

1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIR RUFFATTO: At this point in our
5 agenda, we will introduce the next action item.
6 This is on Page 7 of our agenda. This is in the
7 matter of the notice of appeal of Duane Murray
8 regarding the notice of violations and
9 administrative compliance and penalty order,
10 BER-2020-01.

11 The Board will hear argument from Mr.
12 Murray if he's available to participate in the
13 meeting; and if he makes arguments we will give
14 DEQ an opportunity to respond to those arguments;
15 and we will then consider the proposed findings of
16 fact and conclusions of law; and the Board can
17 either accept those, reject those findings and
18 conclusions, modify the conclusions of law, or
19 remand to the Hearing Examiner. And we will go
20 over those options as we get into it. We're not
21 done talking about that.

22 So my first question is to Mr. Murray.
23 You are on the telephone, I believe.

24 MS. SCHERER: You may need to dial star
25 six to be unmuted.

1 CHAIR RUFFATTO: I'm suspicious Mr.
2 Murray got tired of our last agenda item, and
3 maybe went away for a moment. We'll just wait a
4 minute.

5 (Off the record briefly)

6 (Mr. Murray present)

7 CHAIR RUFFATTO: Since Mr. Murray is
8 available, I will ask the question who on behalf
9 of DEQ would like to argue in response to Mr.
10 Murray's arguments?

11 MR. PETTIS: Chairman Ruffatto, members
12 of the Board. My name is Aaron Pettis. I'm an
13 attorney here at DEQ, and I'll be representing DEQ
14 in this.

15 CHAIR RUFFATTO: Thank you, Mr. Pettis.
16 Mr. Murray, are you available?

17 (No response)

18 CHAIR RUFFATTO: Yes, Dave.

19 BOARD MEMBER LEHNHERR: Chairman
20 Ruffatto, I am just wondering if somehow we can
21 see if we can get in touch with Mr. Murray, if it
22 isn't too time consuming. I can see where he
23 might have wandered off during our last item. But
24 if you think that's appropriate. It may not be.

25 CHAIR RUFFATTO: I think it is. I think

1 it's very appropriate. He was on, and I
2 understood he was planning on participating. So
3 is Elena on? And I think that she has
4 communicated with him. Or Sandy, have you
5 communicated with Mr. Murray?

6 MS. SCHERER: No, sir, I have not.
7 Elena is in the meeting. Mr. Murray, if you can
8 hear me, if you could push star six, and that
9 would unmute you.

10 CHAIR RUFFATTO: Elena, could you shoot
11 Mr. Murray an email -- and if I don't know if he's
12 in front of his computer or not -- and also try to
13 call him. Maybe he will respond to that.

14 MS. HAGEN: Hi, there. Can you guys
15 hear me?

16 CHAIR RUFFATTO: Yes, we can, Elena.

17 MS. HAGEN: I will shoot him an email,
18 and I will also try to reach him by phone and see
19 if he can get on and talk.

20 CHAIR RUFFATTO: Okay. Thank you.
21 Let's take a five minute break while we're
22 waiting. I will wait here so we don't miss him.
23 But if anybody else needs to run down the hall or
24 something, go ahead and take a -- we'll reconvene
25 in five minutes.

(Recess taken)

1
2 CHAIR RUFFATTO: Let's reconvene, and
3 Sandy, please call roll.

4 MS. SCHERER: Chairman Ruffatto.

5 CHAIR RUFFATTO: Here.

6 MS. SCHERER: Board Member Lehnherr.

7 BOARD MEMBER LEHNHERR: Here.

8 MS. SCHERER: Board Member Simpson.

9 BOARD MEMBER SIMPSON: Here.

10 MS. SCHERER: Vice Chair Aguirre.

11 (No response)

12 MS. SCHERER: Board Member Reiten.

13 BOARD MEMBER REITEN: Here.

14 MS. SCHERER: Board Member Smith.

15 BOARD MEMBER SMITH: Here.

16 MS. SCHERER: Board Member Altemus.

17 BOARD MEMBER ALTEMUS: Here.

18 CHAIR RUFFATTO: We have a quorum.

19 MS. SCHERER: Chairman Ruffatto, it
20 looked like Mr. Murray hung up, and I asked Elena
21 to have him recall in to the meeting. So I'm
22 waiting to see if he's going to call back in,
23 because he's not in the queue.

24 CHAIR RUFFATTO: Okay. If he calls back
25 in in the next few minutes, we will hear his

1 matter. Otherwise we will move on.

2 But for the sake of the folks that are
3 interested in the Signal Peak matter, I will at
4 least give the folks that are going to be doing
5 some arguing what I envision for that, and then we
6 can go back to Mr. Murray if he shows up. But who
7 do we have that's going to be arguing on behalf of
8 MEIC on the Signal Peak matter?

9 MR. HERNANDEZ: (Indicating)

10 CHAIR RUFFATTO: Yes, Mr. Hernandez.

11 MR. HERNANDEZ: Good morning, Chairman
12 Ruffatto, members of the Board. Shiloh Hernandez
13 with EarthJustice. I will be arguing on behalf of
14 the Petitioner Montana Environmental Information
15 Center. And for whatever reason my camera is --
16 I'm not sure. I don't seem to have control over
17 it, but I am available if you wish to see me, but
18 for some reason it won't appear.

19 CHAIR RUFFATTO: All right. We've got
20 your name, and so we've got your -- and your
21 voice. So we're good.

22 MS. SCHERER: Chairman Ruffatto, it
23 looks like Mr. Murray is calling in.

24 (Mr. Murray present)

25 CHAIR RUFFATTO: Okay.

1 MS. SCHERER: Mr. Murray, if you would
2 dial star six.

3 MR. MURRAY: Good morning.

4 CHAIR RUFFATTO: Good morning, Mr.
5 Murray. If you would hold off for just a second.
6 I want to give a couple of points to the people
7 that are going to be arguing on another matter, so
8 this won't relate to you.

9 So you can prepare, the folks on Signal
10 Peak, I'm going to give MEIC 20 minutes, and then
11 I'm going to give DEQ 20 minutes, and then I'll
12 give Signal Peak 20 minutes, and then I'll give
13 MEIC ten minutes for rebuttal. So if that helps
14 you over the next few minutes, I thought I would
15 give that to you.

16 Mr. Murray, I'm going to introduce the
17 matter. We are now going to consider the matter
18 of the notice of appeal of Duane Murray regarding
19 the notice of violations and administrative
20 compliance and penalty order.

21 The Board will hear oral arguments from
22 Mr. Murray, and oral arguments from DEQ in
23 response, and then we will consider the proposed
24 findings of fact and conclusions of law provided
25 by the Hearing Examiner, and we can accept those,

1 reject the findings of fact and conclusions of
2 law, except we can't reject the findings without
3 more. We can modify the conclusions of law, or we
4 can remand.

5 So with that, Mr. Murray, can you give
6 me an idea of how much time you think you would
7 like to have to make your points?

8 MR. MURRAY: I don't need more than a
9 few minutes.

10 CHAIR RUFFATTO: Okay. Well, I will
11 give you up to 15 minutes, and if you need more
12 than that, ask me. So Mr. Murray, please proceed
13 with your arguments, and then Mr. Pettis will
14 respond.

15 MR. MURRAY: I installed the septic
16 system about ten years ago, and I don't have all
17 the dates in front of me -- I'm traveling today --
18 and come to find out later then that the septic
19 system I put in did not meet State standards, even
20 though it was approved by the local state -- or
21 excuse me -- local County Sanitarian.

22 And later I went to put another septic
23 system in, and I was told that I needed to go
24 through the DEQ. The County wouldn't do it. He
25 wouldn't work with me anymore because of the

1 problems we'd had with the first one.

2 Then I talked with the different people
3 at the State, and they told me that I needed to
4 hire an engineer to put in the third septic system
5 on the problem, which I did.

6 Then after I did that, I was unable to
7 get a permit because the County refused to give me
8 -- they would tell me, "That's a State issue. You
9 need to talk to the State," and I would talk to
10 the State, and they would say, "We don't issue
11 permits. The County issues permits," and it went
12 back and forth, back and forth a long time.

13 And then I was told, "You can't --"
14 After the fact I was told to hire an engineer to
15 put in the septic system, and it just would go
16 from one problem to another. You'd resolve one
17 problem, another problem would raise up.

18 And then I was told, "You can't even
19 have more than one septic system on there,"
20 because the original subdivision stated each lot
21 will have an individual septic and individual
22 well.

23 My take on that was that they were. I
24 would interpret it that it was implying that
25 there's no city water, no city sewer, so you

1 needed to have your own system. The Department's
2 take on that was no, you can only have one septic
3 and one -- so I was in violation.

4 So it just has gone on, and on, and on.
5 I disconnected, and all of the things,
6 disconnected all the power, disconnected all the
7 water, disconnected everything. So I did
8 everything in good faith. I tried to follow the
9 rules. And I just got tied up in a bunch of
10 bureaucracy.

11 And I've been dealing with the DEQ over
12 this issue for eight years. It's time to come to
13 an end, and I'm ready to just call it quits, and
14 just swallow probably \$150,000 investment that I
15 have, and loss of income, and just, you know, I'm
16 tired. I'm tired of it. I've had enough of it.
17 I just want to be done with it. I'm done.

18 CHAIR RUFFATTO: Thank you, Mr. Murray.
19 Mr. Pettis, I will give you up to ten minutes to
20 respond.

21 MR. PETTIS: Thank you, Chair Ruffatto,
22 members of the Board.

23 I think that the facts are undisputed in
24 this case, and I think the law is straight
25 forward, and I think that the Hearing Examiner hit

1 the nail on the head in the order, and I think --
2 you know, that's why DEQ did not file any
3 exceptions. I think that's a straight forward
4 application of the facts and the law in this case.

5 I just want to back up a little bit, and
6 give a little context about essentially what the
7 effect of the Board's ruling in this case would
8 be.

9 First off, just to be clear, DEQ is not
10 trying to stop Mr. Murray from developing anything
11 on his property, not trying to get him to remove
12 his cabins, or his RV spaces, or any of that. If
13 he wants to keep those, then he should, so long as
14 they are reviewed, and approved, and compliant
15 with State law, and that's ultimately the issue
16 here.

17 What he needs to do is have those
18 reviewed and approved, and ensure that they comply
19 with State law; or disconnect them and revert to
20 the initial conditions of approval. And I think
21 that's set out pretty clearly in the proposed
22 FOFCOL.

23 One other thing that the Board should be
24 aware of is after Mr. Murray filed his notice of
25 appeal, DEQ talked to him, and committed to him

1 that if he disconnected during the pendency of
2 this appeal, DEQ would forego the penalty that it
3 assessed in the original order. And DEQ still is
4 committed to that, since Mr. Murray has
5 disconnected everything during this appeal, that
6 DEQ would not be seeking that penalty.

7 So ultimately, what DEQ is asking the
8 Board is just for an order that if he wants to
9 deviate from the original conditions of approval,
10 that he needs to go through DEQ review to have
11 those approved, and that will be some effort.

12 He may need an engineer for this. He
13 will need to remove the second wastewater system
14 because it does not comply with State law. I
15 don't know about the third system. So there may
16 be some work there to be done.

17 But it is not like an absolute
18 prohibition against his development on the
19 property. It's just that if he wants to do that,
20 then it needs to be reviewed and approved.

21 One other thing that is clearly
22 confusing and clearly a frustrating issue is the
23 relationship between DEQ and the County. And just
24 to clarify on that, we're talking about two
25 separate regulatory schemes, and one is DEQ's

1 subdivision process, which involves review of
2 water, wastewater, and storm water, and solid
3 waste, and the separate County septic permitting
4 system.

5 And I guess the way that I think of that
6 is DEQ reviews more about planning, and ensuring
7 that the proposed facilities comply, and then the
8 County septic permitting is more of a construction
9 on-the-ground type permit.

10 And so clearly there was some sort of
11 problems involved with the County septic
12 permitting on this, but ultimately those are
13 separate from the DEQ issues and the compliance
14 with State law. And I'll admit it's a frustrating
15 and confusing process, and so that's why there are
16 some things that DEQ can do with the subdivision
17 approval and the COSA, and why some things are
18 left to the County.

19 And ultimately regardless of what
20 happens at the County level, you still need
21 approval from DEQ on this. You still need to
22 install those systems to ensure that they comply
23 with State law.

24 And just to emphasize, though, it's not
25 just the septic systems. As the Hearing Examiner

1 rightfully went through, there are issues with the
2 water system; there are issues with the six RV
3 spaces.

4 And just to clarify that, because it
5 might seem a little confusing, but the Sanitation
6 and Subdivisions Act, which is what DEQ
7 administers, applies to things that we normally
8 think of with subdivisions, right -- dividing the
9 land into multiple parcels -- but it also
10 considers multiple RV spaces as a subdivision.
11 So that's the regulatory hook on that, and why
12 those need to be reviewed as well.

13 And I think that's generally it. I
14 think the Hearing Examiner got the findings of
15 fact and conclusions of law right, and those are
16 the general issues, and I'll respond to any
17 questions that you have. Thank you.

18 CHAIR RUFFATTO: Mr. Murray, do you want
19 to respond to any of Mr. Pettis's comments?

20 MR. MURRAY: No, I don't think so.

21 CHAIR RUFFATTO: Okay. Well, then I'm
22 going to ask the Board members if you have
23 questions of either party at this point, and then
24 we can deliberate. Yes, Dr. Lehnherr.

25 BOARD MEMBER SIMPSON: Mr. Chair, if I

1 could ask a couple of questions of Mr. Pettis,
2 please.

3 First of all, I'm not at all familiar
4 with the ins and outs of the subdivision law, but
5 I'm curious as to why the restriction on to the
6 water system versus a multi-family system, and why
7 it's an issue, from a practical standpoint. I
8 mean I assume you're following the law, but I
9 don't quite understand what the rationale is.

10 MR. PETTIS: Chairman Ruffatto, Member
11 Simpson. The Sanitation and Subdivisions Act
12 requires DEQ to adopt rules about different sizes
13 of water systems, and DEQ has adopted rules, and
14 it has adopted design circulars based on the size
15 of the systems, and how many houses it serves, and
16 how many people are served. And I'm obviously not
17 an engineer, but there are capacity issues, and
18 all those kind of things, right? And so that's
19 why there's a distinction between those types of
20 systems.

21 And so the way it works is that an
22 applicant comes to DEQ, and they say, "We want to
23 develop a system, and this is what we're going to
24 do." DEQ isn't directing the development or
25 making those decisions. It's an applicant comes

1 forward, they say, "We're going to put in this
2 individual system, and that's what we're going to
3 do." And so DEQ will review and approve it based
4 on that.

5 And then later down the line, if you
6 want to go to a multiple system, or a public
7 system, or whatever, then you come back in and
8 say, "Okay. We're going to make these changes,
9 and would like approval for that."

10 BOARD MEMBER SIMPSON: If I understand
11 correctly, there is a threshold number of people
12 to be served to be considered a public water
13 system; is that correct?

14 MR. PETTIS: That's correct.

15 BOARD MEMBER SIMPSON: And this system
16 falls below that number.

17 MR. PETTIS: Right. There are three
18 classifications essentially. There's an
19 individual system, the multiple family system, and
20 then the public system. So the public system is
21 anything over 25 persons for a certain number of
22 days per year, and an individual system is one or
23 two living units, and the multiple family is
24 anything in between.

25 BOARD MEMBER SIMPSON: Okay. Thank you.

1 I just have one additional question. Has there
2 been any environmental harm as a result of this or
3 -- this situation, or is this strictly a
4 compliance issue?

5 MR. PETTIS: Chair Ruffatto, Member
6 Simpson. There's no evidence in the record about
7 environmental harm. And ultimately these statutes
8 are designed to be forward looking and
9 preventative, not just to the environment, but for
10 people's health, too. Right?

11 It's making sure that a septic system is
12 sufficiently far away from wells, or that the
13 septic system is not near a wetland, or whatever,
14 those types of things. So it's ensuring that
15 those protections are met before there is harm
16 instead of reacting to it.

17 BOARD MEMBER SIMPSON: Thank you.

18 CHAIR RUFFATTO: Any more questions?

19 Dr. Lehnherr.

20 BOARD MEMBER ALTEMUS: Go ahead.

21 BOARD MEMBER LEHNHERR: Board Member
22 Altemus, go ahead if you'd like. I can go after
23 you.

24 CHAIR RUFFATTO: Go ahead, Dr. Lehnherr.

25 BOARD MEMBER LEHNHERR: I appreciate

1 having a well, and being on septic. I do
2 appreciate DEQ's proactivity. Once you start
3 seeing a well contamination, the cat is sort out
4 of the bag.

5 But I'm just wondering -- this might be,
6 Chairman Ruffatto, something you can answer. I
7 just want to make sure I'm clear on the
8 recommended decision, summary judgment. Would
9 that be primarily payment -- and then I have a
10 second question for Mr. Murray -- but would that
11 be payment of the \$6,000, or are there other
12 elements?

13 CHAIR RUFFATTO: I'll start to answer
14 that. Before we're done here, we will go through
15 the findings of fact and conclusions, and address
16 those. And what I have heard from Mr. Pettis is
17 that they're going to waive the \$6,000 penalty,
18 and we can amend the conclusions to reflect that.
19 So it would be adopting the summary judgment
20 motion with whatever changes we make in it,
21 including the potential for waiving the penalty.
22 Does that answer your question?

23 BOARD MEMBER LEHNHERR: Yes. And then I
24 was just wanting to get -- make sure I understand
25 Mr. Murray's outlook on the future of the

1 property.

2 As I understand it, nothing is hooked
3 into a septic system currently, but Mr. Murray,
4 are you wanting to -- you say you're done. Does
5 that mean you are not going to do anything more
6 with the property, or you've literally given up on
7 it? Thank you for the answer.

8 MR. MURRAY: Currently, I have a 12 unit
9 hotel on the property and, you know, that will
10 stay. I have four cabins on the property which
11 are sitting empty. I have six RV slots that are
12 sitting empty.

13 And I tried very diligently to do a lot
14 of things to make it correct. And I hired an
15 engineer to do a subdivision review at one point;
16 I hired another engineer to design septic systems.
17 I never had anybody ever say that anything was an
18 environmental risk or a potential environmental
19 risk on anything.

20 It's just that there was no way that I
21 could make it all work when the local sanitation
22 department would not work with me for personal
23 reasons, and every time I would try and correct
24 something that the DEQ would come up with for --
25 I'd resolve that, and then they'd come up with

1 another issue.

2 And so it just kept going on, and on,
3 and on, and there's no return on investment. What
4 the Department is requiring, and what everybody
5 wants, is just cost prohibitive to the point that
6 there is no return on your investment, and there
7 has to come a time you just have to throw the
8 towel in and say it's not going to work because
9 there's no return on your investment.

10 And so when you live in rural Montana,
11 it's different. It's a different world than
12 living someplace else where the economy is
13 different. And at this point there's just no
14 return on investment.

15 And so no, I cannot, even if I wanted
16 to. There's no financial gain in doing anything
17 different. The only thing I can do is take and
18 bulldozer push them all down, because I'm paying
19 taxes. I'm paying taxes on houses that are
20 sitting empty that I cannot have any -- no return
21 on.

22 And so no, I'm done. I'm not planning
23 on doing anything different. I'm not planning on
24 further development. It's cost prohibitive what
25 the Department wants.

1 BOARD MEMBER LEHNHERR: Thank you.

2 CHAIR RUFFATTO: Any more questions?

3 Board Member Altemus.

4 BOARD MEMBER ALTEMUS: Thank you, Mr.
5 Chair. And for Mr. Murray. So Dr. Lehnherr
6 actually asked part of my question, but what I
7 actually would like to know is it sounds like you
8 have infrastructure built on your property, but
9 you did not get -- you haven't been able to get
10 approval from the local sanitation department, is
11 that correct, in addition to the issues with the
12 DEQ?

13 MR. MURRAY: Okay. I'll just kind of
14 summarize real briefly on that.

15 Originally about a little over 25 years
16 ago, I built an assisted living facility on the
17 property that was zoned commercial,
18 non-restricted. And in that original plan review,
19 covenants on the property, it states that --

20 Like most of the lots around the golf
21 course there in that subdivision review are like
22 three to five acre houses. The exception is the
23 lot that I own is a 6.3 acre lot. And in the
24 subdivision review it says each lot will have an
25 individual well and an individual septic. It

1 never became an issue, never was an issue.

2 When I decided to build the first
3 cabins, I went to the local sanitation department,
4 and I said, "Hey, this is what I want to do." They
5 said, "Yes. No problem. Here's a set of plans.
6 Follow these plans."

7 And of course the whole story -- and
8 it's long, and I don't want to take everybody's
9 full day -- but the thing was it was no issue.
10 There was no issue in putting in this septic
11 system. Put in one septic system for all three
12 cabins that I built.

13 Later on it became an issue because the
14 local sanitation guy and I kind of got in a little
15 bit of a spat, because I felt some of the things
16 he was doing as far as like selling plans to
17 people, selling septic plans to people under the
18 thing that, "If you do this, you won't have to
19 hire an engineer. So you buy a set of plans from
20 me, I approve them."

21 So I made a comment about that that I
22 felt that was unethical. That's where the whole
23 problem, this whole issue, this is why we're here
24 today, because I said to the local sanitation guy,
25 "What you're doing is unethical to sell plans, and

1 then approve them."

2 Well, come to find out after he turned
3 everything over to the DEQ, you know, which then
4 the plans that he sold me for those three cabins
5 did not meet standards. So all of a sudden,
6 nothing I do I can get through the local
7 sanitation department because he's not going to
8 work with me.

9 So then the Department says, "You need
10 to hire an engineer to design a septic system for
11 you," so I hire an engineer, I get it designed. I
12 called the local sanitation, I said, "Hey, I have
13 an engineered set of plans here. I'm ready to put
14 in the septic system." He says, "I'm not going to
15 help you. You need to call DEQ." So I called
16 DEQ. They say, "We don't issue permits. That's
17 your local County guy."

18 Well, unfortunately in the local County,
19 it is so hard to find sanitationists that nobody
20 will hold the guy accountable. He does the
21 sanitations for six counties. That's how hard it
22 is to find a sanitationist. There's no way that
23 he can adequately do six counties, but he is the
24 sanitationist for six counties.

25 And so he's telling me, "You can't --

1 I'm not going to help you. You've got to talk
2 with DEQ. Deal with them. They'll have to do
3 it." So I called DEQ, and DEQ says, "We don't
4 give permits. You've got to talk to your County."

5 And so this goes on, and on, and around
6 in circles. Well, at some point -- you know. So
7 I sat a whole winter because the ground froze and
8 I couldn't put the septic in. Another winter
9 comes up. I've got to get this septic in. I call
10 the County and I say, "Hey, I need a permit. I
11 need to put this in before the frost comes," and I
12 don't get a response.

13 I called the State DEQ, "Hey, I need
14 permit. It's going to be frozen. The ground's
15 going to be froze. I've been sitting for a year
16 and a half trying to get a permit here. I need a
17 permit to get this in the ground." Nobody said at
18 that time, "You're not allowed to have more than
19 permit -- or one septic on that." No one even
20 said that. They just said, "Get a permit."

21 Okay. I try and get a permit. I can't
22 get a permit. So I dig it, I set it in the
23 ground, I called the County and said, "Hey, it's
24 sitting in the ground according to plans. Come
25 approve it, because the ground is going to be

1 froze." I get absolutely no response.

2 I call the State. "Well, that's a
3 County problem." I give up. I give up. I'm
4 done. I'm not going to pursue it any further.
5 There's no financial advantage for me to even try
6 and fight it any further.

7 BOARD MEMBER ALTEMUS: Thanks, Mr.
8 Murray.

9 CHAIR RUFFATTO: Any more questions?

10 (No response)

11 CHAIR RUFFATTO: I have a question.
12 Maybe I just missed it. But Mr. Pettis, is it
13 your understanding that Mr. Murray has complied
14 with your request to disconnect?

15 MR. PETTIS: Chairman Ruffatto, yes.
16 DEQ talked to Mr. Murray about that, and then we
17 didn't hear anything else from him about it, and
18 so we did not think that he had disconnected
19 anything.

20 And then last summer I went out to Havre
21 by myself, and I met with Mr. Murray. We talked
22 about this for a long time. And at that time, he
23 told me that they had disconnected. So that is
24 our understanding of it right now. We have not
25 gone out and inspected. I don't know for sure,

1 but he has represented that to us.

2 CHAIR RUFFATTO: Okay. Thank you. I
3 think our next step would be to go through the
4 proposed findings and conclusions -- Well, maybe
5 our next step should be discussion among the Board
6 as to where generally you think we should go with
7 that, then maybe we'll start more detailed review
8 of the FOFCOL.

9 (No response)

10 CHAIR RUFFATTO: I guess I will start
11 with one little discussion. I hear Mr. Murray's
12 concerns, and I appreciate them. I can hear his
13 frustration, and I think it's probably justified.
14 I know that these laws are complicated and
15 difficult. I have had to deal with them to some
16 extent, so I understand that.

17 But that doesn't change the fact that
18 these laws have to be followed. And so I
19 appreciate the concern, I appreciate his concern,
20 but these laws in my view have to be followed, and
21 the way we -- if we don't like them, we need to
22 make changes, we need to see if changes can be
23 made, but this Board is not the board to make
24 changes.

25 And with respect to the County, this

1 Board has no jurisdiction over the County, and so
2 we can't deal with what's going on in the County,
3 and to be honest with you, I don't know what the
4 remedy there would be.

5 So my view is -- I will state this -- I
6 think the Hearing Examiner did a good job of
7 laying out the situation. I don't hear really any
8 dispute about the facts as articulated in the
9 FOFCOL. So I want to say that, but that doesn't
10 mean that I don't understand the frustration that
11 Mr. Murray is expressing.

12 I am going to then -- I want to flip
13 through these pages, because I think we need to
14 address -- there are a couple things I want to
15 address because they have some longer term
16 impacts.

17 But before we go through that, I will --
18 I need to remind the Board that since this came
19 from a Hearing Examiner, the Board cannot change
20 the findings of fact unless we review the whole
21 record. We can change conclusions of law or
22 interpretation of law, but we can't change the
23 findings of fact.

24 So I am going to go through this. I'm
25 going to page through this pretty quickly, but I

1 want to go through it and make sure everybody --
2 if you've made notes that you want to talk about,
3 we can do that.

4 And so I want to start out by taking a
5 look at Pages 1 through 3. Are there any notes in
6 that that you want to talk about and/or any points
7 you want to talk about on Page 1 through 3?

8 (No response)

9 CHAIR RUFFATTO: Then I'm going to go to
10 Pages 4 and 5. Excuse me. Did someone have a
11 question?

12 (No response)

13 CHAIR RUFFATTO: Pages 4 and 5, any
14 questions?

15 (No response)

16 CHAIR RUFFATTO: Pages 6 and 7, any
17 questions?

18 (No response)

19 CHAIR RUFFATTO: Pages 8 and 9, any
20 questions?

21 (No response)

22 CHAIR RUFFATTO: Pages 9 and 10.

23 (No response)

24 CHAIR RUFFATTO: Any questions?

25 (No response)

1 CHAIR RUFFATTO: I have a question.
2 Paragraph 5 I believe is not accurate. The case
3 that is cited does not stand for the proposition
4 that is stated for Paragraph 5. The Mayer
5 decision (phonetic) is talking about a judicial
6 review, not a board review. So I move that
7 Paragraph 5 be stricken.

8 I will explain that. I don't think that
9 changes the result at all, but I don't want the
10 Board approving a statement of law which I believe
11 is not accurate. Yes, Dr. Lehnherr.

12 BOARD MEMBER LEHNHERR: Chairman
13 Ruffatto, I'm just needing a little clarification.
14 Mayer is mentioned in item four, and you mentioned
15 item five. I'm just trying to do -- Does five
16 relate to Mayer as well, and do we need to --

17 CHAIR RUFFATTO: Okay. I'll explain
18 that. Paragraph 4 cites the case Mayer for the
19 proposition that the interpretation of an
20 administrative rule is a question of law. That's
21 accurate, and Mayer supports that.

22 Paragraph 5, if you see that little ID
23 down there, that means it's the same cite. What
24 that means is that the conclusion is using the
25 Mayer decision to support five also. Does that

1 make sense?

2 BOARD MEMBER LEHNHERR: Yes. Thank you.

3 CHAIR RUFFATTO: And I probably wouldn't
4 have even picked up on this except that this issue
5 is going to come up in the Signal Peak matter, and
6 there is a 2005 Montana Supreme Court case that
7 says that the Board does not give the same
8 deference to the DEQ as the Courts do, and that
9 case is pretty clear. It's MEIC versus DEQ. It's
10 a 2005 case.

11 I have made a motion to strike Paragraph
12 5. We're allowed to do that because it's a point
13 of law.

14 BOARD MEMBER SIMPSON: I'll second.

15 CHAIR RUFFATTO: A motion has been made
16 and seconded that we strike Paragraph 5. Is there
17 discussion?

18 (No response)

19 CHAIR RUFFATTO: Any discussion?

20 (No response)

21 CHAIR RUFFATTO: All in favor say aye.

22 (Response)

23 CHAIR RUFFATTO: Opposed.

24 (No response)

25 CHAIR RUFFATTO: Now we'll keep going.

1 11 and 12, any points?

2 (No response)

3 CHAIR RUFFATTO: 13. If you go to the
4 bottom of 13, consistent with the motion that just
5 passed, I want to strike the last sentence because
6 the deference under Mayer does not apply. And I
7 also want to strike the words, "DEQ determined
8 that."

9 And let me explain why, because what
10 this says is that the Hearing Examiner made the
11 decision because it deferred to DEQ, but I think
12 the statement of law is accurate without giving
13 the deference.

14 So I would have paragraph -- and I will
15 move this. Actually I will move two of them,
16 because there's another one just like it.
17 Paragraph 29, we have to do the same thing.

18 So I move that in Paragraphs 22 and 29
19 we strike the words, "DEQ determined that" in the
20 last sentence, and we do the same thing in 29. Is
21 there a second?

22 BOARD MEMBER LEHNHERR: I'll second the
23 motion.

24 CHAIR RUFFATTO: Any more discussion?

25 (No response)

1 CHAIR RUFFATTO: I will call the
2 question. All favor of the motion say aye.

3 (Response)

4 CHAIR RUFFATTO: Opposed.

5 (No response)

6 CHAIR RUFFATTO: We'll move on. I have
7 no more changes. If anybody else has any changes
8 in 14, 15 and 16, please let me know.

9 (No response)

10 CHAIR RUFFATTO: Now I think we have to
11 deal with the waiver of the penalty. Mr. Pettis,
12 do you just want us to include a provision that
13 says that the DEQ has agreed to waive the penalty?

14 MR. PETTIS: Chairman Ruffatto, I would
15 be fine with that. The original agreement was if
16 we confirm that everything had been disconnected,
17 and so if it could reflect that, I think that
18 would be most appropriate.

19 CHAIR RUFFATTO: I would move that we
20 rewrite the penalty provision to provide that if
21 it is confirmed that the disconnect as requested
22 by DEQ has occurred, the penalty will be waived.
23 I won't try to draft it now. We'll do that after
24 the fact. Is there a second to that motion?

25 BOARD MEMBER REITEN: I'll second that.

1 CHAIR RUFFATTO: Discussion.

2 (No response)

3 CHAIR RUFFATTO: I'll call the question.

4 All in favor of the motion say aye.

5 (Response)

6 CHAIR RUFFATTO: Opposed.

7 (No response)

8 CHAIR RUFFATTO: The motion carries
9 unanimously.

10 Now I think we have one more motion to
11 make, and that is to adopt the full FOFCOL as we
12 have amended it as the decision of the Board, and
13 that will necessarily require making these little
14 changes and putting a final paragraph on it that
15 it is the decision of the Board.

16 So I move that the findings of fact and
17 conclusions of law be adopted as the decision of
18 the Board. Is there a second to that?

19 BOARD MEMBER ALTEMUS: I'll second.

20 CHAIR RUFFATTO: Any discussion?

21 (No response)

22 CHAIR RUFFATTO: All in favor say aye.

23 (Response)

24 CHAIR RUFFATTO: Passes unanimously.

25 Mr. Murray, I just want to thank you for coming

1 and appearing, and telling us your story. I hope
2 you can salvage something from this, and I hope
3 that your issue with the County sanitarian can get
4 resolved, but I do want to thank you for coming
5 and talking to us. That was very helpful, and we
6 appreciate it. And thank you, Mr. Pettis. I
7 think we're done with that agenda item.

8 It's now 12:00 in Montana, and I'm
9 really hungry. So we'll take an hour break, and
10 at 1:00 we will convene with the Signal Peak
11 matter.

12 (Lunch recess taken)

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C E R T I F I C A T E

STATE OF MONTANA)

: SS.

COUNTY OF LEWIS & CLARK)

I, LAURIE CRUTCHER, RPR, Court Reporter,
Notary Public in and for the County of Lewis &
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - 34 - pages contain a true
record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 20th day of
April, 2022.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2024.

<p>_____ \$ _____ \$150,000 - 10:14 \$6,000 [2] 18:11, 18:17 _____ 1 _____ 1 [2] 28:5, 28:7 10 - 28:22 11 - 31:1 11:07 - 1:13 12 [2] 19:8, 31:1 12:00 - 34:8 13 [2] 31:3, 31:4 14 - 32:8 15 [2] 8:11, 32:8 16 - 32:8 1:00 - 34:10 _____ 2 _____ 20 [3] 7:10, 7:11, 7:12 2005 [2] 30:6, 30:10 2020-01 - 1:8 2022 [2] 1:12, 35:17 2024 - 35:22 20th - 35:16 22 - 31:18 25 [2] 16:21, 21:15 2568 - 1:7 29 [3] 31:17, 31:18, 31:20 _____ 3 _____ 3 [2] 28:5, 28:7 34 - 35:12 _____ 4 _____ 4 [3] 28:10, 28:13, 29:18 _____ 5 _____ 5 [8] 28:10, 28:13, 29:2, 29:4, 29:7, 29:22, 30:12, 30:16</p>	<p>_____ 6 _____ 6 - 28:16 6.3 - 21:23 _____ 7 _____ 7 [2] 2:6, 28:16 _____ 8 _____ 8 [2] 1:12, 28:19 _____ 9 _____ 9 [3] 28:19, 28:22, 35:22 _____ A _____ a.m - 1:13 Aaron - 3:12 ability - 35:14 able - 21:9 absolute - 12:17 absolutely - 25:1 accept [2] 2:17, 7:25 according - 24:24 accountable - 23:20 accurate [4] 29:2, 29:11, 29:21, 31:12 acre [2] 21:22, 21:23 Act [2] 14:6, 15:11 action - 2:5 addition - 21:11 additional - 17:1 address [3] 18:15, 27:14, 27:15 adequately - 23:23 administers - 14:7 administrative [4] 1:7, 2:9, 7:19, 29:20 admit - 13:14 adopt [2] 15:12, 33:11 adopted [3] 15:13, 15:14, 33:17</p>	<p>adopting - 18:19 advantage - 25:5 affixed - 35:16 against - 12:18 agenda [4] 2:5, 2:6, 3:2, 34:7 agreed - 32:13 agreement - 32:15 Aguirre - 5:10 ahead [4] 4:24, 17:20, 17:22, 17:24 allowed [2] 24:18, 30:12 Altamus [9] 1:19, 5:16, 5:17, 17:20, 17:22, 21:3, 21:4, 25:7, 33:19 amend - 18:18 amended - 33:12 among - 26:5 and/or - 28:6 anymore - 8:25 appeal [6] 1:5, 2:7, 7:18, 11:25, 12:2, 12:5 appear - 6:18 appearing - 34:1 applicant [2] 15:22, 15:25 application - 11:4 applies - 14:7 apply - 31:6 appreciate [6] 17:25, 18:2, 26:12, 26:19, 26:19, 34:6 appropriate [3] 3:24, 4:1, 32:18 approval [6] 11:20, 12:9, 13:17, 13:21, 16:9, 21:10 approve [4] 16:3, 22:20, 23:1, 24:25 approved [5] 8:20, 11:14, 11:18,</p>	<p>12:11, 12:20 approving - 29:10 April [2] 1:12, 35:17 argue - 3:9 arguing [4] 6:5, 6:7, 6:13, 7:7 argument - 2:11 arguments [6] 2:13, 2:14, 3:10, 7:21, 7:22, 8:13 articulated - 27:8 asking - 12:7 assessed - 12:3 assisted - 21:16 assume - 15:8 attorney - 3:13 available [4] 2:12, 3:8, 3:16, 6:17 aye [4] 30:21, 32:2, 33:4, 33:22 _____ B _____ bag - 18:4 became [2] 22:1, 22:13 behalf [3] 3:8, 6:7, 6:13 BER - 1:8 BER-2020-01 - 2:10 best - 35:13 bit [2] 11:5, 22:15 board [54] 1:1, 1:18, 2:11, 2:16, 3:12, 3:19, 5:6, 5:7, 5:8, 5:9, 5:12, 5:13, 5:14, 5:15, 5:16, 5:17, 6:12, 7:21, 10:22, 11:23, 12:8, 14:22, 14:25, 16:10, 16:15, 16:25, 17:17, 17:20, 17:21,</p>	<p>17:21, 17:25, 18:23, 21:1, 21:3, 21:4, 25:7, 26:5, 26:23, 26:23, 27:1, 27:18, 27:19, 29:6, 29:10, 29:12, 30:2, 30:7, 30:14, 31:22, 32:25, 33:12, 33:15, 33:18, 33:19 Board's - 11:7 bottom - 31:4 break [2] 4:21, 34:9 briefly [2] 3:5, 21:14 build - 22:2 built [3] 21:8, 21:16, 22:12 bulldozer - 20:18 bunch - 10:9 bureaucracy - 10:10 _____ C _____ cabins [5] 11:12, 19:10, 22:3, 22:12, 23:4 calling - 6:23 camera - 6:15 can't [7] 8:2, 9:13, 9:18, 23:25, 24:21, 27:2, 27:22 cannot [3] 20:15, 20:20, 27:19 capacity - 15:17 carries - 33:8 case [8] 10:24, 11:4, 11:7, 29:2, 29:18, 30:6, 30:9, 30:10 cat - 18:3 Center - 6:15 certain - 16:21 certify - 35:7 Chair [62] 2:4, 3:1, 3:7, 3:15, 3:18, 3:25, 4:10, 4:16,</p>	<p>4:20, 5:2, 5:5, 5:10, 5:18, 5:24, 6:10, 6:19, 6:25, 7:4, 8:10, 10:18, 10:21, 14:18, 14:21, 14:25, 17:5, 17:18, 17:24, 18:13, 21:2, 21:5, 25:9, 25:11, 26:2, 26:10, 28:9, 28:13, 28:16, 28:19, 28:22, 28:24, 29:1, 29:17, 30:3, 30:15, 30:19, 30:21, 30:23, 30:25, 31:3, 31:24, 32:1, 32:4, 32:6, 32:10, 32:19, 33:1, 33:3, 33:6, 33:8, 33:20, 33:22, 33:24 Chairman [12] 1:17, 3:11, 3:19, 5:4, 5:19, 6:11, 6:22, 15:10, 18:6, 25:15, 29:12, 32:14 change [4] 26:17, 27:19, 27:21, 27:22 changes [9] 16:8, 18:20, 26:22, 26:22, 26:24, 29:9, 32:7, 32:7, 33:14 circles - 24:6 circulars - 15:14 cite - 29:23 cited - 29:3 cites - 29:18 city [2] 9:25, 9:25 clarification - 29:13 clarify [2] 12:24, 14:4 Clark [2] 35:4, 35:7</p>
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classifications - 16:18 clear [3] 11:9, 18:7, 30:9 clearly [4] 11:21, 12:21, 12:22, 13:10 comes [4] 15:22, 15:25, 24:9, 24:11 coming [2] 33:25, 34:4 comment - 22:21 comments - 14:19 commercial - 21:17 commission - 35:21 committed [2] 11:25, 12:4 communicated [2] 4:4, 4:5 compliance [5] 1:8, 2:9, 7:20, 13:13, 17:4 compliant - 11:14 complicated - 26:14 complied - 25:13 comply [4] 11:18, 12:14, 13:7, 13:22 computer - 4:12 computer-aided - 35:11 concern [2] 26:19, 26:19 concerns - 26:12 conclusion - 29:24 conclusions [12] 2:16, 2:18, 2:18, 7:24, 8:1, 8:3, 14:15, 18:15, 18:18, 26:4, 27:21, 33:17 conditions [2] 11:20, 12:9 confirm - 32:16 confirmed - 32:21 confusing [3]	12:22, 13:15, 14:5 consider [3] 2:15, 7:17, 7:23 considered - 16:12 considers - 14:10 consistent - 31:4 construction - 13:8 consuming - 3:22 contain - 35:12 contamination - 18:3 context - 11:6 control - 6:16 convene - 34:10 correct [5] 16:13, 16:14, 19:14, 19:23, 21:11 correctly - 16:11 COSA - 13:17 cost [2] 20:5, 20:24 couldn't - 24:8 counties [3] 23:21, 23:23, 23:24 County [22] 8:21, 8:24, 9:7, 9:11, 12:23, 13:3, 13:8, 13:11, 13:18, 13:20, 23:17, 23:18, 24:4, 24:10, 24:23, 25:3, 26:25, 27:1, 27:2, 34:3, 35:4, 35:6 couple [3] 7:6, 15:1, 27:14 course [2] 21:21, 22:7 Court [4] 1:23, 30:6, 35:5, 35:20 Courts - 30:8 covenants - 21:19 CRUTCHER [3] 1:22, 35:5, 35:19	curious - 15:5 currently [2] 19:3, 19:8 <hr/> D <hr/> dates - 8:17 Dave - 3:18 DAVID [2] 1:18, 1:20 deal [4] 24:2, 26:15, 27:2, 32:11 dealing - 10:11 decided - 22:2 decision [7] 18:8, 29:5, 29:25, 31:11, 33:12, 33:15, 33:17 decisions - 15:25 deference [3] 30:8, 31:6, 31:13 deferred - 31:11 deliberate - 14:24 department [7] 19:22, 20:4, 20:25, 21:10, 22:3, 23:7, 23:9 Department's - 10:1 DEQ [44] 2:14, 3:9, 3:13, 3:13, 7:11, 7:22, 8:24, 10:11, 11:2, 11:9, 11:25, 12:2, 12:3, 12:6, 12:7, 12:10, 12:23, 13:6, 13:13, 13:16, 13:21, 14:6, 15:12, 15:13, 15:22, 15:24, 16:3, 19:24, 21:12, 23:3, 23:15, 23:16, 24:2, 24:3, 24:3, 24:13, 25:16, 30:8, 30:9, 31:7, 31:11, 31:19, 32:13, 32:22	DEQ's [2] 12:25, 18:2 design [3] 15:14, 19:16, 23:10 designed [2] 17:8, 23:11 detailed - 26:7 determined [2] 31:7, 31:19 develop - 15:23 developing - 11:10 development [3] 12:18, 15:24, 20:24 deviate - 12:9 dial [2] 2:24, 7:2 difficult - 26:15 dig - 24:22 diligently - 19:13 directing - 15:24 disconnect [3] 11:19, 25:14, 32:21 disconnected [9] 10:5, 10:6, 10:6, 10:7, 12:1, 12:5, 25:18, 25:23, 32:16 discussion [7] 26:5, 26:11, 30:17, 30:19, 31:24, 33:1, 33:20 dispute - 27:8 distinction - 15:19 dividing - 14:8 Docket - 1:4 Dr [5] 14:24, 17:19, 17:24, 21:5, 29:11 draft - 32:23 Duane [3] 1:5, 2:7, 7:18 <hr/> E <hr/> EarthJustice - 6:13 economy - 20:12 effect - 11:7	effort - 12:11 eight - 10:12 either [2] 2:17, 14:23 elements - 18:12 Elena [5] 4:3, 4:7, 4:10, 4:16, 5:20 email [2] 4:11, 4:17 emphasize - 13:24 empty [3] 19:11, 19:12, 20:20 engineer [9] 9:4, 9:14, 12:12, 15:17, 19:15, 19:16, 22:19, 23:10, 23:11 engineered - 23:13 ensure [2] 11:18, 13:22 ensuring [2] 13:6, 17:14 environment - 17:9 environmental [6] 1:1, 6:14, 17:2, 17:7, 19:18, 19:18 envison - 6:5 ES#36-93-L1-78 - 1:6 essentially [2] 11:6, 16:18 everybody [2] 20:4, 28:1 everybody's - 22:8 everything [5] 10:7, 10:8, 12:5, 23:3, 32:16 evidence - 17:6 Examiner [8] 2:19, 7:25, 10:25, 13:25, 14:14, 27:6, 27:19, 31:10 except [2] 8:2, 30:4 exception - 21:22 exceptions - 11:3 excuse [2] 8:21, 28:10 expires -	35:21 explain [3] 29:8, 29:17, 31:9 expressing - 27:11 extent - 26:16 <hr/> F <hr/> facilities - 13:7 facility - 21:16 facts [3] 10:23, 11:4, 27:8 faith - 10:8 falls - 16:16 familiar - 15:3 family [2] 16:19, 16:23 favor [4] 30:21, 32:2, 33:4, 33:22 felt [2] 22:15, 22:22 FID - 1:7 fight - 25:6 file - 11:2 filed - 11:24 final - 33:14 financial [2] 20:16, 25:5 findings [11] 2:15, 2:17, 7:24, 8:1, 8:2, 14:14, 18:15, 26:4, 27:20, 27:23, 33:16 fine - 32:15 five [6] 4:21, 4:25, 21:22, 29:15, 29:15, 29:25 flip - 27:12 FOFCOL [4] 11:22, 26:8, 27:9, 33:11 folks [3] 6:2, 6:4, 7:9 follow [2] 10:8, 22:6 followed [2] 26:18, 26:20 forego - 12:2 foregoing - 35:12 forth [2] 9:12, 9:12 forward [4] 10:25, 11:3, 16:1, 17:8 front [2]
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--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4:12, 8:17 frost - 24:11 froze [3] 24:7, 24:15, 25:1 frozen - 24:14 frustrating [2] 12:22, 13:14 frustration [2] 26:13, 27:10 full [2] 22:9, 33:11 future - 18:25	2:19, 7:25, 10:25, 13:25, 14:14, 27:6, 27:19, 31:10 helpful - 34:5 helps - 7:13 Here's - 22:5 hereby - 35:7 herein - 35:9 hereunto - 35:15 Hernandez [4] 6:9, 6:10, 6:11, 6:12 Hey [5] 22:4, 23:12, 24:10, 24:13, 24:23 Hi - 4:14 hire [5] 9:4, 9:14, 22:19, 23:10, 23:11 hired [2] 19:14, 19:16 hit - 10:25 hold [2] 7:5, 23:20 honest - 27:3 hook - 14:11 hooked - 19:2 hope [2] 34:1, 34:2 hotel - 19:9 hour - 34:9 houses [3] 15:15, 20:19, 21:22 hung - 5:20 hungry - 34:9	initial - 11:20 ins - 15:4 inspected - 25:25 install - 13:22 installed - 8:15 instead - 17:16 interested - 6:3 interpret - 9:24 interpretation [2] 27:22, 29:19 introduce [2] 2:5, 7:16 investment [5] 10:14, 20:3, 20:6, 20:9, 20:14 involved - 13:11 involves - 13:1 isn't [2] 3:22, 15:24 issue [17] 9:8, 9:10, 10:12, 11:15, 12:22, 15:7, 17:4, 20:1, 22:1, 22:1, 22:9, 22:10, 22:13, 22:23, 23:16, 30:4, 34:3 issues [7] 9:11, 13:13, 14:1, 14:2, 14:16, 15:17, 21:11 item [6] 2:5, 3:2, 3:23, 29:14, 29:15, 34:7	<hr/> K <hr/> kept - 20:2 <hr/> L <hr/> later [4] 8:18, 8:22, 16:5, 22:13 LAURIE [3] 1:22, 35:5, 35:19 lauriecrutcher@g - 1:24 law [22] 2:16, 2:18, 7:24, 8:2, 8:3, 10:24, 11:4, 11:15, 11:19, 12:14, 13:14, 13:23, 14:15, 15:4, 15:8, 27:21, 27:22, 29:10, 29:20, 30:13, 31:12, 33:17 laws [3] 26:14, 26:18, 26:20 laying - 27:7 least - 6:4 Lehnerr [16] 1:20, 3:19, 5:6, 5:7, 14:24, 17:19, 17:21, 17:24, 17:25, 18:23, 21:1, 21:5, 29:11, 29:12, 30:2, 31:22 Let's [2] 4:21, 5:2 level - 13:20 Lewis [2] 35:4, 35:6 literally - 19:6 living [3] 16:23, 20:12, 21:16 local [11] 8:20, 8:21, 19:21, 21:10, 22:3, 22:14, 22:24, 23:6, 23:12,	23:17, 23:18 longer - 27:15 looking - 17:8 looks - 6:23 loss - 10:15 lots - 21:20 Lunch - 34:12 <hr/> M <hr/> makes - 2:13 making [3] 15:25, 17:11, 33:13 March - 35:22 matter [10] 1:4, 2:7, 6:1, 6:3, 6:8, 7:7, 7:17, 7:17, 30:5, 34:11 maybe [5] 3:3, 4:13, 25:12, 26:4, 26:7 Mayer [7] 29:4, 29:14, 29:16, 29:18, 29:21, 29:25, 31:6 means [2] 29:23, 29:24 meet [2] 8:19, 23:5 meeting [3] 2:13, 4:7, 5:21 MEIC [4] 6:8, 7:10, 7:13, 30:9 Member [33] 3:19, 5:6, 5:7, 5:8, 5:9, 5:12, 5:13, 5:14, 5:15, 5:16, 5:17, 14:25, 15:10, 16:10, 16:15, 16:25, 17:5, 17:17, 17:20, 17:21, 17:21, 17:25, 18:23, 21:1, 21:3, 21:4, 25:7, 29:12, 30:2, 30:14, 31:22, 32:25, 33:19 members [5] 1:18, 3:11, 6:12, 10:22,	14:22 mentioned [2] 29:14, 29:14 met [2] 17:15, 25:21 minute [2] 3:4, 4:21 minutes [10] 4:25, 5:25, 7:10, 7:11, 7:12, 7:13, 7:14, 8:9, 8:11, 10:19 miss - 4:22 missed - 25:12 modify [2] 2:18, 8:3 moment - 3:3 Montana [7] 1:2, 6:14, 20:10, 30:6, 34:8, 35:2, 35:7 morning [3] 6:11, 7:3, 7:4 motion [10] 18:20, 30:11, 30:15, 31:4, 31:23, 32:2, 32:24, 33:4, 33:8, 33:10 move [8] 6:1, 29:6, 31:15, 31:15, 31:18, 32:6, 32:19, 33:16 multi-family - 15:6 multiple [5] 14:9, 14:10, 16:6, 16:19, 16:23 Murray [43] 1:5, 2:7, 2:12, 2:22, 3:2, 3:6, 3:7, 3:16, 3:21, 4:5, 4:7, 4:11, 5:20, 6:6, 6:23, 6:24, 7:1, 7:3, 7:5, 7:16, 7:18, 7:22, 8:5, 8:8, 8:12, 8:15, 10:18, 11:10, 11:24, 12:4, 14:18, 14:20, 18:10, 19:3, 19:8, 21:5,
<hr/> G <hr/> gain - 20:16 general - 14:16 generally [2] 14:13, 26:6 given - 19:6 giving - 31:12 goes - 24:5 golf - 21:20 gone [2] 10:4, 25:25 ground [5] 24:7, 24:17, 24:23, 24:24, 24:25 ground's - 24:14 guess [2] 13:5, 26:10 guys - 4:14 <hr/> H <hr/> HAGEN [2] 4:14, 4:17 half - 24:16 hall - 4:23 happens - 13:20 harm [3] 17:2, 17:7, 17:15 haven't - 21:9 having - 18:1 Havre - 25:20 he's [6] 2:12, 4:11, 5:22, 5:23, 23:7, 23:25 health - 17:10 hear [9] 2:11, 4:8, 4:15, 5:25, 7:21, 25:17, 26:11, 26:12, 27:7 heard - 18:16 Hearing [8]	<hr/> I <hr/> ID - 29:22 idea - 8:6 impacts - 27:16 implying - 9:24 include - 32:12 including - 18:21 income - 10:15 Indicating - 6:9 individual [7] 9:21, 9:21, 16:2, 16:19, 16:22, 21:25, 21:25 Information - 6:14 infrastructure - 21:8	<hr/> J <hr/> job - 27:6 JON - 1:19 JOSEPH - 1:19 judgment [2] 18:8, 18:19 judicial - 29:5 JULIA - 1:19 jurisdiction - 27:1 justified - 26:13			

<p>21:13, 25:8, 25:13, 25:16, 25:21, 27:11, 33:25 Murray's [3] 3:10, 18:25, 26:11 myself - 25:21</p> <hr/> <p style="text-align: center;">N</p> <p>nail - 11:1 named - 35:9 necessarily - 33:13 needed [3] 8:23, 9:3, 10:1 needing - 29:13 needs [4] 4:23, 11:17, 12:10, 12:20 nobody [2] 23:19, 24:17 non-restricted - 21:18 normally - 14:7 notarial - 35:16 Notary [3] 1:23, 35:6, 35:20 notes [2] 28:2, 28:5 nothing [2] 19:2, 23:6 notice [7] 1:4, 1:6, 2:7, 2:8, 7:18, 7:19, 11:24</p> <hr/> <p style="text-align: center;">O</p> <p>obviously - 15:16 occurred - 32:22 on-the-ground - 13:9 opportunity - 2:14 Opposed [3] 30:23, 32:4, 33:6 options - 2:20 oral [2] 7:21, 7:22 order [6] 1:8, 2:9, 7:20, 11:1, 12:3,</p>	<p>12:8 original [5] 9:20, 12:3, 12:9, 21:18, 32:15 Originally - 21:15 Otherwise - 6:1 outlook - 18:25 outs - 15:4</p> <hr/> <p style="text-align: center;">P</p> <p>pages [8] 27:13, 28:5, 28:10, 28:13, 28:16, 28:19, 28:22, 35:12 paragraph [10] 29:2, 29:4, 29:7, 29:18, 29:22, 30:11, 30:16, 31:14, 31:17, 33:14 Paragraphs - 31:18 parcels - 14:9 participate - 2:12 participating - 4:2 party - 14:23 passed - 31:5 Passes - 33:24 paying [2] 20:18, 20:19 payment [2] 18:9, 18:11 Peak [6] 6:3, 6:8, 7:10, 7:12, 30:5, 34:10 penalty [11] 1:8, 2:9, 7:20, 12:2, 12:6, 18:17, 18:21, 32:11, 32:13, 32:20, 32:22 pendency - 12:1 people's - 17:10 per - 16:22 permit [10] 9:7, 13:9, 24:10,</p>	<p>24:14, 24:16, 24:17, 24:19, 24:20, 24:21, 24:22 permits [4] 9:11, 9:11, 23:16, 24:4 permitting [3] 13:3, 13:8, 13:12 personal - 19:22 persons - 16:21 Petitioner - 6:14 Pettis [17] 3:11, 3:12, 3:15, 8:13, 10:19, 10:21, 15:1, 15:10, 16:14, 16:17, 17:5, 18:16, 25:12, 25:15, 32:11, 32:14, 34:6 Pettis's - 14:19 phonetic - 29:5 picked - 30:4 plan - 21:18 planning [4] 4:2, 13:6, 20:22, 20:23 plans [9] 22:5, 22:6, 22:16, 22:17, 22:19, 22:25, 23:4, 23:13, 24:24 please [4] 5:3, 8:12, 15:2, 32:8 point [7] 2:4, 14:23, 19:15, 20:5, 20:13, 24:6, 30:12 points [4] 7:6, 8:7, 28:6, 31:1 potential [2] 18:21, 19:18 power - 10:6 practical - 15:7 prepare - 7:9 PREPARED - 1:22</p>	<p>present [2] 3:6, 6:24 preventative - 17:9 primarily - 18:9 proactivity - 18:2 probably [3] 10:14, 26:13, 30:3 problem [7] 9:5, 9:16, 9:17, 9:17, 22:5, 22:23, 25:3 problems [2] 9:1, 13:11 proceed - 8:12 proceedings [5] 1:10, 2:1, 35:8, 35:10, 35:13 process [2] 13:1, 13:15 prohibition - 12:18 prohibitive [2] 20:5, 20:24 property [9] 11:11, 12:19, 19:1, 19:6, 19:9, 19:10, 21:8, 21:17, 21:19 proposed [5] 2:15, 7:23, 11:21, 13:7, 26:4 proposition [2] 29:3, 29:19 protections - 17:15 provide - 32:20 provided - 7:24 provision [2] 32:12, 32:20 public [7] 1:23, 16:6, 16:12, 16:20, 16:20, 35:6, 35:20 pursue - 25:4 push [2] 4:8, 20:18 putting [2] 22:10, 33:14</p>	<hr/> <p style="text-align: center;">Q</p> <p>queue - 5:23 quickly - 27:25 quite - 15:9 quits - 10:13 quorum - 5:18</p> <hr/> <p style="text-align: center;">R</p> <p>raise - 9:17 rationale - 15:9 reach - 4:18 reacting - 17:16 ready [2] 10:13, 23:13 real - 21:14 really [2] 27:7, 34:9 reason [2] 6:15, 6:18 reasons - 19:23 rebuttal - 7:13 recess [2] 5:1, 34:12 recommended - 18:8 reconvene [2] 4:24, 5:2 record [4] 3:5, 17:6, 27:21, 35:13 reflect [2] 18:18, 32:17 refused - 9:7 regarding [3] 1:6, 2:8, 7:18 regardless - 13:19 regulatory [2] 12:25, 14:11 Reiten [4] 1:19, 5:12, 5:13, 32:25 reject [3] 2:17, 8:1, 8:2 relate [2] 7:8, 29:16 relationship - 12:23 remand [2] 2:19, 8:4 remedy - 27:4 remind - 27:18 remove [2] 11:11, 12:13</p>	<p>reported - 35:10 Reporter [3] 1:23, 35:5, 35:20 represented - 26:1 representing - 3:13 request - 25:14 requested - 32:21 require - 33:13 requires - 15:12 requiring - 20:4 resolve [2] 9:16, 19:25 resolved - 34:4 respect - 26:25 respond [6] 2:14, 4:13, 8:14, 10:20, 14:16, 14:19 response [29] 3:9, 3:17, 5:11, 7:23, 24:12, 25:1, 25:10, 26:9, 28:8, 28:12, 28:15, 28:18, 28:21, 28:23, 28:25, 30:18, 30:20, 30:22, 30:24, 31:2, 31:25, 32:3, 32:5, 32:9, 33:2, 33:5, 33:7, 33:21, 33:23 restriction - 15:5 result [2] 17:2, 29:9 return [5] 20:3, 20:6, 20:9, 20:14, 20:20 revert - 11:19 review [12] 1:1, 12:10, 13:1, 16:3, 19:15, 21:18, 21:21, 21:24, 26:7, 27:20, 29:6,</p>
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29:6 reviewed [4] 11:14, 11:18, 12:20, 14:12 reviews - 13:6 rewrite - 32:20 rightfully - 14:1 risk [2] 19:18, 19:19 roll - 5:3 RPR [3] 1:22, 35:5, 35:19 Ruffatto [71] 1:17, 2:4, 3:1, 3:7, 3:11, 3:15, 3:18, 3:20, 3:25, 4:10, 4:16, 4:20, 5:2, 5:4, 5:5, 5:18, 5:19, 5:24, 6:10, 6:12, 6:19, 6:22, 6:25, 7:4, 8:10, 10:18, 10:21, 14:18, 14:21, 15:10, 17:5, 17:18, 17:24, 18:6, 18:13, 21:2, 25:9, 25:11, 25:15, 26:2, 26:10, 28:9, 28:13, 28:16, 28:19, 28:22, 28:24, 29:1, 29:13, 29:17, 30:3, 30:15, 30:19, 30:21, 30:23, 30:25, 31:3, 31:24, 32:1, 32:4, 32:6, 32:10, 32:14, 32:19, 33:1, 33:3, 33:6, 33:8, 33:20, 33:22, 33:24 rule - 29:20 rules [3] 10:9, 15:12, 15:13 ruling - 11:7 run - 4:23 rural - 20:10	RV [4] 11:12, 14:2, 14:10, 19:11 <hr/> S <hr/> sake - 6:2 salvage - 34:2 Sandy [2] 4:4, 5:3 sanitarian [2] 8:21, 34:3 sanitation [9] 14:5, 15:11, 19:21, 21:10, 22:3, 22:14, 22:24, 23:7, 23:12 sanitationist [2] 23:22, 23:24 sanitationists - 23:19 sanitations - 23:21 sat - 24:7 says [7] 21:24, 23:9, 23:14, 24:3, 30:7, 31:10, 32:13 schemes - 12:25 SCHERER [12] 2:24, 4:6, 5:4, 5:6, 5:8, 5:10, 5:12, 5:14, 5:16, 5:19, 6:22, 7:1 seal - 35:16 seconded - 30:16 seeing - 18:3 seeking - 12:6 seem [2] 6:16, 14:5 sense - 30:1 separate [3] 12:25, 13:3, 13:13 septic [26] 8:15, 8:18, 8:22, 9:4, 9:15, 9:19, 9:21, 10:2, 13:3, 13:8, 13:11, 13:25, 17:11, 17:13, 18:1, 19:3, 19:16, 21:25, 22:10, 22:11,	22:17, 23:10, 23:14, 24:8, 24:9, 24:19 served [2] 15:16, 16:12 serves - 15:15 sewer - 9:25 Shiloh - 6:12 shoot [2] 4:10, 4:17 shorthand - 35:10 shows - 6:6 Signal [6] 6:3, 6:8, 7:9, 7:12, 30:5, 34:10 Simpson [11] 1:18, 5:8, 5:9, 14:25, 15:11, 16:10, 16:15, 16:25, 17:6, 17:17, 30:14 sitting [5] 19:11, 19:12, 20:20, 24:15, 24:24 situation [2] 17:3, 27:7 six [8] 2:25, 4:8, 7:2, 14:2, 19:11, 23:21, 23:23, 23:24 size - 15:14 sizes - 15:12 slots - 19:11 Smith [3] 1:19, 5:14, 5:15 solid - 13:2 somehow - 3:20 someone - 28:10 someplace - 20:12 sort [2] 13:10, 18:3 sounds - 21:7 spaces [3] 11:12, 14:3, 14:10 spat - 22:15 SS - 35:3 stand - 29:3 standards [2] 8:19, 23:5 standpoint - 15:7 star [3] 2:24, 4:8, 7:2	start [5] 18:2, 18:13, 26:7, 26:10, 28:4 state [17] 1:2, 8:19, 8:20, 9:3, 9:8, 9:9, 9:10, 11:15, 11:19, 12:14, 13:14, 13:23, 24:13, 25:2, 27:5, 35:2, 35:7 stated [2] 9:20, 29:4 statement [2] 29:10, 31:12 states - 21:19 statutes - 17:7 stay - 19:10 step [2] 26:3, 26:5 STEVEN - 1:17 stop - 11:10 storm - 13:2 straight [2] 10:24, 11:3 stricken - 29:7 strictly - 17:3 strike [5] 30:11, 30:16, 31:5, 31:7, 31:19 SUB-18-01 - 1:5 subdivision [8] 9:20, 13:1, 13:16, 14:10, 15:4, 19:15, 21:21, 21:24 subdivisions [3] 14:6, 14:8, 15:11 sudden - 23:5 sufficiently - 17:12 summarize - 21:14 summary [2] 18:8, 18:19 summer - 25:20 support - 29:25 supports - 29:21 Supreme - 30:6 suspicious - 3:1	swallow - 10:14 system [31] 8:16, 8:19, 8:23, 9:4, 9:15, 9:19, 10:1, 12:13, 12:15, 13:4, 14:2, 15:6, 15:6, 15:23, 16:2, 16:6, 16:7, 16:13, 16:15, 16:19, 16:19, 16:20, 16:20, 16:22, 17:11, 17:13, 19:3, 22:11, 22:11, 23:10, 23:14 systems [6] 13:22, 13:25, 15:13, 15:15, 15:20, 19:16 <hr/> T <hr/> taken [3] 5:1, 34:12, 35:8 taking - 28:4 taxes [2] 20:19, 20:19 telephone - 2:23 telling [2] 23:25, 34:1 ten [3] 7:13, 8:16, 10:19 term - 27:15 thank [15] 3:15, 4:20, 10:18, 10:21, 14:17, 16:25, 17:17, 19:7, 21:1, 21:4, 26:2, 30:2, 33:25, 34:4, 34:6 Thanks - 25:7 there's [11] 9:25, 15:19, 16:18, 17:6, 20:3, 20:9, 20:13, 20:16, 23:22, 25:5, 31:16 they'd - 19:25 They'll - 24:2	they're - 18:17 thing [7] 11:23, 12:21, 20:17, 22:9, 22:18, 31:17, 31:20 third [2] 9:4, 12:15 though [2] 8:20, 13:24 threshold - 16:11 throw - 20:7 tied - 10:9 tired [3] 3:2, 10:16, 10:16 today [2] 8:17, 22:24 touch - 3:21 towel - 20:8 transcribed - 35:11 TRANSCRIPT - 1:10 transcription - 35:11 traveling - 8:17 tried [2] 10:8, 19:13 true - 35:12 turned - 23:2 type - 13:9 types [2] 15:19, 17:14 <hr/> U <hr/> ultimately [5] 11:15, 12:7, 13:12, 13:19, 17:7 unable - 9:6 unanimously [2] 33:9, 33:24 understand [6] 15:9, 16:10, 18:24, 19:2, 26:16, 27:10 understanding [2] 25:13, 25:24 understood - 4:2 undisputed - 10:23 unethical [2] 22:22, 22:25 unfortunately - 23:18 unit - 19:8 units - 16:23
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>unless - 27:20 unmute - 4:9 unmuted - 2:25 using [2] 29:24, 35:11</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>versus [2] 15:6, 30:9 VIA - 1:10 Vice - 5:10 view [2] 26:20, 27:5 violation - 10:3 violations [3] 1:7, 2:8, 7:19 voice - 6:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait [2] 3:3, 4:22 waiting [2] 4:22, 5:22 waive [2] 18:17, 32:13 waived - 32:22 waiver - 32:11 waiving - 18:21 wandered - 3:23 wanted - 20:15 wanting [2] 18:24, 19:4 wants [5] 11:13, 12:8, 12:19, 20:5, 20:25 waste - 13:3 wastewater [2] 12:13, 13:2 we'd - 9:1 we'll [7] 3:3, 4:24, 26:7, 30:25, 32:6, 32:23, 34:9 we're [12] 2:20, 4:21, 6:21, 12:24, 15:23, 16:1, 16:2, 16:8, 18:14, 22:23, 30:12, 34:7 we've [2] 6:19, 6:20</p>	<p>wells - 17:12 wetland - 17:13 what's - 27:2 whatever [4] 6:15, 16:7, 17:13, 18:20 WHEREOF - 35:15 WHEREUPON - 2:1 whole [5] 22:7, 22:22, 22:23, 24:7, 27:20 winter [2] 24:7, 24:8 wish - 6:17 WITNESS - 35:15 won't [4] 6:18, 7:8, 22:18, 32:23 wondering [2] 3:20, 18:5 works - 15:21 wouldn't [3] 8:24, 8:25, 30:3</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>you'd [2] 9:16, 17:22</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zoned - 21:17 ZOOM - 1:10</p>				
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