

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause: DA 25-0260

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THOMPSON CHAIN OF LAKES STEWARDSHIP COALITION, a Montana  
nonprofit public benefit corporation, JAMES M. WATKINS and JOHN  
WICKERSHAM

Plaintiffs and Appellants

v.

BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, a  
political subdivision of the State of Montana and the governing body of the  
County of Lincoln, acting by and through its County Commissioners, Brent  
Teske, Josh Letcher and Jerry Bennett,

Defendant/Appellee,

and,

HAPPY'S RV PARK, INC., a Montana for profit corporation, and PARKS  
FAMILY REAL ESTATE, LLC, a Montana limited liability company.

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**APPELLANT'S OPENING BRIEF**

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On Appeal from the Montana Nineteenth Judicial District Court

Lincoln County

District Court Cause No. DV 22-165

Honorable Matthew J. Cuffe, presiding

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## STATEMENT OF THE ISSUES

1. Whether the County properly evaluated an 89 site RV park under the Montana Subdivision and Platting Act (“MSPA”) when the County and applicant failed to evaluate the documentable and clearly defined impacts on natural resources and local services.
2. Whether the County’s approval of the preliminary plat of the RV park was in substantial compliance with the Thompson Chain of Lakes Neighborhood Plan, even though the RV park location directly conflicts with the plan, the RV Park is inconsistent with the inherent properties of the area, and conflicts with the prohibition on commercial strip development.

## STATEMENT OF THE CASE

This case began when APEC Engineering applied for subdivision on March 28, 2022, on behalf of Happy’s RV Park Subdivision. (Appendix Exhibit (“App.”) 1, March 4, 2025, Opinion and Order, p. 4). Over the next few months, the County considered the application and on September 21, 2022, approved the preliminary plat. *Id.*, p. 6. Thereafter, on October 20, 2022, Plaintiffs (“TCLSC”) filed a complaint alleging that the approval violated the MSPA, was not in substantial compliance with the Neighborhood Plan, and that their constitutional right to participate was violated. (Dkt. 1.) On November 22, 2022, TCLSC filed their first amended complaint, which the County answered on February 21, 2023. (Dkts. 3,

5.) On May 19, 2023, Happy's RV filed an unopposed motion to intervene, which was granted on May 22, 2023. (Dkts. 10-12.)

Thereafter, the administrative record was filed, and on October 23, 2023, TCLSC filed their motion for summary judgment, and attached affidavits. (Dkts. 17-18, 21-26.) The County filed its combined cross-motion for summary judgment on October 26, 2023, and the Intervenors filed their cross motion on October 27, 2023. (Dkts. 29, 30.) By November 30, 2023, the parties had completed their briefing on their respective cross motions for summary judgment. (Dkts. 31-41.) And on December 5, 2023, the Court held oral argument. (Dkt. 42.) Subsequently, the Intervenors and TCLSC each filed separate notices of supplemental authority. (Dkts. 43-45.)

On March 04, 2025, the District Court issued its opinion and order. (App. 1; Dkt. 48.) In it, the Court denied the Plaintiffs' request for summary judgment but granted the County and Intervenors cross motions for summary judgment. *Id.*<sup>1</sup>

### **STATEMENT OF FACTS**

This case concerns a 21.03 acre major subdivision located in Northwest Montana. The applicant wants to develop private campground with 69 RV sites and 20 tent sites. Because of the unique nature of the area, and the applicant and

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<sup>1</sup> The public participation claim was orally withdrawn at the December 5, 2023, hearing. *See*, Transc., pp.5-9

County's violations of the MSPA, the District Court should have voided the preliminary plat.

**A. The Thompson Chain of Lakes Area is unique.**

The Subdivision is in the Thompson Chain of Lakes (“TCL”) area, which consists of 18 lakes along Highway 2 between Kalispell and Libby, in Lincoln County, Montana. (Dkts. 3, ¶ 7; 5, ¶ 7.) The landscape, and resulting lakes, were created by “glacial scouring and moraine deposits.” *See Thompson Chain of Lakes Neighborhood Plan (“NP”)* p. 14, [https://lincolncountymt.us/wpcontent/uploads/2016/05/TCL\\_FinalPlan.pdf](https://lincolncountymt.us/wpcontent/uploads/2016/05/TCL_FinalPlan.pdf) (April 7, 2010). Based on this formation, the subsurface is very porous, and groundwater flows freely from one area to another. *See Administrative Record (“AR”)* 551, 725-26; *NP*, p. 13. As groundwater flows through subsurface, it recharges the nearby lakes. AR 551, 725-26; *NP*, p. 13. Any pollutants, nutrients, or contaminants that infiltrate the groundwater are, thus, carried into to these lakes. AR 551, 592, 725-26; *NP*, pp. 13, 19. Once the nutrients enter the lakes, they bioaccumulate because there are no “known outlets.” AR 683. Of particular concern, here, are Lavon and Crystal Lakes, which are two of the spring fed lakes and are within 1,200 feet of the Subdivision. AR 703.

The TCL provide critical habitat for a variety of wildlife species, including both state and federally protected species. AR 66-74.<sup>2</sup> They contain at least 17 species of fish including the native Westslope Cutthroat and Columbia Redband Trout – both species of concern, native Mountain Whitefish; and a variety of sport fish like rainbow and brook trout, and kokanee salmon. *Id.*; *NP*, p. 14. Many species of waterfowl and other birds also migrate and nest in the lakes, including species of concern such as common loons, American bittern, black terns and bald eagles. AR 66-74; *NP*, 15. Other species such as Red-necked grebes, mallards, goldeneyes, Canada geese and osprey also migrate and nest in these lakes. A significant number of these birds are protected under federal law. AR 70.

The area is also replete with various mammals. Elk, moose, white tailed and mule deer use it year-round.. AR 70. These ungulates are regularly observed on both sides of Highway 2, directly adjacent to or on the Subdivision. AR 68. They also use the site as winter range, which is considered “one of the most significant limiting factors” for big game species. *Id.* Subdividing property, such as here, poses a threat to these species because it removes land from their winter range and

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<sup>2</sup> AR 66-74 is an email letter from Montana Fish Wildlife and Parks to Lincoln County highlighting the wildlife in the area. According to FWP, “We submitted detailed comment last year on the Mountain Lakes Subdivision Phase II, which appears to be the currently proposed Happy’s RV Park. | have attached those comments again here for your reference to ensure that you had input from FWP on the current project.” AR 66.

harms their movement between winter and summer range. *Id.* For example, Elk prefer areas at least three-quarters of a mile from development. AR 69.

These ungulates are also prey for various predators. Those include grizzly and black bears, wolves, coyotes and mountain lions. AR 69. Northwest Montana is home to some of the highest densities of mountain lions and black bears. *Id.* And at least two endangered grizzly bears are *known* to have used the area, with other likely having traversed the area. *Id.*

Beyond these major wildlife species, there are “hundreds of nongame species” that use the area. AR 70. For example, in wet meadows and riparian areas, western toads thrive. These toads disperse up to 4 kilometers. AR 70.

To protect this area, the County adopted the Thompson Chain of Lakes Neighborhood Plan on April 7, 2010. *See generally, NP.* That Plan is meant “to protect property rights and values by offering assurance that the types, locations, and density of future uses are consistent with the inherent quality and values of the region.” *NP*, p. 3. To implement this premise, the plan represents that care must be taken to protect the landscape, including water quality, wildlife corridors, habitat, and specifically winter range for ungulate populations. *Id.*, at pp. 11-12.

## **B. The Intervenor’s application process.**

Despite the uniqueness of the area, Intervenor wants to develop an 89 site RV Park. To that end, they submitted a subdivision application to Lincoln County

on March 28, 2022, and proposed 69 RV sites, with full hookups for water, wastewater and electricity; and 20 tent sites. AR 144-145. The application consisted of a cover letter, and 15 attachments. AR 126-27. None of the attachments were identified as the Environmental Assessment (“EA”). *Id.* Instead, the application included a checklist and “Primary Review Impact Questionnaire.” AR 164-178.

Relevant, here, the application purported to address public safety, public lands, water and wildlife. Regarding public safety, the application identified that once the park was developed, it would generate 203 vehicle trips per day. AR 166, 589. Each trip would require an exit or entrance the property via a single, pre-existing, access point off of U.S. Highway 2. And while Highway 2 is able to handle the additional traffic once on the highway, the questionnaire disregards the impact of 203 vehicles entering onto or crossing Highway 2. AR 166-67, 171-72. It also fails to discuss any increased pedestrian traffic crossing highway 2 from the RV Park to the bar/restaurant; any use of Highway 2 or the crossing of Highway 2 by off road vehicles; or any use by slower recreational vehicles. *Id.* Instead of addressing these concerns, the questionnaire notes there is high visibility, and pedestrians will cross Highway 2 at a specific location, without any signage or other safety measures. *Id.*

The questionnaire then tries address public lands but omits any discussion of most of the nearby public lands. AR 172. The application seeks information on “applicable land management policies of any public lands adjacent to *or near* the proposed subdivision.” To which the applicant responds “N/A: the proposed subdivision is not adjacent to or near any public lands.” That information is incorrect as the area is dominated by state and federal public lands, and significant lands held in conservation easements for public use. AR 71, 492-93. It also does not mention the 1993 “Thompson Chain of Lakes *Management Plan and Environmental Assessment*”<sup>3</sup> drafted by the Montana Department of Fish, Wildlife and Parks (“1993 EA”) or its 2006 draft update (“2006 Draft Update”).<sup>4</sup> AR 172, 243, 249, 406, 457, 494. The questionnaire, though, is silent regarding the impacts an additional recreationalists and vehicle use of these public lands or FWP’s management plans. AR 164-78.

Continuing, the questionnaire answer ignores natural environment. In the section on surface water, the applicant notes that there is no surface water *on site*.

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<sup>3</sup> Mont. Dept. of Fish, Wildlife and Parks, Thompson *Chain of Lakes Management Plan and Environmental Assessment*, <https://archive.org/details/thompsonchainofl1993montrich/mode/2up?view=theater&q=maintain>, (1993)

<sup>4</sup> Mont. Dept. Fish, Wildlife and Parks, *Thompson Chain of Lakes Draft Management Plan Updates*, [https://www.thompsonchainoflakesstewardshipcoalition.com/\\_files/ugd/efbaa2\\_51e49195fc444b0bbc3e7e3bb5b30836.pdf](https://www.thompsonchainoflakesstewardshipcoalition.com/_files/ugd/efbaa2_51e49195fc444b0bbc3e7e3bb5b30836.pdf) (2006)

They do not disclose that Crysall and Lavon Lakes are within 1,200 feet. AR 173. The application goes on to note that groundwater supplies would not likely be contaminated or impacted because of permitting through the Montana Department of Environmental Quality and construction would be through “certified.” AR 174.

In the same breath, though, the applicant notes that the “location of aquifer recharge areas is unknown and undetermined” but that no harm would likely happen based on the “deep static water levels and well drained soils and low density.” AR 175. It further notes that the soils are “excessively drained” and the depth to Water table is “more than [6’8”]. *Id.* But it does not discuss the potential impacts of four new septic systems, which generate 7,900 gallons per day of septage waste. And it does not note where any effluent would go once it went into the “excessively drained” soils. Nor does it discuss the total usage of water from a newly developed public water supply system.

The brief discussion of water also ignores the 1993 EA and the 2006 Draft Update. Both of these plans include a goal to maintain or improve current water quality by preventing further degradation. AR 406, 457-58, 590; 1993 EA, p. 66; 2006 Draft Update, p. 2. They also contain significant information concerning ground and surface water in the area. AR 457-58, 590; Dkt. 35, pp. 3-4.

Instead, the application simply references the water and sanitation report. AR 173-75. This report was submitted pursuant to § 76-3-622, MCA, and is

directed at evaluating the availability and use of proposed water and wastewater systems. Regardless, the information highlights the omissions in the questionnaire. AR 75-98. For example, the report estimates that each RV site will use 100 gallons per day (gpd), and each tent site will use 50 gpd. AR 77. This totals 7,900 gpd (2,883,500 gallons per year), AR 78, yet there is no discussion in the application questionnaire about the impacts of this use of water on adjacent well owners or the spring fed lakes less than a ¼ mile away. AR 174-75. The report also notes that the wells will be 60-100 feet deep, AR 77, which is the same depth as the nearby spring fed lakes, *NP*, p. 14. But the EA does not discuss the potential impact of drawing water from the same aquifer as the lakes. AR 173-75

Finally, with respect to wildlife and wildlife habitat, the application is missing significant information. It only identifies that habitat may exist for “white tail deer, mule deer, elk, moose and black bear,” and other inhabitants such as “hawks, owls, and woodpeckers.” AR 178. This description omits other predator species that are known to inhabit the region such as grizzly bears, wolves, mountain lions and coyotes. AR 69, 178. It also fails to include discussion of many species of birds including bald and golden eagles, migratory waterfowl, and hundreds of other non-game species. AR 68-70, 178. Concerning habitat for these animals, it only notes that the ungulates do not prefer the area, and because there are no wet areas on the site, there are no associated waterfowl nesting areas. AR

178. But this ignores the impact of fragmenting habitat, and the increased presence of recreationalists due to the new RV Park.AR 68-70

**C. The County’s decision similarly ignores the public record.**

After reviewing the application, and gathering slightly more information, the County Planning Department put together a Staff Report (AR 231-235) for the County Commissioners to review before an ultimate hearing on the subdivision. The Staff Report, like the application questionnaire was short and lacks significant information. In fact, it had even less information than the applicant provided.

The County relied on this Staff Report to conduct the final hearing on the subdivision on September 14, 2022. After taking public comment, the majority of which opposed the development, the County took the matter under advisement and issued its final findings of fact on September 21, 2022, adopting the previously drafted Staff Report with only minor changes following the hearing. Those findings, as with the staff report and questionnaire answer, contained only minimal information. AR 8-13.

For example, the decision does not account for the comments of Fisher River Volunteer Fire Rescue (“FRVFR”) regarding the increased traffic entering and exiting the highway. AR. 157. The decision only noted that Highway 2 could accommodate the increased traffic, but makes no mention of vehicles, off road vehicles, and pedestrians entering or crossing Highway 2. And the only proposed

mitigation relates to asking MDT to reduce the speed limit. AR 9.<sup>5</sup> This does nothing to address the risks. AR 586.

The same is true of surface and groundwater. The decision notes there are concerns about effluent from the septic tanks. But the County only forwarded those concerns to DEQ and did not actually consider the potential impacts of nutrient loading. AR 9 Nor does the decision consider how that effluent will flow through a porous substrate. *Id.* And it does not address how the use of 7,900 gallons of water a day by the RV Park may deplete nearby wells or the spring fed lakes. *Id.* It then parrots the developer's statements that no impacts to surface water is expected because of the "deep static water levels, well-drained soil and low density development." *Compare* AR 11 *with* AR 175.

And last, with respect to wildlife, the decision identifies even fewer species than the developer. The County only identified, moose, elk, bear, and deer in the area, while ignoring other predators, various birds, and hundreds of other non-game species identified by Montana FWP. AR 11, 68-70. And after ignoring these species, the County states that there will not be a significant impact to wildlife or wildlife habitat. AR 11.

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<sup>5</sup> In May 2023, MDT denied the request.  
<https://thewesternnews.com/news/2023/may/09/state-suggest-minimal-changes-after-lincoln-co-hig/>

Ultimately, public comment contradicted each of these conclusions, but there is no evidence that the County considered the public comment, or the specific, documentable and clearly defined impacts that the public comments raised.

### **STANDARD OF REVIEW**

A district court's grant or denial of summary judgment, and related conclusions of law, are reviewed de novo for correctness. *Park County Env'tl. Council v. Mont. Dept. of Env'tl. Quality*, 2020 MT 303, ¶ 18, 402 Mont. 168, 477 P.3d 288.

In an appeal brought under §76-3-625(2), MCA, the standard of review is whether the record establishes that the governing body acted arbitrarily, capriciously, or unlawfully. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 65, 360 Mont. 207, 233, 255 P.3d 80, 99. The governing body's action is unlawful if it fails to comply with the requirements of applicable statutes. *Id.* The governing body's action is arbitrary and capricious if it came about seemingly at random or by chance, or as an impulsive and unreasonable act of will. *Id.*

### **SUMMARY OF THE ARGUMENT**

This case is about Lincoln County unlawfully granting preliminary plat approval to a developer seeking to create a RV Park in the environmentally unique Thompson Chain of Lakes. The MSPA sets forth the procedures a developer and

county must comply with in order to obtain preliminary plat approval. Those procedures are meant to ensure that water quality, private property rights, open space and the natural environment are protected.

To that end, an applicant seeking approval must submit an environmental assessment to the County for review. That EA must include basic information about surface water, groundwater and wildlife. It must also discuss the probable impacts of the subdivision on the natural environment. That information is then considered by the County who is required to evaluate the specific, documentable and clearly defined impacts of the subdivision. After considering the impacts, the County can then approve, conditionally approve, or deny the application. But if the developer or County do not comply with these basic requirements, any subdivision approval must be void as unlawful, arbitrary or capricious.

That is what happened here. The applicant submitted their application packet to Lincoln County, but the EA did not identify nearby surface water, did not include available groundwater information, and did not include a description of wildlife in the area. It then omitted a discussion of the probable impacts on surface water, groundwater, wildlife and wildlife habitat, and public safety. The County approved this deficient application and sent it to the Lincoln County Commission for review.

The Commission then completed an insufficient review of the proposal. Like the applicant, it ignored available ground and surface water information to find that there would be no impact to the regions water resources, even though all available data indicated that the spring fed lakes would be contaminated from septic drainage, and adjacent wells and surface water would be depleted from the RV Park's wells. In addition to water, the Commission ignored hundreds game and non-game species that use the area for summer and winter range, migration and nesting. Without considering these species, the County, like the applicant determined there would be no impact to wildlife or its habitat. Likewise, the County did not evaluate the impact of additional vehicle usage of the entrance/exit onto the adjacent highway by vehicles, off road vehicles, and pedestrians. The County's failure to evaluate also rendered its approval unlawful, arbitrary or capricious.

In its review, the County was also required to ensure that the subdivision substantially complied with the Thompson Chain of Lakes Neighborhood Plan. It failed to do so. The County allowed the development in an area the Neighborhood Plan specifically recommends against. The subdivision would also be in conflict with the Neighborhood Plan's recommendation against commercial strip development and would violate the Neighborhood Plans goals of protecting water quality and quantity and the natural environment. Because the subdivision is in

direct conflict with these goals, the preliminary plat approval is not in substantial compliance with the growth plan. The County's approval was, therefore, arbitrary, capricious and unlawful.

## **ARGUMENT**

### **A. The Montana Subdivision and Platting Act.**

This Court's review must implement the Legislature's intent by considering the central purpose of the MSPA. *State v. Mathis*, 2003 MT 112, ¶ 27, 315 Mont. 378, 68 P.3d 756. The MSPA was enacted to promote the "public health, safety, and general welfare by regulating the subdivision of land." Section 76-3-102(1), MCA. As such, the MSPA is entitled to "liberal construction with a view towards the accomplishment of its highly beneficent objectives." *State ex. Rel. Florence Carlton School Dist. V. Bd. Of County Commissioners of Ravalli County*, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978) citing *Hall v. Union Light, heat & Power*, 53 F. Supp. 817, 818-19 (E.D. Ky. 1944).

In addition to protecting public health and safety, the MSPA requires that development into rural areas of Montana minimize damage to agriculture, the environment, and existing rural land uses. The Act provides affirmative protections for water supplies, private property rights, preservation of open space, and development in harmony with the natural environment. Section 76-3-102, MCA. These protections apply not just to traditional subdivisions, but also RV Parks.

Section 76-3-102(16), MCA. Further, the MSPA recognizes that “in some instances the impacts of a proposed development may be deemed unmitigable and will preclude approval[.]” Section 76-3-608(5)(a), MCA.

To implement the MSPA, Local governing bodies must adopt subdivision regulations. Section 76-3-501, MCA. Those include requiring a developer to submit an EA with detailed information regarding the subdivision’s impacts and a subdivision application. Section 76-3-504(1)(b), MCA; § 76-4-603, MCA. Once the EA and subdivision application are submitted, the governing body reviews the adequacy of the information to ensure compliance with the MSPA and county regulations. Section 76-3-604, MCA. A hearing is then held, and the subdivision is approved, conditionally approved, or disapproved. Section 76-3-608, MCA. In reaching its decision, the governing body “*shall consider* all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment.” *Id.* (emphasis added). The governing body’s decision is memorialized in a written findings of fact that weighs the criteria in § 76-3-608(3), MCA. A written decision may be voided if it is unlawful, arbitrary and capricious. Section 76-3-608(10), MCA.

**B. The County’s decision-making process violated the MSPA because the EA was insufficient.**

The County’s decision approving the Subdivision was unlawful, arbitrary and capricious because the EA did not comply with § 76-3-603, MCA. The District Court’s decision upholding the subdivision was, therefore, also in error.

As part of the Subdivision process, the applicant was required to submit an EA. Section 76-3-504(1)(b), MCA. An EA must include:

- (i) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;
- (ii) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; . . . .

Section 76-3-603(1)(a), MCA.

The EA must also summarize the “specific, documentable, and clearly defined impact [of the subdivision] on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety. . .” Section 76-3-603(1)(a)(ii), MCA *citing* § 76-3-608(3)(a), MCA.

The EA thus serves a vital role of compiling a list of impacts upon the community, which the public can consider and respond to, and which informs decision-maker review and action. Accordingly, the MSPA requires complete and coherent data compilation to provide “information that is sufficient to allow for the review of the proposed subdivision. . . .” Section 76-3-604(2)(c), MCA.

In briefing below, TCLSC argued that the EA was insufficient because it, first, failed to provide the information required under § 76-3-603(1)(a)(i), MCA, and second, it did not include a “summary of the probable impacts” as described in § 76-3-608, MCA as required at § 76-3-603(1)(a)(ii), MCA. These requirements complement each other, and both must be present for an EA to be sufficient under the MSPA. Failure to include either of them renders the County’s approval arbitrary, capricious, or unlawful. *See, e.g., Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 56, 356 Mont. 41, 230 P.3d 808; *Citizens for a Better Flathead v. Bd. of Cty. Comm’rs*, 2016 MT 325, ¶ 44, 385 Mont. 505, 386 P.3d 567. The District Court rejected each of these arguments, though, and instead found that the EA requirements were satisfied. That decision was in error.

TCLSC argued that the EA failed to satisfy the requirements of § 76-3-603(a)(i), MCA, for two reasons: (1) the application did not include any meaningful disclosure of surface water or groundwater and (2) it did not account for wildlife use in the area. (Dkt. 22, pp. 8-10.) In part, TCLSC noted that the County’s subdivision application form submitted by the applicant does not include as a stand-alone document labeled an EA. Absent such a designation, the information is jumbled, at best, and incomplete, as highlighted by the District

Court conflating the water and wildlife requirements under § 76-3-608, MCA, with those in § 76-3-603(1)(a)(i).<sup>6</sup>

**1. The Application did not include the required surface water information and the probable impacts on surface water.**

With respect to surface water, the District Court’s confusion is clear. Under § 76-3-603(1)(a)(i), the Applicant – Happy’s RV – was required to provide a description of the surface water that “may be” affected. The use of the word “may” indicate that an impact to surface water is a possibility, but not necessarily a “probable” impact. *See, e.g., State v. Hubble*, 206 P.3d 579, 584 (N.M. 2009). It is, therefore, a lesser standard than that required under § 76-3-608, which requires an analysis of the “probable impacts.” The applicant also had to discuss the probable impacts to surface water. and discuss probable impacts to groundwater. Section 76-3-603(a) (ii), MCA.

In fact, the application contained little meaningful discussion of surface waters. It observes, “There is no surface water on this site, or within proximity of

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<sup>6</sup> The Court briefly addressed wildlife with respect to § 76-3-603(a)(ii), MCA, but the requirements are different. Under § 76-3-603(a)(i), the applicant must “describe . . . wildlife use within the area.” Whereas under § 76-3-603(a)(ii), MCA, the applicant must provide a “summary of the probable impacts” under § 76-3-608, MCA. Those impacts include the “specific, documentable and clearly defined impact on the natural environment, wildlife, and wildlife habitat.” Section 76-3-608(3)(a), MCA.

being impaired.” AR 173. But this ignores the proximity to the Thompson Chain of Lakes, which are within 1,200 feet of the property.

The Court, in reviewing this information, simply concluded that the “application *does not identify any body or stream of surface water* that may be affected by the proposed subdivision.” (App. 1, p. 11.) At the same the time, however, the Court noted that the Commissioners “added that there was surface water nearby within 1200 feet.” (App. 1, p. 11.) The mere fact that the Commissioners added this information, indicates that the surface water “may be” affected, and it should have been included in the EA.

Second, the record demonstrates that nearby surface water in Lavon and Crystal “may be” affected. The District Court disregarded this information. These lakes are at risk because they are spring fed, and the subdivision draws groundwater for wells, and then disposes of its waste through septic systems. The potential for contamination was noted in 1993 Environmental Assessment. At that time, FWP highlighted: “While adequate data is not available to make specific predictions, based on previous and current testing, land use activities may be impacting water quality in the Thompson Chain of Lakes.” *See* AR 457-58; 1993 EA, p. 42; Dkt. 35, pp. 4-5. At the time, Crystal Lake already had high nitrate concentration: “Crystal Lake is heavily developed with summer and year-round homes on over half of its shoreline. **The water quality reflects the impact of use**

**and year-round septic drainage.** Its 1984 data show high levels of total N, 0.8 milligrams/liter, of which 63 percent is in the form of ammonia (NH<sub>3</sub>). *See* AR 702; 1993 EA, p. 44;; Dkt. 35, pp. 4-5. It also noted that water quality in the lakes can be deteriorated due to seepage of septic systems into lake and groundwater. *See* AR 702; 1993 EA, p. 70; Dkt. 35, pp. 4-5 (emphasis added.) Similarly, the Neighborhood Plan also highlights this concern; it sets forth goals that water quality should be protected and recognizes the potential impact of new development using septic systems. *NP*, p. 5. As such, the EA was required to identify these lakes as surface water that “may be” affected based on this publicly available information.

Yet, the District Court simply accepts that the failure to include any discussion of surface water in the EA and ruled that the EA “complied with the statute.” (App. 1, p. 11) That decision, like the County’s, was in error because nearby surface water may be affected. This failure also impacts the County and the public’s review of the proposed subdivision because, “without information about the nature of these surface waters the County cannot possibly evaluate the impacts to them.” (Dkt. 45, Ex. 1, *Upper Missouri Waterkeeper, et al v. Broadwater County, et al.* Montana First Judicial District, Broadwater County, Cause No. BDV 2022-38 (Feb. 14, 2024).) Therefore, the County’s decision was unlawful, and the preliminary plat should have been voided by the District Court. *See, Citizens for*

*Resp. Dev. v. Board of Cty. Commsrs. (Citizens)*, 2009 MT 182, ¶ 25, 351 Mont. 40, 208 P.3d 876.

**2. The Application did not include the required ground water information and the probable impacts on groundwater.**

The District Court and County similarly dismissed concerns about groundwater. Together with identifying surface water, the EA needed to include “available groundwater information” and discuss probable impacts to groundwater. Sections 76-3-603(a)(i), (ii), MCA.

Here, the EA omits any meaningful discussion of groundwater. AR 174. In fact, the questionnaire admits, “The location of aquifer recharge areas is unknown and undetermined,” and that “the location and depth of all aquifers which may be affected by the subdivision are unknown and have not been determined.” AR 174-75. The only information in response to the depth of the aquifer is a citation to the well logs attached to the “Water & Sanitation Report. AR 174. Those well logs indicate that the depth to groundwater, in November (or low water) are as shallow as six feet. *See, e.g.*, AR 269 (“Static Water Level: 6” and “Pumping water level 6 feet.”) And the EA does not include reference to the Neighborhood Plan, the 1993 EA, or any other information related to the location and flow of groundwater. AR 174-75, 457.

In other words, the applicant’s response to the questionnaire does not describe the nature of the aquifer beneath the Subdivision in terms of its hydrologic

characteristics, including whether it was confined, what the transmissivity or storativity is for the relevant aquifer, direction of flow and potential impacts on adjacent landowners' wells and existing water uses, or whether and to what extent nearby surface waters interact with and are recharged by the same aquifer. AR 173-74 (Conclusory findings of no probable impact on surface water, on groundwater wells, and on natural environment). But much of this was information publicly available. As noted, this information was available in the 1993 EA and the Neighborhood Plan. AR 457-58, 605-07, 701-02.; *see, generally*, 1993 EA; NP, pp. 13-14, 19-20. Additionally, the Montana DEQ also conducted a study in 2001 concerning groundwater and substrate. AR 58. Yet, the Happy's Inn EA does not discuss any these available documents. AR 174-75.

The District Court, like the County, dismissed these failings and concluded that neither the 1993 EA nor the 2001 report would be relevant to the Application. Choosing instead, to defer to the Planning Department's determination that the application material was complete without it. (App.1, p. 11.) But these documents, literally, describe the subsurface and the flow of groundwater through the substrate in this area. The mere fact that the documents are several years old does not discount that they were relevant, and should have been discussed in the EA. The statute requires "available information," and this information was available. It should have been included, and without them, the decision was unlawful. *Aspen*

*Trails*, ¶ 56 (“The EA noted that ground water in the project area ranged from 2 to 10 feet; however, a U.S.G.S. report on the shallow groundwater, as well as information from test wells, was not presented in the EA.”)

This situation is strikingly similar to *Aspen Trails*, where this Court voided a preliminary plat for failure to include groundwater information. While the studies at issue here may not be as “current” as the “widely available” USGS report in *Aspen Trails*, there is no indication that they are unreliable, and the findings therein refute those made by the Applicant, here. Indeed, the passage of twenty to thirty years, with the additional development in the area, has likely aggravated the problems identified previously. *See, e.g., NP*, p. 19.

To that end, this case is directly on point with *Aspen Trails*, where the Court, in ruling against the County, explained, “the EA **simply does not provide available information on the high groundwater**, and was inadequate with regards to potential impacts to both the groundwater and the Prickly Pear Creek. *Aspen Trails*.” *Id.*, ¶ 56 (emphasis added.) Continuing, the Court observed that without knowledge of the depth the groundwater, the subdivider “could conceivably place sewer pipes directly in the groundwater.” *Id.* The Commission, thus, erred because “in approving the preliminary plat, [the Commission] **had no way to evaluate whether or not this would occur**, and what the resulting impacts

would be, since the EA did not provide all ‘available information’ regarding the groundwater.” *Id.* (emphasis added.)

Here, given the Applicant’s admission that “the location of aquifer recharge areas is unknown and undetermined,” (AR 174), and the failure to evaluate available information, the EA’s conclusion that no contamination would occur was arbitrary and capricious. The County here, like the City of Helena in *Aspen Trails*, ¶ 56, “had no way to evaluate whether or not” impacts would occur.

The District Court attempted to distinguish *Aspen Trails* by asserting that the groundwater, there, was very shallow and directly adjacent to surface water, and a groundwater specific report existed in *Aspen Trails*. But that’s the same situation, here. First, there is surface water within 1,200 feet. AR 457-58, 605-07. That surface water is spring fed. So that adding nutrients from septic systems or additional drains on the aquifer (wells), may deplete those lakes. *NP*, p. 19. Second, The water table, based on the well logs<sup>7</sup>, is “shallow,”<sup>8</sup> or between 6-8 feet in some locations.<sup>9</sup> So, like *Aspen Trails*, “the nature of this possible pollution of the groundwater and its possible tie-in with [surface water] should have **at least**

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<sup>7</sup> Relying on only groundwater information derived from well logs is also insufficient as that information is primarily “directed at the testing requirements of § 76-3-622, MCA. *Citizens*, ¶ 21.

<sup>8</sup> In *Aspen Trails*, a groundwater level of 2 to 10 feet was shallow. *Aspen Trails*, ¶ 56.

<sup>9</sup> On site test pits encountered damp soil at seven feet. AR 0055; AR 175 (water table is 6’8”); AR 269 (static water level 6’).

**been summarized and discussed in the EA.”** *Aspen Trails*, ¶ 57 (citing the district court with approval, emphasis added.”).

In short, the applicant’s answers to the questionnaire failed to include relevant surface and groundwater information, and the County’s approval of the subdivision was, therefore, arbitrary, capricious, and unlawful. *Aspen Trails*, ¶¶ 57-58; *see also, Citizens*, ¶ 21 (preliminary plat voided, in part, for developer failing to “describe the location of the aquifer, current health of the water bodies or whether the aquifer and Clark Fork interact.”)

**3. The District Court failed to analyze the EA’s lack of information on wildlife.**

In addition to water, § 76-3-603(1)(a)(i), MCA, requires an EA to include a description of “wildlife use within the area of the proposed subdivision.” Similarly, the application required Happy’s RV to “provide an evaluation [of] the species . . . that use the area to be affected by the subdivision.” AR 0178. The District Court did not explicitly determine whether this element was met. Instead, it addressed wildlife under § 76-3-608, MCA, and dismissed any concerns merely because the operation “is not in a wildlife corridor” and its operation “would be seasonal, thus not even in operation during the time winter range would be an issue for any kind of species.” (App. 1, p. 11.) The Court’s findings are inaccurate and contradicted by the record; therefore, its decision as in error.

Regardless, the County’s approval was unlawful because the EA failed to describe wildlife use “within the area” of the proposed subdivision.<sup>10</sup> The EA notes deer, elk, moose and black bear, and some birds use the area. AR 178. But it ignores “hundreds of nongame species, especially migratory birds.” AR 70. It does not discuss federally protected Bald Eagles, trumpeter swans, heron, common loons, and other migratory birds; and ignores the presence of numerous predators like: mountain lions, coyotes, wolves, and grizzly bears. AR 0069.-70 Because the bulk of species are not identified, the application does not describe wildlife use within the area, or summarize the impacts on wildlife, both of which are required by § 76-3-603 (1)(a)(i), (ii), MCA.

This information was available to prior to submitting the EA. In 2021, Montana FWP submitted comments based on the Mountain Lakes Subdivision Phase II, which includes portions of the RV Park. AR 66, App. 1, p. 11. In its comments, FWP provided the information necessary to complete the EA, here. AR 66-74; *See also, NP*, pp. 11-13; 1993 EA, pp 54-60; Dkt. 31, p. 8. Yet as described, the majority of that information is not in the EA. AR 178.

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<sup>10</sup> Initially, because both the application and statute use “the area” as opposed to “within” the subdivision, the evaluation necessarily should include wildlife outside of the boundaries of the subdivision itself. *See, e.g., Aspen Trails*, ¶ 56 (considered water impacts outside of boundary of subdivision.)

As with the failure to properly evaluate water, the EA's failure to account for known wildlife use and impacts on wildlife and habitat renders the approval unlawful in violation of § 76-3-603, MCA.

**C. The County's evaluation similarly failed to address the "specific, documentable and clearly defined impacts" of the RV park in violation of § 76-3-608, MCA.**

Separate from the EA, the County has an obligation to evaluate "the specific, documentable, and clearly defined impact on . . . the natural environment, wildlife, wildlife habitat, and public health and safety." Section 76-3-608(3)(a), MCA. However, the patent inadequacy of the EA prepared by the Applicant tainted the County's own subsequent review, as the EA is one of the factors that must form the basis for the governing body's decision. Section 76-3-608(1), MCA.

Indeed, "The criteria described in 76-3-608 . . . require, in part, that the governing body review a subdivision proposal for 'the specific, documentable and clearly defined impact on . . . local services, the natural environment, wildlife and wildlife habitat, and public health and safety.'" *Citizens*, ¶ 12 quoting § 76-3-608(3), MCA. Clearly, if the EA's review of those factors is insufficient, then the Commissioners' decision is also deficient. Moreover, the Planning Staff Report as adopted by the Commission as their decision (AR 8-13) failed to fully and independently consider the factors set forth at § 76-3-608(3)(a), MCA. As such, the

Commission's approval was unlawful "for failure to comply with the statutes" discussed herein. *Citizens*, ¶ 26.

In all, the County's decision, and subsequent District Court order, were in error because the Commission failed to evaluate the impact on the natural environment; wildlife and wildlife habitat; and public health and safety.

**1. The Commission failed to evaluate the impact on the natural environment by ignoring the hydrogeology of the area.**

Concerning the natural environment, and as described above, the County and applicant were ignorant of the impact of this subdivision on the area's surface and groundwater. Nevertheless, the District Court found that approval was lawful because, in the Court's view, TCLSC's argument was premised on the need for an aquifer analysis.<sup>11</sup> (App. 1, p. 11.) But that conclusion ignores the bulk of TCLSC's argument and the record.

Contrary to the District Court's assertion, the record demonstrates the significant impact on the area's aqueous environment. The Staff Report (AR 0231-35) and final approval (AR 0008-13) show the County's lack of analysis. For example, the Staff Report does not reference the surrounding eighteen lakes, two

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<sup>11</sup> Admittedly, an aquifer analysis would be useful, but TCLSC's argument is not that a study is necessary. Rather, based on the available evidence – public comment, the 1993 EA, the 2001 DEQ study, and the Neighborhood Plan – the surrounding spring fed lakes will face an increase in nutrient loading, and the County failed to consider this fact.

of which are directly across Highway 2 from the Subdivision or discuss potential impacts of the Subdivision on those lakes. AR 233. And it does not discuss any potential connectivity to groundwater. *Id.* This omission is significant because the three lakes closest to the Subdivision are spring fed, with no known outlets or inlets. (Dkt. 3, ¶ 7; Dkt. 5, ¶ 7.) Any potential use of groundwater or additional septic systems will likely impact the lakes. AR 457-58, 551-552, 556, 619; *NP*, p. 19.

Public comment, supported by the 1993 EA, 2001 Study, and Neighborhood Plan highlight the interconnectedness of groundwater in the area. Prior to the Commission's public hearing Plaintiffs submitted approximately 35 pages of information/comments for the commission to consider. AR 697-728. The information included new concerns from a professional hydrologist, Steve Paustian. The information Paustian presented concerned the potential impacts to water quality and quantity in the area based on area geology and the lack of data. In his letter, he referenced the 1993 TCL Management Plan EA extensively, which noted that "groundwater movement through unsorted glacier till that occupies much of the TCL Basin is difficult to predict and may be locally complex." AR 607, 725-26.

He further noted the risks to adjacent wells and the lakes due to the use of the shallow aquifer as a water source for the subdivision, and the risks to water

quality of wells and lakes due to location and size of the septic systems combined with the “high porosity of coarse glacial and alluvial soils in the area.” *Id.* He predicted that “contaminants from the septic system could migrate into shallow gravel aquifers impacting wells immediately adjacent to the project area and potentially effect springs along the NW shoreline of Crystal Lake just 1200’ away from site.” AR 727. Put simply, this subdivision will result in “plumes of wastewater” reaching the spring fed lakes with no way out. AR 551.

This conclusion is further supported by the Neighborhood Plan. Therein, the County highlights, “many of the lakes are recharged through groundwater flows. . .” *NP*, p. 13. And Lavon and Crystal Lakes have “no apparent surface inlet or outlet.” *Id.*, p. 14. The water quality of these bodies is at risk “from failing septic systems” and “[w]ater quality protection efforts need to consider existing and **new growth.**” *Id.*, p. 19 (emphasis added). Ultimately, substantial public information and comment, both written and oral, indicated that there is a significant risk of contamination of the lakes from additional septic systems.

The Commission, though, ignored this information and simply found that “the location of aquifer recharge areas is unknown,” but that ground water would “not likely” be “affected due to **deep** static water levels, well drained soils and low-density development. AR 11 (emphasis added). But as noted above, the static water levels are not “deep”; rather, they are as shallow as six feet during seasonal

lows. And, even if they were deep, the porosity of the soils – i.e., well drained – means that any effluent from septic systems will quickly mix with groundwater. Thereafter, it is logical that the septic systems will load nutrients into the system of groundwater fed lakes. *See, e.g.*, AR 50, 499-500, 551, 606, 836-37. Yet, the Commission’s decision assumes there will be no impact. The Court should not defer to this “complete lack of analysis” and instead look to the complete record, which demonstrates the County failed to make a “reasoned decision.” *See, e.g., Mont. Env’t Info. Ctr. v. Mont. Dep’t of Env’t Quality*, 2025 MT 3, ¶ 41, 420 Mont. 150, 561 P.3d 1033.

Moreover, the approval documents neglect the *usage* of water. According to the applicant’s report, the wells will be 60-100 feet deep and have an annual usage of 8.85 acre-feet. AR 77-78. The well information, however, indicates the static water level ranges from 6 feet to 55 feet, with an average depth 38 feet. AR 27-34. This aquifer is coextensive with the source for the neighboring wells and lakes, and its use will impact nearby wells and lakes. AR 457-58, 551-552, 556, 619. There is nothing in the “impacts on the natural environment” section of the approval (AR 11) discussing these particular impacts.

Public comment, though, highlighted the significant risks to existing well owners and the nearby lakes. TCLSC, for example, explained, “Lake levels have been dropping for the past several years and lake bottom vegetation has changed.”

AR 242. And for the first time in 50 years, at least one well on Crystal Lake went dry. *Id.*; AR 248. A professional hydrologist correlated these drawdowns with “increased domestic water use associated with expanding” development. AR 457. Yet, the District Court, like the County, completely ignores these comments.

The District Court further sidestepped these issues by attempting to distinguish *Citizens* and *Aspen Trails*. Its first error in doing so was when the District Court conflated the applicant’s obligations under § 76-3-603, MCA, with the County’s obligations under § 76-3-608, MCA. (App. 1, p. 11.) In *Citizens* and *Aspen Trails*, the issue was whether the EAs required under § 76-3-603, MCA were sufficient, not whether the County fulfilled its obligations under § 76-3-608, MCA. As such, any reliance on *Citizens* and *Aspen Trails* to determine compliance with § 76-3-608, MCA, is misplaced. Instead, the District Court needed to determine whether the County considered the “specific, documentable and clearly defined impact on” hydrology as part of the natural environment, which it did not do.

The County’s failure to consider these impacts, renders the approval arbitrary, capricious and unlawful.

**2. The County and District Court ignored the impacts on wildlife and wildlife habitat.**

In addition to water, the County’s decision barely mentions the impacts to wildlife, further violating § 76-3-608(3)(a), MCA. As noted above, the EA failed

to identify a myriad of species, including those protected under the Endangered Species Act, the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act. As such, the County's evaluation is necessarily deficient because in relying on the inadequate EA, the County does not meaningfully address impacts on wildlife and wildlife habitat. AR 11, 921 (Commission minutes, September 21, 2022).

In its own evaluation, the County also failed to identify important wildlife, or discuss the "specific, documentable and clearly defined impacts on wildlife." Section 76-3-608(3)(a), MCA. Rather, the County notes that wildlife is in the area, but without providing a basis, concludes that "there does not appear to be a significant impact to wildlife or wildlife habitat". (AR 11) A conclusion that the District Court inappropriately adopts. (App. 1, p. 11.)

Both the County and District Court's conclusions were in error because the record demonstrated that there were "specific, documentable and clearly defined" impacts to wildlife and habitat. The Subdivision is situated in a known wildlife habitat for big game, predators, and birds. The area is "year-round range for elk, moose, white-tailed and mule deer," and adjacent to "prime winter range for moose." AR 0068. Winter range "is considered one of the most significant factors to big game species," and subdividing property "can pose a threat to this endeavor." *Id.* For elk in particular, the subdivision causes concern because increasing the number of subdivisions "increases the likelihood of human-wildlife

conflicts.” AR 0069. But the approval only mentions there is land elsewhere, it does not address the impacts of the Subdivision on the species utilizing the area. It simply brushes aside FWP’s concerns that fragmenting winter habitat (such as through removing 21.03 acres of prime winter habitat) harms ungulate populations – even though it is “one of the most significant limiting factors.” AR 0070.

The District Court and County further fail to evaluate the impacts on winter range. Despite this record, the District Court concluded that the area is not in a wildlife corridor and that the park is seasonal, so it will have no impact on winter range. App. 1, p. 11. This conclusion inserts information – that a seasonal RV park has no impact on winter range – that is not present in the record. The County did not “evaluate” the impact of the RV park on winter range, it only stated that the area is “general/winter range” for a variety of animals.

In their decision (AR 11), the Commission also neglected to discuss the presence of grizzly bears, wolves, coyotes, and mountain lions. AR 69; *NP*, pp. 11-13; 1993 EA, pp. 54-60. These species will be impacted as their prey – big game – is impacted. But without any information concerning these predators, the approval provides no evaluation of the impacts on the predators. The approval then ignores “hundreds of non-game species, especially migratory birds.” AR 70. In fact, the approval makes no mention of birds, at least some of which, are protected under federal law. AR 11, 70. Nor does the evaluation address the impacts an additional

89 campsite sites would have on any of these species, or the wildlife impacts of additional recreational use of public lands and waters. *Id.* Nor does the evaluation consider the potential nutrient load of the spring fed lakes, and the impact on fish or waterfowl. Each of these concerns were raised in public comment, only to be ignored by the County. AR 426, 817, 839-40, 908-10.

The County's proposed mitigation is also ineffective. The only mitigation is open space around the sites and requiring bear proof garbage containers. AR 0011. But these measures, like the approval, fail to account for whether they mitigate impacts to wildlife and its habitat and they do nothing for migratory birds.

Ultimately, then, the County and District Court erred. Nowhere did the County consider the "specific, documentable and clearly defined impacts" on wildlife or wildlife habitat, and the District Court's decision to uphold this approval was arbitrary and capricious.

### **3. The approval does not consider the impacts on adjacent public lands.**

As part of the challenge to the preliminary plat, the TCLSC argued to the District Court that the County's review under § 76-3-608, MCA, failed to account for the impacts on adjacent public lands, as part of its review of the natural environment. (Dkt. 22, p. 10.). The District Court, again, misapprehended the argument and considered it as a challenge under § 76-3-603, MCA, concerning the "heritage" in the area. (App. 1, p. 12.) In rejecting the argument, the District Court,

without any analysis concluded that approval, with appropriate conditions, would not “be a violation in an area prized for its recreational opportunities.” *Id.*

That decision, though, ignores TCLSC’s argument, which is that the County failed to evaluate the “specific, documentable and clearly defined impacts” of an additional 89 campsites on then natural environment, including on nearby public lands. Planning staff indicated that “the property is not adjacent to public lands, though there are some managed by the Forest Service to the west.” AR 233. However, the area across Highway 2 includes public lakes, and a State Park. AR 71, 242. The surrounding area is replete with public water bodies (18 lakes) and public lands. *Id.*

The final approval is similarly deficient. It recognizes that Lavon Lake is nearby, and additional area lakes exist. AR 11. However, both the draft report and final approval ignore the *potential impacts* of 89 new campsites on recreational use of the land. AR 231-35, 242, 245. The Commission minutes approving the Subdivision similarly ignore these impacts. AR 921-22. Put simply, the County failed to evaluate the impacts on public lands and waters, or what effect increase recreation would have.

**4. The District Court and the County failed to evaluate the impact on public health and safety.**

In its order, the District Court did not address the “specific, documentable and clearly defined impacts” on public health and safety. Similarly, the County

glossed over the Subdivision's impacts on health and safety. For example, Fisher River Valley Fire/Rescue (FRVFR) provided public comment that highlighted that the Subdivision would be the third subdivision to utilize the same access point to Highway 2. AR 157. And that increasing the number of recreational vehicles, ATV's, UTV's and motorcycles would cause a "huge safety risk." *Id.* The Subdivision would also increase the pedestrian traffic travelling across Highway 2, which has a 70 mph speed limit. These increases would exacerbate the danger and add congestion "to the already extremely busy" and "hazardous" location. *Id.*

The approval documents do not evaluate, or weigh, this public safety risk. They only note that the County has *requested* lower speed limits, and this mitigation would be effective *if granted*. However, there's no showing that Montana Department of Transportation would take any action and reduce the speed limit.<sup>12</sup> Absent such mitigation, there are clear impacts from the addition of 89 campsites on vehicular and pedestrian safety, which the County fails to address.

Due to this error, and the entirety of the record, the County did not consider the "specific, documentable and clearly defined impacts" of the subdivision. This

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<sup>12</sup> In May 2023, MDT denied the request.  
<https://thewesternnews.com/news/2023/may/09/state-suggest-minimal-changes-after-lincoln-co-hig/>

was required under § 76-3-608, MCA, and the County’s decision was, therefore, unlawful, as well as arbitrary and capricious.

**D. The preliminary plat is not in substantial compliance with the Growth Policy or the Neighborhood Plan.**

Governing bodies must be guided by and consider the general policy and pattern of development set out in the growth policy, including neighborhood plans that are integrated into the growth plan. *Heffernan*, ¶ 78. To effectuate this guidance, a subdivision approval must be in substantial compliance with a growth policy and/or neighborhood plan. *Id.*; *Hartshorne v. City of Whitefish*, 2021 MT 116, ¶ 19, 404 Mont. 150, 486 P.3d 693. Under this standard “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.” *Heffernan*, ¶ 78. (emphasis in original).

Relevant here, the County adopted its growth plan in 2009,<sup>13</sup> and in 2010 the Lincoln County Commissioners amended the Growth Plan by adopting the Thompson Chain of Lakes Neighborhood Plan.<sup>14</sup> The underlying premise of the Neighborhood Plan “is to protect property rights and values by offering assurance

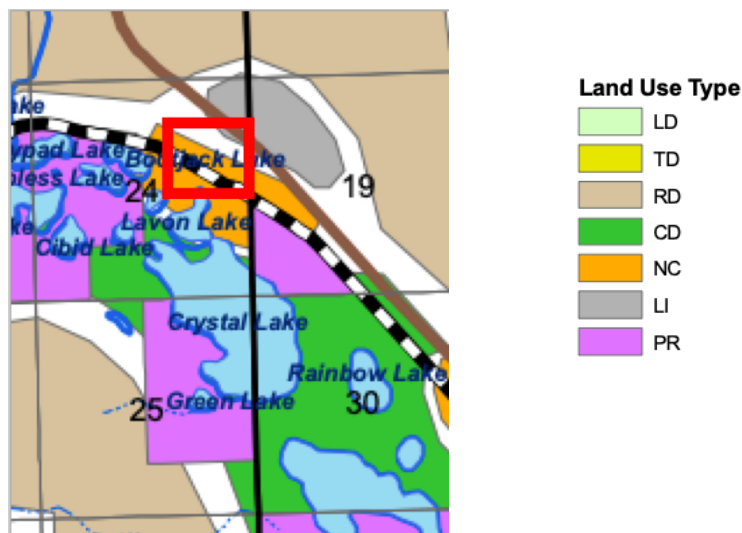
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<sup>13</sup> It was amended in 2019, and the current version is available at: [https://lincolncountymt.us/wp-content/uploads/2016/05/Adopted\\_Lincoln\\_County\\_Growth\\_Policy\\_Update\\_2019.pdf](https://lincolncountymt.us/wp-content/uploads/2016/05/Adopted_Lincoln_County_Growth_Policy_Update_2019.pdf)

<sup>14</sup> <https://lincolncountymt.us/wp-content/uploads/2016/05/TCLNP.pdf>

that the types, locations, and density of future uses are consistent with the inherent quality and values of the region.” *Id.*, at p. 3. To implement this premise, the plan represents that care must be taken to protect the landscape, including water quality, wildlife corridors, habitat, and specifically winter range for ungulate populations. *Id.*, at pp. 11-12.

To meet this goal, the Neighborhood Plan sets forth various land use designations and associated allowable uses. The following map highlights the general location of the RV Park, to the north of highway 2 (black and white line).



See Map B-3, [https://www.thompsonchainoflakesstewardshipcoalition.com/\\_files/ugd/efbaa2\\_167f29595b8c465eb5fef3f5b9a14839.pdf](https://www.thompsonchainoflakesstewardshipcoalition.com/_files/ugd/efbaa2_167f29595b8c465eb5fef3f5b9a14839.pdf) (last access May 14, 2025). The proposal, here, is located in a “neighborhood commercial” or NC designated area, in which RV parks are expressly prohibited. *Id.*; Neighborhood Plan, at pp. 36-37. The District Court misconstrued those use designations,

concluding incorrectly that RV Parks were contemplated in this “node.” (App. 1, p. 13.) For that reason alone, the proposal does not “substantially comply” with the Neighborhood and Growth Plans. *See, e.g., Heffernan*, ¶ 82; *See also. Citizens for a Better Flathead*, ¶ 44.

This Court rejected a similar subdivision in *Heffernan*. There, the issue was compliance with the Growth Policy’s density recommendations. The district court found that the approval of a development with five times the density of that recommended in the Growth Policy was not in substantial compliance. This Court affirmed:“(w)e agree with the District Court that this is a ‘significant deviation’ from the plan. Not only that, but it is also the most important deviation because it undermines all other goals and objectives.” *Heffernan*, ¶ 82; *Citizens for a Better Flathead*, ¶ 44.

Likewise, here, having a Growth Policy that says there should be no RV parks in this specific area, with the County then approving an RV park in that area, is certainly analogous to, if not worse than, allowing density five-times the recommendation.

But that is not the only glaring inconsistency with the Neighborhood Plan. The subdivision also deviates from the Neighborhood Plan with respect to water quality and quantity goals. In the Neighborhood Plan, the County set forth the goals of ensuring water quality is protected and conserved while recognizing the

potential impact of new development, especially new septic systems. *See NP*, pp. 11, 19.

Yet, the Subdivision, here, conflicts with these goals and concerns. As described above, the subsurface is highly porous, and nutrients from septic systems will quickly move from the drain field throughout the groundwater system into the adjacent spring fed. And because these lakes have no outlets, the nutrients, or other contamination, cannot be flushed out. The Subdivision thus fails to preserve and conserve the surrounding water quality and is inconsistent with the Neighborhood Plan's goal of "maintaining the water quality." *NP*, p. 13.

The Subdivision further deviates from the Neighborhood Plan's requirement that development is consistent with the area's natural attributes. Thereunder, "Care must be taken to ensure" that that wildlife and wildlife habitats are protected, that water quality is protected, that habitat loss, degradation and fragmentation are minimized, and that wildlife corridors continue to function. *NP*, pp. 11, 24-26, 28. As described, the Subdivision does none of these things: it destroys wildlife habitat for mammals, birds, and fish; fragments wildlife habitat; and has a deleterious effect on area water quality. AR 68-74. And the proposal fails to account for the 17 species of fish in the area, including the Westslope Cutthroat Trout and Columbia River Redband Trout, which are both native species and species of concern. *NP*, p. 14. Thus, the subdivision is inconsistent with the stated goals of ensuring

protection of natural resources and should be rejected. *See, e.g. Heffernan*, ¶¶ 83-90 (proposed subdivision was inconsistent with stated goals of preserving land, wildlife, and natural resources).

In addition, the Subdivision seeks to expand “strip commercial development” in contradiction to the Neighborhood Plan. *NP*, p. 34 The area across from the subdivision has some development, with the majority of services contained in two of the three existing buildings, with a combined acreage significantly smaller than the proposed RV park. AR 9, 126. And those are expressly *allowed* uses under the neighborhood plan. In contrast, an RV park is not permitted in this node, and will significantly expand the strip commercial development, by adding 21.03 acres to the pre-existing strip development.

While the District Court correctly noted that RV\_Parks and Mobile Home Parks are allowed in “Community Density” and “Rural Density” areas, the Court then ignored the fact that they are *not* allowed in “Neighborhood Commercial” where this one will be located. Compounding that error, the Court then endorsed the Planning Staff’s incorrect assumption that because this was “intense use” it was allowed in this “node.” (App. 1, p. 13.)

These clear and multiple deviations from the Neighborhood Plan means the Subdivision does not “substantially comply” with the Growth Policy. Accordingly,

the approval was unlawful, arbitrary, and capricious and must be voided. *See, Heffernan*, ¶ 91.

### CONCLUSION

An 89 site RV Park may seem small, but the fact that “a proposed development that may constitute only a small insult to the environment does not lessen the need to avoid such an offense. *Gardner v. N.J. Pinelands Com*, 125 N.J. 193, 208, 593 A.2d 251, 258 (1991). The District Court and County ignored this precaution and approved a development not in accordance with the MSPA or Neighborhood Plan. Such approval was arbitrary, capricious and unlawful.

DATED this 15th day of May 2025



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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word for Mac 2016 is 9,988 not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

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