

In The Matter Of:
FLATHEAD CONSERVATION DISTRICT
SPECIAL MEETING

June 14, 2022

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FLATHEAD CONSERVATION DISTRICT
SPECIAL MEETING
June 14, 2022 - 7:00 p.m.
City of Whitefish Council Chambers
418 East Second 2nd
Whitefish, Montana 59937

1 PROCEEDINGS

2 MR. MUHLFELD: We're gonna go ahead and get
3 started. We did advertise for a quorum of the Whitefish
4 City Council, even though Flathead Conservation District
5 did call this meeting. I'll eventually turn it over to
6 Pete Woll, their chairman. But I would like to start with
7 the Pledge of Allegiance.

8 And, Pete, if you don't mind leading us in the
9 pledge this evening, I'd appreciate it.

10 (Pledge of Allegiance.)

11 MR. MUHLFELD: Thanks, everyone. I'd like to
12 first, certainly, welcome the Flathead County District
13 Board. There are a lot of familiar faces. It's great to
14 see you guys here in council chambers, as well as the
15 public that's here attending, as well, in addition to City
16 staff.

17 I thought we would just start with introductions
18 of our Whitefish City Council. So I'll turn it over to
19 Steve for brief intros.

20 MR. QUNELL: Steve Qunell. I've been with the
21 Council a little over two years and on volunteer boards
22 for over ten years here in the City.

23 MR. MUHLFELD: John Muhlfeld, Mayor. I've been
24 sitting up here about 16 years and about 10 as mayor. So
25 it's a pleasure to meet you. And I know I work with many

1 ATTENDANCE:
2 Conservation District:
3 Board Members:
4 Pete Woll, Chair; John Ellis, Vice Chair and Supervisor;
5 Donna Pridmore, Supervisor and Secretary/Treasurer; Scott
6 Rumsey, Supervisor; Verdell Jackson, Supervisor; Lech
7 Naumovich, Supervisor; Roger Marsonette, Supervisor
8
9 Staff Members:
10 Ginger Kauffman, District Administrator; Gordan Ash,
11 Associate Supervisor; Ginger Rigdon, Administrative
12 Assistant
13
14 Legal Counsel:
15 Camisha Sawtell
16
17 Fish, Wildlife & Parks:
18 Kenny Breidinger; Lee Anderson, Regional Director
19
20 Whitefish City Council:
21 Steve Qunell; John Muhlfeld, Mayor; Ben Davis; Rebecca
22 Norton; Andy Feury
23
24
25

1 of you professionally; so it's great to see you.
2 MR. DAVIS: My name is Ben Davis, and I've been
3 up here for somewhere close to two years.
4 MS. NORTON: Rebecca Norton, and I've been a
5 City Councilor for two and a half years. And I have been
6 to some of your meetings; so I really appreciate you
7 reaching out to us. Thank you.
8 MR. FEURY: I'm Andy Feury, and I think I've
9 been here for like 23 years on and off, so, yeah, there
10 you go.
11 MR. MUHLFELD: Thanks, folks. I'd like to start
12 with just acknowledging the long-held relationship we've
13 had with the Conservation District. I think it's been,
14 certainly, a good relationship and one, like with any
15 relationship, especially with intergovernmental
16 relationships, they oftentimes need a tuneup. So I think
17 that's part of the reason we're here tonight. Much like
18 any relationship.
19 With that said, I have some hopeful outcomes
20 this evening that I'd like to steer us towards. Number
21 one being to discuss -- obviously, you have an agenda that
22 sets forth your review of the 310 Law jurisdiction; Fish,
23 Wildlife & Parks' role in the 310 as well as the SPA 124
24 permit process. But I would also like to just discuss our
25 current concerns related to the process between the

1 Conservation District, FWP, and the City of Whitefish in
2 an effort to get beyond what may be perceived as some
3 hurdles in the past.
4 Secondly, to certainly better understand our
5 roles and responsibilities as different government
6 agencies as we work together on permitting and then, of
7 course, communication moving forward. So those are my
8 hopeful outcomes for the night.
9 With that said, Flathead Conservation District,
10 you did call this meeting; you did set the agenda. So
11 right now I'd like to welcome and introduce Pete Woll, the
12 Conservation District Board Chairman
13 **MR. WOLL:** Thanks, John. First off, in a minute
14 I'm gonna have Samantha Tappenbeck, our research
15 conservationist, introduce the whole board. But prior to
16 that, I want to make one statement. The Conservation
17 Board is not against trails. We just have to deal with
18 the permitting process, and we're trying to get a little
19 bit more streamlined. Sometimes these things take a year
20 and a half or so, and we'd like to become more efficient,
21 because that's taking up a lot of time on our side.
22 So with that, Sam, would you, please, introduce
23 the board.
24 **MS. TAPPENBACK:** Yes. Thank you for the
25 evening. My name is Samantha Tappenbeck. I'm the

1 resource conservationist for the Flathead Conservation
2 District; so I'm in a staff position. And I'll go ahead
3 and introduce the board of supervisors and affiliates of
4 the Conservation District.
5 So, to my right is Pete Woll. He's the chairman
6 of the board. Next down the line is John Ellis. He is
7 the vice chair and board supervisor. Donna Pridmore is
8 our board supervisor and secretary/treasurer. Next down
9 the line is Roger Marsonette. He's a board supervisor.
10 Lech Naumovich is a board supervisor; Scott Rumsey is a
11 board supervisor; Verdell Jackson is a board supervisor.
12 And then at the end of the row here, we have Kenny
13 Breidinger. He is the representative from Fish, Wildlife
14 & Parks that works with us closely.
15 And then at the table at the back of the room
16 there, we have two additional staff members. Ginger
17 Rigdon is our administrative assistant; Ginger Kauffman is
18 our district administrator. And then we also have two
19 associate supervisors for the district. Gordon Ash is one
20 of those associate supervisors here in the audience this
21 evening.
22 And also joining us tonight is our legal counsel
23 that is on contract with the Department of Natural
24 Resources and Conservation. Her name is Camisha Sawtell.
25 And she is out there in the front row of the audience.

1 And just a reminder to everyone in the audience,
2 if you could, please, sign in at the sign-in sheet at the
3 back of the room. There are also copies of the agenda
4 right next to the sign-in sheet. It's really important
5 for us to be able to document everyone who is here this
6 evening.
7 **MR. WOLL:** Okay. Thanks, Samantha. At this
8 time, I'd also like to introduce Lee Anderson, who is the
9 new Fish & Game Regional Director.
10 Is that correct?
11 **MR. ANDERSON:** Regional Supervisor.
12 **MR. WOLL:** Supervisor, okay. And we welcome him
13 and look forward to working with him.
14 Now, when we go around, if everybody would,
15 please, if you have a comment and stuff, we'll recognize
16 you, and then state your name so that the staff and
17 stenographer can get the right name in front of the
18 comments. We'd appreciate that.
19 So with nothing else in front of that end of it,
20 I'd like to have Cami get up and give us the legal land
21 part.
22 **MS. SAWTELL:** Give you the what part? Did you
23 say the Legoland part?
24 **MR. WOLL:** Legal.
25 **MS. SAWTELL:** Sorry.

1 **MR. WOLL:** You know, she was on the board here a
2 few years ago.
3 **MS. SAWTELL:** I was the supervisor at one point,
4 and now it's a pleasure for me to serve as legal counsel.
5 I do contract work when they have legal questions. I'm
6 happy to be here this afternoon -- or evening. And they
7 asked me to give a quick breakdown of the 310 Law. One of
8 the big things the Conservation -- they have many roles,
9 but one of their major roles is to administer the 310 Law.
10 And in Montana the 310 Law is the Natural
11 Streambed and Land Preservation Act, also known as the 310
12 Law. It's in Montana Code Annotated 75-7-101 and the
13 purpose of the 310 Law is to ensure that projects on
14 perennial streams will be carried out in ways that are not
15 damaging to the stream, its banks, or adjoining
16 properties. Pretty simple, but the devil is in the
17 details, right.
18 So the policy of the State of Montana is that
19 "natural rivers and streams and the lands and property
20 immediately adjacent to them within the state are to be
21 protected and preserved to be available in their natural
22 or existing state and to prohibit unauthorized projects
23 and, in so doing, to keep soil erosion and sedimentation
24 to a minimum." And that's reading exactly the statute.
25 The statute also specifically says that the

<p>1 State of Montana recognizes that irrigation and 2 agricultural uses are important, and so, again, 3 specifically in the statute it says that we have to find a 4 way to use the water in a way that we also protect them. 5 And so the process that's been established is 6 you need a 310 Permit from a local conservation 7 district -- these folks -- before any work is done in or 8 near a perennial stream or river. 9 And so the first word that needs to be defined 10 there is what is a perennial stream. And according to 11 statute, a perennial stream is "a stream which, in the 12 absence of diversion, impoundment, appropriation, or 13 extreme drought, flows continuously at all seasons of the 14 year during dry years as well as wet years." 15 So those are the streams that we care about. If 16 you're going to do work in one of those streams, you need 17 to get a permit from these folks. 18 The next issue that I think needs to be defined 19 is, what is a project; what does it mean to be a project. 20 And, again, according to statute, a project is any 21 "physical alteration or modification that results in a 22 change in the state of a natural, perennial-flowing stream 23 or river, its bed, or its immediate banks." And 24 "immediate banks"; in my experience on the Conservation 25 District, was one of those terms that, What does that</p>	<p>1 Permit before they can put that trail in. 2 Some examples of projects that are prohibited 3 and/or discouraged with a 310 Law are placing concrete in 4 a stream, placing roadfill material in a stream, placement 5 of debris or other material in a stream where it might 6 erode or otherwise injure the stream. Projects that 7 permanently prevent fish migration are prohibited and/or 8 discouraged, and then removing streambank vegetation, 9 although, sometimes part of the project requires removing 10 some much vegetation. But, generally, 310 Permits are not 11 given if you're going to rip up a bunch of vegetation. 12 So the process that's been established is that 13 you apply for a permit, and then one of the conservation 14 supervisors -- one of these folks here -- will go out with 15 a representative of Fish, Wildlife & Parks, Kenny or Lee, 16 and they'll do a site visit to basically look at the 17 application, look at the project you proposed, and come up 18 with some recommendations and decide whether they're going 19 to approve, deny, or modify the permit. 20 And the supervisors and FWP use six criteria to 21 determine the possible effects of a proposed project. And 22 those criteria are, they'll look at the potential impact 23 on soil erosion and sedimentation, if the project is going 24 to impact flooding or erosion problems, and it's going to 25 have upstream or downstream impact. And the local rules</p>
<p>1 mean? That's a little bit vague. It's not defined in the 2 statute. 3 So the local rules of the Flathead Conservation 4 District, which are rules that have been adopted by most 5 conservation districts across the state -- there are 58 of 6 them, I believe. 7 MR. WOLL: Right. 8 MS. SAWTELL: So the local rules define 9 "immediate banks," it's the "area above the mean 10 high-water mark and directly adjacent to the stream, which 11 when physically altered or modified has the potential to 12 affect the state of the stream." 13 So, basically, if a landowner -- private 14 landowner wants to do work on a stream, they need to fill 15 out an application and apply for a permit from the 16 Conservation District. 17 Some examples of projects that require a 310 18 Permit are dredging; putting in culverts and bridges, dams 19 and ponds; doing a streambank-protection project or a 20 stabilization project; boat ramps; docks; fences; decks; 21 even sandbagging. You're supposed to get a 310 Permit 22 before you get out there and sandbag. 23 So I think the issue we're talking about here 24 tonight, trails along a stream, definitely qualifies as 25 something that a private landowner needs to get a 310</p>	<p>1 definitely state that you have to look at cumulative 2 impacts. 3 So if, you know, we're going to have a project 4 here, and another project here, combined are they going to 5 have an impact is something that needs to be considered 6 before that 310 Permit is issued. 7 They're going to look at the effects of 8 stream-channel alterations, the impacts on streamflow, 9 turbidity, water quality, caused by materials used or the 10 removal of ground cover, the effects on fish and aquatic 11 habitat, which is why we have the FWP experts, because 12 they know better than most of us about the impact of a 13 project. 14 And then, finally, the board will look at if the 15 project that's proposed, if they can make some alteration 16 and there's reasonable alternatives that can still allow 17 the landowner to use their land, do what they want to do, 18 but maybe offer some suggestions in a way that won't 19 impact the environment. 20 And so the application process is on their 21 website. The Flathead Conservation District has, I think, 22 a pretty user-friendly website. A landowner wants to do 23 some work in a stream; if they do what they're supposed to 24 do before they do the project, they go online, they 25 download the application; and they fill it out. It's a</p>

1 joint application. It's then submitted to the
2 Conservation District. One of these supervisors go out
3 with one of the FWP folks, do a site inspection. The
4 landowner is encouraged to come and explain the project.
5 The idea is that it's an open, transparent process that
6 lets the landowner explain what's going on.
7 And then they're invited to attend the
8 Conservation District's 310 meeting, which the
9 Conservation Districts have a 310 meeting scheduled every
10 month. It's on the calendar. It's open to the public.
11 And so the landowner then comes to that meeting, and the
12 board makes their recommendation on whether or not to
13 approve or deny the project.
14 Sometimes an inspection isn't even required.
15 The supervisor that's been assigned a given application
16 will look at it and just know, Oh, yeah, we can approve
17 this without an inspection, or, Absolutely not, this is
18 not something that's going to get approved.
19 And so the board then decides whether or not
20 they're going to approve, modify, or deny the project.
21 And they have within 60 days of acceptance of that
22 application to do that. And I think timeline might be one
23 of the issues that is of concern here today. So all of
24 these steps have timelines that the Conservation District
25 is supposed to comply to. They have local rules; they're

1 all -- and in my experience, when I was a supervisor, is
2 we're pretty good at complying with our rules.
3 So the idea is that once they've made a
4 determination on whether or not it is a project that
5 they're going to approve, the applicant has 15 days to
6 return the permit, sign to indicate that they are in
7 agreement with the District's decision, and then, unless
8 otherwise stated on the supervisor's decision form, they
9 have 15 days, and then they can start their project.
10 Generally a project has to be completed within
11 one year, but if for some reason they're unable to get all
12 the work done within a year, they can get an extension.
13 So, in summary, that is the 310 permitting
14 process. I guess I can answer questions if you have some
15 now.
16 No? Yes.
17 **MS. NORTON:** Could you just briefly go over what
18 happens when someone's requesting an after-the-fact
19 permit, or if there's noncompliance, and then after you go
20 through the complaint process.
21 **MS. SAWTELL:** Yes, absolutely. Often what
22 happens is the landowner notices that their neighbor is
23 doing some work in a stream or doing something that's not
24 been approved. They can file a complaint. And in that
25 case, similarly, one of these supervisors will be assigned

1 to the complaint, and they'll go out and do an inspection
2 and determine whether or not the project is something that
3 would have been approved.
4 And my experience in being on this board is that
5 they want to approve projects; they want landowners to be
6 able to use their property. So you can get an
7 after-the-fact permit, and if they need to make some
8 changes and bring things into compliance with the 310 Law,
9 then they'll have an opportunity to do that. But the idea
10 is that they will, at the end of the day, have that 310
11 Permit. And if they don't, then there's a whole nother
12 process that we can go into.
13 **MS. NORTON:** The reason why I bring it up, there
14 are repercussions for not following the legal guidelines,
15 and so everybody needs to know that we need to follow the
16 legal guidelines.
17 **MS. SAWTELL:** Yes. I mean, I guess the other
18 thing I should mention is that there are emergency
19 permits, which, again, I found this Conservation District
20 really, you know, understanding. If there's a tree
21 overhanging the river that's gonna, you know, be
22 dangerous, well, if the landowner needs to go in and cut
23 down the tree so that it's not dangerous to floaters or
24 whatever, you know, they can issue an emergency permit
25 that doesn't go through the whole process.

1 I do, I think generally -- most of the
2 conservation districts that I've worked with, they tend to
3 want to approve projects and let landowners use their
4 land, and then hopefully use the expertise of the folks on
5 the board and the FWP to maybe design a better project if
6 there's, you know, something that can be done to make it a
7 better project.
8 And the other thing is a 310 Permit is free; so
9 it's not like you're putting out a lot of money for these
10 folks to, you know, do their volunteer role.
11 That's all for me, right, Samantha?
12 **MR. WOLL:** Yeah. I'd like to add to that
13 comment or to your question there. The Conservation
14 District is here to try to educate the people and to also
15 work with them to improve the banks and things of the
16 stream. So it's a big task, and to keep them healthy and
17 everything, it takes a lot of us.
18 Thanks, Cami.
19 **MS. SAWTELL:** You bet.
20 **MR. WOLL:** And you'll be around here in case we
21 have a few questions later, then?
22 **MS. SAWTELL:** (Nodded head.)
23 **MR. WOLL:** Okay. Thank you.
24 Kenny, do you want to speak for the Fish & Game
25 then?

1 **MR. BREIDINGER:** Sure. Cami touched on my role
2 with the Conservation District Board. And primarily,
3 there as a technical advisor on potential impacts a
4 project could have or different alternatives for that
5 project. And we do have a -- if we disagree very strongly
6 with the board's decision, there is a way for FWP to
7 dispute that decision. It goes into an arbitration
8 process. That's pretty similar to if a private landowner
9 disputes the board's decision. We try to avoid that. It
10 really doesn't come up very often at all. I've only been
11 through it once.

12 The other role I play is administering the
13 124 -- well, we call it the 124, similar to the Streambed
14 and Land Use Preservation Act being called the 310 Act.
15 The 124 Act is the Stream Protection Act. And a good way
16 to view the Stream Protection Act, it's a permitting
17 process that's pretty similar, in some ways, to the 310
18 Act, except it's for government agencies. There are some
19 pretty key differences, though, between the two.

20 In a lot of ways, the process is handled
21 similarly. Receive an application; it's the joint
22 application, which is the exact same application that the
23 board of supervisors would receive or DEQ would receive
24 for the 310 permit or the Army Corps would receive for a
25 permit application.

1 When I receive that permit application, I review
2 it, typically call up the applicant, who could be the City
3 of Whitefish, Forest Service, County, whoever. We review
4 it; typically I schedule a site visit; we go out and talk
5 about it on-site; evaluate the impacts of that project,
6 and then I go back and do some paperwork and decide
7 whether to issue the permit or issue the permit with
8 conditions that would reduce the environmental impacts of
9 that project. Or if it's a really challenging project, I
10 can also propose alternatives. It usually doesn't come to
11 that, but that is an option that you have.

12 A couple of things that are really different
13 from the 310 -- well, between the 124 and 310 Laws -- the
14 124 Law actually takes jurisdiction over intermittent
15 streams; it's not just perennial streams. So that's, you
16 know, when we're dealing with, you know, or cooperating
17 with our other agencies, if they want to cross a perennial
18 stream, for example, if DNRC wants to install a culvert
19 pipe across a nonperennial stream, an intermittent stream,
20 they would still have to get a permit for that. So the
21 jurisdiction is a little bit broader.

22 The big difference is, in our decision-making
23 process on, you know, whether to permit a project or not
24 or require conditions or provide the applicant with
25 alternatives, is that we have to go through our legal

1 process, and that's our Montana Environmental Protection
2 Act. Well, it's a statute that we have to follow. And
3 that typically requires us to write an EA.

4 Depending on the complexity of the project, we
5 may release that EA for public comment. Sometimes we do
6 that. I think a lot of you are probably familiar with an
7 environmental assessment. But it's a tool for us to
8 evaluate different alternatives and look at impacts. And
9 it's also a tool for us to disclose potential impacts of
10 the project both on the environmental and the human
11 environment for a project. So we use that to do it.

12 Those are the primary differences. I like to
13 think they're both -- in terms of -- they're both intended
14 to protect the streambed, the water quality within the
15 stream or river, and the streambanks that really support
16 the stream functions that keep our rivers and streams
17 healthy.

18 In most cases we do end up permitting projects.
19 You know, these two laws are a great way to minimize the
20 impacts of a project. So I'd say those are the key
21 differences.

22 Once I issue a permit -- I occasionally do issue
23 permits for longer than one year. Typically the max
24 lifespan, you know, is two years for the permit; then you
25 can request a one-year extension. After that, an

1 applicant would have to reapply if the project is not
2 completed at that point.

3 With that, I guess I'll answer any questions
4 that anybody might have about that process or our role in
5 the process.

6 **MS. COMPTON-RING:** Do you have the same
7 60-day-review timeline that the 310 Permit has?

8 **MR. BREIDINGER:** Sort of, yeah. That's a good
9 question. It does actually say that in the Stream
10 Protection Act, however, because we're also required by
11 the Montana Environmental Protection Act to go through
12 this review process, sometimes those two timelines don't
13 match up, especially, you know, on a more -- a technical
14 project, a project that has potential for big impacts, we
15 oftentimes -- typically we'll release an EA for public
16 comment. We release those EAs for 30 days.

17 So it's my -- I'm not an attorney, but it's my
18 understanding -- and I think our legal counsel has advised
19 us in the past -- that the MEPA process kind of trumps
20 that 60-day-review process.

21 **MS. COMPTON-RING:** I have one more question. So
22 are your permits that you issue appealable to some body?
23 I think you were saying that the 310 was -- you could
24 appeal their decision. Can someone --

25 **MR. BREIDINGER:** Yes. So if the applicant

<p>1 disagrees with the decision that FWP has made, is that 2 what you're asking? 3 MS. COMPTON-RING: Or are your permits 4 appealable? 5 MR. BREIDINGER: Yeah, there is a dispute 6 process for us to go through. But I haven't had to go 7 through that. So that process is laid out in the form. 8 MR. WOLL: Okay. Thanks, Ken. 9 John, do you have any comment? 10 MR. ELLIS: I was just gonna say in response to 11 Wendy's question, sometimes Fish Wildlife & Parks, a/k/a 12 Kenny, and the board of supervisors do not agree, and so 13 they can seek arbitration of our decisions. So that has 14 happened, I think, once since I've been on the board. 15 MR. WOLL: Okay. Thanks, John. 16 I just want to add at this time, too -- I should 17 have done it at the beginning -- but we're a seven-member 18 board. Five of us are elected positions, and two are what 19 we call the urban supervisors. And they are both out of 20 the city of Whitefish here. And one is John Ellis, and 21 the other one is Lech Naumovich. That's your two 22 representatives on the board from the city. 23 John, do you have a representative to talk here 24 then? 25 MR. MUHLFELD: We do. I meant to introduce our</p>	<p>1 the Conservation District was looking for some information 2 on the City of Whitefish permitting process, and I guess, 3 from a Public Works perspective, it's really our 4 responsibility, as a Public Works Department, to permit 5 new trails. I'm assuming that's really kind of the 6 overarching conversation for tonight. 7 There's a number of different approval processes 8 that happen before plans come to Public Works. For any 9 discretionary-type product -- a conditional-use permit, 10 a planned-unit development, you know, a subdivision -- 11 those sorts of things start out at the Planning Board. 12 Typically they go through at least one public hearing at 13 the Planning Board. The Planning Board will make a 14 recommendation to the City Council. And then projects 15 move forward to City Council where they're typically heard 16 at a public hearing. 17 After our City Council approves a discretionary 18 type permit -- conditional-use permit, planned-unit 19 development, subdivision -- the plans are submitted to the 20 Public Works Department. So the Public Works Department 21 will then notify all of the other City departments: 22 Planning, Building, Parks and Recreation. Fire often gets 23 involved, just for access type reasons. 24 We go through; we review projects and plans -- 25 engineering plans -- and then typically make comments.</p>
<p>1 great staff earlier, but we have quite a few members here; 2 so we won't go through that process. But we do have 3 Public Works representatives present. They typically deal 4 with new-trail construction. Our legal counsel is 5 present; obviously deal with legal issues related to 124 6 applications and 310 issues. We have our Parks and 7 Community Services Department present. Their role with 8 the trail system is operations and maintenance. And then, 9 of course, our Planning Department that vets land-use 10 applications that come forward to the Planning Board as 11 well as this governing body. 12 So I think most appropriate for tonight would be 13 to introduce Craig Workman, our Public Works director -- 14 if that's okay, Craig -- to discuss the City of Whitefish 15 permitting and development process. 16 And, Craig, certainly call on your fellow staff 17 members if you need some assistance 18 MR. WORKMAN: Sure, yeah, I'd be happy to. I 19 believe we have Dana on the phone, too, correct? 20 MR. MUHLFELD: I wasn't sure. But our City 21 Manager, if she is online, she is participating remotely 22 this evening. Dana Smith, our City Manager. 23 MS. SMITH: I am attending, John. Thank you. 24 MR. WORKMAN: I guess I'm not really -- I don't 25 have anything prepared for this agenda item. I know that</p>	<p>1 The plans go back to the engineer, and then will be 2 resubmitted to Public Works for final approval. 3 Oftentimes they have conditions from the Public 4 Works Department or from the City of Whitefish, but from 5 there, you know, projects are typically, you know, move 6 forward to construction. We have been putting a very, I 7 would say, not specific condition on every project that 8 does have a new path, where other jurisdictions may 9 require permits. Most importantly, the Flathead 10 Conservation District, if it is a 310 Permit. 11 I know that there is a map behind me. I don't 12 know if this is on the agenda for discussion later. The 13 City of Whitefish also designs and builds trails at times. 14 And those go directly to Fish, Wildlife & Parks for a 124 15 Permit. So although many of the trails we see on this map 16 don't have a 310 Permit, I believe several of them do have 17 124 Permits, which I'm showing. 18 So I think that's just kind of a general 19 overview. I'm not sure if there's specific questions or 20 if any of the other departments have comments that they 21 want to make. But I'd be happy to entertain questions. 22 MR. QUNELL: Thanks, Craig. 23 We do not require, before the Planning Board 24 approves or the City Council approves, that they have 25 their 310 Permit already approved before we approve those</p>

1 things, do we?
2 **MR. WORKMAN:** Correct, we do not, no. Typically
3 the level of efforts that applicants go through to submit
4 applications for these types of projects are, I guess I'd
5 say, one step beyond conceptual. They show, you know,
6 roads, and they show water mains and sewer mains and, you
7 know, general stormwater-management, you know, -type
8 attributes, but they don't go through a full
9 engineering-design level before submitting the
10 application. So in order to submit a 310 Permit, you'd
11 need a full set of engineering plans.
12 **MR. QUNELL:** So when is that due from the
13 applicant?
14 **MR. WORKMAN:** That would happen after City
15 Council approval.
16 **MR. QUNELL:** Okay. And before any building
17 takes place?
18 **MR. WORKMAN:** Correct.
19 **MR. QUNELL:** So before issuing a permit, those
20 things have to be done?
21 **MR. WORKMAN:** Yes.
22 **MS. NORTON:** The 310 Permits are only for
23 private-property owners, and then 124 is what we always
24 get as a City?
25 **MR. WORKMAN:** Correct. Any public entity,

1 whether it be, you know, the -- any city, town, or county.
2 Oftentimes I think there's other state agencies that are
3 required to get 124 Permits, but 310 Permits are just for
4 private parties.
5 **MR. MUHLFELD:** Anything further from counsel
6 or -- John?
7 **MR. ELLIS:** Craig, doesn't the City have some
8 sort of streambank-protection building requirements
9 itself?
10 **MR. WORKMAN:** We do, yes.
11 **MR. ELLIS:** To me, that's what the crux of the
12 matter here tonight is, is that developers go to the
13 Public Works Department or the Planning Department -- I'm
14 not sure which -- and get instructions as to the City's
15 streambank-protection rules. And then what typically
16 happens is they come to us and say, Well, we complied with
17 the City's rules; what are you now telling us to do? And
18 so the developers, I believe, feel that they're caught in
19 the middle between complying with the City's rules, and
20 then being told by the Conservation District, when they
21 ask for a 310 Permit, Well, here are our rules. And so I
22 think that's where the confusion is arising, and I hope we
23 can find a solution to that.
24 **MR. WORKMAN:** I can tell you that there is an
25 exemption in the Water Quality Protection Ordinance for

1 public trails, and so I think, John, you're probably
2 right; that could be, you know, one of the issues we're
3 dealing with here.
4 **MR. MUHLFELD:** I know it would be onerous to
5 expect this of the CD, but all of our land-use
6 applications -- whether it's a CUP, PUD, or a
7 subdivision -- are advertised for public hearings and
8 public noticing; so it's certainly your discretion whether
9 or not you'd like to provide comments to the City before
10 they come to the Planning Board and ultimately the City
11 Council, much like any public entity is invited for
12 comments, or public for that matter.
13 Anything further for Craig from the District or
14 the Council?
15 Rebecca.
16 **MS. NORTON:** I think, John, sometimes when we
17 were on the Planning Board, I thought you were writing in
18 conditions to make sure that people were compliant. Is
19 that not a common thing anymore?
20 **MR. ELLIS:** No. At the Planning Board meetings,
21 when there's a project that's on the river -- that's what
22 we're really dealing with here, not really so many
23 streams -- but when it's on the river, I always remind the
24 developer that they may need a 310 Permit if they want a
25 dock or a trail or something, and encourage them to do so.

1 **MS. NORTON:** Okay. So it's not a regular
2 addition to our conditions, okay.
3 **MR. ELLIS:** I'll just give you an example why it
4 can't always be a regular condition. We had the people
5 before the Planning Board this past month who were
6 building on the corner of 6th Street and Spokane, the
7 RE/MAX building. Well, they're in the process of deeding
8 the lot next door to the City; so it's impossible to know,
9 when they're going to want to do the work, whether they're
10 going to own the property, or the City is going to own the
11 property. And so I can't put it as a condition in their
12 CUP, because the City may need to get a 124 Permit as
13 opposed to the private landowner getting a 310 Permit. We
14 just don't know at that early stage of the proceedings.
15 **MR. MUHLFELD:** Wendy, did you have your hand up?
16 **MS. COMPTON-RING:** I was just going to say we
17 have been adding kind of a standard condition of approval
18 for all the projects that are on the river, saying that
19 you possibly may need to get other permits, such as stuff
20 for the Conservation District. So we have been putting
21 that in all of our projects; so that is a standard
22 condition.
23 **MR. MUHLFELD:** I think one of the challenges, to
24 your point, John, is when you're dealing with streamside
25 and floodplain developments, you have multiple regulatory

1 agencies overseeing the work within those areas, and all
2 those laws and regulations may vary, whether it's DEQ,
3 DNRC, Floodplain, FWP, Conservation District, what have
4 you. So your point's certainly well taken, and maybe
5 moving forward after this meeting, it's something that the
6 City and the CD could work on, is a set of guidelines or
7 agreed-upon conditions that we place on these type of
8 applications so that it's more or less streamlined between
9 the two agencies during the review process here at the
10 City. Just a thought. Again, we don't need to solve that
11 problem tonight, but just an idea.

12 **MR. WOLL:** John, one idea I think that our board
13 would really appreciate is if the City and the
14 Conservation District could work together and kind of
15 outline a corridor down along the river of where we can
16 both live with the trail being. And then we all know, you
17 know, if we're within that, you apply for the permit. It
18 wouldn't take near as much time to battle through this.
19 And I think, working together, I think it could be
20 accomplished.

21 **MR. MUHLFELD:** That's a good idea.

22 **MR. ANDERSON:** Question. Just tagging onto the
23 comment the person over here made where they're requiring
24 -- the City is requiring -- or the Planning Department is
25 requiring the developer to meet permitting requirements by

1 other agencies that have control of that. So if the
2 permit stipulations are not met -- in other words, the
3 Conservation District is not going to approve a permit --
4 then does that go back to the City or the Planning
5 Department to say it cannot go forward?

6 **MR. MUHLFELD:** Craig, do you want to address
7 that?

8 **MR. WORKMAN:** Yeah, I think it would be the
9 applicant's responsibility to come back to the City for a
10 modification of the plan. There's other permits that
11 could be required, you know, from a project. Subdivisions
12 that require water-and-sewer-main extensions require
13 Department of Environmental Quality permits. Projects
14 that have, for example, wetland-, you know, mitigation
15 issues may be required to go through the Army Corps of
16 Engineers.

17 So there's any number of additional
18 jurisdictional permits that could be required as part of
19 the project that the applicant, I think, would have to
20 come back to the City if those permits can't be acquired.

21 **MR. ANDERSON:** And when they come back to the
22 City, not meeting those required standards by whatever
23 entity, your Planning or Public Works will say, You need
24 to bring them up to standard, or do you have the option
25 of, No, you're fine, go ahead?

1 **MR. WORKMAN:** Yeah, I think that if the permit
2 is required for a condition of approval, it would
3 ultimately need to go back to, you know, likely counsel,
4 if not the Planning Board as well, if it's a major change.

5 **MR. ANDERSON:** And then one last follow-up. If
6 those changes are to be made, then does that have to go
7 through the public-review process with those modifications
8 so that the public is aware of what is not being met and
9 what needs to be done to correct the situation?

10 **MR. WORKMAN:** Yes. If it's deemed to be a
11 substantive change, it would have to go back through
12 another public hearing and another public process.

13 **MR. ANDERSON:** Thank you.

14 **MR. WOLL:** Can I have everybody please state
15 their name when they are called on so we can get it in the
16 record. Thank you.

17 **MR. MUHLFELD:** And just for the record, we will
18 be taking public comment before we adjourn, Casey, to your
19 hand.

20 One thing I wanted to acknowledge, Pete and
21 John, to your points is that the City has adopted master
22 plans for our bike and pedestrian trail system that date
23 back a couple decades, if I'm not mistaken, are kind of
24 our master plan, which is nothing more than basically a
25 vision for how we'd like to align our trail systems

1 through the City of Whitefish. That was updated with a
2 Connect Whitefish Plan in 2017.

3 Oftentimes when we engage with developers or
4 land-use applications, it's at that time where we define
5 where the actual easement will occur or be codified, you
6 know, for the trail system. Oftentimes it's just a line
7 on a map when you look at a master plan. So we don't have
8 that level of detail in terms of proximity to the river
9 corridor in the actual master plans. It oftentimes comes
10 back to when those applications actually come forward, and
11 we negotiate with the developer to provide that public
12 benefit.

13 **MR. WOLL:** Okay. Who would we go to ask, then,
14 John, for that information when we get an application in?
15 Do we have a direct contact with the City who we go to?
16 Is it Craig?

17 **MR. MUHLFELD:** I'll let you address that, Craig.

18 **MR. WORKMAN:** Yeah, I think when the
19 Conservation District is in receipt of a permit for a
20 trail along the river -- for a new trail, I would be the
21 direct point of contact with the City.

22 **MR. WOLL:** Okay. Thank you.

23 **MR. MUHLFELD:** Just to be clear, I think one of
24 the outcomes tonight is -- for the benefit of your
25 board -- who is the contact for the City of Whitefish; who

1 is the representative; who speaks for the City, and the
2 City has elected to identify Craig Workman, our Public
3 Works Director, as that primary contact.
4 But as other issues arise, you know, legal
5 issues, or operations and maintenance, for example, you
6 know, Craig will certainly call on our respective
7 directors to facilitate those discussions, as well, with
8 CD. So multiple hats, but Craig remains the primary point
9 of contact.
10 **MR. WOLL:** That helps quite a bit, John. Thank
11 you.
12 **MR. TAYLOR:** Dave Taylor, Planning & Building
13 Director. Just one point is that, you know, the City
14 doesn't necessarily own all the properties where we have a
15 trail slated in our bike/ped master plan; so over time
16 we've been able to either work on getting easements from
17 the different property owners for a future trail that
18 maybe the City might construct, just out of the kindness
19 of the hearts of the property owners, or as that property
20 comes forward for redevelopment, at that point we can --
21 you know, if they're doing a subdivision, we can require a
22 condition that they provide an easement for that trail
23 and/or build a trail, depending on, you know, what kind of
24 project they're doing.
25 And so that's why a lot of these things are

1 coming along slowly over the years. We don't have,
2 necessarily, all the easements in place, but as properties
3 move forward, you know, at the end of day, you know, maybe
4 50 years from now, maybe they'll all connect together and
5 it will be a great experience for the public to be able
6 ride them and connect, but right now none of them really
7 connect together very much. So just a point I wanted to
8 make.
9 **MR. MUHLFELD:** Anything further from the City
10 before I turn it back to Pete?
11 **MR. ELLIS:** I was just gonna say to Dave, that's
12 where the problem comes in, is that the Conservation
13 District or Fish, Wildlife & Parks may say, Where you've
14 got an easement, we don't agree that a trail should be
15 built. So that's a problem we need to solve, is maybe
16 before the easement is finalized, so to speak, to have
17 some contact with the Conservation District or with Fish,
18 Wildlife & Parks so that we don't have an easement where
19 one of those other two people may say, That's not
20 appropriate.
21 Yeah, Wendy.
22 **MS. COMPTON-RING:** Wendy Compton-Ring, Senior
23 Planner. At the City of Whitefish, when projects are
24 coming in, before they submit an official application, we
25 do a pre-app or a site-review meeting, and all the

1 different departments come together, and we talk about it.
2 I mean, certainly, you folks can come to that meeting.
3 But do you have kind of a pre-app before someone submits
4 an official application where you could kind of vet those
5 issues out?
6 **MR. ELLIS:** We're available for that. We don't
7 require that. By the time we get to the developer, it's
8 pretty -- you know, it's pretty much -- by the time we get
9 their request for a 310 Permit, the plans are pretty much
10 made for where the trail that they're going to later deed
11 to the City is going to be.
12 **MS. COMPTON-RING:** They're at engineering-plan
13 level?
14 **MR. ELLIS:** Right. And that's where the problem
15 starts to come in if there's a disagreement. So that's a
16 solution we're trying to get tonight.
17 **MR. MUHLFELD:** Anything further, Craig?
18 **MR. WORKMAN:** Nothing from me.
19 **MR. MUHLFELD:** Great. Lech.
20 **MR. NAUMOVICH:** If I may, and just speaking more
21 to John's point, and also some of those specific projects,
22 once we get them and they've gone through that level of
23 engineering work, that becomes a massive investment on the
24 developer's end, the property owner's end, so really
25 getting in front of that process.

1 I'm not sure if I understood this, John. I
2 think you said in that 2017 master plan that was updated,
3 there was a line drawn where you would like to see the
4 trail, right? And, if you will, in mapping terms,
5 sometimes we call it a fuzzy line. So there is some
6 discretion as to where that goes. Sometimes it's
7 opportunity; sometimes it's discretion. Are there any
8 standards as to where it is preferred for that trail to
9 go that's promulgated in that master plan or some sort of
10 guidance in that, Craig or John?
11 **MR. WORKMAN:** Nothing that's been approved yet,
12 but you raise a valid point. We are working on a set of
13 guidelines in conjunction with Fish, Wildlife & Parks for
14 trails along the river, and so we just, in the last week
15 or so, sent our first draft of that to Kenny for his
16 initial comments, and we're hoping to come out of that
17 with a final document that, you know, is approved by Fish,
18 Wildlife & Parks, or at least, you know, condoned by Fish,
19 Wildlife & Parks.
20 **MR. NAUMOVICH:** I think we'd love to be a part
21 of that process, too, as possible, as the other entity
22 that provides permits. So, again, we're just trying to
23 make the process smoother for everyone involved, I think,
24 and minimize conflicts and minimize expenses.
25 **MR. MUHLFELD:** Pete, I'll turn it back to you.

1 **MR. WOLL:** Okay. Thanks, John. Thanks,
2 everybody there.
3 Kenny, do you want to speak to the projection on
4 the cumulative impacts, then?
5 **MR. BREIDINGER:** Sure. I mentioned this
6 earlier -- and I think some of you have heard it
7 already -- you know, the process that we go through to
8 permit a project, especially with the 124 -- well, and
9 also with the 310 -- I guess there's two different things
10 here. One is, when we start to evaluate a project, we're
11 supposed to evaluate the impacts of a project, and one of
12 the things that's been challenging for me has been just --
13 and don't get me wrong; I understand why the City has done
14 this -- but piecing together a project. You know, so
15 we're trying to evaluate the impacts of a project when
16 it's being done piece by piece, sometimes in different
17 places, sometimes -- for example, you know, the placement
18 of a trail on the Whitefish River would have impacts
19 elsewhere or -- sorry.
20 If there's impacts associated with a project up
21 or downstream, we need to evaluate those impacts. And
22 that can be a challenge in this case where it's done piece
23 by piece, because we don't know where the remaining parts
24 of the trail are going to be permitted. We do know where
25 other pieces have been permitted. But a lot of times what

1 you do on the -- at one spot dictates what might happen at
2 the other. And that limits -- not knowing what's going to
3 happen at the other site or adjacent site really limits us
4 on being able to evaluate the impacts of that project. So
5 that's been a challenge here.
6 Cumulative impacts are a little bit different.
7 And cumulative impacts, again, are a -- they're -- on our
8 physical environment and then cumulative impacts also on
9 the human environment, at least with MEPA and the way we
10 analyze these for 124 projects.
11 I'll try to give some examples. I'll try to
12 explain this. Cumulative impact would be, for example, if
13 we were permitting a riprap revetment on a wasting
14 streambank. I got out there and looked at this proposed
15 project -- this happens all the time where hardening a
16 streambank might increase erosion on the upstream site or
17 the downstream side, or it might just deflect the water's
18 energy across the river and cause erosion on a neighboring
19 property, which would lead to another riprap project on
20 the neighboring property. And that's a cumulative impact
21 to the physical environment.
22 Another example would be permitting a trail
23 project that would ultimately increase trespass on a
24 neighboring property of that trail, something like that.
25 So cumulative impacts are impacts that arise not directly

1 from the project but from a -- more indirectly, as a
2 result of the project. Like I say, we have to evaluate
3 those when we evaluate a project for permitting.
4 Is that what you wanted, Pete?
5 **MR. WOLL:** Yeah, I think that helps. If we can
6 get some questions now. Is there any questions? Do any
7 of our board members want to speak?
8 **MR. MUHLFELD:** I think Steve Qunell had a
9 question, Pete, if that's all right, up here.
10 **MR. QUNELL:** This is for Kenny. Kenny, you just
11 said that one of the things you evaluate is the trespass
12 on neighboring properties as part of a 124 Permit or part
13 of the environmental assessment. That's something that's
14 called out in the --
15 **MR. BREIDINGER:** That's just an example of it,
16 of, you know, what could be considered a cumulative impact
17 from permitting a project. It's -- I'm trying -- we do
18 have a checklist -- I should have brought an example of it
19 -- that we use to address specific criteria.
20 **MR. QUNELL:** Okay. Thank you.
21 **MR. MUHLFELD:** Kenny, are you aware of other
22 regions or offices with FWP that have required
23 cumulative-effects analyses or MEPA/EA-level documents --
24 not a checklist, but an actual EA or EIS -- for
25 comprehensive community trail systems within the state?

1 **MR. BREIDINGER:** Yeah, I'm not -- so I'm an area
2 biologist -- my area is the west side of the Flathead
3 drainage -- and this is really the only riverside or, you
4 know, streambank trail that I've dealt with, personally.
5 I have -- I'm not entirely sure about MEPA process that
6 they did in other cities where some of these trails are.
7 I haven't looked into that kind of detail.
8 **MR. MUHLFELD:** Okay. I was just curious.
9 **MR. BREIDINGER:** I assume that there was MEPA
10 done on, you know, for example, the Great Falls trail,
11 which comes up quite a bit.
12 **MR. MUHLFELD:** Thanks.
13 **MR. WOLL:** Any other questions on the cumulative
14 effects, then, or any other discussion at all?
15 Go ahead, Lech.
16 **MR. NAUMOVICH:** Thank you. I am familiar with
17 cumulative impacts, especially on a single system, but
18 outside the state. Certainly my experience in dealing
19 with MEPA and CEQA law in California -- which is
20 absolutely a different place -- there are trails that are
21 reviewed and go through a similar review process as a
22 building or a mall, whatever it may be. And I understand
23 the debate that some individuals believe that's too
24 stringent, and some believe it's more lax.
25 I'm curious where the City and the Council feel

1 on this with Whitefish Lake and our river that runs
2 through town. And this trail has certainly been invested
3 into. I've heard Bruce speak -- Bruce Moody speak --
4 passionately about it and the vision behind the trail, and
5 connecting the city is a really valuable one.
6 I'm curious if any of the City Councilors or
7 City staff have a feeling on whether we should consider
8 the trail in its entirety as a single project and review
9 it that way, or whether that feels overreaching. You, in
10 the end, are the governing body that we look to. And
11 maybe you don't have guidance from the Planning Commission
12 at this point, but I'm just curious, at this point it
13 seems fair to have an open discussion, if you will.
14 **MR. MUHLFELD:** Rebecca. Thanks, Lech.
15 **MS. NORTON:** I think it's a great idea,
16 actually, and I'm really sorry that we have these gaps in
17 compliance that you guys are having to work with. And
18 some of that is historical, too, because I was involved at
19 different points in time when we weren't communicating as
20 a City with your board.
21 But when I was campaigning to run for City
22 Council, I remember talking to the postman that delivered
23 my mail, and he was bringing up a point about how the --
24 where the mailboxes were put, you know, the boxes that
25 everybody has a key to -- was -- they never got input on

1 that before it was built out, and it was a really big
2 problem with snow and ice and deliveries. And so we
3 changed our planning -- I think we changed our planning so
4 now the post-office people get input before anything is
5 designed.
6 Am I right, you guys?
7 **MS. COMPTON-RING:** Yeah.
8 **MS. NORTON:** So it's kind of like that. You all
9 have jurisdiction over how we govern our rivers, and so
10 you need to have input before we build anything so we
11 don't screw it up. And there might be some places where
12 we can't build, and we need to know that ahead of time so
13 that we come up with alternatives, too. So you have my
14 support to do this, but I'm just one of us.
15 And I really love what you do.
16 **MR. MUHLFELD:** Further comments from Council
17 members?
18 I have a few. When thinking about the
19 cumulative effects, I would generally not be opposed to
20 evaluating our trail system relative to those effects,
21 because I think you're correct, Kenny, when we look at
22 specific trail segments, really all we can do is address
23 indirect and direct effects on that specific project
24 outside of the cumulative window.
25 But when I look at this river, I mean, we all

1 understand the history of degradation to the Whitefish
2 River. It used to ignite -- you know, given the fuel
3 spills that would come out of the railyard and the
4 roundhouse, it's currently listed by the Department of
5 Environmental Quality as impaired for nutrient, sediment,
6 aquatic-habitat impairments, you name it. You know, in
7 partnership with BNSF a number of years ago, the City, in
8 partnership, initiated a multi-million-dollar cleanup to
9 address the petroleum contamination on a multiple-mile
10 reach of the river. We've addressed our stormwater
11 outfalls, you know, by providing additional stormwater
12 retention, detention, and mechanical systems before that
13 water is discharged to the river.
14 And then, of course, we can't forget that we
15 have probably one of the more progressive river-setback
16 and wetland-protection ordinances in the state of Montana
17 that was mirrored after multiple other jurisdictions that
18 we worked in partnership with, developing with Montana
19 Fish, Wildlife & Parks, and that's our water-quality
20 ordinance that provides significant, you know, setbacks
21 and buffers for new development to the river.
22 So I think we've done a good job here at the
23 City. That's not saying we've done the best job we can.
24 I think we're certainly open to new ideas, and if we need
25 to address it more from a cumulative-effect standpoint, I

1 would agree with Rebecca that it's something we're
2 certainly willing to look at. But I just want to put this
3 -- I want to give this a little bit of perspective,
4 because I think, as a City, we've done a really good job
5 in protecting that resource as much as we have. That
6 lake, it's really the livelihood and lifeblood of this
7 community.
8 **MR. ELLIS:** Has everybody seen this map? We
9 have plenty of extra copies here. It's great, because it
10 shows the trail and what has been permitted, what hasn't
11 been permitted, and what's left to be permitted. And I
12 would hope that we could use this to get together and
13 agree about where the trail is gonna be, so then we won't
14 have any more problems.
15 But there's a heck of lot of this that was
16 permitted without any -- I'm sorry -- that was built
17 without any permit. So maybe we were lax in the past when
18 the bike/pedestrian trail started and got developed.
19 So, anyway, I encourage you to look at this, and
20 you can see, and hopefully we could go to landowners who
21 anticipate coming into the City or having the trail pass
22 through and try to get something worked out ahead of time
23 about easements and where the trail is gonna go.
24 **MR. WOLL:** John, would it be beneficial if we
25 got more of these maps and left them with you folks to

1 take and pass out, or anybody who comes through to look
2 at?
3 **MR. MUHLFELD:** Your maps or our maps?
4 **MR. WOLL:** Well, the one John was just talking
5 about here.
6 **MR. MUHLFELD:** Which I believe -- is that City?
7 **MR. WOLL:** Yes, that's a City map.
8 **MR. MUHLFELD:** Yeah, we can certainly provide
9 copies of that. And we can forward that electronically to
10 the District as well as FWP, as well as our planning
11 documents.
12 **MR. WOLL:** Sam, you went in and modified this a
13 little bit, didn't you? I shouldn't say "modified." But
14 you went and put in the ownerships and things from the
15 County?
16 **MS. TAPPENBACK:** Yeah. This was a map that
17 Flathead Conservation District staff created working with
18 the City. So we requested a shapefile for the master-plan
19 extent of the trail, and then we populated that with
20 additional information about which sections have been
21 permitted, what kind of permits, and what kind of land
22 ownership intercepted that trail.
23 **MS. HILDING:** It doesn't include any 124
24 Permits, though, that the City would have gotten for the
25 trails?

1 **MS. TAPPENBACK:** It only includes an indication
2 of public land.
3 **MR. WORKMAN:** Just to clarify. There's sections
4 of purple trail that, on this map, look like they were
5 built without a permit, and there's sections of purple
6 trail on this map that I know for a fact did have a 124
7 Permit. So it's correct; it may not have a 310 Permit,
8 but there's sections of purple trail that are constructed
9 that were properly permitted.
10 **MR. MUHLFELD:** Maybe what we could do is work
11 with the District to update this map so it's a little bit
12 more reflective --
13 **MS. TAPPENBACK:** We went back and forth on how
14 to indicate which sections of trail have which kinds of
15 permits, and so what we focused on were which sections of
16 trail do or do not have a 310 Permit, and then indicated
17 land ownership to suggest that there may be a 124 Permit
18 needed for that segment of trail.
19 **MR. NAUMOVICH:** Just for the record, Craig, by
20 purple do you mean what may be a magenta, reddish/purple?
21 **MR. WORKMAN:** I'll go with purple.
22 **MR. NAUMOVICH:** Not to get too personal.
23 **MR. WORKMAN:** The sections of trail that are
24 existing trail and no 310 Permit, I think -- it would be
25 nice to clarify this map to have existing trail -- I'm not

1 sure exactly how we do it. But the map, to me, is a
2 little bit misleading, because it looks like there's lots
3 of sections that were built without a permit that should
4 have got a permit.
5 **MR. ELLIS:** I'm sure we'd welcome any input you
6 have to get this correct, because if we're gonna try to
7 work together going forward, this is a good place to
8 begin. So, yeah, any information you have that would
9 help, we want it.
10 **MS. TAPPENBACK:** That was a point of confusion
11 for us, you know, those sections of trail that are labeled
12 as "existing trail no 310 Permit." There are several of
13 those sections that do not seem to be flowing through
14 public land or intercepting that. So it's confusing for
15 us when it should be a 124 Permit application because it
16 would be coming from the City of Whitefish or when it
17 would be coming from a private-land developer.
18 A question that I've certainly had, being
19 relatively new to this situation, is, if there is a master
20 plan for the trail, even if it is a fuzzy line, why is
21 that not all submitted as a single-permit application, as
22 a 124 Permit application from the City?
23 **MR. WORKMAN:** Most of those trails -- well, all
24 the trails that you receive as 310 Permits are not public
25 land; they're private property with an easement to the

1 City. So it's private property; it's not public land.
2 **MS. TAPPENBACK:** So for the 310 Permit, it is
3 the applicant that is issued the permit, and so if the
4 applicant is the City of Whitefish, if the easement is
5 already established, then that would be a 124. If it is a
6 private-land developer, then that would be a 310 Permit,
7 even if it is on private land.
8 **MR. WORKMAN:** Yeah. Most of the development
9 that we see and we approve, the trails are applied for by
10 the developer, built by the developer, and then dedicated
11 to the City post-construction, which is why they come to
12 you guys for a 310 Permit. If the City is building a
13 trail, we, of course, would go through the 124 process
14 and, you know, receive that permit and then build it with
15 public funds. But all of these 310 sections in blue,
16 which should have been in green, the permitted 310
17 sections were designed, applied for, and built by
18 the developer on private property.
19 **MS. TAPPENBACK:** May I ask a follow-up question?
20 So it was mentioned earlier that there is a water-
21 protection ordinance through the City of Whitefish and
22 that the public trails are exempt from that ordinance.
23 But in the master plan for the trail system, are there
24 guidelines in terms of how that trail needs to be
25 constructed? Does it need to be asphalt? Does it need to

1 have ADA compliance? Does it need have a certain grade,
2 slope? Are those kinds of restrictions put forward to
3 private developers?
4 **MS. HILDING:** There's some guidance in the
5 master plan for Whitefish Trails. There's also some
6 guidance in the engineering standards. So it gives a
7 width for that path along the river; it designates it
8 as asphalt and then 8' wide if it's along the river. And
9 it provides by section, you know, what the material is on
10 the section. So that's about as much -- it doesn't say,
11 you know, a certain number of feet away from the river.
12 And then, generally, our paths are ADA
13 compliant, unless there's some real exception. But, in
14 general, that's -- we plan our paths so they're ADA
15 compliant.
16 **MS. COMPTON-RING:** I would just add, too, in the
17 Water Quality Protection Regulations, they are permitted
18 use within a buffer. I wouldn't say they're exempt from
19 the Water Quality Protection Regulations; it's an allowed
20 use in a buffer. So they still have to submit -- we have
21 a Water Quality Protection checklist; they're submitting a
22 geotechnical letter; we're getting landscaping plans;
23 erosion-control plans. There's a whole host of things
24 that they still have to do. It's an allowed use; so they
25 still have to comply with regulations.

1 **MS. HILDING:** So Public Works fills out an
2 application, a checklist, and provides all of the
3 materials that are required and submits it to the Planning
4 Department for their review.
5 **MS. COMPTON-RING:** If it's a public trail.
6 **MS. HILDING:** If it's a public trail.
7 **MS. COMPTON-RING:** And we can forward that
8 checklist to you so you can see it, and our regulations.
9 **MR. MUHLFELD:** Pete, should we go to public
10 comments given the hour?
11 **MR. WOLL:** Yeah, let's go into the public
12 comment.
13 **MR. NAUMOVICH:** Pete, could I ask one more
14 question?
15 **MR. WOLL:** Yes.
16 **MR. NAUMOVICH:** Process question, I think, I
17 would just like elucidated upon. Can you help the
18 District understand -- and I'm leaving this open to City
19 official representatives -- how the ped and bike path
20 committee interact with this process? Is it purely in
21 that 2017 master plan? Is it through Planning? And we're
22 just trying to understand a little bit more of that
23 entity? Is that a formal City entity? I believe it's a
24 subcommittee. But if you could just spend a minute
25 talking about that.

1 **MR. MUHLFELD:** I'll defer to Karin, but it is a
2 formal board adopted by resolution that's advisory to the
3 City Council. Karin, do you want to elaborate?
4 **MS. HILDING:** My understanding, they're
5 advisory, actually, to the Park Board, and then the Park
6 Board would go to the Council. So they don't pass any --
7 they don't make any final decisions there, but they would
8 make recommendations to the Park Board.
9 **MR. NAUMOVICH:** Thank you.
10 **MS. BUTTS:** I would like to clarify. Maria
11 Butts, the Parks & Recreation Director. When it comes to
12 a design of a path for a development, that does not go
13 through the Park Board and then to the Council; that will
14 go through the Planning Board. So the Park Board manages
15 parks and the maintenance of paths, but the construction
16 of a path goes through the City Council ultimately, in the
17 end.
18 **MS. SAWTELL:** Can I clarify something you said,
19 Craig?
20 **MR. WORKMAN:** Sure.
21 **MS. SAWTELL:** A private-property owner that has
22 a City trail across their property, the City approaches
23 them and asks if they're willing to put that trail, right?
24 **MR. WORKMAN:** The City would condition their
25 approval based on the trail.

1 **MS. SAWTELL:** Okay.
2 **MR. WORKMAN:** So I'd put it the opposite. I
3 think the applicant would come to the City and say, I
4 would like to build this project, and the City would
5 approve it.
6 **MS. SAWTELL:** But as part of this approval
7 process, you need to put this public easement across your
8 property?
9 **MR. WORKMAN:** Correct.
10 **MR. TAYLOR:** There have been projects where
11 there's a piece of property that is already developed,
12 where the City has come to them and asked for an easement.
13 **MS. SAWTELL:** But then procedurally --
14 **MR. TAYLOR:** The Duck Inn, for an example,
15 trying to get a trail through that.
16 **MS. SAWTELL:** It's the applicant that then -- or
17 the owner of the underlying property that gets a 310
18 Permit, ideally, and then once they have that permit,
19 they, themselves, build the trail, or the City builds the
20 trail.
21 **MR. WORKMAN:** The developer would build the
22 trail.
23 **MS. SAWTELL:** To City standards?
24 **MR. WORKMAN:** Correct.
25 **MS. SAWTELL:** And then once it's built, they

1 then --
2 **MR. WORKMAN:** Dedicate it.
3 **MS. SAWTELL:** -- dedicate it. So they basically
4 are giving an interest in that property to the City?
5 **MR. WORKMAN:** In some circumstances. In
6 other circumstances, it could be designed, built, and
7 owned by the applicant and just open to the public. For
8 example, the 95 Karrow Project, which is currently under
9 construction, there won't be an easement for that. It's
10 just a condition of approval, I believe, that --
11 **MS. COMPTON-RING:** It's an access easement.
12 **THE COURT REPORTER:** I didn't hear that. I'm
13 sorry.
14 **MR. MUHLFELD:** "It's an access easement."
15 **MS. GETTS:** I think if I might add to that, just
16 because I'm maybe the most recent person to go through a
17 land-use-law class. From my understanding, the reason why
18 it's kind of piece by piece is if we required it, it might
19 be considered eminent domain. Or I don't know if Angie
20 might be able to add to that. But if you like require it
21 specifically and say, Oh, we had this planned ahead of
22 time, then that could be problematic legally, like when it
23 comes to other people's property, if we say, Okay, we have
24 this trail planned; you have to put it here. Whereas, I
25 think, the negotiation phase for individual landowners

1 upon development and as they go through the process,
2 that's when there's leverage to be able to get to that.
3 So I'm not sure exactly like if there are
4 problems with it, but it seems like it could be really
5 tricky legally if we were to master-plan it ahead of time.
6 **MS. JACOBS:** It could be. I mean, generally
7 where we see trails is when people come in for planning
8 developments, and it's offered by the developer; it's not
9 mandated by the City.
10 **MS. RIGDON:** Just a reminder, I think we need
11 names beforehand.
12 **MR. WOLL:** Okay. Let's go to the public comment
13 then.
14 **MR. ANDERSON:** I had one follow-up question, if
15 I could.
16 **MR. WOLL:** Go ahead.
17 **MR. ANDERSON:** Lee Anderson, Fish, Wildlife &
18 Parks. To just dovetail off of what Lech was asking. So
19 correct me if I'm wrong. So the trail board, the
20 appointed trail board -- I forget the name -- exact name
21 there -- were you saying that the proper channel then for
22 them is to go through the Park's board -- they would make
23 recommendations on what they want to see to the Park's
24 Board, who would then take that information to the City?
25 **MS. HILDING:** Yeah. And they don't get involved

1 so much -- the bike and pedestrian committee gets involved
2 more in the master planning and wanting to get these
3 connections completed. But they don't get involved that
4 often in the specifics of design. I think what Maria was
5 talking about was the process of when that path is added
6 as a condition; that's through the Planning Board after
7 the City Council. But the bike and ped committee has just
8 for years worked on trying to get the City staff to get
9 these links completed. It is the Public Works Department
10 that actually looks at the actual engineering plans and
11 then goes out and inspects the construction.
12 **MR. ANDERSON:** I'm just speaking for FWP, where
13 I want to go -- or making sure where we go is
14 having single point of contact or direct point of contact
15 with whatever is associated with the City, for example.
16 And assuming that's something -- similar issue for the
17 District, is you want to have a single point of contact.
18 There's varying parts of the City, and I wasn't quite sure
19 how the bike and ped committee fit exactly into that.
20 **MS. HILDING:** You know, I think the idea of
21 having Craig as the single point of contact for the City
22 really just clarifies everything, because both he and I --
23 you know, several of us attend all of those bike and ped
24 committee meetings. It's not a -- you know, separate from
25 the City staff, we attend those. The chair, Don Phelps,

1 is here, of that committee.
2 But I think the City would like to also have
3 this one contact that just -- so you guys aren't
4 necessarily getting directed by various people but have --
5 go through one contact.
6 **MR. WOLL:** Did that answer your question, Lee?
7 **MR. ANDERSON:** Yeah.
8 **MR. WOLL:** Okay. We'll hold the public comments
9 and let the gentleman go first.
10 **MS. TAPPENBACK:** May I ask that for the
11 public-comment period -- I think the group discussion is
12 really great, but also may have confused things a little
13 bit in terms of who is a representative of who, and so for
14 the public-comment period, if you do have a comment or a
15 response to a comment that's being made, if you could
16 please go up to the podium, state your name for the
17 record. Thank you.
18 **MR. MALMQUIST:** Good evening. My name is Casey
19 Malmquist. I am a citizen of Whitefish, former Planning
20 Board member, and applicant on two of the projects
21 indicated on your map, and in some way feel somewhat
22 responsible for this meeting, in a very good way. And,
23 you know what, I'm really, really happy that this is
24 happening. This is kind of like family counseling in a
25 way. This is long, long overdue. And I respect both of

1 these bodies. I've worked with you and appreciate
2 everything you're doing. And the intentions of everyone
3 here are very, very good.
4 I'm a developer. I'm one of these, you know,
5 so-called bad guys that are, you know, changing the face
6 of the Flathead. I don't look at myself that way. I've
7 tried to do what I've done very responsibly. I think my
8 perspective might be pretty insightful for a lot of this,
9 in that the projects I'm doing -- even though I would love
10 to build these trails on my own -- in both the projects
11 I'm doing now, these are requirements borne upon me from
12 these bodies. It's a condition of approval that I build a
13 trail on these two projects. And I'm happy to do that.
14 But what I found in this process is I was a
15 slave to two masters. I was -- by condition of approval,
16 I had to do this, and when there, it was like, You can't
17 do this. I'm like, What do I do?
18 So getting together and looking at this. And,
19 you know what, Kenny brought up a point in one of our
20 meetings, is the trail system is a vision of a City that
21 has been here as long as I've been here, which is
22 30 years. And I think it's incumbent on everyone to get
23 together and look at that system and come together and
24 figure out a way, How do we do this in a responsible way?
25 Because the community wants it; it's a great community

1 benefit; it needs to be done.
2 And this is gonna cost me millions of dollars to
3 do this. But it's not all altruistic. It enhances the
4 property values; it enhances the experience of the
5 community and the people that inhabit this community. So
6 this is a good thing to do.
7 I have a background in environmental science. I
8 want to do this in the right way. And there's a way to do
9 this. And I think it's as simple as these two bodies
10 getting together and figuring out, Here's the plan; this
11 is what we're going to do; how do we do it the right way,
12 and respect the provisions of all of those things that are
13 governing us as a society.
14 So I know this can happen. And this is a huge
15 first big step in doing this. It's given -- I was really
16 puzzled in the last several years of -- I was like, Have
17 you guys talked to each other?
18 No. We tried to, but it hasn't happened.
19 I'm like, How hard is that?
20 Well, we're here; it's happening. So, please,
21 please, let's find a way to work together to make this
22 trail system work and truly set an example of how it can
23 be done.
24 One of the things I offered up -- and, you know,
25 like everything in life, this is not black and white;

1 there's lots of gray areas. The Whitefish River,
2 unfortunately, is not some pristine body of water; it's
3 been impacted for several decades. I said, Let's do an
4 interpretive trail on this thing; I'll do it on our
5 section of -- what we're doing on these projects is
6 teaching people about the riparian areas, teaching them
7 what's going on there, how we need to respect that and
8 help maintain it. There's something positive we can do
9 here. It's silly for us to combat each other in something
10 that is for the public good, because I know every single
11 one of you is here for that.
12 So, please, figure out how we do this. I'm
13 happy to participate. And let's just get it done. Thank
14 you.
15 **MR. ELLIS:** Could I ask you a question, Casey,
16 before you leave?
17 **MR. MALMQUIST:** Yes.
18 **MR. ELLIS:** First of all, I would say that the
19 Conservation District is not against a trail on either
20 project, but the issue always seems to be that you come to
21 us and say the trail has got to be right here, that the
22 City has told me the trail has to be right here. And we
23 say, Well, we don't want the trail -- we're fine having a
24 trail, but we just disagree with you where it needs to be.
25 So I wonder if you'd address that problem that we're

1 having.
2 **MR. MALMQUIST:** Taking a step back, and the
3 question that was asked is -- so I think there's several
4 different scenarios here. One is, in my case -- so
5 there's a private landowner that has land, and they're
6 going to a development that is within the approved -- you
7 know, they can do what they can do per zoning on that.
8 That's where the City needs to go to them and get an
9 easement on that, and then they would build a trail.
10 We've asked for some conditional things. In this case we
11 did a PUD and a CUP, and in those the City has conditioned
12 it. And in that there are regulations and rules we have
13 to follow in that. I've worked with Bruce and his team,
14 you know, on developing those to those standards.
15 And, frankly, this was sort of new to me. I
16 figured -- I just assumed if we did it to the City
17 standards and they approved it, we would certainly go
18 through the permitting process with the Conservation
19 District. And we did initially -- and this is
20 something -- I don't want to grind here, but we were
21 approved at one point, and then there was a change of
22 members, and then we were at some point not approved,
23 which was very confusing to me.
24 In my mind, all of this is, like, coming
25 together and clearly setting some guidelines and standards

1 that will apply not then and not now, in the future. As a
2 developer, I'm simply trying to follow the rules. Someone
3 needs to tell me what the rules are.
4 And in this case, when we have a predesigned or
5 preconceived trail system, get together, figure out what
6 that is, and follow the standards that meet everyone's
7 needs. What we met were -- we thought we were in full
8 compliance of setbacks from the river and the high water,
9 and, frankly, most notably on the Miles Avenue project, I
10 don't think we're even in the jurisdiction at all, as I
11 understand it.
12 The Karrow, there are portions of it, and we've
13 gone through the process, and we've discussed them, and
14 we've moved and adjusted. I mean, we've spent tens of
15 thousands of dollars responding to your requests to
16 clarify our plan and moving it and putting it in and
17 changing it and flagging it and reposting it, and it's --
18 we're trying to do the right thing, but we need some clear
19 guidance on what the right thing is.
20 And, again, that's going to take some
21 coordination and cooperation between the entities. Does
22 that answer it?
23 **MR. ELLIS:** Yes.
24 **MR. MALMQUIST:** Honestly, I want to learn. I
25 mean, again, I'm trying to do the right thing here.

1 **MR. ELLIS:** Right. Well, again, where we seem
2 to be having problems is when you got your plans, have
3 gone through Planning Board, City Council, and then you
4 come to the Conservation District, and we start arguing
5 about where exactly the trail is going to be, and what we
6 think we hear from you is, The City's requiring me to put
7 this trail right where it is on my drawings.
8 **MR. MALMQUIST:** To meet the requirements of the
9 trail, which are complex, as you know -- I mean, meeting
10 ADA, meeting setbacks, meeting grade, I mean, all these
11 things -- to my knowledge, we've done the best we can to
12 meet all of those. And in that -- so, again, from my
13 perspective, it met and got the approval of this body
14 (indicating). At that point, I didn't know that their
15 regulations were not in tune with yours. I assumed they
16 were. And that's a bad thing to do in this life.
17 **MR. ELLIS:** I think you're exactly right.
18 **MR. MALMQUIST:** And then when we get there, you
19 know, there's something different. And so that's where I
20 think coordination with all of this would be beneficial to
21 everybody.
22 **MR. ELLIS:** And you're exactly right there.
23 Thank you, Casey.
24 **MR. MALMQUIST:** Thank you.
25 **MR. QUNELL:** The mayor stepped out for a minute;

1 so if you'd like to speak publicly, come on up to the
2 podium.
3 **MR. MOODY:** Good evening, Council and members of
4 the Conservation District. My name is Bruce Moody. I'm a
5 landscape architect. I've been working on the trail
6 projects here in Whitefish since -- I don't know -- before
7 there was a first master plan. And it's -- as we just
8 heard from Casey, it is complex. But some of the goals of
9 the river trail, which has been voted over and over again
10 as the primary link through the City; it's what links all
11 the neighborhoods together; it can -- when it's
12 finished -- and when it is, then it will link all the
13 neighborhoods to the schools, to our parks.
14 It's a critical link. If you think about
15 Whitefish, we're bisected by a river; we're bisected by
16 the railroad; we're bisected by Highway 93. And as this
17 area gets more and more traffic, it gets more dangerous to
18 cross Highway 93 and to get through town.
19 So we have these points along the river where we
20 have to get under the highway, we have to get under the
21 railroad tracks, to get a separated-grade crossing, which
22 is by far preferred over any other type, for safety.
23 So when you start looking at the corridor and
24 trying to link all these segments and make them work ADA
25 compliant, grade-wise along the river, and to meet the 310

1 requirements and meet the City's water-quality standards,
2 and on and on, there's a lot of complexity to it. And
3 none of us have approached any segment of this trail
4 lightly. But we do have these things that we need to meet
5 to make it safe for all ages and all abilities in our
6 community.
7 So when we get together to talk about the
8 trails, we need to look at it holistically like that and
9 realize that this is 30 years of planning being
10 implemented very slowly, but as you get to the detail of a
11 segment, you start to realize the complexity of how all
12 these pieces come together. So just one more
13 complication. Thank you.
14 **MR. WOLL:** Any questions for Bruce?
15 **MR. PHELPS:** Public comment.
16 **MR. WOLL:** Go ahead.
17 **MR. PHELPS:** Thank you. My name is John Phelps,
18 and I'm the chair of the City's bike/ped committee, and
19 just a little bit about me. I was City Attorney for
20 15 years beginning back in 1996, and then I retired as
21 City Attorney, and I was asked to chair the bike/ped
22 committee; so I've done that for 11 years. So I've been
23 involved for about 26 years in the City's bike/ped
24 process.
25 I've heard several different explanations about

1 what the bike/ped committee does. And they weren't --
2 they didn't cover everything, I guess, is what I'd say.
3 So I wanted to tell you a little bit about what we do and
4 why we do it. City staff is often stretched very, very
5 thin. There's not a designated City employee that handles
6 bike/ped paths. It's typically handled by Public Works,
7 but oftentimes the Public Works individuals are extremely
8 busy, and so a lot of things that might be done in a
9 larger City, by City staff, end up being done by members
10 of the committee.
11 For instance, we meet with property owners; we
12 participate in meetings with City representatives and
13 representatives of other agencies; we do property-records
14 research. I do legal research, and then I run it by the
15 City attorney just, you know, to make sure the City
16 attorney is satisfied with the conclusions. We
17 communicate with other cities in Montana to find out what
18 they're doing, how they solved problems that we're now
19 facing, and that's how we learned about Great Falls and
20 how Great Falls has dealt with issues with trails on
21 riverbanks. We produce written reports to the Park Board
22 and to the City Council. We create priority lists of
23 trails and recommendations about which trail to build next
24 or what trail to put on the shelf and you can concentrate
25 on a different one, depending on needs and money and such.

1 I often ask -- Craig Workman is the main point
2 of contact on bike/ped issues with other public agencies,
3 but I've asked Craig to allow me to attend meetings at
4 times with other agencies so that I know what's going on,
5 and I can report back to my committee, and I can perhaps
6 help. So that's -- we do a lot more than that, but that's
7 a lot of what we do.
8 Changing gears now, I'd like to go back to the
9 discussion that was had about the entire path being
10 submitted or the advantages of the entire path/river trail
11 being submitted to the Fish, Wildlife & Parks and the
12 Conservation District. It would have been a wonderful
13 thing if back in 1999, when the City first came up with a
14 master plan, including the river trail, you know -- from
15 City Beach all the way down to Highway 40 -- it would have
16 been a wonderful thing if the City had met with Fish,
17 Wildlife & Parks and the Conservation District and hashed
18 all that out and discussed it at length and come up with a
19 plan that was satisfactory to everyone. And that didn't
20 happen.
21 I don't think the City folks, back in 1999,
22 understood the Conservation District's role or the Fish,
23 Wildlife & Parks' role. They came up with a plan that ran
24 a trail the length of the Whitefish River, and that was --
25 they began acquiring easements so that they could begin

1 building it. They began building sections in the -- about
2 25 years ago began building sections of the trail and
3 acquiring easements, building sections on the property the
4 City owned. Sometimes the sections that were built were a
5 quarter mile from the next closest section, but that's all
6 we could do at the time.
7 But over those years, we've acquired probably
8 85 percent of the land and the segments needed to complete
9 the trail, and we built about 80 percent of that trail.
10 So we've got this trail system planned that is nearing
11 completion. There's about five gaps in it, five different
12 individual property owners who haven't yet given us an
13 easement or who are willing to give us an easement that
14 aren't quite ready yet to build. But it's down to a
15 relatively small number of lots left.
16 And because of the sections that are already
17 built, it's difficult to go anywhere else now. We created
18 that problem perhaps ourselves, but it exists, and we're
19 trying to deal with it, and I know you folks are trying to
20 deal with it.
21 There was mention of different alternatives, and
22 because of the way it was laid out and because of the
23 segments that have already been built, it's very difficult
24 to find alternatives, other than moving the trail this way
25 or that way on the property but near the river. That's

1 the only -- that's the only land that's available, and
2 it's almost impossible at this point to take the trail and
3 move up from the river and then downstream and then back
4 to the river. It's just not physically possible. If the
5 river trail is going to be completed, the sections that
6 need to be completed are known to us and are the only
7 ones, really, that will work.
8 And so what I think we need to do is work with
9 you folks and try to find a route in proximity to the
10 river that will not harm the river, that will be
11 reasonable, will be stable, that will be ADA accessible.
12 And that just makes good practical sense, because, as I
13 said, there's nowhere else to go, and we're too far along,
14 and there's just -- there's not a whole bag of
15 alternatives.
16 So those are the two things I wanted to do, is
17 cover that and then just also what our committee does.
18 Thank you.
19 **MR. ELLIS:** Could I ask you a question, John?
20 **MR. PHELPS:** Sure.
21 **MR. ELLIS:** Does the City have an easement on
22 the Riverbend Condominium Property?
23 **MR. PHELPS:** We do.
24 **MR. ELLIS:** Where is that easement located?
25 **MR. PHELPS:** That's a good question. The

1 easement was granted to the City in 1983, and the City
2 required it because the developer of the condominiums
3 wanted some City right-of-way. The City abandoned First
4 Street, gave that land to the developer so the developer
5 could fit his condos on the land, and in return the
6 developer provided an easement. And the legal description
7 is wider than the easement. The easement is going to be
8 6' wide, and the legal description is at times 25- to 30'
9 wide, because nobody knew at the time exactly where the
10 trail should go.
11 We didn't have an easement from the property to
12 the north, which is Casey's property. You know, that was
13 a private individual that lived there. To the south, the
14 old highway bridge blocked any way of connecting the trail
15 to the south, and so the parties knew that we don't know
16 exactly where to put this trail.
17 And so they created a wide description and
18 agreed that when the time came, they would sit down and
19 they would negotiate the exact location of the trail. So
20 we can tell you that it's within this range; it's a narrow
21 range, and it's between the condos and the river, but we
22 haven't yet tied down the 6' strip with the property
23 owners.
24 **MR. ELLIS:** Do you have an anticipated date of
25 when that might be resolved?

1 **MR. PHELPS:** Well, that's -- no. No. We are
2 talking with the property owners; we have been talking
3 with the property owners for probably 15 years, and it's
4 been difficult. We sensed a little more cooperative
5 spirit from the landowners recently. We're hopeful that
6 we will tie it down, but I can't tell you today when that
7 will be.
8 **MR. ELLIS:** Thank you.
9 **MR. NAUMOVICH:** Do you mind if I ask a question
10 before we do public comment? I'm sorry. I apologize.
11 John, I've taken one legal class, and it's one
12 of those dangerous things where you learn a little bit and
13 you think you know everything, and, in fact, you don't
14 know anything at all. "Eminent domain" is a third-rail
15 term in a lot of planning situations. Some consider it a
16 four-letter word in the county. I'm curious. As I heard
17 you speak, you pretty clearly said there's only a few
18 places these connections can go. That, to me, seems
19 spatially explicit. Is that an issue with eminent domain,
20 once you say, Well, we're planning for the trail right
21 here at this moment? I'm just trying to understand that
22 context. That comment kind of caught me off guard from --
23 I apologize. I don't know your name.
24 **MS. GETTS:** Riss. It was more as a question of
25 wondering if that was one of the reasons why there was

1 this -- also, I'm new here -- if that was one of the
2 reasons why we approach it in a specific way, right,
3 because you can't say, We're going to use this, but we can
4 wait until the land changes hands, and when they want it
5 to be developed, and then that can be a condition. Yeah,
6 I don't know if --
7 **MR. NAUMOVICH:** Okay. I was curious since John
8 had been the attorney for -- I'm sorry, you said 25 years
9 or so?
10 **MR. PHELPS:** 15, and then the committee.
11 **MR. NAUMOVICH:** Probably felt like 25. You
12 would not necessarily see an issue with eminent domain in
13 doing that sort of planning exercise?
14 **MR. PHELPS:** Well, the City decided, gosh, about
15 25 years ago, not to use the power of eminent domain to
16 force easements upon private landowners. There was
17 discussion of that; it was a very unpopular concept, and
18 the City basically decided they wouldn't do that. And
19 that's probably a good decision. But that meant that we
20 have had to wait sometimes 25 years, before someone passed
21 away or finally sold their property, to get the easement,
22 and meanwhile that section is just frozen; we can't do
23 anything with it. And, fortunately, we're down to very
24 few of those.
25 **MR. NAUMOVICH:** So just for clarification, you

1 would feel comfortable if we were able to move forward on
2 kind of a cumulative-impacts plan, to identify those five
3 pinpoints on a map?
4 **MR. PHELPS:** Certainly, yes. There's a lot of
5 details there, but yes.
6 **MR. NAUMOVICH:** Thank you.
7 **MS. ZANTO:** Good evening. My name is Patty
8 Zanto. I have been working for the Riverbend HOA for
9 15 years. I'm very familiar with the subject. I've been
10 conversing with the officers, the board of directors, and
11 the attorney we work with. The attorney submitted a
12 letter to the City Attorney, dated April 29, that gave the
13 City a location for the easement. So when John says he
14 doesn't know where the easement is because the owners
15 don't agree, I have a problem with that, because we gave
16 them a letter that showed a map with the easement printed
17 on it.
18 And the other thing I'd like to say is I'd
19 like -- I'd welcome anyone to go down and look at the
20 river right now, this week, and you'll realize that the
21 entire easement is underwater. And as a taxpayer, I can't
22 imagine paving a path or building any kind of boardwalk or
23 any kind of facility that would be under water for, you
24 know, maybe a couple weeks out of the year at least and
25 the damage that it would do to that.

1 And the other thing I have a question about is
2 why the bike-path committee has so much influence on where
3 the paths are completed. Because the City hired KLJ
4 Engineering to look at our specific part of the property,
5 and KLJ Engineering issued a seven-page report. This was
6 sent to Karen Hilding, and it basically says this City
7 should not build on that easement. There is an alternate
8 path up Miles Avenue; it's City property; it's a -- I
9 don't know -- 60-foot easement across -- the street is 60
10 feet wide; there's plenty of room for a bike path off the
11 side of that street. It just makes more sense. So that's
12 all I have to say.

13 **MR. PHELPS:** Quick response.

14 **MR. MUHLFELD:** If there are any responses, I'd
15 like those to come from our City Attorney, John, with all
16 due respect.

17 Angie, would you like to respond to that?

18 Although, Mr. Chairman, I really would prefer if
19 this meeting not digress to specifics about Riverbend
20 Condo. That's not why we're here this evening.

21 **MR. WOLL:** Thank you, John.

22 **MR. MUHLFELD:** Angie, would you like to respond
23 to anything?

24 **MS. JACOBS:** If you would like me to respond, I
25 can. I agree with you that we really don't need to

1 discuss the specifics of Riverbend. That's not my
2 intention here, by any means. But if the board would like
3 clarification, I would be happy to give it.

4 **MR. MUHLFELD:** My preference would be to just
5 move forward with additional public comment, Mr. Chairman.

6 **MR. WOLL:** Let's move forward then.

7 Any other public comment?

8 **MS. WALKER:** Good evening. Cate Walker,
9 Northwest Design Studio. I have been working on a number
10 of these trails in association with Bruce and Casey. And
11 I had a question or just kind of a thought. Maybe it
12 doesn't apply right now; it may be too specific. But in
13 looking at what may be a path forward, as far as looking
14 at this master plan cohesively and making that easement
15 work for both the City and for Flathead Conservation
16 District, you know, we've alluded to all those moving
17 parts that are required to make sure that the paths are
18 accessible and that they work.

19 I would just ask that some consideration be made
20 or maybe a partnership be developed with a volunteer
21 organization -- or I would even volunteer my office to
22 look at these things as you work through them -- to make
23 sure that the easements that are developed function from a
24 use standpoint that we can make a functional trail on
25 those easements, with ADA requirements, with access, so

1 that we're not doing this in vain. I don't think anyone
2 wants that.

3 But, you know, I do think it needs to be looked
4 at from a technical standpoint also, and that also needs
5 to be reviewed. That's all I have to say. Thank you.

6 **MR. WOLL:** Any other public comment, then?

7 **MS. MALCHIK:** Hi. My name is Antonia Malchik.
8 I'm a member of the bike/ped pedestrian committee as well.
9 I want to thank all of you for coming here tonight. It
10 sounds like things are really productive, and I appreciate
11 all the time you put in. I'm sure it's not easy.

12 I just wanted to -- two things. I'll be really
13 quick. I just wanted to expand partly on what John Phelps
14 was talking about that the bike/ped committee does. I've
15 been on the committee for a year, and I also feel like one
16 of our important jobs is community outreach. So, for
17 example, Karin Hilding and I have been working on the
18 safe-routes-to-schools group, and we got together the
19 school principals, the police chief, some parents, and a
20 representative from the hospital, and are really working
21 on how we get kids to school safely biking or walking.

22 And I think that community connection and
23 communication is a really important part of what our
24 committee does. So I look forward to more of that in the
25 future.

1 I just had a quick question for Kenny. When you
2 talk about the cumulative effects of the paths, I was just
3 wondering -- and possibly for the Conservation District
4 also -- do you also consider cumulative benefits? Like,
5 you know, Bruce spoke very well about how beneficial the
6 path is to the community and to the -- you know, kids can
7 roam around town and things. I just didn't know if that's
8 part of what's considered during the permit process. And
9 I'll sit down for that.

10 **MR. BREIDINGER:** Yeah, it is part of this, you
11 know. I guess negative and positive impacts are things we
12 look at for the -- both the physical and the human
13 environment.

14 **MR. WOLL:** Any other public comment? John, do
15 you have any other comments?

16 **MR. MUHLFELD:** After you, or I can just
17 certainly just wrap this up from our behalf real quickly,
18 and then turn it back to you.

19 **MR. WOLL:** Okay. That would be fine.

20 **MR. MUHLFELD:** Just a couple take-home, maybe,
21 action items that I summarized in my notes up here this
22 evening, was perhaps we need to continue, obviously,
23 working with FWP to finalize the design guidelines that
24 we've initiated, but certainly engage the Conservation
25 District with those as well.

1 I think we've been clear that Craig Workman will
 2 serve as the primary point of contact or City
 3 representative for the City of Whitefish, and he'll reach
 4 out to other directors, as necessary, to provide support.
 5 I think, thirdly, the map that Samantha and the
 6 District prepared, I'd like to ask that our staff work
 7 with your staff to update that map and make it a little
 8 bit more accurate, in terms of what's been approved and
 9 not approved, whether it's a 310 or 124.
 10 And then, of course, I think just continued
 11 cooperation with regards to our master plan. And maybe
 12 it's something we need to dust off. But I don't think
 13 tonight is the time to figure out those details. But
 14 maybe a subset of the District, as well as FWP, and the
 15 City can work together cooperatively in a working group to
 16 make sure that we move forward cooperatively and address
 17 the concerns that have been made tonight.
 18 With that said, Mr. Chairman, I'll turn it back
 19 to you. And thanks very much.
 20 **MR. WOLL:** I want to thank you, John, for having
 21 us in your chambers here and allowing us to get this. I
 22 think a lot of good things came out on the table tonight.
 23 I think there's a lot of progress that can be made, and I
 24 know the District is willing to do that.
 25 So my last comment, with this growing valley,

1 let's forget the past and work together to improve the
 2 future.
 3 With that, we can be adjourned. Thank you.
 4
 5 (Whereupon, the proceedings concluded at 9:00 p.m.)
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1 **REPORTER'S CERTIFICATE**
 2
 3 I, SHERI J. HAZLETT, Registered
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 7 THAT I did report the foregoing transcript;
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 9 THAT said transcript was taken at the time
 10 and place stated on the caption hereto; and
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 12 THAT the proceedings were taken in shorthand
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 16 THAT the foregoing is a true and correct
 17 transcription of all of the proceedings to the best of my
 18 ability.
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 20 IN WITNESS WHEREOF, I have hereunto
 21 subscribed my name and affixed my seal of office this 6th
 22 day of July, 2022.
 23
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Sheri J. Hazlett
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 for the State of Montana
 Residing in Flathead County
 My Commission Expires 3/2/2025

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**FLATHEAD CONSERVATION DISTRICT
SPECIAL MEETING**

June 14, 2022

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