

## **Additional comments submitted by Citizens for a Better Flathead 3-1-10**

**Information not included in the Release and Settlement Agreement** but required under the Montana Subdivision and Platting Act for approval of a preliminary plat subdivision . Given that the extent of changes to this preliminary plat has been changed, significant new information should be provided for the public record and consideration. The Flathead County Commissioners, for this and numerous other reasons set forth at this hearing, should reject this proposed Release and Settlement agreement.

As recently recognized by the Montana Attorney General (49 Op.Att’y.Gen.No. 7) and the Flathead County District Court (*Neighbors Over the Aquifer, Inc., et al. v. Board of County Commissioners of Flathead County*) it is essential that the Applicant submit **all of the information required** under the Montana Subdivision and Platting Act and implementing regulations **before** a decision is made as to whether or not to approve a proposed preliminary plat, since additional conditions may not be imposed later. (*See* § 76-3-610(2), MCA.)

1. **A preliminary plat map**, the settlement agreement does not include a final version of this map.
2. **Accurate unit and population counts**, given potential changes to the subdivision plat as shown in Exhibit A and Exhibit D identify lots for town houses and condominiums as well as commercial lots. Townhouses or Condominiums could have an average of 4 units or more per lot, this could potentially add additional residents beyond that for single family dwellings in the original proposal. This would mean that information provided in the original application for sewage, water, and traffic among possible others will need to be reevaluated.
3. **New information needs to be provided on stormwater, stormwater facilities, and the stormwater management plan** given changes to lot sizes, uses, and locations as well as changes to roads and road locations.
4. The Montana Subdivision and Platting Act is clear in terms of what information the applicant must now **disclose prior to preliminary plat approval new water supply or wastewater facilities or stormwater. The information must include:**
  - (b) a description of the proposed subdivision’s **water supply systems, stormwater systems**, solid waste disposal systems, and **wastewater treatment systems**, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or **public as those systems are defined in rules published by the department of environmental quality**;
  - (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that **shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104**;

\* \* \*

(e) for new water supply systems, unless cisterns are proposed,

**evidence of adequate water availability:**

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) **evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104. . . .**

(§ 76-3-622(1), MCA; emphasis added.)

The referenced statute, § 76-4-104, MCA, requires the DEQ to promulgate regulations, and the subdivider to make disclosures, that are in accordance with the following:

(b) adequate **evidence** that a **water supply** that is sufficient in terms of **quality, quantity, and dependability** will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate **evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;**

(e) standards and technical procedures applicable to **storm drainage plans** and related designs, **in order to ensure proper drainage ways**

. . . (Emphasis added.)

When a developer proposes to hook up to an existing public wastewater treatment system, then the developer must provide evidence that the system is approved by DEQ, that the managing entity has authorized the connections, and “**the system has adequate capacity to meet the needs of the subdivision.**” (See DEQ ARM 17.36.328(2)(b)(i); see also DEQ Subdivision Review Joint Application Form C Wastewater Treatment, C.3.a.(3)).