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

**Staff Present:** Shyra Scott, Clerk & Recorders Office, Vickie Zeier, Clerk & Recorder, Steve Niday, Public Works, Jamie Erbacher, CAPS, Greg Robertson, Public Works Director, Marnie McClain, Deputy County Attorney 

2. PLEDGE OF ALLEGIANCE 

3. PUBLIC ANNOUNCEMENTS  
Chair Landquist reminded everyone that Fort Missoula has a new exhibit this season; 150 years Missoula. 

4. PUBLIC COMMENT  
None 

5. ROUTINE ADMINISTRATIVE ACTIONS  
Current Claims List ($6,831,470.17) 

**Executive Session**  
Commissioner Carey made motion that the Board of County Commissioners approve the Current Claims List in the amount of $6,831,470.17. Commissioner Curtiss second the motion. The motion carried a vote of 3-0. 

6. HEARING  
Petition to Abandon Public Right-of-Way (Mullan Road, King Ranch)
Shyra Scott gave update; we received a petition on October 15, 2013 sent in by Ockler Cornerstone to abandoned a portion of Mullan Road, laying outside the 60 feet right-of-way, identified on COS 4772. At least 10 or more free holders within the Missoula County Road District have signed the petition. All lands effective by proposed action have been listed and all effected owners have signed the petition.

Grant Parker, Attorney: I’m here helping the Ockler family, Ockler Cornerstone has this. This is an abandonment petition that all started with the Frenchtown bike path that is going on there. When they designed the bike path it turned out that the Ockler property, which is the old King Ranch Golf Ranch, it cleared some fences that were in the 60 foot right-of-way and the county’s going to claim the 60 foot right-of-way, we’re in there. Some of the fences had to be moved to accommodate that bike path. What the Ockler family doesn’t want to do is to move it and then sometime down the road have to move it again, just like to get some clarity in it. We coordinated the Surveyors Office and Public Works and believe that it’s a non-controversial request but just to clarify; the 60 foot right-of-way, which is what was presented on a bike path and that’s what the county’s generally thinking would be the right-of-way and anything outside of that would be abandoned. Just so that sometime in the future the county may not come back and have them move the fence again, we’re just trying to provide some clarity. Hopefully this is reasonable, we have done a lot of coordination and it’s not going to be controversial but with that I’ll open up for any questions.

Commissioner Curtiss: I know in the last year or so it came to light that the right-of-way for Mullan Road was probably 66 feet. So that’s what we’re doing is taking the 6 foot piece off?

Grant Parker: It’s more complicated than that because if the county is going to say it was 66 foot back in late 1800’s, where was the road then? Basically that creates a lot of uncertainty – we just want some clarity. We’re not saying anything within the 60 foot right-of-way that was in the survey and was presented to all the landowners; anything outside of that there might be questions that we’re trying to clear up.

Chad Ockler, Landowner: What I just heard Grant is basically our stance, we don’t know, we’re not trying to get anything that isn’t...we’re not trying to be contentious about anything just give us exactly where it needs to be and that’s what we’ll do.

Commissioner Curtiss: So just to be clear; we open the hearing today, then the law requires that one Commissioner and someone from Public Works actually goes out and does a site visit, so we’ll set that up. Then we come back here to make the decision.

Steve Niday: I wanted to thank the King Ranch for cooperating with Missoula County to move back the fences to accommodate the walkway. I know that was some hardship on them and there was some disagreement, but they complied beautifully. This is an effort to just address that extra 6 feet that came to light recently on the right-of-way, so that we don’t have contentious issues down the road. There is some difficulty in proving the exact location of the right-of-way and to alleviate potential legal problems. Our attorney staff has recommended that through Missoula County, we approach this as a 60 foot right-of-way and not try to assert our rights to that extra 6 feet. In return, hopefully the adjacent land
owners will go along with the location that we propose, which is where the road is. I’m here basically to act as the road viewer and set up the appointment.

Public Comment
None

Site visit is scheduled for Monday, November 18th at 11:00 a.m. with Chair Landquist and Steve Niday.

Hearing is recessed until next Wednesday, November 20, 2013.

7. HEARING (Planning & Zoning Commission)
Zoning District #8 Variance Request – North Placid Lake Road

Jamie Erbacher gave report and showed PPT Presentation. The property is located on lot 3 of Beavertail Villa Sites, lots 1-6 on Placid Lake. In summary; the applicants are represented by Allen McCormick of GLR ~ Allen can’t actually be here today but Jen Clary is here from Encompass Design. The property is zoned citizen initiated zoning district #8A. 8A was created in 2008 as an amendment to Zoning District 8. One of the major revisions that was made at that time was to include a 50 foot setback measured horizontally from the high water line on Placid Lake. So what the applicant is requesting to vary from is that 50 foot setback from the high water line, they’re requesting to reduce that down to 32 feet. Given that the site plan was so rough, we have recommended a condition, if approved, that the applicant stake out where the high water mark is. That high water mark has been determined by the county surveyor’s office, so we would want that done by a professional land surveyor and then also have the proposed building location staked out as well. Prior to construction and permit approval, the planning office would go out and verify that location. The landowners have sought approval or an okay from neighboring property owners ~ 4 of them, so those were included in the applicant packet. In addition, there was one landowner that submitted an additional letter that I inadvertently forgot to include in your packets. I’ll pass that to you now and I’ll read it into the record because it was not included earlier. Jamie read letter:
I'm writing in regards to the above described variance request. I am the manager of the LLC that owns the lot to the west of the Luke’s property. My wife Molly is member and owner of the LLC that owns the property. We are both in favor of granting the variance generally for all of the reasons articulated by Mr. Allen McCormick and Mr. Tom Bodett in their letters that accompanied the request. It is my opinion that while Resolution 2008-0143 was well intended, the imposition of the 50 foot setback from Placid Lake was over kill, especially when the pre-existence of the Shoreline Protection Act which imposed a 25 foot setback. Most of Placid Lake’s buildable lots have been built on. The majority of the lots that have not been built on are situation on the south shore of the lake and are subject to covenants and require a 50 foot setback. Thus, the county imposed the 50 foot setback restrictions on a small number of undeveloped lots not on the south shore. The train of the lots not on the south shore of the lake is fairly flat and the lots are fairly steep, thus the 50 foot setback imposed on the covenants makes good sense. However, the train of the lots on the north shore of the lake, in many cases, is steep and the lots are generally deep. The Lukes’ lot fits the foregoing description. Thus, in my opinion, the county imposed a burden on the Lukes lot; the 50 foot setback without understanding the burden required
the setback that would impose on the landowner. I encourage you to grant the request for the variance.

Regards, John M. Bennett, Manager, Dunlop Cabin, LLC and Molly D. Bennett, Member, Dunlop Cabin LLC.

**Commissioner Curtiss:** I wanted to state on the record that the county imposed that at the request of the homeowners because its citizen initiated zoning. It wasn’t just something that we pulled out of our hat to do.

**Dick Ainsworth:** The 50 foot setback was not something we requested, it was something staff suggested. The homeowners did not request it.

**Jamie Erbacher:** There is one existing structure that I believe is on this property and maybe Mr. Lukes could clarify that. It’s just a little shed like structure (looking at PPT pictures).

Based on the staff report, findings of fact, conclusions of law, we are recommending approval of this. We are also recommending again, just because of the rough site plan, that all construction including soffits or attached decks be located 32 feet back, again that’s measured horizontally from the high water line.

**Bob Lukes:** Allen McCormick could not be here today, he told me to show up and to say that I’ve reviewed the recommendations and conditions and I agree with them, I think they’re just fine. We do also have Jen Clary, the architect we’re working with here today if anybody had any questions, she’s also been up to the property with us.

**Chair Landquist:** You’re good with the conditions that staff was recommending?

**Bob Lukes:** Yes.

**Commissioner Curtiss:** The easement that’s shown on your property that you call a driveway/parking easement, that’s an odd thing to put an easement on, I’m sure it was on there when you bought but, you can’t build within that? It seems funny, it seems like it’s your own parking and driving so I don’t understand why it’s on there.

**Bob Lukes:** It’s odd and I’ll explain my understanding of that. I think what is now lots 3, 4, 5 and I think there’s even one that’s off of the copy that I have here, lot 6. Those at one time were all jointly owned, I can’t remember the family name, but I think what they decided to do is that they were going to split it into 4 lots and give one to each one of their kids. So that’s how this whole subdivision I think came about. And it is quite odd because if you look at the plat map, you can see also what they did too is on lot 4, they created this septic easement that goes up lot 4, across the top of lot 3 and into lot 2. That was designed, I think, so that multiple...so that 3, 4 and 5 could also use that easement to have their septic up on lot 2. They were planning, I think, for the whole family to where the septic was going to be and in doing that they also tried to provide for lot 4 by giving them some ability to park on lot 3. I think frankly it’s kind of a turnaround spot there because the road dead ends and so it is listed as a parking easement. My understanding is that we have the right to park there, the people from lot 4 have the right to park there but we don’t have the right to build there because you have to give them access to park there. That's
why our structure is pushed off to the side to avoid that but I guess that’s my understanding of what that is and how it came to be.

**Commissioner Curtiss:** So there’s not an existing septic in that easement that’s shown across your lot up high?

**Bob Lukes:** Okay so that’s a different question. I believe that lot 4 and lot 5, not sure about that, but at least lot 4 has there septic going up that easement and across the top of ours. Whether lot 5 does too as well, I don’t know. We have worked with the county to identify a septic location on the upper portion of our own lots, so we’re not going to have to be using that, we’re gonna be able to put it in on our own lot.

**Commissioner Curtiss:** Okay, I know that was DEQ and the Health Departments job but I wondered if you were having trouble situating your house where you were going to put your septic ~ so you answered that. The other questions I have is; the footprint of your house seems pretty big, is there a reason why you’re not gonna just go 2-story? You’re going to have this 32 by 56 foot house.

**Bob Lukes:** Well, in fact it’s changed a little bit since we submitted this. Jen Clary and we had Tom Beaudette up there as well, what we were trying to do and I think what the application says is we were trying to create a footprint to say we’re gonna build within that footprint. I think now what they have recommended because of that hill is actually a smaller structure that would be maybe 30 x 40 but it would have a daylight basement, so it’s pushed into the hillside a little bit and then with a small second level on top. We really do want just a cabin up there, we don’t want some big place up there, and we don’t need that.

**Commissioner Curtiss:** My last question is; we didn’t receive any comments back from the HOA, I don’t know when the Homeowners Association meets, I know that Dick might, so nobody had any issues, I guess.

**Bob Lukes:** I didn’t hear anything.

**Dick Ainsworth:** I would echo what Mr. Lukes said. That driveway and parking easement following an existing cut that was in there and they wanted to use that for access and parking for all of those lots. I am also on the Board of Directors of the Cabin Owners Association and I talked with Tom Beards when I first got this, Tom is the new President of that Association. Tom sent the material that he got from Jamie out to the Board of Directors and I talked to Tom this morning and he got no response from any of them. So I don’t think the cabin owners have any concerns.

I have a couple questions; is your intention and I don’t know maybe Jen can answer this better…to have the main floor of the cabin be at about the elevation of that existing driveway that goes through there? When you mention a daylight basement are you thinking of cutting into the hill below that cut?

**Bob Lukes:** I think it’s going to sit on that flat zone and then go back a little bit into the hill.
Jen Clary with Encompass Design: Yes, it will be the basement level that will be right at that grade.

Dick Ainsworth: Okay so it would go up from there?

Jen Clary: Correct.

Dick Ainsworth: And the front of the cabin would be at about the edge of that so you’re not going closer to the lake than that cut we’re seeing?

Jen Clary: Correct.

Bob Lukes: And I think in fact, it would be back a few feet because we need a space to walk in front of it there, we don’t want to be walking on the slope.

Dick Ainsworth: And I think that site…and we’ve also got a family cabin that’s right across the bay from this that my Dad built in 1951, so I lived there my whole life pretty much. Probably the place you’re going to build will be perhaps even further back from the lake than a lot of the other cabins that are along there, those are all fairly close because that same steep topography follows along there for quite a ways and it’s difficult of course, in the past they didn’t have to get approval to build something but they had to be able to get to it. I think this fits in with what’s there already, from my perspective anyway. Looks there’s a big ponderosa right in front of that building site, I presume you’re going to try to save that?

Bob Lukes: That’s a big old swing tree so I don’t see any reason why we would take that out.

Dick Ainsworth: For what it’s worth, Placid Lake the elevation on that is controlled by a damn that belongs to the Home Owners Association, it fluctuates very little. I would guess vertically it fluctuates probably no more than a couple of feet from high to low. And with the steep slope here the difference horizontally would be a foot or two is all. The high water line isn’t going to climb up on this property very far.

Sylvia Wisenburger: From what I’ve seen, I think we should approve what it is they’re asking for because living on a lake that also has steep hillsides I can sympathize with the building situation you’re looking at.

Vickie Zeier made motion to approve this variance request subject to recommended conditions presented by Jamie. Greg Robertson seconds the motion.

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners accept the recommendations from the Planning and Zoning Commission. Commissioner Carey second the motion. The motion carries a vote of 3-0.
8. OTHER BUSINESS
   None

9. RECESS
   Being no further business to come before the Board the Commissioners are in recess at
   2:09.