Ravalli County
MONTANA

Planning Department
215 South 4th Street; Suite F
Hamilton, MT 59840
(406) 375-6530 ph; (406) 375-6531 fax

REQUEST FOR COMMISSION ACTION

OG-06-05-542

Meeting: May 8, 2006 at 2:00 pm
Request: To act on a Floodplain Permit Application Variance Request

I. ACTION REQUESTED

This is a request from Lynn Bates, represented by Bitterroot Engineering & Design, to approve a **Variance Request** to meet the minimum development standards of the adopted Ravalli County Floodplain Regulations as part of a floodplain permit application.

II. BACKGROUND

Lynn Bates submitted a floodplain application (file reference FA-05-16) to complete work within the floodplain of the Bitterroot River. One requested work item is to install a new 2" diameter pressurized sewer line approximately 1800 feet in length through the floodplain and bore the sewer line under Big Creek to connect to an existing drainfield. The existing drainfield is located on the west side of the property and is elevated above the 100-year floodplain. The project area is identified on the regulatory floodplain maps as the floodway portion of the 100-year floodplain. The adopted county floodplain regulations prohibit new individual sewage systems of all types whether for temporary storage, treatment or disposal in the 100-year floodplain. The proposal to bury the sewer line portion of the new individual sewage system within the 100-year floodplain varies from the development standards of the Ravalli County Floodplain Regulations.

III. RECOMMENDED MOTIONS

That the variance request from the Ravalli County Floodplain Regulations, Chapter 4, Table 4-6-1 for the proposed installation of the pressurized sewer line in the 100-year floodplain be **denied** based on the following:

A. Chapter 6-8 (2) proclaims that "the establishment of a use otherwise prohibited" is an action that "shall not be allowed by a variance". A new individual sewage system is

a prohibited use as identified in Chapter 4, Table 4-6-1 in the floodplain regulations; therefore this proposed variance is not approvable.

B. Chapter 6-7 of the floodplain regulations states: "The Board of County Commissioners shall not approve the variance application unless it makes a positive finding, based on substantial competent evidence, on each of the [review criteria]." Based on the findings of fact in the staff report, a positive finding for approving the variance was not found for each of the review criteria.

IV. STAFF REPORT

VARIANCE REQUEST

The applicant has requested a variance from Chapter 4, Table 4-6-1, of the Ravalli County Floodplain Regulations, which prohibits the development of new individual sewage systems of all types within the 100-year floodplain.

Compliance with Variance Review Criteria

A. There is a hardship on the applicant in carrying out the strict letter of this Code as distinguished from a mere inconvenience.

Findings:

1. The application specifies that the preferred residential home site is the "present northern portion of land out of the floodplain".
2. The application states: "Based upon failed groundwater monitoring in the northern portion of land, the only viable septic site is on the one acre piece of land west of Big Creek."
3. The floodplain regulation findings state: "The inability of a landowner to develop to the 'highest and best use' because of this Code does not necessarily create a hardship."
4. The floodplain regulations do not contain a definition of "hardship" or "inconvenience".

Conclusions:

1. The applicant could relocate the home site and the sewer line to the piece of land west of Big Creek outside of the 100-year floodplain thereby meeting the requirements of the floodplain regulations.
2. There may be inconvenience, but there is no hardship in carrying out the strict letter of this Code.
3. There is a **negative** finding on this review criterion.

B. The hardship does not directly result from the actions of the applicant.

Findings:

1. No hardship has been identified (see above).
2. The location of the proposed house is the "preferred building site for the 110 acre parcel of land" as stated in the application.

Conclusions:

1. Other sites outside of the 100-year floodplain are present on the parcel.
2. The perceived hardship is a direct result of the actions of the applicant's desire to locate the home at the specified site instead of the locations outside the 100-year floodplain.
3. There is a **negative** finding on this review criterion.

C. The variance is the only option available to the applicant to afford relief from the hardship.

Findings:

1. No hardship has been identified (see above).
2. The application claims that "this is the only viable option for effluent disposal".
3. As referenced above, there are available options to relocate the home site and sewage system to meet the development standards of the adopted floodplain regulations.

Conclusions:

1. There is no hardship because there are other home site and sewage system locations outside the 100-year floodplain that would not require a variance.
2. There is a **negative** finding on this review criterion.

D. The variance is the minimum necessary to afford relief from the hardship.

Findings:

1. No hardship has been identified (see above).
2. The applicant states that "the variance is the minimum necessary to afford relief from developing the parcel except for the land west of Big Creek".
3. The minimum floodplain development standards are set forth in the Ravalli County Floodplain Regulations, Chapter 4, Table 4-6-1. This section references the County's Sewage Disposal Regulations (presently known as the Subsurface Wastewater Treatment and Disposal Regulations).
4. The standards require that the wastewater treatment system be located a minimum of 100 feet from the 100-year floodplain.

Conclusions:

1. There is no hardship and even if there was, the proposal is not the minimum necessary to afford relief from the perceived hardship.
2. The minimum standards can be met by relocating the home site and sewage system to the land west of Big Creek.
3. There is a **negative** finding on this review criterion.

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

Findings:

1. Chapter 1-6 (a) of the Ravalli County Floodplain Regulations states: "The purpose of this code is to promote the public health, safety, and general welfare. To that end, this code shall be implemented to protect human life and health to the greatest extent."
2. There is at least one alternate potential home site with area for a sewage system on the property that would meet the minimum standards in the floodplain regulations.

Conclusions:

1. The threat to life and property are higher with the proposed design than a design that meets the requirements of the floodplain regulations.
2. The proposed location of the sewage system could become detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
3. There is a **negative** finding on this review criterion.

F. The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.

Findings:

1. Chapter 1-8 (a) of the Ravalli County Floodplain Regulations states that "proposed projects shall comply with all other applicable local, state and federal rules or regulations".
2. Chapter 1-8 (b) of the Ravalli County Floodplain Regulations stipulates that "if the requirements of this Code conflict with any other local, state or federal rule or regulation, the most restrictive requirement or those that impose the highest standard shall control".
3. The application indicates that the "[Ravalli County] Board of Health has approved the construction of the sewer main contingent upon a flood plain permit and presenting engineering plans and specifications for review".
4. The Administrative Rules of Montana 36.15.605 (2) states "the following artificial obstructions are also prohibited within the designated floodway: (c) solid and hazardous waste disposal and individual or multiple family sewage disposal systems".

Conclusions:

1. The Ravalli County Board of Health has conditionally approved the sewer line; however, the Ravalli County Floodplain Regulations and ARM both prohibit sewage systems in the floodway portion of the 100-year floodplain and thereby impose the most restrictive requirement.
2. The proposed variance will result in increased flood hazards, present additional threats to public safety, create a nuisance, or conflict with existing state or other local laws (specifically conflicting with ARM 36.15.605 (2)(c)).
3. There is a **negative** finding on this review criterion.

G. A reasonable alternate location that would not require a variance is not available.

Findings:

1. The application states that "2006 groundwater monitoring may reveal another potential septic site".
2. As referenced above, there are available options to relocate the home site and sewage system to meet the development standards of the Ravalli County Floodplain Regulations.

Conclusions:

1. There are reasonable alternate locations available to locate the sewage system that would not require a variance.
2. There is a **negative** finding on this review criterion.

H. The proposed use would be adequately protected and flood-proofed.

Findings:

1. The application states: "The sewer line will be adequately protected and flood-proofed by being buried a minimum of depth of six (6) feet."
2. The application indicates that "no scour is anticipated as the 100 year flood velocity is estimated at about 3 [feet per second] fps".
3. Larry Schock, with the Montana Department of Natural Resources and Conservation (DNRC) provided the following comments regarding the 3 fps velocity estimates impact on scour: "should be OK unless there is some sort of structure or feature on the property which will cause some sort of local acceleration of the water and cause scour".
4. During a phone conversation in February, 2006 Mr. Schock stated that "there aren't any good scour equations" for sewer lines and is therefore difficult to determine scour depth.

Conclusions:

1. The proposed septic line may not be adequately protected and flood-proofed as scour depth has not been sufficiently identified.
2. There is a **negative** finding on this review criterion.

V. REMAINING ISSUES:

1. Within five (5) days following the decision and if the Board approves the variance or approves it with conditions, the Floodplain Administrator shall mail the decision to the Department of Natural Resources and Conservation for concurrence, modification, or rejection (Note: The DNRC has the ability to modify or void the decision of the Board of County Commissioners.)
2. The Floodplain Administrator shall mail the variance decision to the applicant within seven (7) days of the date of the decision.

Attachments:	Map 1-Floodplain Map
	Exhibit A-Ravalli County Floodplain Regulations
	Exhibit A-1-Floodplain Variance Application
	Exhibit A-2-ARM 36.15.605
	Exhibit A-3-Email from Larry Schock, DNRC
Staff:	Laura Hendrix, CFM LH
	Floodplain Administrator
Date:	May 7, 2006

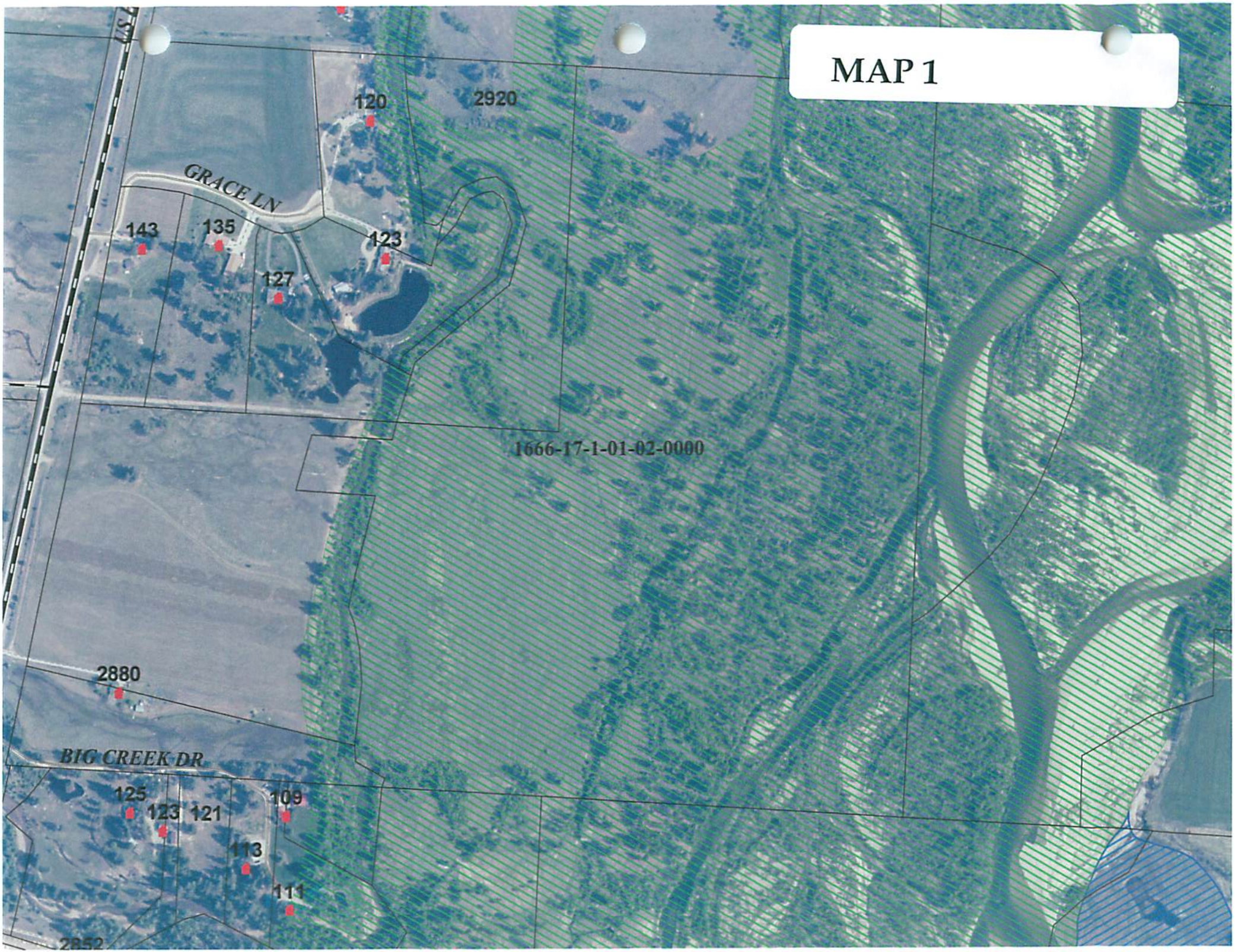

MAP 1
120
2920
GRACE LN
143
135
123
127
1666-17-1-01-02-0000
2880
BIG CREEK DR
125
123
121
109
113
111

EXHIBIT A

Table 4-6-1.
Matrix of Uses and Minimum Development Standards.

	Floodway	Floodfringe	Minimum Standards if Allowable (Also see Section 4-5)
Storage or disposal of solid and hazardous wastes and hazardous substances	Prohibited	Prohibited	n / a
Storage or disposal of toxic, flammable, hazardous, or explosive materials	Prohibited	Prohibited	n / a
New individual sewage systems of all types whether for temporary storage, treatment, or disposal	Prohibited	Prohibited	n / a
Use of an existing individual sewage system for an increase in effluent flow.	Prohibited	Prohibited	(Note: For example, it is not permissible to convert a residential structure into a commercial enterprise, which has a higher flow rate than the residential structure. Likewise, it is not permissible to replace a three-bedroom house with a five-bedroom house.)
Replacement of an existing individual sewage system	No permit required	No permit required	a. The system meets the requirements of the Ravalli County Sewage Disposal Regulations (Specifically see Section III). b. The system is located as far from the river channel as possible.
Public sewage system	Prohibited	Permit required	(Also see the requirements of the Ravalli County Sewage Disposal Regulations - Section VI(d))
Removal of woody debris, such as downed trees in a river channel	No permit required	No permit required	(Note: A 310 Permit from the Bitterroot Conservation District may be needed.)
Agricultural uses	No permit required	No permit required	Does not involve fill, excavation, permanent storage of materials / equipment, or structures other than portable structures.
Accessory uses such as loading and parking areas, or emergency landing airstrips associated with industrial and commercial facilities	No permit required	No permit required	Does not involve fill, excavation, permanent storage of materials / equipment, or structures other than portable structures.
Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, parks, wildlife management and natural areas, game farms, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking or horseback riding trails	No permit required	No permit required	a. Does not involve fill, excavation, permanent storage of materials / equipment, or structures other than portable structures. b. The project will not require flood protection in the future.
Forestry, including processing of forest products with portable equipment	No permit required	No permit required	Does not involve fill, excavation, permanent storage of materials / equipment, or structures other than portable structures.

VARIANCES

6-1. Table of Contents.

6-1. Table of contents
6-2. General description
6-3. Findings
6-4. Purpose
6-5. Initiation
6-6. Application and review procedure
6-7. Basis of decision
6-8. Limitations on issuing a variance
6-9. Imposition of conditions
6-10. Inclusion of specified statements for approved variances
6-11. Application form and content
6-12. Duration of permit
6-13. Appeals

6-2. General Description.

This Chapter establishes the procedure, conditions, and requirements to issue a variance.

6-3. Findings.

The Board of County Commissioners makes the following findings:

(1) Local jurisdictions have the option of granting variances from when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) There could be instances where certain requirements of this Code that if enforced would cause unnecessary hardship to individual landowners.

(3) Minor deviations from this Code may help to alleviate unnecessary hardships without circumventing or undermining the intent of this Code.

(4) To avoid arbitrary and inconsistent decisions, it is appropriate to adopt specific criteria that will be used to evaluate each variance request.

(5) The inability of a landowner to develop to the "highest and best use" because of this Code does not necessarily create a hardship.

(6) Issuance of a variance does not imply or guarantee approval or conditional approval of a floodplain permit or limit the conditions which may be imposed as a condition of approval.

6-4. Purpose.

The purpose of this Chapter is to define the procedure, requirements, and criteria that a variance can be granted.

6-5. Initiation.

An application shall only be submitted by the property owner, or any person having a contractual interest in the property, or an authorized agent. The variance application shall be submitted concurrent with the submittal of a floodplain application.

6-6. Application and Review Procedure.

(a) *Submittal of Application.* The applicant shall submit a completed application to the Planning Office, along with the appropriate application fee as listed in Chapter 5.

(b) *Determination of Completeness.* Within ten (10) days, but not sooner than four (4) days, of submittal, the Floodplain Administrator shall determine whether the application is complete or incomplete and notify the applicant of any deficiencies. If the application is incomplete, the applicant has six (6) months to resubmit the application or forfeit the application fee. The Floodplain Administrator shall take no further steps to process the application until the deficiencies are remedied.

(c) *Provision of Public Notice.* Following a determination of completeness, the Floodplain Administrator shall provide for appropriate public notice.

(d) *Public Hearing.* The Board of County Commissioners shall conduct a public hearing to review the application. The public hearing shall be held more

than 14 days after the publication date of the first legal notice.

(e) *Decision.* Within sixty (60) days of the determination of completeness (unless the applicant consents in writing to an extension of the review period) the Floodplain Administrator shall notify the applicant that additional information is needed to adequately evaluate the application or the Board of County Commissioners after considering the comments of the general public and after reviewing the staff report, shall make a decision, based on the criteria as described in Section 6-7, to either:

(1) approve the application,
(2) approve the application with conditions, or
(3) deny the application.

(f) *DNRC Review.* Within five (5) days following the decision and if the Board approves the variance or approves it with conditions, the Floodplain Administrator shall mail the decision to the Department of Natural Resources and Conservation for concurrence, modification, or rejection. (Note: The DNRC has the ability to modify or void the decision of the Board of County Commissioners.)

(g) *Applicant Notification of Decision.* Within seven (7) days following the decision, the Floodplain Administrator shall mail the variance decision to the applicant.

6-7. Basis of Decision.

The Board of County Commissioners shall not approve the variance application unless it makes a positive finding, based on substantial competent evidence, on each of the following:

(1) There is a hardship on the applicant in carrying out the strict letter of this Code as distinguished from a mere inconvenience.
(2) The hardship does not directly result from the actions of the applicant.
(3) The variance is the only option available to the applicant to afford relief from the hardship.
(4) The variance is the minimum necessary to afford relief from the hardship.
(5) The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.
(6) The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.
(7) A reasonable alternate location that would not require a variance is not available.
(8) The proposed use would be adequately protected and flood-proofed.

6-8. Limitations on Issuing a Variance.

The following actions shall not be allowed by a variance:

(1) establishment of a use that will increase the base flood elevation by more than six (6) inches, unless the Floodplain Administrator determines that the increase in flood elevation will not pose a flood hazard to existing or foreseeable development.
(2) establishment of a use otherwise prohibited; and
(3) expansion of a nonconforming use or structure.

6-9. Imposition of Conditions.

In issuing a variance, the Board of County Commissioners may impose such conditions and restrictions upon the premises benefitted as may be necessary to allow a positive finding to be made on any of the foregoing factors, or to minimize the injurious effect of the variance.

6-10. Inclusion of Specified Statements for Approved Variances.

Where applicable, the following statements shall be made in the variance decision to put the applicant and subsequent owners on record regarding actual and potential consequences:

(1) Constructing a building below the 100-year flood elevation will result in increased flood insurance premiums.
(2) The threat to life and property are higher than if the development meet the requirements of this Code.

EXHIBIT A-1

February 22, 2006

Bitterroot Engineering & Design, Inc.
1180 Eastside Hwy. Corvallis, MT 59828
(406) 961-5634 FAX (406) 961-5654

Laura Hendrix
Ravalli County Floodplain Administrator
Hamilton, MT 59840

RECEIVED
FEB 23 2006
Ravalli County Planning Dept.
1C 06 02 291

RE: Frazier Property Floodplain Permit Application (FA-05-16), Victor, MT.

Dear Laura,

Per the request of Lynn Bates and according to your letter dated January 18, 2006, we are providing the following information.

1. Narrative
a. Limited fill.
    1. There are no other reasonable alternate transportation routes outside the designated floodplain to access the proposed and/or potential building sites.
    2. The encroachment is located well away from the river channel in order to properly access the sites. As you know, a final building site has not yet been selected. It is dependent on the FEMA application and septic issues.
    3. Since the roads are proposed at grade, there will be no increase in base flood elevations.
b. Utility Lines.
    1. No suspended lines are proposed in the floodplain. All utility lines will be buried.
    2. There are no proposed towers or other appurtenant structures.
    3. No scour is anticipated as the 100 year velocity is estimated at about 3 fps. For channels which experience consistent flows, typically lining is required when flows exceed 2.5 fps. With the 100 year flood duration, I can not anticipate that hardly any erosion will ever take place, especially in the gravel bottom channel of Big Creek. Enclosed is some literature for channel lining which indicates erosive velocities.
2. We have provided a copy of the LOMA application.
3. I believe this has now been located in the County's filing system.

We are also providing a variance application in addition to the $500 fee.

We are hopeful that this submittal satisfies the request for additional information. Please give us a call if you have any additional questions.

Sincerely,
BITTERROOT ENGINEERING AND DESIGN, INC.

John C. Horat

By John C. Horat, PE

Application Revised: 09/24/03 Form may be downloaded from: www.dnrc.state.mt.us/permit.html	AGENCY USE ONLY: Application # _____ Date Received _____ Date Accepted _____ Date Forwarded to DFWP _____

JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES

Use this form to apply for one or all of the local, state, or federal permits listed below. The insert titled "Information to Applicant" includes agency contact information and instructions on how to complete this application. After completing the form, make the required number of copies and sign each copy. Send the copies, with original signatures and additional information required, directly to each applicable agency. To **expedite your application**, be sure all required information, including **a project site map and drawings** are included. Incomplete applications will be rejected. **Note: other laws may apply.** It is your responsibility to obtain all permits and landowner permission, if applicable, before beginning work.

✓	PERMIT	AGENCY	FEE
x	310 Permit	Local Conservation District	No Fee
	SPA 124 Permit	Department of Fish, Wildlife and Parks	No Fee
x	Floodplain Permit	County Floodplain Administrator	Varies ($25 - $400)
	Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers	Varies ($0 - $100)
	318 Authorization	Department of Environmental Quality	$150
	Navigable Rivers Land Use License or Easement	Department of Natural Resources and Conservation	License $25; Easement $50

A. APPLICANT INFORMATION

NAME OF **LANDOWNER** at project location: William Frazier
Mailing Address: 19 Camel Hollow Rd. Day Phone: 212 661-5511
Physical Address: _____ Evening Phone: _____
City/State/Zip: Huntington, New York 92067

NAME OF **APPLICANT** (if different from landowner): Lynn Bates
Applicant is: ☐ Landowner ☐ Contractor x Other (explain) Buyer
☐ Government Agency ☐ Landowner's Agent (title)
Has the landowner consented to this project: x Yes ☐ No
Mailing Address: PO Box 675330 Day Phone: 858 759-0650
Physical Address: _____ Evening phone: _____
City/State/Zip: Rancho Santa Fe, CA 92067

B. PROJECT SITE INFORMATION

NAME OF **STREAM** or **WATER BODY** at project location _____ Nearest Town Victor
Address/Location: US Highway 93 Geocode (if available): 1666-17-1-01-02000
____1/4 ____1/4 NW1/4, Section 17, Township 8N, Range 20W County Ravalli
Longitude 46 27' 16", Latitude 114 07' 27" _____ (if available)

ATTACH A MAP OR A SKETCH of the project site that includes: 1) the water body where the project will take place, roads, tributaries, landmarks; 2) directions to the site; 3) a circled "X" representing the exact project location.

This space is for all Department of Transportation and SPA 124 permits (government projects).
Project Name _____
Control Number _____ Contract letting date _____
MEPA/NEPA Compliance ☐ Yes ☐ No

C. PROJECT INFORMATION

1. In addition to the information requested below, a **PLAN OR DRAWING** of the proposed project **MUST** be ttached. **This plan or drawing must include**: 1) a plan view (looking at the project from above; 2) an elevation view (looking at the project from either the right or left; 3) dimensions of the project; 4) dimensions and location of fill or excavation sites; 5) location of storage or stockpile materials; 6) location of existing or proposed structures, such as buildings, utilities, roads, or bridges; 7) drainage facilities; 8) an arrow indicating north. Floodplain permit applicants are encouraged to inquire locally since additional information is usually required.

2. TYPE OF PROJECT (check all that apply)

☐ 1. Stream Crossing (bridges, culverts, fords)
☐ 2. Bridge/Culvert Removal
xx 3. Road Construction/Maintenance
☐ 4. Bank Stabilization
☐ 5. Flood Protection
☐ 6. Channel Alteration
☐ 7. Irrigation Structure
☐ 8. Water Well/Cistern
☐ 9. Fish Habitat
☐ 10. Recreation (docks, marinas, etc.)
☐ 11. New Residential Structure
☐ 12. Manufactured Home
☐ 13. Improvement to Existing Structure
☐ 14. Commercial Structure
☐ 15. Wetland Alteration
☐ 16. Temporary Construction Access
☐ 17. Mining
☐ 18. Dredging
☐ 19. Core Drill
☐ 20. Placement of Fill
☐ 21. Diversion Dam
xx 22. Utilities
☐ 23. Pond
☒ 24. Other Bores (2)

3. WHAT IS THE PURPOSE of the proposed project?

The purpose of this project is to 1. Construct an "at grade" access road down to the building site; and 2. Install utilities (water, electric, phone) from the building site to the outside of the floodplain. 3. Install pressure sewer line.

4. IS THIS APPLICATION FOR an annual maintenance permit? ☐ Yes x No
(If yes, an annual plan of operation must be attached to this application – see "Information for Applicant")

5. PROPOSED CONSTRUCTION DATE: Start 2 / 1 / 06 Finish 2 / 1 / 07
Is any portion of the work already completed? ☐ Yes -- If yes, describe the completed work. x No

6. DIMENSIONS OF THE PROJECT. Describe the impacted area. How many linear feet of bank will be impacted? How far will the proposed project extend into and away from the water body?

The purpose of the project is to 1) Construct a trench for a pressure dose sewer line from the house site up to the existi system located approximately one thousand eight hundred feet (1800) southwest; 2) Construct utilities from Big Creek building site; and 3) Construct an access road to the building site from the existing bridge at Big Creek.
No banks will be impacted. The project will not extend into any water body. 4) Bore utility lines and pressure sewer line under Big Creek, south of the existing bridge.

7. VEGETATION. Describe the vegetation at the site. What type and how much vegetation will be removed or covered with fill material? How will the disturbed area be revegetated?

Construction will take place away from surface waters. After construction, all disturbed areas outside the roadway will be seeded with native grasses.

8. MATERIALS. Describe the materials to be used and how much (cubic yards, linear feet, size, type, source of each).

Sub base and base materials are anticipated at eight hundred (800) cubic yards.

9. EQUIPMENT. What equipment will be used for the proposed work?

The anticipated equipment for th. ,ob is backhoe, excavator, small dozer , dump trucks. and horizontal drill rig.

10. WHAT STEPS WILL BE TAKEN DURING AND AFTER CONSTRUCTION TO MINIMIZE:

- Erosion, sedimentation, or turbidity?

  No effects are anticipated.

- Stream channel alterations?

  There are no proposed stream alterations.

- Effects of stream flow or water quality caused by materials used or removal of ground cover?

  No effects are anticipated for water flow or groundwater quality.

- Effects on fish and aquatic habitat?

  No effects on fish and aquatic habitat are anticipated.

- Risks of flooding or erosion problems upstream and downstream?

  No risks of flooding or erosion problems upstream or downstream are anticipated.

D. ADDITIONAL INFORMATION FOR SECTION 404, SECTION 10, AND FLOODPLAIN PERMITS
If you are applying for a Section 404 or Section 10 permit, fill out questions 1-4. If you are applying for a Floodplain Permit, fill out questions 4-6. (Question 4 is required for Section 404, Section 10, and floodplain permits.)

1. Will the project involve placement of fill material in a wetland? If yes, describe. How much wetland area will be filled? Calculation the impacted area. Note: A delineation of the wetland may be required.

   No.

2. List the names and address of landowners adjacent to and across from the project site. (At its discretion, the permitting agency may contact these landowners.)

   See attached list.

3. If there is a plan for compensatory mitigation, describe the location, nature, and amount of proposed mitigation on an attached sheet.

   N.A.

4. If you have already applied for any permits, list them and indicate whether they were issued, denied, or are pending. (Required for Section 404, Section 10, and Floodplain Permits.)

   N.A.

1. If you have already applied for any permits, list them and indicate whether they were issued, denied, or are pending. (Required for Section 404, Section 10, and Floodplain Permits.)

2. FEMA Map Number (if available) 36081C0120 C

3. Does this project comply with local planning or zoning regulations? x Yes ☐ No

E. SIGNATURES/AUTHORIZATIONS

Each copy submitted to an agency must have original signature(s).

I certify that the above statements are true and correct. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the landowner. I authorize the inspection of the project site by inspection authorities. Both the landowner and the person doing the work have the duty to comply with the stipulations of permits and laws.

*Signature of Landowner — Date 11/28/2005

x Signature of Applicant — Date x 12/5/05

F. Lynn Bates

*(May be waived by agency for utilities and other easement holders)

For Section 404/Section 10 applications, see signature Requirements for US Army Corps of Engineers in the "Guidelines For Completing Application."

Contractor/Agent — Date

DISPUTE RESOLUTION – 310 PERMIT APPLICANTS ONLY

As the applicant, if you disagree with the conservation district's decision on this application and wish to seek formal resolution, you may ask for a judicial review by filing a petition in district court or you may request a review by a three-member arbitration panel. You are not required to make the choice between judicial review and arbitration unless you disagree with the conservation district's final action on this application and want to take formal action. The conservation district will provide you with information about resolving disputes when the 310 permit is issued. However, you may choose arbitration when you file this application or wait until you receive the permit decision. By choosing arbitration at the time of filing this application, you waive your right to have the final decision reviewed by district court.

If you wish to elect arbitration, please check the box. If you wish to decide later and retain your right for judicial review, do not check this box.

☐ I agree to arbitration as the exclusive means of review of a conservation district's decision on a 310 permit. I elect to sign an arbitration agreement as part of this application process and request a copy of the agreement. _____ (Initial)

Surrounding Property Ownership
Frazier Property
11/16/05

Richard and Nancy Neville
2036 US Highway 93N
Victor, MT 59875

LM and Colleen Powell
341 Grantsdale Road
Hamilton, MT 59840

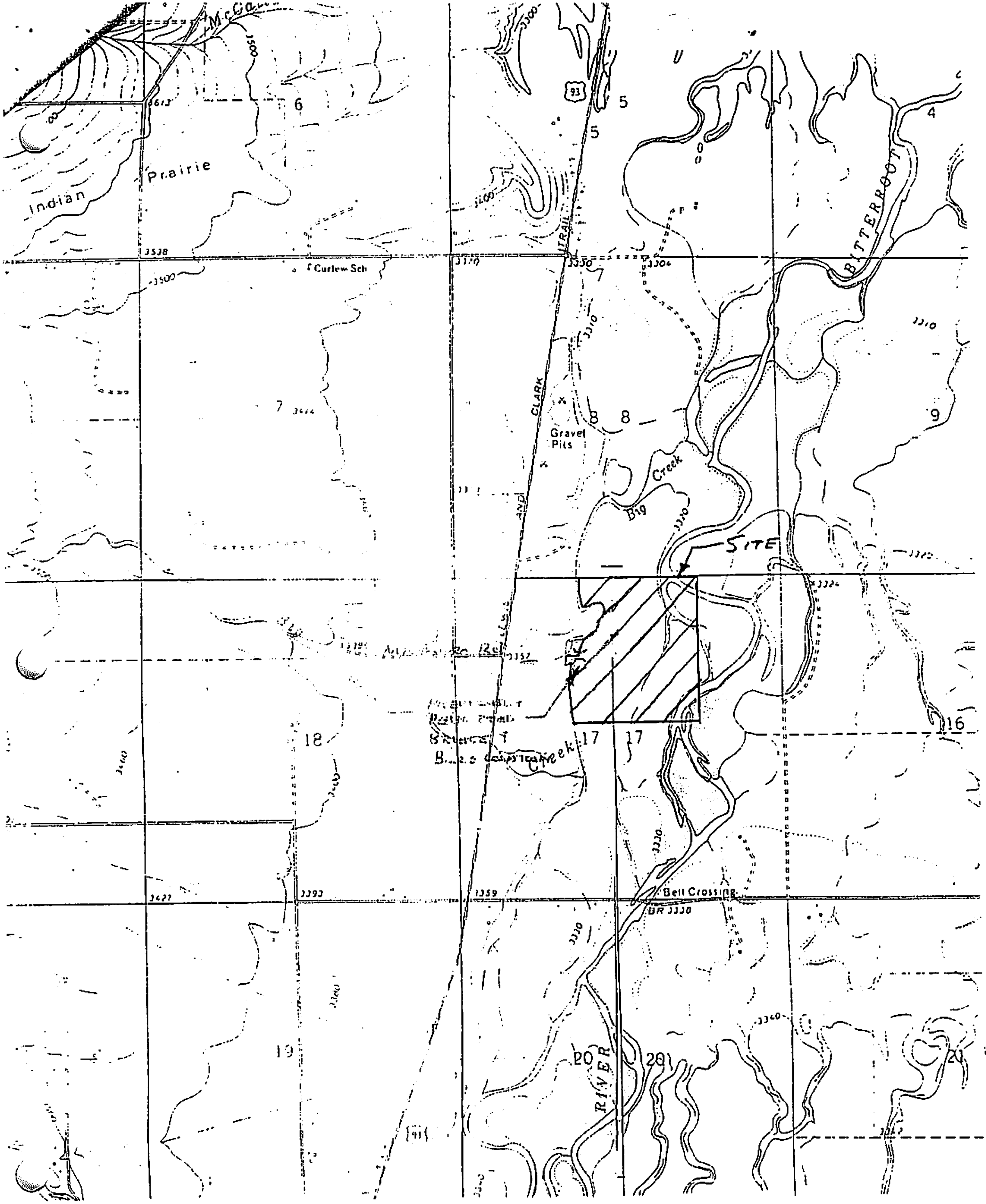
Kent and Laura Olsen
924 Bourne Lane Loop
Victor, MT 59875

John and Michele DeGroot
2880 US Highway 93N
Victor, MT 59875

Scott and Terri Boyer
120 Grace Lane
Victor, MT 59875

William and Sharon Masker
123 Grace Lane
Victor, MT 59875

The Bates Living Trust
PO Box 675330
Rancho Santa Fe, CA 92067



SITE
Big Creek
Gravel Pits
CLARK
TRAIL
BITTERROOT
RIVER
Bell Crossing
Curlew Sch
Prairie
Indian
93

This map is not intended to show all matters related to the property including but not limited to area, dimensions, easements, encroachments, or location of boundaries. This sketch may not be drawn to scale. No warranty is made as to the accuracy

U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

BITTERROOT RIVER
FLOOD PLAIN MANAGEMENT STUDY

FLOOD HAZARD AREA

BITTERROOT RIVER

Floodplain Variance Application
Ravalli County, Montana

1. Project Name WILLIAM FRAZIER

2. Applicant Information:

   Name: LYNN BATES

   Address: PO BOX 675330

   City/State/Zip: RANCHO SANTA FE, CA 92067

   Telephone: (858) 759-0650 (daytime)

3. Describe the requested variance.

   SEE ATTACHED.

4. Describe how the requested variance meets each of the following conditions: (Attach additional pages.)

   (1) There is a hardship on the applicant in carrying out the strict letter of this Floodplain Regulations as distinguished from a mere inconvenience.

   (2) The hardship does not directly result from the actions of the applicant.

   (3) The variance is the only option available to the applicant to afford relief from the hardship.

   (4) The variance is the minimum necessary to afford relief from the hardship.

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

   (6) The variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create a nuisance, or conflict with existing state or other local laws.

   (7) A reasonable alternate location that would not require a variance is not available.

   (8) The proposed use would be adequately protected and flood-proofed.

Note: The Board of County Commissioners may revoke an approval if it determines that information provided by the applicant, and/or the applicant's agent, and upon which such decision was based, is inaccurate. Furthermore, a person commits an offense under Section 45-7-203 MCA, if he purposely misleads a public servant in performing his official duties. Therefore, please complete the application accurately and provide all information requested.

Supplemental Information
William Frazier Property
2/22/06

3. Describe the request variance.
In Table 4-6-1 on page 4-4 of the Ravalli County Floodplain Regulations, it states the following prohibited uses in the floodplain, "New individual sewage systems of all types whether for temporary storages, treatment, or disposal." It is our understanding that a proposed pressure line is interpreted as one of these uses or is otherwise not allowed based on Table 4-6-1. This variance is to allow the 2" diameter pressure line to be buried within the floodplain so that the present northern portion of land out of the floodplain can be developed into a residential home site. The pressure line will connect the septic tank to the existing drainfield site. This is the preferred building site for the one hundred ten (110) acre parcel of land.

4. Describe how the requested variance meets each of the following conditions:
(1) Based upon failed groundwater monitoring in the northern portion of land, the only viable septic site is on the one acre piece of land west of Big Creek.
(2) The applicant is attempting to purchase the land and the only present alternative to developing the northern home site is by pumping the septic effluent up to the higher ground.
(3) At this time, this is the only viable option for effluent disposal for developing the land out of the floodplain.
(4) The requested variance is the minimum necessary to afford relief from developing the parcel except for the land west of Big Creek.
(5) The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining parties.
(6) The proposed sewer main will not result in increased flood hazards or present additional threats to public safety. The Board of Health has approved the construction of the sewer main contingent upon a flood plain permit and presenting engineering plans and specifications for review.
(7) There is no present reasonable alternate location that would not require a variance. 2006 groundwater monitoring may reveal another potential septic site however, the land in its present status is within the floodplain.
(8) The sewer line will be adequately protected and flood-proofed by being buried a minimum depth of six (6) feet.

EXHIBIT A-2

36.15.604 DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

(a) the proposed diversion will increase the upstream elevation of the base flood a significant amount (0.5 of a foot or as otherwise determined by the permit issuing authority);

(b) the proposed diversion is not designed and constructed to minimize potential erosion from a base flood; and,

(c) any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand up to a base flood. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

36.15.604 MINIMUM CRITERIA FOR PERMITS (1) In addition to the requirements of ARM 36.15.602 and 36.15.603, a permit shall not be approved for new construction, substantial improvement, or alteration of an artificial obstruction under this rule if it will increase the upstream elevation of the base flood 0.5 of a foot or as otherwise determined by the permit issuing authority or significantly increase flood velocities. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-404 through 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

36.15.605 PROHIBITED USES (1) The following artificial obstructions are prohibited within the designated floodway except as allowed by permit under ARM 36.15.602 through 36.15.604 and ARM 36.15.606:

(a) a building for living purposes or place of assembly or permanent use by human beings;

(b) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway;

(c) the construction or permanent storage of any object subject to floatation or movement during flood level periods.

(2) The following artificial obstructions are also prohibited within the designated floodway:

(a) mobile homes and manufactured homes;

(b) commercial buildings;

(c) solid and hazardous waste disposal and individual or multiple family sewage disposal systems;

(d) storage of toxic, flammable, hazardous, or explosive materials. (History: Sec. 76-5-208, MCA; IMP, Sec. 76-5-403 and 76-5-406, MCA; NEW, Eff. 9/4/74; AMD, 1989 MAR p. 1665, Eff. 10/27/89.)

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Send Comments to: mt-rules@lists.state.mt.us

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EXHIBIT A-3

Laura Hendrix

From: Schock, Larry [lschock@mt.gov]
Sent: Tuesday, April 04, 2006 9:49 AM
To: Laura Hendrix
Subject: Fraizer Property

Hi Laura,

As per our conversation, the DNRC will agree with the variance for the Frazier property Floodplain Permit Application (FA-05-16), as soon as the applicants have addressed all of Ravalli Counties concerns. As far as your questions concerning the 100 yr. flood flow velocities and the erosive flow rate data, I have the following comments.

The 100 yr flood velocities are usually determined from the computer model which was used to define the floodplain or they can be calculated using the cross sectional area and the 100 yr. flood flows. I am not sure where or how Bitterroot Engineering got the estimated 3 feet per second velocity figure. I suspect that they may be in the ball park, but without them showing or discussing where that figure came from it is difficult to evaluate.

The data submitted on erosive flows is general soils data that is consistent with other types of similar data sources on the subject.

Also, since the exact length of the sewer line and the road is going to be predicated upon which floodplain island that they will be building on, we recommend that the applicant defines the exact location of the proposed building site, so that the information in the application actually reflects what will be going on and where everything will be located.

Generally, if Bitterroot Engineering can validate their 3 fps velocity estimate, they should be OK unless there is some sort of structure or feature on the property which will cause some sort of local acceleration of the water and cause scour.

Larry A. Schock, CFM
MT DNRC MRO
(406) 721-4284
lschock@mt.gov