

**A COMPARISION OF THE DENIED PRELIMINARY PLAT FOR NORTH SHORE RANCH SUBDIVISION
AND THE NEW PROPOSED REVISED PRELIMINARY PLAT FOR NORTH SHORE RANCH SUBDIVISION**

Which is included in the proposed Release and Settlement Agreement Flathead County is being asked to approve.

	2007 North Shore Ranch Preliminary Plat Denied	2010 North Shore Ranch Settlement Proposed Revised Preliminary Plat Exhibit A	2010 North Shore Ranch Settlement Proposed Revised Preliminary Plat Exhibit D
Acres	367.47 acres	367.47 acres	367.47 acres
Lots	290 single family residential lots	78 Single family residential lots 149 Condo units 60 Assisted Living Units <u>2</u> Commercial 289 Total Units	107 Single family residential lots 44 Townhouse lots <u>139</u> Condo units 290 Total Units
Lot Breakdown	150.838 Ac Single Falmily Res. 36.729 Ac Roads <u>179.9</u> Ac open space w/ equestrian center 367.47 Total Acres	41.375 Ac Single Family Residential 41.226 Ac Condo Units 21.669 Ac. Roads 252.088 Ac Open Space/ undev. land of which 150 can be sold off at any time 7.511 Ac Storage 1.662 Ac Comerical <u>1.939 Ac</u> Assisted Living 367.47 Total Acres.	37.991 Ac SFR/Townhouses 34.038 Ac Condo Units 21.809 Ac. Roads 270.716 Ac Open Space of which 150 can be sold off at any time - Storage <u>2.250 Ac</u> Storage 367.47 Total Acres.
	Boarders approximately 1.6 miles of HWY 82.		

Below is a comparison of the original conditions of approval for North Shore Ranch Subdivision and the New Revised Conditions that have been made part of the Release and Settlement Agreement Flathead County is being asked to approve. These new conditions would replace all former conditions and the differences between the new and old conditions are of major concern as significantly change basis of approval and are not supported/justified by the findings of fact and the hearing record.

The Flathead County Planning Board based their recommendation for approval of the North Shore Ranch Subdivision to the Flathead County Commissioners on the Original Conditions provided below. The New Conditions, in the second column below, are drawn from the Release and Settlement Agreement the county is being asked to approve. Changes are shown in the New Conditions with strike-outs, bolding, of text removed and underlining of new text added. We have inserted notes with some of the changed conditions to point out apparent concerns as well. Further analysis of these proposed changes is included in our comments on Pages

Original Conditions	New Conditions
<p>1. The applicant shall receive physical addresses and road names in accordance with Flathead County Resolution #1626. All road names shall appear on the final plat. Street addressing shall be assigned by the Address Coordinator. One of the two “Mallard Court” designations shall be changed. [Section 4.7.17(iv), FCSR]</p>	<p>1. The applicant shall receive physical addresses and road names in accordance with Flathead County Resolution #1626. All road names shall appear on the final plat. Street addressing shall be assigned by the Address Coordinator. One of the two “Mallard Court” designations shall be changed. [Section 4.7.17(iv), FCSR]</p> <p>Note: For every new condition any reference to the Flathead County Subdivision Regulation and by reference state law that provides the basis for these conditions is removed. It appears that this removes the ability of the county to rely on it’s own regulations or state law in enforcing these conditions. Consideration of the potential future liability, which changes of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>2. The applicant shall show proof of a completed approach permit from the Montana Department of Transportation, indicating the approaches have been built and received final inspection. [Section 4.7.17, FCSR]</p>	<p>2. The applicant shall show proof of a completed approach permit from the Montana Department of Transportation, indicating the approaches have been built and received final inspection. [Section 4.7.17, FCSR]</p>
<p>3. With the application for final plat, the applicant shall provide a Road Users’ Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the</p>	<p>3. With the application for final plat, the applicant shall provide a Road Users’ Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the</p>

subdivision. [Section 4.7.16(e), FCSR]	subdivision. [Section 4.7.16(e), FCSR]
4. All internal subdivision roads shall be certified by a licensed engineer and constructed in accordance with the Flathead County Minimum Standards for Design and Construction. [Section 4.7.17, FCSR]	4. All internal subdivision roads shall be certified by a licensed engineer and constructed in accordance with the Flathead County Minimum Standards for Design and Construction. [Section 4.7.17, FCSR]
5. Except for sewer and water lines, underground utilities (if placed in the road right-of-way or easement) shall be located between the roadway and the right of way or easement line to simplify location and repair of lines. These underground facilities shall be installed after the road has been brought to grade and before it is surfaced. Utility lines shall be designed by utility firms in cooperation with the subdivider, subject to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities. At the time of final plat, letters shall be provided from the appropriate utilities stating that the lines constructed meet these requirements and any of their additional requirements. [Section 4.7.24, FCSR]	5. Except for sewer and water lines, underground utilities (if placed in the road right-of-way or easement) shall be located between the roadway and the right of way or easement line to simplify location and repair of lines. These underground facilities shall be installed after the road has been brought to grade and before it is surfaced. Utility lines shall be designed by utility firms in cooperation with the subdivider, subject to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities. At the time of final plat, letters shall be provided from the appropriate utilities stating that the lines constructed meet these requirements and any of their additional requirements. [Section 4.7.24, FCSR] Note: Removing the above statement may suggest that the developers can force the county to build and pave roads before they have to install or have approval to install utilities. As noted elsewhere in these comments, issues with the capacity of the Lakeside Sewage Treatment plant to provide sewer and water and issues with water rights or DEQ approval could each result in potential denial of this subdivision yet this changed condition it appears would allow for the developer to required to build the roads in the subdivision prior to these other necessary approvals. Consideration of the potential future liability, which changes of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.
6. Utility easements shall be 10 feet wide unless otherwise specified by the utility company. These easements shall be shown on the face of the final plat. [Section 4.7.24(c), FCSR]	6. Utility easements shall be 10 feet wide unless otherwise specified by the utility company. These easements shall be shown on the face of the final plat. [Section 4.7.24(c), FCSR]

<p>7. The proposed water and sewage treatment systems and storm drainage systems for the subdivision shall be reviewed by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality. [Sections 4.7.21 and 4.7.22, FCSR]</p>	<p>7. The proposed water and sewage treatment systems and storm drainage systems for the subdivision shall be reviewed by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality. [Sections 4.7.21 and 4.7.22, FCSR]</p>
<p>8. The applicant shall submit to the Flathead County Planning and Zoning Office an approved Storm Water Pollution Prevention Plan from the MT DEQ – Water Protection Bureau prior to any construction activity. [Section 4.7.13, FCSR; 75-5-101, MCA]</p>	<p>8. The applicant shall submit to the Flathead County Planning and Zoning Office an approved Storm Water Pollution Prevention Plan from the MT DEQ – Water Protection Bureau prior to any construction activity. [Section 4.7.13, FCSR; 75-5-101, MCA]</p>
<p>9. The applicant shall provide a provisional water right permit approved by DNRC with the application for final plat. [Section 4.7.21(b), FCSR]</p>	<p>9. The applicant shall provide a provisional water right permit approved by DNRC with the application for final plat. [Section 4.7.21(b), FCSR]</p> <p>Note: The issue of the ability of the applicant to gain legal water rights was an issue of significant disagreement in the hearing record with documentation provided as to conflicts with water rights already allocated or applied for. This was also an issue of importance to the planning board. Consideration of the potential future liability, which changes of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>10. The applicant shall provide proof of water and sewer service in the form of a contractual agreement for service from the Lakeside Water & Sewer District for the number of lots proposed. [Sections 4.7.21 and 4.7.22, FCSR]</p>	<p>10. The applicant shall provide proof of water and sewer service in the form of a contractual agreement for service from the Lakeside Water & Sewer District for the number of lots proposed. [Sections 4.7.21 and 4.7.22, FCSR]</p> <p><u>9. The applicant shall provide a contract or letter of acceptance for sewer service from the Lakeside Water and Sewer District for the number of lots proposed.</u></p> <p>Note: This new condition replaces and greatly weakens the original condition #10 and provides a much lower standard for compliance.</p>

	<p>The issue of the actual capacity of the Lakeside Water & Sewer District was an issue of significant disagreement in the hearing record with documentation as to the inability of the plant to provide the necessary and timely service both from a technical capacity aspect and without compromising service to those within the existing service district. Consideration of the potential future liability, which changes of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>11. The applicant shall comply with reasonable fire suppression and access requirements of the Somers/Lakeside Volunteer Fire District. A letter from the fire chief stating that an agreement has been made shall be submitted with the application for Final Plat. [Section 4.7.27, FCSR]</p>	<p>10. The applicant shall comply with reasonable fire suppression and access requirements of the Somers/Lakeside Volunteer Fire District. A letter from the fire chief stating that an agreement has been made their review and acceptance shall be submitted with the application for Final Plat. [Section 4.7.27, FCSR]</p>
<p>12. The applicant shall provide an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved and implemented. The Weed Control Plan shall be implemented prior to final plat application. The County Weed Supervisor may charge a fee to inspect the subdivision and approve the implementation. [Section 4.7.26, FCSR]</p>	<p>11. The applicant shall provide an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved and implemented. The Weed Control Plan shall be implemented prior to final plat application. The County Weed Supervisor may charge a fee to inspect the subdivision and approve the implementation. [Section 4.7.26, FCSR]</p>
<p>13. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the applicant has met their requirements shall be included with the application for final plat. [Section 4.7.29, FCSR]</p>	<p>12. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the applicant has met their requirements shall be included with the application for final plat. [Section 4.7.29, FCSR]</p>
<p>14. The developer shall contact the Superintendent of Schools and, if required, provide and improve a location for the safe loading and unloading of students. [Section 4.7.30, FCSR]</p>	<p>13. The developer shall contact the Superintendent of Schools and, if required, provide and improve a location for the safe loading and unloading of students. [Section 4.7.30, FCSR]</p>
<p>15. The final plat shall comply with state surveying requirements. [Section 76-3-608(b)(i), MCA]</p>	<p>15. The final plat shall comply with state surveying requirements. [Section 76-3-608(b)(i), MCA]</p>

	<p>Note: This condition was totally dropped. No basis for this is provided. Consideration of the potential future liability, which dropping of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>16. All required improvements shall be completed in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.4.27, FCSR]</p>	<p>14. All required improvements shall be completed in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.4.27, FCSR]</p>
<p>17. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions. [Section 4.4.23, FCSR]</p>	<p>15. The final plat shall be in substantial compliance with the plat and plans submitted for review, except as modified by these conditions. [Section 4.4.23, FCSR]</p> <p>Note: The Proposed Release and Settlement Agreement does not currently include a final preliminary plat map and but allows for one to be developed after the agreement is signed. See page 2a of the agreement. State law prohibits county commissioners in this case from placing conditions on a preliminary plat after approval and thus it appears that if the county enters into this settlement agreement it is entering into an agreement with no certainty of what plat map they are even approving. Consideration of the potential future liability, which this situation might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>18. The proposed subdivision shall have up to 3 years (with 1, one-year extension possible subject to Section 4.4.20 of the FCSR) to file a final plat for Phase One. [Section 4.4.20, FCSR] After Phase One final plat is approved, each successive phase shall have up to two years to file final plat [Section 4.4.10, FCSR]</p>	<p><u>16. Phase one of the preliminary plat approval is valid for a period of 3 years with a possible one year extension if granted by the Flathead County Commissioners. Each successive phase of the preliminary plat is valid for a period of two from the date of the previous final plat. Each successive phase is also eligible for a one year extension granted by the Flathead County Commissioners.</u></p> <p>Note: that this new wording replaces the former wording in condition 18 and appears to allow for unlimited extensions. This appears to provide</p>

	special treatment to the developers of this subdivision and that a basis for this has not been provided.
<p>19. The following statements shall be placed on the face of the final plat applicable to all lots:</p> <p>a. All new subdivision roads are public access easements. All roads in the Road Users' Agreement shall be maintained by the property owners within the subdivision. The County Commission accepts no responsibility for development or maintenance of roads unless accepted by the Commission for maintenance. [Section 4.7.16(e), FCSR]</p> <p>b. Address numbers shall be posted at the commencement of construction and be clearly visible at all times thereafter. Numbers shall be placed in the driveway entrance and at any subsequent divergent points of access for shared driveways. All address numbers shall be displayed on a contrasting background using a minimum four-inch numeral height. [Section 4.7.27(c), FCSR]</p> <p>c. All utilities shall be placed underground. [Section 4.7.24, FCSR]</p> <p>d. Lot owners are notified they are living in a rural area of Flathead County and delayed response times may be experienced from emergency service providers.</p> <p>e. Lot owners are bound by the Weed Control Plan to which the developer and the Flathead County Weed Department agreed.</p> <p>f. Waiver of Protest Participation in Special Improvement District [per County Resolution 503-M]</p> <p>_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12- 2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefited by the Special Improvement District. _____ agrees that this covenant shall run to, with and be binding on the title</p>	<p>17. The following statements shall be placed on the face of the final plat applicable to all lots:</p> <p>a. All new subdivision roads are public access easements. All roads in the Road Users' Agreement shall be maintained by the property owners within the subdivision. The County Commission accepts no responsibility for development or maintenance of roads unless accepted by the Commission for maintenance. [Section 4.7.16(e), FCSR]</p> <p>b. Address numbers shall be posted at the commencement of construction and be clearly visible at all times thereafter. Numbers shall be placed in the driveway entrance and at any subsequent divergent points of access for shared driveways. All address numbers shall be displayed on a contrasting background using a minimum four-inch numeral height. [Section 4.7.27(c), FCSR]</p> <p>c. All utilities shall be placed underground. [Section 4.7.24, FCSR]</p> <p>e. Lot owners <u>The</u> owners are notified they are living in a rural area of Flathead County and delayed response times may be experienced from emergency service providers.</p> <p>d. Lot owners are bound by the Weed Control Plan <u>soil disturbance and weed management plan</u> to which the developer and the Flathead County Weed Department agreed.</p> <p>f. Waiver of Protest Participation in Special Improvement District [per County Resolution 503-M]</p> <p>_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12- 2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefited by the Special Improvement District. _____</p>

<p>of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.</p>	<p>agrees that this covenant shall run to, with and be binding on the title of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.</p>
<p>B. PROJECT SPECIFIC CONDITIONS</p> <p>20. The following statements shall appear on the face of the final plat:</p> <p>a. No lot shall be further subdivided.</p> <p>b. The open space shall not be subdivided. Use shall abide by the open space plan approved with this subdivision.</p> <p>c. Residents are advised that federal law allows for the destruction of dogs, cats, and other animals that kill, injure, harass or molest any individual or wildlife while on federal property. Domestic animals shall be on leashes or confined within fences at all times.</p> <p>d. Residents are advised that according to the geotechnical assessment that was conducted on the subject property, liquefaction on the subject property during a seismic event is a typical concern associated with the soil type and depth to groundwater on the subject property. As a result, structures should be designed by an engineer and built accordingly.</p> <p>e. Residents are advised that adjacent lands owned by USFWS are closed to pedestrian use during waterfowl nesting seasons. Furthermore, no direct access to the USFWS lands is allowed from within North Shore Ranch.</p> <p>f. All lot owners are required to abide by the policies set forth in the approved stormwater management plan.</p> <p>g. Lot owners are required to abide by the policies set forth in the approved vegetation and wildlife management plan.</p> <p>h. An area between Lots A38 and B12 and between Lots B19 and D38 is reserved for connection to adjoining roads to provide interconnectivity. Any future road connection shall be approved by the Homeowner’s Association.</p> <p>i. This subdivision is located in a silvicultural/agricultural area and potential nuisances such as noise, dust, odors, and irregular hours of operation are common place. As such, the right to farm on adjoining properties shall not be restricted as a result of the development or occupancy of this subdivision.</p>	<p>B. PROJECT SPECIFIC CONDITIONS</p> <p>18. The following statements shall appear on the face of the final plat:</p> <p>a. No lot shall be further subdivided.</p> <p><u>a. The open space shall not be subdivided. Use shall abide by the open space plan approved with this subdivision. The open space shall be dedicated incrementally by phase unless the open space is purchased by a government or quasi-governmental agency</u></p> <p>b. Residents are advised that federal law allows for the destruction of dogs, cats, and other domestic animals that kill, injure, harass or molest any individual or wildlife while on federal property. Domestic animals shall be on leashes or confined within fences at all times.</p> <p><u>c. Residents are advised that according to the geotechnical assessment that was conducted on the subject property, liquefaction on the subject property during a seismic event is a typical concern associated with the soil type and depth to groundwater on the subject property. As a result, structures should be designed by an engineer and built accordingly. Residents are advised that all foundation systems must be designed by an engineer and built accordingly</u></p> <p>Note: It is not clear why this important statement of problems with soils in the area and seismic events, which provides notice to future purchasers of this property, has been removed when the that the planning board felt should be included. Consideration of the potential future liability, which removal of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p> <p>d. Residents are advised that adjacent lands owned by USFWS are closed to pedestrian use during waterfowl nesting seasons. Furthermore, no direct access to the USFWS lands is allowed from within North Shore Ranch unless provided by USFWS</p>

	<p>e. All lot owners are required to abide by the policies set forth in the approved stormwater management plan.</p> <p>g. Lot owners are required to abide by the policies set forth in the approved vegetation and wildlife management plan.</p> <p>h. An area between Lots A38 and B12 and between Lots B19 and D38 is reserved for connection to adjoining roads to provide interconnectivity. Any future road connection shall be approved by the Homeowner's Association.</p> <p>f.. This subdivision is located in a silvicultural/agricultural area and potential nuisances such as noise, dust, odors, and irregular hours of operation are common place. As such, the right to farm on adjoining properties shall not be restricted as a result of the development or occupancy of this subdivision.</p> <p><u>g. Residents are advised that they live next to and near public hunting areas of the WPA.</u></p>
<p>21. The applicant shall provide proof that the site plan for this subdivision is approved by the contract hauler.</p>	<p>19. The applicant shall provide proof that the site plan for this subdivision is approved by the contract hauler <u>a letter of "intent to serve" from a contract refuse hauler prior to final plat.</u></p>
<p>22. The applicant shall provide a detailed analysis of soils on the property and a statement from an engineer or hydrogeologist licensed to certify soils that the stormwater management value of detention ponds will not be reduced by limitations in the soils.</p>	<p>22. The applicant shall provide a detailed analysis of soils on the property and a statement from an engineer or hydrogeologist licensed to certify soils that the stormwater management value of detention ponds will not be reduced by limitations in the soils.</p> <p>Note: The issues of water quality, stormwater, groundwater, and soil's characteristics were the matter of extensive concern and comments by the public and professional hydrogeologists and sanitarians and other in the hearing record. Removing this condition or others in this agreement is not based on any revised finding of facts in this proposed settlement agreement. By removing this condition it appears that a valuable information and notice to future purchasers of this property, has been removed when the that the planning board felt should be included. Consideration of the potential future liability, which removal of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>23. The applicant shall provide a Letter of Map Amendment approved</p>	<p>20. The applicant shall provide a Letter of Map Amendment</p>

<p>by FEMA. The base flood elevation for the 1% annual chance flood area shall be delineated on the face of the final plat and the 1% annual chance flood area shall be shown on the face of the final plat as a “No Build Zone.” Should any of the proposed lots be found to not contain a suitable building site and access outside of the 1% annual chance flood area, they shall be eliminated from the subdivision.</p>	<p>approved by FEMA. The base flood elevation for the 1% annual chance flood area shall be delineated on the face of the final plat and the 1% annual chance flood area shall be shown on the face of the final plat as a “No Build Zone.” Should any of the proposed lots be found to not contain a suitable building site and access outside of the 1% annual chance flood area, they shall be eliminated from the subdivision. <u>The applicant shall provide a Letter of Map Amendment approved by FEMA for lands within the subdivision shown in the 1% annual floodplain by the FEMA map but which are outside of the 1% annual floodplain based on the elevation data published in FEMA Flood Study.</u></p> <p>Note: The issues of flooding, historic flooding, groundwater rise, sheet flooding, and potential risks from each of these were the matter of extensive concern and comments by the public and professional hydrogeologists and sanitarians and others in the hearing record. Removing this condition or others in this agreement is not based on any revised finding of facts in this proposed settlement agreement. By removing this condition it appears that a valuable information and notice to future purchasers of this property, has been removed when the planning board felt it should be included. Consideration of the potential future liability, which removal of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>
<p>24. The applicant shall receive a floodplain development permit for any work conducted in the 100-year floodplain or proof that a floodplain development permit is not required for work proposed.</p>	<p>24. The applicant shall receive a floodplain development permit for any work conducted in the 100-year floodplain or proof that a floodplain development permit is not required for work proposed.</p> <p>No basis for removal of this condition has been provided. Consideration of the potential future enforcement or liability, which changes of this statement might create for the county, suggests that the county should seek second opinions and additional legal and other professional advice before entering into this agreement.</p>