



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Benton Lake National Wildlife Refuge
922 Bootlegger Trail
Great Falls, Montana 59404-6133

March 25, 2008

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Annie Thompson
Planner
Flathead County Planning & Zoning Office
1035 First Avenue West
Kalispell, Montana 59901

Dear Ms. Thompson:

As you are aware, we are an adjacent landowner to the proposed North Shore Ranch development. This correspondence is in response to the Findings of Fact. It is our assertion that several areas need to be refined for accuracy, previously submitted considerations need to be addressed that were not addressed, and new developments shared with the Planning Board.

1) On Page 41, under Impact on Wildlife and Wildlife Habitat, the primary purpose of our Waterfowl Production Area (WPA) was misrepresented. The purpose of a WPA is to preserve wetlands and grasslands critical to waterfowl, migratory birds, and other conservation purposes. Management actions are used to maintain healthy native vegetation in wetlands and uplands that fulfill the primary WPA purpose of providing habitat for waterfowl and other migratory birds. Recreational opportunity is a by-product and secondary use.

2) The Flathead WPA particular purpose is to provide habitat for migratory birds and particularly breeding waterfowl. The Findings of Facts discusses that wildlife will "rapidly habituate to human presence". This is not the case for breeding waterfowl. In fact, human induced disturbance, such as humans or domestic pets walking near a nest, attract predators to nest sites, elevates predation, increases the numbers of destroyed nests, increases the loss of clutches, and increases nest abandonment (Keith 1961 and Glover 1956).

Human disturbance will increase in the WPA proportionately as populations increase adjacent to the area. Right now, the WPA has 15 residences between the Mackinaw Estates and the Flathead River. The subdivision will increase these numbers to over 300 residences.

Closing areas and providing buffered areas are critical to minimizing disturbance effects according to Richard Knight and Kevin Gutzwiller in Wildlife and Recreationists: Coexistence

Through Management and Research. The buffers must be of significant size to adequately protect nesting areas. The Finding of Facts minimum width of 50 feet is not adequate for disturbance reduction nor will it serve the dual purpose of minimizing hunting effects. As stated in the Findings of Facts on Page 51, a shotgun's range at a minimum is 150 feet. Hunting will be occurring adjacent to the development. We recommend a minimum width of the buffer to be 150 yards wide to minimize property or personal injury and enhance protection for migratory birds. A few examples of such buffer practices include: (a) Kane County, IL is looking at an ordinance that would establish a 300 yard separation; (b) near their reservoirs, USACOE enforces a 500 foot separation for waterfowl hunting in some of the Southeastern states; (c) Georgia requires a 1,000 foot separation for Canada goose hunting and 300 yards from a residence for general hunting. We believe our recommendation of 150 yards minimum width is reasonable.

As a secondary consideration of disturbance, we recommend a realignment of the existing equestrian and hiking trail through the buffer to the northern most portion of the buffer furthest away from the WPA boundary.

3) Trespass by domestic pets is an extremely serious issue on Service property. On Page 43, cats are exempted from consideration. Cats are one of the most prolific contributors to wildlife mortality and should be considered and regulated through Homeowners Association covenants. Recent research suggests that free-ranging domestic cats in Wisconsin may be killing between 8 and 217 million birds each year (Coleman and Temple 1995). The American Bird Conservancy estimates that cats kill hundreds of millions of birds and more than one billion small mammals in the U.S. each year.

Despite the statement in the Findings of Facts that "destroying cats and dogs that venture off the subject property would not be popular with pet owners", Title 50 of the Code of Federal Regulations Part 26 Subpart B 26.21 and 28.43 clearly states that it is within our authority to dispatch dogs and cats running at large engaging in killing, injuring, harassing, or molesting humans or wildlife.

4) Trespass issues will create additional and costly administrative overhead for the Service. Federal law enforcement oversight by Refuge Law Enforcement Officers will need to increase in the area if the development occurs to ensure respect of closed areas, access compliance, and other regulatory compliance. Local law enforcement patrol of the development was addressed in the Findings of Fact, but not the Federal needs at the WPA. The development will require additional patrolling, preventative law enforcement effort, and general coordination with the established Homeowners Association. It is reasonable to expect an additional two weeks of effort by Federal law enforcement, maintenance, and management personnel.

5) Finding 34 states that the proposed subdivision will minimally impact an eagle's nest located near the subject property, because the nest is located 1,620 feet away from the nearest proposed lot and according to the applicant's Wildlife Report, the "USFWS Draft National Bald Eagle Management Guidelines" suggest a setback of 660 feet from eagle nests. Additional factors need to be considered.

The bald eagle is protected by the Migratory Bird Treaty Act (16 V.S.C. 703-712) and the Bald and Golden Eagle Protection Act (16 V.S.C. 668-668c). Any disturbance that affects the bald eagles, or their nesting or brood rearing activities would be a violation of Federal law. The Bald and Golden Eagle Protection Act (BGEPA) prohibits "taking" bald eagles. One of the elements under the statutory definition of "take" is "disturb". Disturb has been defined as, "To agitate or bother a bald or golden eagle to the degree that interferes with or interrupts normal breeding,