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March 10, 2023

VIA EMAIL AND COURIER DELIVERY

Madison County Commissioners
Dan Allhands, District 1, Chairman
Ron Nye, District 2
Bill Todd, District 3
Post Office Box 278
Virginia City, Montana 59755
Email: madco@madisoncountymt.gov

RE: Opposition to Major Subdivision Preliminary Plat Application – Mile Creek RV Park,
440 Montana Highway 87, Cameron, Madison County, Montana

Honorable County Commissioners:

This information is submitted to you in advance of your decision on the Mile Creek RV Park Major Subdivision Preliminary Plat Application (“Application” or “Subdivision Application”), scheduled for March 14 and March 15, 2023. It is provided on behalf of Save Madison Valley and approximately seventy (70) concerned citizens and property owners in the vicinity of the Mile Creek RV Park, proposed four miles south of the US Hwy 287 N and Montana Hwy 87 junction in Cameron, Madison County, Montana (“Mile Creek RV Park” or “RV Park (“Concerned Citizens”). See the list of Concerned Citizens included as Exhibit A.

As evident from the significant public comment submitted to date, the Concerned Citizens are adamantly opposed to the proposed Mile Creek RV Park Major Subdivision (“Subdivision”), which would introduce unlimited visitors associated with hundreds of recreational vehicles (“RVs”) to this rural residential and agricultural area of Madison County near Reynolds Pass and the Madison River. They have expressed this concern in extensive public comment over the last year, which includes relevant evidence, facts and data, and multiple expert reports and comments addressing the Application’s inadequacies, failure to comply with the Madison County Subdivision Regulations, and lack of substantial compliance with the Madison County Growth Policy.

The following is intended to summarize the firm's previous correspondence in the Planning Board record, but is in no way meant to replace it. That correspondence will be referred to in the comments below and is attached for your ease of reference.

On behalf of the Concerned Citizens, we request that this letter and exhibits, and the public comment and firm's previous correspondence to the Planning Board be included in the Madison County Board of County Commission's ("Commission") record of decision for the Mile Creek RV Park and Application and we respectfully request that you deny the proposed Subdivision Application for the reasons explained in the record and summarized herein.

Thank you in advance for your time, attention to, and consideration of this matter, which is of significant interest and importance to the Concerned Citizens.

Board of County Commissioners Public Meeting

At least one hearing is required for Subdivision Applications, and typically both the planning board and governing body each hold public hearings.¹ Two public hearings would have been appropriate given the significant public interest in the Mile Creek RV Park Major Subdivision Application. However, we have been advised that the County Commission will not hold another public hearing on the matter, but that public comment will be accepted at the County Commission meeting on March 14 and March 15, 2023 to consider the Mile Creek RV Major Subdivision.

Given that you were not present at the Planning Board's public hearings on this matter and given the significant factual information and data presented at those public hearings, which have direct bearing on the applicable review criteria, my clients intend to provide comment so that the Commission may be fully informed with respect to the public's concerns and the issues related to the Subdivision Application.

November 18, 2022 Planning Board Letter

On behalf of the Concerned Citizens, we submitted a letter and exhibits dated November 18, 2022 addressed to the Planning Board ("Planning Board Comment Letter") which demonstrated the Application for the Mile Creek RV Park:

- does not satisfy the requirements of the Madison County Subdivision Regulations ("Subdivision Regulations"),
- does not substantially comply with the Madison County Growth Policy ("Growth Policy"), and,

¹ Montana Planning Board Member's Handbook, Montana Department of Commerce, September 2020, https://comdev.mt.gov/_shared/CTAP/docs/Planning-Board-Handbook-2020.pdf (accessed March 3, 2023), page 25.

- does not provide sufficient facts and data to address the seven (7) public interest criteria pursuant to 76-3-608(3) (“Primary Review Criteria”).

The Subdivision Regulations, together with the Growth Policy, and Primary Review Criteria are sometimes referred to herein as the “Applicable Review Criteria”.

That Application largely remains the same, so the issues remain. Conditions have been suggested to address the deficiencies; however they do not make up for the deficiencies, and largely rely on information to be provided after the Commission’s decision on the Application – which is too late.

That letter, together with the expert reports listed below, is attached for your review as Exhibit B and incorporated by reference as many of the issues raised have not been addressed by the Planning Board’s recent recommendation to approve the Subdivision Application with conditions. The issues related to the lack of compliance with the Applicable Review Criteria are addressed below in the Summary of Issues.

Expert Reports and Comments

The Concerned Citizens hired the following experts to review the Application.

- Andrew G Gordus, Ph.D., Wildlife Biologist, Wetland Biologist, Water Quality Biologist, Ecotoxicologist, reviewed the Environmental Assessment and identified inadequacies. *See* Exhibit B to November 18, 2022 Letter.
- David Donohue, MS, PG, and Senior Hydrologist with HydroSolutions, Inc. reviewed the Mile Creek Application and identified specific areas in which the Application and EA, were insufficient or inaccurate and do not address requirements of the Subdivision Regulations (“HydroSolutions Analysis”). The HydroSolutions Analysis identifies additional requirements necessary for approval. *See* Exhibit C to November 18, 2022 Letter.
- Mike Sanctuary, MS, Environmental Studies, Vice President, Confluence Consulting, Inc., and former Montana Fish, Wildlife, and Parks staff, prepared A Wildlife Assessment of Mile Creek RV Park, dated November 11, 2022, addressing wildlife and wildlife habitat not fully addressed by Application as required by the Subdivision Regulations (“Wildlife Assessment”). *See* Exhibit D to November 18, 2022 Letter.
- John Nitzel, PE, observed deficiencies in the Mile Creek Ranch RV Park Subdivision Traffic Impact Study prepared by E5 Engineering, PLLC, March 2022 (“TIS”), as explained in the Mile Creek Ranch RV Park Subdivision Review of Traffic and Safety Submittal dated November 6, 2022 (“Nitzel Traffic Safety Comments”). *See* Exhibit E to November 18, 2022 Letter.

In addition, see additional expert comments submitted by David Donohue, M.S., P.G., Senior Hydrogeologist, HydroSolutions, Inc., dated March 3, 2023 and Mike Sanctuary, MS, Environmental Studies, Vice President, Confluence Consulting, Inc., also dated March 3, 2023, attached hereto as Exhibit C.

Subdivision Application and Burden of Proof

The basis for the Commission’s decision to approve, conditionally approve, or deny the proposed Subdivision is whether the Subdivision Application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of the Montana Subdivision and Platting Act (“MSPA” or “Act”)². As explained in the November 18, 2022 Planning Board Letter, the Application does not demonstrate compliance with the MSPA.

State law requires that local subdivision regulations be adopted, enforced, and administered to avoid “subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.”³ As explained in the November 18, 2022 letter to the Planning Board, including the expert reports, the research and data provided by the Concerned Citizens, and public comment, the proposed Mile Creek RV Park will result in unnecessary environmental degradation and impacts to wildlife and wildlife habitat, danger of injury to health, safety, and welfare by reason of natural hazards, including but not limited to fire and wildland fire, due to location of the proposed Subdivision in the “high-risk Wildland Urban Interface”⁴, distance to emergency service providers and emergency response times that do not meet the Subdivision Regulations’ required time limit⁵, unmitigated traffic impacts, and a lack of existing public services. Approval of the preliminary plat will adversely impact existing limited services and result in the need for excessive public expenditure to mitigate those impacts.

In accordance with state law, “the governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review...” and, while “a governing body may not unreasonably restrict a landowner’s ability to develop land”, “it is recognized that in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval of the

² See Section 76-3-608(1), MCA.

³ See Section 76-3-501, MCA.

⁴ As stated by the Applicant at page 7 of the EA under potential natural hazards.

⁵ See Subdivision Regulations, IV-A, General Standards, Section 14.b, Chapter IV-19-IV-20.

subdivision. *See* Sections 76-3-608(4)-(5), MCA. Based on the record, the impacts of the proposed Mile Creek RV Park Subdivision have not been mitigated and preclude approval. The November 18, 2022 letter and expert reports explain at length the lack of compliance with the Subdivision Regulations and Growth Policy and failure to adequately address and mitigate impacts on the Primary Review Criteria.

The Applicant has not met its burden of demonstrating that the Application for the Mile Creek RV Park meets the requirements of the MSPA and the Subdivision Regulations, nor that it substantially complies with the Growth Policy, nor that the Primary Criteria have been adequately addressed as explained in the November 18, 2022 letter, the expert reports, and other public comment of record. Accordingly, approval of the proposed Mile Creek RV Park Subdivision based on the information in the record would be arbitrary, capricious, and unlawful.

January 26, 2023 Letter to Board of County Commissioners and Planning Board

Supplemental Findings/Conditions

Supplement Information for Review of the Mile Creek RV Park, dated January 12, 2023, was prepared by the County or its agents, which included additional draft findings and new conditions of approval (“*Supplemental Findings/Conditions*”), many of which acknowledged the adverse impacts of the proposed RV Park and that the governing body does not have sufficient and adequate information on which to make an informed decision on the Subdivision Application.

We addressed the inadequacies of the Supplemental Findings/Conditions in the January 26, 2023 letter to the Commission, which is attached for your review as Exhibit D and incorporated by reference. Many of the issues raised were not addressed by the Planning Board’s recommendation for conditional approve of the Subdivision Application. Several of the new conditions require the Applicant to undertake additional studies to address requirements of the Subdivision Regulations, the result of which are more properly in front of you now so that you may make an informed decision on the Subdivision Application, not provided after the decision – when the County’s opportunity to address the results of the studies has been foreclosed upon and no further conditions can be imposed. *See* Section 76-3-610, MCA. If the Subdivision was approved, and the studies indicate a lack of water supply or significant impact to the aquifer, for example, the County cannot rewind the clock to impose mitigation in the form of conditions in response to those studies.

The Supplemental Findings/Conditions appear to be a result of and in response to the extensive public comments, expert reports and testimony, and information and data provided to the Planning Board. Many of the findings and conditions suggested in the *Supplemental Findings/Conditions* support the Concerned Citizens position that the proposed Mile Creek RV Park Subdivision does not meet the requirements of the Applicable Review Criteria in a Opposition to Major Subdivision Preliminary Plat Application
Mile Creek RV Park, Madison County, Montana

significant number of respects, and that impacts are plainly unmitigable, thus it should be denied.⁶ As explained in the letter, many of the conditions were inadequate to address the significant issues raised.

March 6, 2023 Letter to Board of County Commissioners and Planning Board

Confusion Regarding the Preliminary Plat that Formed the Basis for the Planning Board Recommendation, Number of RV Spaces, and Phases; Studies and Material Information Lacking in the Subdivision Application

As explained in the March 6, 2023 letter, at the conclusion of the January 30, 2023 Planning Board Public Hearing there was significant confusion among contract planner Jerry Grebenc, the Planning Board members, Ms. DePuy, the MACo attorney, and the Applicant's engineer, regarding which version of the preliminary plat the recommendation of the Planning Board was to be based upon, and the corresponding number of RV Spaces being considered for each of the three phases. As a result of the confusion over this material information related to the proposed RV Park, the recommendation from Ms. DePuy was to start the subdivision process over. This is commonly required when changes are material – that is essential or relevant to a subdivision application – in order for the local governing body to adequately review the subdivision and its potential impacts. The studies addressed in Conditions are also material to any decision on the Subdivision Application, as further explained below. Absent clarity on this material information, any decision on the proposed Subdivision would have an inadequate factual basis.

We agree with the attorney's recommendation that the Mile Creek RV Park should be required to start the review process over given the material nature, relevance, and importance of an accurate preliminary plat application with phasing, and to provide the necessary studies in advance of any approval, rather than after the fact, to ensure the County has sufficient and adequate information on which to base an approval, conditional or otherwise. This would also allow the Applicant to do the right thing by providing the missing information and data that is necessary for the Commission to review the Application and make an informed decision. See additional concerns and comments raised in the March 6, 2023 letter.

⁶ See Sections 76-3-608(4)-(5), MCA, as follows.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) but may not require a set-aside of land or monetary contribution for the loss of agricultural soils. Pursuant to 76-3-620, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval of the subdivision.

Authority of Planning Board and Planning Board Analysis

Of grave concern to the Concerned Citizens was the manner in which the Planning Board treated, or rather disregarded, public comment as explained in detail in the March 6, 2023 letter. As noted in that letter, through comments and actions of its members, the Planning Board conveyed a significant lack of understanding of its obligations to the public interest and clearly displayed a bias toward the Applicant, contrary to the requirements of the Subdivision Regulations, governing state statutes, and guidance from the Planning Board Handbook prepared by the Department of Commerce. Individuals serving on the Planning Board have an obligation to act in accordance with state law, taking into consideration the public health, safety, and welfare of Madison County citizens. Based on the testimony on Planning Board members and its dismissive treatment of and negative attitude toward public comment at the multiple public hearings on the Mile Creek RV Park, is patently clear the Planning Board does not understand its obligations.

The Subdivision Regulations require that the Planning Board consider all relevant evidence relating to public health, safety, and welfare to determine whether the proposed Subdivision should be recommended for approval, conditional approval, or denial, and in doing so, it shall consider the information submitted by the public, the Growth Policy, the seven (7) public interest Primary Review Criteria⁷, effect of the proposed Subdivision on the local economy and public resources, among other applicable criteria.⁸

Planning staff and Ms. DePuy attempted to address some of the numerous issues with the Application through the *Supplemental Findings/Conditions* and the additional Findings and Conditions offered in the Exhibit 1: Mile Creek Major Subdivision Public Comment Analysis Updated March 1, 2023. 94-page Public Comment Analysis updated March 1, 2023 (“*March 1 Additional Findings and Conditions*”). The *March 1 Additional Findings and Conditions* included at least 20-pages of new analysis and/or conditions. Despite this, the Application remains lacking in numerous areas, significant issues remain, and a number of the conditions are not timely enough to afford meaningful information for the Commission to rely on in making a decision on the Application and will result in a strain on County resources. This is further addressed in the Summary of Issues below.

Summary of Issues

The Concerned Citizens appreciate the additional conditions suggested in the *Supplemental Findings/Conditions* and the *March 1 Additional Findings and Conditions*. However, many of those conditions rely on after the fact studies, which are not adequate to mitigate impacts as addressed below. The final recommended conditions were not available in time to be

⁷ Section 76-3-608(3), MCA.

⁸ See Subdivision Regulations, Section II-E.1.g.

considered, and these comments rely on the suggested conditions in those County Planning documents, likely to form the basis of the final recommended conditions.

The following summary of issues is provided in no particular order. This summary does not replace the significant body of evidence and issues raised in the previous letters of record attached hereto and provided by public comment.

Inadequate Environmental Assessment and Consideration of Public Interest Review Criteria

The Environmental Assessment (“EA”) prepared for the proposed Mile Creek RV Park to address the seven public interest criteria pursuant to 76-3-608(3), is incomplete and does not address all requirements of Appendix 10 of the Subdivision Regulations. These public interest criteria are among the criteria for local government review and the **basis for the governing body’s decision** to approve, conditionally approve or deny a proposed subdivision. Where the Application does address the criteria, conclusory statements are provided, many with little or no supporting documentation. This is addressed in detail in the November 18, 2022 Planning Board letter and exhibits thereto, and in part, below.

The Subdivision Regulations further state that “[i]mpacts should be considered at three levels: (1) the immediate site of the proposed subdivision, (2) the general vicinity or neighborhood, and (3) the county. A thorough and adequate Community Impacts Report, taking into consideration these three levels of impacts were not located in the EA. The *March 1 Additional Findings and Conditions* claim that impacts in the vicinity were considered. That does not include impacts to the County, and an incomplete EA, relying on conclusory statements that are not supported, is an inadequate basis on which to base a decision.

The *Effect on the Other Resources in the County*, including local county road conditions and outdoor recreation, including local rivers, streams, lakes and trails, detailed in numerous public comments, were not addressed by the Application nor the conditions, contrary to the Subdivision Regulations, Appendix 10-7, #8. No mitigating conditions were offered. See the *March 1 Additional Findings and Conditions*, pages 17 and 91.

The *Effect on the Local Economy*, including overutilization of recreational resources, a major economic sector of the local economy, lack of support for economic viability of family farms and ranches, and strain on public services, were also detailed in numerous public comments and herein, and were also not addressed, contrary to the Subdivision Regulations, Appendix 10-7, #9. Again, no mitigating conditions were offered.

As explained in the November 18, 2022 Planning Board Letter, no explanation nor data were provided in the EA to address what the proposed Subdivision will require of local law enforcement, the fire district, quick response unit, and ambulance service, as the result of 148

RV Spaces and the associated influx of hundreds of temporary residents in Madison County.⁹ Nor were estimates of annual cost, increased demand, or other measures associated with the demands of 148 RVs, related vehicles, and influx of hundreds of people on these local services included. No information was provided regarding the demand for local services resulting from the current land uses as compared to the local services demanded with the addition of 148 RV spaces proposed. Absent this information, the EA is deficient in this critical area of analysis and cannot be relied upon to make a finding that these services can be provided.¹⁰

The *March 1 Additional Findings and Conditions* admit the increase in property taxes may have been overestimated in the Environmental Assessment. Based on the thorough analysis in the November 18 Planning Board letter, the property tax increase was woefully overestimated and does not correspond to the financial impacts to the County. This is one of many flaws in the EA.

The Application failed to take into account the *economic benefits of wildlife, wildlife habitat, local fisheries* and the associated hunting and fishing that rely on those natural resources prevalent in the Madison Valley, which will be adversely impacted by the Subdivision, 148 RV Park spaces, and associated visitors. See Wildlife Assessment, Exhibit D, the Fish, Wildlife and Park PowerPoint, Wildlife Resources in the Madison Valley, by Julie Cunningham, included as Exhibit H and incorporated by reference. Fish, Wildlife and Park provided the following regarding the economic benefits of wildlife.

- The Madison County economy relies upon wildlife conservation for tourism, watchable wildlife, and health of ecosystems, including the Greater Yellowstone Ecosystem.
- “Big game hunting brings big revenue” from “Transportation (gas, airfare)”, “Food, beverages, lodging”, “Equipment purchases”, “Visits to local stores/services” and “Guide fees”.
- 2016 revenue estimates – Madison County – Elk hunters = \$15 million, Deer hunters = \$7 million, Antelope hunters = \$670,000.

Based on the adverse impacts raised herein and in the attached exhibits, as well as the over a hundred public comment letters, the costs of the Proposed RV Park will significantly outweigh the benefits.

⁹ During the January 30, 2023 Planning Board Meeting it was revealed the Application is actually for 149 RV Park Spaces. See discussion above under March 6 Board of County Commissioners and Planning Board Letter regarding the confusion over the Preliminary Plat.

¹⁰ See Subdivision Regulations, Appendix 10-6.

Innumerable negative impacts to wildlife have been identified. As noted above, the Madison County economy relies upon wildlife conservation for tourism, watchable wildlife, and health of ecosystems, to the tune of hundreds of thousands of dollars. The RV Park, and its transient visitors, with hundreds of vehicles, will come at a cost to wildlife and correspondingly to the County, the public, and the property owners in the vicinity. Impacts to Pronghorn migration and critical spring calving/fawning season for big game, which take place in this area and during the RV Park's seasonal operation window, are inevitable. For this reason, among many, the proposed RV Park should be denied.

Absent that, to mitigate impacts to wildlife, the number of allowable RV spaces should be reduced now, rather than after-the-fact.

The County may require additional design and development standards beyond those listed in this Chapter, in order to mitigate the negative impacts of a proposed subdivision. For example, a clustered development design may be required in productive agricultural or environmentally sensitive areas and all outdoor lighting must be directed so as to avoid glare and excessive light spillage on adjacent properties.¹¹

If the RV Park Major Subdivision is approved, the following conditions in the *March 1 Additional Findings and Conditions* are necessary, at a minimum. The conditions may yet be inadequate to mitigate adverse impacts to wildlife as there is no mechanism to repair the damage or restore wildlife once it is gone.

The number of allowable RV spaces should be re-evaluated before the commencement of Phase 2 if there is new information that Phase 1 of the RV Park has had a significant adverse impact on wildlife. Section 76-3-620(4), MCA.

As suggested by the wildlife expert, clustering of the Lot 2 dwelling with the RV Spaces must be required to attempt to mitigate impacts, consistent with the Subdivision Regulations.

Development on Lot 1 should lie immediately adjacent to the RV Park to provide a larger wildlife migration corridor and less disturbance to the spring calving/fawning season. Appendix 10, Environmental Assessment, Public Interest Criteria #4 and #5, MCSR.

Related to sanitation, *Solid Waste Disposal*, the EA claims that solid waste disposal will be provided by the Logan Landfill and L&L Site Services. However, there is conflicting evidence in the record as to whether solid waste disposal is available as L&L Site Services has indicated via email it does not or cannot service the Reynolds Pass area. Solid waste disposal is

¹¹ See Subdivision Requirements, Chapter IV Design and Development Standards, IV-A-23. Other mitigation.

necessary to serve the Subdivision, in part due given the location and prevalent wildlife. The following condition from the *March 1 Additional Findings and Conditions* should be required for the Subdivision to get Final Plat approval, rather than prior to commencement of development. That is the only way the County can ensure the condition is met. The Subdivision should also be required to provide animal proof disposal containers that are certified bear-resistant – as a public health and safety measure.

Prior to the commencement of Phase 1, a will-serve letter for solid waste disposal shall be provided to the County and DEQ.

Solid waste disposal measures shall meet the requirements of Title 76, Chapter 4, MCA (Montana Sanitation in Subdivision Act), and the regulations of the Montana Department of Environmental Quality (DEQ) (ARM 17.36.101 - 17.36.805). MCSR IV.A.16.

The Subdivision Regulations explain the purpose of the environmental assessment, which is “to assist the subdivider and governing body in evaluating the potential effects, positive and negative, of the proposed subdivision.” Based on the information provided the November 18, 2022 letter and expert reports, the proposed Mile Creek RV Park will have “documentable, and clearly defined impact[s] on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety”.¹² Given the inadequacy of the Environmental Assessment, the Commission does not have sufficient information to evaluate potential effects of the RV Park nor to impose conditions to mitigate the significant impacts identified herein and in the November 18, 2022 letter and expert reports, subsequent letters, and public comment.

Subdivision Regulations

The Application did not satisfy the requirements of the Subdivision Regulations, given the inadequacies of the EA described above and based on the following. Inadequacies are addressed in the November 18, 2022 Planning Board letter and expert reports attached hereto as Exhibit B, and in short as follows.

The Application ***failed to identify a water supply to serve the Subdivision***, much less that would provide adequate water for fire protection. One of the purposes of the MSPA is to ensure that subdivisions provide for adequate water supply.¹³ An adequate water supply is among the very basic and minimum requirements for a subdivision per the MSPA, the subdivider is required to submit this information to the County with the preliminary plat for

¹² See Section 76-3-608, MCA.

¹³ 76-3-102. Statement of purpose. It is the purpose of this chapter to:

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements.

proposed subdivisions – not after the subdivision has been approved.¹⁴ Thus, the following condition from the *March 1 Additional Findings and Conditions* must be satisfied before the Commission approves the subdivision.

Prior to the commencement of Phase 1, an adequate water supply sufficient to serve the RV Park shall be identified. 76-3-622, MCA. If recommendations are not followed, at Phase 2 and Phase 3, Additional conditions may be imposed based on new information or changed primary criteria impacts. Section 76-3-620(7), MCA.

What happens if no water supply sufficient to serve the 149 Space RV Park can be identified? The Subdivision will already have been approved, if the condition is relied upon. Imposing additional conditions at Phase 2 and Phase 3 is only allowed based on new information or changed Primary Criteria impacts, not the failure of the County to ensure an adequate water supply in advance of approving the Subdivision.¹⁵

Also related to water supply, the Subdivision Regulations require that “All subdivisions shall be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested Areas.”¹⁶ An adequate and effective water supply is described by the Subdivision Regulations as:

- a reliable, year-round water supply within one mile of the subdivision, and/or install a dry hydrant, that provides year-round access, the RV Park design must include a turnaround for fire apparatus, and provisions for maintaining the water supply site must be included in the County-required covenants enforceable by Madison County, or
- if there is no nearby water source, a reliable, year-round water supply must be provided in the form of an underground or frost proof tank or cistern, or pond, sized according to the recommendation of the local fire district and office of emergency management.¹⁷

A cistern is included in the Suggested Conditions, however without an identified water supply what good is empty cistern for fire protection?

¹⁴ See Section 76-3-622. Water and sanitation information to accompany preliminary plat.

¹⁵ See Section 76-3-617, MCA.

¹⁶ See Subdivision Regulations, IV-A, General Standards, Section 14.c. Fire Protection Standards, Chapter IV-20.

¹⁷ See IV-A, General Standards, 14.c.(2)(a)-(b), Chapter IV-20. Note, per the EA, page 6 surface water rights exist for irrigation on Lot 2, which cannot be used for fire suppression.

The following condition from the *March 1 Additional Findings and Conditions* is insufficient. The water supply should be identified **before this RV Park Major Subdivision is approved**, based on the requirement above, not after.

An adequate water source for fire protection shall be identified and documented prior to the commencement of Phase 1. MSCR IV-A.14.c.(4).

Absent an identified water supply, the cistern to hold water for fire protection cannot be relied upon for fire protection. An empty water supply is not different than no water supply. This is a serious deficiency given the location of the RV Park Subdivision in the Wildland Urban Interface.

In accordance with 76-3-622, MCA, the Preliminary Plat Applications shall include the water and sanitation information outlined in APPENDIX 13 and APPENDIX 14, based on the size of the proposed subdivision parcels.¹⁸ The Application is inadequate as to water and sanitation information. Related to **Surface Water Quality/Quantity and Groundwater Quality**, based on the HydroSolutions Analysis, one of the expert reports included in Exhibit B, data, test wells, well logs from nearby wells, and other information relied upon by the Application were not adequate to demonstrate a clean and adequate water supply in the area. See for example, requirements of the Subdivision Regulations, Appendix 10, pages 10-6-10-7. Nor does the Application demonstrate that surface water and groundwater will not be degraded by the RV Park and residential development.

David Donohue, MS, PG, and Senior Hydrologist with HydroSolutions, Inc. reviewed the Mile Creek Application and identified specific areas where water supply and wastewater disposal information was insufficient or inaccurate. See HydroSolutions Analysis, Exhibit C to Exhibit B attached hereto.

Based on the HydroSolutions Analysis “sufficient information is lacking to make a full assessment of the water demands (can all demands be met with an exempt well?) and wastewater system (depths to first water and associated hydrogeologic properties).” Again, see Exhibit C to Exhibit B, which demonstrates the information provided in the Application is insufficient and lacking in the following respects among others addressed by the HydroSolutions Analysis.

- “the analysis neglects to include the water use in support of the six bath houses, one office, and one store”;
- “the engineer’s report lacks the level of detail needed to evaluate the yearly water demands for the project and thus the ability to meet subdivision water demands....”

¹⁸ See Subdivision Requirements, Chapter IV Design and Development Standards, IV-A-16 Sanitation. Opposition to Major Subdivision Preliminary Plat Application
Mile Creek RV Park, Madison County, Montana

The Mile Creek RV Park Application does not demonstrate effective nor efficient water supply to serve the Subdivision, nor that a water supply for fire suppression is available to protect persons, property, and forested areas. This is a fundamental public health and safety issue as well; thus the Mile Creek RV Park cannot be approved.

In addition to lacking adequate water supply, after the fact groundwater testing is insufficient to adequately address impacts on water quality. The following conditions from the *March 1 Additional Findings and Conditions* is insufficient. *Groundwater testing and the hydrogeological study must take place in advance of Subdivision approval*, so that the Commission may rely on the results and condition the Subdivision approval to address impacts and ensure recommendations are implemented.

Prior to the commencement of Phase 1, the subdivider shall, at its expense, conduct groundwater testing and provide updated nitrate and water analysis data and follow all recommendations. If recommendations are not followed, at Phase 2 and Phase 3, if there is new information or there are changed primary review criteria, new conditions may be imposed. Section 76-3-620(7), Section 76-4-101, et seq., Section 76-3-102(4), 401(1)(f)(iii), and 608(3)(a), MCA; 17.36.202, et seq. ARM.

The hydrogeological study shall be completed prior to the commencement of Phase 1 and provided to the County. All recommendations should be filed. If recommendations are not followed, at Phase 2 and Phase 3, additional conditions may be imposed based on new information or changed primary criteria impacts. Section 76-3-620(7), MCA.

Imposing additional conditions at Phase 2 and Phase 3 is only allowed based on new information or changed Primary Criteria impacts, not the failure of the County to require groundwater testing, water quality data, and the hydrogeological study in advance of approving the Subdivision.

Water quality, both surface and groundwater, are not protected by studies undertaken after a decision on the RV Park subdivision. Water quality analysis must occur in advance of the decision on the Preliminary Plat Application so the Commission may condition any approval on protection of water quality.

Additional offsite waste from RVs and release of chemical products from RVs through the wastewater system are not addressed, nor was the high risk of seismic activity adequately addressed. Rather the conditions defer to the Montana Department of Environmental Quality (“MDEQ”). *See Suggested Conditions in the March 1 Additional Findings and Conditions.* The considerations relate to water quality and further underscore the necessity of water quality information before the decision on the RV Park Subdivision is made, not after.

Emergency Response Times are a baseline requirement of the Subdivision Regulations and a fundamental component of public health and safety which have not been effectively addressed in the Application. The minimal information provided does not comply with the General Standards of the Subdivision Regulations as explained in detail in the November 18, 2022 Planning Board Letter. **Emergency services include** “community services such as fire protection, law enforcement, ambulance service, quick response, search and rescue, flood and disaster relief” and “...are generally provided by local governments or private, nonprofit organizations.”¹⁹

In accordance with the Madison County Growth Policy, approved subdivisions should be “reasonably accessible to emergency services.” The following standards provide a definition of “reasonably accessible to emergency services”. **If a proposed subdivision does not meet all of these standards, then the subdivision cannot be approved** unless the subdivider makes special provisions to upgrade emergency protection to meet the intention of the standards.²⁰

(Emphasis added.)

Regarding emergency response times, the Subdivision Regulations expressly state:

b. Emergency response time

The response time for a responsibly designed subdivision should be less than 15 minutes. If emergency response times are longer than 15 minutes, the proposed subdivision may be expected to incorporate mitigating measures to adequately protect public health and safety. **In order to protect the public health, safety, and welfare, a proposed subdivision, unless mitigated, will not be approved if estimated emergency response times are greater than 45 minutes. Emergency response times shall be estimated by emergency service providers, and shall take into account good weather, road conditions, actual equipment to be deployed, and availability of manpower.**²¹

(Emphasis added.)

The Application does not contain emergency service providers’ response times and estimates taking into account good weather, road conditions, actual equipment to be deployed, and availability of manpower. Whether one volunteer or two, part-time fire personnel at Fire Station No. 2 are insufficient to serve the Mile Creek RV Park Major Subdivision and no actual data has been provided regarding the availability of these two volunteers, contrary to the above. This is especially true, as the RV Park is **without a demonstrated adequate water**

¹⁹ See Subdivision Regulations, I-K Definitions, Chapter I-11.

²⁰ See Subdivision Regulations, IV-A, General Standards, Chapter IV-19.

²¹ See Subdivision Regulations, IV-A, General Standards, Chapter IV-19-IV-20.

source for fire protection as addressed above and given the location of the Mile Creek RV Park in the Wildland-Urban Interface. While a governing body may not deny approval of a proposed subdivision based solely on parcels within the subdivision having been designated as Wildland-Urban Interface parcels under 76-13-145, this is a consideration, among others, as fire protection and an adequate fire protection water supply have not been provided.²²

Law enforcement is included in the definition of emergency services, above. The EA states the distance to the Madison County Sheriff is 59.4 miles and, based up on that, estimates a drive time of 62 minutes. Again, in order to protect the public health, safety, and welfare, a proposed subdivision, unless mitigated, **will not be approved** if estimated emergency response times are greater than 45 minutes.²³ The EA estimated 62 minutes is plainly greater than 45 minutes, no mitigation is suggested, thus, in order to protect the public health, safety, and welfare, the proposed Subdivision cannot be approved.

Ambulance service, another fundamental emergency service, is estimated by the EA to have a 44-minute drive time. This is not a response time provided by emergency service providers as required by the Subdivision Regulations, and does not take into account weather, road conditions, or the location of the ambulance at the time an emergency call is received, among other considerations. Thus, the estimates in the Application cannot be relied upon. Given the comparable distance with Fire Station #1, the estimated response time would be expected to be similar under ideal circumstances, and with traffic congestion, wildlife on roadways, and extreme weather conditions, response time would likely be even longer. The RV Park is in remote area, with high potential for risk of wildlife interaction, traffic accidents, given the adjacent 70 MPH Highway, and other risks involved with recreational vehicles. In addition, public comment from ambulance providers indicated the 45-minute response time could not be met. Given this, the staff training and first aid suggested in the conditions are inadequate to protect public health and safety. The lack of timely ambulance service contributes to the numerous reasons the proposed Subdivision cannot be approved.

Natural Hazards including, earthquake zone – Seismic Zone 4, high water table, high fire hazard and designated Wildland-Urban Interface area, and habitat for potentially dangerous wildlife such as bears and mountain lions, and the Subdivision has not been designed to eliminate or overcome those hazards.²⁴ The Application does not effectively address how these hazards will be addressed nor are mitigation plans provided. *See* EA, page 7. *See* further issues related to PWS wells, septic systems, and water and wastewater distribution lines as observed by the HydroSolutions Analysis. *See* EA at page 7 and the HydroSolutions Analysis expert report included with Exhibit B attached. Also note the additional issues with the Geotechnical Report raised by the HydroSolutions Analysis, including the seismic classification as “D”, which does not take into account the nearby fault line.

²² *See* Section 76-1-605, MCA.

²³ *See* Subdivision Regulations, IV-A, General Standards, Chapter IV-19-IV-20.

²⁴ *See* Subdivision Regulations, Appendix 10, page 10-6.

Given these hazards and the influx of hundreds of visitors traveling to this remote area to occupy the 148 RV spaces, risk to public health and safety will be significantly increased, as visitors are less likely to be aware of how to deal with such hazards. The lack of timely emergency response times compounds the risk to public health and safety.

Public Health and Safety. The failure to satisfy a fundamental requirement of the Subdivision Regulations and ensure adequate emergency response times for fire, law enforcement and ambulance services to ensure protection of public health and safety is reason enough to recommend denial of the Mile Creek RV Park Subdivision. Furthermore, given that the proposed Subdivision is located in a high hazard seismic zone with a nearby fault system, and natural hazards explained above, absent adequate emergency services response times, evacuation and mitigation plans to address this hazard, public health and safety are not protected. The lack of water supply to serve the Subdivision and provide protection is also contrary to protection of public health and safety.

Note also the analysis in the November 18, 2022 Planning Board Letter regarding the inadequacy of the Traffic Impact Study (“TIS”) based on the timing during the Covid pandemic, and failure to take into account the impacts of commercial and Semi-truck traffic as addressed by the Nitzel Traffic Safety Comments. The *March 1 Additional Findings and Conditions* recommended after-the-fact updated TIS is too late for the Commission to consider impacts to public health, safety and welfare.

Innumerable negative impacts to wildlife have been identified. The Madison County economy relies upon wildlife conservation for tourism, watchable wildlife, and health of ecosystems, to the tune of hundreds of thousands of dollars, as address below. The RV Park, and its transient visitors, with hundreds of vehicles, will come at a cost to wildlife and correspondingly to the County, the public, and the property owners in the vicinity. Impacts to Pronghorn migration and critical spring calving/fawning season for big game, which take place in this area and during the RV Park’s seasonal operation window, are inevitable. For this reason, among many, the proposed RV Park should be denied.

Absent that, to mitigate impacts to wildlife, the number of allowable RV spaces should be reduced now, rather than after-the-fact.

The County may require additional design and development standards beyond those listed in this Chapter, in order to mitigate the negative impacts of a proposed subdivision. For example, a clustered development design may be required in productive agricultural or environmentally sensitive areas and all outdoor lighting

must be directed so as to avoid glare and excessive light spillage on adjacent properties.²⁵

If the RV Park Major Subdivision is approved, the following conditions in the *March 1 Additional Findings and Conditions* are necessary, at a minimum, and may yet be inadequate to mitigate adverse impacts to wildlife.

The number of allowable RV spaces should be re-evaluated before the commencement of Phase 2 if there is new information that Phase 1 of the RV Park has had a significant adverse impact on wildlife. Section 76-3-620(4), MCA.

As suggested by the wildlife expert, clustering of the Lot 2 dwelling with the RV Spaces must be required to attempt to mitigate impacts, consistent with the Subdivision Regulations.

Development on Lot 1 should lie immediately adjacent to the RV Park to provide a larger wildlife migration corridor and less disturbance to the spring calving/fawning season. Appendix 10, Environmental Assessment, Public Interest Criteria #4 and #5, MCSR.

As this is a mixed-use Subdivision with the commercial RV Park and residential lot, the **commercial standards of the Subdivision Regulations must be implemented.**²⁶ Per the Subdivision Regulations, “commercial and industrial subdivisions and lots warrant somewhat different design and development standards as outlined” in the Subdivision Regulations, including but not limited to the following.

- Intersections of driveways from parking areas with arterials or collectors shall be designed to cause the least possible interference with traffic movement. The governing body may require frontage or service roads to provide maximum safety and convenience.²⁷

To cause the least possible interference with traffic movement on Highway 87, a frontage is necessary to provide maximum safety and convenience. This is particularly important for public health and safety given this Highway has a 70 MPH speed limit and is heavily trafficked in summer months with tourists and semi-truck and commercial trucks, which when combined with slow moving RVs, can be a fatal combination. Adverse traffic impacts will inevitably result from the addition of 148 RVs and associated vehicles - cars, trucks, ATVs, motorcycles that regularly accompany RVs and their users.

²⁵ See Subdivision Requirements, Chapter IV Design and Development Standards, IV-A-23. Other mitigation.

²⁶ See Subdivision Requirements, Chapter IV, VI-B.4 Specific Standards, Commercial and Industrial Subdivisions.

²⁷ See Subdivision Requirements, Chapter IV, VI-B.4.a. Transportation Design.

- Storage or refuse areas or facilities should be screened from view of any residential area or public roadway.²⁸
- As a large scale Major Subdivision, employee housing for the RV Park should be required.²⁹

This is particularly necessary given the rural area and the lack of affordable housing recognized across the State.

- Any commercial and industrial standards contained in the Uniform Fire Code, as adopted by the State of Montana, shall apply.³⁰

Given the lack of demonstrated water supply for fire protection and the distance from the Madison Valley Rural Fire Station #1 (“Fire Station #1) at Ennis – 46.67 miles, the station most likely to respond to fire at the heavily populated RV Park, the commercial standards of the Uniform Fire Code must be followed.

After-the-Fact Studies and Information

The *March 1 Additional Findings and Conditions* include several conditions relying on after-the-fact studies and information to be provided to the County. Providing studies and information to the County after this Major Subdivision is approved does not satisfy the requirements of the Subdivision Regulations and does not allow the Commission to make an informed decision. The additional studies and information are more properly in front of the County now, not after the decision is made. Once approved the Subdivision cannot be undone and the consequences will be borne by the neighboring property owners and the public.

Once a subdivision is approved, no further conditions can be imposed per State law.³¹ Reliance on the phased subdivision statute is not effective as at least 50 RV Spaces will be approved, before the Applicant has demonstrated that an adequate water supply sufficient to serve the RV Park, as one example. This information is material, fundamental to the Commission’s decision, and necessary before approval not after.

²⁸ See Subdivision Requirements, Chapter IV, VI-B.4.d.(2) Storage, solid waste disposal.

²⁹ See Subdivision Requirements, Chapter IV, VI-B.4.d.(5)

³⁰ See Subdivision Requirements, Chapter IV, VI-B.4.e. Fire Protection.

³¹ See Section 76-3-610, MCA, in pertinent part, “Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions **may not impose any additional conditions** as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).” Section 76-3-507, MCA applies to the provision for security requirements to ensure construction of public improvements.

The phased development statute, Section 76-3-617, MCA, allows the governing body, after a hearing, to determine “whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases.” (Emphasis added.) This statute addresses changed impacts and new potentially significant adverse impacts after the fact – that is after the Subdivision has impacted neighboring owners and does not address the impacts resulting from the initial approval of the RV Park if the studies indicate a lack of water supply or significant impact to the aquifer. Once approved, the County cannot rewind the clock. The first phase, at least, will exist despite the impacts and possibly lack of water supply – which would be significant and adverse.

The appropriate time for the County to analyze and address such impacts is before the RV Park Major Subdivision is approved, not after.

The studies being required are in response to public comment and expert reports identifying the inadequacies of the Application. The *March 1 Additional Findings and Conditions* suggest reports and studies to be provided to the County after approval of the Mile Creek RV Park – this does not provide the information necessary for the Commission to make an informed decision on this Major Subdivision on March 14-15th. The additional studies and information are more properly in front of the County now, in advance of a decision on this Major Subdivision Application, , not after the decision is made – when the County’s opportunity to address the results of the studies has been foreclosed upon and no further conditions can be imposed.³²

Effects on County Resources and Local Economy – No Conditions

Effect on the Other Resources in the County, including local county road conditions and outdoor recreation, including local rivers, streams, lakes and trails were not addressed. Subdivision Regulations, Appendix 10-7, #8.

Effect on the Local Economy, including overutilization of recreational resources, a major economic sector of the local economy, lack of support for economic viability of family farms and ranches, and strain on public services. Public Comments and Subdivision Regulations, Appendix 10-7, #9. The analysis of the local economy failed to take into account the economic benefits of wildlife, wildlife habitat, local fisheries and the associated hunting and fishing that rely on those natural resources prevalent in the Madison Valley, which will be adversely impacted by the Subdivision, 148 RV Park spaces, and associated visitors. *See* Wildlife Assessment, Exhibit D, the Fish, Wildlife and Park PowerPoint, Wildlife Resources in the Madison Valley, by Julie Cunningham, included as Exhibit H and incorporated by reference. Fish, Wildlife and Park provided the following regarding the economic benefits of wildlife.

³² *See* Section 76-3-610, MCA.

- The Madison County economy relies upon wildlife conservation for tourism, watchable wildlife, and health of ecosystems, including the Greater Yellowstone Ecosystem.
- “Big game hunting brings big revenue” from “Transportation (gas, airfare)”, “Food, beverages, lodging”, “Equipment purchases”, “Visits to local stores/services” and “Guide fees”.
- 2016 revenue estimates – Madison County – Elk hunters = \$15 million, Deer hunters = \$7 million, Antelope hunters = \$670,000.

As noted above, the *March 1 Additional Findings and Conditions* admit the increase in property taxes may have been overestimated in the Environmental Assessment. This is clearly and thoroughly explained in the November 18 Planning Board Comment Letter. Based on the adverse impacts raised herein and in the attached, as well as the over a hundred public comment letters, the costs of the Proposed RV Park will significantly outweigh the benefits to the local community and the County.

Growth Policy

While the governing body may not withhold, deny, or impose conditions on land use approvals based solely on compliance with a Growth Policy³³, the Commission body must be guided by and give consideration to the general policy and pattern of development set out in the growth policy³⁴, and ***substantial compliance with an adopted growth policy is required.***³⁵ The RV Park does not substantially comply with the County’s Growth Policy in respect to public health and safety, overcrowding of land, local services and public safety, emergency services, and protection of the environment and property rights.

A detailed analysis of this is provided in the November 18, 2022 Planning Board Comment Letter. Following are few examples among many.

- Per New Development Policy #2 of Section 3.4 of the Growth Policy: Demonstrate that surface water and groundwater will not be degraded, according to state standards. Developments adjoining streams or lakes should use appropriate best management practices to protect water quality and riparian habitats.

The Application has not demonstrated that surface water and groundwater will not be degraded, according to state standards, based on the extensive review provided in the HydroSolutions Analysis and information identified as lacking in the Application. The after-

³³ See Section 76-1-605, MCA.

³⁴ Id.

³⁵ Id.

the-fact hydrogeological study will be provided too late for the Commission to adequately condition the Subdivision as further addressed below.

- Per New Development Policy #3 of Section 3.4 of the Growth Policy: Be located within areas that are reasonably accessible to emergency services. The subject property is located adjacent to Highway 87. No negative comments were received from emergency service providers at the time this staff report was completed. Emergency response times to the property must be 45 minutes or less.

The Application inadequately addressed the necessary emergency service response times and failed to provide reliable data that emergency services providers could respond, law enforcement, in particular. The record is clear that ambulance response times are greater than 45 minutes and public health and safety were not mitigated by the suggested conditions.³⁶ See estimated emergency response times required by the Subdivision Regulations, of 45 minutes or less as required in order for the proposed Subdivision to be approved. The proposed RV Park is not located close to existing services and communities, emergency services providers, in particular, and the Application admitted it “is located relatively far from existing towns.”

Furthermore, the proposed RV Park Subdivision will not respect the private property rights of the owners in the vicinity as demonstrated by the overwhelming public comment in opposition, and the impacts addressed therein, which will adversely affect the public interest and owners’ quiet and peaceful enjoyment of their properties. The rights of one property owner should not be prioritized over the rights of the many owners in the area who will be adversely impacted.

The proposed Subdivision will not minimize conflict among adjacent land uses, again given overwhelming response, does not promote efficient use of land nor protect public health and safety, will not strengthen the major sectors of the local economy, nor will it provide economic diversity – there are numerous existing RV parks in Madison County.

Case Law

Related to Applications lack of compliance with the Growth Policy summarized above and further addressed in the November 18 Planning Board Letter, “A preliminary plat of a proposed subdivision is subject to the review of the governing body to determine whether the plat conforms to the master growth plan adopted for the area and the plat's effects on the public health, safety, and welfare.”³⁷

³⁶ See Subdivision Requirements, Chapter IV Design and Development Standards, IV-A-14 Emergency Services.

³⁷ *Madison River R.V. LTD. v. Town of Ennis*, 2000 MT 15, P 39, 298 Mont. 91, 994 P.2d 1098 (citing §§ 76-3-604 and -605, MCA).

The growth policy statutes require “substantial compliance” with the growth policy.³⁸ This means that “All facets of the proposed land use must be considered to determine whether, taken together, they comply not strictly, but substantially with the goals, objectives, and recommendations in the growth policy. A governing body ‘must develop a record that fleshes out all pertinent facts upon which its decision was based in order to facilitate judicial review. For purposes of evaluating 'substantial compliance, that includes all pertinent elements of the growth policy.’ (internal citations omitted).³⁹ Failing to address the above goals and recommendations of the County’s Growth Policy and those raised in the November 18, 2022 letter, or addressing them in a conclusory or cursory fashion does not ensure substantial compliance. The County must give sufficient consideration to the goals and policies that raise pertinent and significant concerns, otherwise it will have abused its discretion.⁴⁰

In *Madison River R.V. Ltd. v. Town of Ennis*, 2000 MT 15, the Planning Board unanimously recommended denial of a campground that did not conform to the goals of the Town’s comprehensive plan and would result in sewer issues and traffic safety problems, and the Town Council also denied the application.⁴¹ The decision of the governing body was upheld by the Montana Supreme Court, as the evidence in the record demonstrated denial of the RV Park was not arbitrary, capricious, or unlawful.

In *Hansen v. Granite County*, the Commissioners determined that a proposed subdivision would create significant and immitigable adverse impacts to traffic, to agriculture, to local schools, and to public health and safety, and the decision was upheld by the Montana Supreme Court, as “based upon the existing record, ..., the Commissioners' decision was not arbitrary and capricious.”⁴²

Your review of the Mile Creek RV Park is comparable for the following reasons. The proposed Subdivision does not substantially comply with the Growth Policy, will result in adverse impacts to wildlife, local services, neighboring property owners, water quality and quantity, public health and safety due to traffic impacts, as addressed herein and in the attached exhibits and public comment, and the Application is inadequate to demonstrate otherwise. The attempt to bootstrap after-the-fact conditions to the approval, does not overcome those inadequacies, and the Subdivision should be denied.

³⁸ *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs*, 2016 MT 325, P19, 385 Mont. 505, 512, 386 P.3d 567, 573, 2016 Mont. LEXIS 1029, *12

³⁹ *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs*, 2016 MT 325, P20, 385 Mont. 505, 512-513, 386 P.3d 567, 573, 2016 Mont. LEXIS 1029, *13.

⁴⁰ See generally *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs*, 2016 MT 325, 385 Mont. 505, 386 P.3d 567, 2016 Mont. LEXIS 1029.

⁴¹ See generally *Madison River R.V. Ltd. v. Town of Ennis*, 2000 MT 15, 298 Mont. 91, 994 P.2d 1098, 2000 Mont. LEXIS 13, 57 Mont. St. Rep. 84, 30 ELR 20272.

⁴² *Hansen v. Granite County*, 2010 MT 107, P25, 356 Mont. 269, 274, 232 P.3d 409, 414, 2010 Mont. LEXIS 155, *10-11


Conclusion

We trust that you will give meaningful consideration to this matter and the significant issues raised by the Concerned Citizens and the public interest, health, safety and welfare of the people of Madison County. Again, the basis for the Commission's decision to approve, conditionally approve, or deny the proposed RV Park Major Subdivision is whether the Subdivision Application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of the Montana Subdivision and Platting Act.

The Applicant has not met its burden of demonstrating that the Application for the Mile Creek RV Park meets the requirements of the MSPA and the Subdivision Regulations, nor that it substantially complies with the Growth Policy, nor that the Primary Criteria have been adequately addressed based upon the substantial data and information as explained herein and in the attached Exhibits and expert reports, and the overwhelming written public comment in opposition. The substantial data, information, and expert reports have demonstrated the Proposed RV Park Subdivision will adversely affect nearby properties and their occupants, and approval of the proposed Mile Creek RV Park Subdivision based on the information in the record would be arbitrary, capricious, and unlawful.

The Madison County Commission has the discretion to require the Applicant to comply with the standards and requirements of the Subdivision Regulations and substantially comply with the Growth Policy, and must require as much, given the demonstrated inadequacies and inaccuracies in the Application. Absent such compliance, the Commission must deny the requested Major Subdivision Preliminary Plat Application for the 148-space Mile Creek RV Park. The Concerned Citizens respectfully request that the Commission do so.

Respectfully,
GALLIK, BREMER & MOLLOY, P.C.



Jecyn N. Bremer
Attorney at Law

Encl.

- Exhibit A – List of Concerned Citizens
- Exhibit B – November 18, 2022 Planning Board Letter
- Exhibit C – Additional Comments from David Donohue, HydroSolutions and Mike Sanctuary, Confluence Consulting
- Exhibit D – January 26, 2023 Letter to Board of County Commissioners and Planning Board

- Exhibit E – March 6, 2023 Letter to Board of County Commissioners and Planning Board

c: Client

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