

COMMISSIONERS APPROVAL

IMAN

CHILCOTT

FOSS

KANENWISHER

STOLTZ

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner J.R. Iman, Commissioner Suzy Foss, Commissioner Matt Kanenwisher and Commissioner Ron Stoltz

Date.....July 14, 2011

► Minutes: Beth Perkins

► Commissioner Chilcott attended the NACo 2011 Annual Conference in Portland, Oregon for the day

► The Board met to approve the SNAP agreement for MSU Extension at 8:45 a.m. Present was Katelyn Andersen. **Commissioner Kanenwisher made a motion to approve the SNAP agreement for MSU Extension. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)**

► The Board met for a public hearing for Morado Mountain Major Subdivision and variance request at 9:10 a.m. Present were Civil Counsel Karen Mahar, Attorney Alan McCormick, Planner Tristan Riddell, Planning Administrator Terry Nelson, Representatives Terry Forest, Stacy Dykeman, Attorney J.R. Catsilas and

Commissioner Iman opened the public hearing and requested any additional correspondence. Tristan replied there isn't any additional correspondence. Commissioner Iman requested any conflicts of interest be disclosed. Hearing none, he then requested the Planning Staff report be read.

Terry Nelson presented the Staff Report as follows:

**MORADO MOUNTAIN ESTATES
58-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST
STAFF REPORT FOR THE BOARD OF COUNTY COMMISSIONERS**

CASE PLANNER: Renee Lemon

**REVIEWED/
APPROVED BY:** John Lavey

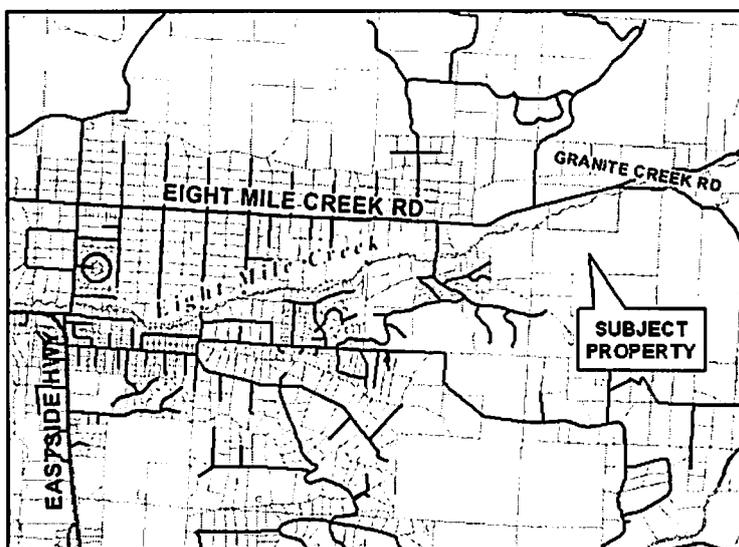
PUBLIC MEETINGS: Planning Board Public Meeting: April 16, 2008
BCC Public Hearing: May 6, 2008
BCC Public Hearing (Continued): 9:00 a.m. May 27, 2008
BCC Public Hearing (Continued - tentative): 9:00 a.m. May 29, 2008
Deadline for BCC action (60 working days): May 30, 2008

SUBDIVIDER: Morado Mountain Estates, LLC
705 Spanish Peaks Drive
Missoula, MT 59803

TITLEHOLDER: Marion McHatton
PO Box 746
Lolo, MT 59847

REPRESENTATIVE: Terry L. Forest, P.E.
DJ&A
3203 Russell Street
Missoula, MT 59801

LOCATION OF REQUEST: The property is located east of Florence off Granite Creek Road. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:** The S2NW4 and the W2NE4 of Section 10, T10N, R19W,
P.M.M., Ravalli County, Montana.

APPLICATION

INFORMATION:

The subdivision application was deemed sufficient on February 29, 2008. Agencies were notified of the subdivision on April 16, 2007 and March 3, 2008. Comments received from agencies are Exhibits A-1 through A-36 of the staff report. The applicant submitted an amended application on April 22, 2008 to connect to the roads through the proposed Lupine Meadows Subdivision. Planning staff determined that the changes were not material because the applicant had originally proposed the road connections. **This subdivision is being reviewed under the Ravalli County Subdivision Regulations (RCSR) amended May 24, 2007.**

LEGAL NOTIFICATION:

A legal advertisement was published in the *Ravalli Republic* on Tuesday, April 1, 2008. Notice of the project was posted on the property and adjacent property owners were notified by certified mail dated March 12, 2008. Public comments are Exhibits B-1 through B-10.

DEVELOPMENT PATTERN:

| | |
|-------------------|-------------------------|
| Subject property: | Agricultural/Open Space |
| North: | Agricultural/Open Space |
| South: | Agricultural/Open Space |
| East: | Agricultural/Open Space |
| West: | Agricultural/Open Space |

INTRODUCTION

Morado Mountain Estates is a proposed 58-lot major subdivision located approximately 6.0 miles east of the community of Florence. Based on concerns from the Planning Department and Planning Board about the impacts of the internal road design on local services and public health and safety, the applicant has redesigned the subdivision to provide two access routes.

There are two phases proposed for this subdivision. Phase 1 includes the lower elevations below the bench (Lots 1 through 11 and Lots 51 through 58). The applicant is proposing access to Phase 1 via the following two routes:

1. Eight Mile Creek Road, Granite Creek Road, and the proposed internal subdivision roads (Morado Mountain Drive and Kaylie Drive)
2. Eight Mile Creek Road, Jenne Lane, Riley Lane (through an adjoining property to the west, the proposed Lupine Meadows Subdivision), and the proposed internal subdivision roads (Morado Mountain Drive and Kaylie Drive)

Prior to the final plat approval of Phase 1, the applicant is proposing to provide the cost of materials to improve Eight Mile Creek Road, to construct the portion of Riley Lane through Lupine Meadows, and to construct the portions of the internal subdivision roads that will serve Phase 1.

Phase II includes the upper elevations (Lots 12 through 50). The applicant is proposing access to Phase 2 via the following routes:

1. Eight Mile Creek Road, Granite Creek Road, and the proposed internal subdivision roads (Morado Mountain Drive and Lyneah Court)
2. Eight Mile Creek Road, Jenne Lane, Riley Lane, Hayley Court, and the internal subdivision roads (Morado Mountain Drive and Lyneah Court) **or** Eight Mile Creek Road, Jenne Lane, Riley Lane, and the proposed internal switchback road, Harper Drive. This has not been confirmed because the applicant is depending on the developer of Lupine Meadows to make the improvements to Hayley Court.

Prior to the final plat approval of Phase 2, the applicant is proposing to construct the portion of Granite Creek Road leading to the subdivision to meet county standards, to construct the internal subdivision roads providing access to Phase 2, and if Hayley Court has not been completed, construct Harper Drive. Staff is recommending that the improvements to Granite Creek Road are completed prior to the final plat approval of Phase 1.

The subdivider is requesting a variance from Sections 5-4-5(a) and (b)(4) of the RCSR, to allow the subdivider to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the road standards for existing construction within a 50-foot wide easement instead of reconstructing the road to meet the road standards for new construction within a 60-foot wide easement. County road standards reflect the standards of the American Association of State Highway and Transportation Officials (AASHTO). AASHTO standards for existing construction differ from AASHTO standards for new construction.

PLANNING STAFF RECOMMENDED MOTIONS

1. That the variance request from Sections 5-4-5(a) and (b)(4) of the Ravalli County Subdivision Regulations be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report. *(Staff Note: If the variance is approved, the BCC should consider a motion to continue the public hearing for the review of the subdivision to May 29th at 9:00 a.m.)*
2. If the applicant submits preliminary approval of the road plans for Riley Lane and evidence that Jenne Lane meets county standards for the additional traffic that Morado Mountain Estates will add from the Road Department by the date of the hearing to review the subdivision, staff recommends the following motion:

That the Morado Mountain Estates Major Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report. *(Staff Note: The BCC should include a decision on the parkland dedication as part of the motion.)*

PLANNING STAFF RECOMMENDED CONDITIONS FOR THE VARIANCE

1. The applicant shall meet the following requirements prior to final plat approval (*Variance*):
 - a) The applicant shall pay the cost of materials required to improve the portion of Eight Mile Creek Road from Station 5+50 to meet the county road standards for

existing construction. The applicant shall submit a receipt from the Ravalli County Treasurer's Office 30 calendar days after both the Morado Mountain Estates and Sandhill Ridge subdivisions have been granted preliminary approval showing that half of the payment has been paid. The applicant shall submit a receipt from the Treasurer's Office showing that the remaining amount has been paid 45 calendar days after the first amount was paid;

- b) The current 50-foot wide easement will be acceptable for the improvements;
- c) Improvements to the north/south major collector segment of Eight Mile Creek Road will be at a road width of 24 feet for a distance of 3,150 feet, and the improvements to the east/west minor collector segment will be at a road width of 22 feet for a distance of 17,375 feet;
- d) Applicants will pay for a 0.12-inch leveling course and an 0.17-inch wearing course. The mutually agreed upon calculations for the leveling course and wearing course over the areas noted in item (c) are:
 - i. 1,520 cubic yards crushed aggregate for the shoulders at \$11.00 per cubic yard equaling \$16,720.
 - ii. 4,680 tons plant-mix asphalt at \$45.00 per ton equaling \$210,600.
 - iii. 7,625 tons plant-mix asphalt at \$45.00 per ton equaling \$343,125;
- e) Additional improvements will require that applicants pay for 1 (10x3x48) Concrete Box Culvert at \$420 per foot + \$2,700 in delivery costs for a total of \$22,860;
- f) The total costs under (d) and (e) is \$593,305, but the applicants acknowledge this total is subject to change depending on the unit cost of plant-mix asphalt. The parties also acknowledge that these calculations were generated by David Ohnstad at the Ravalli County Road and Bridge Department; and,
- g) The applicant's expenditures for Eight Mile Creek Road improvements will be offset by any pro rata payments made in the same grader district from the time either subdivision is preliminarily approved until the time of Eight Mile Creek Road reconstruction. (*Section 3-2-8(a), RCSR, Prerequisites to Approval and Variance*)

- 2. The applicant shall provide for a 50-foot wide public trail easement through the common areas, as proposed in Exhibit C. (*Variance*)

PLANNING STAFF RECOMMENDED CONDITIONS FOR BOTH PHASES

- 1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat for both phases to the Planning Department and filed with the final plat for both phases:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Section 3-2-8(b)(v), RCSR, Effects on Agriculture*)

Notification of Irrigation Facilities and Easement. Within this subdivision there is an irrigation easement, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Downstream water right holders must approve any relocation or alteration (e.g. installation of a culvert)

of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. *(Section 3-2-8(a), Prerequisites to Approval and Section 3-2-8(b)(v), RCSR, Effects on Agricultural Water User Facilities)*

Notification of Water Rights. Residents within this subdivision do not currently have the right to take irrigation water out of the irrigation ditch or the portions of Eight Mile Creek within this subdivision. Taking water without a water right for any purpose is illegal. Residents should consult with the Montana Department of Natural Resources for questions on water rights. *(Section 3-2-8(b)(v), RCSR, Effects of Agricultural Water User Facilities)*

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the Granite Creek Road frontage of the subdivision, excepting the approach for Morado Mountain Drive, as approved by the Ravalli County Road and Bridge Department. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

Notification of Road Maintenance Agreement. The internal subdivision roads, Jenne Lane, Riley Lane, and Hayley Court are not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A road maintenance agreement for these roads was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

Notification of Proximity to Eight Mile Creek. This subdivision is located in close proximity to Eight Mile Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the stream channel. The modeled floodplain boundary on the final plat is an estimate and does not account for potential debris, ice jams, changes in the hydrology of the watershed, and/or poorly maintained culverts. It is recommended that property owners of this subdivision obtain flood insurance. It is also recommended that the property owners of Lots 1, 4, and 5 construct the lowest enclosed floor (including mechanical/utility equipment) of all structures and utilities to be a minimum of 2.0 feet above the 100-year base flood elevation. *(Section 3-2-8(b)(v), RCSR, Effects on Public Health and Safety)*

Notification of Severe Soils. Within this subdivision there are areas of the property identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat. Descriptions of the severe soils in question are included as exhibits to this document [the subdivider shall include the exhibits as attachments]. *(Section 3-2-8(b)(v), RCSR, Effects on Public Health and Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat for both phases that include the following provisions:

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, coyote, fox, skunk, and raccoon. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at www.fwp.mt.gov. *(Section 3-2-8(b)(v), RCSR, Effects on Agriculture and Wildlife & Wildlife Habitat)*

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** must be stored in secure bear-resistant containers or indoors to avoid attracting wildlife such as bears and raccoons. If stored indoors, garbage cans may not be set out until the morning of garbage pickup, and must be taken back indoors that day after garbage pickup.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or

that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

- e. **Birdseed** is an attractant to bears. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of their owner(s), and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food and/or livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets [and/or livestock] do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.**
- h. **Barbecue grills** should be stored indoors. Permanent, outdoor barbecues grills are discouraged in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer and/or elk becoming entangled in the fence or injuring themselves when trying to jump the fence.
- j. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (Board of County Commissioners).

No-build/Alteration Zones for Steep Slopes. Within this subdivision there are no-build/alteration zones on slopes greater than 25%, as shown on the plat, to restrict building in areas with steep slopes. No new structure, with the exception of fences, may be constructed in these areas. (*Section 3-2-8(b)(v), RCSR, Effects on Public Health & Safety*)

No-build/Alteration Zones for Eight Mile Creek and Floodplain. Within this subdivision, there are no-build/alteration zones on the modeled floodplain of Eight Mile Creek and within

50 feet of the modeled floodplain boundary, as shown on the final plat. Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. The goal of the “no build/alteration zones” within 50 feet of the modeled floodplain of Eight Mile Creek is to help preserve the water quality and functionality of this stream, protect and enhance the fisheries and riparian areas, and protect property from eroding banks and possible flooding. Encouraging the development of native vegetation (including shrubs and trees)—while discouraging actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and unlimited livestock grazing—would help preserve the functionality of this creek and its fisheries, protect and improve vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment, Wildlife & Wildlife Habitat, and Public Health and Safety*)

- a. No new building or alteration is allowed in the no-build/alteration zones.
- b. Only non-motorized access and use is allowed (except for certain maintenance needs such as weed spraying).
- c. Do not cut or remove live or dead vegetation, particularly shrubs and trees. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- d. Do not plant lawns in the no-build/alteration zones. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- e. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f. In general, keep livestock out of Eight Mile Creek and do not include the creek in corrals. Develop off-stream watering facilities (e.g., water troughs) for livestock, and use fences to keep livestock from trampling and grazing riparian vegetation in the no-build/alteration zone.
- g. Development of off-channel watering facilities cannot include water from Eight Mile Creek if the lot(s) does not have valid water rights to the stream. If no water rights exist for, or have not been transferred to the property, then water cannot be diverted from the creek for any use. Residents should consult with the Montana Department of Natural Resources for questions on water rights.
- h. It is illegal to modify the streambed or streambanks of a perennial stream without a “310” permit (Montana Natural Streambed and Land Preservation Act). Any stream crossings need to follow all local and/or state regulations relative to bridge/culvert construction materials/methods. Certain other actions near the river and/or creek may require state and/or federal permit(s). Contact the Bitterroot Conservation District office in Superior for further information.
- i. In summary, allow riparian areas--the creek and the no-build/alteration zones--to remain undisturbed. Do not modify unless such change would help return the area to a natural state.
- j. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (*Section 3-2-8(b)(v), RCSR, Effects on Public Health & Safety*)

Control of Noxious Weeds. A noxious weed evaluation form has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Section 3-2-8(b)(v), RCSR, Effects on Agriculture and Natural Environment*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The All Valley Fire Council has adopted the Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)

Access Requirements for Lots within this Subdivision. The All Valley Fire Council has adopted the Fire Protection Standards. All access roads, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Florence Rural Fire Department for further information. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)

Building Standards. The All Valley Fire Council recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. It is recommended that any commercial buildings be constructed to meet state building code requirements. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)

Wood Stoves. The County recommends that home owners refrain from installing wood stoves if possible. The County further recommends that wood and other

biomass burning stoves not be used as the primary heat source. If a homeowner chooses to burn wood as a back-up heat source, the County strongly encourages them to install an EPA-certified wood stove as the best option to reduce air pollution and more specifically, to install an EPA-certified pellet stove. More information on low emission, EPA-certified wood stoves is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Tax Credit to offset the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. Besides the tax credit for qualifying wood stoves, individual Montana residents can claim a tax credit for energy conservation investments made to a home or other building. For more information on the energy conservation tax credits and ways to save energy, please see the *Warm Hearts, Warm Homes* webpage (<http://deq.mt.gov/Energy/warmhomes/index.asp>) on the Montana Department of Environmental Quality's website. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment*)

Wastewater Treatment Facilities Setbacks. The Ravalli County Subsurface Wastewater Treatment and Disposal Regulations require that wastewater facilities are located 100 feet from the modeled floodplain of Eight Mile Creek. Drainfields are required to be located 100 feet from the irrigation ditch traversing Lots 2, 3, 6, 7, 8, 9, and 10. Septic tanks are required to be located 50 feet from the irrigation ditch. The setbacks are shown on the final plat. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment and Public Health and Safety*)

Archeological Resources. If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. (*Section 3-2-8(b)(v), RCSR, Effects on Natural Environment*)

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (*Section 3-2-8(b)(v), RCSR, Effects on all six criteria*)

3. The subdivider shall include an RSID/SID waiver in a notarized document filed with subdivision plat of each phase that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety*)
4. The final plat of both phases shall state that \$100 per lot shall be submitted to the Ravalli County Treasurer's Office to be placed into an account for the Open Lands Bond Program upon the first conveyance, including lease or rent, of each lot. (*Section 3-2-8(b)(v), RCSR, Effects on Agriculture*)
5. The subdivider shall provide evidence with the final plat submittal for both phases that they have applied for County-issued addresses for the lots. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)

6. Prior to the final plat approval of each phase, the subdivider shall provide a letter from the Florence Rural Fire Department stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection of each lot. Alternatively, the subdivider may provide evidence that \$500 per lot has been contributed to the Florence Rural Fire Department with the final plat submittal in lieu of the required water supply or water storage for fire protection. The \$500 contribution shall be adjusted to account for the Consumer Price Index. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*
7. The following statement shall be shown on the final plat of each phase: "The All Valley Fire Council, which includes the Florence Rural Fire Department, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Florence Rural Fire Department for further information". *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*
8. The subdivider shall submit a letter or receipt from the Florence-Carlton School District stating that they have received an amount (to be determined at the Commissioner hearing) per lot prior to the final plat approval of each phase. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services)*
9. The subdivider shall submit an amount (to be determined at the Commissioner hearing) per lot to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to the final plat approval of each phase. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*
10. The Road Maintenance Agreement for the internal subdivision roads filed with the final plat of each phase shall state that other parcels which may have beneficial use of the internal subdivision roads shall be allowed to join as members of the agreement without the consent of the current members once connecting roads are developed within the easements. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*
11. 60-foot wide public road and utility easements shall be shown on the final plat of each phase connecting the internal roads of Morado Mountain Estates to the adjacent properties to the west, south, and east in the locations proposed on the preliminary plat. The following statement shall be on the final plats in reference to these easements: "Development of the roads to meet County Standards within the public road and utility easements connecting this subdivision to the properties to the west, south, and east shall be the responsibility of the property owner(s) to the west, south, and east. Furthermore, when these easements are developed and opened to adjacent property(ies), those properties that have beneficial use of the easements shall be annexed into the road maintenance agreement for the internal subdivision roads." *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

12. The applicant shall provide for 60-foot wide public road and utility easements for all internal roads on the final plat of each phase. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*
13. The 100-foot wastewater treatment facility setback from Eight Mile Creek, the 100-foot drainfield setback from the irrigation ditch, and the 50-foot septic tank setback from the irrigation ditch shall be prominently shown on the final plat of each phase with a label in large, bold font. Also, the setbacks shall be shown on the maps approved by DEQ for each phase. *(Section 3-2-8(b)(v), RCSR, Effects on Natural Environment and Public Health and Safety)*
14. The no-build/alteration zones on the modeled floodplain of Eight Mile Creek and within 50 feet of the modeled floodplain boundary shall be shown on the final plat of each phase. *(Section 3-2-8(b)(v), RCSR, Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health and Safety)*
15. The no-build/alteration zones on slopes greater than 25% shall be shown on the final plat of each phase, as proposed on the preliminary plat. *(Section 3-2-8(b)(v), RCSR, Effects on Public Health and Safety)*
16. The 50-foot wide trail easements through the common areas and 10-foot wide trail easements along the eastern boundary of the internal road easements, as proposed in the preliminary plat application, shall be shown on the final plat of each phase. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services)*
17. The applicant shall provide evidence that a Collection Box Unit(s) (CBU) has been installed atop a concrete slab, in accordance with the Florence post office's standards, and that its installation has been approved by the Florence post office prior to final plat approval of each phase. Alternatively, the applicant shall provide evidence from the Florence Post Office that a CBU(s) is not required for each phase. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)*

PLANNING STAFF RECOMMENDED CONDITIONS FOR PHASE 1

1. Prior to the final plat approval of Phase 1, the applicant shall work with the Florence-Carlton School District to determine whether or not a bus shelter should be constructed on the Granite Creek Road frontage of the property. The applicant shall provide evidence that they have worked with the School District prior to the final plat approval of Phase 1. If any improvements are required, the applicant shall complete the improvements prior to the final plat approval of Phase 1. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health & Safety)*
2. A no-ingress/egress zone shall be placed on the final plat for Phase 1 along the Granite Creek Road frontage of the subdivision, excepting the approach to Morado Mountain Drive. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

3. The improvements to Granite Creek Road shall be completed prior to the final plat approval for Phase 1. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services, Public Health and Safety, and Natural Environment)*
4. Prior the final plat approval of Phase 1, the applicant shall submit documentation that Morado Mountain Estates has annexed into the existing Road Maintenance Agreement for Gunshy Ridge, which includes maintenance for a portion of Jenne Lane, and the portions of Riley Lane and Hayley Court that traverse Gunshy Ridge. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

PLANNING STAFF RECOMMENDED CONDITIONS FOR PHASE 2

1. Lot 40 shall be removed from the proposal and shall not be shown on the final plat for Phase 2. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health and Safety)*

FINAL PLAT REQUIREMENTS FOR BOTH PHASES (Ravalli County Subdivision Regulations Section 3-4-4(a))

1. A statement from the project surveyor or engineer outlining how each final plat requirement or condition of approval has been satisfied shall be submitted with the final plat submittal.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003), shall be submitted prior to final plat approval. (One paper copy may be submitted for the first proofing.) The final plat shall conform to the preliminary plat decision. The following features are required on the Final Plat:
 - a) Project name
 - b) Title block
 - c) Certificate of registered owner – notarized
 - d) Certificate of registered land surveyor with seal
 - e) Certificate of governing body approval
 - f) Signature block for Clerk and Recorder, preferably in lower right hand corner
 - g) Certificate of public dedication
 - h) Certificate of park cash-in-lieu payment
 - i) Other certifications as appropriate
 - j) North arrow
 - k) Graphic scale
 - l) Legal description
 - m) Property boundaries (bearings, lengths, curve data)
 - n) Pertinent section corners and subdivision corners
 - o) Names of adjoining subdivisions/certificates of survey
 - p) Monuments found
 - q) Witness monuments
 - r) Acreage of subject parcel
 - s) Curve data (radius, arc length, notation of non-tangent curves)
 - t) Line data (lengths to tenths of a foot, angles/bearings to nearest minute)
 - u) Lots and blocks designated by number (dimensions/acreage)
 - v) Easements/rights of ways (location, width, purpose, ownership) for the 80-foot wide utility easement for the overhead power line traversing the northeastern

corner of the subject property; the 20-foot wide overhead power line traversing the center of the subject property; 60-foot wide public road and utility easements on all internal roads, the portion of Kaylie Drive that traverses through the Mikesell's property to the north, and connections to the east, west, and south; and the portion of the 20-foot wide irrigation ditch traversing Lots 2, 3, and 6 through 10.

- w) Dedication for public use (boundaries, area, purpose)
 - x) No-build/alteration zones on slopes greater than 25% and within 50 feet of the modeled floodplain
 - y) No-ingress/egress zone along the Granite Creek Road frontage of the subdivision, except for the approved approach for Morado Mountain Drive.
 - z) Water resources (rivers, ponds, etc.) – Eight Mile Creek
 - aa) Floodplains – the modeled floodplain for Eight Mile Creek
 - bb) Irrigation canals including diversion point(s), etc.
 - cc) High-pressure gas lines
 - dd) Existing and new roads (names, ownership, etc.)
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
 4. Any variance decisions shall be submitted with the final plat submittal.
 5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
 6. The final plat review fee shall be submitted with the final plat submittal.
 7. A Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
 8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
 9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.
 10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.
 11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
 12. A copy of the appraisal report, per Section 6-1-7, dated no less than six (6) months from the date of the submittal, for calculating the cash-in-lieu of parkland dedication and a receipt from the County Treasurer's Office for the payment of cash-in-lieu of parkland dedication, shall be submitted with the final plat submittal.

13. Evidence of a Ravalli County-approved road name petition(s) for each new road shall be submitted with the final plat submittal.
14. Engineering plans and specifications for all central water and sewer systems and any other infrastructure improvements requiring engineered plans shall be submitted with the final plat submittal.
15. Utility availability certification(s) shall be submitted with the final plat submittal of both phases.
16. Road/common access maintenance agreements, signed and notarized, shall be submitted with the final plat submittal for both phases. The same road maintenance agreements shall be filed for both phases.
17. A notarized statement from each downstream water user specifically authorizing any alteration, such as installation of culverts, bridges, etc., or relocation of an irrigation ditch shall be submitted with the final plat submittal. This includes the installation of a culvert for the Morado Mountain Drive crossing and the abandoning of the portion of the ditch downstream from the Mikesell property, which is the property adjacent to the north.
18. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
19. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plat submittal.
20. A copy of the letter sent to the appropriate school district(s) stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
21. Signed and notarized homeowner association documents, including bylaws, covenants, and/or declarations shall be submitted with the final plat submittal.
22. Evidence that the phasing requirements in Section 3-2-8(f)(iv) have been met, which includes evidence that each phase is capable of functioning with all the required improvements in place in the event the future phases are not completed and that the phases are being filed in sequential order, or that the BCC have approved a change in the phasing plan.

FINAL PLAT REQUIREMENTS FOR PHASE 1 (Ravalli County Subdivision Regulations Section 3-4-4(a))

1. Road and driveway approach and encroachment permit for the Morado Mountain Drive approach off Granite Creek Road shall be submitted with the final plat submittal for Phase 1.

2. Final Road Plans and Grading and Storm Water Drainage Plans shall be submitted with the final plat submittal for Eight Mile Creek Road, Granite Creek Road, Riley Lane, and the internal subdivision roads proposed to serve Phase 1.
3. Road certification(s) for Eight Mile Creek Road, Granite Creek Road, Jenne Lane, Riley Lane, and the internal subdivision roads proposed for Phase 1 shall be submitted with the final plat submittal. *(Staff Note: A professional engineer's certification on the road plans and final approval from the Road Department shall meet this requirement.)*
4. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required, shall be submitted with the final plat submittal. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.) Following is a list of improvements specific to Phase 1:
 - The applicant shall improve the portion of Granite Creek Road leading to the subdivision to meet County standards prior to the final plat approval for Phase 1. *(Section 5-4-5(a) and (b)(4), RCSR and Condition 3 of Phase 1)*
 - The applicant shall improve the portion of Riley Lane leading to the subdivision to meet County standards prior to the final plat approval for Phase 1. *(Section 5-4-5(a) and (b)(4), RCSR)*
 - The applicant is required to improve the internal roads proposed for Phase 1 to meet County standards prior to final plat approval, which includes Morado Mountain Drive from Granite Creek Road to the intersection with Kaylie Drive and Kaylie Drive from Morado Mountain Drive to the western boundary of the subdivision. *(Section 5-4-5(a) and (b)(4), RCSR)*
 - The applicant is required to install a stop sign and road name sign at the intersections of Granite Creek Road with Morado Mountain Drive and Kaylie Drive with Morado Mountain Drive prior to the final plat approval of Phase 1.
 - The applicant shall construct a bus shelter, if necessary, prior to the final plat approval of Phase 1.
 - The applicant shall install a Collection Box Unit for mail delivery, if necessary.
 - The applicant shall provide the requested water supply and flow unless a monetary contribution to the Fire District is chosen.
5. Written and notarized documentation indicating that the water rights have been removed from the property shall be submitted with the final plat submittal. This may be in the form of a deed showing that the water rights have been severed. (Exhibit A-33)

FINAL PLAT REQUIREMENTS FOR PHASE 2 (Ravalli County Subdivision Regulations Section 3-4-4(a))

1. Final Road Plans and Grading and Storm Water Drainage Plans shall be submitted with the final plat submittal for the internal subdivision roads proposed for Phase 2. If

the applicant does not provide certification that Hayley Court meets county standards, the applicant shall provide final road plans for Harper Drive.

2. Road certification(s) for the internal subdivision roads required for Phase 2, and either Harper Drive or Hayley Court shall be submitted with the final plat submittal. *(Staff Note: A professional engineer's certification on the road plans and final approval from the Road Department shall meet this requirement.)*
3. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required, shall be submitted with the final plat submittal. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.) Following is a list of improvements specific to Phase 2:
 - The applicant is required to provide evidence that Hayley Court (through Lupine Meadows) meets county standards or construct Harper Drive (the internal switchback road connecting Kaylie Drive and Morado Mountain Drive) to meet county standards prior to final plat approval. The applicant shall provide final approval from the Road Department. *(Section 5-4-5(a) and (b)(4), RCSR)*
 - The applicant is required to improve the internal roads proposed for Phase 2 to meet county standards. Prior to final plat approval, the applicant shall provide final approval from the Road Department. *(Section 5-4-5(a) and (b)(4), RCSR)*
 - The applicant shall construct the turnarounds, as proposed in the application.
 - The applicant shall install stop signs and road name signs at any intersections that are proposed for Phase 2.
 - The applicant shall install any additional Collection Box Units required for Phase 2.
 - The applicant shall provide for the water supply and flow requested by the Fire District unless a monetary contribution is chosen.

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. There is an overhead power line that traverses the northeastern corner of the property. This line will not be utilized by the subdivision. The applicant is proposing an 80-foot wide utility easement centered on the line. (Morado Mountain Estates Subdivision Application)
2. There is another overhead power line that traverses through the center of the subject property. The applicant is proposing to relocate a portion of the overhead power line through Lots 17, 18, 22, and 23. This line will be utilized by the

- subdivision. The applicant is proposing a 20-foot wide utility easement centered on the line. (Morado Mountain Estates Subdivision Application)
3. Utilities will be provided to each of the lots via the 20-foot wide utility easement for the overhead power line traversing the property and the 60-foot wide easements for the internal roads. (Morado Mountain Estates Subdivision Application)
 4. A portion of the 60-foot wide road easement for Kaylie Drive traverses through the Mikesell property, which is adjacent to the north. This easement has already been acquired by the applicant. (Morado Mountain Estates Subdivision Application)
 5. *To ensure that this prerequisite is met, the Ravalli County Subdivision Regulations require that existing and proposed utility easements are shown on the final plats of both phases. (Final Plat Requirement 2 for both phases)*

Conclusion of Law

The subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.

Findings of Fact

1. The property is proposed to be accessed via Eastside Highway, Eight Mile Creek Road, Granite Creek Road, and the internal subdivision roads. The applicant is also proposing access via Jenne Lane and Riley Lane from Eight Mile Creek Road. If the portion of Hayley Court that traverses Lupine Meadows, a proposed subdivision the west, is constructed prior the final plat approval of Phase 2, the Morado Mountain Estates Subdivision will also be accessed via Hayley Court. (Map 1)
2. This prerequisite only requires evidence that there is legal and physical access to each lot; it does not require legal and physical access from every possible route. For the purposes of this analysis, staff will use the route via Eastside Highway, Eight Mile Creek Road, Granite Creek Road, and the internal subdivision roads. (Staff Determination)
3. Eastside Highway is a State-maintained highway that provides legal and physical access.
4. Eight Mile Creek Road and Granite Creek Road are county-maintained roads that provide legal and physical access. (Exhibit A, RCSR)
5. The applicant is required to improve the portions of Eight Mile Creek Road and Granite Creek Road leading to the subdivision to meet county standards. (Section 5-4-5(a) and (b)(4), RCSR)
6. The applicant is proposing to construct Granite Creek Road to meet county standards prior to the final plat approval of Phase 2. (Morado Mountain Estates Subdivision Application)
7. To mitigate impacts on local services and the natural environment, staff is recommending that the improvements to Granite Creek be made prior to the final plat approval of Phase 1. (Effects on Local Services and Natural Environment)
8. The applicant requested a variance from improving the portion of Eight Mile Creek Road leading to the subdivision to meet county standards and is instead proposing to pay the cost of materials to improve the road to meet the road

- standards for existing construction. Staff is recommending conditional approval of the variance. (Variance Application and Report)
9. The applicant is proposing to construct the internal roads to meet county standards. (Morado Mountain Estates Subdivision Application)
 10. The applicant is proposing private easements for the internal roads. (Morado Mountain Estates Subdivision Application)
 11. A portion of the 60-foot wide road easement for Kaylie Drive traverses through the Mikesell property, which is adjacent to the north. This easement has been acquired by the applicant. (Morado Mountain Estates Subdivision Application)
 12. To mitigate impacts on local services, staff is recommending that the internal road easements are public road and utility easements. (Effects on Local Services)
 13. *To ensure legal and physical access to the subdivision, the applicant shall meet the following requirements:*
 - *The applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the road standards for existing construction. (Condition 1 of Variance Approval)*
 - *The applicant shall improve the portion of Granite Creek Road leading to the subdivision to meet county standards prior to Phase 1. (Condition 3 for Phase 1, and Final Plat Requirements 2, 3, and 4 for Phase 1)*
 - *The applicant shall improve the portion of Riley Lane leading to the subdivision to meet county standards prior to Phase 1. (Final Plat Requirements 2, 3, and 4 for Phase 1)*
 - *The applicant shall construct the internal subdivision roads required for each phase to meet county standards and obtain final approval from the Road Department prior to the final plat approval for each phase. (Final Plat Requirements 2, 3, and 4 for Phase 1 and Final Plat Requirements 1, 2, and 3 for Phase 2)*
 - *The applicant shall provide for 60-foot wide public road and utility easements for all internal subdivision roads. (Condition 12 and Final Plat Requirement 2 for both phases)*

Conclusion of Law

With the conditions and requirements of final plat approval, legal and physical access will be provided to the subdivision.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

Findings of Fact

1. The applicant shall be required to submit evidence that the following improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdividers prior to the final plat approval of Phase 1:
 - Construction of the portion of Granite Creek Road leading to the subdivision
 - Construction of Riley Lane from the western boundary of the subdivision to the existing cul-de-sac for Riley Lane constructed for Gunshy Ridge

- Construction of the internal roads required for Phase 1 (Morado Mountain Drive from Granite Creek Road to the intersection with Kaylie Drive and Kaylie Drive from Morado Mountain Drive to the western boundary of the subdivision)
 - Installation of a stop sign and road name sign at the intersections of Granite Creek Road with Morado Mountain Drive and Kaylie Drive with Morado Mountain Drive
 - Construction of a bus shelter, if necessary, prior to the final plat approval of Phase 1
 - Installation of a Collection Box Unit for mail delivery, if necessary
 - Provision of requested water supply and flow unless a monetary contribution to the Fire District is chosen
2. The applicant shall be required to submit evidence that the following improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdividers prior to the final plat approval of Phase 2:
- The applicant is required to provide evidence that Hayley Court (through Lupine Meadows) meets county standards or construct Harper Drive (the internal switchback road connecting Kaylie Drive and Morado Mountain Drive) to meet county standards prior to final plat approval.
 - Construction of the internal roads required for Phase 2 (Morado Mountain Drive from the intersection with Kaylie Drive to the intersection with Hayley Court or Harper Drive and Lyneah Court)
 - Construction of turnarounds
 - Installation of a stop sign and road name sign at all the intersections proposed for Phase 2
 - Installation of additional Collection Box Units for mail delivery, if necessary
 - Provision of requested water supply and flow unless a monetary contribution to the Fire District is chosen

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that the improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the subdivider is required to:
- (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities

- of landowners within the subdivision who have a legal right and access to the water; or
- (iii) reserve and sever all surface water rights from the land.
2. The subject property overlaps the claimed place of use for water right #76H25696. The water right is owned by the Eightmile Creek Company, Inc. and Sagebrush Investments, LLP. (Exhibit A-5)
 3. Average lot size of the proposal is less than 5.0 acres. (Morado Mountain Estates Subdivision Application)
 4. According to Bill Schultz, Regional Manager of the DNRC's Missoula Regional Office, the water rights have been severed from the property. (Exhibit A-33)
 5. *To ensure that this prerequisite has been met, the applicant shall provide evidence that the water rights have been severed prior to the final plat approval for Phase 1. This evidence should be the copy of the deed referenced in Bill Schultz' email (Exhibit A-33). (Final Plat Requirement 5 for Phase 1)*

Conclusion of Law

With the final plat requirement that the applicant provide evidence the water rights have been severed, this prerequisite will be met.

E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.

Findings of Fact

1. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii), the subdivider is required to establish ditch easements in the subdivision that:
 - (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
2. A ditch traverses the northeastern corner of the property. In the past, the ditch flowed southwest across Mikesell's property and the western portion of Morado Mountain Estates, but that portion of the ditch has been abandoned. Mikesell is the only downstream user. (Morado Mountain Estates Subdivision Application)
3. The applicant is proposing a 20-foot wide easement centered on the portion of the ditch that traverses the northeastern corner of the subject property. (Morado Mountain Estates Subdivision Application)
4. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and condition shall be met prior to final plat approval:*
 - *The proposed irrigation easement shall be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2 for both phases)*
 - *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch*

*owner shall be included in the notifications document filed with both phases.
(Condition 1 for both phases)*

Conclusion of Law

This prerequisite will be met through the requirements and conditions of final plat approval.

F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Findings of Fact

1. The required parkland dedication is 6.52 acres.
2. The applicant is proposing to donate 7.55 acres to the County and to dedicate 26.53 acres to the Homeowners' Association. (Morado Mountain Estates Subdivision Application)
3. The location of the 7.55 acres to be donated to the County is not clear. (Staff Determination)
4. Due to the steep slopes in the proposed parkland dedication, the Ravalli County Park Board recommends that the BCC request cash-in-lieu. (Exhibit A-7)
5. In accordance with 76-3-621(4), MCA, "the governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks, playgrounds and giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation." (See also Section 6-1-5(e), RCRS)

Conclusion of Law

Due to the Park Board's recommendation and the vagueness of the proposal, staff would recommend that the BCC accept cash-in-lieu of parkland.

G. Overall Conclusion on Prerequisite Requirements

With the conditions and requirements of final plat approval, and a decision on the parkland dedication, there is credible evidence that the subdivision application meets the prerequisite requirements.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The applicant is requesting a variance from Sections 5-4-5(a) and (b)(4), which requires the applicant to improve the portion of Eight Mile Creek leading to the subdivision to meet county standards. (Morado Mountain Estates Subdivision File)
2. Staff is recommending conditional approval of the variance. (Variance Report)

3. The applicant has not yet submitted preliminary approval of the road plans for Riley Lane and approval from the Road Department that Jenne Lane will meet county standards for the additional traffic from Morado Mountain Estates. (Morado Mountain Estates Subdivision File)
4. Professional Consultants, Inc., the contract engineer for the County, submitted a recommendation to the Road Department to grant preliminary approval of the road plans for Riley Lane. (Morado Mountain Estates Subdivision Application)
5. The applicant's engineer submitted a letter to the Road Department providing evidence that Jenne Lane meets county standards for the additional traffic generated from Morado Mountain Estates. The Road Department has not yet approved of that information. (Morado Mountain Estates Subdivision Application)

Conclusions of Law

1. With variance approval, the preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. With submittal of preliminary approval of the road plans for Riley Lane from the Road Department and approval that Jenne Lane meets county standards for the additional traffic from Morado Mountain Estates, the application procedures in Chapter 3 will have been followed.

B. Applicable zoning regulations.

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. The property is not within one of the voluntary zoning districts in Ravalli County. (Morado Mountain Estates Subdivision Application)

Conclusion of Law

This proposal complies with existing zoning regulations.

C. Existing covenants and/or deed restrictions.

Finding of Fact

There are no existing covenants on the property. (Morado Mountain Estates Subdivision Application)

Conclusion of Law

There are no applicable covenants and/or deed restrictions.

D. Other applicable regulations.

Findings of Fact

1. Following are regulations that may apply to this subdivision:
 - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
 - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County)

Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)

2. Prior to the final plat approval of each phase, the applicants shall submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

Conclusion of Law

With the requirements of final plat approval, the application meets all of the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The subject property is currently pasture land. (Morado Mountain Estates Subdivision Application)
2. The adjacent parcels are in agricultural use. The property adjacent to the west is also a proposed subdivision named Lupine Meadows. (Morado Mountain Estates Subdivision Application)
3. The subject parcel and adjacent parcels to the west and south are classified for tax purposes as agricultural rural. The subject parcel and adjacent parcels are currently vacant. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
4. There are no soils classified as Prime Farmland, Prime Farmland if Irrigated, or Farmland of Statewide Importance on the property. (Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))
5. To mitigate impacts on agriculture, the applicant is proposing to donate \$100 per lot to the Open Lands Bond Program upon first conveyance of each lot. (Morado Mountain Estates Subdivision Application)
6. The applicant submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that states Houndstongue, Spotted Knapweed, Leafy Spurge, and Sulfur Cinquefoil are located on the property. (Morado Mountain Estates Subdivision Application)
7. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
8. *Following are conditions and requirements of the final plat approval of each phase that will mitigate the impacts of the subdivision on agriculture:*
 - *The final plat of both phases shall state that \$100 per lot shall be submitted to the Ravalli County Treasurer's Office to be placed into an account for the Open Lands Bond Program upon the first conveyance, including lease or rent, of each lot. (Condition 4 for both phases)*
 - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat of each phase. The protective covenants, also filed with the final plat of each phase, shall include a provision*

requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2 for both phases)

- *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to the final plat approval for each phase. (Final Plat Requirement 11 for both phases)*
- *A noxious weed control provision shall be included in the protective covenants filed with the final plat for both phases of this subdivision. (Condition 2 for both phases)*

Conclusion of Law:

With the mitigating conditions of approval and the requirements of final plat approval, there will be minimal impacts on agriculture.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. The subject property overlaps the claimed place of use for water right #76H25696. The water right is owned by the Eightmile Creek Company, Inc. and Sagebrush Investments, LLP. (Exhibit A-5)
2. According to Bill Schultz, Regional Manager of the DNRC's Missoula Regional Office, the water rights have been severed from the property. (Exhibit A-33)
3. An irrigation ditch traverses the property. Future lot owners will not have water rights from the ditch. The portion of the ditch that traverses through northwestern portion of the property is to be abandoned. Mikesell is the only downstream user. (Morado Mountain Estates Subdivision Application)
4. There is an existing 20-foot wide irrigation easement centered on the ditch. The portion of the ditch and easement through the northeastern portion of the property will remain. (Morado Mountain Estates Subdivision Application)
5. Eight Mile Creek traverses Lots 1 and 57 of the proposed subdivision. Future lot owners will not have water rights from the Creek. (Morado Mountain Estates Subdivision Application)
6. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
 - *The portion of the existing 20-foot wide irrigation easement through Lots 2, 3, 6, 7, 8, 9, and 10 are required to be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2 for both phases)*
 - *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications document filed with both phases. (Condition 1 for both phases)*
 - *A notification that there are no water rights associated with the irrigation ditch or Eight Mile Creek shall be included in the notifications document filed with both phases. (Condition 1 for both phases)*
 - *The applicant will be required to submit a notarized statement from each downstream water user specifically authorizing any alterations to the irrigation ditch traversing the property prior to the final plat approval of both phases. This includes the installation of a culvert for the Morado Mountain Drive crossing and the abandoning of the portion of the ditch downstream from the Mikesell property, which is the property adjacent to the north. (Final Plat Requirement 17 for both phases)*

Conclusion of Law

With mitigating conditions and the requirements of final plat approval, the impacts on agricultural water user facilities will be minimal.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Fire District

1. The subdivision is located within the jurisdiction of the Florence Rural Fire Department. (Morado Mountain Estates Subdivision Application)
2. The Fire District is located 5.8 miles from the subject property. (Morado Mountain Estates Subdivision Application)
3. The Florence Rural Fire District stated in a phone conversation that they do not recommend one access to the subdivision via a loop road that exceeds 2.00 miles. (Exhibit A-25) The Fire District stated they will submit their comments in writing, but staff did not receive written comment.
4. Staff identified a significant negative impact on public health and safety resulting from the original road design (one access route into the subdivision) in the draft staff report to the Planning Board issued on April 11, 2008. (Effects on Public Health and Safety)
5. On April 22, 2008, the applicant submitted an amended application to construct the portion of Riley Lane through the adjacent proposed subdivision to the west. This provides for another access to the subdivision. The applicant is also proposing access to Phase 2 via Hayley Court if the developer of Lupine Meadows, the adjacent proposed subdivision, completes the improvements prior to final plat of Phase 2. If Hayley Court has not been completed, the applicant will construct Harper Drive, the internal switchback road that would connect Kaylie Drive to Morado Mountain Drive. Turnarounds for emergency vehicles will be constructed on Phase 2 roads. (Morado Mountain Estates Subdivision Application)
6. The applicant is proposing to pay the cost of materials to improve Eight Mile Creek Road to meet the road standards for existing construction. (Variance Report)
7. The Florence Fire Chief supports the proposed improvements to Eight Mile Creek Road. (Exhibit A-34)
8. The applicant is proposing to construct the portion of Granite Creek Road leading to the subdivision to meet county standards prior to the final plat approval of Phase 2. (Morado Mountain Estates Subdivision Application)
9. To mitigate impacts on local services, specifically the county-maintained road network, and the natural environment, staff recommends that the improvements to Granite Creek Road be completed prior to the final plat approval of Phase 1. (Effects on Local Services – Off-site Roads and Effects on Natural Environment)
10. The All Valley Fire Council, which includes the Florence Rural Fire Department, has adopted Fire Protection Standards (outlined in document from the Hamilton Rural Fire Department) that address access, posting of addresses, and water supply requirements. (Exhibit A-16)
11. Approximately 80% of Lot 40 has slopes greater than 25% and the remainder of the lot has slopes greater than 15%. (Morado Mountain Estates Subdivision Application)
12. To mitigate impacts on public health and safety and ensure adequate emergency vehicle access to every lot, staff is recommending that Lot 40 be removed. (Effects on Public Health and Safety)

13. The applicant is proposing to contribute \$500 per lot to the Florence Rural Fire District upon first conveyance of each lot. (Morado Mountain Estates Subdivision Application)
14. *The following conditions will mitigate the impacts of the subdivision on the Florence Rural Fire Department:*
 - *The applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the road standards for existing construction. (Condition 1 of Variance Approval)*
 - *The applicant shall improve the portion of Granite Creek Road leading to the subdivision to meet County standards prior to the final plat approval for Phase 1. (Condition 3 of Phase 1 and Final Plat Requirements 2, 3, and 4 for Phase 1)*
 - *The applicant shall improve the portion of Riley Lane leading to the subdivision to meet County standards prior to the final plat approval for Phase 1. (Final Plat Requirements 2, 3, and 4 for Phase 1)*
 - *The applicant is required to improve the internal roads proposed for Phase 1 to meet County standards prior to final plat approval, which includes Morado Mountain Drive from Granite Creek Road to the intersection with Kaylie Drive and Kaylie Drive from Morado Mountain Drive to the western boundary of the subdivision. (Final Plat Requirements 2, 3, and 4 for Phase 1)*
 - *The applicant is required to provide evidence that Hayley Court (through Lupine Meadows) meets county standards or construct Harper Drive (the internal switchback road connecting Kaylie Drive and Morado Mountain Drive) to meet county standards prior to final plat approval. (Final Plat Requirements 1, 2, and 3 for Phase 2)*
 - *The applicant is required to improve the internal roads proposed for Phase 2 to meet county standards. Prior to final plat approval, the applicant shall provide final approval from the Road Department. (Final Plat Requirements 1, 2, and 3 for Phase 2)*
 - *The applicant shall construct the turnarounds, as proposed in the application, prior to the final plat approval of Phase 2. (Final Plat Requirements 1, 2, and 3 for Phase 2)*
 - *Provisions shall be included in the covenants filed with both phases requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2 for both phases)*
 - *The covenants shall include a recommendation that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. (Condition 2 for both phases)*
 - *Prior to the final plat approval of each phase, the subdivider shall provide a letter from the Florence Rural Fire Department stating that the subdivider has provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection of each lot. Alternatively, the subdivider shall provide evidence that \$500 per lot has been contributed to the Florence Rural Fire Department with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 6 for both phases)*
 - *The following statement shall be shown on the final plat of each phase: "The All Valley Fire Council, which includes the Florence Rural Fire Department, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface*

width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Florence Rural Fire Department for further information". (Condition 7 for both phases)

School District

15. The proposed subdivision is located within the Florence-Carlton School District. (Morado Mountain Estates Subdivision Application)
16. It is estimated that 29 school-aged children will be added to the Florence-Carlton School District, assuming an average of 0.5 children per household. (Census 2000)
17. The applicant is proposing to mitigate the impacts of the subdivision on the School District through a voluntary contribution of \$1,500 per lot to the Florence-Carlton School District upon first conveyance of each lot. (Morado Mountain Estates Subdivision Application)
18. The Florence-Carlton School District requested a \$10,418 per lot contribution. The amount is based on information commonly requested by the county commissioners when reviewing subdivisions, and information from an August 8, 2006 Impact Fee Study. (Exhibit A-19)
19. Ravalli County has not adopted impact fees to date. The County cannot request a contribution for capital expenses until an impact fee has been adopted. (MCA 7-6-1603)
20. The cost per pupil for one year in the Florence-Carlton School District, excluding capital costs, is \$6,686. (Exhibit A-20)
21. Taxes from new residents may not be immediately available to the school districts. There is no available information on the average amount of time between when a school district serves children from a new residence and when the school district receives tax money from that residence. (Staff Determination)
22. The Ravalli County Educational Transportation Committee has requested that the BCC require that developers establish a bus shelter and a turnout lane or turnaround, as appropriate, at subdivision entrances to County-maintained roads. (Exhibit A-21)
23. The applicant talked to the bus company that provides service to the subject property. The company stated that they do not want a bus turnout because they prefer to stop traffic on the street. The company did not address a bus shelter. (Morado Mountain Estates Subdivision)
24. *To mitigate the impacts of the subdivision on the School District, the following conditions shall be met:*
 - *The applicant shall negotiate a contribution with the BCC, in consultation with the Florence-Carlton School District, if possible. (Condition 8 for both phases)*
 - *Prior to the final plat approval of Phase 1, the applicant shall work with the Florence-Carlton School District to determine whether or not a bus shelter should be constructed on the Granite Creek Road frontage of the property. The applicant shall provide evidence that they have worked with the School District prior to final plat approval. If any improvements are required, the applicant shall complete the improvements prior to the final plat approval of Phase 1. (Condition 1 for Phase 1)*

Water and Wastewater Districts

25. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Morado Mountain Estates Subdivision Application)

Public Safety Services

26. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Morado Mountain Estates Subdivision Application)
27. The Ravalli County Sheriff's Department is located 33.8 miles from the subject property. (Morado Mountain Estates Subdivision Application)
28. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on April 16, 2007 and March 7, 2008, but no comments have been received from the Sheriff's Office. (Morado Mountain Estates Subdivision File)
29. The average number of people per household in Ravalli County is 2.5. This subdivision is estimated to add 145 people to the County. (Census 2000)
30. Taxes from new residents may not be immediately available to law enforcement services, E-911, or the Department of Emergency Services (DES). There is no available information on the average amount of time between when public safety services begin to serve a new residence and when public safety services receive tax money from that residence. (Staff Determination)
31. The applicant is proposing to contribute \$250 per lot to mitigate impacts on law enforcement upon the first conveyance of each lot. (Morado Mountain Estates Subdivision Application)
32. Staff identified a significant negative impact on public health and safety resulting from the road design. Subsequently, the applicant is proposing a second access to the subdivision and turnarounds. (See Findings of Fact under Fire Districts above and Effects on Public Health and Safety)
33. *To mitigate the impacts on Ravalli County Public Safety Services, the subdivider shall submit an amount (to be determined at the Commissioner hearing) per lot to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to the final plat approval of each phase. (Condition 9 for both phases)*

Ambulance Services

34. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department and Missoula Emergency Services. Both entities were contacted on April 4, 2008, but no comments have been received to date. (Morado Mountain Estates Subdivision File)
35. In the Environmental Assessment, the applicant also listed Bitterroot Valley EMS, which is located in Stevensville, as the ambulance service. St. Patrick Hospital in Missoula was listed as the life flight provider. (Morado Mountain Estates Subdivision Application)
36. Staff identified a significant negative impact on public health and safety resulting from the road design. Subsequently, the applicant is proposing a second access to the subdivision and turnarounds. (See Findings of Fact under Fire Districts above and Effects on Public Health and Safety)
37. *To mitigate the impacts on emergency services, the subdivider shall provide evidence with the final plat submittal for each phase that they have applied for County-issued addresses for the lots. (Condition 5 for both phases)*

Solid Waste Services

38. Bitterroot Disposal provides solid waste service to this site. (Morado Mountain Estates Subdivision Application)

39. Notification letters were sent to Bitterroot Disposal requesting comments on April 16, 2007 and March 7, 2008, but no comments have been received to date. (Morado Mountain Estates Subdivision File)

Pedestrian Facilities

40. The applicant is proposing trail easements through the common areas of the subdivision to mitigate impacts from not providing a 60-foot wide easement for Eight Mile Creek Road that could accommodate pedestrian facilities. The applicant is also proposing an additional 10-foot wide easement along the eastern boundaries of the 60-foot wide public road and utility easements for the internal roads. The applicant will not be constructing any trails. (Morado Mountain Estates Subdivision Application)
41. The Park Board is requesting an easement along the internal roads to provide a safe route for children to get to the bus stop. (Exhibit A-7)
42. *To mitigate impacts on the local transportation network, which includes pedestrian facilities, the applicant shall provide for trail easements within the common areas and along the internal roads, as proposed in the preliminary plat application, on the final plat of each phase. (Condition 16 for both phases)*

Mail Delivery

43. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS. (Exhibit A-29)
44. *To mitigate impacts on local services, the applicant shall provide evidence that plans for a CBU and actual installation have been approved by the local post office. Alternatively, the applicant shall provide evidence that a CBU is not necessary. (Condition 17 for both phases)*

Utilities

45. The proposed subdivision will be served by Ravalli Electric Cooperative and Qwest Communications. (Morado Mountain Estates Subdivision Application)
46. Dave Smith, Senior Design Engineer from Qwest, stated that service will be provided to the lots. (Exhibit A-2)
47. There are two overhead power lines traversing the subject property. The power line traversing the northeastern portion of the property will not be utilized by this development. The applicant is proposing to show an 80-foot wide utility easement for this power line to be placed on the final plat. The second power line enters the subject property from Mikesell's property to the north, traverses the common area, and exits the subject property in the southeastern corner. The applicant is proposing to show a 20-foot wide utility easement for this power line to be placed on the final plat. This power line will be used for the lots within this proposed subdivision. (Morado Mountain Estates Subdivision Application)
48. James A. McKay, Manager of Engineering and Operations at the Ravalli Electric Cooperative (REC), stated that the power line that will be utilized by this development needs to be upgraded back to the intersection of Eight Mile Creek Road with Jenne Lane. He requested a 20-foot wide easement for the power line. He also requested that the applicant contact REC early to plan for any buried or relocated lines. (Exhibit A-1)
49. The applicant is proposing to upgrade the power line traversing through the center of the property prior to the final plat approval of Phase 1. The applicant will construct a new line from the existing power line at the east edge of Lot 56 to serve Phase 1. This will be an underground line. (Morado Mountain Estates Subdivision Application)
50. *The following requirements will mitigate impacts of the subdivision on local utilities:*
- *Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2 for both phases)*

- *The applicant is required to submit utility availability certifications from Ravalli Electric Cooperative and Qwest Communications prior to the final plat approval for both phases. (Final Plat Requirement 15 for both phases)*

Roads – Off-site

51. It is estimated that this subdivision will generate an additional 464 vehicular trips per day. (Morado Mountain Estates Subdivision Application)
52. There are several proposed routes to the subdivision. One route is via Eight Mile Creek Road and Granite Creek Road from Eastside Highway. The applicant updated their application to propose access from another route, which is via Eight Mile Creek Road, Jenne Lane, Riley Lane, and potentially Hayley Court. (Morado Mountain Estates Subdivision Application)
53. Eight Mile Creek Road and Granite Creek Road are county-maintained roads. (Exhibit A, RCSR)
54. The applicant is required to improve the portions of Eight Mile Creek Road and Granite Creek Road leading to the subdivision to meet the county standards for new construction. (Section 5-4-5(a) and (b)(4), RCSR)
55. The applicant is requesting a variance from reconstructing Eight Mile Creek Road to meet the county road standards for new construction, and is instead proposing to pay the cost of materials associated with constructing the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for existing construction with the exception of easement width. To mitigate the fact that the current easement width cannot accommodate a pedestrian path, the applicant is proposing a public trail easement through the subdivision. (Morado Mountain Estates Variance Application)
56. The Road Department has granted preliminary approval of the road plans for the proposed improvements to Eight Mile Creek Road. (Exhibit A-17)
57. Staff is recommending conditional approval of the variance. (Variance Staff Report)
58. The applicant is proposing to construct the portion of Granite Creek Road leading to the subdivision to meet county standards prior to the final plat approval of Phase 2. (Morado Mountain Estates Subdivision Application)
59. The applicant changed the phasing plan so that 19 lots are part of Phase 1, but did not propose to make the Granite Creek Road improvements part of Phase 1. (Morado Mountain Estates Subdivision Application)
60. It is not known how much traffic would use access via Granite Creek Road versus Riley Lane in Phase 1. (Staff Determination)
61. The application states that the current surface of Granite Creek Road is asphalt in very poor condition. (Morado Mountain Estates Subdivision Application)
62. Granite Creek Road does not currently intersect Eight Mile Creek Road at a right angle. The intersection will not be improved until Phase 2. (Morado Mountain Estates Subdivision Application)
63. Because of the poor condition of Granite Creek Road and the fact that 19 lots may access the road in Phase 1, staff is recommending that the improvements to Granite Creek Road are completed prior to the final plat approval of Phase 1 instead of Phase 2. (Effects on Natural Environment)
64. The applicant is now proposing to connect Kaylie Drive to Riley Lane and potentially Morado Mountain Drive to Hayley Court. If Hayley Court is not completed by the developer of Lupine Meadows prior to the final plat approval of Phase 2, the applicant will construct Harper Drive to meet county standards. (Morado Mountain Estates Subdivision)
65. The applicant submitted the following evidence showing there is legal access on the portions of Jenne Lane, Riley Lane, and Hayley Court leading to the subdivision:
 - a) Jenne Lane - An existing 60-foot-wide public road and utility easement is provided along Jenne Lane, as recorded on the amended plat of Riverview Orchards, Block 6, Lot 6-A

- (AP 541015), the plat of Gunshy Ridge subdivisions, and the plat of Gunshy Ridge III. (Morado Mountain Estates Subdivision Application)
- b) Riley Lane – The applicant submitted a preliminary easement document granting a 60-foot wide public road and utility easement for the portion of Riley Lane traversing Lupine Meadows. The applicant submitted the plat of Gunshy Ridge showing a dedicated 60-foot wide public road and utility easement for the portion of Riley Lane traversing Gunshy Ridge. (Morado Mountain Estates Subdivision Application)
- c) Hayley Court – The developer of Lupine Meadows, the proposed adjacent subdivision to the west of Morado Mountain Estates, is proposing a 60-foot wide road and utility easement across Lupine Meadows to provide access to Morado Mountain Estates. The plat for Gunshy Ridge shows a dedicated 60-foot wide easement for Hayley Court for the entire portion of Hayley Court that traverses Gunshy Ridge, except for a small portion that crosses one of the lots of Gunshy Ridge. The developer of Lupine Meadows is proposing to purchase the lot in order to grant the easement for so that Hayley Court will have a 60-foot wide public road and utility easement along the entire length. (Morado Mountain Estates Subdivision Application)
66. The applicant submitted evidence to the Road Department that the portion of Jenne Lane leading to Morado Mountain Estates meets the county standards for the additional traffic that Morado Mountain Estates will add. (Morado Mountain Estates Subdivision Application)
67. The County's contract engineer has recommended preliminary approval of the road plans for Riley Lane to the Road Department. The Road Department has not yet granted preliminary approval. (Morado Mountain Estates Subdivision Application)
68. The applicant submitted the filed Road Maintenance Agreement for Gunshy Ridge, which includes Jenne Lane, Riley Lane, and Hayley Court. The applicant is proposing to annex into that agreement prior to the final plat approval of Phase 1. (Morado Mountain Estates Subdivision Application)
69. The applicant submitted a preliminary Road Maintenance Agreement for the portions of Riley Lane and Hayley Court that traverse Lupine Meadows. (Morado Mountain Estates Subdivision Application)
70. Prior to the final plat approval of Phase 2, the applicant will provide final approval from the Road Department that either Hayley Court or Harper Drive meet county standards. (Section 5-4-5(a) and (b)(4))
71. The applicant is proposing a stop sign at the intersection of Morado Mountain Drive with Granite Creek Road. (Morado Mountain Estates Subdivision Application)
72. The applicant is required to install a road name sign at the intersection of Morado Mountain Drive with Granite Creek Road. (Section 5-4-11, RCSR)
73. *To mitigate impacts on the off-site roads leading to the subdivision, the following conditions and requirements shall be met:*
- *The applicant shall pay the cost of materials to improve Eight Mile Creek Road. (Condition 1 of Variance Approval)*
 - *The applicant shall submit final approval from the Road Department that the portion of Granite Creek Road leading to the subdivision meets county standards prior to the final plat approval of Phase 1. (Condition 3 for Phase 1 and Final Plat Requirements 2, 3, and 4 of Phase 1)*
 - *The applicant shall improve the portion of Riley Lane leading to the subdivision to meet County standards prior to the final plat approval for Phase 1. (Final Plat Requirements 2, 3, and 4 of Phase 1)*
 - *The applicant is required to provide evidence that Hayley Court (through Lupine Meadows) meets county standards or construct Harper Drive (the internal switchback road connecting Kaylie Drive and Morado Mountain Drive) to meet county standards prior to final plat approval. The applicant shall provide final approval from the Road Department. (Final Plat Requirements 1, 2, and 3 for Phase 2)*

- *A final approach permit from the Ravalli County Road and Bridge Department for the Morado Mountain Drive approach off Granite Creek Road is required to be submitted with the final submittal for Phase 1. (Final Plat Requirement 1 for Phase 1)*
- *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal for each phase. (Final Plat Requirement 10 for both phases)*
- *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat of both phases shall address these services/facilities. (Conditions 2 and 3 for both phases)*
- *The final plat of both phases shall show a no-ingress/egress zone along the Granite Creek Road frontage of the subdivision, excluding any approaches approved by the Road Department. A notification of the no-ingress/egress zone shall be included in the notifications document. (Conditions 1 for both phases and Condition 2 for Phase 1)*
- *The applicant shall install a stop sign and road name sign at the intersection of Morado Mountain Drive with Granite Creek Road prior to the final plat approval of Phase 1. (Final Plat Requirement 4 for Phase 1)*

Internal Subdivision Roads

74. The applicant is proposing to construct the internal subdivision roads to meet county standards. (Morado Mountain Estates Subdivision Application)
75. The applicant has received preliminary approval from the Road Department for the internal roads. (Exhibit A-17)
76. The applicant is proposing 60-foot wide easements for the internal roads and for future connections to adjacent parcels. (Morado Mountain Estates Subdivision Application)
77. 60-foot wide public access and utility easements on all the internal roads and future connections would provide for road connectivity between future developments. (Staff Determination)
78. The applicant has submitted a preliminary road maintenance agreement for the internal subdivision roads. (Morado Mountain Estates Subdivision Application)
79. The applicants are proposing 60-foot wide road and utility easements for future connections to the east and south. If Morado Mountain Estates does not connect to Hayley Court prior to the final plat approval of Phase 2, the final plat will still show a 60-foot wide easement for a future connection. (Morado Mountain Estates Subdivision Application)
80. *To mitigate impacts on the internal road network, the following conditions and requirements shall be met:*
 - *The applicant is required to improve the internal roads proposed for Phase 1 to meet County standards prior to final plat approval, which includes Morado Mountain Drive from Granite Creek Road to the intersection with Kaylie Drive and Kaylie Drive from Morado Mountain Drive to the western boundary of the subdivision. (Final Plat Requirements 2, 3, and 4 for Phase 1)*
 - *The applicant is required to provide evidence that Hayley Court (through Lupine Meadows) meets county standards or construct Harper Drive (the internal switchback road connecting Kaylie Drive and Morado Mountain Drive) to meet county standards prior to final plat approval. The applicant shall provide final approval from the Road Department. (Final Plat Requirements 1, 2, and 3 for Phase 2)*
 - *The applicant is required to improve the internal roads proposed for Phase 2 to meet county standards. Prior to final plat approval, the applicant shall provide final approval from the Road Department. (Final Plat Requirements 1, 2, and 3 for Phase 2)*

- *The applicant shall submit a copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ prior to the final plat approval for both phases. (Final Plat Requirement 10 for both phases)*
- *The applicant is required to submit final road maintenance agreement for the internal roads, signed and notarized, with the final plat submittal for both phases. (Final Plat Requirement 16 for both phases)*
- *The road maintenance agreement created for the internal subdivision roads shall allow other parcels which may have beneficial use of the internal subdivision roads to join as members of the agreement without the consent of the current members once connecting roads are developed within the easements. (Condition 10 for both phases)*
- *The proposed easements providing for future connections to the west, east, and south shall be labeled as 60-foot wide public road and utility easements and the following statement shall be shown on the final plat for each phase:
"Development of the roads to meet County Standards within the public road and utility easements connecting this subdivision to the properties to the west, south, and east shall be the responsibility of the property owner(s) to the west, south, and east. Furthermore, when these easements are developed and opened to adjacent property(ies), those properties that have beneficial use of the easements shall be annexed into the road maintenance agreement for the internal subdivision roads." (Condition 11 for both phases)*
- *A notification of the road maintenance agreement shall be included in the notifications documents filed with both phases. (Condition 1 for both phases)*
- *The applicant shall provide for 60-foot wide public road and utility easements for all internal subdivision roads on the final plat. (Condition 12 for both phases)*
- *The applicant is required to submit evidence of Ravalli County-approved road name petitions for all internal roads with the final plat submittals for both phases. (Final Plat Requirement 13 for both phases)*

Conclusion of Law:

With the mitigating conditions and requirements of final plat approval, impacts on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

Air Quality

1. In an email dated April 1, 2008, the Montana Department of Environmental Quality (DEQ) identified Ravalli County as a community that experiences poor air quality during certain periods of the year. (Exhibit A-24)
2. According to the application, Granite Creek Road has a surface of asphalt in very poor condition. (Morado Mountain Estates Subdivision)
3. The applicant is proposing to improve the road prior to the final plat approval of Phase 2, but no improvements are proposed prior to Phase 1. (Morado Mountain Estates Subdivision Application)
4. Sources of particulate from this subdivision could be dust from Granite Creek Road prior to Phase 2 final plat approval, vehicles, and/or wood-burning stoves. (Staff Determination)

5. *To mitigate impacts on air quality, the following conditions could be met:*
 - *A recommendation for EPA-certified wood stoves shall be included in the covenants filed for both phases. (Condition 2 for both phases)*
 - *The improvements to Granite Creek Road shall be completed prior to the final plat approval of Phase 1. (Condition 3 for Phase 1)*

Ground Water Quality

6. The applicant is proposing individual wells and wastewater treatment facilities for all the lots. The applicant submitted water and sanitation information per MCA 76-3-622. (Morado Mountain Estates Subdivision Application)
7. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-6)
8. For each phase, the applicant will be required to submit the DEQ Certificate of Subdivision Approval. The most current DEQ standards will apply.
9. *To mitigate impacts on the natural environment, the applicant is required to submit a final DEQ Certificate of Subdivision Approval prior to the final approval of each phase. (Final Plat Requirement 9 for both phases)*

Surface Water Features

10. Eight Mile Creek and its associated floodplain traverse Lots 1, 4, 57, and 58. (Morado Mountain Estates Subdivision Application)
11. All components of wastewater treatment facilities are required to be setback 100 feet from the modeled floodplain of Eight Mile Creek. (Article 4, Section 4.2(J), Ravalli County Subsurface Wastewater Treatment and Disposal Regulations)
12. The applicant was required to complete a floodplain analysis for this proposal. (Effects on Public Health and Safety)
13. The applicant is proposing a no-build/alteration zone on the modeled floodplain and the area within 50 feet of the modeled floodplain boundary. The applicant is also proposing building envelopes for all lots. (Morado Mountain Estates Subdivision Application)
14. FWP often recommends setbacks and associated riparian covenants when streams traverse proposed developments. FWP did not comment on this proposal yet, but recommended riparian covenants on a similar project. (Exhibit A-22)
15. An irrigation ditch traverses the subject property. (Morado Mountain Estates Subdivision Application and Effects on Agricultural Water User Facilities)
16. No ponds, excavations that contain or convey surface water, or flood irrigation may be constructed or used within 50 feet of the septic tank and within 100 feet of the drainfield at any time after the system is installed. (Article 4, Section 4.2(I), Ravalli County Subsurface Wastewater Treatment and Disposal Regulations)
17. It appears that the locations of the drainfields on Lots 6 through 9 do not meet the previous requirement of the Ravalli County Subsurface Wastewater Treatment Disposal Regulations. (Staff Determination)
18. *To mitigate the impacts of this subdivision on the surface water features, the following conditions and requirements shall be met:*
 - *The 100-foot wastewater treatment facility setback shall be prominently shown on the final plat of both phases with a label in large, bold font, and the covenants shall include a provision referring to the setback. Also, the setback is required to be shown on the maps approved by DEQ for each phase. (Conditions 2 and 13 for both phases)*
 - *The 100-foot drainfield setback and 50-foot septic tank setback from the irrigation ditch shall be prominently shown on the final plat of both phases with a label in large, bold font, and the covenants shall include a provision referring to the setbacks. Also, the*

setbacks are required to be shown on the maps approved by DEQ for each phase. (Conditions 2 and 13 for both phases)

- *The no-build/alteration zone on the modeled floodplain of Eight Mile Creek and within 50 feet of the modeled floodplain boundary shall be shown on the final plat of each phase. Riparian covenants shall apply to the no-build/alteration zone. (Conditions 2 and 14 for both phases)*

Light Pollution

19. The addition of homes in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association, www.darksky.org)
20. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants filed with both phases shall include a provision recommending full cut-off lighting on new construction. (Condition 2 for both phases)*

Vegetation

21. The applicant submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that states Houndstongue, Spotted Knapweed, Leafy Spurge, and Sulfur Cinquefoil are located on the property. (Morado Mountain Estates Subdivision Application)
22. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
23. The Montana Natural Heritage Program found that there were no plant species of concern within the same sections as the subject property (Morado Mountain Estates Subdivision Application).
24. *To mitigate impacts on the natural environment, the following condition and requirement shall be met:*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for both phases of this subdivision. (Condition 2 for both phases)*
 - *The approved Ground Disturbance and Noxious Weed Management Plan shall be submitted with the final plat for both phases of this subdivision. (Final Plat Requirement 11 for both phases)*

Archaeological Resources

25. There are no known sites of historical significance on the property. (Morado Mountain Estates Subdivision Application)
26. *To mitigate possible impacts on any potential sensitive historical, cultural, archaeological, paleontological, and/or scenic sites, the following statement shall be included in the covenants filed with both phases: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the developer will contact the State Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 2 for both phases)*

Conclusions of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

1. According to the Montana Natural Heritage Program (MNHP) in January of 2007, the Canada Lynx, Olive-sided Flycatcher, Bobolink, Lewis's Woodpecker, Townsend's Big-eared Bat, and Westslope Cutthroat Trout were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. (Morado Mountain Estates Subdivision Application)
2. The applicant hired Ecosystem Research Group (ERG) out of Missoula to complete a sensitive species report. The conclusions were that the subject property does not provide habitat for the Canada Lynx, Olive-sided Flycatcher, Bobolink, Lewis's Woodpecker, and Townsend's Big-eared Bat. The report noted that Westslope Cutthroat Trout are located within Eight Mile Creek. To mitigate impacts on the Creek, ERG recommends that grazing be restricted within the floodplain, that no structures be built within 50 feet of the floodplain, and that future in-stream channel stabilization structures or rip-rap is restricted. (Morado Mountain Estates Subdivision Application)
3. FWP recommended living with wildlife and riparian covenants. (Exhibits A-22 and A-31)
4. The applicant is proposing a no-build/alteration zone on the modeled floodplain and the area within 50 feet of the modeled floodplain boundary. The applicant is also proposing building envelopes for all lots. (Morado Mountain Estates Subdivision Application)
5. The applicant is proposing to include the usual FWP-recommended covenants. (Morado Mountain Estates Subdivision Application)
6. The property is located within elk and mule deer winter range. (FWP and Morado Mountain Estates Subdivision Application)
7. ERG stated in their report: "While it's conceivable that a few elk might wander onto the proposed project, its value as elk winter range was lost decades ago." (Morado Mountain Estates Subdivision Application)
8. John Vore said in a phone conversation that this area is not as important as the area north of Eight Mile Creek Road because of the surrounding development. (Exhibit A-23)
9. *To mitigate impacts on wildlife, the following conditions shall be met:*
 - *The no-build/alteration zones on the modeled floodplain of Eight Mile Creek and within 50 feet of the modeled floodplain boundary shall be shown on the final plat of each phase. Riparian covenants shall apply to the no-build/alteration zones. (Conditions 2 and 14 for both phases)*
 - *The covenants filed with both phases shall include a living with wildlife section. (Condition 2 for both phases)*

Conclusion of Law:

With the mitigating conditions of approval, impacts on wildlife & wildlife habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

Traffic Safety

1. Eight Mile Creek Road, Granite Creek Road, and the internal subdivision roads were originally proposed to provide the only access route to the subdivision from Eastside Highway. (Morado Mountain Estates Subdivision Application)
2. Now the applicant is also proposing access via Riley Lane, Hayley Court, Jenne Lane, and Eight Mile Creek Road. (Morado Mountain Estates)

3. *The requirements and conditions listed under Roads, both off-site and on-site, in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

Emergency Vehicle Access and Response Time

4. The subject property is located 5.8 miles from the Florence Rural Fire District, 33.8 miles from the Ravalli County Sheriff's Office, 34 miles from the Marcus Daly Memorial Hospital EMS Department, 12 miles from Bitterroot Valley EMS, and an 8-minute flight from St. Patricks Hospital in Missoula. (Morado Mountain Subdivision Application)
5. The applicant is proposing 58 lots. (Morado Mountain Estates Subdivision Application)
6. The applicant originally proposed one access to the subdivision off Eight Mile Creek Road. The internal road was a loop road that exceeded 2.0 miles in length. (Morado Mountain Estates Subdivision Application)
7. The original road design with one access did not provide for adequate emergency vehicle access or efficient traffic flow, and presented significant negative impacts to local services and public health and safety. Staff outlined this concern in the draft report to the Planning Board, which was issued April 11, 2008. Following are the findings that supported that conclusion:
 - a) The Florence Rural Fire District stated in a phone conversation that they do not recommend one access to the subdivision via a loop road that exceeds 2.00 miles. (Exhibit A-25) The Fire District has not submitted a written comment to date.
 - b) The Ravalli County Subdivision Regulations do not allow cul-de-sac roads to be longer than 1,400 feet. The standards do not address loop roads. (Table B-1, RCSR)
 - c) Roads serve two competing functions: property access and efficient movement of goods and people. (Section 5-4-1(1), RCSR)
 - d) Roads are an important factor in community and subdivision design. Improperly designed roads and intersections can negatively affect the safety and efficiency of private and public roads. Furthermore, they can create unnecessary maintenance costs, limit a parcel's development potential, and limit a project's desirability. (Section 5-4-1(4), RCSR)
 - e) The advantages of a single access point to a major residential project (greater sense of security and elimination of through-traffic) are generally outweighed by the advantages of multiple access points, which include reduced internal congestion and diffusion of the development's full traffic impact to the external public road system. (Section 5-4-1(4), RCSR)
 - f) In a memo dated September 21, 24, the Ravalli County Attorney's Office discusses a similar situation in which the road design technically met the county road standards, but did not optimize traffic safety and ensure adequate emergency access. The memo specifically states: "To any extent that there is a finding of negative impact on review criteria from the design of this subdivision, the subdivision application should not be approved unless sufficient mitigation to minimize the potential dangers can be done. Approval without requiring sufficient mitigation or approval where mitigation is not possible to provide for adequate public and emergency access exposes the County to significant liability in the event of a public emergency in the subdivision." (Exhibit A-27)

- g) Without a second access to a subdivision of 58 lots and 165.0 acres, emergency service vehicles could have difficulty providing service to all of the lots in the case of emergency or internal traffic congestion. This road design does not provide for adequate emergency vehicle access. (Staff Determination)
 - h) Without a second access, residents of all 58 lots will be traveling out via one route, which will cause internal traffic congestion and reduced traffic efficiency. This road design does not provide for efficient traffic flow. (Staff Determination)
8. On April 22, 2008, the applicant submitted an amended application to construct the portion of Riley Lane through the adjacent proposed subdivision to the west. This provides for another access to the subdivision. The applicant is also proposing access to Phase 2 via Hayley Court if the developer of Lupine Meadows, the adjacent proposed subdivision, completes the improvements prior to final plat of Phase 2. If Hayley Court has not been completed, the applicant will construct Harper Drive, the internal switchback road that would connect Kaylie Drive to Morado Mountain Drive. Turnarounds for emergency vehicles will be constructed on Phase 2 roads. (Morado Mountain Estates Subdivision Application)
 9. Lot 40, which is part of Phase 2, is located on and accessed by slopes greater than 25%. There are two potential accesses depending on whether or not Hayley Court is constructed prior to the final plat approval of Phase 2. If Hayley Court is constructed, Lot 40 will be accessed via a driveway approximately 1,000 feet in length in the location of Harper Drive. If Hayley Court is not constructed, Lot 40 will be accessed via a driveway 400 feet in length across steep slopes from Harper Drive. (Morado Mountain Estates Subdivision)
 10. The Fire Protection Standards state that driveways that exceed 150 feet in length need to have an all-weather travel surface width of 22 feet and a maximum grade of 10%. (Exhibit A-16)
 11. Approximately 80% of Lot 40 is covered with slopes greater than 25%. (Morado Mountain Estates Subdivision Application)
 12. Staff has not received any information that will ensure adequate emergency access to Lot 40. (Staff Determination)
 13. The following conditions and requirements will mitigate impacts on emergency vehicle access:
 - *The conditions and requirements listed under Fire District in Criterion 3.*
 - *The condition listed under Public Safety Services in Criterion 3.*
 - *The condition listed under Ambulance Services in Criterion 3.*
 - *In order to provide for a second route to the subdivision, the applicant shall improve the portion of Riley Lane through the proposed Lupine Meadows Subdivision prior to the final plat approval of Phase 1, as proposed. (Final Plat Requirements 2, 3, and 4)*
 - *Lot 40 shall be removed from the final plat of Phase 2. (Condition 1 for Phase 2)*

Water and Wastewater Treatment

14. The applicant is proposing individual wells and wastewater treatment facilities for all the lots. The applicant submitted water and sanitation information per MCA 76-3-622. (Morado Mountain Estates Subdivision Application)
15. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-6)
16. For each phase, the applicant will be required to submit the DEQ Certificate of Subdivision Approval. The most current DEQ standards will apply.
17. Eight Mile Creek and its associated floodplain traverse Lots 1, 4, 57, and 58. (Morado Mountain Estates Subdivision Application)
18. All components of the wastewater treatment facilities are required to be setback 100 feet from the modeled floodplain of Eight Mile Creek. (Article 4, Section 4.2(J), Ravalli County Subsurface Wastewater Treatment and Disposal Regulations)

19. An irrigation ditch traverses the subject property. (Morado Mountain Estates Subdivision Application and Effects on Agricultural Water User Facilities)
20. No ponds, excavations that contain or convey surface water, or flood irrigation may be constructed or used within 50 feet of the septic tank and within 100 feet of the drainfield at any time after the system is installed. (Article 4, Section 4.2(I), Ravalli County Subsurface Wastewater Treatment and Disposal Regulations)
21. *The following conditions and requirements will mitigate the impacts of this subdivision on public health and safety issues related to water and wastewater treatment facilities:*
 - *The applicant shall submit a final DEQ Certificate of Subdivision Approval prior to the final approval of each phase. (Final Plat Requirement 9 for both phases)*
 - *The 100-foot wastewater treatment facility setbacks could be prominently shown on the final plat of each phase with a label in large, bold font, and the covenants could include a provision referring to the setbacks. Also, the setbacks would be required to be shown on the maps approved by DEQ for each phase. (Conditions 2 and 13 for both phases)*
 - *The 100-foot drainfield setback and 50-foot septic tank setback from the irrigation ditch shall be prominently shown on the final plat of both phases with a label in large, bold font, and the covenants shall include a provision referring to the setbacks. Also, the setbacks are required to be shown on the maps approved by DEQ for each phase. (Conditions 2 and 13 for both phases)*

Natural and Man-Made Hazards

22. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
23. *To mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. (Condition 2 for both phases)*
24. The preliminary plat and soils map indicate that the subdivision may have soils rated as severe for road and building construction. (Morado Mountain Estates Subdivision Application)
25. *To educate property owners and to mitigate potential impacts of this subdivision on Public Health & Safety, a notification of the potential for severe soils shall be included in the notifications document filed with the final plat for both phases. A reduced plat showing the approximate locations of soils rated as severe for roads and building construction and descriptions of the soils in question shall be attached to the notifications document as an exhibit. (Condition 1 for both phases)*
26. There are slopes greater than 25% located throughout this subdivision. The applicant is proposing no-build/alteration zones on the slopes. (Morado Mountain Estates Subdivision Application)
27. *To mitigate impacts on public health and safety, the no-build/alteration zones on slopes greater than 25% shall be shown on the final plat of each phase, as shown on the preliminary plat. The no-build/alteration restriction shall also be included in the covenants. (Conditions 2 and 15 for both phases)*

Floodplain

28. The applicant submitted a floodplain analysis for Eight Mile Creek. (Morado Mountain Estates Subdivision Application)

29. In a letter dated May 16, 2007, the Ravalli County Floodplain Administrator recommended conditional approval of the floodplain analysis with the following conditions:
- a) No-build/alteration zones shall cover the modeled 100-year floodplain boundary for Eight Mile Creek and the area within 50 feet of the modeled floodplain boundary.
 - b) Granite Creek Road should be constructed to meet county standards. (Staff Note: The applicant originally requested a variance from this requirement, but is now proposing to construct Granite Creek Road to meet county standards prior to the final plat approval of Phase 2. The existing culvert over Eight Mile Creek will be replaced as part of the improvements. Staff is recommending that the improvements be made as part of Phase 1.)
 - c) It is strongly recommended that property owners obtain flood insurance.
 - d) Residential structures on Lots 1, 4, and 5 should be elevated so that the lowest floor, including mechanical equipment, is located 2.00 feet above the 100-year base flood elevation.
30. *To mitigate the impacts of this subdivision on public health and safety, the following conditions and requirements shall be met:*
- *The no-build/alteration zones on the modeled floodplain of Eight Mile Creek and within 50 feet of the modeled floodplain boundary shall be shown on the final plat of each phase. Riparian covenants shall apply to the no-build/alteration zones. (Conditions 2 and 14 for both phases)*
 - *The applicant shall submit final approval from the Road Department that Granite Creek Road has been constructed to meet county standards, which includes the replacement of the existing culvert on Eight Mile Creek, prior to the final plat approval of Phase 1. (Condition 3 of Phase 1)*
 - *A notification shall be included in the notifications document recommending that lot owners obtain flood insurance and that the lower enclosed floor of any structures or utilities built on Lots 1, 4, and 5 be constructed to be a minimum of 2.0 feet above the 100-year base flood elevation. (Condition 1 for both phases)*

Conclusion of Law:

With the mitigating conditions and requirements of final plat approval, impacts on public health and safety will be reduced.

VARIANCE REQUEST

The subdivider is requesting a variance from Sections 5-4-5(a) and (b)(4) of the RCSR, to allow the subdivider to pay for the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the county road standards (or AASHTO standards) for existing construction within a 50-foot wide easement instead of reconstructing the road to meet the county standards for new construction.

Variance Analysis

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

Prerequisite Variance Criteria

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

Variance Review Criteria

If and only if a positive determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).
- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

Five Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. Eight Mile Creek Road is a county-maintained road that provides access to the proposed subdivision from Eastside Highway to Granite Creek Road. (Exhibit A, RCSR)
2. It is estimated that this subdivision will generate an additional 464 vehicular trips per day. (Morado Mountain Estates Subdivision Application)
3. The applicant is required to improve the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for new construction, which includes a 60-foot wide easement. (Section 5-4-5(a) and (b)(4), RCSR)
4. Eight Mile Creek Road currently has a varying travel surface width around 22 feet, 1 to 2-foot wide shoulders, and a 50-foot wide easement. The road does not meet county standards for new construction. (Morado Mountain Estates Subdivision Application)
5. The Montana Department of Transportation (MDT) is planning to reconstruct the intersection of Eastside Highway with Eight Mile Creek Road to be a roundabout in the future. The completion date is not known. (Morado Mountain Estates Subdivision Application)
6. Since MDT will be improving the intersection of Eastside Highway with Eight Mile Creek Road, the required improvements would begin approximately 500 feet

- north of the existing intersection (Station 5+50 on the aerial photography submitted with the road plans). (Exhibit A-23)
7. The applicant originally requested a variance from improving Eight Mile Creek Road and instead proposed to pay a pro rata share. The Road Department strongly opposed the variance request. (Exhibit A-18)
 8. The applicant, the applicants of Sandhill Ridge (another proposed subdivision that accesses off Eight Mile Creek Road), the applicants' engineers, the applicants' attorneys, the Road Department, the Planning Department, and the County Attorney's Office had several meetings and substantial communication about the required improvements to Eight Mile Creek Road. (Exhibit A-23)
 9. The applicant is now requesting a variance from Section 5-4-5(a) and (b)(4), and is instead proposing to pay the cost of materials associated with constructing the portion of Eight Mile Creek Road leading to the subdivision to meet the county standards for existing construction with the exception of easement width. To mitigate the fact that the current easement width cannot fit a pedestrian path, the applicant is proposing a 50-foot wide trail easement through the subdivision in case there is area trail planning in the future. (Morado Mountain Estates Variance Application)
 10. The following improvements are needed in order for Eight Mile Creek Road to meet the county road standards for existing construction, except for easement width:
 - a) Road preparation, which would address any roadside drainage issues
 - b) A 24-foot wide pavement overlay from Station 5+50 in the preliminary road plans to the intersection with Lower Woodchuck Road
 - c) A 22-foot wide pavement overlay from the intersection with Lower Woodchuck Road to Granite Creek Road
 - d) 2-foot wide gravel shoulders on both sides over entire length
 - e) A 0.12-foot thick leveling course on the entire length
 - f) A 0.17-foot thick wearing course on the entire length
 - g) Asphalt aprons on the 49 driveway approaches along the entire length
 - h) A new box culvert installed at Station 5+50
 - i) Advance warning signs and speed advisory traffic control signs
 11. The applicant submitted preliminary road plans to improve Eight Mile Creek Road to meet AASHTO standards for existing construction from Station 5+50 to Granite Creek Road. The proposed road improvements can be accomplished within the existing 50-foot wide easement. (Morado Mountain Estates Variance Application)
 12. The applicant submitted four design exceptions for the three horizontal curves along Eight Mile Creek Road. (Morado Mountain Estates Variance Application)
 13. The Road Department granted preliminary approval of the road plans and the four design exceptions. (Exhibit A-17)
 14. The cost of materials for the improvements is estimated at \$593,305.00. (Exhibit A-23)
 15. The applicants of Morado Mountain Estates and Sandhill Ridge have agreed to share the cost of materials for the improvements, and request that the County provide the labor. (Exhibit A-23)
 16. David Ohnstad, Road and Bridge Department Supervisor, has agreed to provide the labor if the applicants provide the cost of materials. (Exhibit A-23)

17. The applicants are requesting that any pro rata money submitted in the same grader district between the time Morado Mountain Estates and Sandhill Ridge receive preliminary approval and the time the improvements to Eight Mile Creek Road are completed be reimbursed to the applicants. (Exhibit A-23)
18. The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
19. *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. (Condition 1 of Variance Approval)*
20. *The applicant shall provide for a 50-foot wide public trail easement through the common areas, as proposed in Exhibit B. (Condition 2 of Variance Approval)*

Conclusions of Law:

1. If the applicant fulfills the requirements of Condition 1, then the County would receive the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction.
2. A 50-foot wide trail easement through the subdivision would provide the opportunity for an alternative off-road trail if the Eight Mile area is developed in the future.
3. The granting of the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. Section 5-4-5(b)(4) requires that applicants of subdivisions with more than 20 units improve all roads leading to the subdivision to meet county standards for new construction. (RCSR)
2. There has been increased development activity proposed to access off Eight Mile Creek Road. (Ravalli County Planning Department)
3. Sandhill Ridge, a 35-lot major subdivision that also accesses off Eight Mile Creek Road, will be reviewed by the BCC on May 8, 2008. The requirement of Section 5-4-5(b)(4) also applies to Sandhill Ridge. (Sandhill Ridge Subdivision Application)
4. The applicants of both Morado Mountain Estates and Sandhill Ridge are proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Morado Mountain Estates to meet county standards for existing construction. (Morado Mountain Estates Variance Application)
5. The Road Department stated that constructing Eight Mile Creek Road to meet county standards for existing construction is acceptable for the combined ADT that would result from Morado Mountain Estates and Sandhill Ridge for the following two reasons (Exhibit A-23):
 - a) The current condition of Eight Mile Creek Road does not require complete reconstruction
 - b) The horizontal and vertical curvature of Eight Mile Creek Road is generally level

Conclusions of Law:

1. The fact that Ravalli County has two development proposals that are required to make road improvements on the same road is a unique condition.
2. The recommendation from the Road Department that the applicant should improve the road to meet the road standards for existing construction is a unique condition.

C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The horizontal and vertical curvature of Eight Mile Creek Road is generally level. (Exhibit A-23)
2. The easement width for Eight Mile Creek Road is 50 feet. (Morado Mountain Estates Variance Application)

Conclusion of Law:

The challenge of purchasing additional easement to reconstruct the road to meet county standards for new construction is not a physical condition.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2193). The application complies with Resolution 2193.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined in italics below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.

Countywide Policy 4.2: Consider cumulative impacts of development.

Countywide Policy 4.4: Improve and maintain existing infrastructure and public services.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant is proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction. The applicant is also dedicating a 50-foot wide trail easement for future area trail planning. (Morado Mountain Estates Variance Application)

- The Road Department has granted preliminary approval of the road plans and recommends that the proposal be approved. (Exhibit A-23)
- The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
- *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. The applicant shall also provide for a 50-foot wide trail easement, as proposed in Exhibit B. (Conditions 1 and 2 of Variance Approval)*

Conclusions of Law:

1. The subdivision proposal complies with applicable zoning regulation.
2. The variance will not vary from the provisions in the Growth Policy.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The applicant is proposing to pay the cost of materials to improve the portion of Eight Mile Creek Road leading to the subdivision to meet county standards for existing construction. (Morado Mountain Estates Variance Application)
2. The Road Department has granted preliminary approval of the road plans and recommends the proposal be approved. (Exhibit A-17)
3. The County Attorney's Office summarized discussions with the applicant. (Exhibit A-28)
4. *To mitigate impacts on public health and safety, the applicant shall pay the cost of materials to improve the portion of Eight Mile Creek Road leading to Granite Creek Road to meet the county road standards for existing construction. (Condition 1 of Variance Approval)*

Conclusion of Law:

The granting of the variance will not cause a substantial increase in public costs.

Prerequisite Variance Criteria

A. Strict compliance with these regulations will result in undue hardship.

Findings of Fact:

1. The conclusion for Criterion B is there are unique conditions associated with the variance request.
2. The conclusion for Criterion C is that there are no physical conditions preventing the applicant from acquiring the 60-foot wide easement and constructing the road to meet full county standards.

Conclusion of Law:

Strict compliance with these regulations will result in undue hardship.

B. Compliance is not essential to the public welfare.

Findings of Fact:

1. The conclusion for Criterion A is that granting the variance will not be substantially detrimental to public health and safety, general welfare, and adjoining properties.

2. The conclusions for Criterion D are that the variance request complies with applicable zoning regulations and does not vary from the provisions in the Growth Policy.
3. The conclusion for Criterion E is that the granting of the variance will not cause a substantial increase in public costs.

Conclusion of Law:

Compliance is not essential to the public welfare.

C. Overall Conclusion on Hardship and Public Welfare

The variance application provides evidence that there is an undue hardship and that compliance with the RCSR is not essential to the public welfare.

Road & Bridge Supervisor David Ohnstad stated at the time this was discussed with the applicant, Eight Mile Creek Road was in a substantial state of disrepair. After the previous action of denied variance, there were some improvements made during the fall of 2008. Those improvements qualified for a portion of what was discussed with the applicant. The Florence East MDOT project has been the last planned design incorporating the replacement of a culvert structure on Eight Mile Creek under Eight Mile Creek Road just north of SR 203. As it was developed three years ago, remains the same with the exception of those two items. The 50 foot easement is the east-west segment going towards Granite Creek and the 55 foot easement on the north-south segment. It would require consultations with multiple owners to obtain a 60 foot easement. The easement needs to be wide enough to accommodate the structure of the road. The conversation with the applicant was whether or not a private individual would be able to acquire the easement from those owners and determined it would be a challenge. Commissioner Kanenwisher stated AASHTO standard don't require 60 feet and Ravalli County Subdivision Regulations standard is 60 feet. David stated the road remaining at the current width is acceptable. Tristan stated a traffic impact analysis can show improvements are needed and then maybe pedestrian facilities would be appropriate. Details are in Section 5 of the subdivision regulations. Civil Counsel Karen Mahar stated Section 5-4-8 gives the Board discretion to weigh the facts for road and safety traffic improvements.

Civil Counsel Karen Mahar noted for record there is reference to the Growth Policy and the Growth Policy has been repealed and there isn't any zoning in Ravalli County other than citizen-initiated zoning districts. Terry reviewed the conditions for the variance request.

Staff recommends the applicant pay the cost of materials required to improve the portion of Eight Mile Creek Road from Station 5+50 to meet the county road standards for existing construction. The applicant shall submit a receipt from the Ravalli County Treasurer's Office 30 calendar days after both the Morado Mountain Estates and Sandhill Ridge subdivisions have been granted preliminary approval showing that half of the payment has been paid. The applicant shall submit a receipt from the Treasurer's Office showing that the remaining amount has been paid 45 calendar days after the first amount was paid:

- a) The current 50-foot wide easement will be acceptable for the improvements;
- b) Improvements to the north/south major collector segment of Eight Mile Creek Road will be at a road width of 24 feet for a distance of 3,150 feet, and the improvements to the east/west minor collector segment will be at a road width of 22 feet for a distance of 17,375 feet;

- c) Applicants will pay for a 0.12-foot leveling course and a 0.17-foot wearing course. The mutually agreed upon calculations for the leveling course and wearing course over the areas noted in item (c) are:
 - i. 1,520 cubic yards crushed aggregate for the shoulders at \$11.00 per cubic yard equaling \$16,720.
 - ii. 4,680 tons plant-mix asphalt at \$45.00 per ton equaling \$210,600.
 - iii. 7,625 tons plant-mix asphalt at \$45.00 per ton equaling \$343,125;
- d) Additional improvements will require that applicants pay for 1 (10x3x48) Concrete Box Culvert at \$420 per foot + \$2,700 in delivery costs for a total of \$22,860;
- e) The total costs under (d) and (e) is \$593,305, but the applicants acknowledge this total is subject to change depending on the unit cost of plant-mix asphalt. The parties also acknowledge that these calculations were generated by David Ohnstad at the Ravalli County Road and Bridge Department; and,
- f) The applicant's expenditures for Eight Mile Creek Road improvements will be offset by any pro rata payments made in the same grader district from the time either subdivision is preliminarily approved until the time of Eight Mile Creek Road reconstruction. It was further recommended a pedestrian pathway within the easement.

David Ohnstad reviewed the improvements made to Eight Mile Creek Road. He stated item d (ii.) and item E can be removed since they are completed. Item D (iii) would increase to \$346,940.

Commissioner Iman requested a presentation from the representative.

Terry Forest with DJ&A Engineering discussed placing a two inch overlay and replacing the gravel shoulders for road improvements. If this variance is approved, Sandhill Major Subdivision would also have to agree due to Morado Mountain's portion being 60% of the road. Commissioner Iman noted for record that not one member of this Board was present for the first hearing for Morado Mountain. Civil Counsel Karen Mahar stated the board is reviewing the variance under the same regulations 7-3-5. Discussion followed regarding Section 3-4-1 and if the Board has the discretion to address any changes.

Attorney Alan McCormick gave analysis of accepting the subdivider pay 60% of the improvements needed for the variance. Terry Forest replied yes.

Commissioner Iman asked if the requirements of the Court have been met. Karen replied the Court did not make any ruling on the substance of the variance.

JR the original offer that was made of \$5,400 per lot is no longer on the table due to the road work done. Karen stated the regulation is the same regulation then applying.

Commissioner Iman opened public comment for the variance request. Hearing none, he then closed public comment and opened board deliberations.

Commissioner Kanenwisher asked if there is a bike path south of the road and asked if it crosses the bridge. David replied not right now but will be for the MDOT project coming. Commissioner Kanenwisher stated it is hard to separate both the variance request and the subdivision review. He does not see how the Board can require a bike path. Civil Counsel Karen Mahar suggested

considering asking the applicant since it was proposed by the applicant. Terry Nelson stated it is part of the application however there can be discussion since it is part of the variance.

Commissioner Kanenwisher asked the applicant if they would prefer to not have a trail easement through the common areas as proposed in Exhibit C. Stacy Dykeman replied yes they would like to not have to put in trails. Commissioner Kanenwisher discussed item 1 a) specifically the payment schedule and requested applicant preference. Terry Nelson stated at the time the original hearing, Eight Mile was in need of improvement. Fees such as road mitigation tied to filing final plat. Any change should come from the developer as a preference. Stacy preferred since the subdivision in three phases and requested the paying the cost of materials be divided amongst the three phases in percentages such as 11 divided by 58 for the first phase.

Commissioner Iman requested a five minute recess. The Board reconvened at 10:45 a.m.

Commissioner Iman requested Terry Nelson present. Terry Nelson does not know if the per lot payment is the right way to go but rather per phase over a period of six years. He recommended further discussion with Road & Bridge Supervisor David Ohnstad. The breakdown percentages would be 12% for Phase 1, 8% for Phase 2, and 42% for Phase 3 with Sandhill Major Subdivision being 38% on a per lot basis. David Ohnstad does not know if it is critical for road repair within six years however it may if it should extend beyond those six years. Tristan Riddell suggested having a proposal for the phasing plan on record. Stacy reviewed the phasing plan in two year increments with a possible extension included such as July 2013, July 2015 and July 2019 with a possibility of extending to July 2021. David does not see any issues with the proposal due to some structure being included. Discussion followed regarding the possible increase per ton for the asphalt. This year it is \$45.50 per ton. Stacy requested a set number to stay the same over the phases. Commissioner Iman recommended staying at the unit price at the time of the phase. Stacy preferred the payments be made at the time of first conveyance of each lot and the second preference being first conveyance upon each phase. JR Catsilas agreed with the fixed price in principal. Karen replied this total is subject to change per unit.

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties. The Board concurred Items 1-4 stay the same. Commissioner Foss made a motion to amend Item 5 to include the completion date scheduled to 2013. Commissioner Kanenwisher seconded the motion and all voted "aye". (4-0) Commissioner Kanenwisher made a motion to amend Item 10 (h) to such action to be performed by MDT as planned. Commissioner Foss seconded the motion and all voted "aye".

Commissioner Kanenwisher made a motion to amend Item 9 to add the applicant has expressed preference to not do the path. Commissioner Stoltz seconded the motion and all voted "aye". (4-0) **The Board concurred items 6, 7, & 8 have not changed.**

Commissioner Kanenwisher made a motion to eliminate Item 10 (e) and Item 10 (i).

Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

The Board concurred items 11 & 12 have not changed.

Commissioner Kanenwisher made a motion to amend Item 13 to include the work has been completed to date. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to amend Item 14 to change the number to \$363,657.50. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to amend Item 15 after the period to say that Morado Mountain Estates has stated their share is 62% of the total cost and Sandhill will have 38%.

Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to amend Item 16 to change to “Road Department Supervisor has recommended that Ravalli County provide the labor”. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made a motion to amend Item 17 to add “or road assessments” after the word “money” and strike “same grader district” and add “in regards to the use of Eight Mile Road and Granite Creek Road”. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

The Board concurred item 18 has not changed.

Commissioner Kanenwisher made a motion to amend Item 19 to change the word “cost” to “share of 62% of the materials”. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0) Commissioner Kanenwisher amended his motion to include “local services with public health and safety”. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made a motion to strike Item 20. Commissioner Foss seconded the motion and all voted “aye”. (4-0)

Conclusions of Law:

Civil Counsel Karen Mahar referred to the agenda. Attorney Alan McCormick stated page 29 in reviewing the subdivision process. He discussed page 41 with a variation in determining strict compliance. In consideration of the factors, it was determined no real positive findings in light of the variance request. Civil Counsel Karen Mahar recommended utilizing the agenda as a step by step guideline. She stated by the statues of the subdivision and planning act, to grant a variance when strict compliance will result in undue hardship once those thresholds are determined and based on criteria in the regulations. Commissioner Iman clarified that each criterion has to be considered separately.

Commissioner Kanenwisher made a motion to amend Item 1 to add “the County would receive this applicant’s share of the cost of materials”. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made a motion to strike Item 2. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made motion to Item 2 to item 19 in findings of fact and move item 19 to item 20. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

The Board concurred to skip Item 3 at the moment.

1) The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Commissioner Kanenwisher made a motion to add a finding of fact Item 21 “ the existing easement accommodates the existing and proposed roadway consistent with adopted AASHTO guidelines and standards. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made a motion adopt conclusions of law Item 3 the granting of the variance will not be substantially detrimental to public health and safety, general welfare and adjoining properties. Commissioner Foss seconded the motion and all voted “aye”. (4-0)

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Commissioner Kanenwisher made a motion to amend Item 3 to change the date to July 21, 2011. Commissioner Foss seconded the motion and all voted 'aye'. (4-0)

The Board concurred items 1, 2, & 4 are to stay the same.

Commissioner Kanenwisher made a motion to amend Item 5 to change "construction" to "roadways" and Item 5 b to change "curvature" to "alignment" and "level" to "acceptable". Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Conclusions of Law:

2) The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Item 1 - Commissioner Kanenwisher made a motion to strike Item 1 conclusion of law and make it finding of fact number 6. Commissioner Stoltz seconded the motion and all voted "aye" (4-0)

Item 2 – Commissioner Kanenwisher made a motion to strike Item 2. Commissioner Stoltz seconded the motion and all voted "aye" (4-0)

Commissioner Kanenwisher made a motion to add finding of fact number 7 that the applicant has stated their situation is unique to the road base being in good condition. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to add conclusion of law to state that based on the finding fact as amended the conditions are unique to the property and are not general applicable to other properties. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Commissioner Kanenwisher made a motion to amend Item 1 to change "curvature" to "alignment" and "level" to "acceptable". Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to amend Item 2 to add between 5-55 feet and add Ravalli County Road Supervisor after Morado Mountain. Commissioner seconded the motion and all voted "aye". (4-0)

Conclusion of Law: Commissioner Kanenwisher made a motion to remove the conclusion of law. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to add conclusion of law based on the findings of fact physical condition such as topography and parcel shape does not prevent the applicant from meeting the strict letter of these regulations. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Commissioner Foss made a motion to strike Items 1 & 2. Commissioner Kanenwisher seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made a motion to add finding of fact Item 1 all incorporated areas within RC are subject to citizen initiated zoning. Commissioner Foss seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher Item 2 Morado Mountain subject property is not subject to any citizen initiated zoning district. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Foss made a motion to add Finding of fact Item 3 that the Ravalli County Growth Policy was repealed on November 2, 2008. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Conclusions of Law: Commissioner Kanenwisher made a motion to strike items 1 & 2. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Commissioner Kanenwisher made a motion the variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. Commissioner Stoltz and all voted “aye”. (4-0)

E. The variance will not cause a substantial increase in public costs.

Commissioner Kanenwisher made a motion the applicant is willing to pay their share of cost of materials. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

The Board concurred items 2 and 3 stay the same.

Commissioner Kanenwisher made a motion to amend Item 4 to match Item A 20(add and local services) and their share. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Conclusion of Law: Commissioner Kanenwisher made a motion to amend the conclusion of law to read “based on the findings of fact amended here today, the granting of the variance will not cause a substantial increase in public costs”. Commissioner Stoltz seconded the motion and all voted “aye”. (4-0)

Prerequisite Variance Criteria

A. Strict compliance with these regulations will result in undue hardship.

The Board concurred to weigh all five criteria.

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties. **The Board concurred for critical weight.**

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property. **The Board concurred for medium weight.**

C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s). **The Board concurred for high weight.**

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy. **The Board concurred for low weight.**

E. The variance will not cause a substantial increase in public costs. **The Board concurred for critical weight.**

Commissioner Kanenwisher made a motion to add Item C 3 as a finding of fact due to physical conditions there are numerous land owners on Eight Mile Road from which additional right of way would need to be required. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to rescind conclusion of law number 1 under Item C. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to add conclusions of law Item 1 based on the finding of fact, physical conditions do exist that would prevent the subdivider from meeting the strict letter of these regulations. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion based on the findings of fact and conclusions of law using five criteria with consideration and weight the Board finds that strict compliance with these regulations will result in an undue hardship. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

B. Strict compliance is essential to the public welfare.

The Board concurred to weigh all five criteria.

Commissioner Kanenwisher made a motion based on the findings of fact and conclusions of law using five criteria with consideration and weight the Board finds strict compliance is not essential to public welfare. Commissioner Stoltz seconded the motion. Discussion: The Board finds the criteria not detrimental to public health and would not be detrimental to the granting of the variance. All voted "aye". (4-0)

C. Overall positive finding on Variance Request based on the evidence.

Civil Counsel Karen Mahar summarized the amended conditions for the variance with the Board. The Board concurred to the amended conditions.

Commissioner Kanenwisher made a motion having found strict compliance with Section 5-4-5 (a) and (b)(4) of the Ravalli County Subdivision Regulations will result in an undue hardship and is not essential to the public welfare and based on an overall positive finding on the review criteria, the variance is approved subject to the findings of fact and conclusions of law within the staff report and subject to the conditions of approval as amended here today. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)

Commissioner Kanenwisher made a motion to continued this public hearing on July 26th at 9:00 a.m. Commissioner Stoltz seconded the motion and all voted "aye" (4-0)