



REQUEST FOR COMMISSION ACTION

OG-13-11-264

BCC Meeting: November 21, 2013, at 10:00 a.m.

Subject: Planning Department Comments on Prospective Court-Ordered Division

I. Action Requested

This is a request from the Planning Department to approve the Department's comments on the prospective court-ordered division of land for the John Potter Estate. No District Court Petition has yet been filed.

II. Applicable Regulations

Ravalli County Subdivision Regulations Section 11-2(A) establishes that Court-Ordered Splits are divisions of land which may be entirely exempt from the requirements of the subdivision regulations and the Montana Subdivision and Platting Act. Further, this section provides that the court shall allow the BCC, through its Planning Department, to present written comment on the subdivision. (76-3-201(1)(a) and (2), MCA)

III. Background

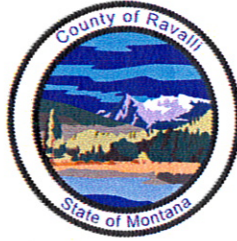
- John and Janet Potter jointly owned the subject property, identified as Lots 1 and 2 of Potter Subdivision, until John's death in September 2011. Janet was later named as successor-in-interest.
- The property is located less than a quarter-mile north of the Skalkaho Highway and Foley Lane intersection, and on the west side of Foley Lane.
- The final plat of Potter Subdivision was approved by the Ravalli County Board of County Commissioners, and filed with the Clerk and Recorder's Office, in August 1996.
- Mrs. Potter is currently pursuing a Court-Ordered division of land, and subdivide the two existing parcels into four total parcels. The purpose of the division is to transfer parcels to the Potters' children, in keeping with the wishes of Mr. and Mrs. Potter.
- Due to the fact that the property was previously subdivided in 1996, the Family Transfer option through subdivision exemption is not feasible, and thus the reason a Court-Ordered division is sought.
- A Notice of Petition for a Court Order has not yet been filed with the District Court, as the owner's attorney seeks to obtain Planning Dept. comments prior to filing the petition.
- The Planning Department has prepared a formal comment letter (attached) to address the proposal.

IV. Planning Staff Recommendation

The Planning Department has reviewed the comment request letter, project narrative, proposed Amended Plat, and other materials submitted by attorney Jason Williams of DM&L, and recommends that the BCC adopt Planning Staff's comment letter, with any changes the Board deems appropriate.

Attachments: Draft Planning Dept. Comment Letter, Vicinity Map, DM&L-Submitted Documents (Project Narrative, Proposed Amended Plat, and others)
Staff: *KW* Kevin Waller
Date: November 14, 2013

Cc: Jason Williams, DM&L, P.C. (without attachments), Clerk and Recorder, County Attorney's Office, Subdivision File, Outgoing Correspondence File



Ravalli County Planning Department
215 South 4th Street, Suite F
Hamilton, Montana 59840
406.375.6530 Fax 406.375.6531 kwaller@rc.mt.gov

OG-13-11-

November __, 2013

Jason Williams, Attorney
Datsopoulos, MacDonald, & Lind, P.C.
201 W. Main St., Suite 201
Missoula, MT 59802

Subject: Prospective Court-Ordered Split for Potter Estate

Dear Mr. Williams:

Our office is in receipt of your November 7, 2013 request for Planning Department comments on the above-referenced matter. The request also includes a proposed Amended Subdivision Plat (enclosed) depicting a prospective Court-Ordered division of real property presently titled in the name of Janet Potter (Property Tax Identification #665640 and #665660). The Ravalli County Subdivision Regulations apply to divisions of land in this area, unless a statutory exemption applies.

The Planning Department appreciates the opportunity to present written comments on this prospective division of land, on behalf of the governing body of Ravalli County. An exemption to this division exists under §76-3-201(1)(a), MCA, which exempts divisions of land created by order of any court of record, provided that the method of disposition is not adopted for the purpose of evading subdivision review.

The property owner, Janet Potter, requests division of the property pursuant to the desires of she and Potter's late husband, John Potter, in order that portions of the property can be devised to their children. The property is not eligible for the Family Transfer exemption from subdivision review, since it was previously subdivided in 1996.

After review of information submitted by Potter's attorney, including the comment request letter, project narrative (enclosed), proposed Amended Plat (AP), and other supporting documentation, the Planning Department offers the following comments:

1. Written confirmation should be obtained from the Ravalli County Environmental Health Department (RCEHD) that each lot meets or exceeds local and State Department of Environmental Quality (MDEQ) standards for wastewater treatment and potable water (wells).
2. Current and future property owners should be made aware that further development of the properties may require, where appropriate, access permits from the Ravalli County Road and Bridge Department, water and wastewater permits from RCEHD and/or MDEQ, or the following potential applications from the Planning Department: Buildings for Lease/Rent, Subdivision Exemption Application, or Subdivision Review. The Planning Department's research has confirmed that the property is not located within a Voluntary Zoning District, is not intersected by floodplain boundaries, and covenants or deed restrictions are not recorded on the property.
3. Current and future property owners should also be made aware that this letter does not constitute a substantive review of the proposal, such as when evaluating a subdivision application. Despite the provisions addressed in Item #2 above, the lots altered or created through any Court Order process might not:
 - possess legal or physical access;
 - be eligible for a County road access permit;
 - be able to utilize previous private access easements;
 - be eligible for County well or wastewater treatment (septic system) permits;
 - have access to utilities;
 - contain a usable building site; or
 - have beneficial economic use or value whatsoever.
4. Water rights, if any, should be transferred and used on the parcels in order to help protect area water users while guaranteeing access to water on each tract of land. A master irrigation plan addressing water distribution among the lots should be filed with the AP, if needed. Allocation of water should be a part of this master irrigation agreement. Any irrigation ditches located on or near the property, in this case including, but not limited to, Hedge Ditch, should be shown on the AP with a 20-foot easement, as measured from the ditch center, for maintenance purposes.
5. The largest reported Box Elder tree in Montana, as well as the Pale Sedge vascular plant, have been identified as species of concern within the same PLSS Section as the proposed property division. The property owner should contact Martin Miller of the Montana Natural Heritage Program at (406) 444-3290 for additional information related to species of concern which may be located on or near the property.

Should you have questions, please contact me at your convenience.

Sincerely,

Kevin Waller
Planner

Enc: Proposed Amended Subdivision Plat, Project Narrative

Cc: Subdivision File, Board of County Commissioners, Clerk and Recorder, County Attorney's Office

DRAFT

Vicinity
Map

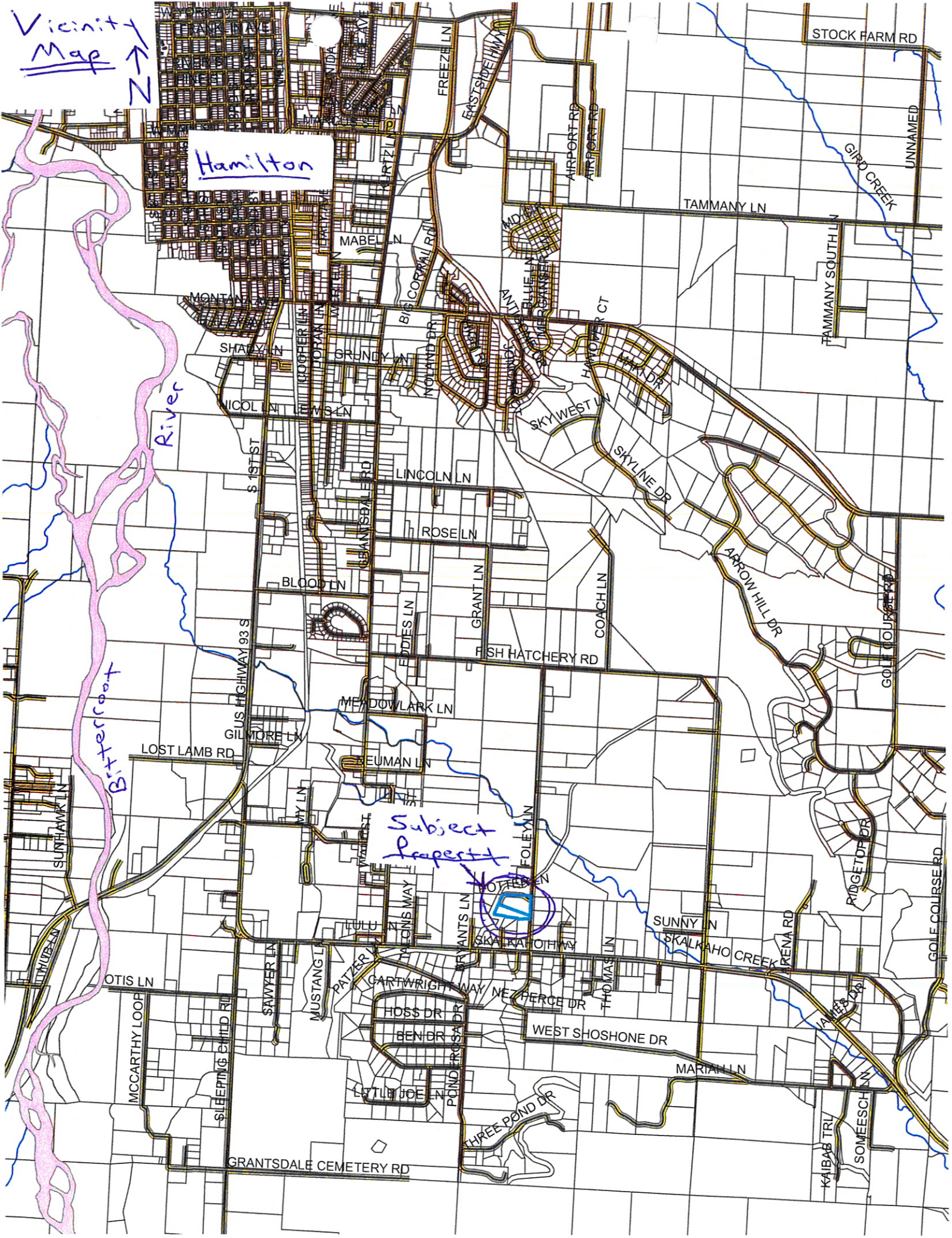


Hamilton

Bitterroot River

Bitterroot

Subject
Property



Kevin Waller

From: Jason Williams [jwilliams@dmllaw.com]
Sent: Thursday, November 07, 2013 5:29 PM
To: Kevin Waller
Subject: Potter subdivision comments
Attachments: planning department.pdf

Received
RAVALLI COUNTY
PLANNING DEPT
11/7/2013
JC-13-11-707
-KW

Kevin,

Attached is the information in regards to the proposed subdivision for the Potter estate. If you could look it over with the board and let me know of any problems that we need to address before we file the petition I would appreciate it.

Thanks,
Jason Williams, Attorney



Datsopoulos, MacDonald & Lind, P.C.
201 W. Main Street, Suite 201 Missoula, MT 59802
Phone: 406.728.0810 | Fax: 406.543.0134

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Datsopoulos, MacDonald & Lind, P.C.

LAW OFFICES | EST. 1974

Missoula Offices

Central Square Building
201 W. Main Street, Suite 201
Missoula, MT 59802

Phone: 406.728.0810
Fax: 406.543.0134

www.dmlaw.com

Hamilton Offices

Hamilton Center
1920 N. First Street, Suite C
Hamilton, MT 59840

Phone: 406.961.9003
Fax: 406.961.9004

www.dmlaw.com

Milton Datsopoulos
Dennis E. Lind
William K. VanCanagan
Rebecca L. Summerville
David B. Cotner
Darla J. Keck
Terance P. Perry
Molly K. Howard
Phil McCreedy
Trent N. Baker
Peter F. Lacny
Nathan G. Wagner
Del M. Post
Joseph R. Casillas
George H. Corn
Kyle C. Ryan
Sherine D. Fernando
Brian M. Lebsock
Jason A. Williams

November 7, 2013

Ronald B. MacDonald [1945-2002]

Also admitted in Massachusetts

Via Email [Kwaller@rc.mt.gov]

Ravalli County Planning Department
Attention: Mr. Kevin Waller
215 South 4th Street, #F
Hamilton, Montana 59840

Re: Estate of John Patrick Potter
Division of Land

Dear Kevin:

Please be advised that the undersigned represents Janet Potter with regard to the Estate of John Patrick Potter. In our efforts to close John's estate, we have discovered that a certain parcel of property in the estate that would be more marketable if it were subdivided.

This letter is to provide you with background information on the Potter property that we are proposing to be subdivided through a court order. Please review the documents and let me know of the comments that the board and yourself has in regards to this plan.

John died on September 22, 2011. At the time of his death, John and Janet owned property located in Ravalli County as joint tenants with right of survivorship. John was survived by his wife Janet Potter. Janet was appointed as the Personal Representative of John's estate by the Court on December 7, 2011, and a notice was sent to all heirs and devisees. Janet was named as successor in interest to the property located in Ravalli County. The property can be more accurately described as:

"Potter Subdivision located in the SW ¼ of Sec. 8, T. 5N., R.20W., P.M.M.,
Ravalli County, Montana."

Datsopoulos, MacDonald & Lind, P.C.

Mr. Kevin Waller
November 7, 2013
Page 2

At some point in 1996, John and Janet Potter subdivided the parcel of property they owned in Ravalli County. (See Subdivision, attached hereto as Exhibit "A.") This subdivision was properly recorded with the Ravalli County Planning Department. Both lots were retained in the name of John and Janet Potter.

Pursuant to the desires of John and Janet Potter, the property is to be further subdivided so that portions of it can be devised to their children in equal shares. A subdivision of the property would also make the parcels more marketable. Because the lot was previously subdivided in 1996 and is now considered to be within a subdivision, the Family Conveyance exemption as found in Mont. Code Ann. §76-3-207(b) is no longer available and a court order is required to divide the land.

A survey crew was engaged to determine the size and location of the original parcel and also determine how to divide the parcel into equal shares for children. The proposed division of the property has been provided to the Ravalli County Planning Commission for review and comment. (See Proposed Division, attached hereto as Exhibit "B.")

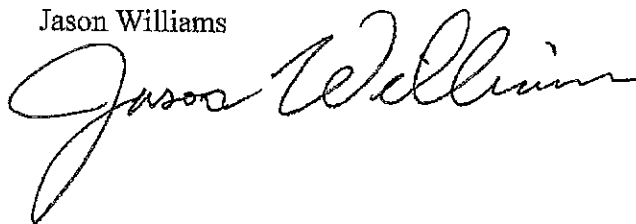
Currently there are three parcel units located on the property. Parcel A has a single building which operates as a duplex and has a 1,000 gallon septic tank that is pumped annually. Parcel B is a vacant lot. Parcel B does not have a septic tank, nor does it have any residential building structure on it. Parcel C has one building which is composed of two structures that are connected by a breezeway. The building has four listed addresses. One of the addresses is for a garage unit that has no living quarters. The other addresses correspond to three separate living units. Each unit is a one bedroom/one bath living unit. Parcel C has a 1,000 gallon septic tank that is pumped annually. Parcel D has a single building/single residence structure and a 1,000 gallon septic tank that is pumped annually. The parcels included in the former Lot 1 were monitored in 1996 and the land was found suitable for a standard septic system. (See Lot 1 Report, attached hereto as Exhibit "C.")

If you have any other questions feel free to contact me.

Sincerely,

DATSOPOULOS, MacDONALD & LIND, P.C.

Jason Williams



JAW/kg
Encl.
cc: Janet Potter

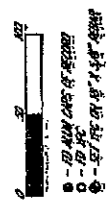
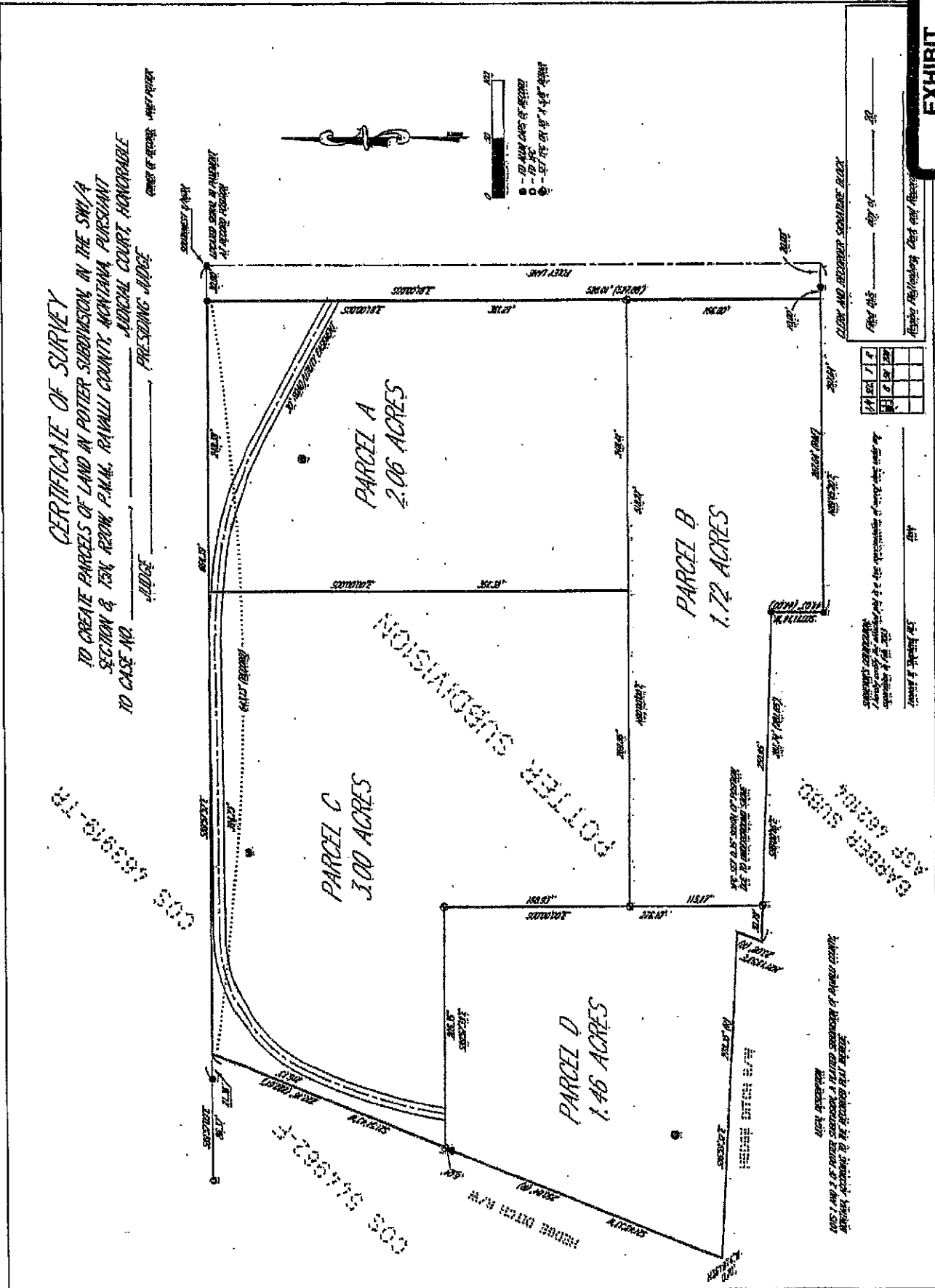
CERTIFICATE OF SURVEY

TO CREATE PARCELS OF LAND IN POTTER SUBDIVISION IN THE SW 1/4 SECTION 8, T5N, R20W, P.M.H., RAVALLI COUNTY, MONTANA PURSUANT TO CASE NO. _____ JUDGE _____ PRE-SIDING JUDGE _____

COMMISSIONER OF LANDS

COS 48398-78

COS 514982-4

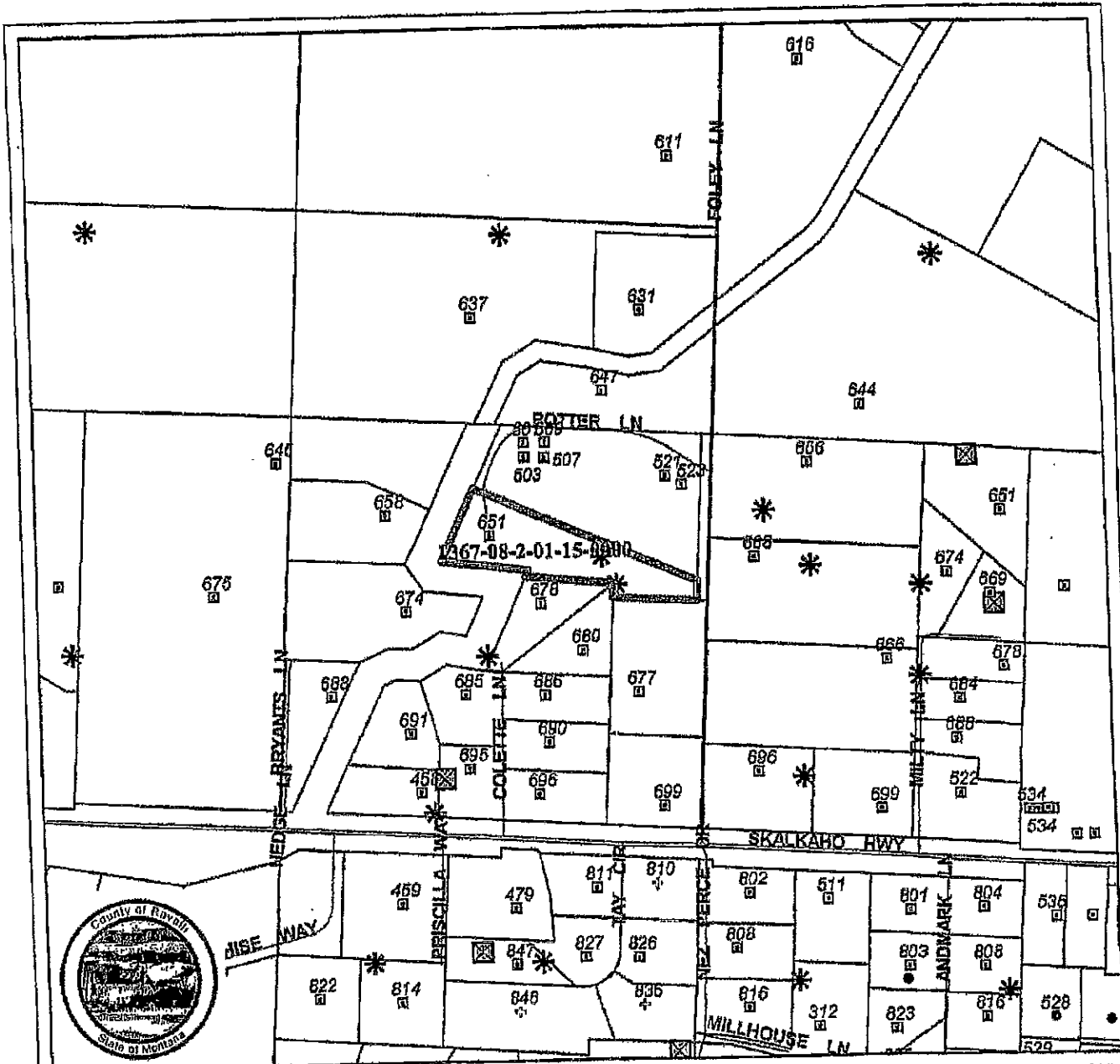


| | | | |
|---|----|----|----|
| 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 |
| 9 | 10 | 11 | 12 |

TO BE KEPT IN THE OFFICE OF THE COMMISSIONER OF LANDS AT BUTTE, MONTANA. THIS SURVEY IS SUBJECT TO THE PROVISIONS OF THE ACT OF MARCH 3, 1879, CHAP. 136, AND THE ACT OF MARCH 3, 1893, CHAP. 101, AND THE ACT OF MARCH 3, 1909, CHAP. 101, AND THE ACT OF MARCH 3, 1909, CHAP. 101, AND THE ACT OF MARCH 3, 1909, CHAP. 101.

EXHIBIT
B

SEARCH THE RECORDS OF THE REGISTER OF DEEDS IN BUTTE COUNTY, MONTANA FOR RECORDS RELATIVE TO THIS SURVEY.



POTTER JANET

PO BOX 883

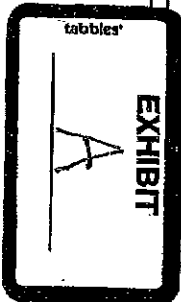
HAMILTON, MT 59840-0883

Physical Address:
651 FOLEY LN
HAMILTON, MT 59840

Levy Dist: 3-4 (Hamilton Rural, with Rural Fire)
School: HAMILTON
Fire: HAMILTON

Legal Description for Tax-ID: 665660 »→
* Description may be incomplete. Consult the official record.

Geocode T-R-S Legal Description
1367-08-2-01-15-0000 POTTER SUBDIVISION
LOT 2 2.86 AC



DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITTING AND COMPLIANCE DIVISION

Jaka



MONTANA GOVERNOR

METCALF BUILDING
1520 N SIXTH AVE

STATE OF MONTANA

(406)444-2479
FAX (406)444-1374

July 29, 1996

PO BOX 200901
HELENA, MONTANA 59620-0901

JOHN POTTER
651 FOLEY LANE
HAMILTON MT 59840

file 3234

AUG 5 1996
[Stamp]

RE: POTTER SUBDIVISION
HAMILTON COUNTY
D.O. #97-1109

Dear Sir:

The plans and supplemental information relating to the water supply, sewage, solid waste disposal facilities, and storm drainage (if any) for the above-referenced division of land have been reviewed as required by Section 76-4-101 through 76-4-131, MCA and have been found to be in compliance with those acts.

Two copies of the Certificate of Subdivision Plat Approval are enclosed. The original is to be filed with the Plat at the office of the county clerk and recorder. The duplicate is for your personal records.

Your copy is to inform you of the conditions of the approval (Please note that you have specific responsibilities according to the plat approval statement, primarily with regard to informing any new owner as to inherent limitations which have been imposed). Since this property is in HAMILTON County, the HAMILTON County Health Department must be contacted before any water supply or sewage systems are installed or modified.

Please be further informed as per 76-4-122 (2) (a) MCA, a county clerk may not accept a subdivision plat or Certificate of Survey for filing until the Department of Environmental Quality has received approval from the local health official.

If you have any questions, please contact this office.

Sincerely,

[Signature]
for Jim Melstad, P.E., Supervisor
Drinking Water/Subdivision Section
Permitting and Compliance Division

JM/edm

cc: County Sanitarian
County Planning Board
PLAT, I

665640

EXHIBIT
C

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
CERTIFICATE OF SUBDIVISION PLAT APPROVAL
(Section 76-4-101 through 76-4-131, MCA 1993)

To: County Clerk and Recorder
Ravalli County
Hamilton, Montana

No. 97-1109

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as: Potter Subdivision

FOR LEGAL DESCRIPTION, SEE ATTACHED "EXHIBIT A"

consisting of 2 lots have been reviewed by personnel of the Permitting and Compliance Division, and,

THAT the documents and data required by Section 76-4-101 through 76-4-131, MCA 1993 and the rules of the Department of Environmental Quality made and promulgated pursuant thereto have been submitted and found to be in compliance therewith, and,

THAT approval of the Plat is made with the understanding that the following conditions shall be met:

THAT the lot sizes as indicated on the Plat to be filed with the county clerk and recorder will not be further altered without approval, and,

THAT Lot 1 shall be used for one single-family dwelling and one duplex, Lot 2 shall be used for one single-family dwelling, and,

THAT the individual water systems will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 16, Chapter 16, Sub-Chapters 1, 3 and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT data provided indicates an acceptable water source at a depth of 40 feet, and,

THAT the individual sewage treatment systems will consist of a septic tank and subsurface drainfield of such size and description as will comply with Ravalli County Septic System Regulations and Title 16, Chapter 16, Sub-Chapters 1, 3 and 6 ARM, and,

THAT each subsurface drainfield shall have an absorption area of sufficient size to provide 90 lineal feet per bedroom, and,



E.Q. #97-1109
Page 2 of 3
Potter Subdivision
Ravalli County

THAT when the existing water supply systems on Lots 1 and 2 are in need of extensive repairs or replacement they shall be replaced by a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 16, Chapter 16, Sub-Chapters 1, 3, and 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT when the present sewage treatment systems on Lots 1 and 2 are in need of extensive repairs or replacement they shall be replaced by a septic tank and subsurface drainfield of such size and description as will comply with Ravalli County Septic System Regulations and Title 16, Chapter 16, Sub-Chapters 1, 3 and 6 ARM, and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum highwater level of a 100 year flood of a stream, lake, watercourse, or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply and sewage treatment systems will be located as shown on the approved plans, and,

THAT plans for the proposed water and individual sewage treatment systems will be reviewed and approved by the Ravalli County Health Department before construction is started, and,

THAT the developer and/or owner shall provide each purchaser of property with a copy of the Plat, approved location of water supply and sewage treatment system and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT departure from any criteria set forth in the approved plans and specifications and Title 16, Chapter 16, Sub-Chapters 1, 3 and 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval, is grounds for injunction by the Department of Environmental Quality.

THAT this certificate supersedes Certificate No. 96-1609 dated the 19th day of October, 1995, for Tract A only.



E.Q. #97-1109
Page 3 of 3
Potter Subdivision
Ravalli County

YOU ARE REQUESTED to record this certificate by attaching it to the Plat of said subdivision filed in your office as required by law.

DATED this 17th day of July, 1996.

Ravalli County Health Officer

By: Jake Kammmer
Jake Kammmer, R.S.
Ravalli County Sanitarian's Office
Courthouse Box 5019
Hamilton, MT 59840

MARK SIMONICH
DIRECTOR

By: Jim Melstad
for Jim Melstad, P.E., Supervisor
Drinking Water/Subdivision
Section
Permitting and Compliance
Division
Department of Environmental
Quality

Owner's Name:
John Potter

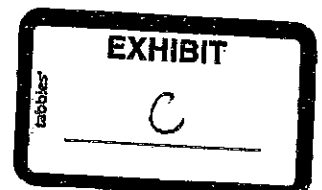


EXHIBIT A

E.Q. #97-1109

A tract of land in the Southwest one-quarter of the Southwest one-quarter (SW1/4 SW1/4) of Section 8, T 5 N, R 20 W, P.M.,M. described as beginning on the Southwest one-sixteenth (1/16) of Section 8, thence along the 1/16 section line S⁰ 00'25" E, 527.88', thence along the north line of that tract described in Deeds, Volume 155, Page 766, S 89°44'41" W, 297.64', thence along the south line of that 8.60 acre tract shown on Certificate of Survey #4796 N 0°04'18" W, 44.00', thence N 88°00'16" W, 281.65', thence along the east right-of-way line of the Hedge Ditch N 21°13'53" E, 23.08', thence N 86°59'32" W, 278.35', thence N 36°19'14" W, 0.70', thence N 21°48'33" E, 473.45', thence along the 1/16 section line S 89°56'01" E, 673.13', to the point of beginning containing 8.60 acres. This tract is to be known as POTTER SUBDIVISION and the right-of-way for FOLEY LANE as shown hereon is hereby dedicated to the public forever.

EXHIBIT

C

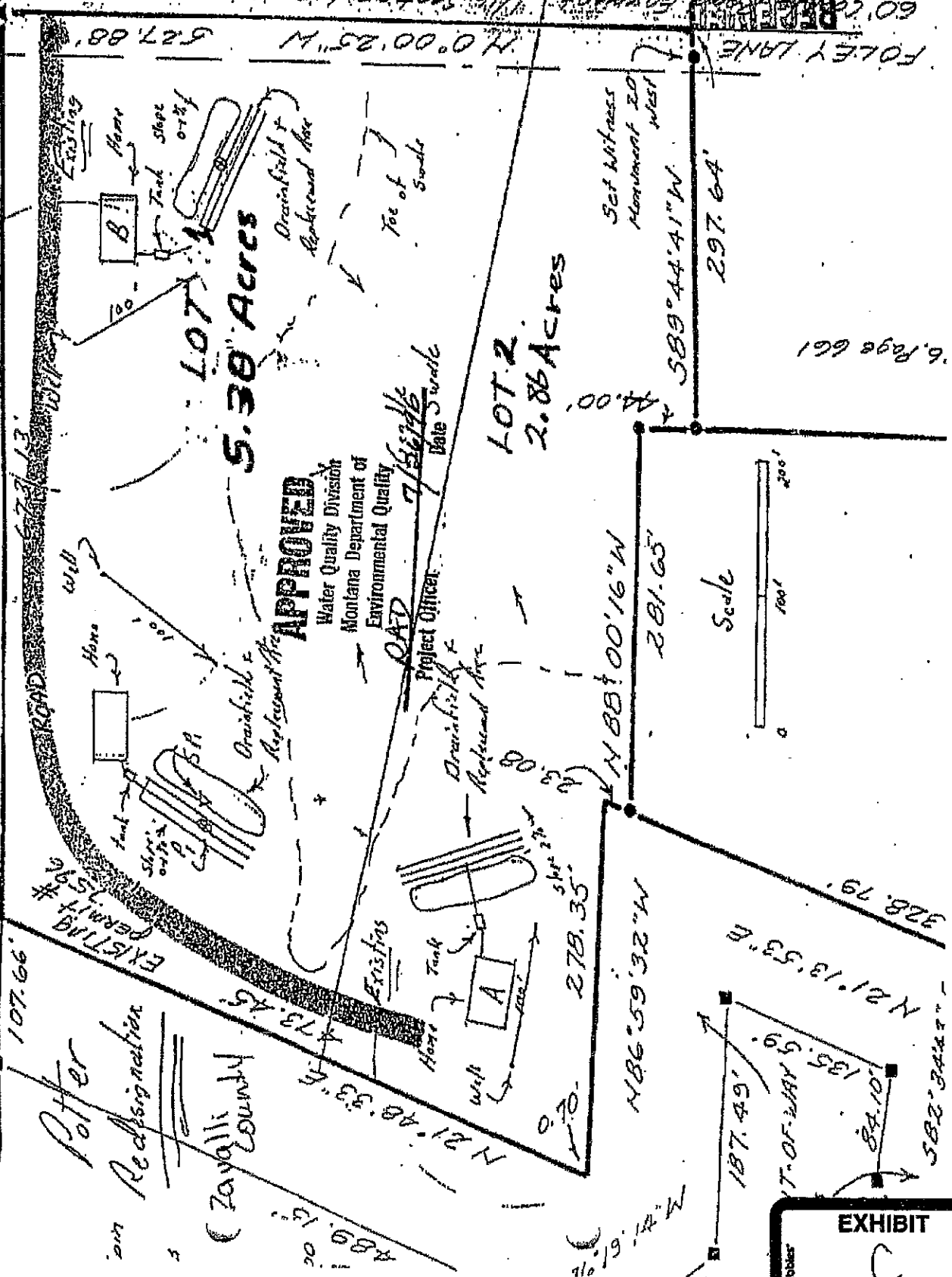
tabbles

JUL 19 1996

Sec. 17 of Survey # 3801

Accepted: Appraisings
Monument at the
SW 1/4 corner

Sec. 24 of Survey # 3729
N 89° 56' 01" W



APPROVED

Water Quality Division
Montana Department of
Environmental Quality

Project Officer
Date Sworn

6. Page 661

EXHIBIT
C