

Missoula Board of County Commissioners

PUBLIC MEETING MINUTES COVER SHEET



THURSDAY, APRIL 22, 2021 – 2 PM

Virtual Meeting – Microsoft Teams

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Time stamps (in green) correspond to meeting recording above. Please click to the time stamps listed to view a particular item in the meeting.

ATTENDANCE:

Commissioners Present:

Chair Strohmaier
Commissioner Slotnick
Commissioner Vero

Staff Present:

Violet Plummer, Administrative Assistant, Commissioners' Office
Kyla Lehnerz, Administrative Assistant, Commissioners' Office
Tim Worley, Senior Planner, Community and Planning Services
Chris Lounsbury, Missoula County Chief Administrative Officer
Jeffrey Darrah, Supervisor, Animal Control
Jeanna Miller, Environmental Health Manager, Health Department
John Hart, Civil Deputy Attorney, Attorney's Office
Anna Conley, Chief Deputy Civil Attorney, Attorney's Office
Bailey Minnich, Planner, Community and Planning Services
Mallory Scharf, Public Health Policy Specialist, Health Department
Nicholas Zanetos, Planner, Community and Planning Services
Shannon Therriault, Environmental Health Director, Health Department
Ellen Leahy, Director, Health Department
Allison Franz, Communications Manager, Communications
Kylie Paul, Natural Resource Specialist, Community and Planning Services

1. **CALL TO ORDER** *[Time stamp – 00:06]*
2. **LAND ACKNOWLEDGEMENT** *[Time stamp – 00:27]*
Missoula County acknowledges that this event takes place in the aboriginal territories of the Salish and Kalispel people.
3. **PLEDGE OF ALLEGIANCE** *[Time stamp – 00:49]*
4. **PUBLIC ANNOUNCEMENTS** *[Time stamp – 01:17]*
 - a. [Proclamation: Volunteer Appreciation Month](#)

5. **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA** *[Time stamp – 06:54]*
[None]

6. **CURRENT CLAIMS LIST** *[Time stamp – 07:27]*

Claims received as of April 1, 2021 to April 13, 2021 by the Commissioners' Office total \$1,996,129.79.

7. **HEARINGS**

a. **Iverson Family Transfer** *[Time stamp – 09:15]*

Nick Zanetos, Planner, Community and Planning Services

Commissioner Vero made the motion that the board approve the Iverson Family Transfer.

Commissioner Slotnick seconded.

[Motion passed 3-0]

[Letter 2021-096 Mailed to: Leslie and Susan Iverson]

b. **Waldo Road & George Cates Boulevard Rural Zoning District – Final Resolution**

[Time stamp – 18:39]

Bailey Minnich, Planner, Community and Planning Services

Commissioner Slotnick made the motion that the request to adopt the Resolution to zone the Unzoned parcel to Waldo Rd & George Cates Boulevard Rural Zoning District be approved, subject to the recommended conditions of approval, based on the findings of fact contained in the staff report, public testimony, and written comment.

Commissioner Vero seconded.

[Motion passed 3-0]

[Resolution 2021-064. Book: 1054 Page:401]

c. **Emergency Ordinance Adopting Health Code** *[Time stamp – 30:18]*

Shannon Therriault, Director, Environmental Health

Commissioner Vero made the motion to adopt the emergency ordinance incorporating the Missoula City County Health Code and associated fees by reference to be in effect immediately for 90 days.

Commissioner Slotnick seconded.

[Motion passed 3-0]

[Resolution 2021-059; Ordinance 2021-001. Book: 1054 Page:402]

d. **Ordinance to Adopt Health Code – First Reading** *[Time stamp – 30:18]*

Shannon Therriault, Director, Environmental Health

Commissioner Slotnick made the motion that [the Board of County Commissioners] approve the first adoption of the ordinance incorporating the Missoula City County Health Code and associated fees by reference.

Commissioner Vero seconded.

[Motion passed 3-0]

[Resolution 2021-060; Ordinance 2021-002. Book: 1054 Page:404]

- e. **Review of New Information – McCauley Meadows Subdivision** *[Time stamp – 1:19:29]*
Tim Worley, Senior Planner, Community and Planning Services
- f. **McCauley Meadows Subdivision** *[Time stamp – 1:19:29]*
Tim Worley, Senior Planner, Community and Planning Services

Commissioner Vero made the motion that McCauley Meadows Subdivision be denied based on the findings of fact in the staff report.

Commissioner Slotnick seconded.

[Motion passed 3-0]

[Subdivision denied by commissioners.]

- 8. **OTHER BUSINESS** *[Time stamp – 3:23:54]*
[None]

9. ADJOURN

Chair Strohmaier – Called the meeting to adjourn at 5:24 p.m.

BCC Public Meeting April 22, 2021 – Transcription

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[00:01:11] So, public announcements, we have a proclamation to read today. This is Volunteer Appreciation Month, Commissioners Vero or Slotnick, would one of you be so kind as to read the proclamation?

[00:01:29] I'm happy to give it a shot. I think Juan read the last one, so I think I'm on for this one.

[00:01:35] Go, Josh.

[00:01:37] Thanks. That means you get the next one. Okay. "Whereas, volunteers are one of the county's greatest resources; and whereas, volunteers had to adapt to the changing needs of the community during the pandemic, and they showed their resilience and creativity in finding new ways to help and encourage others; and whereas, these volunteers prove our community with their dedication, willingness to share time and expertise and ability to meet community needs to make a lasting difference; and whereas, we wish to honor and recognize volunteers collectively and the many contributions they make that enhance Missoula County's quality of life. Now, therefore, we, John Engen, Mayor of the City of Missoula and the Missoula Board of County Commissioners in coordination with Missoula Aging Services do hereby proclaim the week of April 18 to the 24, 2021 as Volunteer Recognition Week, and we encourage all citizens to join us in recognition of our county's volunteers throughout this week and throughout the entire year.

[00:02:44] Thank you, Josh, and is there any one from Missoula Aging Services who would like to speak? No pressure.

[00:02:53] Volunteer Services Supervisor, Missoula Aging Services. Yeah, yeah. This is Laura. I am from Missoula Aging Services. I am the volunteer services supervisor here, and I hope you can hear me with my mask on okay?

[00:03:06] Yep, we can.

[00:03:07] Excellent. I just want to say to the commissioners and of course to the mayor, at Missoula Aging Services, we promote the independence, dignity and help of older adults and those who care for them, and as you are aware, the aging population continues to grow, and resources are limited in type and in funding. At Missoula Aging Services, we currently have 50 employees, yet because of our volunteers, we are able to meet the critical needs in our community. With over 700 volunteers, we were able to get things done this year in our community. Volunteers make the community a better place to live and to work. Thank you so much for recognizing our community volunteers and proclaiming this week as Volunteer Recognition Week, because they deserve it. Thank you so much.

[00:03:58] Thanks, Laura. We really appreciate that. Anyone else want to speak to this proclamation of Volunteer Appreciation Week? I think I said month to begin with, but--

[00:04:09] Earlier this morning I got to sit in on the Kiwanis volunteer appreciation and celebration of their Volunteers of the Year, the Lyle Heath Award, so shout out to Sentinel senior [00:04:22] Maddie Seltzer [00:04:23] and well, agent services' [00:04:26] Toby West; 84 [00:04:28] years old, a volunteer champion.

[00:04:29] Nice.

[00:04:33] So, we've got an 18-year-old and an 84-year-old?

[00:04:36] Yes.

[00:04:36] That's brilliant. That's super great.

[00:04:39] And while we have the opportunity, if folks don't know, there are a ton of volunteer opportunities with Missoula County to participate in boards, committees. We interviewed someone yesterday from Clinton who wanted to be on the fire district board out there, so check out our website. There are a ton of opportunities that you can avail yourself of. So, thank you, volunteers.

[00:05:03] And Dave, today is the first ever meeting of our Impact Fee Advisory Board that I'm very excited about. Long in coming.

[00:05:13] Fantastic. Well, the only other announcement I'd like to make is for any of you who have been following our proposed naming of the Higgins Avenue Bridge, as you know, the Higgins Avenue Bridge is being reconstructed as we speak, and both the City of Missoula and Missoula County thought this would be a fitting time to name a piece of significant infrastructure in the City of Missoula in recognition of the long friendship and partnership and collaboration and government relations with the Confederated Salish and Kootenay Tribes. So, this very morning, the Transportation Commission over in Helena adopted the name of the Higgins, what was generally known as the Higgins Avenue Bridge, we will now refer to it as the Bear Tracks Bridge in recognition of the Bear Tracks family as an important family in the tribal life here in Missoula Valley for generations upon generations, and also to reflect the fact that this is an opportunity for redemption by way of this an earlier version of this bridge and near this bridge was the path by which the Bitterroot Salish in 1891 were forcibly removed from the Bitterroot Valley to the Flathead Reservation, and in this sign of respect and recognition, we want to say that this place from time immemorial has been occupied by native peoples, and they are still among us today and are our friends and neighbors, and we're glad to do this.

[00:06:51] Great, well done.

[00:06:54] Any public comment on items not on the agenda? And folks, if you're not familiar with these sorts of meetings or this format, you will have a chance later on under public hearings to comment on any of the specific items that have already been noticed, but this is your chance to comment on anything that is not otherwise on the agenda, but within the purview and jurisdiction of the commission. Any public comment? Okay, seeing none.

[00:07:59] We have six public hearings, and the way we will work this is I will open each public hearing, the public hearing will begin with a staff report to be followed by comments from either the applicant or an applicant's representative, if that is germane to the the topic at hand. There will then be an opportunity for public comment that would be followed by questions from the commission, we'll then at some point have a motion. We'll have debate and then vote on the item. I would ask everyone, since we've got a long agenda today to try to be as succinct as possible, limit your comments to three minutes or less, try not to repeat the exact same thing that someone else says. Just know we have noted it, and we'll take that into consideration. Be respectful of one another, and you only get one bite at each apple, and by that, I mean you have one opportunity to comment on each of these items before us, and we don't want to get into back and forth of folks commenting multiple times or asking questions. Direct your comments to the chair, and we are off and running. I would like to open the first public hearing. This is the proposed Iverson family transfer. Nick, would you like to provide a staff report?

[00:09:21] Planner, Community and Planning Services. Yes, thank you very much, Commissioner Strohmaier. Let me go ahead and share my screen here, then we'll get going. Just want to confirm everyone can see my screen?

[00:09:36] Yes.

[00:09:37] Perfect. So, welcome. This is the Iverson family transfer. First, I'm going to start with some background in the project, so this--the location of the proposed transfer is about a quarter mile south of Highway 200 east and Potomac, Montana. The property is currently un-zoned. The growth policy document that covers the area is the 2002 Regional Land Use Guide. That guide designates this area as open and resource with a density of one dwelling per 40 acres under that category. It is also within the activity circle for Potomac. The circles are meant to be areas of

higher concentration development. Next, some further background, I know on Monday we asked about conservation easements in the area, so [on the screen] blue is any easements that are surrounding in the area. Yellow is the highlighted parcel. Next, we'll go into existing on-site conditions. So, the parcel is 13.55 acres in size. On site, there is one home that's occupied by the claimants. The address is 31580 Potomac Road. Then Susan and Leslie received this property in 2003 via a deed of trust. Next, we're going to go into the proposed conditions if the transfer were to be approved. The claimant's adult son, Justin, would receive Tract B2 at 6.45 acres, while the claimants would retain Tract B1. This does include their home. This new density would be one dwelling unit per 6.77 acres, and the exemption application states that these are to remain single family residential. The exemption application was sent out for agency comment. The only comment received was from the Missoula County Water Quality District, sorry. They noted that wells in the area do have--have seen elevated arsenic levels, and they do recommend testing for impacts to groundwater that would be done during sanitation review, but they will need a well permit regardless when they do go to drill a well. As with any family transfer request, we check for rebuttable presumptions and general evasion criteria, so I'm going to go through any points that were triggered during this review. Rebuttable presumption number eight has to do with what the proposed division is on a tract that has previously been created through the use of a family transfer exemption. This is applicable. A member of the Iverson family created the parent tract on June 7, 1993, using the family transfer exemption. This can be shown in COS 4239. Getting into the general evasion criteria, general evasion criteria number 14 was also triggered here. Like we said, the density, if approved, will be one dwelling unit per 6.7 acres. So, this would exceed the one per 40 that the 2002 land use guide does recommend. It is also currently already not in compatibility with that land use document, too, and just one more note about the activity circle being areas of concentrated development. General evasion criteria number eight: this has to do with impacts that would come up during subdivision review, and we would note here that the high levels of arsenic would be mitigated during sanitation review and subdivision. So now, I'm going to go over the family transfer questions with the claimant. Can I have the--are the claimants in line here? I think I saw them, Leslie and Susan?

[00:14:02] Leslie or Susan?

[00:14:05] Okay, yes, I'm Les, my wife, Sue, is here. Here we are.

[00:14:10] Awesome. Thank you. Thank you. I just did that first part asking for your name for the record, so I'm going to just ask you a series of questions here that we ask for every family transfer proposal. So, question number one, did you buy the property with the intent of dividing it?

[00:14:27] We did not at the time, and, no, we didn't, but an understanding that at some point, if the one of the family wanted to come home, get involved in the ranch, why that might be something we would do. And it is.

[00:14:47] Perfect, thank you. Question number two: do you or your transferees intend to transfer the property within the next year?

[00:14:56] No.

[00:14:58] Awesome. Thank you. And question three: have you talked to anyone at the County about going through subdivision review?

[00:15:06] No.

[00:15:08] Awesome, thank you. Then, based off of staff analysis, staff is recommending approval of the proposed transfer.

[00:15:18] Thank you.

[00:15:19] Les or Susan, do you have anything else that you'd like to add, or do you have a representative who you would like to speak to this?

[00:15:27] No, we don't. And we're just glad that we can do this to have the kids home, and they've taken over my portion of the ranch, so they need a place to live close by, and it is, and so we're happy that this is going to happen.

[00:15:46] Thanks, Mr. Iverson, is there any public comment on this proposed family transfer? Okay, just a reminder for folks, if you are online and want to comment, please use the raise hand function. If you're just on the phone, unmute yourself and try not to talk over others if possible. With that, we'll close the public hearing. Questions from the commission?

[00:16:13] So, Dave, I don't have a question so much as a comment on, that, given that this property is adjacent to a much--it is attached to and adjacent to a much larger chunk that's in a conservation easement and will never be developed, I feel personally okay with that this creates a higher density than is called for in the long term land use plan, given that there will never be any more, that this in effect is kind of clustering with permanent protection, given that it's already in an easement, and I'm OK with that.

[00:16:47] And is it, Les and Susan, is it your conservation easement that's to the south?

[00:16:53] Yes.

[00:16:54] That's my understanding, too. Yeah, yeah.

[00:16:57] Yeah, us and my brother Denny at the time. In '07 we did that with the understanding that we would like to keep it in agriculture.

[00:17:07] Yeah.

[00:17:08] Nick, I do have a question for you. Could you just talk a little bit about the significance of the activity circle? It's a bit of an artifact of past planning efforts, but what sort of level of density or intensity of use is called for in that?

[00:17:26] Yeah. So, the 2002 guide doesn't call out an actual density in this area, but it does acknowledge that the rural communities that were planned using this guide would see concentrated growth. So, they wanted to concentrate certain areas that already had concentrated growth, and those would be the areas for future dense development if that were to occur.

[00:17:57] Okay, so a little less than half of this property is within that activity circle?

[00:18:02] Correct.

[00:18:03] Okay, thank you. Any other questions or a motion?

[00:18:07] Commissioner Vero made a motion to request that the board approve the Iverson family transfer.

[00:18:13] I'll second that.

[00:18:15] Okay, any further discussion on the motion? Seeing none. All in favor? Passed: 3-0. Glad Justin is home.

[00:18:25] Alright. Thanks, Les and Susan.

[00:18:28] Thank you.

[00:18:29] Thank you, commissioners. Thank you, Juanita.

[00:18:31] Thanks, Nick.

[00:18:34] Thank you all. Take care. Okay, moving right along, we'll open the next public hearing. This is the Waldo Road and George Cates Boulevard proposed rural zoning district, and Bailey, would you like to bring us up to speed here? This is not the first time we have seen this.

[00:18:54] Planner, Community and Planning Services. No, commissioners. Thank you very much. This is kind of the last hurrah of this kind of process, actually. So, what we're going to be talking about is the Waldo Road and George Cates Boulevard rezoning application, and you guys can see my screen, correct? Okay, I should have made sure about that first. So, the property is this kind of just a big overall picture for everyone. This is [on the screen] down here to the--the lower portion of the picture is the interchange with I-95 and Highway 93. The subject property is up here towards the top portion of the screen in red, and it is at the corner of Waldo Road and George Cates Boulevard. So, some of the zoning around it--so, the property is currently un-zoned. The majority, basically, everything in the picture that does not have a color on it is un-zoned. So, only the things that are colored actually have a zoning. The CC2 special condition 35 zoning on the property to the east was recently approved here; I believe it was the spring of 2020 is when it received its final, so 2019 to early 2020, and so you can see some of the other areas kind of further to the south and east of Highway 93 are also zoned. So, the proposed zoning district, the applicant is working to connect to the city of Missoula sewer system. However, in order for the city to allow that connection, the property does have to be zoned. So, that's why we're in this process. It's a rural zoning district, which means it would be only specific to this property. It's not a district that would be, you know, a standard district. It's creating a density that's actually not currently existing within our zoning regulations. It would fall between the CA3 and the CR1 districts with a recommended density or maximum density of one dwelling unit per two acres. They're also doing some modifications to the setbacks, and they're drastically reducing the potential permitted conditional and special exception uses. So, this project has been going on for quite a number of months. The planning board held a meeting and heard the request February 16 of 2021, and they discussed topics such as potential for future annexation, the submitted public comments, the difference between zoning regulations and subdivision regulations, and they ended up recommending approval of the request eight to zero with the two recommended conditions of approval from staff that I'll get to here in a second, and then the Board of County Commissioners heard the request on March 11, and you guys also discussed the submitted comments, the difference between zoning regulations and subdivision regulations and the water quality district and concerns with some of the higher groundwater in this area. Ultimately, you did approve the resolution of intent to zone two to one--or excuse me, two to zero. So, since that meeting, we did post the legal notice for the resolution of intent on March 21st and March twenty eighth, and that started that 30 day protest period or 30 day window, which did end April 20. We did get two additional comments that came in in opposition to it. They are both located outside of the zoning district boundary. One of the comments is within the 300-foot mailing radius for our mailing notice, and the other one is actually outside of that 300 feet as well. Staff is recommending that the board adopt the final resolution subject to the two recommended conditions of approval, which are under Section D of the proposed regulation's permitted uses. We would have them add residential accessory buildings and uses. They list agricultural accessory buildings and uses, but didn't list anything about residential. So, this would cover a detached garage or a shed. You know, those typical things that we allow in all of our residential districts, and then under Section C, general standards, we would have them add that the construction of basements is prohibited and that the lowest floor and all utilities, including ductwork, be constructed a minimum of two feet above the highest adjacent existing grade. This is the exact same wordage that was on the zoning that was approved in early 2020 that I talked about to the east. So, it's exactly the same, keeping everything the same with those properties. So, at this time, that's what I had to present for you, because this is the final resolution for adoption. I do know that Eli Surveying is on the line, as well, if you had questions of more in-depth, but I do have a proposed motion for you guys for today.

[00:23:47] Thanks, Bailey. Would the applicant or applicant's representative, namely Eli and Associates, would you like to speak to this?

[00:23:58] Applicant's Representative, Eli and Associates. Well, this is Joshua Phillips with Eli and Associates. I really don't have anything to add to this. It's just a matter of the horse and carriage, which comes first, and we needed zoning in order to propose a development that utilized the sewer.

[00:24:21] Okay, thanks. Well, this is a public hearing. Is there any public comment on this proposed rezoning? Don't be shy if you'd like to comment.

[00:24:36] Constituent. Hi.

[00:24:37] Hi. Go ahead. Introduce yourself if you could.

[00:24:40] Am I unmuted? Can you hear me?

[00:24:42] We can hear you. Who are we speaking to?

[00:24:45] You are speaking to Judy Luebeck, and I'm one of the owners here at Jim and Mary's RV Park, which is, if you don't know, located on 93 right across from that intersection with Waldo Road that you're talking about, and I don't really have a specific comment about the rezoning. My concern is with the traffic and any additional traffic at that intersection. I'm not sure if you're all aware there was another accident, a very bad one, just a few days ago, and it seems like we're constantly hearing more crashes out there and very concerned with the additional or any additional traffic without a traffic light at that intersection. So, I just wanted to make sure that that's on everybody's mind as you're approving rezoning and additional residential or whatever building on either side of 93 North in this area. Are my three minutes up?

[00:26:04] No, you're good. Yeah, thanks, Judy. We appreciate that. My understanding from a meeting we were in last week is that after the construction is completed, which I think there's going to be major construction out there later this year, there will be a study that will follow on the heels of that that will be looking at such improvements as signalization. I'm not sure if it's at that intersection we're talking about there or certainly at pinch points out there along Highway 93. Thank you.

[00:26:45] Okay, thank you.

[00:26:47] Thank you. Additional public comment?

[00:26:51] Yeah. Do we just chime in?

[00:26:53] Yeah, if you're on the phone, and I can't see your hand raising. So, just chime in, and please identify yourself.

[00:27:00] Okay, yeah, my name is Alex Gray, sorry, I just tried to attend the meeting in person. I didn't know you guys were going online or on the phone with it. There's nothing on the website that said that. I'd suggest that maybe you guys should add that to the County website.

[00:27:12] Oh, yeah, we've not met in person for over a year, so we'll make sure that gets noted.

[00:27:18] Yeah. That's amazing that they didn't make it to the website, then. But yeah, my concern, I've actually been working for your COVID response team in the call center for the last three months, and I just have some concerns about that. Basically, the whole time I work there, everybody that worked in the phones there was great, but the management didn't seem to want to abide by the mask mandate, and I had complained to them about this, and they had said basically that according to the County rules, you only really need to wear a mask if you're within six feet of somebody for longer than 15 minutes.

[00:27:51] Alex, I'm going to have to cut you off here, because the public comment is pertaining to the item at hand, which is the rezoning out at Waldo Road.

[00:28:04] I don't know how these meetings are set up. I thought it was like open up whatever public comment you wanted to make.

[00:28:08] You know what? Why don't we follow up after the meeting offline and talk about this? I know we've exchanged some correspondence on this, I've at least seen your correspondence on this in the past. So, let's handle it then.

[00:28:22] I sent emails in and I didn't really get a response, but it is something that concerns me. So, yeah, I'd like to bring it up at whatever time is appropriate for it.

[00:28:31] Okay, yeah, let's do that. Is this the number, the best number to reach you at here?

[00:28:38] Yep. Absolutely.

[00:28:40] Okay, 6715. Okay, we'll have someone get back in touch with you. Thanks, Alex.

[00:28:43] Oh, no, it's 406-594-4729

[00:28:50] Okay, sorry about that. I'd end up calling the wrong person.

[00:28:53] Yeah, right? You'll just call me at sometime, then?

[00:29:01] Yes.

[00:29:01] Okay. Thank you.

[00:29:02] Thanks, Alex.

[00:29:03] Is there additional public comment? Yep, you bet. Additional public comment on the Waldo Road and George Cates Boulevard proposed rezoning? Okay, I will close the public hearing on that right now, and questions from the commission?

[00:29:24] Dave, I don't have any questions. I remember the March 5 meeting like it was five weeks ago.

[00:29:31] Is that your motion?

[00:29:34] Unless you all have something to say, which is wonderful, I'm happy to make a motion.

[00:29:39] Go for it.

[00:29:41] Okay, thank you.

[00:29:42] Commissioner Slotnick made the motion that the request to adopt the resolution to zone the un-zoned parcel to Waldo Road and George Cates Boulevard Rural Zoning District be approved subject to the recommended conditions of approval based on the findings of that contained in the staff report, public testimony and written comment.

[00:29:58] Leave it at that.

[00:29:59] Second,

[00:30:01] Any further discussion on the zoning? Seeing none. All in favor? Passed: 3-0.

[00:30:10] Thanks, Bailey.

[00:30:10] Thanks, everyone.

[00:30:13] Thank you.

[00:30:14] Thanks, Bailey.

[00:30:14] Thanks.

[00:30:16] You bet. Alright. The next two items are related, and these will be kicked off by Shannon Therriault. We have an emergency ordinance adopting the health code and an ordinance to adopt the health code, first reading. There is a distinction to be made there, and we will let Shannon and whoever else, Shannon, you would like to support you in this describe it.

[00:30:38] Environmental Health Director, Health Department. Great. Thank you so much for having this on the agenda. Really appreciate it. So, I know that the commissioners are aware of this, but for people who have not been following the legislature or all of the legislature so closely, let me start a quick slideshow to go through, House Bill 121 is one of a number of bills that the legislature this year has considered that addresses in some fashion the authority of the health board and the health officers. This particular bill has been signed by the governor and has an immediate, effective date, and so the immediate effect date has us scrambling a little bit to figure out the right way to implement it. The bill does have some confusing aspects to it, but we, after talking with our County Attorneys and talking with city and county leadership, have decided that the most conservative approach to make sure that the health code is enforceable and in effect, is to ask the BCC to go ahead and adopt the health code in whole by reference, and so last week, the health board met, and they passed a resolution as is contemplated in the law for the health--asking the BCC to adopt it. The other thing about this bill is that the local--the governing body for City-County Boards of Health is not spelled out as clearly as it would have been had an amendment been put on. However, we also know that there is interest in looking at the interlocal agreement that created the City-County Board of Health, and so after meeting with City and County leadership, it was determined that it's appropriate for--it's a default to the Board of County Commissioners to be that local governing body. So, with that context, and also with help from the County Attorney's Office, it was suggested that the best way to adopt the health code--for BCC to adopt the health code at this point--would be to adopt it by reference, and so there's already current law, 7-5-108, that anticipates that there are times where you would want to adopt an entire code by reference and explains how you would do that, and again, going back to that immediate effective date, this also allows, this section of law also allows the Board of County Commissioners to adopt it as an emergency ordinance, and the emergency ordinance would be in effect for 90 days. So, the process that we're looking at for this is that I already talked about April 15 the health board passed the resolution, and today is April 22, so the Board of County Commissioners is holding a public hearing, and what we're hoping for is that the Board of County Commissioners will adopt the emergency ordinance today to be in effect for 90 days and then to also at the same time begin the regular ordinance process, and so the idea is that there would be a first adoption today, then there is posting and time for the public to take a look at it, and then you would have a second hearing on it before the regular ordinance could be adopted, and we're proposing for that to be June 3. That would allow, if the BCC does approve that, it's 30 days before that regular ordinance goes into effect, and it would go into effect before the 90-day emergency ordinance would expire, and that's really important to just make sure that our health code continues to be applicable and be enforceable, but ultimately to protect public health, public safety and the environment. We want to make sure that there's no gap. So, what does it mean to adopt the health code by reference? I'm going to go over the health code quickly but with enough detail to let you know what's in the health code. We do have an administrative section and then eight regulations. I'm going to tell you up front that the first regulation, wastewater treatment and disposal, is the most detailed, the longest, and so it's going to take me the most time, but I can also tell you that two through eight will take me about the same time as the wastewater treatment and disposal system, so don't fear--don't fret--when you see how long it seems to be taking to begin with, because I know that there's a lot on your agenda today, and I certainly want to be respectful of time. The asterisks here [on the screen] will come up again later, but those are the rules that have fees associated with them. And so, the Missoula City-County Health Code actually has been in effect in one form or another since 1966. That was when the wastewater regulations were first adopted, and then it was combined into a health code in 1994, and then some additional regulations have been added since that date. So, I'm just going to start with the administrative section. The administrative section covers administrative processes, as would make sense. It deals with enforcement and compliance actions and the steps that we're to take as staff. So, it talks about notices of violation and when administrative hearings can be requested and then board hearings and judicial review. So, it gives people an idea of what their due process is, and it does talk about penalties, and just as an important point, the law which allows you to adopt codes by reference does not let you adopt fees or penalties by reference. So, both of the resolutions do have a penalty section, and so we're really asking you to adopt the code and associated fees minus the penalty section, and then the administration section also has very general information on inspections and permits and then also has the--spells out the process and the criteria for granting variances and then talks a little bit about fees and how the code is amended or revised, some of which will have to be revised as we go along. So, regulation one, this is wastewater treatment and disposal systems, also known as septic systems. So, this really covers--mostly covers onsite septic systems, but it also covers under what conditions people must connect to municipal sewer. So there's some things that are adopted by reference, including DEQ-4. That's a circular that's created by the Department of Environmental Quality that lays out a lot of information about septic systems, including design and installation, construction, criteria. So, then we get into this general section and that gives overall prohibited activities, for instance, it is not legal to contaminate drinking water supplies, contaminate, degrade state waters with a wastewater system, for that system to enter directly into groundwater, for there to be access for insects, rodents or

other areas of disease. You can't violate other rules, laws or regulations that apply to wastewater systems, and it can't cause a nuisance either by odor or sight, and then the general section also has a requirement that you can't construct a system without a permit, of course, but importantly, it requires that a structure that either is or is designed to be occupied by people have approved toilet facilities within 200 feet, and if there is plumbing in that structure, it has to be connected to an approved system. The next sections really deal with permits and the permitting process. So, we all--every county has to have a permitting process for septic systems, and so that talks--that section talks about when permits are required and what's required in an application and when applications and permits expire, and then there are some requirements for installers to be certified, and the reason that is, is that it is not possible to put every single rule that applies to a septic system installation on a permit, and so they really have to be generally familiar with the rules, and so there is an initial test and then an annual recertification that they do every year, and then, of course, the rule talks about final inspection and final approval. So, now I'm down on about nine, so after all of the permit information, it goes into the information that we need in order to be able to write a permit and to be able to size or design a septic system. The first thing that you need to know is site characteristics, and so there's a chapter on site evaluations, and that covers the lingo, the nomenclature for how soils are described so that we're all on the same page with that. It also lets you know when additional processes are necessary so that sometimes you have to just dig a hole to look at what the soil structure is, and other times you have to do percolation tests, which is basically to see how quickly the soil will take water, and then it gets into this location and design of wastewater treatment and disposal systems, looks at there's some prohibited locations. You can't have a new septic system in the floodplain or on a steep slope, and then there's also the horizontal and vertical separation requirements. You know, you can't be too close to a drinking water well or to surface water or to groundwater, and then it talks about when groundwater testing is required, then it gets into the design of wastewater systems. So, wastewater systems have both primary and secondary treatment, and that section addresses the size of the tank and the pump chambers and how large the system has to be based on flow or in residences, the number of bedrooms, and then also the soil. And when we're talking about septic systems, what we're concerned about, it's really two things: one, that the system is sized in a way that it will take the water away, it can manage that amount of flow, but also that the soils are such that it will treat the wastewater before it hits groundwater, somebody's drinking water well. There's also in the section details about pressure design systems, information about if you're going to use to use a distribution box versus a [00:42:35] man hole, lateral [00:42:37] requirements, sorry. There's rock and pipe or there is [00:42:41] gravelis. [00:42:42] So, it has a lot of those details in it. Next, we have alternative treatment systems, and so these systems are often used when those conventional either pressure or gravity systems are not appropriate, and so this--our adopt--this rule does adopt the alternative system manual that's created by the City-County Health Department and the health board by reference. That was last updated in 2015, but the examples of alternative systems that I'm talking about are things like [00:43:16] shallow systems. [00:43:17] We call them [00:43:18] shallow cap systems [00:43:19] or [00:43:19] sand mounds, [00:43:20] and that helps people be able to develop in areas that have shallower groundwater or, alternatively, deep absorption trenches, which allows you to break through a layer that's less permeable to a more permeable layer. There are different kinds of systems that improve the treatment of the wastewater, trickling filters, passive aerobic systems, and then the alternative manual also deals with sealed and unsealed vault toilets, waterless toilets like composting toilets or incinerating toilets, so I'm not going through all of them, but you get the drift of what I'm talking about in terms of alternative systems. Then we have a section that's dealing with holding tanks, floor drains, chemical toilets, which [00:44:12] port-a-potties or portalettes, [00:44:13] and camping, and that camping section basically allows the health department to require that people give us a wastewater disposal plan if they are camping outside a licensed RV park for more than 30 days, and that has been quite helpful on a number of complaints. Then there's a section on experimental systems, so if somebody has a great idea for a new type of septic system, this lays out the process on how to get a permit and how to test it, and we have had some of those in Missoula County. Then, there's a section on replacement systems. Replacement systems has its own section, because sometimes you think about older parcels, you just can't--they meet the current requirements for a new system, and so there's some additional types of systems that are allowed there, absorption beds or seepage pits that aren't allowed in other--in as new systems, but they also have restrictions on them. For instance, the seepage pit, which is basically you have a septic tank and then you have a pit that the water goes to, you can't use that, even as a replacement system, unless you have at least 25 feet to groundwater, and the reason is, is that it causes concentrated flow and preferential flow paths, and so it just doesn't do as good of a job treating the waste, and so you have to, instead of four feet of separation, you need 25 feet of separation in order to protect public health and the environment. Then we get into a section on--to cover what's required when businesses or houses are enlarged or there's increased use or boundaries changed, and basically what we're trying to do when boundaries are changing is to make sure that they don't take away space that could be used for a replacement system, because systems will need to be replaced eventually, so if they're not going to eventually be on city sewer, we need to make sure that a replacement area is

preserved. Missoula has something kind of unique in that we also require the systems--when they're no longer going to be used--certain systems to be abandoned, and that septic tanks, cesspools and seepage pits--there are examples across the country of animals or people falling into them and getting hurt if they aren't abandoned safely, and so basically what that means is, yeah, you can dig it up and remove it or you can crush it and fill it in just so that there's not a hole in the ground waiting for somebody to fall in. Then there's a section on multiusers in public systems. So, those that have three or more users, and then finally special management areas, and so special management areas, we have several in Missoula County, and these are areas where there are either notable issues or notable opportunities, and as an example, the Missoula Wastewater Treatment Plant Service area is a special management area. The concept there is that sewer is planned for that area. We want people to know the septic system use is temporary until sewer gets to that location, because that really is a better way to prevent environmental degradation and public health impacts of sewage is to have it go to the treatment plant. There's also a rattlesnakes special management area, which has surface water--it really is designed for surface water drinking water protection, and then there's a special management area out in Frenchtown, because there was a groundwater contamination issue that was identified, and then finally Seeley Lake where there was a nitrate issue in groundwater identified. So, that is regulation one.

[00:48:06] Ladies and gentlemen, you are getting your money's worth today.

[00:48:12] Thank you. Alright. So, now we're going to go to the rest of them. Regulation two is the large group function health permits. This really was established to deal with large events like [00:48:25] agri-days [00:48:26] that were being held out in the field with not enough sanitary facilities or sanitation facilities, and for any of you who have been around a long time, you will know what some of the sanitation facilities were in those early [00:48:41] agri-days, and [00:48:43] so what that does is it addresses water and wastewater, hand-washing facilities, garbage disposal, first aid, medical services for large events--and large events in this case is defined as you're going to have a thousand or more people in that area simultaneously for at least three hours or more. But, it also doesn't apply to places like the Grizzly Stadium, because they are completely set up to handle large crowds, and so it really is to deal with these large events that are happening in fields where we need to make sure that they have the right number of port-a-potties, and that they have ways for people to wash their hands, and that they're thinking about first aid and medical services. So, then we have regulation three. Regulation three is solid waste management or garbage, basically, and so that regulation deals with the storage, handling and disposal of solid waste, and it deals with how solid waste is stored on a property, how often it has to go to the landfill at least once every seven days, that you can't, of course, have trash just strewn around your property. An interesting part of this rule is the rental units have to have commercial garbage collection services, and that comes from back in the 90s, we were finding a whole bunch of garbage in the woods and garbage in other people's containers, and they just almost entirely tracked back to rental units. It also addresses construction and demolition sites and how you have to deal with the garbage on those sites, and then, of course, it says you can't bury trash, you can't burn trash, and you can't go out and dump it in the woods somewhere, and then it ends with saying you have to deal with hazardous waste as the state law requires you to. It has to go to a Class 1 landfill, which is different than our landfill, which is Class 2 landfill. So, something that's established for--to deal with hazardous waste. Then we have regulation four that deals with food service establishments. These are in addition to state regulations. It does adopt them by reference, and there is some stuff that started out unique to Missoula that kind of the state, and honestly the nation, has caught up to, and an example of that is that for a long time, I think it was since the 90s, Missoula--it was the rule in Missoula that you can't have bare hand contact, direct contact, with ready to eat food. That--and it's also called the glove rule--that's now a requirement statewide, but when that became a requirement statewide, it was not an issue at all for our restaurants, because they had been used to that and had not been touching food for a long time. It addresses temporary food services. So, in the past, temporary food services had--they used to get a license from the state, but then they were finding that that just wasn't working well. So, the law changed, and instead of state licenses they get local permits, and so that section talks about how, you know, what you need to do to get the permit and what it means to be a temporary food service, and it goes right into, then, the mobile food service establishments. So, a temporary food service establishment is what you think of. It's a booth that's set up at an event, but it is at an event. A mobile food establishment can drive around. It's self-contained. So, for the most part, it often has a commissary that it's dealing with, and it can basically serve food anywhere, and so what we find in food service is there really is a continuum of business plans and opportunities, and so these rules help make the distinction better than the state rules did about what's a temporary food service, and what's a mobile food establishment? And then the state law does allow us to have reinspection fees under certain conditions, and those conditions are you've been to the business at least twice, and the same violations are present, and so then you can charge a reinspection fee, and so this establishes that, and

that really has helped us get compliance. Then, it goes on to talk about under what conditions the health department can close a restaurant, and it's really nice to have this spelled out in the rule, and so that's what that does. It talks about under what conditions we can close a restaurant or we would close a restaurant, and things like "imminent" and "present danger" to public health, there's an outbreak associated with the restaurant or there are high risk critical violations that haven't been corrected and pose a threat to public health or food safety, and then it also--that closure section also explains what the process is for reopening and for staying open, and so it's very much a process section there. And then we've, like the glove rule, we have required some training. There is, like, evidence that when you have a manager at the restaurant who is trained in food safety, understands the concepts of food safety and models those concepts with staff, that they are way more likely to follow the necessary steps to keep food safe. And so, we've required that certification for a while. It's now required across the state, and then there's also some requirements for food safety training if a restaurant is closed or if there's repeated violations. Then we have the plan review process and application contents, and then, interesting, wild mushrooms, that seems weird, but wild mushrooms have some requirements at the state level that were totally not spelled out well, and so Missoula, we took it on ourselves to figure it out, and in fact, it's a model that's used across the state in dealing with how you make sure the wild mushroom pickers know what they're picking and that the mushrooms that you see down at the farmer's market are safe to eat. Okay. So, whoops, I keep clicking the wrong thing here [on the screen]. Let's see. So, regulation five is water well protection. This one we established in 2013--no, I guess we amended it in 2013--it was established just a year or two before, and this really is--this is a well permitting program, but it is only for the location. So, the water well driller, the board of water well drillers is the one that is in charge of how a well is constructed, but what we were finding is that people weren't always drilling wells where they needed to go, where they were approved to go, and sometimes what they were doing is they would drill a well and either their own or their neighbor's septic system would then be in violation, and so we could really only deal with it in terms of what was going on with the septic system and not the well, and that wasn't a good system at all. So, we've had well permits for almost a decade now, and this section, this rule basically talks about when the permit's required, what happens if you drill a well and you don't get any water and so you need to drill a well in a different spot, talks about siting requirements that you have to do it--you have to put the well where it's been approved through the sanitation and subdivision review process, and you can't be too close to a septic system, and in some cases there's distances from surface water, and then inspections and the obligation for inspections. Regulation six was first adopted in 2012, and so it must be the--the wells must have been 2011, initially. So, the drop-in childcare facilities, childcare is regulated by DPHHS, but the drop-in centers, there was just a hole. There was a regulatory hole that if they wanted to, they could license with the state, but it was optional, and what we found is I think it was both a pertussis outbreak and a whooping cough outbreak and then some sanitation issues that were coming up in some drop-in childcare facilities, and so we worked with the facilities, and we proposed this rule which has since been copied by other health boards and in some of the larger counties in the state, and so this rule, basically the requirement is you have a choice. You can either license with the state through their optional licensing program, or you can get certification by the health department, and so the certification by the health department covers water, wastewater and solid waste disposal, different health things, including immunizations and medication safety, then food safety, of course, cleaning and sanitizing, which are important in a daycare, diapering and infant care and the sanitation requirements around those and then inspections, and then again, it goes into the reasons why the health department would close a place, and it's very similar to a restaurant in that there's an imminent and present danger, there's an outbreak associated with it, or there continue to be high risk, critical violations at the facility that we just are not able to get them to correct. And then, for something entirely different, we have rabies control, and so this rabies control, it used to actually be in the County's animal control ordinance, but looking at the authority, there was a decision made that the health board had better authority based on the communicable disease authority than the County Commissioners had at the time, and so this rabies control ordinance was put into the health code. So, it incorporates a couple of documents that create the scientific basis for the rabies control, the National Association of State Public Health Veterinarians, and then the Public Health Association's Control of Communicable Disease Manual. It goes on to explain the role of the health officer and of the sheriff, and so the sheriff has a role that's created in Title 7, which is, I guess, in the spirit of having it all in one place, also in this rule, and then it also talks about the animal control officers and the role of animal control officers and specifically their responsibility for record keeping and documentation. They have the ability to impound the animals, and that if euthanasia becomes necessary, that it be done in a humane way. Jeff Darrah is on the call, and I can tell you that we limit euthanasia to the absolute degree possible. So, rabies--it goes on to talk about rabies vaccination requirements for dogs, cats and ferrets. Basically, they have to be vaccinated when they're three months and older. There are some exemptions, if an animal can't take it, if there's a health-related issue--and some animals do have that. It addresses wildlife and hybrids, because the rabies vaccinations really aren't designed for those--weren't produced for those types of animals, and so there's some

question about how effective it is in those animals, and then it prohibits the sale, adoption or giving away of a dog, cat or ferret over three months unless it's been vaccinated. Then it goes into bite reporting, and so it is a requirement to report bites to animal control, and then it talks about the process for investigating rabies exposure, and what I can tell you is that it really is a partnership between animal control and the health department's infectious disease nurses to try to figure out what the possible exposure was and what the risk is, because rabies is 99.9 percent fatal once the symptoms appear, and then it also talks about the impalement of the animal that did the biting, and it really--it's different if the animal was vaccinated than if it wasn't, so if it's not vaccinated, it will be held at animal control. If it has been vaccinated, then there may be an opportunity for them to quarantine that animal at home. And then the last one, regulation eight, is trailer courts and campgrounds. And really what this regulation does, it's also--there are some state regulations that adopts those, incorporates those by reference, but what it does is it establishes a reinspection fee, and the reinspection fee is the same as those in place for food service establishments, and it's a tool that we're able to use to get people to comply, and it has made a difference since it was first adopted in 2017 and people paying attention to the inspection reports that they get and taking care of public health and safety hazards in trailer courts. So, then the last thing I need to talk about is fees, and you saw this earlier, but I've highlighted the fees that are associated with the health code, and then these are the fees that have been attached and they're in the packet, as well, and so it's groundwater monitoring, the large group function permits, fees that have to do with licensed establishments, fees that have to do with septic permitting, site evaluations, a general staff work per hour fee when it's not covered by this--and there's not very many times that we've used that, but there have been a couple of times when that's been appropriate--subdivision submittals, well permits and then a variance application, so I'm not sure if the commissioners prefer to have a recommended motion put in front of them, but we're used to doing that for the health board, and I don't even know for sure that this is the right motion, but we are asking--we're hoping that you do two different things today. One is to adopt an emergency ordinance incorporating the Missoula City-County Health Code by reference and the associated fees to be in effect immediately for 90 days. It expires automatically in 90 days, and then to approve the first adoption of the ordinance incorporating the Missoula City-County Health Code and associated fees, and as I said earlier, the concept there is that on June 3, which is more than the time required in the statute, we would come back and ask for--if you approve the first adoption, then we would ask for the second and final adoption on June 3, which would allow the regular ordinance to go into effect before the emergency ordinance would expire. So that's the presentation,

[01:05:08] Thanks, Shannon.

[01:05:10] Great, Shannon.

[01:05:13] Shannon, is there anyone else from the health department who was cued up to speak, and before they do, and eventually we'll want you to pull back up on the screen the motions, maybe I misheard you, but I thought you said we could not adopt fees by reference? Did I mishear that?

[01:05:33] I thought you said it, too.

[01:05:35] Yeah, I misspoke, I didn't mean to say fees, I meant to say penalties. And so, the ordinance, the administrative section of the health code does have a penalty section, and it's based on what the health board was allowed to penalize somebody which was not less than \$50 or more than \$200, but then the ordinance penalties are different, and it's like up to \$500 plus six months of incarceration, and I need to look really quick if we included that or not, but it's in the--in the resolutions that you have in front of you there is a section, Section 7, that has penalties. And we did leave out the--so, the state law 7-9-109 allows for up to six months imprisonment, but we just--we never use that, and that's probably not the right way for the prisons or jails to be used. So, we just left it at a potential fine of up to \$500. I know Anna Conley is here somewhere, and she can talk about that a little bit more, too.

[01:06:53] So, again, just to clarify, by what you just said, it sounds like we are adopting penalties, also.

[01:07:01] Yeah. What you can't do is adopt them by reference. I'm sorry. I'm not being very clear. So, we have to, like, have you not adopt that one section in the health code that talks about penalties, but you can have a penalty section in your ordinance. So, that's--

[01:07:17] Deputy County Attorney. Want me to do some clarifying, Shannon?

[01:07:19] Yeah, that would be so awesome, Anna.

[01:07:21] Anna Conley?

[01:07:23] So, prior to HB 121, if somebody violates the city-county health code, there is a penalty in the code for violation of that code. That is not something that you can adopt by reference, because the state law that allows commissioners to adopt code by references excludes the ability to adopt that code's penalty system. So, instead of the code's penalty system, what we have is the system under state law for violations of county ordinances. State law says that if somebody violates a county ordinance, it can be a misdemeanor, which can result in a fine or imprisonment, and we have taken off that imprisonment piece, and it's our office--we don't really use criminal charges for health violations, because we don't want that fine or imprisonment. What we want is the person to stop violating the health code and to come in compliance with the health code. So, instead of a fine or imprisonment, what we're looking for is injunctive relief for the person to do or not do something, and the only way to get that injunctive relief is through a civil action to enforce the county ordinance or the code. So, we've specified in the county ordinance that there is a possibility of a criminal penalty of \$500, which is consistent with state law with regard to county ordinances, but we've also added that that doesn't preclude us from pursuing injunctive relief, which is the civil action that we would take if we had a serious infraction of what you're adopting by reference.

[01:09:02] Okay.

[01:09:03] And if it would help, I can put the resolution up on the screen. I don't know if you want that or not.

[01:09:11] Would that be useful for anyone, to see the resolution? Why don't you go ahead and throw it up, Shannon.

[01:09:16] Go ahead, yeah.

[01:09:16] And if you want to pass the baton to any of your colleagues?

[01:09:22] Actually, no. I will tell you that Jeanna Miller is on the line as is Jeff Darrah in case you have specific questions about the code, and then, of course, Anna is here to answer any other questions, legal questions, that you have. But basically, I just hogged all the presentation for myself.

[01:09:45] So, can I just throw out a comment? So, the issue is, here, that because of this new law, our old code is going away, and what we're doing is adopting, temporarily, the code we've had for quite a long time so that we're not codeless, for lack of a better word. Is that--am I getting that wrong?

[01:10:04] No, you're exactly right. It's just, this is a very ambiguous set of laws that we're now dealing with, and we are interpreting them, to be safe, that they require immediate adoption of the health code in order for the health code to continue to exist and be enforced in our county. There are other interpretations of HB 121 that would make it not retroactive, for example, but I don't know that I think that that's a safe way to interpret HB 121. I think the safest route is for us to interpret it as we understand its intent, which is if you want to enforce a health code, you have to have your commission adopt that code.

[01:10:48] Yep. That's--thank you. So, what we're doing is kind of a careful conservative approach, and I guess what I wanted to say for anybody listening is the only new thing about this code is the circumstances upon which we are adopting it. This is the code we've been living with for a very long time, and there aren't a new set of rules. They're only new, because they're laid down underneath this new umbrella of HB 121 that says the commissioners have to play this role, that people who own RV camps or restaurants or installing septic systems are not going to have whiplash with a bunch of new rules. This is the same thing we've been living with forever. We're just responding to a new lay of the land the legislature has laid out before us, so we get to continue to live in a safe and healthful environment amidst some regulations that are conducive to those conditions.

[01:11:44] Yeah, and Josh, just to build on that, you're exactly right. I mean, this is clearly just something the legislature is now requiring for us to preserve the status quo. And the reason that this is both an emergency

ordinance and a non-emergency ordinance is because I think it would be, frankly, a serious public health emergency if all of a sudden all of the regulations that you just heard about disappeared.

[01:12:06] That would be a real emergency.

[01:12:09] It may not be that that's the case of what would happen, but we don't want to take that chance. So, we're being as cautious as we can for public health in our community.

[01:12:17] As we should be. And thank you for catching this. Yeah, thanks a lot. We would not have seen this in the word soup that is this legislation.

[01:12:31] Thanks, Josh. Yeah. And just to put an exclamation point on it, the careful presentation that Shannon just delivered to us contains nothing novel that does not already exist on the books right now. So, this is not just new stuff that's come out of thin air that we're proposing to adopt today. Okay, with that, let's open it up for public comment. Is there anyone who would like to comment on either the emergency ordinance or the permanent ordinance, which essentially by reference adopts what we already have today? If you are on the line, please raise your hand, and I'll call on you in order. If you're on the phone, and let's exhaust the folks online first, and if there are no hands that get raised, then let's go to the callers, and just as a reminder there, you'll need to hit *6 to unmute yourself. Anyone online who would like to comment? Okay, seeing none. Anyone on the phone who would like to comment, just go ahead and unmute yourself and introduce who you are.

[01:13:45] Constituent. My name is George Hart, and at one point Shannon mentioned that there was 25-foot to ground water, I have to point out, the ground water depth varies during the season, and so I'm thinking that probably in June is the highest ground water that we have. So, it's a small thing, but, you know, you might want to think about taking those tests or referencing the groundwater in June. You could put that in parentheses. That's it.

[01:14:32] Thanks, Mr. Hart. Anyone else on the phone who'd like to comment? Hit *6 six and unmute yourself and start talking. I see, someone who's unmuted with 8245 is the number, would you like to speak?

[01:14:57] That is George Hart.

[01:14:59] Okay, George, sorry.

[01:15:01] I don't know how to remute myself.

[01:15:03] That's okay. It's always a challenge. Anyone else like to comment, either online or on the phone? Okay, seeing none, we'll close the public hearing. Any questions from the commission? I guess my question, Shannon, anything that you would like to address as far as Mr. Hart's comment, as far as depth goes, and is that something that in a future iteration of the regulations ought to be addressed in some manner?

[01:15:38] Actually, when we are looking at distance between groundwater and the surface to determine what type of system is appropriate, we do look at high groundwater. It might not be the highest groundwater in the highest year, but it is what we look at already is the high groundwater. So, in most cases, you're exactly right. It's in June, and in some places where it is influenced more by irrigation ditches it can be in the early fall.

[01:16:13] Thank you, Josh or Juanita?

[01:16:16] And the timeline again, so what we have to do today is--

[01:16:21] Shannon, why don't you pull up those motions again, please?

[01:16:26] Sure.

[01:16:34] So, we adopt--we make these motions today, and then as a reminder, Shannon, when will we be back again?

[01:16:44] We'll be back again June 3 to ask for the second and final adoption of the ordinance.

[01:16:53] Okay.

[01:16:56] Okay.

[01:16:56] Commissioner Vero made the motion to adopt the emergency ordinance--is there another word, or it has to be called the emergency ordinance? Yeah, okay--the emergency ordinance incorporating the Missoula City-County Health Code and associated fees by reference to be in effect immediately for 90 days.

[01:17:16] That's an order. Let's go ahead and take these individually. Josh, do you want to--

[01:17:20] I'll second that.

[01:17:22] Any further discussion on the emergency ordinance? Seeing none. All in favor? Passed: 3-0. Okay, next.

[01:17:34] Alrigt.

[01:17:35] Commissioner Slotnick made the motion that we [the Board of County Commissioners] approve the first adoption, the ordinance incorporating the Missoula City-County Health Code and associated fees by reference.

[01:17:44] Second.

[01:17:46] Any further discussion on that motion?

[01:17:48] This is Anna. I'm not sure if Shannon mentioned this, but the actual ordinance, it expires 60 days after a new interlocal is executed. So, essentially the interlocal agreement could address this governing body definition, and there could be a desire for the County to adopt some of the code and the City to adopt some of the code after the interlocal is revisited, so I just wanted to point out that this does expire by its own terms 60 days after a new interlocal agreement is entered into.

[01:18:26] Okay, thanks, Anna. Any further discussion? Seeing none. All in favor? Passed: 3-0. Okay, thank you.

[01:18:39] Thank you so much, Shannon.

[01:18:41] Yeah, thanks a lot, Anna and Shannon, for catching this amidst all the legislative hubbub and making sure we're still safe.

[01:18:49] And I also just want to thank you for being so willing to figure it out with us. That's very helpful, and we feel better about it being that we know it's still in effect. So, appreciate that.

[01:19:03] We are actively supportive.

[01:19:07] Alright. And we are--this is a long haul today. So, without objection, how about we take a five minute break.

[01:19:14] Thank you.

[01:19:16] A recess, and we'll be back in session here at 3:25 p.m.

[01:19:22] Okay, it is 3:25 p.m., so let's reconvene here, and we will finish off the day with a couple of related items pertaining to the McCauley--proposed McCauley Meadows Subdivision, beginning with a review of new information and then the subdivision as a whole, and we'll begin with a staff report from Tim Worley. Tim, it's all yours.

[01:19:49] Senior Planner, Community and Planning Services. Thank you. Good afternoon, Commissioners. Tim Worley with CAPS, and just by way of clarification, we're essentially bundling these two agenda items today, because of the time that's elapsed with McCauley Meadows, I feel it's pertinent to deliver the staff report as a whole, and then I will interweave the new information piece as part of that, so consider the next two agenda items to effectively be bundled today. So, again, we're talking about a major subdivision in Target Range, proposed as McCauley Meadows. Tai Tam, LLC is the applicant. Professional Consultants, Inc. is representing the applicant. Just to provide some history for McCauley Meadows, it went to the planning board on the sixth of October. The initial hearing before the county commissioners was on November 5, and that is when the new information was first introduced. As a result of that, the hearing was continued to the tenth of December and further extended to January 14, where there was a subsequent request for more time from the applicant, and the hearing was essentially left open, so that brings us to today, April 22, which was noticed in the Missoulian and adjacent property owners were also notified about this date of hearing. So, today, what I'm going to do is present the subdivision. I will summarize the new information, and again, we're essentially bundling these two items today, and commissioners, it will be important to consider the new information in the decision that you make, whether that be today or down the road at a subsequent hearing, should that happen. So, the subdivision is a 14-lot subdivision on about 28 acres with a 3.5-acre common area. There are no variances proposed. The 28 acres is located in Target Range between Humble Road and Ringo Drive at the base of McCauley Butte. There's an existing home on the property, as well as a number of agricultural outbuildings. The topography on the southern end of the property is steeper, and then the northern end of the property is essentially flat. There are two roads proposed on site as part of the subdivision design, an extension of Ringo Drive all the way to Humble and then Ponderosa Lane, which accesses the properties on the southern end. The northern end of the subdivision, as I mentioned, is flat, which is represented in this slope map by yellow colors, and then on the southern end of the property, you can see the steeper topography in red; 25 percent slopes are represented by the crosshatch. These are some photos taken from Humble Road looking to the south east across the gentler, sloping portion of the property. The photo on top is looking at the existing home, looking to the southwest from the end of Ringo Drive, and the photo on the bottom shows the agricultural outbuildings from Humble Road, looking southeast toward the Butte. Alright, getting into growth policy. The Target Range neighborhood plan splits the property out, actually, into two designations, a residential one-home-per-acre designation on the northern end and then parks and open space on the southern end. The Missoula Area Land Use Element, which dates to 2019, lumps the entire property together as rural, residential and small agriculture. The Target Range neighborhood plan designates the property as having low suitability for residential development based on soils, excuse me, large acreage and agricultural history and a lack of municipal water and sewer. Again, Missoula Area Land Use Element designates the property as rural, residential and small ag with the residential intensity of up to two homes per acre. Agricultural uses can be primary or secondary to a residence. Development is encouraged to be designed to protect agricultural land as well as wildlife habitat and movement corridors. The subdivision complies with the local zoning, which is the Target Range West End Rural Zoning District, which allows for residential uses with a one acre minimum lot size. We concluded that the subdivision complies with zoning; however, it does not comply with the growth policy. I should note that our recommendations for the subdivision are not based solely on the growth policy. So, on to agriculture. On the northern portion of the property that's flat, that's mostly prime farmland as designated by the NRCS. The total sloped portions of the property are not prime farmland. There is an irrigation ditch that runs through the property. It's a Missoula Irrigation District ditch that returns to the Bitterroot. There's a roughly 3.5-acre common area proposed for agricultural impact mitigation. The net acreage ends up being about 2.66 acres. It's intended to be restricted to agricultural uses. It will have access to the irrigation ditch. At least one of the traditional agricultural buildings will remain as part of this lot, and it's intended to be a working farm. We found that portions of the common area are a bit steeper. That's that red color [on the screen] up against the new road, Ponderosa Lane, that's proposed, and this portion of the common area will therefore have in all likelihood lower productivity soils. We concluded that there's actually more opportunity for contiguous prime farmland acreage, and again, that net acreage for this common area is about 2.66 acres, excuse me. Our conclusion was that there will be a significant loss of over 10-acres of existing high quality ag soils as a result of the subdivision, and that restricting 3.5 acres, of which approximately 2.66 would be considered usable farmland for an ag, does not reasonably mitigate the subdivision's potential adverse impacts to agriculture. Adequate mitigation of adverse impacts would require redesign and, in essence, a new subdivision. On to local services, there's a fairly complete public road grid network here. You can reach the subdivision by Humble Road on the western edge or Ringo Drive on the eastern edge, and Ringo is proposed to be connected through to Humble as part of the subdivision design. Again, two onsite roads proposed that will be built to County standards per the proposal. There's also 8-foot-wide walkways along each of the roads proposed, which meets the standard in our subdivision regulations. This is considered a combined appropriation, despite the number of wells, individual wells, proposed as

part of the subdivision. Because of that, it's tapped out--or capped out, I should say--at about 10-acre feet per year, which requires a plan and approval by DNRC to stay under that 10-acre foot threshold for domestic usage. The ditch does run through this property, which allows for irrigation on particular lots and the common area, and there's selective well irrigation outlined in the plan to stay under that magic 10-acre foot number, and also landscape irrigation is proposed to be limited as part of the plan with limits to lawn and landscaped areas. So, they've devised a plan and it's been reviewed and approved by the DNRC. Individual septic systems are proposed for the subdivision, which is a design supported by the health department, water quality district and City engineering, and because this is in the Missoula Wastewater Treatment Plant service area, a future planned connection to a municipal system has to be part of the overall design. As I mentioned before, there's a 3.5-acre common area proposed. The parkland dedication total for this subdivision is about three-quarters of an acre. So, that standard is met by the common area proposed. Two 5,000 gallon cisterns are proposed to provide fire protection, which have been given preliminary approval in design by Missoula Rural Fire. There's been considerable vegetation change over time on this property. The photo on the left dates back to the mid -950s. The photo on the right is probably within five years old. Particularly Ponderosa Pine and Juniper have really grown over the years, and so we definitely wanted to take a look at the fire suppression issues. Those have been reviewed by Missoula Rural Fire. The conclusion was that there's moderate wildfire risk with the subdivision. I should also note that the Sheriff's Office will be available to the subdivision in a manner consistent with its distance from the property and the ease of access. This is a view of the property looking south toward Blue Mountain and the Bitterroot River. If we zoom out a little bit, here's the property right here [on the screen], the Bitterroot River, McCauley Butte, Blue Mountain recreation area, Blue Mountain Road. The subdivision butts up against a 278-acre conservation easement. It's adjacent to an open space cornerstone. Cornerstones are areas with high open space values and can contain a unique combination of resources and open space values. Five Valleys Audubon Society commented on the subdivision, noting an updated understanding of bird migration patterns. Particularly, they cite a bird survey in southeast Missoula which documented an estimated 1,300 individual birds representing 21 species, and that that area consisted of what's known as "stopover habitat," with birds descending from migration altitude. It's estimated, per Five Valleys Audubon, that this area, too, is likely stopover habitat, evidence being 210 species documented on the Knife River ponds over a four-year period. It's also adjacent to--the property is adjacent to the Clark Fork River Grass Valley Important Bird Area, which stretches beyond Frenchtown to Huson, a bird conservation area of continental significance. Five Valleys Audubon's conclusion is that there's mixed habitat on the property: overstory trees, grasslands, conifer edges and open space and that homes on the butte would shift bird use away from the area. In some cases, the only buildable area's on those southern lots are on the southernmost portions of the property. So, we concluded that significant disturbance of wildlife habitat can be expected. Property size and proposed density offers opportunities to mitigate adverse impacts, but would require a redesign. Mitigation of the impacts to the natural environment and native veg would require significant changes to subdivision design and development restrictions that would require review. So, emergency services, water and sanitation are available to the subdivision. Per the subdivision regulations, no-build areas have been delineated. Those are the 25 percent plus slope areas. The subdivision meets the basic survey requirements in our regulations. We've concluded, though, that the developer has submitted a plat which doesn't comply with the requirements of the local subdivision regulations with regard to mitigating certain adverse impacts. However, this proposal has followed the necessary application procedure and has been reviewed within the procedures of our procedure chapter, which is Chapter 5. The subdivision meets requirements for utility easements and physical and legal access, and I will briefly turn things over to Bailey Minnich, who will summarize public comment on the subdivision.

[01:34:57] Thanks, Tim. So, just to give an update for public comment.

[01:35:04] So, Bailey, we're getting some bad echo. If everyone could mute their computers or phones, that would be great.

[01:35:14] Is that better?

[01:35:17] No. Not yet.

[01:35:23] Testing, testing, how's that?

[01:35:26] That's better. Okay, I'll start again here. So, I'm going to go over the public comment, the dates, kind of what what we went to through with it very briefly, and then also, just so you understand the public comment that

was in the packet, and what we did with this one, because of the number of times that it has gone through the planning board and the County commissioners, you'll notice in the packet we did a link on SharePoint through the County Commissioners' Office. Violet was a great help with that, and we kind of broke it out into two sections. So, there were comments that were prior to your November 5 board meeting, and that included everything that was with the planning board, et cetera, that was all in, kind of, beforehand, and then we have new comment, obviously, as of today, up to today. So, originally we did a number of public comment requests or outreach for public comment back in September. So, we mailed notice within 300 feet of the subject property in September. We did a legal notice in September, September 13 and September 20, in the Missoulian, and we did post a sign on the property, as well, at that time. And so, those comments are the ones that came in prior to November 5, but there were 10 comments in opposition at that time, and they included things of, you know, issues with development on the butte, I've listed, basically, kind of the main ones--topics, kind of--on, as you can see, on the slide [on the screen], issues with the steep slope, traffic and access, impacts in the neighborhood, wildlife, wildlife habitat, that the butte is a really iconic area, the need for bike lanes and sidewalks along Humble and impacts to the viewshed of the the butte and that the butte is a community value. So, then after that November 5 meeting, we did do some updated mailings as far as the extension in January, and then with the new information, we also did a new public notice to the adjacent landowners within 300 feet that went out on March 31. We also did a new legal in the paper, and that went out the end of March, March 28 and April 4 in the Missoulian, and so we've had--we actually--this slide is now out of date. We had another comment come in late this afternoon, so we actually had 12 comments that were received in opposition prior to this meeting, as well, and a lot of the comments were very similar or very much the same issues that kind of popped up and came through, but I would notice that there were a number of comments regarding potential issues with water quality as well as water quantity and more concerns about if there were septic systems more on the butte area and if those failed in the future, you know, what would be the impacts to water quality downstream of people? But a lot of the comments were very much the same as far as wildlife habitat, concerns with the steep slope, loss of ag lands and then one comment did have some questions about the potential for zoning variances after the subdivision approval, especially on the steeper slope issues, where in our zoning, you know, we state that you can't go over 25 percent slope, but you can have an engineer certify, you know, maybe there's no other options, and so the potential that, even though there are these areas that aren't shown as buildable, that could potentially become buildable down the road with a zoning variance or some other deviation after this process. So, that's kind of it in a nutshell. I can go into way more detail, but I know they were all as part of the packet, too.

[01:39:25] Thanks, Bailey. Tim, you're muted. Still muted, Tim. Okay, you're back with us.

[01:40:04] Alright, thank you.

[01:40:09] Yeah, feel free to move me out of the frame [on the screen] there.

[01:40:15] Alright. Dating back to planning board in October, just a summary of planning board's comment, they asked questions about unmitigated adverse impacts with this subdivision. Their concerns surround it impacts agriculture, wildlife and wildlife habitat and the natural environment. They did ask the question as to whether there are some sort of prescribed set aside metric in our regulations, and there is not. In the end, they recommended denial with seven votes of "aye." Now, we've mentioned the new information. It actually is a separate agenda item today. We determined in November when the new information came in that it was relevant and credible information, which requires us to schedule a hearing within 45 days, and that's why we had a subsequent hearing on December 10. This information has been distributed for review and is available on our website. It dates back to, actually, November 4, 2020. It's from TerraQuatic, a consultant working on behalf of the applicant. It's essentially an answer to Five Valleys Audubon's comments, and it's a plan for mitigation of impacts, and today, commissioners, I'm not going to represent the depth of what is proposed, but this [on the screen] is a graphic attached to the memo from TerraQuatics' original memo back in November showing additional plantings intended to mitigate impacts to bird and bird habitat. That's been followed up on, by the way, and I will speak to that briefly. So, again, starting in November 5, we had this new information brought forward. That hearing was continued to the tenth of December and then eventually to the 14 of January. And at the January 14 hearing, Five Valleys Audubon was encouraged to provide information supporting their position, and they did that on the 27th of January, and what they provided included survey information regarding the important bird area, night flight project mitigation research, the Knife River ponds bird list, as well as Christmas bird counts in the McCauley Butte vicinity, and this is just one item that was submitted regarding the Christmas bird count. You don't need to really read through it, but just--it's illustrative of what they submitted, and again, this is all available on our website and as part of the public record. So, following

that, on the eighth of February, TerraQuatic responded with updated information, and a few days later, West Incorporated provided a response to Five Valleys Audubon's analysis regarding birds and bird habitat, and they provided their own recommendations to mitigate impacts to birds and bird habitat. And so, what TerraQuatic did is they updated their planting plan, essentially, and this isn't the essence of what is proposed to mitigate impacts, but it's illustrative of a portion of what they're proposing with the green plantings being proposed as new plantings and red and yellow illustrating the vegetation that will probably have to be eliminated as a result of the development. And then, again, West Inc. submitted information on, I believe it was the twelfth of February, a multipage memo with their own recommendations for mitigation of impacts, and I believe folks from both consulting outfits are part of the call today, and what I would encourage you to do, commissioners, today, is to consider the new information in whatever decision that you make. It will be important. Our original recommendation is for denial of the subdivision, and I will be available if you have questions from there.

[01:45:12] Thanks, Tim. So, the applicant--can you [the person causing echoing] mute yourself, please? And someone is still unmuted out there, but let's go ahead and try this. Would the applicant or applicant's representatives from PCI like to present at this time?

[01:45:43] Sure. Can you guys hear me okay?

[01:45:46] Yeah.

[01:45:47] Applicant's Representative, PCI Consultants. And see me? Okay, great. I'd like to give a little bit of an update, thanks Tim and Bailey for that update and thanks to the commissioners for considering this application. It's been a long process. So, appreciate your time. I'd like to see if I could get the control of the screen and prepare a couple--show a couple slides. I'll try to be brief, because obviously this is stretching into a long meeting here.

[01:46:17] Violet, could you accommodate that, please?

[01:46:20] Administrative Assistant, Commissioners' Office. I'm sorry, Dave, what was that?

[01:46:23] Yeah, could you get Andy Mefford's--

[01:46:26] Yes. Yes, right away. Yes, definitely. Sorry about that. Andy, you should be good to go now. Do you see that capability?

[01:46:38] Okay, I'll see if I can execute it. It might be--.

[01:46:41] It's the little dots with an arrow in it.

[01:46:49] I am assuming you don't see it right now?

[01:46:54] No.

[01:46:54] We do not.

[01:46:56] Let's see here. I used to see request control, I don't see that. Is that what I'm supposed to see?

[01:47:22] No, Andy, it's in that top bar, it should be right by your camera and microphone buttons, and it's a little white box with an arrow in it.

[01:47:32] We're making progress.

[01:47:36] Oh, there you go.

[01:47:44] Can people see that, now, by chance?

[01:47:46] Yep, we're good.

[01:47:47] Yep.

[01:47:47] Okay. So, what I put together here is just a couple overviews. All I see is my screen and no one else at this point. So, maybe that's what I'm supposed to see. I'm not sure, but so a couple--I wanted to just highlight a couple elements. The first, I guess, is kind of an overview of, you know, why the McCauley Meadows Subdivision could and should be approved. First and foremost, we believe the project is in compliance with the rules and regulations related to subdivision approval. I understand staff finds that they don't feel that it complies with growth policy, but we disagree with that and probably believe that it does comply largely with the growth policy. Growth policies are broad arching dialogues that have a lot of bullet points, and, you know, most projects don't fully probably check every box in those. So, sort of cherry picking and finding certain elements to say you're out of compliance we feel is maybe a little strong of an opinion to say that it doesn't comply. We believe it complies with the zoning standards imposed on the area. The project's in compliance with the 2019 land use plan. We're requesting no variances. The project has a significant agricultural set aside with several amenities, as has been noted: the barns and access to irrigation water. We've worked closely with over this--not only this application but prior applications--on this similar project. We work closely with CFAC and Garden City Harvest to vet ag set-asides. In the previous November commission meeting, I presented at least 12 examples showing successful agricultural operations on parcels from a half-acre to four acres in size and covering a wide variety of vegetable farms, flower gardens, slopes. So, we really do feel that there is a workable opportunity here. I've been--there has been outreach to us from individuals interested in taking this parcel and moving with it. So, we believe it is a viable set aside. The regulations in of themselves lack any guidance on what is enough. It's never prescribed. So, we believe that with no guidance in place, that to claim that we're not providing adequate mitigation when there's no bar being set is a difficult position to say that we don't comply or have enough set aside or mitigate for ag when there's no benchmarks even established. There were several references in there that, you know, it would require a redesign, you know, for either the impacts on natural environment or for ag. The likelihood if this project were to come back for a redesign with--the likelihood of Senate Bill 211, maybe, moving forward, that will be known today, I believe, the next project that presented on this subdivision could have zero set aside. I think it was Tim showed it was .75 acres of common area. And so, I think now is a good opportunity to bring this to fruition so that people can have some set aside and preserve some ag. There was discussion about 10 acres lost. Well, 3.5 acres is still being preserved, so really, there's like seven acres or so, and we can get into the, you know, the change of that deal, but the full loss, there's only about 10 acres total of prime land to begin with, and 3.5 is preserved, so it's really not a 10-acre loss. There was some voicing over cornerstone's and viewsheds that's sort of a similar [01:51:25][reference?] that [01:51:25] I made earlier about the ag. Again, there's no viewshed zoning, you know, so this deal of holding someone accountable to a belief that the project isn't meeting the standard when no standards are in place for zoning reviews, you know, viewshed zoning is a difficult concept to say that you're non-compliant. Public opinion, you know, there has been some public opinion against this project, obviously. Again, public opinion in and of itself is not a criteria to gauge the subdivision on, whether it's a popular subdivision or not. We have criteria that we gauge it against, and the public has an opportunity to bring concerns to the table that might be overlooked, or some people might not be aware of, so that's an important element, but public opinion in and of itself I do not believe is one of the criteria. There was concern about the natural environment, specifically the birds. We have went and retained two experts to look at this project, and as a result, they have found reasonable mitigation that our client has been agreed to, and in many cases upped the ante, even, what was maybe even necessary. We've agreed to go above and beyond that for preservation to natural environment protection. And we believe it's a good project. It's well thought out, and there's been a lot of accommodations for agencies and neighborhood commentary we've heard. This is a brief one. We're just talking about its proximity to amenities in the area--we had this slide originally, but--to the school system, Fort Missoula, ballfields, open space lands, it adjoins, you know, the conservation easement that Tim showed. So, there's--the project lines within good proximity to infrastructure.

[01:53:07] Andy, are you intending to advance your slides?

[01:53:11] The ag screen.

[01:53:17] We're only seeing the first slide.

[01:53:23] What do you see now?

[01:53:25] 2020 land use.

[01:53:25] Nothing that's--could you go to the presentation mode for PowerPoint? Oh, you're so close.

[01:53:43] You're on slide 12 right now.

[01:53:46] What slide do you see now?

[01:53:46] Number 12.

[01:53:46] Yeah, you'll need to either go back to the beginning.

[01:54:00] Deputy County Attorney, Attorney's Office. Hey, Andy, this is John Hart. I see John Kellogg in the background there. I know he's your company's expert computer guy, so maybe you should let him take over there.

[01:54:13] I think what's going on is I had two slideshows up, and you were seeing--what do you see now, you don't see McCauley Meadows slide?

[01:54:41] Nothing.

[01:55:04] Andy, if you click on the share button and select screen number one or whichever screen you're using, that'll bring us to whatever you're seeing instead of just clicking on PowerPoint. That way it moves along with you. Something's uploading here. I may have shared it a different way.

[01:55:52] Some lupine and McCauley Meadows?

[01:55:54] There we go.

[01:55:56] Alright, let's try this one. So, I can click on the one. That was the overview site I was just going through. This is the one I was referring to with the community infrastructure. Do individuals see that now?

[01:56:13] Thank you.

[01:56:15] Yep.

[01:56:15] Thank you. So, that slide that we were just talking about with respect to its proximity to infrastructure, this is a slide I think John may touch on, Tim had it in his presentation, as well, but it's a slide that just shows the, kind of the progression of the community and views that were vented about this property where it was at one point even labeled "parks and open spaces," and through the 2019 land use plan actually expanded the use to residential and small ag while this application was even in process. This is a small illustration, unfortunately I wish I could blow it up a little bit more, but we superimposed into those building sites [on the screen], if you can see, the little red square where the two building sites would be on [01:56:56] the butte proximity to skyview and other skyline fans.

[01:56:59] I'm going to jump into a little bit of discussion about birds here. I'd certainl [01:57:08]y ask Brian-- [01:57:08]Lynn apparently was not available to make it today, from TerraQuatics, she had an emergency. She had to go into a field study today out in Big Timber, but Brian, certainly, when I get into the technical side of the birds, I want him to talk about that, and then I think John has a couple of things he would like to talk about, so once I'm done with that, then I'll either let John take over and do his or Brian. The bird thing I wanted to get into a little bit. The bird thing, this is sort of the non-scientific, more to the layman's, approach to this bird situation that we got into in the natural environment. So, I made a few bullets about this. The first one was we had a very similar proposal in this project in 2018, and it had the same relationship to this IBA, and we heard no significant comments from the Audubon Society at that time. So, you know, it kind of yields the question of what changed between a 2018 proposal and kind of silence on the matter to now it's a significant concern. The best I can tell in the process in going through this, there was an April 20 email that the Clark Fork--I guess, Five Valleys Audubon Society submitted with respect to concern about the project in the natural environment. PCI never really heard anything about where staff was going on this thing or anything until weeks before the final staff report was concluded, and at that point, we heard there was either going to be a no position, which I've never heard of yet, or a recommendation for denial. When this came

out and we learned those recommendations for denial and concern about natural environment, I reached out to the Audubon Society on several occasions. I specifically asked, the question was, was there a conversation between April and staff's finding with respect to the unmitigatable impacts to the birds in the natural environment? And the Audubon Society, when I talked to them, said, "no, we haven't had that discussion." I don't understand. Personally, this is a very technical aspect. It seems confusing to me how staff, without concert--consultation with us and bringing in an expert or with the Audubon Society came to the conclusion that the effects on bird is unmitigatable. I mean, there are experts that deal with this. There's been numerous projects approved in this IBA since 2000 adoption, 2008 adoption. The project has a lot of scrutiny with respect to its relationship to the IBA. This project is, as you've seen on other slides, and I'm going to show you a couple at the end of this presentation, it is on--it straddles the borderline between the IBA. If you look at that, there are some pronounced things about it that don't even physically make sense. The IDA, as just a layperson, when you look at it, there's great importance put on the impacts to the Knife River ponds or the ponds. The IDA doesn't even cover the ponds in entirety. It barely covers the river corridor in reaches. It's very, very segmented. It doesn't follow wildlife patterns or anything. So, it seems like it's sort of a rudimentary line that doesn't have a lot of basis to how that line is created. We got this, the science or the verification from the Audubon's position about this support of not mitigatable, but a lot of that support comes after conclusions that are already made, which I don't understand. To me, the process is, you look at the data, you look at the situation and you find a fact or a conclusion. This was a deal of we found it, said it's unmitigatable, and then we spend the time after that decision's been reached to support those decisions. It seems like there's an issue of sequence. The developer, I can assure you, and we work with a lot of developers, this developer has taken great concern with this respect to the birds. They said, let's go hire experts, let's bring in the right people and look at this. And we did that, and not only one, but two of them to get a foundation to verify, is this mitigatable? And we'll get into that and let them get into the details of that. We found that it is very mitigatable. We actually invited the Audubon Society to participate in those, and it was either unwilling or unavailable to do that, which, and it was sort of the deal of that ship sailed with me until next one, you know, and we just found that that was odd, that we couldn't at least yield them out there to take a look at it with us and talk about it. Even if the conclusions were, "we can't agree," we couldn't even get that to occur. As I said, we hired the two experts to look at this and review it for potential impacts, and they have found numerous mitigation measures that we feel are adequate to mitigate any minimal impact that may occur from the subdivision. There's actually a belief that we could probably improve bird habitat by adoption of this subdivision. It increases habitat, removal of fencing, overhead electrical, bird boxes. There was a lot of good mitigation in there, and there's even a study, I believe, referenced in the West study that indicates new subdivisions can actually improve bird habitat. I'm just about done, so I won't take much longer. This is just an example of the Five Valleys Audubon Society of notable birding areas in the valley. You'll note the Knife River ponds and the butte are not listed on that. The closest nearby is Maclay Flat and Blue Mountain. Next slide. This is one of the documents [on the screen] that's also, I believe, on their website, the Montana Audubon, indicating in red, as you can see, the outline of the IBA, but this document is very hard to discern. So, we cut that file, and we broke it down and we imposed it more on things that can start to be more real. The red area here is, this is cadastral, I believe, underlain with the red area showing the IBA. This is another look showing projects that have been approved within the IBA, subdivisions and land development projects and subdivision nature that have been approved. This is also another microscopic view of the subdivision itself, proposed subdivision, in black. The red hatching is the IBA, and here's an example, as I pointed out earlier, where we've got the coveted ponds that are being referenced so frequently as being a part, where, I guess one would have to ask, was that in pond A or pond B, and if it was on the west side or the east side of the IBA? So, it's clear this red line we've drawn in the sand is very crude, not to mention if you back up a slide, I just don't think wildlife patterns follow 90 degree corners and such. So, it's clearly a, you know, a 10,000 foot view at best to kind of establish that. And then this is the final [on the screen]. I just wanted to show one of the things we had in that original planting guide with TerraQuatics was trying to replace corridors and create corridors with this loss of the road. So, that's why we had proposed some more plantings on the hill, and the Audubon Society had concern about that, that we were converting grasslands to forested lands. So, we looked at other ways to do that and mitigate that by not proposing those, because there seemed to be more desire to have more grassland, and we actually proposed specie variety and clumpings and created, actually, a secondary corridor along the road network, and we've also proposed replacement of two to one. If we take out a tree, we put two back is another one of the mitigations. So, that's just kind of an overview to touch a little on the ag, a little on the bird concerns, a little couple overview items, and with that, I think I'm done. I'll stop presenting and let John maybe add what he has to about land use and then maybe let the bird guys talk.

[02:05:05] Thanks. John?

[02:05:07] Land Use Planner, Professional Consultants, Inc. Thank you. Appreciate this opportunity, commissioners, and I just want to touch on a couple of items that Tim's already hit on. And if I could, I'd like to bring up the screen in a minute here.

[02:05:25] Yes. One moment.

[02:05:25] Pardon me?

[02:05:32] John, you should be able to share your screen now, it's a box with a little arrow inside of it up in the top right corner.

[02:05:44] Okay, can you see that?

[02:05:48] No, not yet.

[02:05:54] Not yet. Okay. Share content. Okay. Can you see that? The area land use element?

[02:06:17] Yes.

[02:06:18] Okay, great. When I initially read through the staff's 34 findings of fact concerning the growth policy, I was fairly certain that our proposal would be found in conformance with that policy. I was actually dumbfounded when the staff's conclusion at the end of that was that we're not in compliance with the growth policy. In the findings, the staff lists two parts of the growth policy that are under consideration here. One is the 2019 Missoula Area of Land Use Element that's up on the screen here. We are fully, as Tim's already mentioned, we're fully within an area designated for rural, residential and small agriculture. And I think it's kind of hard to disagree that McCauley Meadows is a perfect example of that designation. Tim's also mentioned that we're in conform--can you see the zoning map?

[02:07:30] Yes.

[02:07:30] Okay, great. Tim's also mentioned that we're in full compliance with the Target Range zoning, and we're not asking for any variances. So, where does the substantial noncompliance come from? Well, on page 92 of the Target Range plan, neighborhood plan, is a suitability, a landscape-based suitability analysis. If you look at this closely, and I don't want to get too deep in the weeds here, but it's fairly obvious that the blocks of land here [on the screen] are driven by ownership patterns rather than natural boundaries, such as prime ag land or other natural bases. So, if you look at the maps that are used as a basis for this composite map, it's obvious that all of the red areas, and we're this red area down here, all the red areas are parcels that are two acres and larger, and so these blocks of land are presumed in the plan to be unsuitable for development based largely on the fact that they're two acres or more, while the yellow and the orange areas are under two acres and they're indicated on this map as being more suitable. Unfortunately, those yellow and orange tracts that are less than two acres cannot be subdivided in Target Range zoning, because you need at least two acres to meet the standard of one acre per lot. So, therefore, this map, which was used as a basis for staff's interpretation, potentially prohibits development anywhere in the target range neighborhood. And so, I have--I'm fairly certain that the County's goal in interpreting this plan is not to block any development of the Target Range neighborhood, and so I would suggest a revision of conclusion number one on page six of the staff report to determine that we are in compliance with the growth policy. Moving on to one final point I wanted to make about our farmland preservation effort. When we began preparing this subdivision proposal a couple of years ago, the first people, Dale McCormick and I met with where Bonnie Buckingham of CFAC and Genevieve Marsh of Garden City Harvest. That's because we knew we wanted to focus our design around a feasible and appropriately sized agricultural common area. We spent a great deal of time researching similar farm parcels, and Dale, through the process, communicated frequently with these agencies and others to assure we're headed in the right direction. And I think in a previous hearing Andy Mefford showed you a number of slides of that research that we had done. Our agricultural preserve, on this slide here [on the screen], the three and a half acre preserve, includes three important elements. First, a substantial old barn in the middle of it that provides a place where produce can be stored, where equipment can be maintained, and so that's the first item here. The second is that there's immediate availability of irrigation water. The third item is, and this I think you may have missed in the explanation by Mr. Worley previously, that 100 percent of the underlying soils in this three and a half acres are

Grantsdale loam, per the USDA map. Even though there's a slight increase in slope as you move toward the southern end of it, it does not make that unsuitable for growing crops, vegetables and such, and so what we have here is preserving the best of the best land within this property for a workable farm. I'd like to also mention that the net acreage that's been mentioned quite a bit and that site that's listed on here, also takes out easements and the irrigation ditch. So, those are actually important parts of the agricultural land. The net acreage of a usable farm here, when you take out the road, half of the road easements, is actually closer to three acres. And as you're certainly aware, and as Tim mentioned previously, the County does not have a standard in the subdivision regulations that establishes how much land or the percentage of land that should be set aside for preservation. In fact, throughout the time we prepared the subdivision application, there was no recommendation, suggestion or other indication specifically regarding how large our agricultural common area should be. So, with our research, we came up with a proposal and initially it was two and a half acre, which is the light area in the center of the current and common area. When we submitted the application, we did receive a response in the agency review from Bonnie Buckingham suggesting how we could enlarge the common area by taking land from adjacent residential lots, which is shown in the green, the darker green [on the screen], on either side of the initial common area. So, we took that advice immediately. We revised the layout, even though it meant we lost a few months by having to go back through review, but we wanted to show how committed we are to making this agricultural preservation work, and we think it's a good plan. As an aside, I'd like to mention that I live next to Stevensville, and I grow hay and graze horses on three to four acres down there. It's a lot of work, and my daughter certainly thought it was a noble, important use of our agricultural land resource so that they could ride their horses in Pony Club. But now I've come to the place where, in the near future, I may want to transition from kind of a passive agricultural use, keeping the horses fed, to a more active growth of farm produce, because I have prime ag land with--if it's irrigated, also, similar to this. So, to do that, I'll need to work with someone who knows a lot more than I do about farming. Coming back to McCauley Meadows here, what we're proposing is that same transition from a passive agricultural use to an actively productive farm. Through CFAC and through Garden City Harvest and others, we have great help, and I'd like to quote from Bonnie's last letter to us where she says, "Should the subdivision be approved, CFAC will work with the owners to find a suitable farmer for the agricultural lot through our farm link program." So, this is a great opportunity, I believe, for you to show how farmland can be preserved within a development through a cooperative effort with agriculture non-profit agencies and come up with a great usable farm center to this subdivision. Let me see if I can--am I back off?

[02:16:11] You are. Thanks, John.

[02:16:12] Great. Thank you.

[02:16:14] So, did you have your consultants queued up who wanted to say a few words?

[02:16:20] Looks like he's on, so I'll let Brian take it.

[02:16:26] Wildlife Biologist, Western Ecosystems Technology. Alright, thank you, commissioners, for letting me share today. My name is Brian Moser. I'm a certified wildlife biologist. I've been practicing wildlife biology for 24 years. I have a bachelor's and master's degree in wildlife biology Washington State University and a Ph.D. in wildlife biology from the University of Idaho. I've studied birds over the last 25 years, 24 years, and published a number of studies and written lots of reports. I used to live and work in Missoula for 10 years, and now I work in the Bozeman Office of Western Ecosystems Technology, otherwise known as WEST. WEST works nationally and internationally on developing scientifically defensible common sense solutions to oftentimes complex natural resource problems. WEST was founded in 1990 and has offices in 13 states and one province. I'm assuming the commissioners have read the memo that was developed as a result of both our desktop review and site visit of the proposed project area. So, I won't read it, but I want to give you just some of the highlights briefly, and I'll try to make this quick. WEST's goal in this exercise was to provide an objective, scientifically defensible review of the project's potential impacts on birds and to provide options to mitigate those impacts, if any. So, there will be approximately 3.16 acres of permanent habitat loss as a result of the project. However, the amount of permanent habitat loss is a relatively small proportion of the McCauley Butte, approximately 1.06 percent, and it's also a small proportion of the IBA, 0.01 percent of the IBA. We recognize that habitat effectiveness will be reduced to the presence of the subdivision. However, much of the project area is already impacted by the existing development in and around it. The Audubon Society has documented 231 species of birds that use the IBA. However, upon review of those data, the majority of those species are not associated with grassland habitat, but rather water and/or riparian habitats and wouldn't be found on the IBA. In fact, we don't have complete data that documents which bird species

are actually using the project area, how they're using it and how important it is to them. Some of the habitat loss to the subdivision development is almost always permanent, and incremental losses certainly add up over time. There are best management practices generally accepted by wildlife managers to avoid and minimize potential impacts during construction activities. There are also measures generally accepted by wildlife managers that could be implemented both onsite and offsite to mitigate for the project's impact to birds and/or their habitats in the IBA and Missoula Valley. We have listed a number of viable mitigation options that are [02:19:27] memo, [02:19:28] as has Lynn Bacon from TerraQuatic in her report. What we would recommend is a collaborative approach that includes all the potential stakeholders to develop a solution that allows for development of housing and also protects and even potentially enhances bird habitats in the Missoula Valley. If you have any specific questions that you would like to ask me about our report, our review, I'd be more than happy to fill them for you.

[02:19:54] Thanks, Brian. I appreciate that. So, Andy or John, do you have anyone from TerraQuatics on the line who wants to speak?

[02:20:05] No, she was not available today. I don't think--her exhibit, I think, speaks for itself, and we've got a lot to do with it, but she's not on the line today.

[02:20:13] Okay, before we open it up for you--who was that? Okay, before we open it up for public comment, and just so everyone knows what they're commenting on today, Andy or John, are you proposing--well, both in the documentation provided by both TerraQuatics and WEST, there's a whole collection of potential mitigation. Are you proposing adopting any of those, just so we know what it is we're commenting on here?

[02:20:49] All of those.

[02:20:51] All of them? Because one of the mitigations I believe offered by WEST was offsite mitigation, even.

[02:20:58] We had proposed that, you know, and that was one that was not --the offsite mitigation, I believe, and maybe Brian could speak to this, was some kind of reasonable contribution to a Five Valleys Land Trust or other offsite agencies where there could be habit restoration. And so, if that was something to consider, we're open to that as long as it's, you know, a reasonable amount, you know, not an unreasonable or insurmountable effect. They were open to that in reasonable values.

[02:21:25] Okay, well, let's hold those thoughts, I think we'll probably want to loop back to that in the context of what that would look like operationally by way of conditions of approval or otherwise incorporated into your proposal. But why don't just hang on to that thought for a second and let's go ahead and open up the public hearing for public comment. I would encourage folks to please be, as I mentioned earlier, be as succinct as possible, try not to repeat one another. Keep your comments to three minutes or less. Be respectful. Follow the golden rule and all those good things. So, without further ado, it looks like we do have a hand up here, and I'm trying to see--oh, there it is. Jim Brown, would you like to unmute yourself and go ahead and introduce yourself and tell us what's on your mind?

[02:22:24] Yes, I'm not sure my picture is up there, but I think I can be heard.

[02:22:28] Yep. We see you, too.

[02:22:30] Director, Five Valleys Audubon Society. Okay, I would just like to emphasize a few points that we've made in the past, but first, a couple of comments on some things that were brought up earlier. One was that the Audubon changed its position from the very first time to the last time on what we recommend. That isn't really quite true. One thing that happened between the very first comment we made, which is almost two years ago, was that we learned a lot more about the importance of migration through the river corridor system. And the other thing is that we've always said that two lots of the five on the butte itself we don't have issues with. The bottom land, it has the agricultural potential. But two lots on the butte are particularly important in that they are a major disturbance of bird activity, kind of related to that, too, the disturbance of birds goes well beyond the boundaries of the lots, and that is a big problem, particularly in open areas and for some species that are prone to disturbance. One other thing mentioned about the IBA and the Knife River ponds, the IBA does include the ponds now. When it was first drawn some 12 years ago or so, it was excluded, because it was a huge gravel pit, and it didn't seem appropriate to include

a huge gravel pit. Now that the City owns it, and it's full of water, we've included it, but that's really not so important. What's important about the Knife River pond is a number of species that are coming through there, and many of them are migrants, not just waterfowl migrants, but many of these are landward migrants right next door to McCauley Butte. So, that's the importance of it, whether it's in the IBA or out of the IBA. So, just to emphasize a few points we've made in the past, one small point was that we talk a lot about birds, but birds represent all forms of wildlife: mammals, small mammals, ones you have a hard time seeing, amphibians, reptiles and so forth. [02:24:41] So, so go the birds so go all these forms of wildlife. [02:24:45] So, the big issue is whether the mitigation really offsets the bird impacts, and some of those mitigation measures that have been proposed I think are very good things to do. And a number of them wouldn't be so useful, particularly over the long term, because many of those would take a long-term commitment from the landowners to maintain them. Shrubs, for example. It'd be nice to plant some berry shrubs, although the kinds of birds that would use them aren't maybe so important up on the butte itself, but if you're going to have successful shrub planting, you're going to have to maintain strong fencing for 10 to 15 years to get them established beyond the ever-present deer browsing. So, a number of those mitigation measures really would only be effective over the long-term if there was long-term landowner commitment to it, but I think the important thing is that we don't really believe that the mitigation would compensate for the loss of habitat and particularly for the disturbance due to home sites on that area, and McCauley Butte, as a grassland, it's really important when we look at the whole landscape where McCauley Butte sits, it's a part of a river corridor, which is a treasured national resource in this valley. Missoula is so lucky to have this kind of a natural resource right through its town. It's a part of the important bird area that is well established. It's in an open space cornerstone, it's iconic landmark, and we really need to protect it for the benefit of all citizens in the community. So, McCauley Butte is just not the place for continued incremental loss of habitat, and I conclude with that statement, and I appreciate the time you commissioners are giving to understand these issues. Thank you.

[02:26:45] Thanks, Mr. Brown. Annie Graham?

[02:26:53] Constituent. Hi there. Can you see me and hear me?

[02:26:57] Yes, we can.

[02:27:00] My name is Annie Graham, and I own the neighboring property that contains the rest of McCauley Butte, and then I also have a house over on Two Rivers Lane, and that portion of the butte is my view. As far as the the conversation about the birds goes, I've been working with MPG Ranch recently, and they've recognized how important this area is for birds, and we've recently installed a [02:27:33]moda station [02:27:34] on the butte in order to track birds in the area. So, that's how important that particular area is for bird research. They recognize what's going on over there. I just wanted to say, you know, I know I've commented before, but the rest of the butte has been placed in a conservation easement, not only to protect the animals that are there, but also to protect its scenic value, and this piece of the butte doesn't have the easement, but it is of scenic value to everyone else in that neighborhood. I think that the images that are shown in these presentations tend to be misleading. The southernmost corner of that property is McCauley Butte. It is a quarter of McCauley Butte. It goes right up to almost the very top, and so I think when you look at those images, you're not actually seeing that. So, again, I think like others have said, I'm not necessarily opposed to having a subdivision in my neighborhood that is not built on the butte. I'm in support of the subdivision, but I am not in support of any of those parcels that are built on McCauley Butte.

[02:29:01] Thank you, Ms. Graham. Anyone else online want to comment? Paul Ferguson? And Paul, you'll have to unmute yourself. There we go.

[02:29:18] Constituent. Yeah, I'd agree with Ms. Graham. The local people don't want this. There's no base--nobody's saying in favor of this development. Everybody worries about the view, the increase in traffic, the degradation of some of the streets with all the construction traffic that's going to be going through. The birds are important, but probably the deer are more important that are all very hungry to eat anything that's put out there, and the humans are important, too.

[02:29:58] Constituent. Hello, I'm [02:29:59] Sid Ferguson, [02:30:00] Paul's wife. I'd just like to make a comment about the developer's comment about not listening to public input. We all--the majority of us out here--put down a lot of hard-earned money to buy the property and live out here. We maintain it beautifully. It's a wonderful neighborhood. And just the idea that we should, you know, just accept the fact that they want to put homes up on the

butte is unacceptable. We are not against subdivision. This was a dead-end street when we moved here. They've subdivided all around us. It fits the neighborhood. So, it's okay, but the houses on the butte are not, so build on the flat, and I think that would be a very acceptable plan. Thank you very much.

[02:30:58] Thank you, Mr. And Mrs. Ferguson. Anyone else? Fred Stewart? And you're muted, Fred. There we go.

[02:31:12] Representative, Target Range Homeowners Association. My comment was about the composite map that John Kellogg put up from the neighborhood plan, and it was map number 13, and I just wanted to point out that as a composite, it talked about a number of different overlays, and the fact that that area came up red had to do with the fact that there are eight different criteria that were used in the neighborhood plan, and I'm not sure that he made that clear, that it looked at wildlife habitat, sensitive land, prime soil, open space, travel for the fire department, access to city sewer, transportation, so there are a number of different criteria that were used in that particular map to try to show which areas in the Target Range area made the most sense as far as suitability, and it didn't say you could only subdivide or build in areas that were green or yellow or red. It just tried to point out which areas have the most impact in terms of subdivision and which areas were most suitable, so that's all I wanted to point out, was that particular map, I think, was not necessarily explained as much as it could have been.

[02:32:41] Thanks, Fred. Additional public comment? Yeah, go ahead, if your caller on the line, just unmute yourself and introduce who you are. Whoop, we got two folks going on.

[02:33:04] Okay, I'll go first and then you can go.

[02:33:12] 8579.

[02:33:16] Can you hear me?

[02:33:17] Yep, go ahead.

[02:33:18] Constituent. Okay. My name is Brett Kalina. I've spoken against this development several times, written several letters. So, I'll be brief. I just want to reiterate that I am all in favor of developing the flat land on the valley floor. I'm 100 percent opposed to the lots up on the butte. I was one of the original signers of the conservation easement how many ever years ago we did that, and the idea of putting houses on the butte is so wrong in so many ways, and the developers and their representatives seem frustrated that they just can't find the right people to pay to just make this problem go away, and it's just not going to--it's not going to be a mitigatable situation. The lot, the southwest most lot, and again, I'm at work and I'm on a phone, so I don't have my paperwork in front of me, but the southwest most lot is basically a hillside of 25 percent slope or greater, and it's disingenuous to say that there's a little teeny space there that can hold a house, but keep in mind, you've got a road cut across the butte with Ponderosa Lane just to access that lot, and then if we let them--if you let them create a lot up there, the next guy comes along and he has to put in a driveway and a septic system and a house and a garage and a dog kennel and all the stuff that he will be, or he or she, will be entitled to do once they buy that private lot, and the bird mitigation stuff is wonderful, and I'm all for it, but the deer that come down through the Ponderosa will no longer be there. The presence of houses and all the stuff that that accomplishes are not shown on this map. So, to plant a few shrubs because you've built a road through Ponderosa Forest and named the Ponderosa Lane, that doesn't even begin to--the real impact comes when the homebuyers come, and I'll stand up for their rights, because once you buy a lot, you have the right to do with it what you want, and from day one, several years ago, I told the developers and their representatives, I will support you any way I can. Don't build on the butte. And they have never acknowledged that that is a serious problem. They have never offered mitigations. They've never offered property line setback. They've never done all the things that they could do. Instead, what they've done is they just keep watering this project down, saying we meet the letter of the law. We're not asking for any variances. You know, how could you, you know, we hired some professionals out of Bozeman to come here and tell us to put some bird boxes up. But they have never dealt with the most glaring problem of their proposals, which is putting homes up on a steep conservation-easement-protected unique geological landmark. Once those five lots are developed and all the stuff that goes with them, the deer are gone. They're going to go to the other side of the butte where everyone in that neighborhood, where I live, that is an asset to see the wildlife and the clear, dark skies up on the butte, that's an asset that's going to go away, and I tell you, I've walked this property three times a week for the last 17 years. I no longer own it. I'm lucky enough to still be able to go on it. I protected it for an eternity through Five Valleys Land Trust, the best thing I've ever done

with my life, but I tell you, the developers are so intent on winning this argument that they are blind to the fact, I mean, even Andy Mefford said that one of the assets is that it's close to conservation easement protected property. Well, you're going to ruin it, and there is a viable profit, very profitable development that could happen. Put the houses down on the flat, charge an arm and a leg for them, because they will have this beautiful, protected hillside that is part of a great conservation story in Missoula. And stop watering it down, get active, but I'll leave it at that. I've got a lists and lists of things I could talk about forever, but steep, rocky slopes on the side of a unique geological feature that is conservation easement protected forever, it is just the wrong place to put septic systems, driveways, dog kennels, houses and all the stuff that will come. So, I wholeheartedly support their right to build down on the flat where we have a neighborhood, we have paved roads, we have it all, build on the flat, protect the steep slopes, and you're going to make a lot of money, and everyone will be happy. But this just defies common sense, and I will leave it at that. Thank you.

[02:38:22] Thanks, Brett. There is another caller who was wanting to get in there earlier?

[02:38:28] This--can you hear me now? This is George Hart.

[02:38:33] Yeah, go ahead, George.

[02:38:36] Dave, did you talk about two bites of the apple?

[02:38:39] This is George.

[02:38:40] I think George had commented on something previously, a different item.

[02:38:45] That was the 25-foot to water from the health code.

[02:38:49] That was the health code.

[02:38:51] Sorry about that.

[02:38:52] Alight.

[02:38:52] One bite per apple, Josh. Mr. Hart, go ahead.

[02:39:00] Representative, Target Range Sewer and Water District. Thank you. I represent, today, the Target Range Sewer and Water District, which has never been consulted about this and has some very serious concerns about why they would want to put five houses on the side of the butte, as we understand, shit does flow downhill and eventually the septic systems have to fail. That's a concern. Back to the Audubon, first there was no bird comment before Mr. Worley's mentioned. Now there's an Audubon concern. I appreciate Brett Kalina explaining that it represents all small animals up to the size of deer, and fortunately, well, actually, I think we've had bears in this area as well as pumas, so there are animals that come to Target Range, whether they're using a corridor or not or a street. I really don't know or care. But one of the things that most bothers me about this particular proposal is the plan to cut down all of the ponderosas that are down low and replace them with--this is especially Annie, I can't remember her last name, but her concern is cutting all of those ponderosas down and then "mitigating" it, and mitigating in quotes, by putting trees up above, which will never be watered, and they'll never live, and how long of a concern is that mitigation going to be? Another speaker represented that the mitigations have to be maintained. And, you know, we've got no concerns at all. Target Range Sewer and Water District has no concerns at all about building on the flats as long as they meet the County, City-County Health Department regulations for wells and septic systems, but we have yet to hear anything about a septic system that would be successful and useful and permanent that can reside on the side of a slope. As Mr. Stewart mentioned, there was a lot of reasons why that area was not suitable for development. It wasn't because a lot of wealthy homeowners said this is not what you should be doing. It is because the Target Range plan took like three years to put into place, and that was because we got the community involved and--not myself, but the rest of the community--and decided that these were important factors. And so far, you have--or PCI--has found no neighbor that supports building on the slope. There really isn't much opposition at all to building on the flats, that's pretty much where all of us live, but building on the slope is a great deal more than a slight increase in slope, and as far as the ag land goes, you have not found--or nobody has found--a farmer that is

willing to work that land, and Bonnie Buckingham's assurances that they're going to work with farm link does not produce a farmer for that land. The farmer--most farmers don't want to travel far to get to their farm, and the prices of these homes is going to be out of their price range anyway. So, in summary, one of the most remarkable quotes I heard from Brian Moser about birds was that we don't have the data, and it kind of strikes me as odd that the commission would consider a change for which they don't have the data and putting homes on the slope, it's just a bad idea. Absolutely no support for it out here in Target Range, and I don't think there ever will be any support. I think that the owners should do what Annie Graham has done and, you know, leave the slope the way it is. People like it. And item number two of your review criteria for subdivision requests talks about the effect on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety, and if you start putting--if you start cutting down all those ponderosas to put up houses in places, I mean, they're going to make a lot of money, and maybe the developer is, you know, really intent upon having a home on the top of the butte, but--

[02:44:32] Hey, George, I need you to wrap it up.

[02:44:36] Okay, fundamentally, by the criteria identified and subdivision requests, this does not mean any--it does not meet the criteria and should be voted down. You've got my letter that explains a few other things, and today I send in an email from one of our constituents that talks about how there's not enough water in the area, and I got to remind folks that the aquifer flows from south to northwest, and it is entirely possible that there is no water for development on the side of the of the hill. Okay, that's it for me.

[02:45:24] Thanks, George, and I'm going to be a little bit draconian here and start muting folks. We are running long, and please be courteous to one another and keep your comments to three minutes or less and try not to be repetitive. I think we're getting the gist of some of the themes being articulated here. Next commenter? Anyone else like to comment? Last chance. Okay, with that, I will close the public hearing and open it up for questions among the commission. I guess, before we do, a point of clarification from Tim Worley, where are we at in terms of process here? Are there any statutory deadlines that we are under here today or because of the introduction of this new information that's kind of drug on for a while, do we have any latitude to not take action today?

[02:46:38] I think I would recommend getting consent from the developer's representative if we were to continue the hearing to--and I would--it looks like maybe Violet can help on this, but May 13 and be one day--although that seems kind of busy.

[02:46:57] And the reason I ask, and this loops back to the question that I posed to Andy and John earlier, prior to hearing from them today, it was unclear what, if any, of the proposed mitigations by their consultants were ones that the developer was actually supportive of and could potentially be turned into conditions of approval if we decided to go down that path. So, it was really impossible for any member of the public to adequately comment on or members of the commission to deliberate on specific mitigations that we were unsure if they were actually being proposed or not.

[02:47:45] Yeah, I think it was important on the record to have Andy essentially consent to specific mitigations proposed by both WEST and TerraQuatic. What staff would do, should you move forward in a direction of approval, is we would probably outline those in a condition of approval, and we would also try to frame other appropriate conditions of approval for mitigating impacts.

[02:48:17] Thanks, Tim. Okay, Josh or Juanita, questions or thoughts at this juncture, because it seems like we are at a crossroads here, either it's up or down denial, or adding conditions on the fly today, or basing our approach to the findings of fact and conclusions of law and recommendations of the original staff report.

[02:48:46] Well, I had a question about, because we were to consider the new information, is there someone from Five Valleys Audubon that wants to speak?

[02:48:55] Well, we did have, they actually did speak. That was by way of Jim Brown from Five Valleys Audubon.

[02:49:02] Oh, thank you. I thought Jim Brown was a neighbor. I didn't--apologies, Jim.

[02:49:08] He might be that, too. I don't know. Maybe he's wearing two hats today.

[02:49:14] Okay, apologies, Jim.

[02:49:16] I did speak, but I don't know that we're neighbors.

[02:49:20] I thought you were speaking as a, yes, as a neighbor to the project. I didn't realize you were representing Five Valleys Audubon. So, thanks.

[02:49:29] Josh, you were trying to get in there?

[02:49:30] Yeah, thanks. I just wanted to ask Tim a couple of questions, if that's all right. Thank you. So, Tim, when the original staff denial was, I think I got this right, but I just want to make sure that I do, that that denial was based on three things: one, lack of compliance with the growth policy, two, insufficient ag protection, and three, significant habitat disturbance. Is that correct?

[02:49:52] That's a good summary, yeah.

[02:49:54] And then in terms of new information, can you say if you feel like this significant habitat disturbance has been addressed by these mitigation efforts? If that's too much on the spot, that's fine, too, I don't mean to be speaking out of turn.

[02:50:20] I think it definitely changes things, I don't know that I necessarily have the expert opinion to arrive at a change, I guess, of whether it's adequate. I think it certainly is mitigation. I think, commissioners, it's really up to you to decide whether you think that's--whether the two consultants and their series of proposed mitigations are sufficient to take care of those wildlife habitat issues.

[02:50:53] And then, last bit about building on a 25-degree slope, can you speak to that?

[02:51:02] Yes, and let me speak from the health perspective, even though that's not my wheelhouse, necessarily, you can cite septic systems on steep slopes of a certain degree, and I think they have worked to find locations where septic systems could at least meet Reg. 1, which you just approved in a fashion, and there's also locations that they've demonstrated where a home can be built under a 25 percent slope. They're very limited on some of those southern lots, but there's locations that exist that are less than 25 percent slope.

[02:51:49] Last question, and then I'll be done. Some of the people have spoken to the butte as kind of unmitigatable in terms of loss, that the butte itself is significant, meaningful wildlife habitat and any damage to those slopes is not mitigatable. Do we have a precedent for that? Is there--do we have a precedent for that any--that some landscapes are unmitigatable in terms of--the losses of those landscapes are unmitigatable?

[02:52:25] Yeah, that's a tough one, I'm not sure what to conclude about that. I mean, there's some balance, because it's [02:52:31] certainly--the tow slope [02:52:33] of the butte is included as part of the subdivision, but there's definitely a considerable portion of the butte that is preserved in perpetuity--over 278 acres--and there's other portions of the butte that are not going to get developed, so I don't know if I can make a conclusion about unmitigatable. I mean--

[02:52:55] I just wondered if maybe there's some other place in the County where when a person wanted to develop and it was determined that this habitat is so special, you just can't build on it without it being some other designation.

[02:53:10] Yeah, I don't know that I've ever seen it quite phrased like that. I mean, if you're getting into endangered species impacts or clear--I mean, I know we're talking about flyover habitat, but documented wildlife corridors--that's maybe where we've see decisions made that have--where attempts have been made to mitigate that habitat very clearly.

[02:53:37] I would certainly agree that this is an iconic piece of the landscape, but that isn't a criteria by which we could approve or disapprove something.

[02:53:47] Or could you speak to, on that point, Tim, to viewsheds and how that can or cannot be factored into reviewing a proposed subdivision?

[02:54:00] I would say viewshed is probably more in the growth policy arena. I mean, what's the vision of the community for preservation of a viewshed? And it's a--there's a sort of relative nature to it, obviously, because there's a southern boundary to this property, and it doesn't, obviously, go to the top of the butte. I mean, it's going to impact the side of the butte, but it's a partial impact, is it a, you know, is it more than that? I don't know.

[02:54:34] Thanks. Thanks, Tim. I've got a couple questions. I think I saw Bonnie Buckingham out there. Not to put you on the spot, but I'm going to put you on the spot. Does CFAC have a position on this proposed subdivision as presented today, taking into account the additional proposed mitigations?

[02:54:58] Executive Director, Community Food and Agriculture Coalition. Yeah. So, CFAC has commented on this over the past many years, and we have recommended denial of this subdivision due to the loss of agricultural land, and while others have commented a lot on it's okay to put all the houses down on the flat and preserve the butte, it really is an asset of soil that is a big loss, and it is a 10-acre piece that is currently intact, and so we have recommended every time this has come forward to deny this subdivision based on the loss of agricultural soils. And my name has been brought up many times, and I have met with the developers and the owners on numerous occasions and tried to talk about how to mitigate and how to best protect that land. I think, in all honesty, the best mitigation for this would be to put the whole lot in a conservation easement and utilize funds that are available to pay the difference between the easement cost, the development cost and the conserved cost. And that would be my recommendation, but I do appreciate that they have put the set aside. One of the things that we've talked about in the past is having it as a for sale lot at agricultural value, because then a farmer would actually gain an asset by farming on it as opposed to leasing it from a Homeowners Association, which is not nearly as valuable to a farmer, especially on a small acreage amount like that. So, those are my thoughts, I guess, as of today, and as I said in my letter, though, should you approve it, we would really work very hard to ensure that it was farmed and that there was a project put on it so that it doesn't just sit there fallow or become a park, but that it would really actually utilize the best soils that are there and create a farm project of sorts on there.

[02:57:45] Thanks, Bonnie. I do have another question, but Juanita, you've not had a chance. Do you have any questions right now?

[02:57:54] No, I guess just in the past, why--the concern about housing and development on the butte, why do we have to build there?

[02:58:10] Is that to PCI?

[02:58:12] I guess, yeah, I guess PCI, the landowners, I mean, it feels like this has been kicked around for a few years, and I'm not really clear why the insistence to to build on that bench.

[02:58:24] Andy or John, what do you think about building those parcels at the toe of the butte, and what would it look like to delete those parcels? Recognizing that there is this tension, as I think we've all noticed, between ag land and viewsheds on the butte.

[02:58:51] Sure. We have looked at all this carefully, no doubt, you know. Architectural standards came up, you know, it's been a sensitive issue. There's no doubt about it, but it's part of the economics in the model that, you know, they're not willing to walk away from numerous lots to this project. It doesn't make it make it work for them, and we can't recapture them on the bottom. So, preserved ag has been a delicate balance, you know, because you hear some very passionate folks come in and say, "put all you want on the flat. We're good with that, but don't touch the butte," you know, and then you don't do any preservation for ag, so it's a fine line we've been trying to walk here, you know, and very carefully. That's why we've brought in the experts to look at the birds and the habitat and preservation. You know, I heard [02:59:36] today that [02:59:36] we hadn't monitored any setbacks. We actually did propose some setbacks along the southern boundary. You know, we heard things about, you know, I heard

comments like deer won't cross the roads and things and other wildlife impacts, but I don't know that those are really founded. I mean, there's deer crossing the road at Cabelas, you know, on Brook Street, so I'm not so sure that that's of great concern. What we heard is this riparian, you know, or the bird issue, and so we carefully looked at that, but I think, you know, removal of those lots on the butte, you know, since it's already been disturbed, the roads punched up there, I mean, honestly, one of the things we really wanted to do was not build a trail and put a smaller road up on the butte, and that was in that first proposal with a variance, but we did not want a proposal with variances in it. We wanted it to be clean and follow the compliance and not asked for variances and follow the rules, and so it's been a struggle, but it's a fine line and a balance we've been playing, and, you know, it's just not in the profile or the [03:00:34] performer [03:00:35] to drop two, three, four lots off to butte.

[03:00:40] Thanks, Andy.

[03:00:41] You bet.

[03:00:43] So, Dave, I got just one other--oh, you're muted there, sir.

[03:00:50] Yes, go for it, Josh.

[03:00:51] Thanks. I just have a comment, really, and Mr. Mefford pointed out that SB 211 is, you know, about ten government minutes away from becoming law, and these folks could just shelve this thing and come back in a month and put a house everywhere where it could fit across the bottom, and as is now, they're saving what looks--what, 2.6 acres of ag land, and I'm pretty nervous that 2.6 acres isn't enough to amount to much, and I'm also keenly aware of the damage done to the butte, and I wonder if we were to--and it hurts me to say this--but kind of make a swap. A 2.6 isn't enough to be a real viable, economically viable agricultural lot. It's certainly viable that somebody can grow things there, but it would have to be in some kind of hobby situation. It's not enough to be real. If that land were to be built on and then no land on the butte was to be built on, could that--Mr. Mefford, could you swing it that way?

[03:01:58] Well, I think you raised, you know, a lot of questions, and this is sort of an interesting circle back to some negotiation we tried at the last commissioner meeting. We were actually chastised heavily by certain commissioners for trying to provide mitigation. You know, the old subdivision way was sort of that bartering system and trading at the table, but I guess I'd looked to Tim and others. I think if we did that, that's a new subdivision. You know, we're going back to elements and sufficiency review. I guess I'd be interested to what Tim has to say about that.

[03:02:30] I didn't mean any chastising, and I wasn't part of that last meeting.

[03:02:34] No, you weren't. You weren't.

[03:02:36] This is just an open question as potential problem solving is all I'm going for right now.

[03:02:42] Understood.

[03:02:46] Tim, do you want to speak to this? As far as just from a process standpoint, what degree of changes would kick something back to either an earlier stage in the process or essentially create a situation where you're needing to start from scratch?

[03:03:08] I think something as significant as absorbing the common area and just developing on the flat but preserving the upland portion of the property is--that's too big a change to accomplish through this process. Now, what's being proposed as far as mitigations from WEST and TerraQuatic, that's more in the realm of things that you can bring into the conversation for mitigation of impacts. But radical changing of lot lines and common areas and elimination of roads, that's probably too far.

[03:03:48] Okay, thanks. I do have a question for you, Tim, but first I need some clarification from either Andy or John. I'm not sure which one of you mentioned this. I think you were disputing staff's assessment of the growth policy. You mentioned conclusion number one on page six regarding the growth policy. Was that you, Andy?

[03:04:16] It was John.

[03:04:16] No, it was me.

[03:04:16] John, could you clarify that again? Because I would like to hear from staff on that point.

[03:04:21] Certainly. The map, if you go--and the comments that Fred Stewart made refer to the underlying maps, there were eight of them, I believe, that are a composite into that map that shows relative suitability for residential development--if you look at the underlying maps, it's painfully obvious that a heavily weighted item in the underlying maps is the lot size, and that's a driving force that creates the red blocks on the final composite map. So, the difference between the yellow and the red on that final composite map is merely a difference in the underlying lot sizes being two acres or larger. So, I think it's clear from that composite map that the unsuitability is driven largely by the lot size, and so that's my point, that you either have a lot that's two acres or larger that's unbuildable then, or undevelopable, or you have lots that can't be subdivided under the Target Range zoning, because there's not enough acreage within them, which results in no area within the Target Range zoning and the Target Range plan where you can reasonably develop based on the way staff has interpreted the low suitability for developing.

[03:06:11] Yeah, so that's helpful. So, you were primarily referencing the suitability map in the Target Range neighborhood plan as an amendment to the growth policy?

[03:06:24] Correct. That's correct, yes.

[03:06:25] Okay. Tim, could you just clarify for us, and recognizing that the growth policy and substantial compliance therein is only a portion of your rationale--staff's rationale--for denial. Could you just recap for us the inadequacy of compliance with the growth policy?

[03:06:50] Well, to speak to that specific issue that John brought up, I had a slide regarding the suitability map. I think part of the composite, the factors that go into that are the fact that you have agricultural soils, and John mentioned the large acreage, the agricultural history, and then the lack of municipal water and sewer. So, that's regarding the suitability map in particular, but no, substantial compliance is--it can be a challenge to find it. From the standpoint of this is rural, residential and small ag, if you look at the goals and policies of the Target Range neighborhood plan, substantial compliance might be a little bit elusive if you look at the straightforward land use designation of in the 2019 land use element. On the face of it, it seems pretty straightforward, I mean, up to two homes per acre, agricultural preservation is encouraged as part of development in the 2019 land use element. Growth policy compliance is always kind of a challenging metric, for sure. I mean, I think with this one, goals and objectives in the neighborhood plan, I sort of tipped it the other direction for us.

[03:08:29] Okay.

[03:08:31] What were the discussions about clustering or getting variants for clustering, or a greater density so you could have more farmable acres? Is that--

[03:08:44] Andy or John, was that a consideration during the design of this subdivision?

[03:08:50] It was, we--that was sort of what the first proposal did, and we had that issue with the one acre minimum in that planned neighborhood variation that was a real struggle, and so that's why we held the one acre minimums, because we actually tried to sub some one-acre lots, but that--there was a term, and Tim will have it off the tip of his tongue, but that was a major struggle in the earlier subdivision that was denied over this property was breaking that one-acre ceiling.

[03:09:18] Also, the Target Range zoning specifically mentions they did not want to rely on the planned variation and the other methods of clustering as a way of avoiding the one-acre minimum within the zoning. So, that was another reason that we went to full compliance with the zoning with this revised proposal.

[03:09:49] Thank you. Does that answer your question or get at it, Juanita?

[03:09:53] Yeah.

[03:09:53] Okay.

[03:09:54] I guess it kind of gets at it a little bit. Thanks, Andy and John. I mean, I'm just--it's just we're kind of in this awkward position, and it's 5:15 p.m., and I think people are probably fried and get a little loopy, but it's--this is looking like it has to be a redesign. I mean, or we, you know, dine our swords over 2.6 acres of agricultural soil? No, we can't, I mean--

[03:10:28] So it's, I mean, basically the choices before us, I think, are either, based on the findings of fact and conclusions of law in the staff report, based on the public comment that we've heard, based on our own deliberations, voting this thing up or down, and if that's not the approach, if you're thinking that--or if we are thinking that--some of the habitat mitigations that have been proposed are enough to tip the scales to get this over the finish line, then I think we would probably not want to take action on this today and have staff work out those conditions of approval for consideration at a subsequent meeting provided that the applicant and applicant's representative were willing to grant us that additional time.

[03:11:25] I think that's a good way to go, Dave, I'm just going to--I can see where I'm leaning right now, if that helps or hurts. I don't believe that 2.6 is, as Juan said, worth dying over. It's not really big enough, and as soon as tomorrow, the governor is going to say, "don't consider agriculture anymore," so you could build anywhere. I don't believe there's any political or physical solution to the loss of habitat on the butte. So, those two things--and I'm also really bummed that the Target Range zoning is so rigid as to not accept some clustering. I feel like that would have been the answer here, and it's far too late, and I missed a key meeting. I was away at November 5. It would have been great to have houses on smaller lots, shared septic, maybe get the same amount of houses, save ag land and keep the houses off the butte. That's the kind of design that could have done this, but I guess--I probably--I'm just saying that because I wanted to say it. I get that that isn't here nor there.

[03:12:35] This conversation about clustering, though, that happened years ago, though, not on November 5, right?

[03:12:41] You're correct, Juan. I probably shouldn't even be saying it, but it's that sort of design solution that will yield things like ag land protection and natural protection on steep slopes. If we would just shake ourselves free from the shackles of "one per acre is the only way a person could live in this area in harmony with their neighbors." I feel like that's the real bugaboo here, and I'm fully willing to give up the 2.6. The governor is going to make it go away, and it's not big enough anyway, and I don't believe there's anything mitigatable--any mitigation we can do to preserve the ecological integrity of those slopes, but that's just me, and we're not voting yet. I'm just speaking my mind.

[03:13:22] So, another consideration, as far as ecological integrity and habitat, and Tim might have flipped slides so quickly as to folks not noticing this, but the grassland habitats that you see on McCauley Butte were probably at one point in time, and we're at one point in time, subject to more frequent fire. So, there was actually a time when, I think in the first historic slide that you showed, there were quite a few fewer trees than are there today. So, from the standpoint of, if we're talking about conifers on the butte and what is kind of the historic range of variability, maybe preserving some of those trees today is not--that's an artifact of fire control more so than anything, and may not be indicative of what an earlier condition would be. So, if we're talking removal of trees, maybe that's not ultimately the worst thing that could happen on the slope.

[03:14:40] No, it's just that--I agree with you, Dave, but the--where can we fit the social and cultural importance that the community has placed on this butte, and with the conservation easements all around it? And I totally get this isn't part of subdivision review, but, I mean, it is part of--what otherwise--why are we even having this conversation if we can't take that public and community comment to heart? Sorry, Tim. Go ahead.

[03:15:14] I was just going to mention if we choose to move forward in time and have the subsequent hearing in May, I think it would be the closest we could get this, we could not only provide some recommended conditions but some alternative findings that address some of these issues. Then you could sort through all those pieces, for sure. One element that probably needs to be worked out as far as just the logistics on the planting plan by TerraQuatic is a

lot of the plantings are proposed on private lots, and if those are to be an adequate mitigation for impacts to birds and bird habitat, the question is, how do you accomplish establishing those clusters of vegetation, and then maintaining them over the long term on private lots? And I don't know the answer to that right now, but that's something we would have to sort through, and maybe Andy and PCI could consider that if we go that direction.

[03:16:26] So, SB 211's been mentioned a few times today. I find this just an egregious piece of legislation amidst many egregious pieces of legislation this session, but it is the hand that we will be dealt. So one question, I think, for us, and I hate even being in the position to pose the question, is, is what is before us today as good as it gets? And, is it as good as it gets and could be maybe made a little bit better by some additional mitigations or conditions of approval? If it's not as good as it gets, then I think we're back in play as far as, do we take it on its own merits today and vote this thing up or down? Thoughts?

[03:17:20] It seems to me, Dave, that it is as good as it gets in terms of ag land preservation, but that 2.6 I don't believe is big enough to really be meaningful. It'll be wonderful for the people who live nearby, but in terms of really meaningfully adding to our food system or generating quantities of food or quantities of dollars, I don't believe that it's going to be meaningful. And we are still faced with the ecological integrity of the butte and the iconic nature of this piece of landscape.

[03:17:51] Well, I'm sensing it's time to throw some motions up on the screen, Tim.

[03:17:57] Or, yeah. Or, I mean, do we want to just let this conversation sit with the folks who are here and come back again in a month, given they've heard what we've had to say and maybe want to bring something back that's different than it looks like right now?

[03:18:12] Well, and if commissioners, if you go the approval direction, I would definitely request an extension be granted by the developer's representatives, and then either hold a subsequent hearing on the 13 or the 27 of May, it looks like, are the next two open times, or open hearings, that would work. I wouldn't do a straight ahead approval, just because we don't really have a series of findings. We don't have conditions yet, and I would suspect that PCI would consent to an extension should you go that direction.

[03:18:50] But I don't want to be disingenuous, because it sounds like we're actually looking at a different proposal, and so, I mean, is there a way that you can have--can we make a different proposal without having to completely go back to the very beginning? Do they get a mulligan of sorts, or what leeway do we have to--

[03:19:12] Can we say that, you know, the legal lay of the land has changed with SB 211, and these folks should not have to go back to square one?

[03:19:22] I don't know that you can really do that. I think process wise, and it was either Andy or John mentioned that back in the day there was more of a run different designs up the flagpole sort of approach, but the way state law has been put together over the years, I think it would be very difficult to do that.

[03:19:47] Is John Hart out there?

[03:19:50] I'm here, Josh, and I would just--just to tag on to what Tim said, for me it's the public participation and the public knowing the proposed subdivision that you're acting on that is the reason why you don't want to do more than just tiny, insignificant tweaks to a subdivision at a public meeting.

[03:20:21] Got it. Thank you.

[03:20:24] So, I think it boils down to a little bit of a roll of the dice in terms of if kind of the overriding concern, if there's no conceivable way in which we could see the existing ag parcel being adequate and enlarging it at this juncture is not going to be possible and is going to be kind of precluded by SB 211 in the future, notwithstanding the good intentions of a developer, then I guess what we're down to is, if a new proposal came in, could we--is there a mechanism by which you could keep the development off of the butte itself? And I guess that's the unknown right now, and I don't think, short of a conversation with the property owner, I don't know if we're going to resolve that. In which case, I guess it brings us back to where we were at originally. If we're inclined--leaning towards approval,

then we request a delay on an action and have a subsequent public hearing where we could have some conditions of approval actually drafted for it. If that's not in the cards, then I say we do the up or down vote today.

[03:22:00] I'd prefer--I don't want to be disingenuous, and so I'd rather do the up or down vote today.

[03:22:06] Yeah.

[03:22:09] Tim, the motions? The motion? Okay, there it is.

[03:22:54] Ok, I move that the McCauley Meadows subdivision be denied based on the findings of fact in the staff report.

[03:23:02] Second.

[03:23:04] Any further discussion on the motion? I think today is, speaking of things that are iconic, it's the tension between ag land and it's diminishing and precious nature and also landscapes that are iconic to the heart and soul of our community. Any further discussion? Seeing none. Let's go ahead and vote. All in favor, please signify by saying ay.

[03:23:41] Motion to deny passed: 3-0.

[03:23:42] Any opposed? Nope, that's unanimous. Okay, there we have it. Thank you, everyone, for hanging out today as long as you did. Is there any other further business to come before the commission today? Seeing none. We will be adjourned.

[03:24:03] Thank you.

[03:24:04] Thank you.