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AUG 17 2015

Ravalli County Commissioners

Ravalli County Planning Department

215 South 4th Street, Suite F

Hamilton, Montana 59840

406.375.6530 Fax 406.375.6531 kwaller@rc.mt.gov

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OG-15-08-201

August 14, 2015

Hon. James A. Haynes
District Judge, Dept. No. 2
Twenty-First Judicial District
Ravalli County Courthouse
205 Bedford St., Suite B
Hamilton, MT 59840

**Subject: Proposed Court-Ordered Partition of Land for David R. Hyatt vs. The Roy and Ireta Hyatt Ranch, Inc.
Cause No. DV-15-205**

Dear Judge Haynes:

Our office has been provided with a copy of the Complaint (Cause No. DV-15-205), with regard to the above-referenced case. The Complaint includes an attached Certificate of Survey depicting a proposed Court-Ordered division of real property presently titled in the name of The Roy and Ireta Hyatt Ranch, Inc. (Property Tax Identification #695000), and other relevant documentation. The Ravalli County Subdivision Regulations apply to divisions of land in this area, unless a statutory exemption applies. An exemption to this proposal 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.

David R. Hyatt, Plaintiff, requests partition of the property through the Court-Order process. Specifically, the 236-acre property is proposed to be divided into two parcels, one to measure 6.10 acres in size, and the other, 229.9 acres, as depicted on the attached, proposed Certificate of Survey. The late L. Dean Hyatt and Florence Hyatt had promised their son, David Hyatt, that he would receive land in lieu of the cash gifts given to his siblings. David Hyatt has not received a tract of land from the 236-acre property to date. The defendant, The Roy and Ireta Hyatt Ranch,

Inc., with David and his siblings as sole shareholders of the corporation, has agreed to a division of land, with David receiving Tract A of the proposed Certificate of Survey ("Exhibit A"), and the defendant retaining the remainder of the property set forth in Exhibit "B".

The Planning Department appreciates the opportunity to present written comments on this proposed division of land, on behalf of the governing body of Ravalli County. The Ravalli County Board of County Commissioners (BCC) held a Public Meeting on August 13, 2015 to consider Planning's draft comment letter, and all BCC amendments are incorporated herein.

After review of information submitted by the Plaintiff's attorney, including the Complaint document, comment request letter, proposed Certificate of Survey, and other supporting documentation (all enclosed), the Planning Department offers the following comments:

Findings of Fact

1. The requested action can be considered through the subdivision process.
2. Utilizing the Court-Order process limits the Ravalli County Board of County Commissioners' ability to consider data and mitigation measures typically found in subdivision review.
3. The Court-Order procedure limits citizens' opportunity to participate in the decision.
4. The Planning Department's research has confirmed that the property is not located within a Voluntary Zoning District, and according to County Clerk and Recorder records, covenants or deed restrictions do not appear to be recorded on the property (Planning cannot guarantee, however, that such restrictions do not encumber the property).
5. One existing lot is proposed to become two potentially buildable lots.
6. Three single family residences and a number of accessory structures currently exist on the property. One residence is located on proposed "Tract A", with an address of 1222 Golf Course Rd., along with several accessory structures. The remaining two residences, with addresses of 1444 and 1468 Tammany Lane, are located on the remainder portion of the property, in addition to several accessory structures.
7. The Ravalli County Road and Bridge Department (RCRBD) identifies Golf Course Rd. and Tammany Ln. as County-maintained roadways.
8. It is currently possible for the existing lot to be developed with up to 5 additional residential structures, subject only to review through the Montana Department of Environmental Quality (MDEQ) and/or Ravalli County Environmental Health Department (RCEHD), in addition to the provisions of any covenants or deed restrictions encumbering the property. With the proposed two-lot partition, however, it would be possible for Tract A and the remainder portion to each be developed with up to 5 additional residential structures, for a total of 10 additional structures, subject only to review through the above agency(ies) and the provisions of any covenants/deed restrictions. *Please Note: Additional structure provisions have been adopted, pursuant to recent changes in Montana State Legislature (M.C.A. 76-8).*
9. According to Ravalli County GIS data, the property is not located within, nor in proximity to, FEMA-mapped floodplain boundaries. In addition, neither wetlands, nor streams, traverse the property.
10. According to an August 13, 2015 discussion with Ravalli County Environmental Health Department Director John Palacio, the proposal will require review through an

Environmental Health exemption process, with one of the resulting parcels being greater than 20 acres.

Should the Court order the division of land without requiring review through the Montana Subdivision and Platting Act:

1. Written confirmation should be obtained from RCEHD that each lot meets or exceeds local and 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.
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 Certificate of Survey, if needed. Allocation of water should be a part of this master irrigation agreement. Any irrigation ditches located on or near the property should be shown on the Certificate of Survey with a 20-foot easement, as measured from the ditch center, for maintenance purposes.

Prior to the Court's review of the proposal:

It is requested that a development plan for the proposed lots be provided to the Court for consideration.

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

Sincerely,



Kevin Waller
Planner

Enc: Attorney Comment Request Letter, Complaint Document, Proposed Certificate of Survey, Other Attorney-submitted Documentation

Cc: Lawrence D. Johnson, Attorney at Law, Toby Dumont, PCI, SEA File 2015-43, Outgoing Correspondence File, Ravalli County Board of County Commissioners, Ravalli County Clerk and Recorder, Ravalli County Attorney's Office, Ravalli County Environmental Health Department, Bitter Root Irrigation District, Daly Ditches Irrigation District

1 Lawrence D. Johnson
Attorney at Law
2 345 West Main
P. O. Box 500
3 Hamilton, MT 59840
Telephone: 406 363 1655
4 Attorney for Plaintiff

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10-15-07-178
Ravalli County Planning Dept.

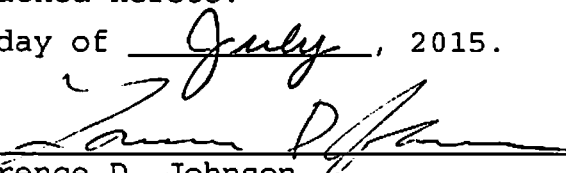
P695000
SEA 2015-43

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8 MONTANA TWENTY FIRST JUDICIAL DISTRICT COURT, COUNTY OF RAVALLI

9 DAVID R. HYATT,) CAUSE NO. DV 15 205
10) DEPT NO. 2
Plaintiff,)
11)
-VS-) NOTICE OF PROPOSED
12) PARTITION
THE ROY AND IRETA HYATT RANCH, INC.)
13)
Defendant.)

14
15 Comes now, Plaintiff and hereby gives Notice of Proposed
16 Partition to the Ravalli County, Montana Planning Department. A copy
of the Complaint is attached hereto.

17 Dated this 17th day of July, 2015.

18 
19 _____
Lawrence D. Johnson

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on this 17th day of July, 2015, I served a copy of the foregoing NOTICE OF PROPOSED PARTITION to the following parties by mailing a copy thereof in an envelope, securely sealed, postage prepaid and addressed as follows:

Ravalli County
Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840

Ravalli County Attorney
Ravalli County Courthouse
Hamilton, MT 59840

Lerie Caldwell

HON. JAMES A. HAYNES
District Judge - Dept. 2
Twenty-First Judicial District
Ravalli County Courthouse
205 Bedford - Suite B
Hamilton, Montana 59840
(406) 375-6780
Fax (406) 375-6785

FILED
PAIGE TRAUTWEIN, CLERK

JUL 21 2015
Paige Trautwein
DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

DAVID R. HYATT, Plaintiff, vs. THE ROY AND IRETA HYATT RANCH, INC., Defendant.	Cause No. DV 2015-205 / 16 Department No. 2 ORDER
------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------

To the Ravalli County Commissioners:

On July 16, 2015, a Stipulation for Entry of Partition Decree was filed by the Plaintiff in this matter seeking a court ordered division of land. Pursuant to MCA §76-3-201(2), the Plaintiff also filed a Notice of Proposed Partition (Doc. #5) and notified the governing body of Ravalli County of the proposed division of land.

IT IS HEREBY ORDERED that Ravalli County Commissioners may examine this proposed division of land and shall submit any written comments they may have on this proposed land division to the Court within 30 days. In the absence of timely comments, the Petition will be granted as presented.

DATED this 21st day of July, 2015.

James A. Haynes

HON. JAMES A. HAYNES, District Judge

cc: Lawrence Johnson, Esq. *email*
Ravalli County Attorney *cb*

Ravalli County Commisioners
Ravalli County Planning Department
Ravalli County Environmental Health Dept.

email certify that I forwarded copies of this instrument to counsel of record
7-21-15
Paige Trautwein, Clerk

1 Lawrence D. Johnson
Attorney at Law
2 345 West Main
P. O. Box 500
3 Hamilton, MT 59840
Telephone: 406 363 1655
4 Attorney for Plaintiff

FILED
PAIGE TRAUTWEIN, CLERK

JUN 09 2015

DEPUTY

8 MONTANA TWENTY FIRST JUDICIAL DISTRICT COURT, COUNTY OF RAVALLI

9 DAVID R. HYATT,

10 PLAINTIFF,

11 vs.

12 THE ROY AND IRETA HYATT RANCH, INC.)

13 DEFENDANT.)

DEPT. NO. 2

CAUSE NO. DV-15-205

COMPLAINT

14 1. The parties are owners of the following described property:

15 The Northwest Quarter, and the West Half of the Northeast
16 Quarter, LESS ditch rights of way, all in Section 10,
Township 5 North, Range 20 West, M.P.M.

17 TOGETHER WITH all water, water rights, ditches, dams,
18 flumes and easements appurtenant to said lands, or usually
had and enjoyed with the same.

19 Deed Reference: Book 196, page 785

20 2. There are no liens or encumbrances appearing of record on
21 the property.

22 3. The Plaintiff has no knowledge of any other parties who
23 claim an interest in the property or who will be materially affected
24 by the action.

25 4. In 1990, L. Dean Hyatt and Florence Hyatt made cash gifts
26 to each of their children, except the Plaintiff. L. Dean Hyatt and
27

28 1 - COMPLAINT

1 Florence Hyatt promised David R. Hyatt that they would give him land
2 in lieu of the cash gift. Relying on the promise, the Plaintiff
3 build his residence on the parcel described in Exhibit "A." In 1995,
4 L. Dean Hyatt and Florence Hyatt deeded the property to the
5 corporation, see Exhibit "B," again promising the Plaintiff he would
6 receive a deed to his parcel. L. Dean Hyatt and Florence Hyatt are
7 deceased and their children are the sole shareholders of the
8 corporation.

9 5. Partition of the real property and interests therein is in
10 the best interests of all parties hereto.

11 6. The Defendant has agreed to a division with Plaintiff
12 receiving Tract A of Certificate of Survey No. _____,
13 attached as Exhibit "A" and the Defendant retaining the remainder of
14 the property set forth in Exhibit "B."

15 WHEREFORE, Plaintiff requests that the Court enter a Decree of
16 Partition as follows:

17 1. For the partition of the real property set forth in Exhibit
18 "B" by awarding the property set forth in Exhibit "A" to the
19 Plaintiff.

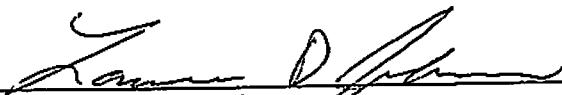
20 2. If the parties can agree to the partition, to partition the
21 property as agreed; otherwise, for the appointment of three referees
22 to make a report to the Court regarding the physical partition of the
23 property;

24 3. For a partition of the costs of suit and reasonable
25 attorney's fees in accordance with Section 70-29-218 M.C.A. and such
26 other relief as seems proper to the Court.

27

28 2 - COMPLAINT

1 Dated this 1st day of June, 2015.

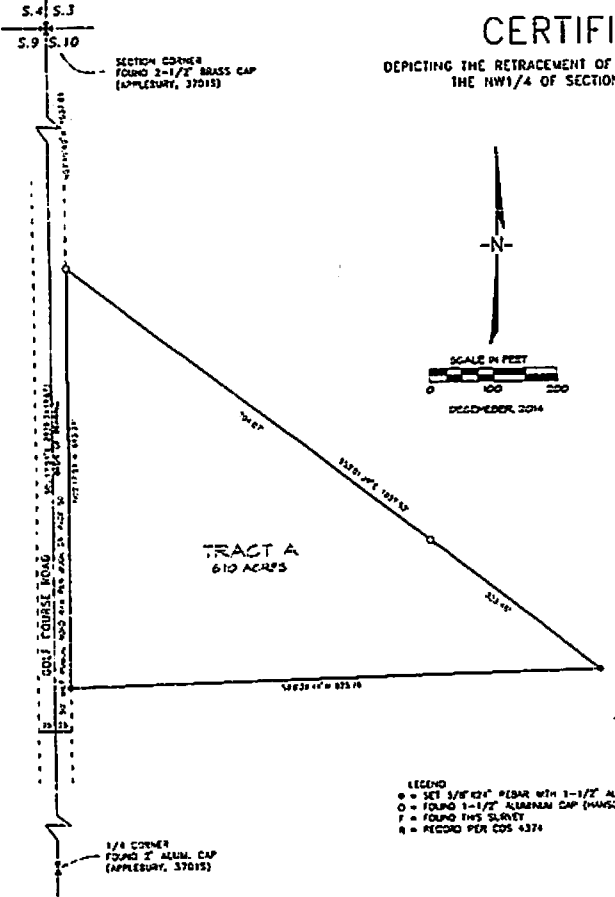
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4 Lawrence D. Johnson
Attorney for Plaintiff

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EXHIBIT "A"

CERTIFICATE OF SURVEY

DEPICTING THE RETRACEMENT OF A TRACT OF LAND CREATED BY COURT ORDER, LOCATED IN THE NW1/4 OF SECTION 10, T5N, R20W, P4M, RAVALLI COUNTY, MONTANA



LEGAL DESCRIPTION

TRACT A, Certificate of Survey No. _____, A tract of land located in and being a portion of the Northwest one-quarter (NW1/4) of Section 10, T5N, R20W, Principal Meridian, Montana, Ravalli County, Montana and being more particularly described as follows:

Commencing at the northwest corner of Section 10; thence S.01°40'40\"/>

Containing 6.10 acres, more or less, being subject to all easements or rights-of-way existing, apparent or of record.

SURVEYOR'S CERTIFICATION

I hereby certify that the attached Certificate of Survey represents a survey made under my supervision, and substantially completed on the date shown hereon.

By: _____
 Toby Dument, Professional Land Surveyor
 Montana Registration No. 120715

PURPOSE OF SURVEY

This survey was prepared to assist a Court Ordered Partition of real Property pursuant to Montana Fourth Judicial District Court, Ravalli County, Cause No. _____ and pursuant to Section 76-3-201(1)(a), M.C.A., to wit: is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, Chapter 30.

OWNERS:

- LEGEND
- = SET 3/8" (1/2") PEGS WITH 1-1/2" ALUMINUM CAP (DAUGHT, 128715)
 - = FOUND 1-1/2" ALUMINUM CAP (HANSON, 315263)
 - F = FOUND THIS SURVEY
 - ▲ = RECORD PER COS 4374

Professional Consultants Inc.
 Engineers, Surveyors, Planners, Appraisers
 2111 CENTER ST., SUITE 100
 MISSOULA, MONTANA
 PHONE 606.233.1100
 FAX 606.233.1104

PREPARED AT THE REQUEST OF: DAVID HYATT
 PCI PROJECT NO. 8560-14

1/4	SEC.	T.	R.
1	10	5N	20W

SHEET 1 OF 1
 RAVALLI COUNTY, MT
 CERTIFICATE OF SURVEY NO. _____

EXHIBIT "B"

STATE OF MONTANA COUNTY OF RAVALLI 394872 1 OF 1 PAGES
RECORDED MAY 31, 1995 4:45 PM BOOK 213 DEEDS PAGE 666
Betty J. Lund CLERK AND RECORDER BY Linda D. Beisel DEPUTY \$6.00
WARRANTY DEED

THIS INDENTURE, Made this 26th day of April, 1995 between L. Dean Hyatt and Florence Hyatt, husband and wife, of Hamilton, Montana, the parties of the FIRST PART, and The Roy and Ireta Hyatt Ranch Inc., of Hamilton, Montana the party of the SECOND PART;

WITNESSETH: That the parties of the FIRST PART, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) lawful money of the United States of America to them in hand paid by the party of the SECOND PART, the receipt hereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the party of the SECOND PART, AND TO THE SURVIVORS OF SAID NAMED party of the second part and to the heirs and assigns of such survivors forever, the hereinafter described real estate located in Ravalli County and the State of Montana, to-wit:

The Northwest Quarter, and the West Half of the Northeast Quarter, LESS ditch rights of way, all in Section 10, Township 5 North, Range 20 West, M.P.M.

TOGETHER with all water, water rights, ditches, dams, flumes and easements appurtenant to said lands, or usually had and enjoyed with the same. Deed Reference Book 196, Page 785

TOGETHER, with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances, thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim and demand whatsoever, as well in law as in equity, of the parties of the FIRST PART, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging. TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the party of the SECOND PART, and to the heirs and assigns of the survivors of said named tenants forever.

And the parties of the FIRST PART, and their heirs, do hereby covenant that they will forever warrant and defend all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said party of the SECOND PART, and to their heirs and assigns of the survivors of said named party of the second part, against all acts and deeds of the parties of the FIRST PART, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the Parties of the FIRST PART have hereunto set their hands the day and year first above written.



L. Dean Hyatt
L. Dean Hyatt
Florence Hyatt
Florence Hyatt

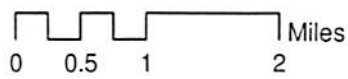
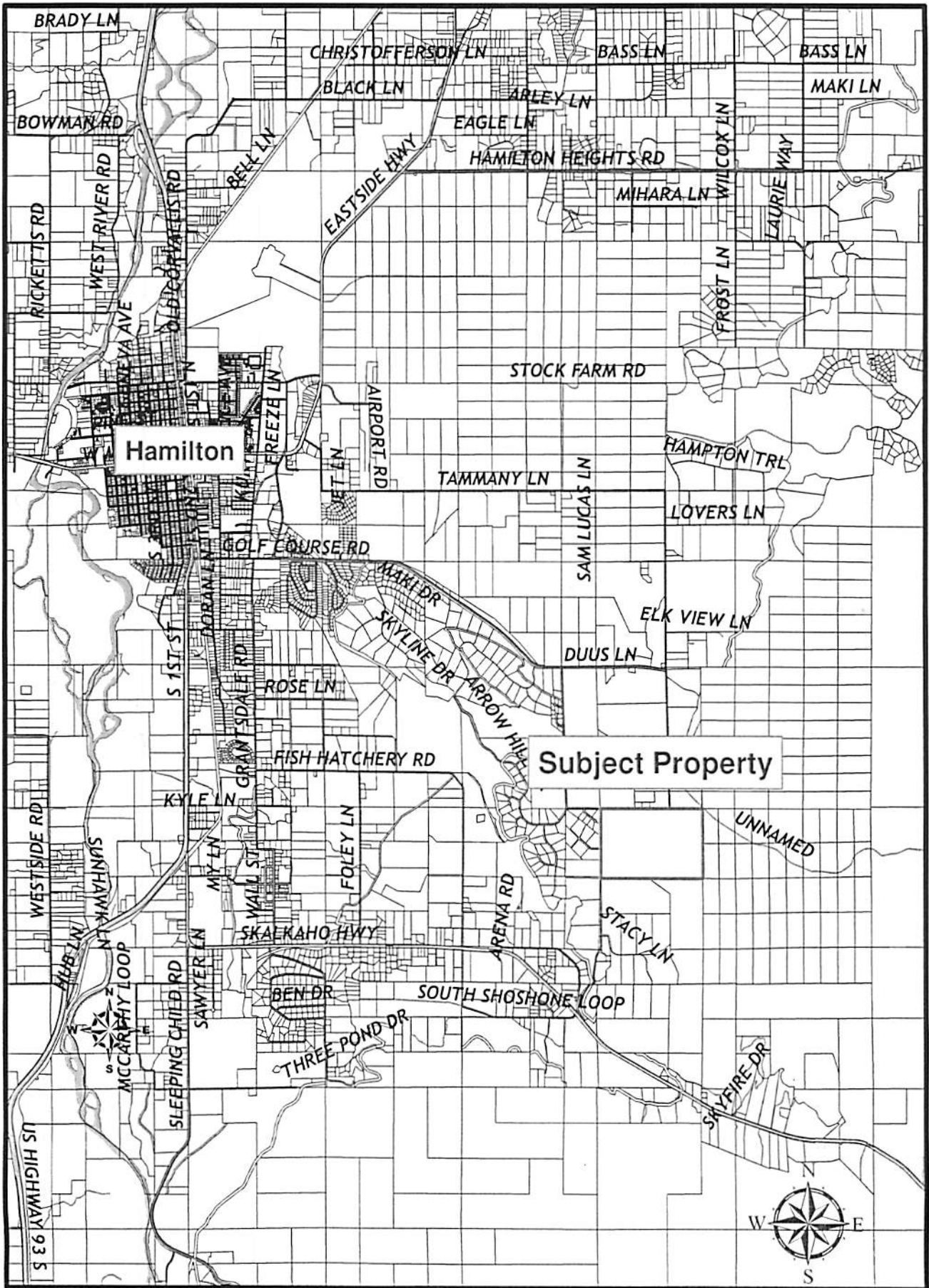
On this 26th day of April, in the year 1995, before me, Phillip R. Taylor, a Notary Public for the State of Montana, personally appeared L. Dean Hyatt and Florence Hyatt, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same as their own free and voluntary act and deed, for the uses and purposes therein mentioned.

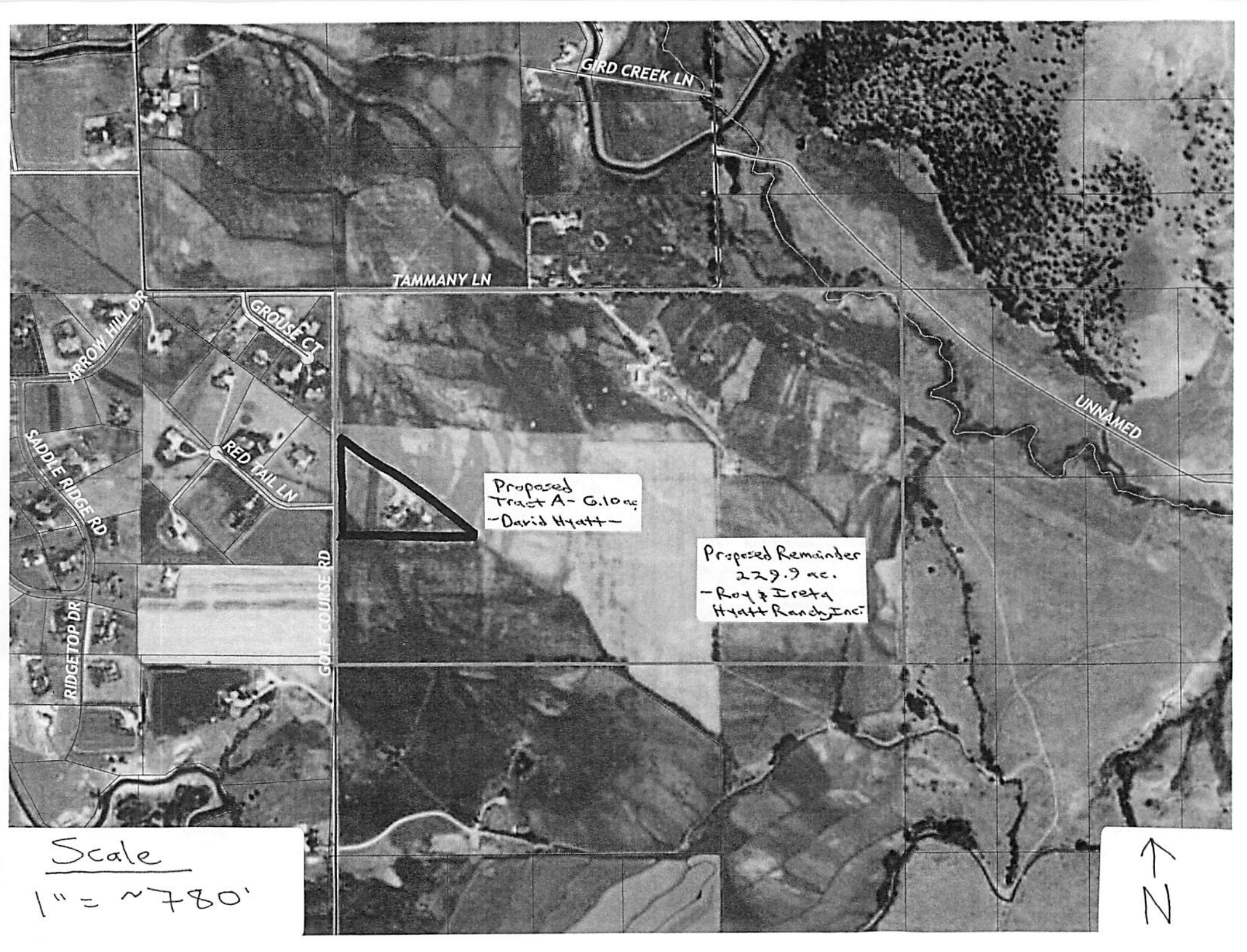
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Phillip R. Taylor
NOTARY PUBLIC for the State of Montana

Residing at: Victor, Montana

My Commission expires: May 1, 1996





GIRD CREEK LN

TAMMANY LN

UNNAMED

ARROW HILL DR

GROUSE CT

SADDLE RIDGE RD

RED TAIL LN

Proposed
Tract A - 6.10 ac
- David Hyatt -

Proposed Remainder
229.9 ac.
- Roy & Ireta
Hyatt Randy, Inc.

RIDGETOP DR

GOLF COURSE RD

Scale
1" = ~780'

←
N
→