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Ravalli County Commissioners

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Date: 8/26/19

To: Ravalli County Board of County Commissioners

From: James Rokosch, on behalf of Bitterrooters for Planning

Re: Objection to an extension of the preliminary plat decision (PPD) for Grantsdale Additions scheduled for 1:00 PM 8/27/19

I am submitting the attached material listed below as additional comments to the public record submitted by Bitterrooters for Planning 8/19/19 for your consideration of changed circumstances as specified in the MT Association of County (MACO) guidelines for PPD extensions, and to support denial of an extension to the 181 lot major subdivision 'Grantsdale Additions' located south of Hamilton.

- The administrative record for Cause No. CDV-2014-505 (pdf 'Grantsdale MTX000163_AdminRecord')
- BFP's filed Complaint in Cause No. CDV-2014-505 (pdf "Grantsdale Complaint conforming copy scan.pdf")
- A MT Bureau of Mines and Geology publication by John LaFave titled 'Ground-water Quality of the Shallow Basin-Fill, Deep Basin-Fill, and Bedrock Aquifers, Bitterroot Valley, Ravalli and Missoula Counties, Sothwestern Montana' (pdf with same title)
- A United States Geological Survey publication titled 'USGS Groundwater Information - Groundwater and Surface-Water Interactions (pdf with same title)

As was stressed in BFP's 8/19 comments, Grantsdale Additions' DEQ permit MTX000163 was invalidated by the ruling on Cause No. CDV-2014-505, not because of 'improper processing', but because the MT constitution, state law, and the administrative rules of Montana require the analysis of cumulative impacts to water quality to determine if non-degradation can be achieved if a proposed development is permitted to add pollution to existing levels in the groundwater and associated surface waters. In the case of Grantsdale Additions, the public record for the Grantsdale case, which you did not have when you made the PPD decision in 2011, clearly shows that, as still proposed, Grantsdale Additions' effluent would exceed current water quality surface water standards of 300 micrograms/L, which have been changed since the PPD decision in 2011, by well over an order of magnitude. Not only would the concentration of effluent pollution be in excess of the changed standards, the magnitude of the pollution entering the Bitterroot River from the groundwater flow from the septic of Grantsdale Additions would be equivalent to a 50% increase in the permitted point source pollution entering the river from Hamilton's sewage treatment plant, a short distance downstream.

Although the DEQ permit was invalidated, the substantive data contained in the administrative record for the Grantsdale case, and BFP's filed Complaint, contain a wealth of substantive data and information for you to consider regarding changed circumstances as specified in the MACO guidelines, not only regarding water resources, but with respect to all seven MT Subdivision and Platting Act (MSPA) review criteria; and water resources are at the core of all seven criteria. As a general powers county and an extension of state government, and as the authoritative entity charged with the constitutional duty to maintain and improve a clean and healthful environment for present and future generations in land use decisions, the county needs to review that case's record and determine if potentially adverse impacts now exist that cannot be mitigated, or if the impacts can be mitigated, how that will be accomplished. Clearly, at best, you will need to come up with some way to prevent violating current water quality standards, as well as preventing negatively impacting Hamilton's point source permit by raising upstream ambient nutrient pollutant levels. Since the county has neither the technical expertise, nor the financial taxpayer resources to determine this with its own capability and capacity, this extension should be denied, and the developer should be required to obtain valid necessary permits from the state and federal agencies prior to submitting a new subdivision application.

Only then will you have the necessary substantive information and data to determine if adverse impacts can be mitigated, and if so, the technical data to know what to require to keep from degrading state and federal waters and other public resources, infrastructure and services. As the DEQ case made clear, you cannot rely on the DEQ permitting process to relieve you of your statutory duty to protect the public interests. DEQ is the entity that permits pollution; local governments are required to decide if the pollution can be mitigated, and how to do so, if mitigation is possible. If a development cannot obtain physically and legally available water for example, there is no need to subject local and state taxpayers to the costs, economic and otherwise, of the rest of the process required by the MSPA to approve a major subdivision, especially mitigation determinations or designs.

Regarding adverse impacts to water resources from the proposed Grantsdale Additions subdivision, the 2005 publication of the Tri-State Water Quality Council "Septic System Impact on Surface Waters: A Review for the Inland Northwest" contains some troubling conclusions that apply to the Grantsdale Addition setting:

- "In settings where septic-contaminated groundwater inflow makes up a significant portion of surface water flows, surface water nutrient loading from septic effluent will occur, and can be a significant portion of total nutrient loads to sensitive waters."
- "In some cases, using new nutrient-reduction septic systems actually encourages further development in sensitive watershed areas that would not have been built

out with traditional septic systems. For nutrient-sensitive surface waters, this could result in a net loss of water quality.

- "In general, septic systems are a significant source of nutrients, especially nitrates, to groundwater and surface water in rural areas experiencing rapid growth. New septic systems inexorably add nitrates to the cumulative nutrient loads in surface waters. Other factors common to land development (e.g. construction sediments, road runoff, fertilizers, industrial projects) also typically increase phosphorous loading to surface waters. This combination of nitrate and phosphorous loading is highly detrimental to freshwater lakes and streams."

The pollutant loading from the Grantsdale Addition development will further impair the water quality and fish habitat of the Bitterroot River. This impairment will negatively affect the overall trout sport fishery of the valley and the important sector of the local economy that has developed and depends on sustaining the improvement of fish habitat and fish populations. This will also negatively impact the recovery of West-slope Cutthroat Trout, designated as a "Species of Special Concern" in Montana, and the federally listed "Threatened" Bull Trout.

In October, 2010, the main-stem Bitterroot River and a number of tributaries were designated as "Critical Bull Trout Habitat" by the U.S. Fish and Wildlife Service (USFWS). Increased pollution from the effluent of Grantsdale Addition will compromise that critical habitat's biological capacity to optimally function for further recovery of Bull Trout, and will impede the progress of delisting Bull Trout as "Threatened" under the Endangered Species Act (ESA). The Ravalli County Board of County Commissioners supported the USFWS critical habitat designation in April, 2010 (see Document ID: FWS-R1-ES-2009-0085-0298: Endangered and Threatened Wildlife and Plants: Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States, Comment Tracking Number: 80ad0a3c – Letter of Support for Bull Trout Habitat). Approval of the extension of the Grantsdale Addition as proposed is contradictory to the recovery and delisting of Bull Trout, and no mitigation is being proposed by the developer for the impacts of pollution on the Bull Trout critical habitat, including the pollution and degradation actually allowed by any potential DEQ non-degradation and groundwater discharge permits, if granted. The central question to consider is: What are the ramifications of an extension of state government permitting degradation of primary constituent elements of designated critical habitat as defined under the ESA? If components of water quality are not considered to be primary constituents to critical aquatic habitats, what would be? The commission should realize that pollution from systems at the scale being proposed would allow cumulative degradation that will very likely lead to a change of status for Bull Trout under the ESA from "Threatened" to "Endangered", a result that hopefully no one desires.

Therefore, I am requesting the Ravalli Board of County Commissioners engage in a formal ESA Section 6 consultation with the U.S. Fish and Wildlife Service regarding this proposed action as deleterious to critical Bull Trout Habitat. Approval of this proposed action would be considered an action of the State through its local government extension. This formal consultation should be included as part of a new application if one is submitted after denial of the extension request, or prior to any PPD extension approval decision.

Thank you for your consideration of these comments and the documents listed above as you take a hard look at these and all other comments and substantive information and data submitted to you, and weigh the preponderance of the evidence submitted by the developer, and that submitted here and from other sources, to decide if the requirements of the MT Constitution, the MT Code Annotated, and the Ravalli County Subdivision Regulations allow or preclude extension of the 181 lot Grantsdale Additions subdivision. Bitterrooters for Planning's position is that the requested extension should be denied, based on its failure to meet the requirements of our state constitution, state law, and your own county subdivision regulations.

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