Neighbors protest Hell Roaring home site

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A five-year long logging and bulldozing project on private land next to Hell Roaring Creek has neighbors and watchdog groups up in arms, especially after last week's heavy rains washed muddy waters into the creek and down to the lake and flooded part of East Lakeshore Drive.

The landowner, however, claims a "witch hunt" has been going on ever since owners of property above the site filed a lawsuit against him that dragged on for years, costing him $1.5 million in lost business and settlement costs.

"If they'd just left us alone, we'd be done with the project," said Whitefish-resident Tom Thomas. "Our home was supposed to be done in 2002, but they used flyers and notices and got all the neighbors against us."

Thomas said road improvements at his property halted last week after his D8 Cat got stuck in mud, but once the road is finished, "only a monsoon could bring water down the hillside like it did last week." He said once he heard about flooding on the county road, he changed the layout of the eight-to-10 detention ponds he had built on the property.

"The problem was fixed in 24 hours," Thomas said. "Go down to Columbia Falls and look at Flathead River. More mud goes by in one second than came down my hillside all week."

The county road department sent three men to the site for several hours June 1 and 2, said road foreman Greg Iverson. Sludge had built up, plugging a culvert, he said.

Members of the Whitefish Lakeshore Protection Committee and the Whitefish Lake Institute, however, regarded the muddy water flowing off Thomas' property as a significant water quality issue. Separately, they collected samples from the creek and the lake near the creek's outlet and sent the samples to the Montana Environmental Lab, in Kalispell, for analysis.

Both groups say they sent complaints to the Department of Environmental Quality, claiming the owner violated state storm water discharge regulations.

Thomas' 40-to-50 acre property is located on steep hillsides between Hell Roaring and Eagle creeks, about 3.3 miles past Big Mountain Road. Neighbors claim Thomas has been logging and bulldozing there for several years, creating a scar on the mountain that is visible from the lake.

Thomas claims the property had already been cleared of trees when he bought it in 1999.

"I heard they took about 110 loads of logs down from there," he said. "We've only taken three loads down, and that was blow down and slash we've been cleaning up."

Since then, he said, he has leveled about 20 acres for a ranch, pasture and trees. Some of that has been Hydro-seeded, and construction on his home has finally started. He also said he cleaned up an unofficial dump site on his property that contained appliances and construction materials.

Thomas received a 310 permit for construction at the site from the Flathead Conservation District on Sept. 12, 2000. According to the permit, Thomas was required to keep activities at least 10 feet away from the top of any stream banks, limit activities to his own property, shape, seed and mulch all disturbed ground, retain as much of the original vegetation as possible, and install temporary erosion control measures during construction.

"All work should be completed in an expeditious and careful manner as possible and shall take place during low-flow periods only," the permit reads.

No fill dirt was allowed by the permit, and Thomas was required to contact a riparian specialist who could recommend the proper types of vegetation to use around rocks.

DEQ received a complaint about the Thomas site on June 25, 2002, from John Schwarz, of Schwarz Engineering, who contacted open-cut mining investigator Rod Samdahl. Schwarz reported that Thomas was "mining a steep hillside that spills sediment into drainages leading to Hell Roaring Creek and Whitefish Lake."

Thomas claims the complaint was connected with the lawsuit that dragged on and prevented him from finishing work on his property.

Samdahl investigated the complaint and soon established that a mining operation was not underway. But noticing that "the project is severe, producing intense visual impacts as well as runoff and sedimentation problems for Hell Roaring Creek and possibly Whitefish Lake," Samdahl referred the case to DEQ's Water Protection Bureau.

"This activity has caused a substantial scar visible from many locations on and around Whitefish Lake," he said in a memo at the time.

Thomas "has cut down all the trees and stripped all vegetation and native topsoil from the majority of the 40-to-50 acre site," Samdahl reported. "Topsoil has been used as fill in draws and drainages as deep as 50 feet in places." Roads and switchbacks were cut into the steep hillside without adequate drainage diversion, he said.

Cuts and fills were made from glacial till, a mixture of rock, silt and clay that "is highly erodable by water," he said. A "fill wanted" sign near the road suggested Thomas wanted to fill in a newly created swampy area near the road, Samdahl said, but "that would remove the trap for sediment that has inadvertently protected the downhill landowners and the county road from being inundated with water and sediment during spring runoff."

Samdahl said he was concerned that "denuding this large surface area of trees and ground cover, which act as natural 'water pumps,' has disrupted the natural ability of the land to consume rain and snowmelt and return the water to the atmosphere through trans-evaporation."

Most alarming, however, was Samdahl's concern that "it is highly unlikely that this site is repairable without expensive design work, structural support and soil importation." He estimated about 32,000 cubic yards of topsoil was missing.

"Costs to replace topsoil at $15 per cubic yard (delivered) would be $480,000," he said. "Costs to re-design and construct adequate roads with water-bars, slope revegetation and erosion controls are out of range for economic reality for this site."

The Whitefish Lakeshore Protection Committee has been aware of Thomas' activities for some time, but last week's rains drove them into action. John Muhlfield, a hydrologist and member of the group's board, looked over the site and reported that Hell Roaring Creek's channel was "moving laterally" and cutting into the slope. He said all the conifers had been logged, creating "wind-throw" for the remaining birch trees that are vulnerable and dying. Claiming Thomas violated state water quality regulations, Muhlfield filed a complaint to DEQ on behalf of the committee.

Mike Koopal, a partner at Watershed Consulting and executive director of the newly-formed Whitefish Lake Institute, also took action last week. He said he planned to file a complaint with DEQ and offered his services to Thomas to help get best-management practices in place at the site.

Thomas said he is following his own plan for the property, and that he is abiding by all government regulations.

"Within a month, everything will be done," he said.

Calls to the DEQ by the Whitefish Pilot were bounced around between the permitting and enforcement departments. Ed Coleman, a water quality enforcement officer, said the DEQ had received three separate complaints with photographs about the Thomas property — one from the Whitefish Lakeshore Protection Committee and two anonymous ones.

Coleman said the permitting people need to establish that a "significant violation" has taken place before enforcement action could begin. Typically, enforcement could include monetary penalties, a clean-up order, stabilization measures and mandatory best-management practices to prevent further impacts.