those lots is just a daylight basement because it is such a steep slope going down to Mullan Road. I think there are plenty of design options out there allow use of that existing topography.

Commissioner Rowley – So you think a 30 foot and a matching 30 foot would be a reasonable solution in this case?

Erik Dickson – Yes, and also because if you look at that large 81 acre parcel, like we mentioned originally, if the sewer develops from the north, that very well could be a loop road that comes all the way down from Warbler or Robin and it could have a winding road that follows the topography that doesn't need that direct north south connection because it will still connect to north but provides a more natural flow into Haven Heights.

 **Jennie Dixon** – I think the last thing I would add which I think Jamie has made clear but I am not sure, Jason addressed this a little bit, I just want to make sure that it is really clear on the record that this is not intended to serve lot three of Wentland. It is a bigger picture thing than that.

 **Commissioner Curtiss** – I wrote myself some notes of some points that I think we need to cover in a motion. If this is the way that we decide to go it would be to:

Commissioner Curtiss made a motion to agree to vacate the conditional access easement 30 feet on lot six and 30 feet on lot seven of Caitlin Estates and replace them with a new 30 foot conditional access easement on the west boundary of lot six and a 20 foot permanent pedestrian easement on the west boundary of lot seven to connect to the public easement on Wentland lot number three. The whole motion would be conditional upon the documentation and easements being filed. Commissioner Rye seconds.

Passed 3-0.

Commissioner Rowley – Any further discussion? Was there any public comment? Seeing none, we will close that hearing.

7. OTHER BUSINESS

None

8. RECESS

Commissioner Rowley – Called the meeting to recess at 2:31 p.m.

THURSDAY, AUGUST 4, 2016

BCC met in regular session; all three present. Morning: BCC met with Mayor and City and County Chief Administrative Officers.

ADMINISTRATIVE MEETING

Lease Agreement – BCC signed Lease Agreement between Missoula County and Allegiance Benefit Plan Management for the use of 50 spaces in the fairgrounds parking lot. Amount/\$30,000 per year. Term/August 1, 2016-August 1, 2017. To Chris Lounsbury/Chief Operating Officer.

Resolution No. 2016-106 – BCC signed, dated August 4, 2016. Calling for bond election that would authorize \$30,000,000.00 in general obligation bonds for new public library, including ballot question, notice, and other details relating to the bond election. To be submitted to voters at November 8, 2016 general election. To Honore Bray/Missoula Public Library.

Professional Services Agreement – BCC signed Professional Services Agreement with Fast Track Entertainment Inc. for kids tractor pull at Western Montana Fair. Amount/\$5,450.00. Term/August 7, 2016-August 15, 2016. To Chris Lounsbury/Chief Operating Officer.

Affiliation Agreement – BCC approved, NR signed. Uniform Clinical Training Affiliation Agreement between Gonzaga University and Missoula City-County Health Department (MCCHD) for internship placement of graduate student in the School of Nursing and Human Physiology. Term/September 1, 2016-September 1, 2017. To Cindy Hotchkiss/MCCHD.

Resolution No. 2016-107 – BCC signed, dated August 4, 2016. Canceling Delinquent Personal Property Taxes. Writing off personal property taxes delinquent for 5 years or more as listed in resolution. To Tyler Gernant/Clerk and Recorder/Treasurer.

Contract Award – BCC signed Independent Contractor Agreement with Highway Specialties for road striping. Amount/\$82,500.00. Term/August 15, 2016-October 28, 2016. To Erik Dickson/Public Works.

Contract Amendment – BCC signed Contract Amendment between Providence Montana Health Foundation and Missoula County to extend date of original contract. For Strangulation Training by First Step Resource Center staff. Amount/\$9,114.00 through grant funding. Term/July 1, 2015-September 30, 2016. To Shantelle Gaynor/Grants and Community Programs (GCP).

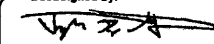
Grant Applications – BCC approved, NR signed. Applicant Disclosure Form and Drug-Free Workplace form for the YWCA Ada's Place Rapid Re-housing 1 and 2 renewal applications. Forms are required for 2016 Continuum of Care/Supportive Housing grant applications. To Sindie Kennedy/GCP.

Pay Increases – BCC approved FY 17 pay increases for County Officers and Department Heads. To Patty Baumgart/Human Resources.

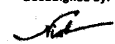
Additional discussion item(s): None.

FRIDAY, AUGUST 5, 2016

BCC met in regular session; all three present.

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Tyler Gernant
Clerk & Recorder

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Nicole "Cola" Rowley, Chair
BCC

MONDAY, AUGUST 8, 2016

BCC met in regular session; all three present. Morning: JC participated in conference call with Montana Healthcare Foundation. Afternoon: BCC attended Fairgrounds Concept review meeting.

Community and Planning Services (CAPS) Update – BCC/CAPS Staff. Agenda: 1) Public comment; 2) Communications; 3) General updates: a) Sunwood Park Vegetation Management/Contracted Services; b) Parks and Trails comments on proposed County Fairgrounds Plan; c) Anderson-Meister Open Space Bond Project hearing; d) Upcoming Open Space Bond Project hearing schedule; e) Right to Farm, Ranch, and Forestry update; f) Chapter 8 Subdivision Exemptions preview; g) Chapter 5 preview: approval periods and phasing plan language; h) Pioneer Acres Phasing Plan Extension; i) Burton Family Transfer; 4) Director's update.

TUESDAY, AUGUST 9, 2016

BCC met in regular session; all three present. Afternoon: JC attended Missoula Economic Partnership Governance Committee meeting. Evening: JC attended Seeley Lake Community Council meeting.

County Payroll Transmittal Sheet – BCC signed. Pay Period: 16/CY2016 - Pay Date/August 5, 2016. Total Payroll/\$1,600,328.86. To County Auditor.

ADMINISTRATIVE MEETING

Employment Agreement – BCC signed Employment Agreement with Larry Farnes, Director of Facilities and Grounds. Term/August 2, 2016-August 2, 2018. To Patty Baumgart/Human Resources.

Employment Agreement – BCC signed Employment Agreement with Christi Page, Director of Financial Services. Term/August 2, 2016-August 2, 2018. To Patty Baumgart/Human Resources.

Pioneer Acres Phasing Plan Extension – BCC approved Pioneer Acres Subdivision Phasing Plan Extension. Phase 1 extended from September 16, 2016 to September 16, 2020. Phase 2 extended from September 16, 2020 to September 16, 2023. Approval letter includes additional permit language. To Christine Dascenzo/Community and Planning Services.

Resolution No. 2016-105 – BCC signed, dated August 9, 2016. Relating to \$2,275,000 Open Space General Obligation Bonds, Series 2016A: Determining the Form and Details, Authorizing the Execution and Delivery and Levying Taxes for the Payment Thereof. Open Space Bond approved in 2006 authorizing \$10,000,000 in general obligation bonds. County previously issued bonds in 2007 and 2010 for \$6,650,000. To Andrew Czorny/Chief Financial Officer.

Appointment – BCC appointed Leigh Kelley to Greenough Potomac Volunteer Fire Department. Three year term through May, 2019. To Heather Schroeder/Commissioners' Office.

Professional Services Agreement – BCC signed Professional Services Agreement with All Aboard to run trackless train at the fairgrounds during the 2016 Western Montana Fair. Amount/Not to exceed \$5,300.00. Term/August 10, 2016-August 14, 2016. To Todd Garrett/Fairgrounds.

Budget Amendments – BCC signed three budget amendments for Public Works (PW). Formally adopted as part of FY16 budget. To Amy Rose/PW.

- Resolution No. 108 – BCC signed, dated August 9, 2016. Adjusts Seeley Lake Refuse District Fund.
- Resolution No. 109 – BCC signed, dated August 9, 2016. Revises expenditures/revenues to Road, Surveyor, Building Division, and RSID funds.
- Resolution No. 110 – BCC signed, dated August 9, 2016. Reflects budget transfer from Water Quality District for Bonner Milltown Wastewater Improvements Project.

Budget Transfers – BCC signed six budget transfer requests for PW to increase line item allocations previously approved in FY16 budget by transferring unexpended line item allocations within same fund. For RSID 8918, Building Division, and Roads. To Amy Rose/PW.

Stage 1 Fire Restrictions – Request for BCC approval to adopt resolution for Stage 1 Fire Restrictions. Action postponed.

Professional Services Agreement – BCC signed Professional Services Agreement with Tetra Tech to prepare update to Pre-Disaster Mitigation Plan (PDM). Missoula and Ravalli Counties applied for joint funding through Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program and were awarded \$37,500.00 (\$18,750 each) to update PDMs. Amount/\$6,250.00 Missoula County match. Term/September 1, 2016-March 1, 2017. To Adriane Beck/Emergency Management.

Engagement Letter – BCC approved, NR signed engagement letter with Dorsey & Whitney LLP to act as bond counsel for the issuance of open space general obligation bonds. To Andrew Czorny/Chief Financial Officer.

Additional discussion item(s): 1) Upcoming board meetings and review of meetings; 2) Citizen board training.

WEDNESDAY, AUGUST 10, 2016

BCC met in regular session; all three present. Morning: BCC attended Freedom Gardens meeting.

ADMINISTRATIVE MEETING – CANCELED

PUBLIC MEETING – AUGUST 10, 2016

MISSOULA BOARD OF COUNTY COMMISSIONERS

PUBLIC MEETING MINUTES

Room B14-County Administration Building

If anyone attending the public meeting is in need of special assistance, please provide advance notice by calling 258-4877. Missoula County is happy to provide auxiliary aids and services.

WEDNESDAY, AUGUST 10, 2016 – 1:30 PM

1. CALL TO ORDER

Commissioners Present: Chair Nicole "Cola" Rowley, Commissioner Jean Curtiss and Commissioner Stacy Rye

Staff Present: Christine Dascenzo – Community and Planning Services, John Hart – County Attorney's Office, Kali Becher – Missoula County Parks Trails and Open Lands

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS

Commissioner Curtiss - It is fair week; everyone go to the fair.

Commissioner Rowley - On the hearing schedule today, D and E, we have the Subdivision Regulations chapter three and four listed; those were actually completed last week. They were put on as place holders and should not be on today's agenda. We will not be doing those today.

4. PUBLIC COMMENT


None

5. CURRENT CLAIMS LIST

Total claims from July 28, 2016 – August 5, 2016 - \$1,133,940.10

6. HEARINGS

a. Burton Family Transfer

 **Christine Dascenzo, Community and Planning Services** – A consideration of a family transfer exemption affidavit submitted by Brent Burton and represented by Territorial Landworks and Datsopoulos, MacDonald & Lind, P.C. Brent Burton owns 27.27 acres in between Huson and Frenchtown. The proposal is to use the family transfer exemption affidavit to transfer six new parcels on 6.3 acres to his family members; 0.68 acres to his mother, Sharon Burton, 0.9 to his father Ron Burton, one acre to his eleven year old child, Kyler Burton, 1.2 to his wife Amanda Burton and 1.3 acres to his eight year old daughter Sierra Burton and 1.3 acres to his four year old child, Payten Burton for possible residential use. The remaining tract is claimed to be 26.4 acres in section eight of the affidavit but appears to be 20.97 acres based on data from the Department of Revenue. The property is located on unzoned land and is complaint with the zoning. The western portion of the tract, about 3.5 acres, is located within the Huson Activity Center which is the recommended location for area development. The proposed lots are located east of the activity center. The 2002 regional land use guide recommends one dwelling per 40 acres. This lot is not the result of a division that occurred after July 1, 1973 and is currently the site of gravel pit reclamation. The current parcel is accessed by four approaches off Frenchtown Frontage Road and one approach off the north of Houle Creek Road. Additional access easements for the property will be added to the final survey but are not on the submitted exhibits. These easements could potentially impact the irrigation ditch running along the northern property line and reduce available locations, if any exist, for septic and well facilities. The one single family dwelling was built in 1992 and the garage was built in 2002; both located within that Huson Activity Center. The parcel is not located within the floodplain. The City, County and Environmental Health Department commented that there would be significant challenges to siting drain fields and wells and to non-degradation analysis due to the size and configuration of the lots and their proximity to surface water. This request was reviewed for subdivision evasion based on ten criteria in the Missoula County subdivision regulations. These criteria do not provide a strict formula with which we add up a total and arrive at our recommendation, but they provide a lens with which we can evaluate factors and consider and weigh them as an attempt to evade subdivision review. This proposal for a six lot family transfer triggered five of those criteria; those being, to divide a tract with which will become one of three or more parcels that will have been divided from the original tract through use of exemptions. That is applicable because this proposal would create six new lots without subdivision review and if reviewed through subdivision it would be considered a seven lot acre subdivision requiring in part a 24 foot wide road, pedestrian infrastructure, park land dedication, fire suppression plan and proper access. It also triggered the criteria to create a parcel that is not intended for a home site for the transferees; this is applicable because none of the recipients have imminent or definite plans or residential use of the parcels. The avadavat stated that the intended use of every parcel to be possible residential down the road. It also triggered to divide tracts that were recently transferred to the applicant. Bask Properties LLC, a nonresidential building operation, transferred the property to Brent Burton

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on March 11, 2016. Brent Burton appears to be the Principal of Bask Properties LLC. To divide tracts or transfer to minor children and three minor children four, eight and 11 are three of the six intended recipients. It also triggered the tenth evasion criteria to divide land to transfer to spouse. Brent's wife, Amanda Burton, is on the six intended recipients. In addition, the Board of County Commissioners received a letter from Will VanCanagan, Mr. Burton's attorney; I would like to respond to some of the points in the letter. On page two of that letter, the state law permitting family transfer exemption is presented and allows for lots of any size to be created subject to applicable zoning. The site is not zoned, the proposed lot sizes would not be relevant to our recommendation except for the fact septic and well approval will be significantly challenging on parcels smaller than an acre. The letter included information on an unsuccessful legislative attempt to alter the family transfer requirements; we figured that is irrelevant to the proposal as it did become law. On page three, there is a discussion of the evasion criteria developed in the state's model subdivision regulations; which Missoula County did not adopt and are not relevant to this review. Missoula County developed 10 criteria, as mentioned earlier. This proposal triggered five of those evasion criteria, suggesting evasion of subdivision review. Additional information about the recording requirements for family transfers was included and not relevant to our review. On page five, the paragraph under number 10, it is stated that the Missoula County subdivision regulations are less restrictive than the model regulations. None of the factors create any presumption that the proposed division is for the purpose for evading review under the Subdivision and Platting Act. This is incorrect as it is the intent of the criteria to review the proposal for whether there is a preponderance of evidence that the proposal is an attempt to evade subdivision review. It is also stated in point three that Mr. Burton may consider creating fewer parcels if this body deems doing so appropriate. We would strongly recommend that rather than negotiate and review a new proposal today that Mr. Burton submit a new application that can be reviewed. On page six, domestic wells, discussion about of environmental quality and county health department approval for the domestic wells, septic systems and drainage facilities which may take a year to complete. This is a response to the timeline for residential development of lots. Based on the Health Department's comment the site poses significant challenges to siting these facilities; it is likely that this approval may not be attainable. This timeline for approval does not negate the fact that the applicant stated in the affidavit the intended use for every parcel is possible residential down the road. Point seven, the history of ownership transactions and historic use of the gravel pit does not refute the fact that there was a recent transfer in March 2016 from Bask Properties to Mr. Burton. Based on the facts presented there does appear to be an attempt to evade subdivision review and staff is recommending denial of the family transfer request.



Christine Dascenzo – Asks Brent Burton family transfer questions:



1. Please state your name for the record. Brent Burton



2. Are you using the subdivision exemption process in an attempt to evade subdivision review? No.



3. How long have you owned the property? One year.



4. Did you buy the property with the intent of dividing it? No, we bought the property with the intent to keep it within the family. It was going to short sale with the bank. We purchased through the bank from our in-laws.



5. Do you or your transferees intend to transfer the property within the next year? No.



6. Have you talked to anyone at the county about going through subdivision review? No.



7. Are you in the business of building or developing property? I am not. I have never done it. This is my first attempt.



8. Can you expand on what Bask Properties does? It is an LLC that was set up for this occasion. When we purchased the property it was an active gravel pit. To mitigate liability we purchased it through an LLC, opposed to the personal name. Four or five months later, once we worked through our options, we decided to do the family transfer, and transferred it into my name at that time.



9. Do you understand that this exemption is not being reviewed for adequate physical and legal access by all vehicles in all weather? Yes.



10. Do you understand that approval of this exemption does not mean the property is approved for zoning compliance, building permit, floodplain or septic systems or any other permit? Yes.



11. Will the property be developed? (Answered on behalf of the recipients by Brent Burton) Yes, our hope is to have a home site on each of these lots.



12. Will the recipients of the property be residing on the property? Yes.



13. Where do the recipients currently live? Colstrip, Montana

Conclusion of questions from Christine Dascenzo.



Commissioner Curtiss – What does the reclamation plan for this gravel pit look like?



Brent Burton – The two crossovers (referring to map) are being removed. The slope has to be reclaimed to meet reclamation requirements. Most of the shoreline is remaining the same. We want to get it to one large body of water for recreational purposes. There is an island being put in on the far western side. It is about 90 percent complete. The plan is to have it reseeded in the next couple of months.



Commissioner Curtiss – Does the reclamation plan also say what your future use is?



Brent Burton – Just what the land needs to look like.



Commissioner Curtiss – So your parents also live in Colstrip right now?



Brent Burton – That is correct. Currently, we all live in Colstrip.



Commissioner Rye – Question from the staff report regarding family transfer exemption. The action requested is: family transfer exemption for the purpose of a single gift or sale in each county to each member of landowner's immediate family. Under one of the criteria for evasion, number nine states to divide tracts to minor children applicable three minor children are intended recipients. I am wondering about the discrepancy between the intent of the subdivision in planning out to be able to make a gift to a single family member and the criteria to transfer a parcel to an immediate family member. How does that reconcile?



Christine Dascenzo - We see that in two cases, the minor children and the spouse, they are legal recipients via state law but based on context it is a case by case situation. Using those relationships can be considered evasion because it is not an immediate use of the home site. Specifically, with the spouse, it is creating two home sites where one family unit exists.



Commissioner Rowley - It is legal to do that, but in conjunction with other factors it may be a trigger making it look more like a subdivision than just a family transfer. Does the model code have evasion criteria? And are they similar to the County's?



Christine Dascenzo - Yes, they are similar. Ours are more and slightly tailored to the County. On page four of the letter from Datsopoulos, MacDonald and Lind, they include the four that were developed by the model regulation.



Commissioner Curtiss – But even at that, it still triggers two of those. The overall development plan looks like a subdivision. The remaining parcel is less than 160. If you had 640 acres you can divide into 160s without going through any kind of process, this one or another.



Paul Forsting, Territorial Landworks – Brent is trying to reclaim his gravel pit and is looking at his options and the recreational opportunities with his family. The guidance we have for him is to follow the rules put in place. The rules say, yes you can do things, but there is no clarification on how many of those things would trigger what a definition of an evasion is. Is it giving it to your kids? We see people give it to their kids all the time. Is it giving it to your wife? We've seen instances where people give it to their wives. Is it giving it to your parents? Well, all of those entities are specifically listed in the rule that says you can do this. That doesn't change at the state level or even at the level here. In regards to Brent Burton's wife, this gravel pit was Mr. Johnson's, her father. The history component adds reason in Brent Burton giving his wife a parcel of the property. In regards to the parents, there are two parcels, one for each parent. It is not uncommon for someone to have two parcels but only build on one of them. People do these family transfers for estate planning and we have a lot of that going on here. The kids, they won't build a house tomorrow, but these parcels will be valuable assets for their livelihood. Who knows what their outlook will be and how their lives will evolve. The family transfers were added to state law for the opportunity for people to receive them. Brent understands the concern with the number of parcels. I would like to hear what a new application would have in it. Nicole, we talked about it on Monday, you can continually and legally submit new applications. It may be viewed as less evasive to do that but in all reality it would be more evasive to do that six times. We are here with open hands. We understand it is going to be difficult with the DEQ (Montana Department of Environmental Quality). We have not sugar coated the challenges to Brent at all. It is going to take substantial review and we are going to have to go through that. That is a requirement before we can file this COS (Certificate of Survey) that would create these parcels. We have to have a condition of subdivision approval, that is the COSA and that is the DEQ's requirement before the Health Department will sign this survey. We will have water, sewer and physical access on that plat. There would be no filing of this project if there is not capacity for both water

and sewer. Brent understands this isn't a guarantee or a building permit or DEQ or Health Department approval. This is an opportunity for him to seek those things and to see what he would have to get reviewed for. If you have seen it, it looks pretty nice. It is about 90 percent done, there will be vegetation there. They don't say anything else really; they say go restore it to this older plan and the future is up to you. We see this as a good future for this site. It is an interesting process of a gravel pit being a mining resource for extraction to having the Burton's reinvest in it as a place they want to be. I would like to hear what the encouragement for new application is. Brent is open to concepts and wants to know what you need to approve it. If it is putting a new application in, that is something that can be done. We would like to hear what it is today and possibly adjust today to allow it and make it approvable in your minds.



Commissioner Rowley – Could you potentially address the concern that with this many lots it would be considered, in subdivision, a major subdivision and would have the infrastructure needs and so in essence what we are doing, if we approve this family transfer, is approving a major subdivision with no infrastructure requirements. This, in the future, if it is an estate and they intend to sell and none of the family is going to live there, potentially that creates a public infrastructure problem.



Paul Forsting – A minor subdivision has infrastructure requirements. They are subject to all the same things. There is no such thing as a shared driveway in subdivision regulations. That is a County standard local road that is engineered and designed. These will also have to have building permits. Building permits require adequate access and fire suppression mechanisms that are in place. Every house that is being built outside a subdivision is being built according to building code and the building permit standards.



Commissioner Rowley - There is no sidewalks or road standards or parkland dedication like there would be in a subdivision?



Paul Forsting – Sure, in some aspects, a minor subdivision is five or fewer. If you are saying, we don't like that you are transferring one to your wife, we don't like that you are giving one to both of your parents; we can get that number down to five if that is really the concern. That is a minor subdivision. Those are exempt from parkland dedicating. We haven't looked at it as a subdivision. It hasn't been a subdivision. It is a site that had a gravel pit with trucks entering and exiting with large loads. I know from a traffic engineering standpoint a six or seven lot subdivision with residential traffic on it is much safer for the area than taking gravel trucks in and out of there. This is what it was, I am not sure if we had any incidents of accidents and this is where it is going. I would say that residential use is a much less impactful use than a gravel pit.



Commissioner Rowley – Christine, I would also like to hear that if they submitted a different application, what you think that would look like. I do think if, like we talked about on Monday, you could do the wife family transfer and then come and do the kids. But if you just chunked it up into pieces then you would also trigger evasion criteria number four; which is to divide a tract that fits a previously established pattern of land divisions. You would actually be adding evasion criteria on as you continue to do it; it may get you a division or two, with another trigger on it, I don't know if you could ever get up to seven, if we chose to go that way. So I didn't know if there is something that staff thinks would be more acceptable.



Christine Dascenzo – Staff would just want to see what proposal would come from the applicant. It is hard to say, without seeing it, what we could or would approve. The small acreage is a concern for sanitation and the number is a concern.



Commissioner Rowley – Was there any interest by the applicants to alter the size of the lots, upon hearing the denial? Or, why are those so small you can't get sanitation on them?



Paul Forsting – Sanitation is not a requirement here. There is no size requirement in the DEQ size. Those were removed. There is a possibility here. This project is going to rely on a community system. The separation distances from this pond are great enough that the only place for water or septic is on the far end. You can only invest so much money in that research if you have an idea of what you are going to do.



Commissioner Rowley - So the intent is a community system?



Paul Forsting - That would be the only thing that could likely work.



Commissioner Rowley - It is not one of our review criteria, but knowing that single septic and wells won't work it does play into our decision, but as long as you are fully aware that...



Paul Forsting - Absolutely, Brent is aware and he knows. When we talk about residential down the road, it is a year or two year process to get through monitoring, prove nondegradation

analysis. Brent is not surprised by all of this. We told him it is going to be a difficult aversion. We told him we may only get two parcels out of here because that is all we can fit for a drain field. You never know. I don't think that would require an amendment. I think you just file one of them. I don't know. You have no idea. We could not fit a well on these parcels. A well takes 100 feet; it has to be 100 feet in all directions, you can't be close to the surface water. So the only place that works is the very end. Your drain field has similar requirements, it has a mixing zone and creates a large swath and can't influence surface water either.



Commissioner Curtiss – Building codes also require you cannot build on fill and there is going to be a lot of fill here.



Paul Forsting – Certainly, we are going to have to look at all the requirements and make sure that these are feasible. Again, we looked at as an option. The option says he can do it. You can create a transfer in all 56 counties and certainly when they put that rule in there they did not intend on people having 56 primary rules. You are only allowed to do it once in each county to each applicable family member.



Commissioner Rye – I would like to hear from John Hart. We seem to be discussing the potential for residential housing on each of these lots and now we are discussing mitigation and sanitation and development and infrastructure as if it is a subdivision but it is not a subdivision. I would like to hear from John Hart because I don't know that I have been here when we have said we cannot approve this as a family transfer. What does it look like for us to not approve it as a family transfer? What, if any, appellate process there is?



John Hart, County Attorney's Office - What exactly is your question Stacy?



Commissioner Rye – What is the process for us to not approve this as a family transfer?



Commissioner Rowley – What level of discretion do we have since indeed two of our evasion criteria are things that are allowed in state law. What is the preponderance of evidence for us to have the discretion? What discretionary level do we have to hit in order to be able to legally deny a family transfer?



Commissioner Rye – This appears to be a subdivision. While I appreciate the desire for wanting to transfer this to family members who live 500 miles away, I can't get there. What Cola said and what is the appellate process after that for the applicant if any?





John Hart – So when the legislature passed the Subdivision and Platting Act, it provided some of the exemptions (inaudible). Unfortunately, the legislature did not give governing bodies like yourselves any guidance to use to figure out how to do determine whether or not it is an evasion. I have looked at the legislative history, there is really nothing there. When you are considering denying one of these things it is tough. The Supreme Court has not provided very much guidance in the 40 years since the passage of the act. The intent of the Subdivision and Platting Act was to protect public health and safety, exceptions of the subdivision review should be narrowly construed. When you have someone like the Burton family who is asking to be exempt from subdivision review, the court has said, look at that and make sure your decision reflects the purpose of the act and that is to protect public health and safety. The other thing that the court has told us is the applicant has the burden of proof. It is up to the Burton family today to bring forward facts and evidence and put those in the record that show that they are entitled to it. It is not the County's obligation to somehow meet some preponderance that the applicants not entitled to it. With regard to the family transfer exemption itself, we don't really know what the legislature meant. There isn't any court decision that said, okay this is what we meant by allowing applicants to give a parcel to their immediate family. There is some commentary that I have read, it isn't binding on the court, which suggests that it was basically a way to give or sell some property to immediate family members who would then occupy that property. So in other words, the mom and pop that were getting old need some help from son or daughter, they give a part of their land, and son or daughter builds a home on the property and takes care of them in their golden years. I don't know if I am answering your questions or not, but another thing that I want you to understand and the Supreme Court has said, the exemptions in 76-3-207 (the statute the applicant is relying on) were not provided to allow a developer to create a division of land which is for all intent and purpose, nothing less than an un-reviewed subdivision. Rather, the exemptions were provided to deal with exceptional circumstances under which full plenary subdivision review is unnecessary. That is about the extent of guidance we get from the reported Supreme Court decision.





Commissioner Curtiss – Could you read that last sentence again, the exceptional circumstances that don't need...


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 **John Hart** – Rather, they were provided to deal with exceptional circumstances under which full plenary subdivision review is unnecessary. I think that just reflects what the courts also said about giving (inaudible) construction to the Subdivision Act to benefit the public health and safety and then to give a narrow interpretation to the exemptions under the act. That is the guidance that we have been given.


 **Commissioner Rye** – So, for all intents and purposes this appears to be the potential for a subdivision and in the interest in the public health and safety the exceptions should be narrowly construed for future public health and safety considerations of future residential property owners for lots one through seven. Okay. This could have lots of potential problems if there is no subdivision review.


 **Commissioner Rowley** – And you support the recommendation of staff?

 **John Hart** – I do support the recommendation of staff. I would also recommend that whatever you decide to do today just state the facts that you are relying on to reach your decision.


 **Commissioner Rowley** – Any further comment from our staff or representatives of the applicant?

 **William VanCanagan, DM&L Law Offices Datsopoulos, MacDonald & Lind, P.C.** – In the end the analysis that the Commission is required undertake is a balancing act. It is a matter of reviewing all the subdivision criteria in weighing them appropriately and making a decision with regard to whether the scale tips in favor of the developer or the home owner, the land owner in this case, or whether those criteria when taken as a whole point to evasion. We have to do two things. We have to look at each criterion individually and make that call and secondly we have to look at the criteria as a whole and then balance those criteria in rendering a decision. I agree with Mr. Hart's comments and I think they are well taken that the Commission is required to issue findings of fact which justify the decision, not only in terms of the application of each individual criterion but also the overall balancing of all the criteria. Just to point out a couple of things that I think might be helpful in terms of the history here. This is not a family that resides in Colstrip, Montana. This is a family that has significant connection to the Frenchtown area. In fact, Mr. Burton's wife Amanda is from Frenchtown, her mom and dad live there. It is a desire of the family to maintain that connection and to retain this property for family purposes. This property is not being considered as use for primary residential lots. It is looked at as a family recreational property to be developed down the road. We have assisted the family with some estate planning ideas. As lawyers who have practiced in this arena we see the family exemption as being a very useful tool for estate planning purposes. There are things that we can do for these families to help avoid probate, to get their property to where they want it to go, the way they want it to get there and to avoid federal estate tax. One of the things that the family transfer exemption allows us to do is to allocate ownership of these various parcels between spouses so that the husband's estate and the wife's estate, for federal estate tax purposes, are properly managed and so that one estate isn't overloaded with value for those purposes. It is the same analysis for Mr. Burton's parents and the reasons they want to hold title for one or more of these lots specifically. With regard to his minor children, these lots are going to go into a trust and that trust is going to be set up for long term holding purposes. That is an estate planning objective. These kids, who are minors, don't have the intent to build and live in houses two years from now. Likewise, they do not have the intent to resell any of these parcels either; which is one of the factors I think this Commission should consider in terms of whether or not there is an intent to evade the Subdivision Act. I think the lack of intent to resell is not only established by the family purpose for this subdivision, it is also established by the estate planning documents and it is also further established by the long-term holding intent that the family has. I also think that long-term holding intent could be further memorialized with an appropriate covenant that is recorded against the property that requires the individual family members to hold those parcels for a period of time and not resell them. I don't see that there would be an objection to that approach simply because that is completely in line with the family's purposes.

 **Commissioner Rowley** – That was kind of addressing my question of although the four year does not have the intent to sell, the trust legally could sell the property prior to them turning 18.


 **Commissioner Curtiss** – As long as it benefits the kid.


 **Bill VanCanagan** – As long as it benefits the kid, that is true, Commissioner Rowley.


 **Commissioner Rowley** – You said you could set up something so they wouldn't be able to sell for a period of time?


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 **Bill VanCanagan** – Yes


 **Commissioner Rowley** – I guess my point was, although the minor children don't have currently the intent to sell, it is in a trust but the property could still be sold even though it is in that trust.


 **Bill VanCanagan** – That is a true statement. I appreciate that comment. The trust instrument would govern the disposition of that question. Any restrictions that are placed on the trustee within that trust document with regard to resale would be binding on the trustee. Likewise, any covenants that are recorded against the real property that restrict a resale would also be binding not only on the family members, but also on the trustee. I am suggesting for purposes of attempting to arrive at a solution here that meets the intent of the family and what they really are trying accomplish that there may be some ways to address this that we haven't previously considered. With those comments, I will just conclude by saying that I think it is important to take a hard look at the evasion criteria not only singularly but as a whole, weigh and consider those criteria in light of the objectives and the intent of the family and make a decision that is fair and equitable. Thank you.


 **Commissioner Rowley** – Any other comments from our staff or the applicant or representatives of the applicant?


 **Brent Burton** – I would like to address your question about the applicant living 500 miles away. We live in a community of 2,500 people. In the year 2022, half of that town is going to go away. They are shutting down the two small units in the next five or six years and the two bigger units, probably at this point, not too far behind there. Our family is looking for a plan B at this point in time that is a great plan B.

 **Commissioner Rowley** - Was there any public comment on the Burton Family Transfer or any other comment from interested parties?


 **Christine Dascenzo** – I just wanted to add, it is included in the staff report, the fact that the father-in-law does reside in the remaining tract (inaudible).

 **Commissioner Rowley** – Any other public comment? Seeing none, we will close the hearing.


 **Commissioner Rye** – Can I ask a quick question? I do have another meeting that I need to be at. Is it the will of the Commission to want to approve or deny this family transfer? If we wanted to deny it, we would need findings of fact. Would that take a couple of more weeks to write those or do we have those available? What does that look like?


 **Commissioner Curtiss** – I think the findings of fact are here, that have been stated on the record. I know that you have to get to another meeting. I think we can do it quickly, I have some notes. First, I would like to thank staff for the thorough review for this application outlining the facts and following our regulations and state law. You pointed out the criteria for the Commission to consider and weigh in our decision like we do for every family transfer consideration. I also want to thank Mr. VanCanagan for his letter that outlined those exemption sections and John Hart, of course, for his comments. We are charged with reviewing applications, listening to the applicant's responses, public comments and then deciding on each case based on its own facts. I think that is what we are going to do here today. I just think that, if it walks like a duck and it quacks like a duck and it looks like a duck and in this case, could swim like a duck, I think it is a subdivision. It needs to go through that review. That doesn't mean it can't happen someday but there is a lot of things that need to be reviewed for our charge and all our decisions is to protect health and safety. I think that exemptions should be narrowly construed whether it is a boundary line or any other exemption that is in lot, it is to again protect public health and safety. I think that in this case there are way too many unknowns that show us continually that it needs to be reviewed like a subdivision. I think that is probably the biggest finding of fact that there are too many things here that make it look like a subdivision and also show us to protect public health and safety it needs to be reviewed that way. I just in good conscience couldn't approve this particular subdivision. Mr. VanCanagan called it a subdivision, maybe accidentally but he did as he was talking. Only people who are party to the covenants are party to the covenants so there really isn't any strength in that especially if it is all family members.


I would move that we take staff's recommendations and based on the findings and facts that we have talked about today deny this family transfer as presented.

 **Commissioner Rye** – I would second that motion and I would agree. I took to heart Mr. VanCanagan's testimony that we could potentially entertain covenants or restrictions on the trust that would restrict the sale of the land. It reopened my mind to the possibility of that, but overall


that didn't provide the evidence that I would need to say that there couldn't be potential serious problems with public health and safety whether or not it is family members or a different owner of these properties 20 years from now if all these were able to be developed. It could be 20 years from now that Sierra and Amanda could be arguing about access and sanitation and water rights and all kinds of things. So, because those can't be put at ease in my mind, I think the responsibility is on us to protect the public health and safety and this should go through subdivision review.

 **Commissioner Rowley** – I agree that the scope and circumstances of this particular proposed family transfer do not narrowly construe the exemption from state law. I do not feel that there are any external circumstances that exist in this case where subdivision review would not be needed, which for the court planning that Mr. Hart brought up and with the evasion that were developed and analyzed by staff, I do find that there is preponderance of evidence that this proposal is an attempt to evade subdivision review. So we have a motion and a second. Is there any further discussion?


 **Commissioner Curtiss** – Just one quick one, even if this ends up being a family recreational site, which sounds like a great plan. We still have to consider the public health and safety. Just down the road on Roman Creek, so not very far from here, is a special management area for water quality. It is our job to make sure it doesn't happen again.


 All in favor of denying the family transfer request.

Denied 3-0.

 **Commissioner Curtiss** – If we could have staff work with John Hart and the notes from today, have the letter reflect the findings of fact to show what the discussion was.

b. Anderson-Miester-Clearwater Open Space Bond Project

 **Kali Becher, Missoula County Parks, Trails and Open Lands** – The Anderson-Miester-Clearwater Open Space Bond Project is a request for funding from the Five Valley's Land Trust.

 **Vickie Edwards, Five Valley's Land Trust** – Thank you Kali and other County staff for working with us through the Missoula County Open Space Bond Process. We really appreciate you guidance and help and also, thank you to the volunteers with the advisory committee. Thank you also Commissioners for the opportunity to present this project for your consideration. I have been very fortunate to work with Doug Anderson and Mary Miester for the last year and a half on this conservation easement. They are interested and willing to donate a conservation easement on their 35 acre parcel that they live on as their primary residence, in the upper Clearwater Drainage. To help with that, there are transaction costs that are associated with every conservation easement project. For that donation to occur we need to seek assistance and help to recover the transaction costs associated with this project and that is what we are seeking from the County. This property is located in the upper Clearwater Drainage, near the Summit Swan Divide. It is adjacent to Forest Service land in the green (referring to map), to the north as well as to the east. The Bob Marshall Wilderness is four miles to the east. The Mission Mountain Wilderness is to the west. The Marshall Creek Wildlife management area, management by Fish, Wildlife and Parks, is to the southwest. There are other private lands as well within in that section that are in that tan color (referring to map). When we look at the property there is currently one residence, a garage and a few outbuildings and a work shop. There is an unnamed creek that flows on the western portion of the property. The upper portion of that creek is entrenched and closed year round, but the lower portion is seasonal. In the lower elevations in the spring that flow is braided across Doug and Mary's property but also on the adjacent property to the west. That channel varies during the spring, where one day it can be on Doug and Mary's and one day it can be on the neighboring property. It does pick back up around highway 83 as it goes under ground after that spring run-off and then it flows into Bertha Creek which then flows into Rainy Lake. Looking in these conservation values associated with the property, it has wetland areas providing wetland habitat for wildlife. Also, it is more of a forested landscape that provides a localized habitat for wildlife. But also at a broad landscape level connecting into those important blocks of habitat and land previously described, providing connectivity. Other conservation values associated with the property are some of the scenic views. The wetland area, this is (referring to picture) one of the wetlands that is seasonal; it provides habitat for a variety of species, including Colombia sprout spotted frog and long-toed salamanders. Within the State Wildlife Action Plan by Montana Fish, Wildlife and Parks the 2015 Action Plan, wetlands are a tier one terrestrial community in need of greatest conservation need. This property provides that wetland habitat that the conservation easement will protect. To protect those wetland areas we have established a 100 foot buffer around wetland as well as the riparian areas, along that unnamed creek. The large landscape level habitat connectivity to larger blocks of protected public lands, the Seeley Lake regional plan speaks to this and the need to discourage development in those key wildlife ranges and corridors, maintaining

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connectivity among large blocks of habitat for wildlife and discouraging the expansion of wildland urban interface. Also, there is a US Forest Service open space conservation strategy that speaks to the importance of protecting adjacent lands that affect the ecological integrity of the Forest Service public lands. This property definitely does that and having a conservation easement minimizes the opportunity for development on the property or illuminates the opportunity for additional residential development and meets the needs of that plan. This video is taken by Doug and Mary on the property via remote cameras. This grizzly bear was captured on the property on September 10, 2015. The property provides critical habitat for Canada lynx as well as the grizzly bear. Grizzly bear per that state wide wildlife action plan are identified as a species of greatest conservation need. This conservation easement will help protect habitat for those species. Also, there are additional species that utilize this area. The Montana National Heritage Program, within this township and range, has identified 26 Montana state species of concern that use this area and that may use this property. Those remote cameras that I talked about, Doug and Mary have captured a variety of species, including moose, elk, white-tail deer, turkey, coyote, sandhill crane, you name it and they have captured it. It speaks to the importance of this habitat and that connectivity of broader things statewide. In regards to those scenic views that I mentioned many of us have driven down Highway 83 heading south and looked over to the east and this property sits at the base of the majestic Swan Mountain range. The conservation easement would help protect those scenic views. Within the easement there is a scenic view shed that is identified that no structures can be over ten feet in height and that includes those temporary structures as well. Also, on the state of Montana visitor's website there is actually a map and information and directions on the Seeley Swan scenic drive that directs tourist to this area to enjoy this stretch of highway, this property would help protect those scenic values. This conservation easement would help protect those scenic values. In summary, there are no additional residences on the property; there is a three acre building envelope that currently encompasses the current development on the property. No subdivision will be allowed. There is a 100 foot riparian buffer around the wetland area and the riparian area. Also, there is the protection of that scenic area, with that scenic view shed, that is just to the north and covers the majority of the property, north of that building envelope. There is language within the conservation easement to reduce bear and human conflicts that may occur on the property. Doug and Mary do not have to change how they do business at all because they have done an amazing job co-habituating with the wildlife on their property. This is (referring to slide) an electric fence around their garden, compost pile and humming bird feeder that helps keep bears and other wildlife out. It helps reduce opportunities of conflicts with those animals. Looking at the budget, Doug and Mary are donating this easement; there has not been an appraisal that has been connected on this property, so we are not sure as to what that income contribution is. With the transaction costs, total costs are estimated at up to \$16,100. We are requesting from Missoula County Open Space Bond Program to help cover \$15,600 of those costs and that is up to. Five Valley's Land Trust is contributing \$500 as well as our staff time on this project which of course is covered by our organization. Total price per acre is \$460 but keep in mind that does not include that donated conservation easement value, since we do not have it. County total project price per acre without that appraised value is \$446. We are hoping the County will join us in protecting this amazing property. It is really a special place.



Commissioner Curtiss – Vickie, does the conservation easement allow for timber management?



Vickie Edwards – Yes, it does. It allows for timber management for forest health. In the past Doug and Mary have done some prescriptive timber removal for beetle issues but also to improve overall performance health. Within the easement there is also, depending on what level of timber management is required, if timber is removed from the property it triggers a timber management plan that is required as part of the conservation easement that is reviewed by staff.



Commissioner Curtiss – So, fuel mitigation and that kind of thing can happen?



Vickie Edwards – Yes, definitely.





Commissioner Rowley – I have not seen one of these without an appraisal done, is that just something that I haven't seen because I haven't been here very long?





Kali Becher – We have had one other project that hasn't had an appraisal. It was similar where only transaction costs were being requested. We always require a conservation easement if Open Space Bond funds are being used to purchase an easement but without the request to actually purchase the easement we don't require the conservation easement. In the case of the previous project that was done, the landowner later decided to pursue a tax deduction and therefore got an appraisal. They shared that with us, which was very kind, so we knew how much value ended up being donated. If an appraisal is done in the future it is likely that they would share that information with us at that time.


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 **Commissioner Rowley** – I was just wondering for data tracking processes and things like that. If not having appraisal throws off any of our tracking or if we would just delineate certain projects that did not have an appraisal and are kind of left out of the analysis?


 **Kali Becher** – Correct, we can't quantify the landowner donation in our tracking. It is always nice to show, but it is not required in these situations.


 **Kali Becher, Staff Report** – This project proposes to use up to \$15,600 of Open Space Bond funding toward the transaction costs of a fully donated conservation easement on approximately 35 acres of land in the Seeley Swan Valley, owned by Doug Anderson and Mary Miester. Five Valley's Land Trust would hold the conservation easement on this property. On June 22, 2016 the Board of County Commissioners determined that this qualified as an Open Space project and adopted reimbursement resolution 2016-94. The Missoula County Open Land Citizen Advisory Committee has recommended approval of this project. There is an Open Land's committee member who will present that recommendation. The 2007 interlocal agreement related to the open space bond (inaudible) the purposes of the Open Space Bond. This project meets three of those purposes, protecting the water quality of rivers and streams, providing open space and scenic landscapes and protecting wildlife habitat. A few notes on how the project fits into this criteria, this property is very visible from Highway 83 and you are driving along the Swan Range, restricting development through this conservation easement would maintain that scenic view shed that is currently undisturbed. This property is frequently used by a variety of wildlife and it contains both intermittent and perennial streams which support a diverse wetland and riparian area which is important habitat. In terms of funding, the total project cost is estimated at \$16,100 and that includes both transaction costs and stewardship fees. The bond funds would be used to pay of transaction costs, since the value of the easement is being donated. Five Valley's Land Trust is requesting \$15,600 for the project and they would cover the remaining funding. The cost and bond funding per acre would be \$446 and this fits within the range of projects that have been previously approved. Staff recommends approval of this project. There is one condition of approval that is included in the draft approval resolution in the packet. The condition is that separate agreement between Five Valley's Land Trust and Missoula County is recorded prior to the release of funds.

 **Ron Schlader, Member of the Missoula County Open Lands Citizen Advisory Committee** - On June 16, 2016, we as a committee got together had our final discussion and review of this proposal. After a hearty discussion we determined that this parcel does have wildlife value, it has watershed protection value and it maintains the visuals off of Highway 83. Therefore, it is the recommendation of the Open Lands Committee that the County authorize expenditure of the \$15,600 in Open Space Bond funds for the transaction of the acquisition of this conservation.

 **Commissioner Rowley** – You said a hearty discussion, and I always think it is interesting of all the factors that are considered in these decisions and it's not just an easy ride through. So could you elaborate on some of the different factors that were discussed and what made this a hearty discussion?

 **Ron Schlader** – Everyone had a different view of the advantages that this parcel had. There were wildlife issues, some were very adamant about protecting the visuals that this parcel would do. The riparian area was an issue with one. Everybody had their own little thing that they were concerned about this parcel. It is a small parcel but it was a recommendation by the committee that it does have the wildlife value and the other values that they were soliciting. The other discussion was the concern of the amount of money. It is a completely donated easement by the owners, which we are not purchasing anything for the easement; our funds are for the cost of the transactions and the cost to Five Valley's for monitoring at the site.

 **Commissioner Rowley** – This was a unique project for me as well. I have not seen a project in this area and then extending open space. It is surrounded by public lands and there is not currently significant development pressure like other parts of the county. As Open Space Bond money runs out, how do you prioritize it? But ultimately it does contain those important values and it is a really important for the wildlife and the watershed and everything that is going on there. I think it is different than most Open Space projects have been, but after a lot of discussion and thought it meets the values and it is a great project. Thank you so much for donating the value of it.

 **Doug Anderson, Owner** – Thank you commissioners and the staff at Five Valley's for all of the work that has gone into this. It was very obvious to us soon after we purchased the property that there was just an impressive amount of wildlife that moves through the area and it is constantly moving through the area and it is a tremendous amount of different species. We have worked as hard as we can since we've owned the property to maintain wildlife habitat. We have been trying to figure out how we can keep that property the way it is and keep it from degrading

beyond us, after we are gone. Expressing your wishes to your kids or grandkids doesn't seem to do it. That may last the next marriage or next bankruptcy or whatever it is but this conservation easement to us seemed to be the best guarantee of keeping this property the way it is. Thank you for your consideration.



Mary Miester, Co-Owner – Other than being married on the property and working really hard to keep the property as natural as we can, we would like to preserve that for the future. So that everybody who comes down Highway 83 going south would enjoy that view and there wouldn't be any high towers or any more development. That was one of our main concerns. Thank you for considering it.



Commissioner Rowley – Is there any other public comment? Seeing none, I will close that hearing.



Commissioner Curtiss – I would to thank Doug and Mary for their great stewardship of that property. It was fun to go up there. Your garden is a model; I think it is going to be on some home and garden show. As to living with wildlife the footprint of where you live and do your stuff is small on your property. You had some very unique things that you have done there to maintain that small footprint. I think this is, as Commissioner Rowley said, one of those cases that show that even smaller parcels are important in conservation. I am definitely in favor of this project. The other piece is, sometimes people say why does it cost that much for transactions and monitoring? That monitoring piece going forward in the future is really the piece that makes sure these are successful and they do protect what you have brought to us to be protected. The public needs to understand that, it is when they are not monitored that things go wrong. We have had a couple in Missoula County that weren't under your organization, they were under nobody and they ended up having to be mitigated to try and protect what we had originally tried to protect.



Commissioner Rowley – Right, and monitoring something in perpetuity, that is forever. It is hard to determine how much that is going to cost and I know that really there does come a time when you are doing it for free because what has been paid into it has been expended by the amount of monitoring that has been done. It is an expensive endeavor and it is worth doing. The bigger the piece of land, the less expensive the transaction costs seem relative to it. It is just the cost of doing business, but the cost of doing business is worth doing business where it matters. I think that this parcel meets that. Thank you.



I would move that the Missoula Board of County Commissioners approve the expenditure of up to \$15,600 in Open Space Bond funds via the attached resolution that we will sign, towards the transaction costs of a donated conservation easement, totaling 35 acres for the Anderson-Miester-Clearwater project based on findings of fact that it qualifies for funding and the recommendations of the Open Lands Citizens Advisory Committee and public hearing, comments and staff's analysis.


Passed 2-0 (Commissioner Rye no longer present.)


c. Jail Diversion Master Plan




Commissioner Rowley – Next up I will open hearing for the Jail Diversion Master Plan. It is at this point more of an update. This is a joint City-County effort and the City Council has requested more time working through things, making potential edits and what not. Since the City and the County want to adopt the same version of the plan, we are going to ourselves not adopt it until the City is also ready to adopt it. I did get an email today that made me want to clarify something. The email was a request that we adopt a specific recommendation for funding a program. I wanted to clarify that our intent has not been to go through and adopt each individual recommendation. There are about 40 recommendations in the plan. Our adoption of the plan is not to be taken as a commitment of funding to any particular recommendation at that time or anything like that. It is a concept. There will be an implementation committee that is formed that will go through and prioritize and start doing costing, get staff going on what is the low hanging fruit and what can we piece together, what partnerships can we put together, if state or federal funding becomes available for something that will increase its priority level if we can get outside money for it. I just didn't want it to be interpreted as we are adopting this; therefore we are funding all 40 of these recommendations in this budget cycle. That would break the County; we don't have that kind of money. There are some really expensive recommendations in the plan. It is to utilize the recommendations as well as we go forth with RFPs for services and how we operate the jail and our justice system how it operates on many levels. I think a lot of the recommendations are more of an operational sense and to be taken into consideration when we make decisions. I just wanted to clarify that it is an accepting of a product that was done by a consultant and a guideline for moving forward, not committing any funding to any particular recommendation at that time. We are still working through it. Was there any public comment today on the plan? To clarify we did close public comment to give to the consultant to make


alterations and edits in the plan. But we are still of course, listening to what is going on and are still working on it.


 **Tina Reinicke** – I am a citizen of both the city and the county. I would just ask that in the future if something is on agenda, I came specifically today for Jail Diversion, if it is less than a five minute update may it be moved to the beginning of the public meeting to preserve my valuable time, too.


 **Commissioner Rowley** – I apologize for that. We were intending on adopting it today but found out that the City is not ready to move forward with it.


 **Tina Reinicke** - During this meeting, you found that out?


 **Commissioner Rowley** - Before, I discussed it with our administration, we had no way to get notice out to people. I had looked at cancelling it on our agenda, but it had already been sent out, and so I apologize. I did notify people that I knew were planning on coming about it.


 **Tina Reinicke** – I was here when you started the meeting and read the agenda. As a member of the public it feels polite, if I know that. So when would be the next actual?


 **Commissioner Curtiss** – Did you have some comment that you wanted to add though? We are taking that today.


 **Tina Reinicke** – Well, she just said that it ended.


 **Commissioner Rowley** – No, to submit to the consultant before we had closed it. But since the City is taking further comment from their staff members etc. and including it we are taking public comment.


 **Tina Reinicke** – I would also like to attend the next hearing.


 **Commissioner Rowley** – Right, and usually we do continue to a specific date but since I don't know when City Council is going to take it up we will then advertise.

 **Commissioner Curtiss** – But I will put a piece of paper for you to put your information so we can make sure you know.


 **Tina Reinicke** – I am emailing Nicole now, so that's how I found out about today's meeting. I would just like to caution the commission that I support many pieces of the plan but I caution the commission to remember that it is going to cost a lot of money, a whole lot of money and where mental health services are needed and available they are taken advantage of. If we build six beds in Missoula, which would be awesome, for mental health beds anyone in this state will have access to those beds. When we in Missoula are looking for a bed we look in Billings, we look in Kalispell, we look anywhere there may be a bed. So that is one of my cautions. The other is that because of the way the statistics were gathered for this particular plan, it is not going to be a balancing of costs if fund the jail costs the whole way. I think that is what the public primarily needs to know. That it will be an added cost. Because we all know how we got the jail. We know the money we accepted 20 years ago when we built the jail. We know the alternatives today. We know who really is housed at the jail. It isn't mostly prisoners out of municipal court. So I think it is fair to consider that in terms of the burdens that we as tax payers are going to bear. We are still going to have all of the jail costs we have today in addition to the recommendations.


 **Commissioner Rowley** – Thank you. We analyzed this as a potential project as well. That was a very obvious conclusion that we came to is that this is not cost savings/cost avoidance it is cost shifting. The only way you can save, most of the costs at the jail are fixed costs, and so the only way you can really save money operationally is when you can shut down a pod, which is lots of beds and we probably aren't going to accomplish that. But you can look at the avoidance of building onto the jail and the societal costs of the mental health needs and things like that. We did try to monetize these abstract costs and gave up on it. I know Cynthia tried that as she was going through the master plan as well. So I hope we haven't projected to the public that we going to significantly save tax payer dollars by decreasing jail costs, but helping society by decreasing unnecessary jail bed days and having the appropriate people incarcerated as opposed to inappropriately incarcerating people.

 **Tina Reinicke** – I absolutely agree. Thank you


 **Commissioner Rowley** – Thank you and I apologize. I should have moved this up. Thanks.


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 **John Larson, Chief District Judge/Senior District Judge in the Fourth District** – This document concerning the juvenile pod was produced by the Youth Court. I am the last city judge to have attended the meeting of the county commissioners before the jail was built. At that time, all four district judges appeared in front of the county commissioners and requested that the juvenile detention center be added. It was initially rejected and at the last minute it was cut off. The four district judges went upstairs to the commissioners' area and requested that the juvenile facility be added. It was added. You can read from the document there that there was a lot of thought put into the construction and the development and the programs that were implemented there plus what we have in the Youth Court now. I can also tell you that before I became a State district judge I was a part time federal magistrate. We had a couple of cells over in the federal building for the federal prisoners and when I first became a judge that was our initial juvenile detention facility. We got licensed for a period of hours. I think it was like 72 hours or something that we could hold a juvenile if we absolutely needed to and we did absolute need to hold some juveniles at that time. We still have to absolutely hold some juveniles. In the interim before we got this program built our juveniles were held primarily at Kalispell, a very dangerous highway at that time, it is a little safer now, but we were all concerned about that. I worked with Tribal governments, we housed some juveniles at a new facility on the Fort Peck Reservation, it was a geography lesson to see Montana and come back. Again, those were not long term detentions but again those kids needed to be held. That was our best available option at that time. More recently before detention center was built we housed juveniles at the Medical Lake facility, a little bit west of Spokane. Better highway and it is actually quicker there than it was to Kalispell. So, we have had the experience of placing kids out of town. Families can't contact them, treatment providers can't see them and we are uncertain about the education they are getting. Right now we have got all of that available. We've got treatment that can come in, we have a special treatment program there, we have a jail school there, and parents can regularly attend. You can see from the jail roster every day that we have multiple kids from out of community placed there. Again, because they need to be placed and Missoula is the closest area in Western Montana to do it. It is very convenient for these other areas, it is not perfect, but certainly other families can travel here from Kalispell and Hamilton and the reservation and see their loved ones and work with them. We believe that facility is absolutely necessary. What I read in the jail diversion plan, from some unnamed stake holder was to close it down and possibly use it for mental health. All of the fourth judicial district judges are on call 24/7 we all answer the phone, anytime day or night, anytime anybody needs to leave our detention facility and go to the state hospital. In order to get that accomplished there needs to be a signed order from a state judge to do that. It can't just be stamping my name. We have to authorize it over the phone and give the state hospital our phone number so they can call us back and confirm that that individual indeed was sent by us and needs to be held temporarily. I have got lots of those phone calls and I even got one back from Warm Springs on the weekend because they weren't absolutely sure that I would have done that, but I did and we all do. We are very committed to handling the mental health issues in our community as quickly and as fairly and as compassionately as we can. My colleagues and I all support the continuation of the juvenile detention facility. I can't envision how it would be transformed without a great expenditure of finding some sort of mental health program. I have visited Warm Springs, I have toured it, and I've seen lots of patients there, both the forensic side and the treatment side; I just don't see without a huge expenditure transforming anything out there. What I do see and what we do need all the time are, and what you have already implemented, are having case managers there on site helping with people on day to day basis, helping with their medical needs because they are often co-occurring or maybe three issues, drugs, mental health and then their own physical health all collide and they have to be attended to. Jail doesn't have as many people as possible but it has certainly is as good if not better than any other facility in the state. So I want to commend you for the funding you have already done to help the mental health people and the ill people in the jail. I want to underline the need for the continued operation of the juvenile detention facility and I can pledge to you that we are going to continue to try to use the most scientifically based, evidenced based practices in that facility that we can to keep the young people there in a minimum time. It sometimes happens, and it happened to me about a year in, an eight year old or a nine year old or a 12 year old will shoot somebody outside a bar, kill someone. For his safety, for the safety of the community, we have got to have that youth temporarily detained. Certainly there are a lot on the roster there. You will see some sexual assault cases, where they need to be detained in the estimation of the local communities where they are sent. Some are longer than others. Some are just unable to get at home and any other placement, we have got to temporarily hold them there, until we get another placement available. I wish that we could turn them over quicker but I can assure you that we are working very closely with our Medicaid bureau and our juvenile probation office to get all of the paper work, all of the evaluations, any kind of data that is necessary to get them onto another treatment program and out of our jail. Most of those things are out of our control and something that we don't sign off on, other people do. I am available for questions. I did think it important to give you our view. I checked with my colleagues and they all support the continuation of the facility.

 **Commissioner Curtiss** – Just for the record, Mr. Welsh who is one of our youth probation officers, I think their staff pulled this together, it has a lot of information about the history of all the

things that Missoula County has done when they used to be county employees and now they are state employees but we still all work together.

 **John Larson** – Most of these programs started at the county with the help of the county commissioners.


 **Commissioner Curtiss** – Right. So this gives a lot history of the jail diversion things we have done for the youth. I think it is a great addition to the material.

 **Commissioner Rowley** – It has been very successful, thank you. We will make sure to get this up on our website as well as public comment for people to have access to on our jail diversion website. Is there any other comment on the jail plan? I apologize for not moving it up on the roster. Family transfers are typically a few minutes long. With that I will continue this until further notice and we will re-notice it at the point we feel that we can have one cohesive document between the city and the county continue.

7. OTHER BUSINESS

None

8. RECESS

 **Commissioner Rowley** – Called the meeting to recess at 3:04 p.m.

THURSDAY, AUGUST 11, 2016

BCC met in regular session; all three present. Morning: BCC met regarding Community Assistance Fund and Substance Abuse Prevention levy. NR attended Human Resource Council meeting.

ADMINISTRATIVE MEETING

Employment Agreement – BCC signed Employment Agreement between Missoula County-Partnership Health Center (PHC) and Lynda Fisher, RN to serve in capacity of Director of Nursing. Term/July 1, 2016-June 30, 2018. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Andrea Wirshing, MA, LCPC to serve in capacity of Behavioral Health Director. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Administrative Services Agreement – BCC signed Washington, Wyoming, Alaska, Montana and Idaho Medical Program (WWAMI) Administrative Services Contract No. CMV00543 between University of Montana (UM) and PHC. Purpose is for UM to train health professionals and provide clinical training experiences for University of Washington School of Medicine students. Amount/\$3,000.00 to PHC physicians. Term/Initial term July 1, 2015-June 30, 2016, with one year renewals. To Bernadette Roy/PHC.

Clinical Affiliation Agreement – BCC signed Clinical Affiliation Agreement between Midwestern University and PHC. Purpose is for students to obtain practical and clinical experience in osteopathic medicine. Term/Upon execution for one year. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Joseph Faircloth to serve in capacity of Health Information Technology Director. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Mary Jane Nealon to serve in capacity of Director of Innovation. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and John Honsky, APRN to serve in capacity of Advanced Practice Registered Nurse. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Business Associate Agreement – BCC signed Business Associate Agreement between PHC and Mountain Pacific Quality Health. Purpose is to protect patient information used by Mountain Pacific Quality Health to send out postcards during Flu/FIT campaign. Term/Date of execution through January 1, 2017. To Bernadette Roy/PHC.

Employment Agreement – BCC signed Employment Agreement between PHC and Winslow Lewis, PA-C to serve in capacity of Physician Assistant. Term/July 1, 2016-June 30, 2017. To Bernadette Roy/PHC.

Professional Services Agreement Amendment – BCC signed Amendment to Professional Services Agreement with Sankey Pro Rodeo to include services for 2016 Western Montana Fair and increase compensation. Amount/\$3,200.00 increase for total \$79,420.00. Term/August 9, 2016-August 14, 2016. To Todd Garrett/Fairgrounds.

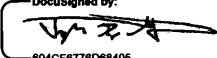
Professional Services Agreement – BCC signed Professional Services Agreement with Watershed Consulting, LLC to provide vegetation management services at Sunwood Conservation Park. Amount/\$6,866.66. Term/August 1, 2016-November 1, 2016. To Garrick Swanson/Parks, Trails, and Open Lands.

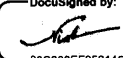
Letter – BCC signed letter, dated August 11, 2016. To Mark Hayden, Missoula Electric Cooperative. Noting that BCC voted to approve purchase of 25 additional solar panels in 2016 and 24 panels in fiscal year 2018, as part of Phase II solar farm project. Expressing appreciation for work to bring fossil-free source electricity to Missoula County.

Additional discussion item(s): None.

FRIDAY, AUGUST 12, 2016

BCC met in regular session; all three present. Morning: NR attended Midtown Mojo meeting. Afternoon: NR attended Partnership Health Center Board meeting.

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Tyler Gernant
Clerk & Recorder

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Nicole "Cola" Rowley, Chair
BCC

MONDAY, AUGUST 15, 2016

BCC met in regular session; all three present. Evening JC attended Missoula Economic Partnership meeting at Bonner mill site.

TUESDAY, AUGUST 16, 2016

BCC met in regular session; all three present. Afternoon: NR/SR attended Transportation Policy Coordinating Committee meeting.

Larchmont Claims – BCC signed Signature Page for A/P Invoice Register dated August 16, 2016. Amount/\$37,244.45. To County Auditor.

ADMINISTRATIVE MEETING

Independent Contractor Agreement – BCC signed Independent Contractor Agreement between Missoula County and Janet Bush. To assist Missoula City-County Health Department (MCCHD) with completing State of Montana Request for Proposal #DPHHS-RFP2017-0066FT: Healthy Montana Families-Home Visiting. Amount/\$6,000.00. Term/August 8, 2016-September 16, 2016. To Kate Siegrist/MCCHD.

Resolution No. 2016-111 – BCC signed, August 16, 2016. Expending \$15,600 of 2006 Open Space Bond Proceeds Towards the Transaction Costs of a Donated Conservation Easement, Totaling Approximately 35 acres for the Anderson-Miester-Clearwater Open Space Project. Approved at August 10, 2016 public meeting. To Kali Becher/Parks, Trails, and Open Lands.

Pay Increases – BCC approved pay increases for Chief Deputy Appointees for various elected officials. To Patty Baumgart/Human Resources.

Letter – BCC signed, dated August 16, 2016. To Energy Telecommunications Interim Committee. Supporting LECT04 Next Generation 9-1-1 draft legislation.

Additional discussion item(s): Upcoming board meetings and review of meetings.

WEDNESDAY, AUGUST 17, 2016

BCC met in regular session; all three present. Afternoon: BCC met regarding Gleneagle litigation.

Monthly Report – NR examined/approved/ordered filed the Monthly Reconciliation Report for Justice Courts 1 & 2 (Marie A. Andersen and Landee Holloway) for month ending July, 2016.

ADMINISTRATIVE MEETING

Subordination Agreement – BCC approved, NR signed. Subordination Agreement to allow Rosalee J. Murphy to refinance home and keep Missoula County in second position. Homeowner received down payment assistance through a state HOME grant awarded to the County. In order to refinance to lower interest rate, subordination agreement is needed. To Erin Kautz/Grants and Community Programs (GCP).

Loan Approval – BCC signed commitment letter to Jon Clarenbach, Western Cider, approving \$170,000 economic development loan from Community Development Block Grant Revolving Loan Fund. For assistance in purchasing equipment to start new cider-making business on California Street in order to expand opportunities and create jobs. Amount/\$170,000, to be repaid at 5% over 10 years. To Nancy Harte/GCP.

Additional discussion item(s): None.

THURSDAY, AUGUST 18, 2016

BCC met in regular session; all three present. Afternoon: JC attended Election Advisory Committee meeting.

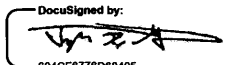
ADMINISTRATIVE MEETING

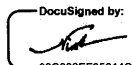
Medical Affiliation Agreement – BCC signed Medical Facility Affiliation Agreement between Missoula County-Partnership Health Center (PHC) and Rocky Vista University. Establishes procedures and guidelines for education and clinical experience for students. Term/August 3, 2016-August 3, 2019. To Bernadette Roy/PHC.

Additional discussion item(s): Demonstration of how DocuSign could be used for signing 2018 Budget Resolution and associated Enhancement Requests and the Capital Improvement Plan.

FRIDAY, AUGUST 19, 2016

BCC met in regular session; all three present.

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Clerk & Recorder

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Nicole "Cola" Rowley, Chair
BCC

MONDAY, AUGUST 22, 2016

BCC met in regular session; all three present. Afternoon: SR attended Missoula Ravalli Transportation Management Association Board meeting.

Community and Planning Services (CAPS) Update – BCC/CAPS Staff. Agenda: 1) Public comment; 2) Communications; 3) General updates: a) Clearwater Junction Subdivision Phasing Plan Extension; b) Right to Farm, Ranch, and Practice Forestry Policy; c) Approve Amendments to Chapter 8 Subdivision Exemption Regulations; d) Memorandum of Understanding for use of East Missoula Lions Park Playground by MCPS for the 2016-2017 academic school year; e) Mallo Floodplain Variance; f) South Hills Spur City Open Space Bond Project; g) Approve and authorize chair to sign Energy Corps Memorandum of Understanding; h) Action items at public meetings; i) Zoning and agricultural resources; 4) Director's update.

TUESDAY, AUGUST 23, 2016

BCC met in regular session; all three present. BCC attended Montana Association of Counties District 10 and 11 meeting in Thompson Falls.

County Payroll Transmittal Sheet – BCC signed. Pay Period: 17/CY2016 - Pay Date/August 19, 2016. Total Payroll/\$1,698,152.41. To County Auditor.

ADMINISTRATIVE MEETING - CANCELED

WEDNESDAY, AUGUST 24, 2016

BCC met in regular session; all three present. Morning: JC participated in conference call with Western Montana Health Board.

ADMINISTRATIVE MEETING - CANCELED

PUBLIC MEETING – AUGUST 24, 2016

MISSOULA BOARD OF COUNTY COMMISSIONERS

PUBLIC MEETING MINUTES

Room B14-County Administration Building

If anyone attending the public meeting is in need of special assistance, please provide advance notice by calling 258-4877. Missoula County is happy to provide auxiliary aids and services.

WEDNESDAY, AUGUST 24, 2016 – 1:30 PM

1. CALL TO ORDER

Commissioners Present:

Chair Nicole "Cola" Rowley
Commissioner Jean Curtiss
Commissioner Stacy Rye

Staff Present:

Jennie Dixon – Planner, Community and Planning Services
Shannon Therriault – Director of Environmental Health, Health Department
Christine Dascenzo – Planner, Community and Planning Services
John Hart – Chief Deputy County Attorney, County Attorney's Office
Tyler Gernant – Clerk and Recorder/Treasurer, Clerk and Recorder/Treasurer's Office

Shyra Scott – Chief Deputy Clerk of Recorder, Clerk and Recorder/Treasurer's Office
Mitch Doherty – Planner, Community and Planning Services
Andrew Czorny – Chief Financial Officer, Financial Services

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS

None

4. PUBLIC COMMENT

None

5. CURRENT CLAIMS LIST

- Total claims from August 5, 2016 – August 18, 2016 - \$5,706,930.56

6. HEARINGS

a. Approve Amendments to Chapter 8 Subdivision Exemption Regulations



Jennie Dixon, Community and Planning Services – Montana Code establishes content requirements for your subdivision regulations. This includes establishing criteria for reviewing divisions of land that are exempt from subdivision review. It also requires that you have an appeals process in your regulations. As you consider changes to these regulations I would like you to keep these four important ideas in mind.

1. The Montana Constitution declares that the powers of counties shall be liberally construed.
2. The Montana Supreme Court asserts that local governments have the "power and duty to evaluate and determine from all the circumstances whether the proposed division of land is based on a purpose to evade the subdivision requirements."
3. Exemptions are for exceptional circumstances and must be given a narrow interpretation in the context of the Montana Subdivision and Platting Act.
4. The purpose of exemptions is not to allow a developer to create a division of land which is, for all intents and purposes, nothing less than an unreviewed subdivision, but rather exemptions were provided by the legislature to accommodate the exceptional circumstances when full plenary subdivision review is unnecessary.

Our current exemption regulations do not provide much guidance nor do they establish evasion criteria for review, except for family transfer, which are cumbersome at best. Therefore, CAPS is proposing amendments to Chapter 8, entitled Divisions of Land Exempt from Review under the Montana Subdivision and Platting Act (MSPA). Our changes are based on more than a year of research and analysis of the following documents and sources:

- Montana law and administrative rules
- AG opinions and supreme court cases
- County policies and past practices
- Agency and departmental requirements
- Subdivision regulations from other jurisdictions within the state and the Montana State Model Subdivision Regulations
- Feedback from the Community Technical Assistance Program (CTAP)
- Consultant input, and
- Public comment and input from the professional land surveyor community

Staff would like to thank all those agencies and individuals who participated in the drafting of these regulations, including representatives from:

- Carstens & Associates
- DJ&A
- Ed Flemming Surveying
- Eli and Associates
- Granite Creek Engineering
- Martinsen Surveys
- Montana Northwest Company
- Morrison-Maierle
- Professional Consultants Incorporated (PCI)
- Territorial Landworks
- WGM Group
-

County agencies were also invaluable in creating this draft, in particular:

- County Attorney's Office
- County Surveyor's Office
- Clerk and Recorder's Office

- County Floodplain Administrator
- City Parks and Recreation
- Missoula County Airport Authority
- County Parks, Trails, and Open Lands, and
- Health Department

Staff has not received any public comment on the proposed draft regulations. Nobody indicated a desire to convey that to you as public comment but rather we incorporated it as changes in the draft that you have before you in your packet and shown in attachment D. It was not for lack of trying to get comment on this.

There are sixteen exemption types covered in state law and in this draft.

1. Court Order
2. Mortgage Exemption
3. Severed Interest
4. Cemetery Lot
5. Reservation of Life Estate
6. Agricultural Lease
7. Federal and Tribal Land
8. Right-of-way
9. Utility Site
10. Condos and Townhomes
11. Airport Land
12. State-owned Lands
13. Boundary Line Relocation
14. Family Transfer
15. Agricultural Covenant
16. Aggregation

These revisions are intended to provide a more predictable and understandable review process. To that end, we envisioned making the regulations easier to use, primarily through the layout and organizational format of the information and the clarification of what to expect from an exemption review. The purpose and intent statement is expanded to help the public, agency staff, and governing bodies understand exemptions better. The county's authority to regulate exemptions is explained. A new definition section is included. The exemptions are listed in the order as they appear in law, with clarification of each applicable section of law. Each exemption is clearly defined, with evasion criteria and rebuttable presumptions as needed to review. The submittal requirements and review processes are fully explained. A deadline for filing and transferring an approved exemption is proposed. The role of other agencies in the review of exemptions is addressed. More information is included about surveying and recording/filing an approved exempt parcel. The appeals process is also explained.

The drafts that you have were also distributed online to a number of people. There is a clean version of the draft that has comment bubbles that are important because they tell you the source of any proposed amendment that you want to know the history behind it. The bubbles will not appear in the final draft, they are for ease of use. Although the new draft more than doubles the length of the current regulations, the idea is that an applicant should be able to go to the specific exemption for guidance, generally a page or two, in combination with the general regulations that apply to all exemptions, such as general evasion criteria, submittal requirements, and review procedures.

There are three highlights and changes that I would like to draw your attention to. The first is a creation of a set of general evasion criteria that will apply in the review of all exemptions, except for condos and townhomes, airport land and state-owned lands. Those will be subject to what is on that page and will not refer back to the general evasion criteria. No one single criterion necessarily creates a presumption that the proposed division is an evasion. Instead, these criteria are to be viewed as a whole, balancing the factual circumstances against the presumption of evasion to make a determination based on a preponderance of evidence presented by the claimant. That is not to say that one criterion couldn't result in a denial of an exemption if it paints a picture that clearly indicates evasion but it is not by necessity that if it meets one you would deny it.

Another change to highlight is in the mortgage exemption. There are five new rebuttable presumptions. The first is whether there is already a mortgage tract on the original tract. Second, whether the claimant has previously transferred a mortgage tract or remaining tract outside the foreclosure process, which is not permitted. It has happened in the past and we have a county policy to deal with that. This is a rebuttable presumption, it does not mean if somebody has done that it will be denied but if there is a pattern of that happening with other factors it could indicate evasion if someone transfers a mortgage tract outside of foreclosure. A third new rebuttable presumption is whether the claimant has previously used the mortgage exemption. Fourth, the rebuttable presumptions also assume that securing financing through this method and using the

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loan for construction elsewhere is an indication of evasion. Last, creating a mortgage exemption doesn't create a permanent tract and ultimately once the mortgage is satisfied we want to see that tract go away we have included a new requirement in this draft that says, "once the loan has been satisfied, the boundaries of the exempt parcel are extinguished, and the acreage reverts back to the original tract. This shall be accomplished by including a statement on the security instrument that the security parcel does not exist as a transferable tract of record unless foreclosed upon."

The third highlight is in the utility site exemption. We have clarified the meaning of utility. We are referencing back to two sections of law 76-3-103(13) and 69-3-101. We clarify that the term utility site does not include privately-owned or operated water or sewer systems that do not serve the public. The fourth highlight would be in the state owned lands. This exemption is only for the first transfer of a vacant tract of state-owned land. It is not to have a residential dwelling on it. This exemption is not for the state to transfer a tract that already has a home on it. It is to create a tract that is vacant to transfer. Subsequent transfers of state-owned land from an original tract may not use this exemption, nor may the transferred tract contain a residential dwelling.

Commissioner Rowley – Is the utility lot for a small community water system? What is the definition of public? What is the definition of privately owned? Is that very clear in the state law or in these regulations? I know there have been issues in the past.

Jennie Dixon – A community system is serving a public. When it is saying privately owned and operated system that doesn't serve the public, I am thinking that it is an individual sewer system and well. You can't create another lot to put septic system on.

Commissioner Rowley – But if two homes had one system together could they?

Jennie Dixon – I don't know what the definition of community system is. The Health Department might be able to weigh in on the definition of a community system. Would you like to do that at this point?

Commissioner Rowley – Or if you feel that this state law and that these regulations are clear enough that we won't get into a utility lot disagreement.



Shannon Therriault, Director of Environmental Health – To answer your question, a public system is any system that serves 25 or more people, 60 or more days of the year. It usually takes about ten homes to get to that. A shared system would not be considered a public utility.

Commissioner Rowley – That is the DEQ definition. Is this referencing the DEQ definition of public or is there another?

Jennie Dixon – How about while I finish my presentation, if Shannon wouldn't mind I could give the section of law and let her look and see has any other thoughts about that.

Commissioner Rowley – Okay, thanks.

Jennie Dixon – My assumption is that somebody has to know what the definition is in state law and it might not be me but it would be good to get an understanding for today. We will see what we can do. Another highlight that I would call your attention to is in the family transfer. There are five new rebuttable presumptions. The first is, the transfer of a tract from one family member to another by quitclaim deed, followed by a proposed family transfer on the same tract. If that is a condition that is present in the application that could be an indication of evasion. Second, the remaining tract is intended to be sold so as to finance construction on a tract gifted and transferred to a spouse. Third, there is no clear intent declared on the occupancy or use of the transferred tracts by receiving family members. Fourth, the proposed division is on a tract that was previously created through use of a family transfer exemption, mortgage security exemption, or occasional sale exemption. This is the one change that I would like to propose to the draft that I submitted to you earlier, I would ask that you amend this one rebuttable presumption to include a fourth scenario which is that it was an approved preliminary plat. (Page 8-25 H) We are simply adding four words "or approve preliminary plat" at the end.



Commissioner Rowley – Can you give me a scenario of what that looks like?

Jennie Dixon – You have an approved subdivision that has not been filed and rather than file it the owner comes in and asks to do a family transfer on one of the lots that was approved in the preliminary plat.

Finally, a fifth new rebuttable presumption for family transfer is that the transfer could be accomplished by a different exemption that would be more appropriate for the intended use. One of the last highlights I would give you is in the agricultural covenant for both 201 and 207 Ag exemptions, there is now a definition of agriculture and agricultural building, sourced from the Missoula County Subdivision Regulations chapter two there is a new definition of agriculture, the State Model Subdivision Regulations, and the 2012 International Building Code. We wanted to

make sure that when somebody was proposing an Ag exemption it was dependent on soil type but otherwise fully matches the new definition of agriculture in our subdivision regulations and the definition of agricultural building prohibits it from being used as a commercial type building that brings the public there to purchase agricultural products that are produced on site. It does not prohibit accessory agricultural uses, like a farm stand that is clearly accessory and subordinate to a primary agricultural use. The second point under agricultural covenant to pay attention to is that as proposed, water cannot be used on the property for anything other than agricultural use, and if facilities for water supply, wastewater disposal, or solid waste disposal exist or are proposed for an agricultural covenant tract, it may be an indication of evasion.

I have three major changes I want to call your attention to. The first one is in the boundary line relocation, attachment D-2 page 8-23 letter B, "The division would result in the creation of a new building site." Boundary line relocations cannot create new additional tracts of record. This rebuttable presumption is also saying that it cannot create an entirely new opportunity for building a dwelling when that opportunity did not exist on the original tract. It is not intended to prohibit a situation where there may be hazardous lands and you adjust a boundary line to get an area that is less hazardous or safer to construct. It is really intended for those tracts that are currently not buildable, examples being like a railroad right-of-way that is an actual tract that was never intended for development. This comes from a Missoula County Attorney policy. I know that in the past some staff from the County Attorney's Office has felt pretty strongly about this criteria. It is here for your consideration. I left it in so you can see it and consider it. It is not something that we feel strongly about but it is something past county staff have encouraged you to follow and I am not sure that I could articulate as good an argument for that as somebody else could. So that is there for you to consider if you want to keep it or not.



Commissioner Rye – Can you think of any recent family transfers that have also included a boundary line relocation that would be prohibited with this inclusion of B?

Jennie Dixon – No.

Commissioner Curtiss – I can give an example of where I think some of the discussion came from years ago. Sometimes a road might be expanded or there is a new road that comes through and there might be skinny little remainder of your property so eminent domain was probably used or purchased in the land somehow. You end up with this skinny little piece plus another lot. Well the skinny little piece is of no value but if you moved the line it could be. That is where it came from some time ago. I guess, it is one of those things of what is the sense of owning two lots if you are able to create two different lots that make them usable it is probably better than just having a strip of land that has no monetary value.

Jennie Dixon – It is very hard to articulate, which to me indicates that if I can't explain it well then I am ambivalent about it. I am happy to provide more information. I can consult with the County Attorney's Office a little further. You may get some public testimony about it as well. But that is something that I really want to bring to your attention as something that you may get comment on and you may want to take it out.

Commissioner Rye – It is very muddled to me and so my fear would be that planners in generations to come would or could interpret this in a different way than we are talking about right now. If there are other examples that you can give me that help.

Jennie Dixon – If you do decide to keep it in, that is why I am bringing it up now on the record, it is in the findings of fact that we are not trying to prohibit somebody from making a situation better. Maybe they are 99 percent in the floodplain or floodway and they want to shift the line with their neighbor to create a buildable site, we are not trying to prohibit that but then the question is what is it for? The best example I can give is what Jean explained. Beyond that I don't know if I can give you any more information.

Commissioner Rye – So B would enable them to change a boundary line to get rid of the little sliver of land, to make two usable lots.

Commissioner Rowley – It is just another rebuttable presumption. Again, it is not a deal breaker if it is one of the pieces of the pie that we can look at. I agree that if we could find a way to word it.

Commissioner Rye – It just seems like to me when I read this it sounds like if your boundary line relocation results in the creation of a new building site then it is a flag and I don't think that is what it is meant to be, yet it reads that way.

Commissioner Curtiss – In Jennie's defense, I think the reason it is in here is because it is a policy that we have used in the past. So we need to either throw it out or clarify it. I agree, it could be that little sliver of land that is left is you know, mine and now you see the value in buying it because you have a lot but if you had two you could have two houses, and I don't know that I care. I am glad that you have pointed it out and we will probably hear more discussion.

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 **Jennie Dixon** – The second one is in the family transfer, which is on the next page, there are two holding periods, newly proposed requirements. Let me first say, the family transfer is intended to allow for an isolated transfer of a tract to a defined immediate family member, that would then use or occupy the tract that has been transferred. The family transfer exemption is used frequently and they have been abused in the past and this proposal is an attempt to reign in and ensure that the family transfer is not abused. These two holding periods have to do with transferring a family transfer tract. If are a recipient of a family transfer tract you are required to hold onto it for two years. You may not sell or transfer that tract within two years of county approval of that family transfer exemption tract. There is a procedure that we are proposing along with this that would allow for some exceptions to this requirement to hold a property for two years after you received it as a family transfer. Those exceptional circumstances, through an approval process by the commissioners, could allow for a transfer of that property would include involuntary transfers such as foreclosure, death, judicial sale, condemnation or bankruptcy or other exceptional circumstances, such as estate planning or adding additional owners to the deed. Those are some circumstances that you might see as an appeal of I would like to transfer my family transfer tract before the two year holding period is up and then it is up to you to determine if it a reasonable thing to transfer it. I think this does go a step toward ensuring that family transfer tracts are not used for evasion, that they are used for their intended purpose. I also think that our newly proposed rebuttable presumptions and general evasion criteria are just going to go so much further in getting us there that this could be overkill or it could be the icing on the cake and that is for you to decide. We put it out there for you to think about if you want to see family transfer tracts held onto for a period of time to ensure that it is not evasion. The third major highlight is in the submittal requirements and review procedures we have included some requirements for flood hazard evidence. In the exemptions themselves in section 8.5 which lists each exemption and their rebuttable presumptions and requirements we don't have anything about floodplain. We do have a general evasion criteria that says, "Does the proposed division violate applicable floodplain regulations or create access or building sites that are within a designated flood hazard area that includes being within a mile of a Zone "A" floodplain. If someone is creating a tract that is in violation of floodplain regulations or creates building sites within a flood hazard area you can use the general evasion criteria to deny that exemption." The problem is how do we know, especially in a Zone "A" which is approximate and we don't have that information. In the submittal requirements, page 8-32 section 8.7.1.7. Exemptions are not being reviewed for compliance with floodplain regulations. Based on that general evasion criterion that I just read to you, we are trying to make sure that tracts are not being created entirely within flood hazard areas. That is our goal. We do not want to see people creating family transfer tracts that they then need to come and ask for a floodplain permit. You couldn't do it through subdivision. In fact now you have to put them in common areas in some subdivisions. That is the reasoning behind doing this is that if you can't do it through subdivision but you try to do it through exemption is that evasion? That is one of the factors that we would use to determine that. A new provision states that an exemption is subject to an assessment of impacts on the flood hazard area. What we can do to make sure that these tracts aren't created entirely within flood hazard areas is the county floodplain administrator may make a field determination or may require an analysis of the land division history of the original tract dating back to August 15, 1983 to determine if a Zone "A" flood hazard area has been located previously on the parent parcel. This language comes directly word for word out of your subdivision regulations of how to determine a flood hazard area in a Zone "A." It is not new language it is just sourced from somewhere else. If a Zone "A" Flood Hazard Area had been located on the parent parcel at any time since August 15, 1983, and the parcel was subsequently divided, the county floodplain administrator may require a flood analysis. This is a big change in the draft that we released in May. We got a lot of feedback, probably the most significant of feedback on the floodplain issue. Our draft at that time had a lot of requirements for complying with floodplain regulations, showing the floodplain on the survey. We tried to reign it in and figure out what is our goal and how do we accomplish our goal. We are hoping that language that we took directly from the subdivision regulations and put in here for how to determine a flood hazard area in a Zone "A" would be acceptable. Presuming that you agree that we don't want to create exemption tracts that are within the flood hazard area.

Lastly, I want to call attention to a new provision in the review procedures relative to an approval period for exemptions. We are proposing a three-year approval period for subdivision exemptions with an option for another three-year extension (page 8-35 Section 8.8.2.2). Right now there is no deadline for filing an exemption, there hasn't been since the creation of this law. We have exemptions from the eighties that still have yet to be filed, they could come in at any time, occasional sales, we still have some of those we haven't seen yet. We have about 300-400 outstanding approvals. Section 8.8.2.2 is attempting to take care of those and hopefully giving adequate notice and time to satisfy all requirements. Any outstanding approval letters that were issued prior to the adoption of these regulations, assuming they are approved, shall be automatically deemed to expire three calendar years after the effective date of these regulations which would be in November of this year. So it would be November, 2019. Our goal, if you do approve this, is to attempt to contact all of those property owners to let them know and to give them an opportunity to file their survey. However, if you don't adopt that those would remain out there.

Their ability to file would continue and it would simply be those after November, 2016 that would have the three year time frame.

Staff is recommending approval of the changes to chapter eight, shown in Attachment D in the packet. A draft resolution, shown in Attachment L, if approved, would take effect on November 4, 2016.



Commissioner Rye – On 8-24 under D-2, can it say, “The recordation of an instrument of conveyance of a tract created by family gift or sale within two years of creation may be subject to the refusal of the Clerk and Recorder.” Rather than just “subject to refusal.” I really like under family transfer, the approval within two years may not be transferred or sold within two years, with some exceptions such as foreclosure, death, judicial sale, condemnation or bankruptcy. I really appreciate the flexibility that allows the government to have. There are things that come up in our lives all the time that we can’t control that I think we need to have flexibility for. So I appreciate the inclusion of that.

Jennie Dixon – In addition to those that you just listed, the others that I have tried to build in based on comment and some of the workshops that we had in June they mentioned, what about transferring it into or out of a trust? Or putting a spouse’s name on the deed after marriage. Those types of things we are not trying to prohibit. It is clear evasion where there is family transfer after family transfer in a very short succession.

Commissioner Rye – Would you want to put it in a trust if you got married and you wanted to make sure it was part of a prenuptial agreement that if the marriage dissolved prior to the two years being up, if they wanted to keep that parcel to themselves would they have to put it in some kind of trust?

Tyler Gernant, Clerk and Treasurer – That is a private issue that they would have to deal with between themselves. There are lots of different ways they can deal with that.

Commissioner Rowley – Did we get clarification if there was MCA 76.3.103.13 and if the utility lot is the DEQ’s definition of public or if we have a different definition of public?

Shannon Therriault – I think that I am not actually the right person to answer. DEQ has changed their regulations and so a utility lot will go through review if a water or waste water system will go through DEQ review. The concept of what is a public utility would not be left up to the Health Department or to DEQ, it would end up being an interpretation by CAPS and the attorney’s office and John has some more information for you.



John Hart, Chief Deputy County Attorney – In the regulations, and regulations refer to public utility as defined in 7.6.3.103 sub 13 which defines public utility as having the meaning provided in 69.3-101. In 69.3-101 it says the term public utility within the meaning of this chapter includes every corporation both public and private that would include homeowner’s associations, companies, individuals, associations of individuals (that could be an informal conglomerate of home owners who don’t actually incorporate) trustees or receivers. It goes on to broaden that even more. As I read 69.3.101 and then how we’ve used public utility in our regulations it is very, very broad. I think if someone came and wanted an exemption using this public utility exemption we could be very flexible in what we are able to provide.

Commissioner Curtiss – I think we also always assume public water and waste water but it could also be the telephone company, the cell tower and those kinds.

John Hart – Absolutely, it includes a lot of the regulated utilities regulated by the public service commission that is. It is very, very broad.

Commissioner Rowley – Thank you. Was there any public comment?



Toby Demont, Professional Consultants Inc. – Section 8.4.5 D. Where did the mile within a floodplain come in, the trigger that I need to do a floodplain study? That seems excessive to me, as we sit here in the courthouse we are within a mile.

Commissioner Curtiss – I think Jennie said that was from the subdivision regulations we just adopted right?

Jennie Dixon – Yes.

Toby Demont – Which we are exempt from, correct?

Jennie Dixon – Yes. I am using a reliable source for what’s defined as determining flood hazard area and Zone “A” but the language does come from subdivision regulations but it is in the exemptions chapter.

Commissioner Curtiss – It is talking about Zone “A.” Zone “A” is an undefined not mapped.

Jennie Dixon – It is mapped as an approximate but there is not enough information to know.

Toby Demont – If it is approximate and you are a half mile from it, but it is reaching pretty good there.

Commissioner Rowley – Is there a possibility for them to determine the flood hazard more specifically?

Toby Demont – You will spend thousands of dollars doing the study.

Commissioner Rowley – You can't subdivide and that is your only option.

Jennie Dixon – Based on feedback that we got at the workshops from Toby and others included, if you are in an approximate Zone "A" flood hazard area which means we don't have the information to know what the flood elevations are, there are ways to determine that. One would be as we wrote in here, the floodplain administrator could go out and make a field determination. Is it clearly out of any flood hazard area? If it is not clear then it could require a flood study.

Toby Demont – I understand some of that. It is the mile. FEMA has gone and they have approximated on the map and have drawn this line that says you're close and then we've taken this regulation and we've gone, you're close and we stretch it all the way to a mile. If FEMA was concerned that there was something close there they would have stretched it out that mile.

Jennie Dixon – Right. My apologies Todd Klietz was supposed to be here today to better explain this to you. From the regulations that you recently adopted it says, "If a proposed division is located within a mile of the Zone "A" flood hazard area the subdivider shall analyze the land division history for the parcel." I am not sure that I can answer your question beyond that. If we have additional questions we may need to hold this until a time that Todd could respond to those questions better.



Commissioner Curtiss – So I think Toby again, it is not something that is going throw the whole thing out. There are FEMA maps going through the Swan Valley that say this is a floodplain and the river is over here. It is just one of those things that gives us one more tool. We had a subdivision last week that showed all the lots under water. We denied it. It is just one more tool, so we are not trying to kill anybody on this thing saying yes or no.

Toby Demont – I just don't want to go through an expensive study when I am not close.

Commissioner Rye – It does seem odd to me on two fronts. One is within a mile could be up to the shoreline of glacial lake Missoula on Mount Sentinel which seems counter intuitive to be a flood area. It does seem generically blanketed.

Jennie Dixon – This is, as Mitch explained to me, because he was the one that worked on this section that brought through last summer relative to flood hazard areas, is that this section is requiring an analysis of the parcel history to determine if you are in a Zone "A" or if your parcel as of 1983 was in Zone "A." Back in 1983, as I understand it, when they created Zone "A" they didn't necessarily take the boundary of Zone "A" to the edge of where Zone "A" could be, they simply covered at least a portion of the parcel. Therefore, back in 1983 if your parcel had a little corner in Zone "A" in fact it applied to the whole parcel. So this is requiring a parcel history determination back to 1983. If your parcel was in Zone "A" 1983 then you may need to do a flood study or the county floodplain administrator could make a determination.

Commissioner Rye – So than how does it say within a mile?

Jennie Dixon – Because that is the number that was adopted last summer to try to account for all parcels that might have had Zone "A" on them in 1983.

Commissioner Curtiss – A lot of them would not be in that zone now.

Jennie Dixon – Right.

Commissioner Curtiss – So it is actually to their benefit?

Toby Demont – Boundary Line Location - Jennie says she doesn't have a strong opinion in the division resulting in a new building site. I have a strong opinion in the other way. You are getting taxed on two lots and if you can improve them, why not?

Commissioner Rowley – Would you see it removed or do you have a better way of wording it that would make it more clear that we are not intending to try prevent that?



Toby Demont – I would prefer to see it removed. There has been some discussion as possibly putting some kind of square footage to it or something.

Commissioner Rye – That might be something to think about, just taking it out for now.

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Commissioner Rowley – I think it is too easy to misinterpret potentially.



Toby Demont – Page 8-25 in the Family Transfer, Rebuttable Presumptions B, "The landowner intends to divide land for the purpose of a gift or sale to the landowner's spouse." I thought the law was specific to include the spouse; I am not sure why they are an evasion.

Commissioner Curtiss – If you read the whole thing would be you have five acres you are going to divide it and take an acre off, sell the acre so you can build a house. That isn't what the law is intended for. To me it is intended to give it to them to live on. Spouse is always that weird one.

Commissioner Rowley – It is specified as acceptable by law to transfer to a spouse which is why it is just one of the suite of things. But often times if you quitclaimed that you transferred it to your spouse they transfer back to you, you sell it. It is just one of those red flags that if you were happily living with your spouse and you are transferring to your spouse, amongst a series of other things it could signal subdivision as opposed to a family transfer.

Commissioner Curtiss – This is a rebuttable presumption. We had one in the last year or so and that is exactly what they were going to do. Divide the property and we proved it. They didn't need a great big house anymore. So that is why we look at them individually and try to decide what it looks like in the end.

Commissioner Rowley – It could not, not be denied based on the fact that you are transferring to the spouse. That would be illegal.

Toby Demont – This recording of the correction deeds on these tracts seems odd and it seems like it is wasting a lot of record space. Once the survey is recorded and I create two lots, through boundary line relocation that are owned by me and my wife, I have to turn around and do a correction deed back to ourselves in order to that?

Jennie Dixon – It is section 8.8.1.10, correct me if I am wrong, but I think that is one of the primary spots you see it.

Toby Demont – You see it in a couple of spots, in the boundary line relocations and other sections.

Jennie Dixon – Okay, so in the recording section, the last section of a few exemptions.

Toby Demont – We went through the process to go through and review the boundary line exemptions or whatever exemption it is and we go through that whole administration process and we record the plat. This correction deed doesn't make any sense to me. Am I going to have to go hire an attorney and spend money to record that deed? If you are quitclaiming does it void the title insurance policy that you had?

Jennie Dixon – I think Tyler is prepared to address your questions.



Tyler Gernant, Clerk and Treasurer – That is the exact reason I am here today. This whole section of the subdivision regulations is about exemptions. Our office is statutorily tasked with enforcing those subdivision regulations in the sense that we are the last stop where these actually get recorded. We are specifically prohibited from recording anything that has not either gone through subdivision review or is exempt from subdivision review. The issue that we have run into and is particularly troublesome for our office is that they often result in divisions of land that are not described in any deed and require us to review multiple surveys or plats that often can span over decades in order for us to determine the correct legal description. This review is confusing. It can be confusing for even the most experienced and knowledgeable individuals. Sometimes even the surveyor's office has to take a day or two to figure out what the correct legal description for a tract of record is.

Commissioner Curtiss – Could you explain it to us a little bit more, the certificate of survey and deed part, can you give an example?

Tyler Gernant – So, a certificate of survey will generally show a portion that is to be transferred, for boundary line relocation, for example. So, it shows the portion and if there is one party who owns all of that, there is a portion that is shown, often times what happens is someone will come in later on and try to record something that is transferring something either that is not supposed to have that portion attached to it. Sometimes they will try to record just that portion in itself. Sometimes they will record it with that portion with the tract that was not supposed to have it anymore. It requires us to look through and not just that survey but often times multiple surveys because older surveys didn't necessarily require that all parcels contiguous to that be included so it is something that we have had I can say expressly we have recorded things that have created an illegal division of lands. Once it is recorded there it is not necessarily an irrebuttable presumption or anything but it does give legal credence to this tract of record being there when it really shouldn't be there.

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Commissioner Curtiss – So they should do the certificate of survey that shows the original parcel but there should be a deed transferring the exempted parcel and parcels to the people they go to.

Tyler Gernant – The corrected deed only comes into play when you have one owner, really. A corrected deed is something that has been used since deeds were in existence. All they do is they correct the record. It doesn't actually have any affect over who owns the land; it just corrects what the legal description is. It makes it easier for our office to just look at the deed and we can look at the last deed that is in place and see that should be the correct legal description because that is the legal description that was developed in conjunction with this exemption. It helps somewhat with ghost deeds. It doesn't really solve that issue but ghost deeds are ones that don't actually get filed in our office but they are still a legal transfer of land. So those are legal transfers but people don't have notice of them. This is probably the single most important issue in our office in these changes to the subdivision regulations because it would clean up a lot of the problems that we see on a day to day basis.

Commissioner Rye – So you like this?

Tyler Gernant – I very much like this.

Commissioner Rowley – Is there a process way to make it not overly burdensome for the public? Or do you not feel like it will be, what does the process look like?

Tyler Gernant – Ultimately, there should be on any survey a legal description for the lands; both the new tract and the old tracts are usually included. So there is already a legal description that should be in place. This is putting it on a correction deed so that it is not something that we have to go look through six different places to find what it should be. That is generally where we get the biggest problems, having to go and look in different places. Ultimately a correction deed is a deed that you pay \$7-\$14 to report it. Personally, I don't think of this as being overly burdensome. If you have a portion that is being transferred you have to pay somebody to make a deed.

Commissioner Curtiss – So the same person who made the certificate of survey could make the deed?

Tyler Gernant – That varies. I think that is generally speaking. Surveyors probably use attorneys or title companies I would assume. Title companies are under my assumption the ones who make most of these.

Commissioner Rowley – But it wouldn't necessarily be a separate step because you are getting it when you get the...

Tyler Gernant – It should be part of it. The whole point of it, in terms of evading subdivision review it prevents future evasion of subdivision reviews. So it is not something that affects the current transfer. It is something that affects future transfers to ensure that there isn't a mistake made in the future. There are plenty of examples in our office of where this has happened.

Commissioner Curtiss – And not every family transfer would need correction deed?

Tyler Gernant – Most of them have a deed filed with them anyhow and so most of them wouldn't need a correction deed.



Commissioner Rowley – Was there a second question you had?

Toby Demont – The way I read it here you are requiring for the remainder as well?

Commissioner Curtiss – We don't allow remainders anymore.

Jennie Dixon – We just call it remaining tract.

Toby Demont – Do you need a correction deed for that as well?

Tyler Gernant – Generally speaking the answer would be yes. Any tract of record that does not have a legal description in the deed books would need a corrected deed to have a correct legal description.

Toby Demont – So I create a certificate of survey and I show, I understand where this would be a problem and you resurvey the entire property, but I resurvey the entire property through a minimum plat and show tract 23A, 24A, 25A, 26A and I have to get a deed for me, myself for 23A, 24A, 25A.

Tyler Gernant – If you are correcting all of those parcels and if you are changing them, I am not seeing where that would happen all that often, where you are creating five new parcels in an exemption. The answer would be yes, you would need a deed for each because that is the only way to make sure that we are getting exactly what we should.

Toby Demont – Inaudible.

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Tyler Gernant – If the recorded plat doesn't have. There are some circumstances where that would be perfectly fine. Most circumstances that would probably be fine, but there are probably more limited circumstances where that does create problems for our office. It requires us to go back and look and again, things get recorded that aren't supposed to be recorded that cause more confusion. The corrected deed is intended to be something that at the time of the exemption at the time there is an institution of land we put on the record in the deed books what the correct legal description for these parcels is.



Ken Jenkins, Montana Northwest – I would like to talk about deeds since we are on the subject. So if I own ten acres and I do a family transfer of five of it to my child, I still own the remaining tract; I think what I am hearing is that I would then file a deed on the remaining tract to myself. Or, if I own two adjacent tracts and I do a boundary adjustment between those tracts there is no need for a portion because I own both sides, I am just moving the boundary between the two things that I own. I guess what I am hearing is that I would then record a new deed to myself for these two newly defined tracts. The problems I have with that whole concept are two things. Number one, a survey that is recorded is a recording reference. Secondly, when Montana changed the definition of a subdivision from 20 acres to 160 acres, prior to that law changing there was a large ranch, I believe it was in Ravalli County and by deed they cut that entire ranch into allocated twenties and deeded it to themselves. That went to the Montana Supreme Court and the supreme court ruled in favor of the county I believe. The decision was that if I convey a deed to myself or in this case the ranch conveyed 120 acre tracts back to themselves that there was no change to the vested interest of the property, therefore they were invalid deeds. Powell County as a part of helping them keep their records straight when new surveys are recorded they require new deeds on every new tract. I keep telling them, it works fine if you have two different owners involved and a boundary adjustment and file the deeds so that the title is sorted out but when it is the same owner and you are just conveying to yourself, I believe that violates a supreme court ruling.

Commissioner Curtiss – When was that supreme court ruling?

Ken Jenkins – It was whatever year prior to when they changed the definition of subdivision from 20 to 160 acres.

Commissioner Rye – So you are saying it is invalid if you deed yourself?

Ken Jenkins – That's how that ruling went.

Commissioner Curtiss – If you change your deed description.

Ken Jenkins – There is no change in the vested interest in the property.

Commissioner Rowley – May Tyler can give his opinion.



Tyler Gernant – So I can specifically address that; that was a different issue. These are corrected deeds. This is correcting an existing deed with the correct legal description. A good example, Shyra just brought up to me, often times someone will come in and file one of these surveys. So they file a survey and a landowner doesn't know that this, they know but they don't necessarily pay attention to it, they file their own deed in the future and they reference an old legal description. That happens all the time. If there is a recording reference to an old deed then we will record it because generally speaking that is how the statute reads. This is a good example of where if we have the latest deed on there we can go back and look at the latest deed. What Mr. Jenkins is referring to is what is called a Strawman Deed where you are trying to effectuate a legal division of land through a deed to yourself. That is not a corrected deed that is change in the legal form of ownership and that was found to be illegal in that case. This is a corrected deed, something that has been used since deeds existed, to correct your existing deed and show the correct legal description since there has now been a certificate of survey filed that updates the legal description. This is not the same issue as that case.

Commissioner Curtiss – If the legal description was on the certificate of survey would that meet the same thing?

Tyler Gernant – It technically does. The problem we have with that is there is a requirement that you have a recording reference on your deed. So if we go back and see a recording reference for this then we have to go find the certificate of survey as to where this has changed. Our software doesn't necessarily track which certificate of survey is tied to a parcel of land. So we have to go through and dig through and find the certificate of survey. It exists, it is public record but it is harder for us to find than if this was in a deed book. That is the best example I can give as to why this is necessary for our office.

Ken Jenkins – To stick with the deed thing, one other possible scenario that comes up is if we are doing a boundary adjustment between two landowners that let's say each owner owns a thousand acres and they want to move the line 10 feet to accommodate a driveway, state law allows us to do that survey at a minimum the only piece we have to survey is the sliver of land that changes hands.

We are not necessarily required to survey the two revised resultant tracts. So you survey the little sliver that changes hands we file a deed that conveys it from one party to the other and you don't survey the thousand acres on each side.



Commissioner Curtiss – But would there be a legal description?

Ken Jenkins – There is a legal description of the portion of land that goes from one owner to the next. So you file a survey that shows that portion, file a deed that conveys that portion and you don't have to go to the expense of surveying each thousand acres on each side of that. So, if there is anything about this new deed requirement that would preclude our use of that that is potentially a major cost to the public that hasn't been there before.

Tyler Gernant – We are talking the legal description not the survey so you could include the legal description from the old one plus this portion and that would be sufficient. It is just a matter of getting the correct legal description for each tract of record.

Ken Jenkins – I am concerned about the cost. The document we are reviewing is twice the size of what it used to be. It used to be that a landowner could come in and if they wanted to do something to their land, fill out a simple application and get their business done. More recently it is even difficult for us as consultants to get through the process sometimes. I just get the feeling especially with rebuttable presumptions that pretty soon you are going to see landowners bringing their attorney along with them in order to do something with their land. The term rebuttable presumption, I know that is right out of the model law; I very much dislike the term. To me if you just think about the language, the presumption is that it is evasion. But you can rebut that. That is what that means; I would like to see us call it something else, call it a red flag if you will. If you add up too many red flags maybe you get denied but a rebuttable presumption to me, if we are going to keep that in here, than what that means to me if we submit an application for any exemption and it triggers a rebuttable presumption than that means that we are presumed to be evading subdivision. I am bringing this up more from a process standpoint. If we weren't going to want to rebut that presumption we wouldn't have submitted the application. If we are going to leave rebuttable presumption in there to me that means you are presumed to be evading, you would then enter into the process of appealing it to the county commissioners. What I would like to see is if rebuttable presumptions are triggered by the review of the application it automatically would generate a hearing in front of the commissioners, whether it is a boundary line adjustment, family transfer or whatever. The family transfer as far as the two year holding period, I would like to say that without specifics as to why, because we are not going to think of all the things that you as commissioners might approve, it could be medical reasons, medical hardships it could be a lot of different things, I would just suggest leaving the reason that you might appeal that blank and allowing a process to appeal the two year period.



Commissioner Curtiss – I think in the language it says, for example, means that it is more like a suggestion.

Ken Jenkins – Maybe there could be more of a human element in there because that happens a lot. In regards to the boundary adjustment, the building site, if we are going to leave that in there I think there should be a two or three year warning to the public because there is a lot of public sitting on, there is a lot of examples, there are hundreds of unbuildable lots that were created prior to zoning or prior to floodplain or people that have invested and purchased long strips of Milwaukee Railroad right-of-way that was railroad. They have a lot of money invested and they are sitting on it with a boundary adjustment maybe they can make it buildable. I think that if you are going to leave that in there, there should be due notice given to the public because it will take millions of dollars' worth of real-estate out of people's hands. The quitclaim deed prior to a family transfer as a rebuttable presumption, again maybe my problem is that you are presumed to be evading if you do that. A lot of times, when people come in to do a family transfer, it is in the family trust or it is in the family corporation and we explain to them no you can't convey a parcel to your son if it is in the family corporation you need to first move that into your name as an individual. That is a very common thing. I understand that this is one potential on my list of red flag items but when again the language rebuttable presumption, if the presumption is that you are evading then the planning office should deny it. If you read the language that is how it should work. Exemptions wouldn't be so popular if subdivisions didn't cost so much.



Misty Zahn, Territorial Landworks - On the rebuttable presumptions they have already talked about this, we are saying in here that these are just guidelines, these are just generalities that we are looking at to give people something to review, five years from now, ten years from now you might not be sitting there, the folks working at the different agencies might not be there; someone else is going to come in, they might interpret that as automatic rule and now all of these things that we are listing will be denied, they are not considered something to be reviewed anymore. I just feel that we are making it very restrictive and not giving the landowners really an opportunity to do anything with their land by adding all of those in there. In regards to the boundary line relocation, the new rebuttable presumption on the building site, a lot of what he just said, a lot of people are sitting

on property that right now with new zoning or changes to floodplain they can't do anything on that site but if they can change around a couple of boundaries and make it into a usable site that adds a lot of value to their property. By having that in there we are discouraging that and we are devaluing their property and making it a lot more difficult for people to do something with that property that they've had. Maybe they didn't have the money sitting there to go forward, it is expensive when you have start looking at the sanitation side of things and maybe they don't have the money right now but five to ten years from now they might. I just think we are just making things very difficult for people. On the family transfer two year requirements, I would also agree I would rather see not having examples, I think it is too easy for people to assume that those are the only way you can get an exception is by the items that are listed. I think that is too easy to be interpreted that way.

Commissioner Rowley – It says among others.

Misty Zahn – I guess is all up to interpretation.


Commissioner Curtiss – But if we list every single thing and somebody comes in with something else then it is not there, that is why it says that.


Commissioner Rye – We could change it to, such as.


Misty Zahn – It could say, open to review by the county commissioners.

Commissioner Rye – Or, including, but not limited to.

Misty Zahn – Yes, just making it clear that it is not just what is listed there. There are a lot of different hardships that people could have that need to be reviewed and taken into consideration. On the family transfers, there is no clear intent on the occupancy or use, as far as that being criteria for evasion. I just had one a little while ago that I was in here with. If somebody is transferring to their minor children, how are the minor children supposed to give intent to what they want to do on that property that is going to be sitting in a trust? I think we are making some of these things very restrictive and difficult for people to understand. If you can do a family transfer to your children, your spouse, your parents, but yet they are red flags if you try to do a family transfer to your children or your spouse it is very confusing to people. They come into our office all the time and a lot of people have a difficult time understanding that. I think we are making that very restrictive.

 **Commissioner Rowley** – I think that it provides clarity for the public that we have to have some guidelines to paint ourselves a picture with. This is just showing the public here are some guidelines that the commissioners take into consideration when they are deciding what is the picture. Is the picture evasion or is it a valid family transfer? I feel like if there was less, it is actually more restrictive with less because that is giving us further reign on what we are going to decide on without clear indication of what the commissioners are going to look at. That is what this is a list of.


 **Commissioner Curtiss** – It is the applicant's responsibility to paint the picture. That is why it says rebuttable. These are things that we look at but you tell us why that doesn't equal evasion in this case. You have to sell your story. Most of the time people sell their story.

 **Misty Zahn** – I just worry that, it is very easy for someone who has a legitimate exemption that they want to use can come in and on a family transfer they might trigger six different criteria. Again, this is on that it is up to the people's interpretation, but someone other than you might interpret it differently than what we have talked about today.

Commissioner Curtiss – The somebodies that sit here in the future, that is their job.

Misty Zahn – I am just saying, we are writing this and I just don't feel that it is very clear and I feel that it's going to create a lot of hardship for people and not allow them to do what is legally allowable on their properties. I have some questions regarding the floodplain requirements. There are some inconsistencies that I am not sure of. We already talked about making it the cost for somebody to now have to have this floodplain study done before they even know if they can do this exemption, they don't even know if they can use this exemption to do what they want with their property and now we are asking them to spend thousands of dollars before that is even a feasible idea for them to move forward. I don't think that should be a requirement. In your summary, Jennie, it says under general submittal requirements that the submittal requirements are the same that they currently are with two new requirements. Here it says that it is a requirement and it states that paragraph on the floodplain being within one mile of a Zone "A." If you look there, if you look under the regulations under 8.8.3.6, "Divisions of land that are exempt from subdivision review are not reviewed for compliance of floodplain regulations." Under 8.8.6.8 on the requirements for the survey under B it says, "This division of land was not reviewed for installation of utilities, compliance with zoning or floodplain." I think that is confusing, it is either something that you have to review and have completed and so it is being reviewed for floodplain or isn't. To me the way that I interpret this it is confusing and it doesn't address that.


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 **Jennie Dixon** – I am in absolute agreement about the confusion on floodplain. I have spent a lot of time talking to Todd and I am not entirely sure that I can explain to you the answers that will help clarify this, but what I can do is tell you the intent. The idea that we are not reviewing an exemption for compliance with floodplain is because that is really determined at the time of construction, right, building in a flood hazard area. What this is trying to do is to determine if you are creating a tract that is entirely encumbered and therefore not somewhere you want to build upon in a flood hazard area. We need to know is the tract you are creating within a flood hazard area or are you creating it and there is some flood hazard but there is some that is not. We won't know that in some instances. Now if it is mapped as floodway, floodplain, 100 year floodplain, we will know it. Where we won't know it is in the Zone "As" because of the way the mapping occurred in 1983 there may be a certain distance beyond that boundary of Zone "A" that could also be in a flood hazard area. Last summer the commissioners adopted a provision in the subdivision regulations that helped the county departments that regulate this. They established a way to determine if you are in a flood hazard area that is called Zone "A" or is affected by it. The goal is to make sure that you are not creating tracts that are not buildable because of a flood hazard. We are not reviewing it for floodplain compliance - that happens at building permit. Does that help answer any of it?

Commissioner Rowley – We would like it to be a little less confusing. How much work has been put into this with Todd? Is it in the best shape it can be? If everybody is still confused I would like to see a little bit more work on that piece.

Jennie Dixon – I think if Todd was here there wouldn't be the confusion, I am so sorry I just can't explain it as well as he can.

Commissioner Curtiss – I think what we are trying to do is to make sure that we don't let somebody create a lot that they feel are going to give to a family member that ends up being totally unusable. So in reality what we are doing is offering up the floodplain manager to go out and say this doesn't make sense you might want to change the lines. I am not sure. The intent doesn't come through this piece.

 **Jennie Dixon** – It is entirely reasonable to conduct your hearing and flag those that we need to look into further and I am happy to do that and come back to another meeting. What I would ask is that you think about limiting the testimony at the next hearing to those items only. I think that is possible to do and it will help narrow down the focus.

Commissioner Rye – I think Jean's example just now made sense to me. I don't get that from this.

Jennie Dixon – Then we need to work on it some more.

Commissioner Rye – One of the pieces of confusion that I have is, we are asking for somebody to do something that is in subdivision that is exempt from subdivision.


Jennie Dixon – It is only because I didn't want to have to dream up new language of how to measure. It is just a way of measuring, it is not a subdivision requirement, it is just how do you measure and that language was put into the subdivision regulations last year.

Commissioner Rowley – Right, and although this is not in subdivision an exemption from subdivision is still a physical subdivision of land, even though it is not a subdivision. We can't create subdivisions that have parcels all in the floodplain and we don't want to outside of subdivision subdivide land that creates those parcels.

Commissioner Rye – We need another word for the second definition of subdivision.

Commissioner Curtiss – If someone did create this lot and then went to build on it they are going to have to go through the floodplain regulations and then Todd is going to tell them the same thing. We are just trying to prevent a person from creating something that is not usable in the future and then they are going to have to file another deed.

Misty Zahn – If we can get some clarity on that. The way it is now sounds expensive and is very confusing.

 **Chris Johnson, Missoula attorney** – I am not representing anybody relative to this but I do have an interest in some of these subject areas. I have a number of clients that travel in these areas. Relative to the floodplain issue, I think you have latched onto a valid concern. One of the other concerns to keep in mind is that if flood elevation data is required it can be fabulously expensive, just ask some of these surveyors about this. Depending on the size of the tracts and how much area you are talking about the problem for the floodplain administrator to very politely say hey we need floodplain elevation information and the surveyors come back and say well that is going to be \$15,000-\$20,000, depending on the size of the tract. It wouldn't be the first time that I saw recommendations or requirements made without any concept of what it is costing the application.

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Commissioner Curtiss – Of course, it costs a lot to have your house float on down the river.

Chris Johnson – Absolutely. Missoula also has a luxury associated with that of having building permit units in the county which is not the case in a lot of rural counties. I suggest, contrary to prior statement, that somebody potentially could boundary line adjust or whatever the mechanism was and create a parcel that was in the floodplain. They could knowingly do that. There is nothing that stops them from doing that and your catch up on that is that you can't get a building permit. It would be possible to do that. The second thing is on the family transfer. I would rather see the preference turn around that said there is a conveyance, there is going to be a rebuttable presumption, there is a presumption that the conveyance happens within two years that the original application was fraudulently or mistakenly made and it is invalid, as opposed to having a two year prohibition on it. The model for having a presumption of a transfer within two years, meaning it wasn't a valid family transfer is probably closely aligned to 10-31 exchanges, where if you do not hold your replacement property for the period of time, for trader usage, then they can come back and disallow your taxes. I realize that creates an enforcement problem for the county, doing that after the fact, but I think it is a much more tenable position overall. I don't anticipate you are going to change that because again it would require the county to come back and catch a transaction that occurred within two years and then go back and seek your remedy which you have in here of disallowing that original transfer, forcing the property to revert back to its original boundaries or original plat description. The other issue is on page 8-23, the relocation of boundaries, and the rebuttable presumption that arises if the division would result in the creation of a new building site. I think that has to go. That is one of the absolute purposes of why you would be doing a boundary line relocation is because you don't have a buildable parcel of ground. So you have the guy that does have the 90 percent floodplain, neighbor agrees to do an exchange of waterfront for a buildable site, that is a very valid reason for doing it. So I suggest you let presumption go. In your executive summary associated with this, the exemptions that are being reviewed in here are being described as exceptional circumstances. I don't know whether I would call them exceptional. If the legislature went out of their way to specifically carve out specific exemptions, I am not sure whether they are exceptional in and of itself. One other thing with the family transfer, I would concur with the proposal to change that language to say, including but not limited to, when you are reviewing this stuff. I would also encourage you to add a specific reference to financial hardship. You mention bankruptcy, but there a lot of circumstances where somebody could be a recipient of family transfer property could run into significant medical bills or whatever the circumstance, whatever the financial hardship is, including divorce. A sale of the property for whatever financial hardship, short of bankruptcy, that would be a good inclusion in there too and give you flexibility.

Commissioner Curtiss – I think that is an awful big door. When it is related to medical, we did one once where I know they sold the property so he could put his wife in assisted care because they needed it. But when you say financial it can mean I am moving to Timbuktu because my job moved. I mean I just think it is an awful big door to actually state financial, if somebody made the case to us, I think the "including but not limited to" allows us to consider that.



Chris Johnson – Or you could phrase it and call it documented financial hardship. In other words, they are going to have to come in and make some private information public but nevertheless need to come in and document that the financial hardship is for real, not just that I am behind on my bills, but you have the wolf at the door in some kind of substantial factor. I would encourage that to be recommended as a specific factor.

Commissioner Rowley – The exceptional circumstances language that was from a supreme court decision, is where we got that language?

Jennie Dixon – I believe so.

Commissioner Curtiss – Madam Chair do you want to have us make the amendments that we feel that we have clarity on and then naturally continue the hearing to just focus on that floodplain language?



Commissioner Rowley – I will close the general hearing and then we will open for discussion on floodplain next time. We want to rework that section and see how that turns out and receive comment back on that. Was there any other that we wanted comment on or just our amendments that we are willing to make today?

Commissioner Curtiss – We could just make all the amendments next time if you want; in the interest of time. There might be some people here though that don't want to come back for that. I have three noted.

Commissioner Rowley – Let's discuss those and then people can comment on them the next time, for staff to workout.

Jennie Dixon – If you have the time and inclination to make changes, then what I can do is incorporate that into a new draft with also new floodplain language, so that when it comes back you

will focus solely on floodplain. I do have "the" for in front of refusal, "including but not limited to" in the holding if you decide to keep that piece. Other than that I don't have any other actual edits until you make your motions.



Commissioner Curtiss – I think usually our final motion allows you to make grammar edits. I agree with folks that the language on 8.6.13.5B-The division would result in the creation of a new building site. I think that we should remove that.

Commissioner Curtiss made a motion to delete section 8.6.13.5B. Commissioner Rye seconds.

Motion Passed 3-0.

Commissioner Curtiss – Section 8.6.14.1D, I think that if we change the language to add "including, but not limited to."

Jennie Dixon – After the word "involuntary transfer" instead of "such as."

Commissioner Rowley – I am not sure that "including, but not limited to" is specifically referring to involuntary transfers because if you are transferring to a trust that is voluntary but we are still willing to make the exception for it. So maybe keep the "such as" those examples.

Jennie Dixon – The other place I had include the concept of including but not limited to was after in the underlined language, "time limitation may be approved include, but are not limited to."

Commissioner Rye - Do we want to add something like documented hardship and/or divorce? I can see adding both of those but particularly divorce. It is not uncommon. There was that one instance recently where there was a divorce and one thing had to be transferred to one spouse or the other and there was no water and we wanted it to be obvious that there was no water associated with the parcel that was created that had to be transferred into the divorce just to settle this divorce. It is my understanding that is still caught in some kind of legal mess. I think those instances happen more often than not. I think us spelling it out in here would help. These are big significant things and I think bankruptcy and judicial sale, foreclosure and divorce certainly falls into that heading to me.

Commissioner Rowley – Divorce would be a court order.

Jennie Dixon – If there is a divorce and you need to divide property that is one issue and that falls under court order. If you are talking about I am getting divorced I don't have any money to buy a new house somewhere else, let's just divide our land through family transfer so that we can each leave this marriage with enough money to go on our separate ways, that is what you are talking about now right?

Commissioner Rye – Correct.

Jennie Dixon – So if you are looking to be able to allow a family transfer so that they can get enough money to move forward separately that is something you can incorporate in here as an example, the such as, as you said just add divorce on the end of that.

Commissioner Rowley – But it is not regarding the creation of the exemption. It is your holding period; if they divided the land and then they got divorced we would allow them to sell a parcel of it.

Jennie Dixon – Oh, yes thank you.

Commissioner Curtiss – So it also looks like there are two things in here. One says that "they can't do this unless they are subject to these involuntary transfers." The other one says, "other instances where the waiver may be approved." We should probably say "by the commission." Should we say that? Include, but are not limited to estate planning, adding additional owners and then move on to add medical expenses and divorce. But still it is all inclusive.


Commissioner Rye, Commissioner Rowley and Jennie Dixon – They all offer slight adjustments to the specific wording.



Commissioner Curtiss made motion that last sentence in Section 8.6.14.1D will read, "Other instances where a waiver of the time limitation may be approved by the Board of County Commissioners include but are not limited to estate planning (e.g., transferring the tract into or out of a trust) adding additional owners to the deed, documented financial hardship or divorce."

Commissioner Rye seconds the motion.

Motion Passed 3-0.


 **Commissioner Rowley** – On the next page in our version it didn't have the preliminary part on H, do we need to specifically amend that?

Jennie Dixon – Yes please.

Commissioner Rye made motion that Section 8.6.14.2H read, "The proposed division is on a tract that was previously created through use of a family transfer exemption, mortgage security exemption, or occupational sale exemption, or has received preliminary plat approval."

Commissioner Curtiss seconds.

Motion Passed 3-0.


 **Commissioner Rowley** – The three calendar years issue, Section 8.8.2.2, is everybody okay with that as is?

Commissioner Curtiss – Yes.

Commissioner Rowley – So we do not need a motion on that, it stands that way. And is everybody okay with the deed language, as proposed by the Treasurer's Office?


Commissioner Rye – Yes, and I appreciate the comments from the Treasurer's Office.

Commissioner Curtiss – In regards to the floodplain revisions, our goal is to not create tracts that are totally unusable and we are offering up our folks who are trained in floodplain to help them make sure they create usable lots or we will figure out language to do that next time.

 **Jennie Dixon** – The two sections I am going to look at with Todd is that 8.7.1.7 and that is a submittal requirement but then it is reflected by a review procedure which is in 8.8.3.6 so we will look at that as well. So those are the two areas that I will focus on primarily with Todd and bring it back to you September 14, 2016.

Commissioner Rowley – Let's go ahead and continue this until September 14, 2016 at which time I will take further comment on the floodplain issue.

b. Annexation of property into Missoula Rural Fire District – Jim Helmer and Patricia Skergan

 **Shyra Scott, Chief Deputy Clerk and Recorder** – The Clerk and Recorder's Office has received a petition to annex a parcel of land, described as parcel 2B of COS 5865, located in Section 9 Township 12 North, Range 20 West, Missoula County, Montana, it is parcel number 3608000 located at 5088 Skyway Drive, Missoula, Montana 59804, into the Missoula Rural Fire District. The petition fee has been paid in full. It has been signed by property owners who represent at least 40 percent of the acreage and 40 percent of the taxable value of the property to be annexed.

Commissioner Curtiss – And it has also been accepted by the fire board, right, that they said they would provide?

Shyra Scott – It has been yes, they provided a letter of their acceptance.


Commissioner Curtiss – These are some cleanups that we have done where folks have somehow been left out of the fire service area so therefore they aren't paying for fire services either. So this is good.

Commissioner Rowley – Is there any public comment? Seeing none, we will close that hearing.

Commissioner Rye made the motion that the Board of County Commissioners approve the annexation of the property described by Shyra into Missoula Rural Fire District. Commissioner Curtiss seconds.

Motion Passed 3-0.

c. Annexation of property into Missoula Rural Fire District – Donald Lloyd and Rachel Rae Moon

 **Shyra Scott** - The Missoula County Clerk and Recorder's Office has received a petition to annex a parcel into the Missoula Rural Fire District described as the southeast quarter, northwest quarter of the northeast quarter, Section 11, Township 13 North, Range 21 West, Missoula County, Montana it is parcel number 5898605, located at 3341 Crows Roost Road, Missoula, Montana 59804. The petition fee has been paid in full. It has been approved by the Missoula Rural Fire District. It has been signed by property owners who represent at least 40 percent of the acreage and 40 percent of the taxable value of the property to be annexed.

Commissioner Rowley – Any public comment? Seeing none, we will close that hearing.

Commissioner Curtiss made the motion that the Board of County Commissioners approve the annexation of this property as described by Shyra into the Missoula Rural Fire District.
Commissioner Rye seconds.

Motions Passed 3-0.

d. Right to Farm, Ranch and Practice Forestry Policy



Mitch Doherty, Community and Planning Services – A right to Farm, Ranch and Practice Forestry Policy essentially seeks to protect farmers, ranchers and foresters who use accepted practices from nuisance lawsuits. There are numerous examples in state law currently that support the right to farm and ranch; including MCA 27-30-101 and MCA 45-8-111 those both speak to nuisance. Those as a summary protect an agricultural operation from being deemed a nuisance as a result of changed land uses around an operation. Found in MCA 76-2-901 is some additional rights afforded the farm and ranch community and those also protect them from nuisance ordinances. Further along in that section MCA 76-2-902 the state law offers some definitions for agricultural activities including the use of farm machinery, irrigation pumps, timber harvesting, etc. It lists about a page of activities.

Project background, as far as I can remember, this dates back to 2012 when the commissioners signed a letter supporting the Right to Farm and Ranch Policy. That was in communication with a planning board at the time who was working on some amendments to the subdivision regulations. Following that in January, 2013 the planning board had a presentation on the right to farm and ranch which focused mostly on ordinances around the state of Montana. During the most recent subdivision regulations we heard a lot of support for the right to farm and ranch. The commissioners heard that and renewed their commitment to a Right to Farm and Ranch Policy during the subdivision regulation amendment hearing in January, 2016.

In regards to outreach for this project, following the hearing in January of 2016 staff began drafting a Right to Farm and Ranch Policy. We took a draft of that policy to the Open Lands Committee for consideration in April, 2016. We got some great feedback from that committee. We went back and did some work to the draft and released it to the public in late June and so it was out for roughly a month for public consideration. Following the closing of that period we reissued essentially the same draft policy in advance of this hearing today, so it has been out for another couple of weeks. With the adoption of this policy it is not over, it is not a static document, it is going involve continued outreach and there is a couple different mechanisms to get the word out about the right to farm and ranch.

The purpose and intent of the policy. The intention to enhance the state law already in place, consideration for education outreach regarding support for farming, ranching and forestry in Missoula County. The policy would promote good neighbor policy, encourage conservation of ag, ranching and forest lands thus reducing the loss of agricultural and forestry resources and the policy recognizes the diversity and complexity of farming, ranching and forestry operations. The policy speaks to activities that shall not be considered nuisance including customary ag, ranching and forest activities, changing crops, livestock or animal numbers. Productive use of land, land laying fallow for a number of years. Repair of structures, fencing irrigation facilities and things like that. It is also important to note that this policy does cover all of Missoula County including the more urban areas. Often times people think of the more traditional farm and ranch areas in Missoula County but it is important to note that this covers all of Missoula County. There are several other elements including the right of practices and disclosure section. The right of practices includes a statement that speaks to individuals right to choose the food, crops or livestock and processes associated with production. The disclosure section includes a note of statement and encourages the use of that note of statement prior to land transactions. It speaks a little bit to how you can go about doing that, including working with local organizations to get the word out.

Since we released the public draft in June of 2016 we received a total of three public comments, you can find those in attachment six, none of those comments resulted in any change to the policy, so what was released in June is the same document that you are considering today. It is also important to note that this policy does not compromise or alter existing county, state or federal laws.

In summary, staff is supportive of this policy and we included the following motion in the request for action: That the resolution to adopt Missoula County Right to Farm, Ranch and Practice Forestry Policy be approved.



Commissioner Curtiss – I know we had some comment from folks that sometimes farm animals need to be treated more like pets. We have dealt with people neglecting their animals in the past. Is there anything that needs to be addressed in this particular thing, or is that addressed in different sections of county government?

Mitch Doherty – I would go back to that one statement; this policy doesn't alter or compromise those existing laws. I am not familiar with every law in place. But if there are existing laws that deal with animal cruelty this policy is not going to supersede those. It is just a policy.

Commissioner Rowley – Is there any public comment?



Bonnie Buckingham, Executive Director of Community Food and Agriculture Coalition

Our mission is to strengthen Missoula County's food and agricultural system. We really appreciate the effort that has gone into this policy, most especially to Mitch and the CAPS staff. Thank you for the opportunity to make some comments and for considering our thoughts. This policy comes out of the long process of grappling with the issues of growth in our community. For the past decade we have worked together to find specific ways to protect our dwindling farm land from unplanned sprawl. While this ordinance does not directly address the need to mitigate the loss of agriculture soils it does emphasize the importance of our agricultural heritage and culture and provide some key protections to farm and ranch operations. Community Food and Agriculture Coalition (CFAC) supports this policy's intent to enhance and protect ranching, farming and forestry within the county, our hope is that this will lead to further dialogue and other more specific policies that will strengthen our community's food and farming system. CFAC members have also been actively working in the working groups that CAPS set up earlier this summer to look at voluntary measures for the protection of our agricultural soils and it is my understanding that groups are finalizing their findings of recommendations and will be presenting those in the near future. Our hope is that this leads to more dialogue, more specific policies as well as the voluntary efforts as we move along. CFAC supports the stated purpose of this policy which is "to reduce the loss to the county of its agricultural and forestry sources by eliminating the circumstances under which agriculture, ranching and forestry operations may be considered nuisances."

We do have two specific areas of concern that we want to call attention to in the policy. One concern that has come up is the use of the right to farm ordinances in other communities to support large scale concentrated animal feeding operations which are sometimes referred to as CAFOs or factory farms. Under the nuisance area section in item one we suggest adding "or the environment" to the end of the first paragraph, which currently reads with the words "public health and safety." So it would read, with our suggestions, "unless the activity or practice has a substantial adverse effect public health and safety or the environment." If you do adopt that I would say in the disclosure statement at the end of the policy that would be added in there as well. In item two of that same heading, the change in animal numbers, really if it is large enough could indeed create a nuisance and an environmental and public health concern if there were a CAFO added to farm operations. We suggest adding language that either disallows CAFOs to operate within a certain distance of residential housing or to eliminate them all together. I could provide some examples of other communities that have put together some policies eliminating CAFOs from their community.

Commissioner Curtiss – Can you tell me what CAFO stands for?

Bonnie Buckingham – Concentrated Animal Feeding Operations. The definition is that it is over 10,000 animals. So quite large. We don't currently have any in our community, but it has become a rather large problem in other communities. The corporations that are running them have used Right to Farm Ordinances specifically to bypass regulations.



Commissioner Curtiss – Does it count on chickens, too?

Bonnie Buckingham – It doesn't, I think it is 150,000 birds.

Commissioner Curtiss – So Concentrated Animal Feeding Operations is defined somewhere.

Bonnie Buckingham – It is, it is a national/federal definition.

Commissioner Rowley – Would it suffice to at the end of that sentence say when it says a change in animal numbers and then say except for once they have hit the level that would trigger CAFO? Do you know what I mean? I am just trying to think of how to incorporate that.

Bonnie Buckingham – Yes. Possibly yes. To think about how to word that we are not encouraging CAFOs in our community. Throughout the document there is some vague language, "usual and customary, responsible application, may ordinarily occur, responsible use, current good management practices, normal agriculture." Those are somewhat vague and I think could be more clearly defined before adoption just to eliminate loopholes and misunderstandings should a nuisance complaint be filed. I think we have an idea of what that means in our community but it is somewhat vague. Overall, we consider the policy to be a strong support for farming and ranching in Missoula County. As we continue to see to an influx of new housing often juxtaposed with our working farms and ranches there is a need to mitigate conflicts resulting from lack of familiarity with the operations on farms and ranches. The policy outlines many of those issues and is a proactive measure to help mitigate the conflict. We appreciate the thought and the effort that went into its development. Thank you for your time.

Commissioner Curtiss – Where you asked us to add "and the environment" are you focusing on water pollution?

Bonnie Buckingham – Yes. Much like from a concentrated factory farm you would have degregation of the soil and the water.

Commissioner Curtiss – But those are all in this disclosure. It talks herbasides, pesticides and fertilizer. I guess it is talking about the need to apply it.

Commissioner Rowley – Any other public comment?



Jim Cusker, Grass Valley, farmer/rancher – I am certainly supporting and endorsing this policy and giving my wholehearted support to it. I first of all would like to extend my appreciation to the commissioners and Mitch deserves a tremendous amount of credit for all of the work that he has done here. He reached out to many folks in the community that have contributed to this. There are many things that I certainly like about the policy. I would like to call your attention to a few specific items. Under the purpose number three, "encourage conservation and retention of productive agricultural, ranching and forest lands," that is wonderful. As you know there are three committees that are looking at a different ways at which this could come about. I would hope that the chair of the committees be given copies of this. On that same page, number four, "It is the purpose of this policy to reduce the loss to the county of its agricultural and forest resources by limiting the circumstances under which agricultural, ranching and forestry operations may be considered nuisances." As you know, the fastest growing agricultural sector in Missoula County are the small acreages of the small specialized farms. As these farms continue to grow, as far as numbers go, this is very important. The folks that live next to them, their right to farm and do the things that they have to do in order to produce a crop so they will be protected. I also like number five, "recognize the diversity and complexity of farming, ranching and forestry. To facilitate diversification the County encourages, where appropriate, ancillary uses and other uses associated with agricultural, ranching and forestry practices." Mitch, when you put that in there can you give some possible examples of these ancillary uses?

Mitch Doherty – Some things we have heard of most recently include say farm and ranch operations having some sort of guest ranch component, hay rides in the fall and outfitting these types of activities are what come to mind first and foremost. I am sure there are a slew of other things that could be considered ancillary uses.

Jim Cusker – I wonder if you would consider the construction of a produce processing plant?

Mitch Doherty – I suppose it could be. In state law, you know when I mentioned the definitions earlier it lists a whole page there. It talks produce market at roadside stands, farm markets and things like that. There is a possibility for that I would suppose. You know, just speaking to the definition of ag, thinking about the report received from the law clinic in 2012 I believe, their interpretation of the definition of agriculture in the state of Montana is very broad. So it was intentional that with this policy and with the subdivision regulations that were adopted we took a broad approach to defining agriculture. Just something else to add to that.

Jim Cusker – I really like the fact that you didn't spell out specific things because there are many items that might come up that might fall into this. Just this past weekend I discovered that my nephew in eastern Montana is composting old feed lots. Some of these feed lots have been around for so long that the manure it is practically mountains high. They have lost the old fences because they are buried. He is composting that and the products will be sold to the local farmers and ranchers as organic fertilizer. Great step in the right direction. Under the disclosure, the sentence that states, "Missoula County has determined that the use of real property for agricultural, ranching, and forestry operations is a high priority and protected use in the County." That is great and I feel confident that the commission is going to consider agriculture an extremely high priority here. Thanks to all of you.



Heather Wills, Potomac, cattle producer – I hate the idea of the Right to Farm, I am in support of it, but I hate the idea of Right to Farm. I don't particularly like having to worry about my neighbors turning me in for a nuisance violation. I think we need to work with the realtor community, especially now that we have more and more lots being bought sight unseen, informing their buyers that they are in traditional ag communities or traditional logging communities and that they will be surrounded by these things and to know that before they buy a lot so that they are prepared for that. Also, I would suggest keeping the language just the same as it is now. We have to be careful with throwing around the word factory farm. My operation would be considered a factory at certain points of the year because we have winter nine months out of the year in Potomac. Our animals could be considered confined and so because we have them running through our barns we have them in confined areas in our pens. Some people have large lots for caving and they are confined in those areas for their safety especially in areas where there are grizzly bears or wolves. I think we have to be careful throwing around words like factory farm and confinement areas and those kinds of things. Also, if you are going to want local meats in your community, not all local meat can be grass fed. If you are going to supply enough meat for the community, there is just not the grass available and so there may be some grain fed operations which means there are going to be areas where there is already state and federal laws regulating water and an environment in regards to those lots.

If you want to call them feed lots whatever you want to call them. There are laws already on the books regulating those. This is a Right to Farm and Ranch. This isn't a right to farm and ranch certain areas of ag. I think we need to keep it broad and allow those operations to be allowed in the future. We aren't just thinking about today, we are supposed to be thinking of the future. By limiting ourselves by saying that we can't have those things it may deter your ability to have local meat in the community. I am also really encouraged by the forestry language added to this. We have already had occurrences with our logger in our area with neighbors coming up and questioning his practices, on our private ground, he was able to answer those questions and I think things got resolved. But there could be situations where machinery is running during hoot owl times and I am really glad that forestry language has been added to this policy. Thank you.

Commissioner Rowley – Any other public comment? Seeing none we will close that hearing.



Commissioner Curtiss – Mitch, under the disclosure section "Interpretation of provisions. This policy shall not be construed to compromise or alter existing county, state or feral laws." Wouldn't our water quality laws, as Ms. Wills just said, address if people have a feed lot that is running cow manure into the creek that can be address through that law.

Mitch Doherty – Yes, exactly.

Commissioner Curtiss – And the same with the CAFO, are those already addressed in law?

Mich Doherty – I don't know that they are defined necessarily in state law. We certainly haven't defined them, there is the possibility that some of these operations as they come in may be deemed a commercial business and so they may be subject to zoning if that is in place. Or other sorts of laws as well at the state level. This statement here, the interpretation of provisions, is put there to get at those types of situations.

Commissioner Rowley – The concentrated feeding operations, what are the definitions as far as if they are confined to pens due to weather, but they do have x amount of square foot per animal. I don't know what those definitions are. I do see again, the difference between these and how cattle farms typically operate and if then if they are more concentrated into a feed lot thing. I don't feel like that is an issue that is pressing our community right now but it is good, thank you for bringing it to my attention. I had never heard of that. We certainly don't want this to be utilized to promote that. It is good to have that on our radar. I am thinking that we don't need to add specific language about it at this point. We don't want it to be confused with the cattle farm operations that are wintering in barns.

Commissioner Curtiss – I agree. Right now I don't think we have a slaughter house in Montana and we also don't have a feedlot anymore. So if people are going to grass feed their cattle and want them to be grain fed to go to market they go to Kansas or somewhere so you can't even put made in Montana on them, even though they are made in Montana, they aren't finished in Montana. I think this gets to what we need to do right now and all those other things are on our radar.



Commissioner Rye – I would agree. It is a solution answer to our problem.

Commissioner Curtiss – I also thought that Ms. Wills' comment is good. We have that good neighbor book that we put together a few years ago; we might want to make sure that the realtors are aware of it. I think they probably were, but we could remind them. I think we have it in a PDF that they could easily put on their website for folks that are looking to come to Montana sight unseen which does happen. My uncle's house was sold to someone who thought they were buying a house with a wood stove and it is a propane stove. They just looked at the picture.

Commissioner Curtiss made motion to adopt the resolution for the Missoula County Right to Farm and Ranch and Practice Forest Policy. Commissioner Rye seconds.

Motion Passed 3-0.

e. Final Budget



Andrew Czorny, Chief Financial Officer - The budget begins July 1 and ends June 30 each year. The process begins with a mid-year review in late February. The budget team compares each department's actual verses projected expenditures for the current fiscal year to ensure sound financial management of each department and fund. The mid-year budget review provides the opportunity to forecast the projected year-end fund balances. The Missoula County budget team is made up of some very important people: County Auditor, Chief Administrative Officer, Chief Financial Officer, Chief Operating Officer, Finance Director, Clerk and Recorder, Communications and Projects Director, Undersheriff, Parks, Trials and Open Lands Manager. The team uses the mid-year budget review process to assess current year revenues and expenditures and how they may change in the upcoming fiscal year. This assessment contributes to the construction of the coming year's budget parameters. The county commissioners adopt the budget after the budget team develops and refines department-specific budgets. The CFO (Chief Financial Officer)

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develops parameters from which each department must build their budget. Revenue parameters can include: estimated growth or stagnation in tax related revenues; estimated changes to entitlement share from the state of Montana; legislative and/or Department of Revenue changes. Departments that receive non-tax revenue must absorb any reduction in that revenue. Expenditure parameters can include: salary adjustment as determined through labor agreement negotiations and the County Compensation Committee; changes to fringe rates-typically around 30 percent of an employee's salary, as determined by cost corrections related to workers' compensation, health benefits, retirement plan changes as directed by state statute; commissioner proposed modifications such as cost of living increases. As a rule, parameters maintain that operational expenditures remain at the prior year's level. Proposed operational increases must be submitted as an enhancement request. All capital requests must be submitted as an enhancement request. Capital requests in excess of \$25,000 are considered part of the County's Capital Improvement Program (CIP). Each fund in the County budget must maintain a cash reserve at a level established by County policy. The highest funds are the general fund (12 percent) and the public safety (eight percent) the others are special funds (five percent) and community-based (three percent). Another rule in the interest of sound financial management provides that one-time money (grants, operational savings, etc.) will only be used for one-time costs (capital equipment, software acquisition and licensing, contract-based assistance, etc.). Ongoing revenues (tax revenue, entitlement share, etc.) are used for ongoing expenditures (personnel costs, annual software maintenance costs, etc.). Requiring cash reserves for each fund and sound financial management has provided the County with a recent affirmation of its strong AA GO bond rating from Standard and Poor's, saving taxpayers millions of dollars in interest costs. Each department head presents their proposed budget to the commission and the budget team. They are individual meetings conducted over several weeks, this year several months. The department head presents their budget in the context of Missoula County's mission, vision and values statements. The CFO provides the county commissioners a structural analysis of each department's budget. The commissioners make decisions on individual department enhancement requests at the conclusion of budget meetings. The requests are examined in the context of the entire budget. Budget hearings are generally conducted in July and August of each year. The final budget is adopted by the first Thursday after the first Tuesday in September or within 30 calendar days after receiving the certified taxable values from the State of Montana and after the final public hearing (MCA 7-6-4036). The final budget hearing for the FY 2017 budget is today, August 24, 2016.

Next we will look at Missoula County's financial outlook for fiscal year 2017. Montana's economy is doing well, sixth fastest wage growth for over five years (2009-2014), the wage growth was driven by private sector; fifth fastest GDP growth over five years (2009-2014); twelfth fastest personal income growth over five years (2010-2015); seventeenth lowest unemployment rate last year (2015). Missoula is also doing well, job growth increased by 1.9 percent in 2015; the county's unemployment rate in 2015 was 3.9 percent below the state rate of 4.1 percent; new construction has picked up significantly around the county, 574 building permits were issued in 2015; home sales were up with 889 units sold within the county during the first six months of 2016.

The following are certified valuations from the Department of Revenue:

Projected vs. Certified Valuations

Projected Values

County-Wide – 2% increase or \$205,403
County-Only – 1% increase or \$90,715
Open Space – 1% increase or \$198,686

Certified Values

County-Wide – 2.48% increase or \$206,364
County-Only – 3.80% increase or \$93,232
Open Space – 2.79% increase or \$202,209

The growth in Missoula County related to newly taxable property was approximately \$1,000,000. The county was able to fund more programs and lower the mills related to new taxes from 5.23 in County-Wide mills to 4.39 mills. County-Only mills were lowered from 3 mills to 1.87 mills. Voter-approved Open Space mills were lowered from 14.57 mills to 13.86 mills (including Fort Missoula Regional Park). The County controlled budget which includes the County-Wide and County-Only mill increases combined produce an overall tax increase of 2.38 percent. The voter-approved Open Space mill increases supporting the Fort Missoula Regional Park and remainder of the Open Space program resulted in a 6.19 percent tax increase. The focus of the fiscal year 2017 budget is operational. The Commission placed a strong emphasis on funding programs and initiatives that improve transparency and accessibility of services. This includes adding an additional programmer to our technology department to develop applications in-house which will increase the services provided online to the public; enhancing connectivity to the fairgrounds and the Historical Museum; data back up and protection of critical county information; digitization of Clerk and Recorder files to ensure records are accurate and easily available to the public. The focus of the fiscal year 2017 budget is also on infrastructure. The commissioners also prioritized construction and Capital

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Improvement Projects (CIP) to improve county efficiencies and avoid continued deferred maintenance: the five- year renovation of the County Courthouse is coming to a close with only the exterior work to be completed; establish a capital replacement fund for county public works heavy equipment to offset anticipated reductions in federal funding; the county will purchase the former GLR building this year. Due to a new market tax credits program that financed the new GLR building the county had to lease the building for the previous five years with 40 percent of every payment buying down the principal. The new debt service on the building will lower the annual payments by \$90,000. We have also furthered our dedication to the fairgrounds by allocating funding to begin some of the initial changes to the conceptual plan. The design will be finalized in the coming months. The Health Department building has been operating with the same HVAC units that were placed on the building 44 years ago and the building cannot maintain a constant temperature. They are currently using window air conditioning units to cool the main floor. The current situation is costly and unreliable. The focus of the fiscal year budget also focuses on public safety. The safety and welfare of county residents remains a top priority for the county commissioners. Last year the commissioners approved additional deputy positions within the Sheriff's Office. This year, we are adding four additional positions to the Detention Facility to provide full staffing, reduce overtime and hopefully eliminate the turnover from job fatigue. The Missoula County Attorney's Office has requested an additional attorney to handle sex crime and domestic violence cases. There has been significant growth in these types of cases in recent years.

County Budget Request and Cost:

Reserve deficiency in General Fund resulting from primarily increased funding to County Attorney's Office and Clerk and Recorder.	1 County-Wide mill required
Sheriff and Detention Center operational cost increases.	1.88 County-Wide mills required
Sheriff ¾ FTE Property Clerk to 1 FTE.	.06 County-Wide mills required
CIP request to: 1) Purchase former GLR building 2) Complete needed exterior work to Courthouse and Courthouse lawn 3) Replace the 44 year old Health Department HVAC system 4) Additional space planning efforts	1.42 County-Wide mills required
CIP/Operations request for the Fairgrounds	0.53 County-Wide mills required
Replacement of rolling stock at Public Works, staff is currently functioning with 30 -year-old trucks, this will provide for the creation of a replacement fund.	2 County-Only mills required

Voter Requested CIP and Cost

CIP request to construct Fort Missoula Regional Park	13.43 Open Space mills required
Complete last third of the joint City/County Open Space project authorized by Missoula voters in 2006	0.60 Open Space mills required

Costs on a Missoula County Median Home with a Market Value of \$230,000

BUDGET REQUESTS	
Request for 4.39 County-Wide mills	\$14.16 annually
Request for 1.87 County-Only mills	\$5.81 annually
Voter-approved Open Space Bond Projects	\$43.04 annually

Commissioner Rye – Excellent budget narrative. I would like to include the addition of some service to our county trails. Residents can expect a level of service to maintain their trails in summer and winter, including snowplowing and sweeping.

Commissioner Rowley – Any public comment on the final budget?



Andrea Davis, Homeword – I am with our Operations and Program Director Karissa Drye. We are for the first time being recommended to be funded through the Community Assistance Fund. I just wanted to thank you and thank the public for supporting Homeword's efforts to provide access to rental education, financial literacy, education workshops, one on one financial counseling and foreclosure prevention counseling for those that need to have an advocate and assistance with making sure they can work out their mortgage and also folks that just need basic rental education and financial literacy. We work with a lot of non-profits in town, we leverage these services along with their case management. We will utilize the grant you are providing via the budget today to leverage other grant resources and corporate sponsorships as well as fee for service. I just wanted to make ourselves available for any questions you might have and extend our appreciation of your support. Thank you.

Commissioner Rowley – Any other comments on our final budget hearing? Seeing none, we will formally adopt it next Tuesday, August 30, 2016 at 10:00 a.m. in our administrative meeting.

Commissioner Rye – This budget was a labor of love. I think that an increase of \$14 dollars for most county residents have their taxes increased for the level of service that the county provides is a screaming deal. I am happy to have participated in it.

Commissioner Rowley – I am really happy with how it went this year, it was painful, but I think we ended in a good spot.

Andrew Czorny – Yes, we did. It was worth it.

7. OTHER BUSINESS

None

8. RECESS

Commissioner Rowley – Called the meeting to recess at 4:13 p.m.

Resolution No. 2016-117 – BCC signed, dated August 24, 2016. Adopting Right to Farm, Ranch, and Practice Forestry Policy. Approved at August 24, 2016 public meeting.

Resolution No. 2016-134 – BCC signed, dated August 24, 2016. Annexing parcel of land into Missoula Rural Fire District. Parcel described as SE¼ NW ¼ NE ¼ Section 11, Township 13 North, Range 21 West; Parcel 5898605, located at 3341 Crows Roost Road. Approved at August 24, 2016 public meeting.

Resolution No. 2016-135 – BCC signed, dated August 24, 2016. Annexing parcel of land into Missoula Rural Fire District. Parcel described as Parcel 2B of Certificate of Survey 5865 Section 09, Township 12 North, Range 20 West; Parcel 00036080000, located at 5088 Skyway Drive. Approved at August 24, 2016 public meeting.

THURSDAY, AUGUST 25, 2016

BCC met in regular session; all three present. Morning: NR attended 10 year plan meeting with City.

Letter – BCC signed, dated August 25, 2016. To Jason Rice, Territorial Landworks, Inc. Confirming approval of Caitlin's Estates Plat Adjustment at August 3, 2016 public meeting. Eliminating 60 foot wide conditional public access and utility easement along the common property boundary of Lots 6 and 7. Replacing it with 20 foot wide public pedestrian easement on west property boundary of Lot 7 and a 30 foot wide conditional public access and utility easement on the west side of Lot 6.

ADMINISTRATIVE MEETING

Professional Services Agreement – BCC signed Professional Services Agreement with PayneWest Insurance, Inc. for the services of Casey Galloway for consultation on risk cases and to conduct a risk

assessment of the Missoula County Detention Facility. Amount/\$2,500.00 per month. Term/September 1, 2016-September 1, 2017. To Chris Lounsbury/Chief Operating Officer.

Subdivision Improvement Guarantee – BCC signed Amended Subdivision Improvements Agreement and Guarantee for the Ranch Club, Phases 7 & 8. Improvements Agreement signed on March 1, 2016 secured by letter of credit of \$508,791.60. Since then all improvements have been completed except for an estimated \$18,221.16 in improvements. Amended agreement guarantees remaining improvements will be completed by December 31, 2016 and is secured by letter of credit. To John Hart/County Attorney's Office.

Professional Services Agreement – BCC signed Professional Services Agreement with Tetra Tech, Inc. to provide quality assurance testing associated with Grant Creek Trail project. Amount/Not to exceed \$20,000. Term/August 3, 2016-October 1, 2016. To Greg Robertson/Public Works.

Clinical Affiliation Agreement – BCC signed Clinical Affiliation Agreement between Missoula County-Partnership Health Center (PHC) and A.T. Still University-Kirksville College of Osteopathic Medicine. Provides clinical experience and familiarity with primary care and specialty rotations. Term/Upon execution until terminated. To Bernadette Roy/PHC.

Grant Agreements – BCC signed Assisted Business Agreement (Contract # MT-BSTF-1-17-01-AB) and Management Plan (Contract # MT-BSTF-1-17-01-MP) for Big Sky Trust Fund (BTSF) Category 1 Job Creation Grant to assist Montana Health Solutions, Inc. dba Consumer Direct Management Solutions. Documents establish relationships among Missoula County, Missoula Economic Partnership, and Consumer Direct. To Nicole Rush/BitterRoot Economic Development District (BREDD).

Professional Services Agreement Amendment – BCC signed Amendment to Professional Services Agreement with Sankey Pro Rodeo. Amends August 11, 2016 agreement to add costs for Professional Bullriders event. Amount/\$3,200.00. To Todd Garrett/Fairgrounds.

Land Trust Grant Agreement – BCC approved, NR signed. Grant agreement between Missoula County and Five Valleys Land Trust for Anderson-Miester-Clearwater Open Space Bond Project. Project was approved at August 10, 2016 public meeting, authorizing \$15,600.00 of bond funds to be used on transaction costs of donated conservation easement. Condition of approval requires separate grant agreement prior to release of funds. Agreement establishes the use of funds for long-term protection and enforcement of the conservation easement. To Kali Becher/Parks, Trails, and Open Lands.

Resolution No. 2016-118 – BCC signed, dated August 25, 2016. Budget transfer for Anderson-Miester-Clearwater Open Space Bond Project establishing expenditure line of \$15,600.00. Formally adopted as part of FY17 budget.

Resolution No. 2016-119 – BCC signed, dated August 25, 2016. Budget transfer for Sheriff's Office correcting overages in certain categories by recording additional revenues and increasing budget lines in use of cash reserves. Formally adopted as part of FY16 budget. To Gary Elliott/Sheriff's Office.

Letter – BCC signed, dated August 25, 2016. To Ed Toavs, Montana Department of Transportation. Regarding West Broadway/Flynn Lane Intersection Study. Agreeing with conclusion and recommendation of extending 45 mph speed zone west of Flynn Lane intersection. Adding that crash trend could be remedied through additional geometric revisions and/or safety enhancements.

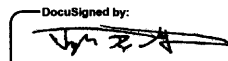
Letter – BCC signed, dated August 25, 2016. To Big Sky Trust Fund Selection Committee, Montana Department of Commerce. Supporting Missoula Economic Partnership's application to be designated a Local Economic Development Organization (EDO) for the purpose of applying directly to Category II Planning Grants Program.

Letter – BCC signed, dated August 25, 2016. To Big Sky Trust Fund Selection Committee, Montana Department of Commerce. Supporting BitterRoot Economic Development District's (BREDD) application for Category II planning grant to help Tru-Home Montana complete second phase of strategic business development plan.

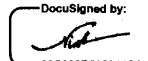
Additional discussion item(s): None.

FRIDAY, AUGUST 26, 2016

BCC met in regular session; all three present.

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Tyler Gernant
Clerk & Recorder

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Nicole "Cola" Rowley, Chair
BCC

MONDAY, AUGUST 29, 2016

BCC met in regular session; all three present.

Monthly Report – NR examined/approved/ordered filed the Monthly Reconciliation Report for Clerk of District Court, Shirley Faust, for month ending July, 2016.

TUESDAY, AUGUST 30, 2016

BCC met in regular session; all three present. Morning: BCC attended Freedom Gardens meeting.

ADMINISTRATIVE MEETING

Resolution No. 2016-115 – BCC signed, dated August 30, 2016. Adopting Budget for Missoula County for Fiscal Year 2016-2017. To Vickie Zeier/Chief Administrative Officer.

Resolution No. 2016-116 – BCC signed, dated August 30, 2016. Adopting Rural Special Improvements District Budget for Missoula County for Fiscal Year 2016-2017. To Vickie Zeier/Chief Administrative Officer.

Subdivision Phasing Plan Extension – BCC conditionally approved and signed letter for Phasing Plan Extension for Clearwater Junction Subdivision. Phase 1 extended from July 11, 2016 to July 11, 2019. Phase 2 extended from July 11, 2018 to July 11, 2021. Phase 3 extended from July 11, 2020 to July 11, 2022. Conditional approval limited extension of Phase 3 to 2022 to avoid extending the deadline beyond 15 years from the original approval date. To Christine Descenzo/Community and Planning Services.

Contract Agreement – BCC approved, NR signed. Contract Number 17-331-74108-0 between Montana Department of Public Health and Human Services Addictive & Mental Disorders Division and Missoula County for Crisis Intervention and Jail Diversion. Continues funding crisis mental health contract services, training for law enforcement and crisis responders, detention center diversion for those with acute mental illness, and funding the building of an emergency detention unit at Western Montana Mental Health Center's Dakota Place. Amount/\$510,795.00. Term/July 1, 2016-June 30, 2017. To Erin Kautz/Grants and Community Programs.

Appointments – BCC approved appointments to the Building Code Board of Appeals. Re-appointments of Engineer Jennifer Anthony, Architect Steven Adler, and Master Electrician James McDonald. New appointment of Russ Allaway as Member at Large. To Stephen Hutchings/Public Works.

Additional discussion item(s): 1) Economic development grant for Missoula Food Bank; 2) Upcoming board meetings and review of meetings.

WEDNESDAY, AUGUST 31, 2016

BCC met in regular session; all three present. Afternoon: BCC attended Swan Flood Study meeting.

Letter – BCC signed, dated August 31, 2016. Confirming approval of Clearwater Junction Phasing Plan Amendment at August 30, 2016 administrative meeting.

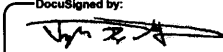
Letter – BCC signed, dated August 31, 2016. To Nikisha Love-Weaver, Justice and Mental Health Collaboration Program, U.S. Department of Justice. Requesting no-cost, one-year extension for grant number 2011-MO-BX-0040. New project end date would be September 30, 2017.

ADMINISTRATIVE MEETING

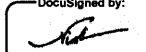
Resolution No. 2016-120 – BCC signed, dated August 31, 2016. Resolution Relating to Financing Certain Open Space Bond Project; Establishing Compliance with Reimbursement Bond Regulations Under the Internal Revenue Code. For South Hills Spur Project. Determining that expending up to \$575,000.00 from the City's portion of 2006 Open Space Bond funds to cover the cost of fee acquisition of 83 acres in the South Hills is a Qualified Open Space bond project. To Kali Becher/Parks, Trails, and Open Lands.

Agreement – BCC approved, NR signed. Agreement between Missoula County and Blackfoot Communications to provide fiber optic cable and connectivity to Missoula County Fairgrounds. Amount/\$20,000 startup costs, \$360.00 ongoing monthly costs. To Chris Lounsbury/Chief Operating Officer.

Additional discussion item(s): None.

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Clerk & Recorder

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Nicole "Cola" Rowley, Chair
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