1. CALL TO ORDER
Commissioners Present: Commissioner (Chair) Michele Landquist, Commissioner Bill Carey

Commissioners Absent: Commissioner Jean Curtiss

Staff Present: Marnie McClain, Deputy County Attorney, Jennie Dixon, CAPS, Greg Robertson, Director Public Works, Tim Worley, CAPS, James McCubbin, Deputy County Attorney, Nancy Heil, CAPS, Lewis YellowRobe, CAPS

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
None

4. PUBLIC COMMENT
None

5. ROUTINE ADMINISTRATIVE ACTIONS
Current Claims List ($2,704,702.29)

Executive Session
Commissioner Carey made motion that the Board of County Commissioners approve the Current Claims List in the amount of $2,704,702.29. Chair Landquist second the motion. The motion carried a vote of 2-0.

6. HEARINGS (Certificate of Survey)
a. Babbitt (John) Family Transfer - Postponed from June 26, 2013
   Jennie Dixon gave staff report and update. Property located at 12508 Hawk Lane. Tract 1, COS 4887 in Clinton. Mr. Babbitt proposes to create four (4) new parcels, each approximately one (1) in size to transfer to his two adult sons, his wife and his mother. The remaining parcel will also be approximately one (1) acre for a total of five (5) tracts on five (5) acres. If approved
it is recommended that the land owner provide an actual dedicated easement, as shown to each parcel. The claimant has previously used the boundary line relocation exemption on this property in 2007 but has not previously used the family transfer exemption in Missoula County. This request, as Commissioner Landquist mentioned, was presented to the Board of County Commissioners in June 2013. The action on this request at that time was delayed to address concerns regarding the family transfer evasion criteria. At the June 26 public meeting, Mr. Babbitt indicated that he did not purchase the property in 1999 with the intent of dividing it, and was unsure whether his sons, his wife or his mother would ever construct a home on the property or transfer the proposed parcels. After review and analysis of this request, it appears that this family transfer meets three (3) of the evasion criteria contained in Article 8 of the Missoula County Subdivision Regulations…sorry I have four (4) of them. Criteria #1 is to divide a tract that was created through use of an exemption; As mentioned early this parcel was subject to a number of exemptions, including a family transfer in 1998 by the Allen family. The invasion criteria in #3 are to divide a tract which will become one of three or more parcels that will have been divided from the original tract; this is creating four (4) new family transfer parcels and a remaining one acre tract. Invasion criteria #6 is to create a parcel that is not intent for use as home sites for the transferee’s; Indicated by testimony at the previous hearing, it is not clear whether there is any intent to construct homes on these parcels. Invasion criteria #10 to transfer land to a spouse; the applicant has proposed to transfer land to his spouse. Based on the invasion criteria and this application, staff is at this time recommending denial of this family transfer. However, we do have some questions for the applicant so what I’d like to do maybe is take a seat and ask Mr. Babbitt to come to the podium.

Jennie Dixon asked Mr. John Babbitt the standard family transfer questions.

**Commissioner Carey:** I wonder what perhaps one of our Attorneys might venture a response to this; seems to me this proposal does subdivide this land but it doesn’t necessarily mean that you’re intending to, know what I mean? The effect is to have subdivision on the ground but what if that just happens to be the effect without his intention?

**Chair Landquist:** It’s creating five (5) lots and that’s a minor subdivision. I thought that family transfers were generally for four (4) or less lots? When you start getting into five (5) lots, that gets a little stickier, doesn’t it?

**Marnie McClain:** So you are dividing the property – that’s formally what’s happening, and this is a mechanism by which you accomplish that process of creating separate lots out of the larger overall. But that’s the question for you; is whether or not it’s exceeded the scope of what’s intended by the exemption from the legislature. Which is to give family’s a way, I think to originally preserve property that they owned, and certainly maybe originally agricultural, but it’s never been restricted to just agricultural. Looking at whether or not the development exceeds that small scope. Obviously, the more lots that get created the more into it you are and Debbie’s a better person to talk about that then me.

**Commissioner Carey:** But is there any difference…I guess I’m trying to get at, an attempt to evade versus just happening to evade?

**John Babbitt:** As I said, I never tried to divide it or anything. I checked around and was told this was a way to do it.

**Commissioner Carey:** It’s just that we are going to end up with five (5) parcels and they won’t have been reviewed.
Chair Landquist: I thought there was something that I read in here in the general Missoula County Growth Policy because we don’t actually have a regional growth policy for this area, that the land use recommendation for that area is one (1) dwelling per five (5) acres, did I read that correctly?

John Babbitt: There are one (1) acre parcels surrounding it.

Chair Landquist: But were they created by going through more of a formal subdivision process or were those other lots created more through multiple family transfers? I’m seeing roads; I’m seeing what would look like thorough roads.

Jennie Dixon: I’m not sure how other parcels in the area were divided. I guess I would ask Mr. Babbitt to clarify; you do not live on the property at this time, right? The mobile home that’s on the property is rented to someone else?

John Babbitt: That’s correct…the lots rented, I don’t own the mobile home either.

Jennie Dixon: Okay, the lot is rented and someone has moved their mobile home onto the property?

John Babbitt: Right.

Jennie Dixon: And you own other property in the area, correct? Do you live on those properties adjacent to this property?

John Babbitt: Yes I do. I live on one (1) parcel and my mother lives on another. One has another trailer on it and one is vacant right now.

Jennie Dixon: So there is some indication that the applicant lives in the area, which I think Marnie was starting to address the idea of providing parcels in the vicinity of the parent, or the child in this case, both in this case. The transfer to a spouse has been listed as one of several indicators of evasion and I think with all of the evidence that we had at our disposal, at the time of review, let us to conclude that this looked like an evasion to us. We didn’t have the benefit of the testimony, obviously, at that time.

Marnie McClain: Maybe if I could try to get more directly at your question. I think the word evasion, in the statue, is really kind of a hard word to work with because it sounds like we’re saying somebody’s trying to sneak something by, and that’s really not what it means. I always think of it in kind of the same way I think about taxes; I’m not trying to evade paying taxes but I am certainly not going to volunteer to pay more than what I really have to. So I think that’s the approach most people take; I’ll pay my share but I’m not gonna volunteer for a bunch of extra stuff. I think that’s more of what we’re looking for here, is someone adhering strictly to the law and not proposing to do more than they have to do, does this fit within. You’re in an area where it’s a little gray because I think when you do get above a certain number of lots, whatever they may be it starts to look like a subdivision.

Chair Landquist: What I’m look at, aside from staffs report and your recommendation is, in some of the information provided to us, the proximity to the river which tells me groundwater. Then I do appreciate some of the forward thinking that Mr. Babbitt or somebody came up with to provide us, to have this proposed land use split where the access road for the lots would be, where the wells and proposed septic’s would be and the flow of the groundwater. It tells me that
you've probably already received or sought the advice of a professional consultant to get the lay of land. But it also tells me that this probably is a sort of subdivision, there’s no telling how quick lots could sell or get leased out but when I start seeing septic’s and wells and knowing which way the groundwater runs, especially seeing multiple ones here, it starts making me think; that’s where DEQ…that’s why some of these lots – five (5) lots and or more need to go through the formal process of subdivision review to make sure that people aren’t drinking water that’s been polluted by somebody else’s septic’s and to make sure that they wells are far enough away from one another that if one well starts interfering with the operations of another well and then both wells go dry. There’s a whole of science that goes into placement of wells and why they need to be so far apart from other wells and from property lines, and where zoning and compliance and things like that come into play. I’m having some trouble with this and I know you had your hand up; maybe you can help me not have trouble with this Mr. Babbitt.

**Mr. Babbitt:** I’ll try. Yes, I did hire that gun but if I hadn’t we would be standing here going well, this would be the next step. I realize that so I did hire the evaluation done and the perc test done, where the wells will be, by professionals, I certainly don’t know. I couldn’t tell you anything really about it so yes, I did hire them. But, if this is okay and goes through, it’s definitely gonna need to be done.

**Chair Landquist:** Well you’re part way there, is what I’m saying and I’m just thinking that maybe…I love the way Marnie explained it because boy, I try to be really cognizant of how much things cost, not only myself but other people. This is one of those cases that I’m really feeling as though, hang that little bit more to go through proper subdivision review would not only make the lots more valuable, it would cost you more, but it would make the lots more valuable. Because they’ll be more knowns, meaning less unknown, more sense it will fit in better with those other lots already existing in the area. As far as, well placements and septic placements, and all that stuff, it will have been signed off by the Health Department, DEQ, etc. A little bit safer situation for the people that will be living, I’m personally fine to go with staff’s recommendation and look at this as an evasion, feeling as though it’s five (5) lots, that is considered a minor subdivision. I think it should probably go through proper subdivision review.

**Commissioner Carey:** I do too but I don’t think I don’t know whether it’s important or not but just to be on the record to say; we don’t believe that there’s an intention to evade but the practical effect is an evasion.

**Chair Landquist:** Yes, I would agree with that.

**Commissioner Carey:** Do you understand our reasoning?

**John Babbitt:** I understand and as you say, I haven’t checked on a subdivision but I’m sure it’ll cost substantially more than what we’re doing here. So if I do sell in the future, whoever buys gets to pay more.

**Commissioner Carey:** Hopefully that’s a good investment over time by virtue of the relationship to the land and the groundwater and all the rest of it.

**John Babbitt:** Well as I say, those tests have been done. Even if it would go into a…or if I did try to slice it up the other way, that same paperwork, it isn’t going to be any different.

**Commissioner Carey:** You might want to talk to someone who could help you think that through because it could well be as Commissioner Landquist said, that you’ll have more
valuable lots and make up the difference. If it goes through subdivision, I would presume that it’s worth more than just four (4) empty lots.

**John Babbitt:** I don’t know how but that doesn’t make any sense why it would but, if that’s where we’re at.

**Chair Landquist:** You might even be able to...I don’t know how invested you wanted to get in putting in the wells and the septic’s for making these lots more marketable but we did just hear this morning that there are some developers out there looking for developable lots. You might just maybe try to advertise them to someone that is in the business, save yourself the headache and the time and the expense being the developer to go that far and put that survey cost in and the little bit infrastructure in it to make them more merchantable for yourself and your family. See if you can sell the whole piece to a developer and let them take on that headache too sir. They’re use to taking on those headaches.

**John Babbitt:** It’s an option.

**Public Comment**
None

**Executive Session**
Commissioner Carey made motion that the Board of County Commissioners deny the request by John Babbitt to create four (4) additional parcels by use of the family transfer exemption based on the fact that there does appear to be an attempt to evade subdivision review. Commissioner Landquist second the motion. The motion carried a vote of 2-0.

b.Marcure Family Transfer - Postponed from October 9, 2013

**Jennie Dixon gave staff report and update.** Property located at 14912 Mullan Road. Tract 1A, COS 5956. Mr. Marcure proposes to create one (1) parcel approximately 15.8 acres in size to transfer to his wife Bradie. If this family transfer is approved it is recommended that a shared access easement be shown on the amending survey. The parcel to be divided was created through family transfer in 1999 and boundary line relocation in 2007 by the claimants’ parents and then the claimant himself, respectively. This family transfer appears to meet three (3) of the ten (10) evasion criteria contain in Article 8 of the Missoula County Subdivision Regulations. The first of which was that the tract was created through use of an exemption, that exemption was a family transfer in 1999 by Andre’s parents, Ilene and Edward Marcure to Andre at which point in 2007 Andre expanded his parcel through a boundary line relocation. Criteria #7 to divide tracts that were recently transferred to the applicant; the original tract has been in Andres ownership since 1999. However, his wife Bradie, who is also an owner of this property since 1999, quit claimed this tract 1A to Andre in May of this year (2013). Finally, #10 to divide land to transfer to a spouse, which is obvious that this is a request to transfer to his wife Bradie. Based on the evasion criteria and the application received, staff is recommending denial of this family transfer.

Jennie Dixon asked Mr. Andre Marcure and Ms. Bradie Marcure the standard family transfer questions.

**Chair Landquist:** Would you like to explain anything since this sounds a little confusing?

**Andre Marcure:** This is an old family homestead, I’m the fifth generation of Marcures on the ranch and a lot of the ideas behind this are preparing to transfer the ranch eventually to the sixth
generation, our two daughters. That boundary relocation that was done in 2007 was done strictly for estate planning purposes. To balance out some gifting of land to make sure that my parents at the time could transfer the land to my brother and I who still actively ranch land. Basically what we’re trying to do is get that original parcel back to the 1999 size comparatively and try to keep the family ranch in the Marcure family.

Chair Landquist: Okay, that makes a lot more sense to me.

Jennie Dixon: The parcel that Mr. Marcure owns and wants to do a family transfer, I believe what he’s talking about in getting the parcel back to 1999 configuration is this upper piece that’s owned by his parents ~ your goal is to eventually aggregate those?

Andre Marcure: That’s gonna stay a separate parcel but what we don’t want to do is jeopardize that 18 acres.

Bradie Marcure: Our house currently ~ the original acre was like this little square and during his parents estate planning that line was changed to include this whole thing. Our goal is to try to create the new parcel so that this is the smaller piece again with this remainder being still part of the family ranch and not connected to the house that is currently sitting there. The house and the 18 acres currently all go together and for our own estate planning purposes we’re trying to get the house back to the original.

Jennie Dixon: That house that you’re in now it was constructed in 1999 by you, correct?

Andre Marcure: That’s correct.

Chair Landquist: Have you had an opportunity to visit with a legal representation to help guide you through the process to make sure that you’re going about doing things the way you want? The story I made up in my head was similar to what you’re doing there. I’m glad when I asked what you’re story was that it kind of jived with that you’re just trying to do some estate planning.

Andre Marcure: We’re trying to think in the future on how we’re going to be able to get our land to the kids name as well.

Commissioner Carey: For me this is much murkier then the one we had before. There are three evasion review criteria. Will there be any new wells put in?

Andre Marcure: If we build a new house we’ll have to do a new well at that time, go through, of course, all the DEQ requirements.

Commissioner Carey: So we’re creating one (1) parcel here as opposed to five (5) on the other one?

Chair Landquist: Yes. I understand the original family transfer…boundary relocation looking at how to make equitable sense out of land especially when you have heirs involved. Then if you end up having to sell the one original house to build another one…again, the story I made up in my mind for the reason you would have to do that would be to help afford being able to move forward to be able to keep things the way you’re trying to get them. Because selling a piece of property to be able to achieve certain goals and objectives is some of the things that sometimes we’re forced to when we can’t take the chance to rent them out and worry about things that happen to rentals and stuff like that.
Andre Marcure: Absolutely and once again, I’d rather not sell the property if we could somehow afford to just build a new house and keep our existing house as either a rental or save it for our kids, which would be preferable.

Chair Landquist: That’s one of reasons…the differences that I’m finding in this when I can see where on the surface it might seems as though they’re trying to avoid and evade going through the subdivision process but basically they are trying to keep the properties in the family ownership and name. They aren’t trying to create multiple lots given to multiple different heirs at this time and create trusts. As far as that one lot going to the wife, that’s just the consequences of trying to do the business here that the family’s trying to do. That’s where I look at this one as being at least much more palatable. I’m not seeing it as the evasion. So I’d be okay with it.

Commissioner Carey: Another question for our council here; the findings of fact would have to be changed, right?

Marnie McClain: I’ve watched Jennie assist people through modifying findings before, she’s brilliant at it.

Commissioner Carey: If I’ve been schooled properly by our other attorney, would Commissioner Landquist’s recent remarks qualify? That’s kind of the way I’ve been thinking.

Marnie McClain: I think it provides a basis that can be put into the findings to support a decision.

Jennie Dixon: Would you like me to do that on the spot or would you like me to take your comments and formulate that to then go into the approval letter?

Chair Landquist: I think I trust you to take the essence of what we discussed here and formulate the findings of facts based on that Jennie. Do you feel confident enough?

Jennie Dixon: I think that’s find and if we go to…I think that the three (3) evasion criteria still are valid, in terms of the facts surrounding those three evasion criteria. But I think you could add additional findings along the lines that the intent is not to evade subdivision, but rather create a situation where the family ranch can be retained by the fifth generation owners for estate planning purposes and transfer to future generations.

Commissioner Carey: In my mind too there’s a big difference between five (5) acre split ~ that’s a subdivision in my mind. One parcel division, that doesn’t reach that threshold for me.

Chair Landquist: With larger pieces of land.

Jennie Dixon: So here what you have then is a proposal to divide off the majority of the property…15.8 acres for transfer to wife, at which point, the small 1.5 acre tract would either be used to continue the family business ranching operation or retain for other family to reside in at a later time.

Chair Landquist: Right and the other part of the story, one of the chapters in my head, was maybe they’re just trying to do this to keep it in the family and create that smaller lot with the house on it to use as a mortgage exemption lot to get the money to build the newer house on the larger lot.
Andre Marcure: That actually was one of our conversations; it’s a very viable option too.

Chair Landquist: I’m getting good at writing these chapters now aren’t I? Word to the wise, there’s been some legal problems with those too, so if you go that direction please, please, please do your due diligence, do your homework. Check with the Missoula Organization of Realtors, check with your lawyer, check with our staff here to make sure you go about doing that the right way. There are all these weird hiccups about making sure that that’s really what it is and that it gets recorded as that.

Jennie Dixon: So this is an application for a family transfer which if approved, you would file and create a brand new transferrable parcel. And I think what Commissioner Landquist is talking about in a mortgage exemption situation you’re not creating a new parcel, unless and until the property is foreclosed upon, which hopefully wouldn’t happen. That’s not the direction you’re going in, not an avenue I would recommend, certainly something to consider but at this time it’s a family transfer creating a new parcel.

Chair Landquist: The fact of the matter is if they do go to the part of actually…if we approve this family transfer and they do do that and they survey that out, then that house on that smaller lot is a separate severed lot. So for the purpose of them going to the bank, it’s not the same as them doing that mortgage exemption sort of thing, so it takes that headache away from that.

Andre Marcure: I have a friend who is a mortgage broker and that’s what he says, that most banks just don’t except the mortgage survey any longer.

Commissioner Carey: We don’t mind being challenged on our thinking on this or the previous one. This is a hearing so if anyone has a problem with the way we’re handling something or a question.

Public Comment
None

Executive Session
Commissioner Carey made motion that the Board of County Commissioners approve the request by Andre Marcure to create one (1) additional parcel by use of the family transfer exemption based on the revised facts that are before us. Commissioner Landquist second the motion. The motion carried a vote of 2-0.

Open comment
Steve Inabnit with Eli & Associates: I represent the Marcure’s for doing the surveying work on this. This was brought to the Commissioners in June but it was postponed, the reason it was postponed…

Jennie Dixon: October

Steve Inabnit: October, okay. The reason it was postponed was this was the first time that I submitted a family transfer where I had a recommendation. I personally filed over 375 Certificates of Survey in Missoula County. It took me by surprise that it was a recommendation and it was a recommendation for denial. When I look through the criteria, you have ten (10) criteria and Mr. Babbitt had four (4) criteria that he met for evasion so would that be that he failed because he got a 60%? And Marcure’s passed because they got a 70%? This is a new
system; I see that you’re struggling with it as well. I’m just trying to get some clarification, how do we decide who passes and who fails?

Marnie McClain: I was thinking maybe it would work for me to sit down and talk to Steve and go through his questions with him. Not to cut-off any conversation that you want to have with him but I’m wondering if that would be good for us to sit down.

Chair Landquist: I don’t have a problem with Steve meeting with you or any staff after the meeting for more clarification. I can tell you that one of the reasons that staff is now giving the opportunity to weight in and make a recommendation is because staff is the one that sees these things, they’re the ones closer to the projects, they’re the ones that...we as Commissioners do a whole lot more than just this one niche of business. Our staff has all this other expert training and they’re very good at what they do and we’ve given them that opportunity to give us those recommendations. Doesn’t always mean we take the recommendations, as you can see because the decision still stops with us, the buck still stops here, so to speak. One of the tipping points for me in the changes between these two, the differences between these two, is exactly what we discussed here. The first one that we looked at their not sure...they’re most likely going to be either leasing or selling those lots. They have kind of figured out where a road and access and wells and septic’s would be and it really does look like it needs a whole lot more professional planning. Even though they’re just carving out essentially four (4) lots, it’s making five (5), which is a minor subdivision. The second one that we looked at is, they’re trying to do whatever they can and you can tell, you can look at the history of the various...well, we’ll move this lot official...well backup, maybe we should of done this maybe, they’re divvy it up and you can tell it’s estate planning. It’s nice for staff to be able to line that out and say; well this is four out of ten and that one is three out of ten. That didn’t really weight in...if it was ten out of ten I would have had some major heartburn going against staff but that played a small but important role in it, what staff did, and them having the opportunity. They’re allowed to be shining stars too, they work hard for a living, for the County, they get to show off their stuff by making those recommendations just like an Attorney or anybody else that’s important here.

Steve Inabnit: I appreciate that too. I guess Marnie we’re going to get together at some point?

Marnie McClain: Yes, can I send you an email?

Steve Inabnit: One last thing regarding the criteria. #10 is transfer to a spouse and I just don’t understand how that can be a criteria when what’s a family transfer? It’s a transfer to immediate family, what’s the definition of a immediate family? It’s a spouse, parent, and children. That one shouldn’t even be on there in my opinion, maybe Marnie and I will talk about that.

Jennie Dixon: I’d like to be part of that meeting. I have that same question so I would love to get some guidance on that as well.

John Babbitt: What does it take to get invited to this meeting?

Chair Landquist: Jennie has your contact information she can let you know.

John Babbitt: I would like to, it’s interesting.
Marnie McClain: You can join in, we have a conference room.

7. HEARING
310 Permit – Orchard Homes Ditch Company

Marnie McClain: I'll take a minute or two to briefly describe what a 310 Permit and what the process is; I know that you know that but for the benefit of those who don’t. The Orchard Homes Ditch Company is represented today by Molly Skorpik and Matt Barnes from Morrison-Maierle. I'll go ahead and describe the overview or the background of what we’re considering here, they're going to describe the project for you and then we'll come back and take a look at the team member reports that were produced after the site inspection that we did on December 9th and walk through the decision making process.

The Natural Stream Bed and Land Preservation Act is also known as the 310 law. It requires that any person proposing a project on the bed or banks of a perennial stream has to have a permit from either the Conversation District or the Board of County Commissioners. In Missoula County, the Missoula Conversation District covers all of Missoula County except the area that was the city in 1946. The reason for that is that conversation districts, the legislation the authorize their enactment was inactive in Montana in 1946, so that’s what they took when they actually created the conservation district, so it left that little piece out. Orchard Homes Ditch Company proposes a project that's within the 1946 city limits so its proposed project has to be reviewed by the Board of County Commissioners. The 310 law provides for a pre-construction review of projects by the Board and that excludes consultation with Montana Fish, Wildlife and Parks in order to ensure that the proposed project is a reasonable means of accomplishing the purpose of the project and will be conducted so as to mitigate impacts to the stream, the banks and to other property owners. The action that’s requested today is a decision on the 310 application from the Orchard Homes Ditch Company. The proposed project is the repair of an existing intake structure that’s located on the south bank of the Clark Fork River. The Clark Fork River is a perennial stream as defined by the 310 law. The existing intake structure is over 60 years old and well past its design life. The slide gates do not function properly and it cannot seal against the intake to prevent and control flow rates entering the ditch both during and after the irrigation season. Large debris and sediment have exaggerated the problem, debris often accumulates on the return ware and removal requires the use of large equipment. Much of the concrete intake structure is unstable with large cracks and scour damage, the return control ware controlling the water surface elevation and the flow rate returning to the river is inefficient and warrants improvement. The project proposes to replace the slide gates, return channel ware and concrete retaining wall adjacent to the intake, along with improvements to stabilize the bank upstream of the intake structure. Orchard Homes Ditch Company got a renewal research grant from DNRC to do this project which was sponsored by the Missoula Conservation District.

Matt Barnes, Morrison-Maierle: A real quick brief overview of the Orchard Homes Ditch Company intake. One quick thing to mention, I guess, would be; it was unclear originally if the project location was actually in the bed of the Clark Fork River. We requested the State Department of Natural Resources (DNRC) to determine that and they determined that it was not. Just out of good faith the client and I are here to apply for the 310 permit rather than go through the process of determining if it’s applicable or not, just in a good faith effort to proceed with the project. The Orchard Homes Ditch Company is under taking this intake improvements project, they’re a private irrigation company. As Marnie mentioned, the project was sponsored by the Missoula County Conservation District and did receive funding through the state renewable resource grant program. A real quick slide on some of the background of the ditch company, they're a nonprofit irrigation water supply company with a long history in the Missoula valley. They deliver roughly 14 acre feet
per day, which equates roughly 7 cubic feet per second during irrigation season. They deliver water to a multitude of different uses in the valley, many small local producers; Bensons Farms and also supplies some water to the City Parks and Recreation Department. The renewable resource grant program funded this project based on its merits of renewable resource benefits. It was funded during the legislature cycle this past year. Showed PPT Presentation.

This brings us here to ask for a 310 permit. One of the things that we wanted to mentioned, related to the conditions that Ladd and Greg had sent over, was that we would like to request that the portion of Ladd’s Fish, Wildlife & Parks recommendation, about his condition 3, that mill logs should be removed and transported outside the 100 year floodplain. That's actually been stated that the City Floodplain Administrator, as part of the permit, would request that. We intend to ask for a variance on that request and we ask that that condition remains, and just the single permits, rather than having the one condition in both permits ~ we have it in the floodplain permit.

**Chair Landquist:** So what you’re saying; is that Ladd Knotek and one of his conditions has said mill logs, i.e., logs from the former mill site and other process man-made should be removed and transported to an approved site outside the 100 year floodplain? What you’re saying is the city floodplain administrator usually asks…requires that because you’ll have to get a permit from them too, if we approve this? What your plan is to ask for a variance from the portion of the city’s requirement because you prefer not to have to do that? Which is the same thing as saying…that’s why you’re asking us to just take that off of Ladd’s comments now, so that you don’t have to ask for that variance twice?

**Matt Barnes:** Correct.

**Marnie McClain:** I just want to talk for a second about #3. There are a couple sentences…Is it the entire condition you want stricken or is there just a part of it that you’re not agreeing with?

**Matt Barnes:** Just the part that he’s conditioning on continued maintenance and basically the continued removal of mill logs from the structure.

**Marnie McClain:** So what you want to do is retain the mill logs?

**Matt Barnes:** No. We want to allow the mill logs to remain in the river.

**Chair Landquist:** You just want to move them off to the side if they get in the way or something?

**Matt Barnes:** Exactly.

**Chair Landquist:** Or help send them downstream.

**Marnie McClain:** In other words what you want to just strike is the part…is really the last sentence.

**Matt Barnes:** Exactly, I believe so, I don’t have it right in from of me. Basically the section regarding the mill logs being removed from the 100 year floodplain.

**Marnie McClain:** Usually the Fish, Wildlife & Parks guys, they want all the wood to stay, so I’m pretty sure he wouldn’t object to that.

**Matt Barnes:** Wade made the statement that that was going to be a condition of the floodplain permit, which is where we would address that condition.
**Chair Landquist:** Why does the city do that, do you know?

**Matt Barnes:** It’s the Floodplain Administrators interpretation of the regulation. I don’t have that regulation in front of me but it says something to that effect that they interpreted it that any logs that require mechanical intervention should be removed from the 100 year floodplain.

**Marnie McClain:** It’s an area where Fish, Wildlife & Parks and the Floodplain Administrators go back and forth because in their efforts each to carry out their own responsibilities, they come up with different answers about how it should be handled.

**Chair Landquist:** I’m having problems with the log mills. If the log mills up there in Bonner, they rise with high and sink back down and stay in kind of the same general area, that’d be nice but they’re not. They floating downstream during high water and they are creating problems for other people and I have a problem with something that was cleaned up and all this money was spent on and if we can’t contain those problem logs in that area and continue to clean them up in that area where they came from, I don’t think that we should be allowing them to be shoved down somebody else’s throat by allowing them to float downstream. This is one of the conditions on Ladd’s conditions that I’m not inclined to move on; I like the fact that he put that there.

**Molly Skorpik:** The reason we want to leave this with the City Council, we have to go in front of them for this variance and it’s not too different from Missoula Irrigation District with their log grade. We went in front of City Council a few years ago went the same process. Essentially, come to find out there’s a lot of different opinions on what should happen with the logs and what we’re trying to avoid is if there’s a log grate put up and there’s a big log jam in the high water, you’ll have water backing up. The district wants to go over there and tap the logs along so they continue to pass downstream if they get hung up. What they don’t want to have is the high cost and public nuisance and risk of transporting the logs through the park system. We did meet with city parks and they have a high level of concern with a lot of traffic increase...increased traffic on their trail. I think what we’d like to do is leave it as a city issue since it’s a city regulation and take up that battle, if you will, with them. There is a precedent with Missoula Irrigation District; they did get a variance through city council through the same process to help pass those logs through when they get hung up. I think Orchard Homes is concerned about taking the onus of having to deal with all those logs through a high traffic area.

**Chair Landquist:** I’ve seen the effects of those logs going downstream to the Orchard Homes, Target Range area. I’ve even seen them as far down as the Frenchtown area on rancher’s properties raising havoc. As soon as those logs end up near the shore, wherever they end up, if they’re a problem there that’s where they should be dealt with. I’m not inclined to just shove them back on and say ship ahoy and make them someone’s problem ~ I have problems with that.

**Commissioner Carey:** For me, since it is a city issue and it will be dealt with one way or another through that process, I’m comfortable with the recommendation we have.

**Chair Landquist:** That’s just it, I’m concerned that the city’s just gonna turn around and say; yeah okay just shove it down and then it becomes somebody in the county’s problem so no. We’re gonna have to agree to disagree on this one and maybe we can’t make a decision today because Commissioner Curtiss isn’t here. For me this is a sticky issue.

**Marnie McClain:** I respect your opinion so thank you for that. The log grade itself will be deflecting those logs off the site regardless. What we’re looking at is that situation where if
something does get hung up on it, to helping it still deflect. So the intent of the log grade is to deflect the logs off the structure and a mechanical deflection would help accomplish that.

**Chair Landquist:** If a log grate can do its job all on its own, then let it do its job but if it needs human intervention with a problem log then I’m not in favor in shipping it downstream to let it be somebody else’s problem. I live in the country, I have two irrigation ditches; ones down defunct that run through my problem. When junk gets cleared up, you don’t send it down to your downstream neighbor; you take it out on site. It’s the lay of the law and the responsibility of the irrigation ditch. I understand that this irrigation ditch serves a lot of good Ag operations and I want it to continue to serve those Ag operations but I’m not in favor of sending problem material downstream via our river system to other people to create debris jams and possible floods to other areas.

**Marnie McClain:** We do have the two team member reports and so Missoula County has adopted administrative rules for the 310 and it’s Rule 13 that identifies for you what things you have to consider in making the determination about whether or not the project should be approved. If you look at the team member reports it just goes down the list of elements and the findings for you based on their inspection and expertise about what the impacts are. Then they both made recommendation for you, both Greg and Lad, which are attached to the team member reports. Your options are to move to approve the application as its proposed and that would mean it would not be attaching any conditions. You could move to approve the application, with modifications, what that means is your approving it subject to conditions as recommended by the team member reports. You can move to deny the application and even move to table it.

**Chair Landquist:** I’m okay with approving it with the two conditions from Ladnotech and from Greg Robertson but I’m not inclined to make any other additional conditions. If that means that we approve it and you take it to the city and you get that little things waved and have to bring it back for maybe when there’s an opportunity and three Commissioners here and I get overturned on this, there’s always that opportunity for you.

**Commissioner Carey:** Did you just change your vote on this?

**Chair Landquist:** No. I’m in favor of approving it based on the conditions that the team members have lined out here.

**Commissioner Carey:** How’s that different from the discussion we were having?

**Chair Landquist:** Take out this part of Lad’s thing knowing that this is the part they’re also going to ask for a variance from the city. This is similar to what the city’s floodplain will require of them to do. So I’m saying as is, I would approve it and I’d even make the motion to approve it and to include the conditions that the two team members added to the approval and let it be that way.

**Molly Skorpik:** Is another option to even consider if this is jurisdictional with a 310 process given that DNRC has determined that the segment that this is considered canal and not river. We didn’t want to go there because we want to do the right thing and get your input, but in light of the issue with the difference of opinion on the one condition, perhaps it’s worthwhile even considering that?

**Chair Landquist:** So that would mean you’d be withdrawing it? But you still have to get the 310 permit.

**Marnie McClain:** But what they’re saying is they don’t think they need a 310 permit because they think is not activity on the bed or bank of the perennial stream. As we discussed before stream
permitting is complex, there are multiple agencies with responsibilities for making decisions about a single project. What the DNRC decides about the applicability of their trust responsibilities and how they identify the resource doesn’t mean we can adopt the same look when we apply our responsibilities, which is the 310 law. The other thing is that the Orchard Homes Ditch Company has in the past, at least twice since 2000, applied for 310 permits to do work on this head gate structure. So when we talked about it earlier, about whether not it was or wasn’t, if we go the route of saying they don’t think it is, we think it is, we have to go into a fact finding process – that’s very complicated. If I say the words Mitchell slue, that’s what Mitchell slue was about is do you or don’t you have jurisdiction, is this or is this not something that…. Yes we have a difficult issue here with sorting out this condition but it’s a much more difficult process, which we can go through if we need to, to decide the question of jurisdiction.

Molly Skorpik: I think we’re interested in moving ahead with the project schedule so we’ll go with your recommendations. If we should get a variance through the city Council then we’ll come back with some additional data and re-approach the County Commissioners.

Marnie McClain: We can do that legally.

Executive Session
Chair Landquist made motion that the Board of County Commissioners approve the application with the modifications incorporating the conditions contained in the team member reports. Commissioner Carey second the motion. The motion carried a vote of 2-0.

8. HEARING
a. Missoula County Subdivision Regulations – Agricultural Covenant Lifting Requirements
Tim Worley gave staff report. Before you this afternoon is a recommendation to amend Section 8.2.3.3 of the Subdivision Regulations, covering Agricultural exemptions. State law and the Subdivision Regulations allow for the creation of Agricultural lots as a subdivision exemption. As part of exemption approval, the applicant enters into covenant running with the land that can only be revoked by mutual consent of the governing body and the property owner. The covenant requires that the land will be used exclusively for agriculture. The counties handled the lifting of Ag covenants differently; Flathead County and Yellowstone County do not appear to have lifting criteria beyond what is sited in State Law. In Gallatin County a change of use outside of agriculture subjects the division to their subdivision regulations. Ravalli County and Cascade County operate similar to Missoula County. The applicant may either aggregate lots to create what existed before the Ag lot creation, or the applicant is required to go through subdivision review. It is come to the attention of the Planning Office that lots exist, created through the agricultural exemptions that are in public ownership. Some of these lots do not have an explicit agricultural use, they're merely vacant. Others have intended uses that are decidedly nonagricultural. Lot aggregation for some of these ownerships is not possible. Subdivision review involves a public hearing regarding impacts of a lot division or divisions. Residential, commercial or industrial impacts are usually assumed. In the case of the small number of publicly owned agricultural lots, intended uses don’t fit into the typical use and impacts categories. One public entity has an immediate need to remove an agricultural covenant on a parcel under their ownership. This is a small public school that intends to use the property in question as an athletic field. Other publicly owned parcels created through agricultural exemption have been recently identified as well. The no immediate need for the lifting of agricultural covenants has been identified for these parcels; it appears likely that one or more of them may include a future use not allowed by the current agriculture covenant. Planning Board heard this request at their December 3, 2013 hearing and the Board discussed.
the possibility of a more narrow definition of public. They also considered some means of disclosing the public purpose behind a lifting. For instance, if a public entity wanted to lift an agricultural covenant to construct a community hall, that intent should be documented whenever the property was sold or transferred in the future. Planning Board also recommends language requiring a parcel ever use for agriculture or presently in an agricultural use to go through lot aggregation or subdivision review, as is presently required for these agricultural covenant lifting’s. Planning Board also added language restricting the intended uses following the covenant lifting to be nonresidential, noncommercial and nonindustrial. The Board of County Commissioners should be aware that it cannot be disproven that the school in question desiring to lift the agricultural covenant has been in uses other than agriculture for its history. Based on the limited number of publicly owned parcels created through agricultural exemption and the limited number of parcels requiring the agricultural covenant lifting, staff and Planning Board recommend amending the subdivision regulations to allow the lifting of agricultural covenants without subdivision review, but only for public entities seeking to use the parcel in question for public purposes. The content of the recommendations can be found on the very last page of documents attached to your Request for Commission Action (RCA). This is exhibit A of the Resolution adopting amendments to section 8.2.3.3. Again, staff’s recommendations are in single underline and strike through and Planning Board’s recommendations are in double underline.

James McCubbin: I recommend against adding the language proposed by the Planning Board. It’s the double underline, so both the language they inserted that would be new, subsection 3A. As well as the language that they’re proposing to add to the original staff proposal in new subsection C. The reason for this is…I think maybe one thing that the Planning Board didn’t consciously acknowledge so much, I didn’t attend the Planning Board Hearing on this but I did review their minutes. I think some critical language here is in the first part of 3 and this is the Board of County Commissioners may in its discretion allow lifting of Ag covenants under these circumstances. This is always going to be a discretionary decision by the Board of County Commissioners. As Tim explained, the idea here is to add in another exception from the requirement of going through subdivision, formal subdivision review when we’ve got government ownership and that government ownership wants to sue the parcel for public purposes but those public purposes aren’t necessarily Ag purposes anymore so the Ag covenant isn’t working. As Tim noted also, there’s only a few parcels that we’re aware of…there’s probably…actually there’s undoubtedly other parcels out there that Tim and I aren’t consciously aware of at this time. There seem to have been kind of a series of parcels over time under prior staff, prior Deputy County Attorneys believing that the agricultural covenant was the best tool to create some basically government use parcels. Now that we’ve got more formal building permits and things like that, somebody comes in a government entity comes in for a building permit to do some kind of a building on the parcel that looks to be totally appropriate for the public use but we have to turn down the building permit because we figured out; oops, it’s an Ag parcel and what you’re proposing to do isn’t Ag. That’s essentially the situation that aroused with the Potomac School. The reasons why I’m recommending taking out the Planning Board double underlined language is; first of all, the language under a) the parcel is not agricultural land, and has never been in agricultural use, and – particularly the second clause, especially if you consider that timber industry is agriculture, what part of Missoula County was never agricultural? Arguable a 100% of the County was at some point agricultural use. I think that just adds a whole level of restriction that kind of defeats the purpose of having these two exceptions to requiring subdivision review. The way that Planning Board drafted that, with the word “and” after, that indicates to me that they intended to have that apply to both b and c. So the thing where you restore the original parcel, it’s putting

Public Comment
Tim Johnson, Principal Potomac School: We want to do our due diligent to the county; we also want to support the school.

Executive Session
Commissioner Carey made motion that the Board of County Commissioners not accept Planning Boards recommendation but to approve staffs proposed amendments to Missoula County Subdivision Regulations Section 8.2.3 be adopted by the Missoula Board of County Commissioners.

b. Resolution of Intent to Adopt the Missoula County Growth Policy Profile Update (Chapter 2)
Nancy Heil: Lewis will be providing the main part of the staff report today. Before he did that I wanted to acknowledge that there was a bit of a snafu in the distribution of your briefing packets, in that you didn’t receive all of your attachments until yesterday. So if the Commissioners feel they haven’t had enough time to review and consider the materials, staff recommends that you could proceed with the public hearing today and then if you find you don’t feel ready to make a decision, you could continue your decision till another meeting. I’ve talked with Patty and the availability of your January 8th meeting is there, so I just wanted to offer that as an option as you move through your deliberations and considerations today.

Commissioner Carey: Before I continue on with the public hearing, I would like to extend my apologies to the county Commissioners this afternoon about my misunderstanding of the distribution. I had a small breakdown in my misunderstanding of the distribution of the materials to you. One again, I would like to extend my apologies to the Commission for my misunderstanding. I would like to continue on with the public hearing and thank the County Commissioners for scheduling the public hearing today. I’m here today to provide a staff report for the Missoula County Growth Policy Profile Chapter 2 Update. The purpose of this project is that the Missoula County Growth Policy, there is an update; the law is permitted every 5 years. If it meets two criteria there are ten criteria that are listed in the Growth Policy and these two criteria are changes in existing conditions and trends and that it improves growth policy. In the Request for Commission Action (RCA), in the staff report there is a larger explanation of the findings and facts and conclusions of these criteria for the Commissioners to read and consider. In that staff report, the staff did find that this project did meet two of these criteria; that the existing conditions and trends in the Chapter 2. This data has changed since the last update and it also improves the growth policy, the readability for the public. The Chapter 2 of the Missoula County Growth Policy, it includes an inventory of existing conditions and projected trends and it also provides a background information for the goals and implementations and that’s a separate section of the Missoula County Growth Policy and those goals and objectives and help achieve these policies that are also listed in the Missoula County Growth Policy. These proposed changes today that I’ll run through are factual updates only and it doesn’t make any changes to any other chapters within the Missoula Growth Policy, it’s strictly limited to Chapter 2.
Lewis showed a PPT presentation of the general overview of some of the material that’s within the sections of the Growth Policy, Chapter 2.
We did do a substantial amount of public involvement; we made a good faith effort to reach as many public, private and individuals as possible. We sent out a comment request on November 6, 2013 with a deadline of November 15 for comments. We did send out a notice in the community planning service community and planning services newsletter on November 12 and that goes out to about over 600 organizations and individuals on this newsletter email list. We did do a public hearing with the Missoula Consolidated Planning Board on December 3, 2013, they voted 6-1 to recommend adoption of the updated Chapter 2 with amendments and then
those showed in Attachment E as described in the staff report. (Lewis went through public comment for attachment E)

Planning Board revisions again at the December 3 Public Hearing; the Planning Board reviewed the material and provided the following recommendations and they provided 10 to the County Commissioners for their consideration. They would the changes showed in Attachment E that was just described to the Commissioners. The Clark Fork Coalition presented recommendations on December 3, which they took up at their hearing that same day. The Clark Fork Coalition comments are also included in your RCA, attachment 5. They recommended that the Clark Fork Coalition comments be included in this draft update as appropriate. They also requested some information about irrigation ditches and their viability within the Missoula County in terms of making agriculture viable within Missoula County. They wanted latest data for Table 3, within Chapter 2 to be updated. That table 3, the most recent data is 2007 and that actually is the most recent data due to the Government shutdown. Another 3-9 are primarily focused on agriculture #5 there was just a more clarification from CFAC, the Community Food and Agricultural Coalition, they asked to have some information included that discussed about the food production capacity within Missoula County and so staff took some material that they provided and included that language within Chapter 2; you can see some of that material that staff worked on in attachment 2, the planning board changes within the RCA, it also add growth and farming activities sentences to the agricultural section.

That was the recommendations that the Planning Board provided for the County Commissioners to consider based on their recommendation. Since the Planning Board Hearing, staff has received some additional comments on December 10 and 12. We received those from the Confederated Salish and Kootenai Tribes; these comments are is to update maps 23, 25, 26 and 27, to include big game, grizzly bear and bull trout and links information within the reservation boundaries, within Missoula County. The reservation portion of those maps the data are pretty sparse so the tribes did provide us that information so that's the recommendation for these maps. Also that they asked to include current Tribal landowner figures within Tables 2 and 1, and a Tribal land allotment explanation that basically explains consequences of the allotment that the tribes experienced in 1908 and then during the 1920's. Staff did review this material and does concur with the one exception of Table 2, they asked to have the entire acreage tribal owned land within Missoula County but Table 2 actually shows the taxable land within Missoula County and some tribal land is actually taxable, as they are buying more of the reservation back. Until they get it into a trust status, it still is taxable. We did get this information from the Montana Department of Revenue so the staff does not recommend including the entire acreage of the Flathead Reservation lands within the boundaries of the reservation but only include that taxable portion of the land within the reservation, within the county.

Chair Landquist: But once that information is available or is changed then it will be easy enough to add that in. I’m really glad that the Confederated Salish and Kootenai Tribes weighted in on this and suggested those changes.

Lewis YellowRobe: Yes we are too because we have a data gap, so to say. I think that this information sharing was very helpful for staff and then also for the Commissioners and the public.

The staff recommendation that is provided for the Missoula Board of County Commissioners to consider is to adopt a Resolution of Intent to adopt the Missoula County Growth Policy Profile, Chapter 2 Update as amended by the Missoula Consolidated Planning Board with additional amendments based on the Findings of Fact and Conclusions of Law that are described in the Staff Report within the RCA.

Public Comment
John Kellogg, Professional Consultants: I apologize for late comments because this only came onto my radar fairly recently, I think I must have slipped off of Lewis’ email listing. I would like to hit some high points that I suggest in comments on the proposed growth policy. On page 35 under natural resources; the point is being made about concern over development on steep slopes and things but half way down on that page it states; county subdivision regulations require that roads and driveways be constructed on areas with slopes of 10% or less. I believe that slightly misstates the requirements that the roads need to be at a grade of 10% or less but they can actually be built on ground that goes up to 25% without a variance. So maybe a clarification there would be in order. I appreciate that CFAC has already commented on Table 13, where the listing is; Missoula County soils of agricultural importance. Within that table the initial proposal was 100% of the soils within that table but I think in the revised recommendation that has been incorporated here by staff it correctly then reverses the...interprets the acreage in light of the total acreage within Missoula County so that the percentage is then of prime farmland that such dropped down relative to the 1.6 million acres in the county then. So I’m glad that that has been clarified but I also think that it’s important to note that out of the total acreage of the of county over half of it is in public ownership, essentially undevelopable land. And so when we’re talking land of agricultural importance that is going to be reviewed on the basis of development proposals that in turn is going to be on the basis of the private land within the county. So if you’re relating the agricultural important soils to the total land area within the county, as CFAC has recommended and incorporated here, is less than 8% of the total. But if you’re talking about the developable land, the private land within the county, it increases the percentage of land to probably 30-40% of the valleys that are private land within the county. So I think it’s important to maybe make a statement that reflects the potential greater impact that that agricultural land is going to have on the potential development of private land in the county. Staff has done a fantastic job of incorporating an enormous amount of data from a variety of sources here and I’d like to briefly touch on some of the maps that had been proposed. Some as Lewis has stated are reiteration of maps that were in the 2005 growth policy, particularly the big game winter range, which is basically taking from FWP’s maps. There’s have been some changes over the years of how FWP’s maps of big game winter range, in the past they would outline as precisely as possible in these maps where in their estimation big game winter range occurs. In the latest maps that have come from FWP’s it a blockier type of map because what they’ve indicated is somewhere within that section there may be big game winter range, or there is big game winter range from their data. So the change then that’s happen from the 2005 map with the amorphous shapes to the 2013 map that you have proposed here is that it’s turned into a blockier type of map incorporating a lot more land. So that would indicate that there’s a lot of land on that map that is not big game winter range but is a reflection of the fact that somewhere within that area there is big game winter range. For instance, we’re standing in big game winter range right now, on the basis of this map. I think it would be important to include a note on the map similar to what was on the 2005 growth policy map, which states; this map is intended as an illustration of areas within the county that may provide big game winter range land. This general overview is not intended for properties specific range identification. What that emphasizes is the fact that this is an estimation of where big game winter range could occur and so I think that would help clarify it.

James McCubbin: Commissioners I’m just going to quickly follow-up on that last comment. That’s consistent with language that was presented last night by different staff to the Planning Board about the PLACE project maps, in terms of the big blocky. The PLACE project maps are consistent with that too so I’m noting for Lewis that he could probably use this same language we’re using on the PLACE project.

Ruth Lincoln, Missoula Organization of Realtors: From what it sounds like the Commissioners also haven’t had a chance to review the final document as well and I I was
basically coming here today to ask for a little bit of additional time. Like John, this was just recently brought to our radar and we are working on some comments very, very soon. We’d like the opportunity to comment. I do feel like the majority of it is definitely factually based and we want to make sure that is consistent in any of the amendments that were made, and of course, follow-up on some of the comments that John had regarding the maps and making sure that those aren’t being used. Especially if you look at like the wildland urban interface, all of Missoula County again is within that particular…not Missoula County but the City of Missoula is within that as well. I think there could be some argument against that. In addition to we probably have some really fantastic data we might be able to add regarding housing and some of that migration information that we get every year during out housing report. We look forward to commenting, I really do hope we have the opportunity to move this forward to another meeting and I’ll get you some comments at that time.

Chair Landquist: Does the January 8th date work for you or are you thinking you need more time than that with the Holidays upon us and stuff?

Ruth Lincoln: We will have one meeting in between now and then so if Lewis feels like that would be enough time, we probably wouldn’t be able to get them comments until the afternoon of the 6th, which I know would be pretty short timeline for you guys but…more time would be appreciated but we could definitely work within it just based on what works for you guys.

Commissioner Carey: We don’t have an immediate deadline.

Chair Landquist: No I just figured if she knew for sure she was going to need way more time, we don’t for sure if we’re not going to need way more time. This is a lot to digest so right now we can continue to work under the premises of the January 8th but with Commissioner Curtiss having a family emergency and stuff, we just might need more time.

Annie Houser, CFAC: I’m mostly just here to watch the process and we’re really pleased that you guys are working on the Growth Policy and we’re really excited for the rest of the process and I think this is a really great Chapter 2.

Chair Landquist: We’ve already sort of come to the conclusion that we’re going to revisit this so do we leave it open? We don’t close it if we’re going to revisit it, do we? Or do we close it for the time being and then reopen it or…?—?

James McCubbin: You could do it either way. You’re going to accept public comment at the other meeting regardless. My recommendation is you either close the formal public hearing or continue it to a date certain. The reason for that recommendation is so we avoid having to go through the formal re-noticing process for public hearing; it just saves a little public expense that way. So if you continue it to January 8th at 1:30pm and just announce that now we won’t have to re-notice it, that doesn’t mean you have to make a decision that day.

Commissioner Carey: Or that we even have to have it that day.

James McCubbin: Well if you continue it to that date for certain then you’ll at least need to meet to continue it again. So it will need to be on the agenda. Or you could just close the hearing now with the understanding that of course anytime the Board takes this up as an agenda item, there certainly will be public comment allowed, so either way.
Chair Landquist: Okay, well I prefer not to close the hearing because I want people to feel like they have more time without panicking, especially over the Holiday so we'll leave it open and tentatively plan to revisit it on January 8th. But I would like...we may not necessarily be required by law, and I realize the expense to the County and essentially county taxpayers of re-advertising it and that the legal notices but I would like it if staff could revisit there email lists that they use to put these notices out and resend it to those folks. I did notice that FWP had a comment in there that they hadn’t had a chance to finish reviewing it. So I’d like to at least get the word out on the electronic street, so to speak – the global radar that they still have time to revisit it and comments on it is appreciated and welcomed and accepted. So with that, we'll leave it at that.

Executive Session
We’ll leave this open and revisit on January 8th at 1:30. I'll ask staff to resend out notice and to email contacts.

9. OTHER BUSINESS
None

10. RECESS
Being no further business to come before the Board the Commissioners are in recess at 3:44.