

COMMISSIONERS APPROVAL

IMAN

CHILCOTT

FOSS

KANENWISHER

STOLTZ

PLETTENBERG (Clerk & Recorder)

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

Date.....July 26, 2011

► Minutes: Beth Perkins

► The Board met for a discussion on comments for “Waters of the US” at 8:45 a.m. Present was Bitterroot Star Reporter Michael Howell. After discussion, the Board concurred to have Commissioner Chilcott draft a resolution.

► Commissioner Chilcott made a motion to pay the invoice from Specialty Excavating for the Florence CTEP project in the amount of \$13,964.22 with Chair signature. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

► Commissioner Chilcott made a motion to ~~pay~~ allow Airport Manager Page Gough to submit a credit application to Donaldson Brothers. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

► Commissioner Chilcott made a motion to reconsider the motion made regarding bid award for the Airport Environmental assessment. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0) Commissioner Chilcott made a motion to accept the qualifications of Robert Peccia & Associates for the Airport Environmental Assessment. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

► The Board met for a public hearing for Morado Mountain Major Subdivision at 9:00 a.m. continued from July 14<sup>th</sup>. Present were Civil Counsel Dan Browder, Planning Administrator Terry Nelson, Representatives Terry Forest, Stacy Dykeman, and Attorney J.R. Catsilas.

Commissioner Iman reconvened the public hearing. He requested any disclosures of conflicts of interest. Hearing none, he then requested a staff report. Terry Nelson gave a brief update of the previous meeting.

**Prerequisites to Approval:**

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

Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law providing for the location and installation of any planned utilities. Commissioner Stoltz seconded the motion and all voted 'aye'. (5-0)

**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.**

Commissioner Kanenwisher made a motion to add "prior to the filing of final plat of Phase 2" to item 2. Commissioner Chilcott seconded the motion and all voted 'aye'. (5-0)

Commissioner Chilcott made a motion to accept the findings of fact and conclusions of law providing 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. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)

**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.**

Commissioner Kanenwisher made a motion to add a conclusion of law "The final plat requirements or an improvements agreement and guaranty will ensure that the improvements are installed. Commissioner Chilcott seconded the motion and all voted "aye". (5-0)

Commissioner Kanenwisher made a motion to amend item 4 to read "Planning Staff has determined the weight of evidence indicates that all". Commissioner Chilcott seconded the motion and all voted "aye". (5-0)

Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law as amended here today assuring 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. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)

**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.**

Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law assuring 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. Commissioner Foss seconded the motion and all voted "aye". (5-0)

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

Commissioner Chilcott made a motion to amend item 1 to segregate the two ditches traversing the property. One ditch serves a downstream user with a 25 foot easement and the other ditch (Branch) to have the water right severed. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)

Commissioner Foss made a motion to accept the findings of fact and conclusions of law as amended assuring that the requirements of 76-3-504(1)(k), MCA, regarding watercourse and irrigation easement as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)

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

Discussion followed regarding the difference between deeding the land for public use and dedicating the land. Is the park dedication met? If the applicant proposed areas designated as common areas to be dedicated as parkland, the requirement would be met. Stacy offered 26.53 acres dedicated.

**Commissioner Kanenwisher made a motion to strike items 2 and 3 and replace item 2 with the applicant proposed to dedicate for private recreational use by the homeowners 7.55 acres as indicated on the preliminary plat as trails. Commissioner Chilcott seconded the motion. Discussion: Terry Forest stated the trail system is the 7.55 acres and will dedicate the acreage for parkland for private recreational use by the homeowners. All voted "aye". (5-0)**

**Commissioner Chilcott made a motion to add finding of fact item 4 stating "Due to the steep slopes in the original parkland dedication, the Ravalli County park Board recommends that the BCC request cash-in-lieu. (Exhibit A-7) The applicant has proposed 7.55 acres designated as trail system as parkland dedication for homeowners use". Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)**

**Commissioner Chilcott made a motion to add conclusion of law that the 7.55 acres of approximately 7,400 feet of hiking trail provides adequate requirement for parkland dedication. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)**

**Commissioner Kanenwisher made a motion to strike conclusion of law item 2. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

**Commissioner Kanenwisher made a motion to add conclusion of law item 2 "The land that the applicant has proposed be dedicated for recreational use by the homeowners association is sufficient to meet the needs of persons who will ultimately reside in the development and the area of the land exceeds the requirement of dedication". Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

**Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law as amended here today providing the appropriate park dedication or cash-in-lieu, if applicable. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

**G. Overall Conclusion on Prerequisite Requirements:**

Commissioner Kanenwisher made a motion to accept item G for 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. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

**Compliance with Applicable Regulations:**

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

Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law for these regulations, including, but not limited to, the standards set forth in Chapter 5. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

**B. Applicable zoning regulations.**

Commissioner Chilcott made a motion to accept the findings of fact and conclusions of law for no applicable zoning regulations. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

**C. Existing covenants and/or deed restrictions.**

Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law for existing covenants and/or deed restrictions. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

**D. Other applicable regulations.**

Commissioner Kanenwisher made a motion to accept the findings of fact and conclusions of law for other applicable regulations. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Iman opened public comment. Hearing none, then closed public comment and opened board deliberations.

**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:**

Commissioner Stoltz made a motion to strike the second sentence in item 2 “The property adjacent to the west is also a proposed subdivision named Lupine Meadows”. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

**Conclusions of Law:**

Commissioner Stoltz made a motion to change conclusion of law item 3 from 15 days to 10 days. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)  
Commissioner Chilcott made a motion based on the findings of fact and conclusion of law, and subject to the conditions and requirement of final plat approval, potentially significant adverse impacts of the subdivision on agriculture will be sufficiently mitigated as amended here today. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

### **Criterion 2: Effects on Agricultural Water User Facilities:**

#### **Findings of Fact:**

Commissioner Kanenwisher made a motion to amend finding of fact 3 to remove “The portion of the ditch” and replace with “A branch of the ditch”. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

#### **Conclusions of Law:**

Commissioner Kanenwisher made a motion based on the findings of fact and conclusion of law, and subject to the conditions and requirement of final plat approval, potentially significant adverse impacts of the subdivision on agricultural water user facilities will be sufficiently mitigated as amended here today. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

### **Criterion 3: Effects on Local Services:**

#### **Findings of Fact:**

**Fire District:** Terry Nelson recommended Lot 40 builds a driveway up to fire code across adjacent land from Riley Lane to out of the subdivision. Florence Fire Chief Charlie Lambson replied it is acceptable with emergency gate access and the road for emergency access vehicles (cul-de-sac). He also accepted the offered mitigation of \$500 per lot payable 50% at the filing of each phase and the remaining half is proposed at first conveyance of each phase. Discussion followed regarding stand alone approval for phasing for findings of fact items 10 & 11. Stacy Dykeman requested paying pro rata for Granite Creek until the first few lots are sold. Terry Forest clarified that improvements to the road will be made between the sale of the fifth lot and the tenth lot. Commissioner Chilcott requested a subdivision improvement guarantee for the improvements to the road prior to the filing of the plat for Phase 1. Stacy agreed.

Commissioner Kanenwisher made a motion add finding of fact item 12 for the applicant’s preference to construct Granite Creek Road prior to the filing of the final plat for the first phase and with the understanding that they may exercise the ability to have a subdivision improvement guarantee as within the subdivision regulations. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

The Board discussed the offered mitigation payable half upon the filing of each phase and the remaining half at first conveyance of each lot. The Board determined the offered mitigation can be payable upon first conveyance of a lot in each phase. For example Phase 1 has 11 lots. Once a lot sells, \$5,500 would be payable to the County for that phase. Discussion followed regarding the effects being mitigated. Stacy requested opportunity to calculate totals for all offered mitigation to be considered as a whole for payment upon first conveyance.

► The Board concurred to recess for one hour for lunch. The Board reconvened at 1:05 p.m.

Commissioner Kanenwisher spoke with the Treasurer's Office for how first conveyance can be tracked. It was suggested having a lien against the lots per phase and then it would show on the plat until payment is made and the lien released. The assurance is there is a lien shown on the plat. Total mitigation offered is \$700 per lot in three phases being 11 lots in phase 1, 8 lots in phase 2 and 39 lots in phase 3 for a total of \$40,600 payable upon the first conveyance of each lot in a phase. Stacy Dykeman confirmed the offered mitigation and terms.

Commissioner Kanenwisher made a motion amend finding of fact item 16 to strike the second sentence and replace with "The total amount to be paid upon first conveyance of the first lot of each phase. The applicant proposes the fees shall constitute a lien on the properties within the subdivision and shall file consent to lien suitable to the County". Commissioner Stoltz seconded the motion and all voted "aye". (4-0) (Commissioner Foss was not present for this vote)

### **School District:**

Commissioner Kanenwisher made a motion to amend finding of fact item 20 to strike "upon first conveyance of each lot" and replace with "The total amount to be paid upon first conveyance of the first lot of each phase. The applicant proposes the fees shall constitute a lien on the properties within the subdivision and shall file consent to lien suitable to the County". Commissioner Chilcott seconded the motion and all voted "aye". (5-0)

Commissioner Kanenwisher made a motion to amend finding of fact item 21 to strike "commonly requested by the County Commissioners when reviewing subdivisions, and information". Commissioner Stoltz seconded the motion and all voted "aye". (5-0)

Commissioner Chilcott made a motion to amend finding of fact item 23 to strike \$6,686 and replace with \$2,239. Commissioner Foss seconded the motion and all voted 'aye". (5-0)

Discussion followed regarding creditable evidence to determine suitable offered mitigation for the impacts to schools. Commissioner Iman asked if there was any additional offer from the developer for schools. Stacy replied no.

### **Water and Wastewater Districts:**

The Board concurred to accept the finding of fact item 28.

### **Public Safety Services:**

Commissioner Kanenwisher made a motion to amend finding of fact item 34 to strike "upon first conveyance of each lot" and replace with "The total amount to be paid upon first conveyance of the first lot of each phase. The applicant proposes the fees shall constitute a lien on the properties within the subdivision and shall file consent to lien suitable to the County". Commissioner Stoltz seconded the motion and all voted "aye". (5-0)

Commissioner Kanenwisher made a motion to add a finding of fact item 36 to add Florence Rural Fire District Chief gave verbal testimony agreeing with Staff Determination. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

**Ambulance Services:**

Commissioner Kanenwisher made a motion to add finding of fact item 40 to state “Florence Rural Fire District Chief in verbal testimony agreed with the recommendation of staff that turnarounds would be sufficient. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

**Solid Waste Services:**

The Board concurred to accept the findings of fact items 41 & 42.

**Pedestrian Facilities:**

Commissioner Kanenwisher made a motion to strike finding of fact item 44. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to add finding of fact item 43 “There aren’t any pedestrian facilities leading to this subdivision”. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

**Mail Delivery Services:**

The Board concurred to accept the finding of fact item 46.

**Utilities:** The Board concurred to accept the findings of fact items 48, 49, 50, 51 & 52.

**Roads – Off-Site:**

Commissioner Kanenwisher made a motion to amend finding of fact item 55 to strike “and potentially Hayley Court” and add “an easement to connect to Kaylie Drive”. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to amend finding of fact item 61 to strike upon the first conveyance if the tenth lot within Phase 1 of the subdivision” and add “with “The total amount to be paid upon first conveyance of the first lot of each phase. The applicant proposes the fees shall constitute a lien on the properties within the subdivision and shall file consent to lien suitable to the County” and apply to findings of fact items 65 & 66. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to amend finding of fact item 68 (b) to strike “traversing Lupine Meadows” and replace with “to Kaylie Drive”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to strike finding of fact item 70. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to add finding of fact item 77 “based on Staff recommendations, the road maintenance agreement to include the easement between Kaylie Drive and Riley Lane. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

The Board concurred with the findings of facts as amended for Roads – Off-Site.

**Internal Subdivision Roads:**

Commissioner Chilcott made a motion to amend finding of fact item 82 to strike “to the east and south”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

**Conclusions of Law:**

Commissioner Kanenwisher made a motion to amend conclusion of law item 6 to strike “The Hamilton School” The Florence-Carlton School District has completed an Impact fee study but it has not been accepted by the Board of Commissioners. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion based on the findings of fact and conclusions of law and as subject to the conditions and requirements of approval, the potentially significant adverse impacts of the subdivision on local services will be sufficiently mitigated. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

**Criterion 4: Effects on Natural Environment:**

**Findings of Fact:**

**Air Quality:**

Commissioner Foss made a motion to amend finding of fact item 3 to strike “upon first conveyance if the tenth lot within Phase 1” and replace with “The total amount to be paid upon first conveyance of the first lot of each phase. The applicant proposes the fees shall constitute a lien on the properties within the subdivision and shall file consent to lien suitable to the County”. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

**Ground Water Quality:**

Commissioner Chilcott made a motion to add two findings of fact item 9 “the applicant has identified the ditch and field separation does not meet DEQ standards on Lot 7” and item 10 “The applicant proposes to either pipe or culvert the ditch to meet DEQ standards”. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

**Surface Water Features:**

The Board concurred with the findings of fact items 10 through 17.

**Light Pollution:**

The Board concurred with the finding of fact item 19.

**Vegetation:**

The Board concurred with the findings of fact items 21 & 23.

**Archaeological Resources:**

The Board concurred with the finding of fact item 25.

**Conclusions of Law:**

**Surface Water Features:** Commissioner Chilcott made a motion to add conditions to the findings of fact and add two findings of fact: item 9 “the applicant has identified the ditch and field separation does not meet DEQ standards on Lot 7” and item 10: “The applicant proposes to either pipe or culvert the ditch to meet DEQ standards”. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Foss made a motion to amend conclusion of law item 5 to change 15 days to 10 days. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion based on the findings of fact and conclusions of law and subject to the conditions and requirements of final plat approval, the potentially significant adverse impacts of the subdivision on the natural environment will be sufficiently mitigated as amended here today. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

**Criterion 5: Effects on Wildlife:**

**Findings of Fact:**

Terry Nelson noted for record that Criterion 5 has been split according to law. The Board noted for record the splitting of the Criterion.

**Conclusions of Law:**

Commissioner Kanenwisher made a motion based on the findings of fact and conclusions of law and subject to the conditions and requirements of final plat approval, the potentially significant adverse impacts of the subdivision on wildlife will be sufficiently mitigated. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

**Criterion 6: Effects on Wildlife Habitat:**

**Findings of Fact:**

Commissioner Kanenwisher made a motion to add to finding of fact item 7 “significant open area enhances wildlife habitat and maybe used as a wildlife corridor. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

### **Conclusions of Law:**

Commissioner Chilcott made a motion based on the findings of fact and conclusions of law and subject to the conditions and requirements of final plat approval, the potentially significant adverse impacts of the subdivision on wildlife habitat will be sufficiently mitigated.

Commissioner Foss seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion based on the findings of fact and conclusions of law and subject to the conditions and requirements of final plat approval, the potentially significant adverse impacts of the subdivision on wildlife and wildlife habitat as taken as on Criterion will be sufficiently mitigated. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

### **Criterion 7: Effects on Public Health & Safety:**

#### **Findings of Fact:**

##### **Traffic Safety:**

Commissioner Kanenwisher made a motion to amend finding of fact item 2 to add “via an easement from Riley Court to Kaylie Drive; an emergency access easement from Kaylie Drive to Riley Lane and then Riley Lane to Jenne Lane and Eight Mile Creek Road”. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

##### **Emergency Vehicle Access and Response Time:**

Commissioner Kanenwisher made a motion to add finding of fact item C to reflect verbal testimony by Florence Rural Fire District Chief that 1400 foot road with cul-de-sac is sufficient. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to amend finding of fact item 9 to “Lot 40, which is part of Phase 3 contains slopes grater than 25%. Lot 40 will be accessed via a driveway that compiles with Fire Department recommendations”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to strike finding of fact items 11 & 12. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to add finding of fact item 11 to state “The Florence Fire District, in testimony received today, has stated that adequate emergency access to Lot 40 will be achieved with the applicant’s proposed design”. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

#### **Water and Wastewater Treatment:**

Commissioner Chilcott made a motion to amend finding of fact item 19 “pipe or culvert the irrigation ditch traversing Lot 7 in order to comply with DEQ. Commissioner Kanenwisher seconded the emotion and all voted “aye”.

**Natural and Man-Made Hazards:** The Board concurred with the findings of fact items 22, 24 & 26.

**Floodplain:** The Board concurred with the findings of fact items 28 & 29.

**Conclusions of Law:**

Commissioner Stoltz made a motion based on the findings of fact and conclusions of law and subject to the conditions and requirements of final plat approval, the potentially significant adverse impacts of the subdivision on public health and safety as taken as on Criterion will be sufficiently mitigated. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Iman opened public comment on each criterion. Hearing none, he then closed public comment on the criterion.

**Planning Staff Recommended Conditions for All Phases:**

Commissioner Kanenwisher stated the notifications as sufficient and correct. The Board concurred.

Commissioner Kanenwisher made a motion to strike Condition 5 entirely and replace it with “upon first conveyance of the first lot of each phase, the applicant will make payment of \$500 per lot to Florence Rural Fire Department in lieu of the required water supply and storage. The payments of these contributions shall constitute a lien on the properties within the subdivision” Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to add to Condition 9 “prior to final plat approval of the first phase, the applicant shall file a consent to lien acknowledging that the lien on the subdivision shall secure payment of the mitigation”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to amend Condition 7 to “applicant shall file consent to lien”. Commissioner Chilcott seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to amend Condition 9 to “will also be applicable to Conditions 5, 7 & 8”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to amend Condition 9 to include “mitigation fees in the amount of \$100”. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to change finding of fact item 26 (on page 40) to strike “/alteration”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Stoltz made a motion to amend Condition 15 to strike “/alteration”. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to amend Condition 20 to strike the underlined portion. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to strike Condition 21. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Stoltz made a motion to strike Condition 24. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to add Condition 21 to require the applicant to provide evidence from downstream water user that any modifications to the irrigation structure are approved prior to final plat. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to add Condition 22 “the applicant shall prepare and file a description of the entire trail system with Phase 1 as an easement for recreational purposes to be used by the homeowner’s association fulfilling the parkland dedication requirement”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Discussion followed regarding the easement within parkland. It was the developer’s recommendation to keep the easement and write within the easement capture the language of dedication to the HOA. Commissioner Iman discussed the need for an undivided interest in order to keep the easement in existence. Terry Nelson suggested having the easement for the trail system to benefit the owners of Lots 1-58 which would be the undivided interest. The Board concurred.

Commissioner Chilcott made a motion to add Condition 20 in Phase 1 “That easement shall be filed along the proposed trail dedication permanently set aside for parks and recreation use as required by 76-3-621 for the benefit of Lots 1-58 Morado Mountain Estates Major Subdivision to be shown on final plat of Phase 1”. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

#### **Final Plat Requirements for All Phases:**

Commissioner Kanenwisher made a motion to strike item 2 (h) and item 12. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to amend item 2 (x) to remove “/alteration” and additional of item (y). Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)

Commissioner Kanenwisher made a motion to amend item 2 (v) to add the easement of the common areas dedication to lots 1-58. Commissioner Stoltz seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to strike every reference to Mikesell’s property and replace with COS 559535 TRACT 2. Commissioner Foss seconded the motion and all voted “aye”. (5-0)

Commissioner Chilcott made a motion to add Final Plat Requirement 24 for the consent to lien for mitigation fees at Phase 1. Commissioner Foss seconded the motion and all voted "aye". (5-0)

**Commissioner Chilcott made a motion to approve Morado Mountain Estate Major Subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report as amended here today. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

7/24

**Proposed Policy on Waters of the United States**  
Ravalli County, Montana

**Issue:** Oppose removing "navigable waters" from the Clean Water Act (CWA)

**Proposed policy:** Ravalli County supports keeping the terms "navigable" and/or "navigable waters" in the Clean Water Act (CWA) to protect intrastate waters, including wetland habitats, rivers, and streams within the United States and to protect the fundamental principles of local land use control in accordance with the goals of the CWA. Ravalli County opposes any effort to remove the term "navigable" from the CWA.

**Background:** In the past several years, there have been several attempts to remove the term navigable from the CWA. This removal, if successful, would have severe jurisdictional repercussions on county governments. S. 787, the Clean Water Restoration Act revised, was reported out of the Environment and Public Works (EPW) Committee by a vote of 12-7 on June 18, 2009. A similar companion bill, H.R. 5088, America's Commitment to Clean Water Act (ACCWA), was introduced in the House of Representatives. While the bills differ in their water of the U.S. definition, both bills remove the term navigable from CWA.

The introduction of legislation similar to the ACCWA or the Clean Water Restoration Act (CWRA), will broaden the federal jurisdictional scope of the CWA. The purpose of both bills was to restore to the authority to the Corps of Engineers and the EPA prior to 2001, referencing two pivotal Supreme Court decisions in 2001 and 2005. In both cases, the high court said that federal agencies had reached well beyond the scope of their authority. This broadening of federal jurisdiction is in direct conflict with counties fundamental principle of local control.

The term "navigable" originally stems from the Rivers and Harbors Act of 1899, the oldest federal environmental law and closely tied to the U.S. Commerce Clause because of its relation to interstate commerce. The Rivers and Harbors Act dealt with interstate commerce, defining a federal waterway vs. a state waterway. This Act gives authority to states to govern waters within their states.

Ravalli County opposes any attempt to remove the reference to activities affecting those waters and redefine waters of the U.S. by using a hybrid of current agency regulatory definitions. While there has been proposed language that is based on existing agency regulations for "waters of the U.S.," it is not identical to existing regulations. Furthermore, certain sections of the existing regulations have been proposed to be deleted and new language added to the "water of the U.S." definition.

Removing "navigable waters" from the definition raises the question: Who should be responsible for oversight of local land and water decisions, the federal government or states and local governments. Any expanded federal jurisdiction must provide a sizable funding stream for any state or local implementation of federal regulation and expanded oversight.

Federal jurisdiction would stretch to virtually all waters and will undercut the basic fundamental principles of local land use control and undermine federal, state, and local coordination and partnering efforts in support of clean water nationwide.

Because of this, Ravalli County must oppose any legislation that removes the term “navigable” from the definition of “waters of the U.S.” in the CWA.

**Fiscal/Urban/Rural Impacts:** The fiscal impact on counties nationally could ultimately be in the billions through delays, lost state and federal monies, inconsistent jurisdictional interpretations, and permit delays. These impacts could ultimately adversely affect the county's ability to protect the health and well being of its citizens.

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