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RECEIVED

SEP 27 2013

Ravalli County Commissioners

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10 **MONTANA TWENTIETH FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY**

11 **BITTERROOTERS FOR PLANNING**
12 **Inc.,**
13 **Plaintiff and Petitioner,**

14 vs.

15 **THE BOARD OF COUNTY**
16 **COMMISSIONERS OF RAVALLI**
17 **COUNTY, a body politic and a political**
18 **subdivision of the State of Montana,**

19 **Defendant and Respondent.**

Cause No. *DV-13-372*

Dept. 2 JAMES A. HAYNES

SUMMONS

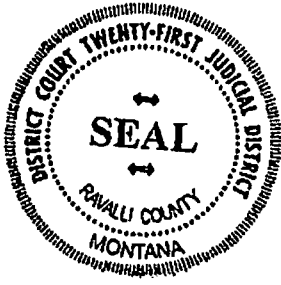
20 THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE-NAMED
21 DEFENDANT The Board of County Commissioners of Ravalli County, a body politic and a
22 political subdivision of the State of Montana:

23 YOU ARE HEREBY SUMMONED to answer the Petition for Judicial Review and
24 Declaratory Judgment Action, which is filed in the office of the Clerk of this Court, a copy of
25 which is herewith served upon you, and to file your answer and serve a copy thereof upon the
26 Plaintiffs' attorney within forty (40) days after the service of this Summons, exclusive of the day
27
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1 of service; and in case of your failure to answer, judgment will be taken against you by default,
2 for the relief prayed for in the Petition.
3

4 WITNESS my hand and seal of said Court, the 10th day of September, 2013.
5

6
7 CLERK OF DISTRICT COURT



By: [Signature]
Deputy Clerk

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FILED
PAIGE TRAUTWEIN, CLERK

SEP 10 2013

DEPUTY

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11 BITTERROOTERS FOR PLANNING
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15 COMMISSIONERS OF RAVLLI
16 COUNTY, a body politic and a political
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Dept 2 JAMES A. HAYNES

PETITION FOR JUDICIAL REVIEW
AND DECLARATORY JUDGMENT
ACTION

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21 COME NOW the Plaintiffs, through counsel, and in support of their petition seeking
22 review of the August 14, 2013, decision of the Board of County Commissioners for Ravalli
23 County granting preliminary plat approval to the Legacy Ranch subdivision, declaratory relief,
24 and their other claims and causes of action, state and allege as follows:

25 INTRODUCTION

26
27 Legacy Ranch, a proposed 639 unit subdivision adjacent to the Lee Metcalf Wildlife
28 Refuge, is the largest subdivision ever approved in Ravalli County. Situated in close proximity

1 and adjacent to the subdivision. Defendant is the local governing body for Ravalli County. The
2 proposed Legacy Ranch subdivision is located within Ravalli County, the review of which
3 subdivision is under the jurisdiction of the Board pursuant to the provisions of the *Montana*
4 *Subdivision and Platting Act*, §76-3-101, *et seq.*, Mont. Code Ann. (*Subdivision Act*), and other
5 statutes and local subdivision regulations. Plaintiffs also seek declaratory relief pursuant to §27-
6 8-101, Mont. Code Ann. The land proposed to be subdivided is in Ravalli County. Venue is
7 proper in Ravalli County pursuant to §76-3-625, MCA.
8

9 **ALLEGATIONS COMMON TO ALL COUNTS**

10
11 9. The Legacy Ranch subdivision has a long history preceding the present
12 controversy. It was first proposed in 2005 and subject to public comment and review in 2006.
13 Some of the same concerns raised here regarding unmitigated adverse impacts wildlife, water
14 and other resources were raised at that time and never addressed. The proposal was denied based
15 on the County's interim zoning regulations. The developer then sued the County in federal
16 court, claiming an unconstitutional taking of private property.
17

18 10. After reaching a settlement with the County, the developer resubmitted the
19 subdivision for review in 2008. The application went through a prolonged series of deficiency
20 findings under the then-existing Ravalli County subdivision regulations. A November 16, 2011,
21 "Insufficiency" letter from the Planning Department noted numerous deficiencies related to water
22 quality and quantity, wildlife, traffic, and other impacts. The Planning Department also
23 suggested the applicant delay proceedings pending the enactment of new subdivision regulations,
24 and provided several examples of how it anticipated the new regulations would be more
25 favorable to the developer. These are not in the records provided by the Planning Department.
26 On May 15, 2012 another deficiency letter was sent to the developer.
27
28

1 11. On May 12, 2012, the Applicant sent a letter to the Planning Department
2 requesting sufficiency review by Planning Department under the new regulations expected to go
3 into effect in June, 2012. The new subdivision regulations were adopted on June 4, 2012. The
4 Planning Department unlawfully and arbitrarily switched its review to the new regulations in
5 order to favor the needs of the developer.
6

7 12. The Planning Department continued to issue deficiency letters even under the new
8 planning regulations. However, on November 16, 2012, the Planning Department wrote to the
9 Applicant indicating its willingness to drop most of its outstanding deficiency issues. The letter
10 referred to a discussion between the developer and Planning Department Administrator Terry
11 Nelson, although the record contains no notes of that discussion. Subsequently the Planning
12 Department arbitrarily and unlawfully removed all environmental deficiencies except for
13 requesting a list of identified plant species.
14

15 13. On December 3, 2012 the Planning Board issued a letter finding the preliminary
16 plat application to be complete despite the earlier insufficiencies. The application was then
17 forwarded to the Commissioners for formal review.
18

19 14. The Ravalli County Planning Board conducted public meetings on this
20 subdivision proposal on March 6, 2013, March 13, 2013, March 20, 2013, April 17, 2013, and
21 April 18, 2013. In oral and written comments, BFP, other members of the public, and state and
22 federal agencies raised in substantial form the issues that are the subject of this lawsuit,
23 explaining why the application and environmental assessment were incomplete and failed to
24 address the requirements of the Montana Subdivision and Platting Act ("the Subdivision Act").
25 Of the people testifying at the Planning Board hearings, over 95% voiced opposition to the
26
27
28

1 subdivision as proposed. The Planning Board failed to substantively respond to all of the
2 relevant and appropriate comments and the supporting documentation.

3
4 15. Defendant Board of County Commissioners held public hearings on June 3, 11, 27
5 and 28, 2013. Plaintiff's members submitted extensive written and oral comments raising the
6 issues presented in the present lawsuit during these hearings. Public testimony by citizens and
7 other organizations voiced many of these same concerns and overwhelmingly requested that the
8 Board deny the preliminary plat in its present configuration.

9
10 16. On August 14, 2013, the Board issued its *Preliminary Plat Decision for Legacy*
11 *Ranch* ("Preliminary Plat Decision") approving the preliminary plat for the Legacy Ranch
12 subdivision subject to a number of requirements as conditions of final plat approval. The
13 decision failed to respond meaningfully to the oral and written comments and evidence
14 submitted by the public. Moreover, the conditions contained in the decision failed to adequately
15 mitigate the potential effects of the subdivision in numerous substantive areas identified during
16 the review and comment process. The Preliminary Pat Decision is a final Board decision subject
17 to judicial review.
18

19 17. The information furnished by the subdividers in support of their application is
20 incomplete and is not adequate to allow the Board to properly review the primary criteria under
21 §76-3-608, MCA, and the *Ravalli County Subdivision Regulations*. The environmental
22 assessment and community impact report are inadequate under § 76-3-603, MCA.
23

24 **COUNT ONE**

25 **(Violation of the Montana Subdivision and Platting Act)**

26 18. Plaintiff realleges all counts as if set forth in full.
27
28

1 19. The *Subdivision Act* requires an applicant for a major subdivision to submit an
2 environmental assessment that evaluates, among other things, the probable impact of the
3 proposed subdivision on seven primary review criteria, as well as a community impact
4 assessment evaluating impacts on local services and schools. § 76-3-603, MCA. The
5 environmental assessment and community impact report are the principal means of ensuring the
6 Board has adequate information to determine whether the proposal meets the primary review
7 criteria set forth in § 76-3-608, MCA as well as meet their obligation to protect the environment
8 under Articles II and IX of the Montana Constitution. The environmental assessment must
9 consider and discuss all relevant information. An inadequate environmental assessment cannot
10 serve as the basis for lawful subdivision review.

13 20. The *Subdivision Act*, §76-3-608(3) (a), MCA, requires the Board to base its
14 decision on the Legacy Ranch preliminary plat on whether the proposal, based on full review and
15 public comment, meets seven primary review criteria. These criteria include the subdivision's
16 effects on the impact on agriculture, agricultural water user facilities, local services, the natural
17 environment, wildlife, wildlife habitat, and public health and safety;

19 21. Where a proposed subdivision would have potentially significant effects on any of
20 the primary review criteria, §76-3-608(4), MCA empowers the Board to require mitigation
21 measures to address these impacts.

23 22. During the review of the Legacy Ranch application, members of the public, as
24 well as state and federal agencies, presented specific information showing the proposal would
25 have potentially significant impacts on the resources protected by the primary review criteria in
26 many ways, and explaining how the environmental assessment, community impact assessment
27 and other information supplied by the applicant did not adequately address the review criteria.
28

1 Plaintiff's comments addressed the following deficiencies in the record. These deficiencies
2 enumerated below are by way of example and are not intended as a complete recitation of all
3 deficiencies in the record. Plaintiffs provided:

- 4
- 5 a. Information showing that the subdivision will restrict movement of wildlife
6 along one of the most significant remaining migration corridors in the Bitterroot
7 Valley.
- 8 b. Information showing that the subdivision will cause contamination by
9 pollutants, including pollutants not regulated by the Montana Water Quality
10 Act, to surface and ground waters in the project area, including the Lee Metcalf
11 Wildlife Refuge and the Bitterroot River, and also water depletion issues arising
12 from the subdivision's use of water.
- 13
- 14 c. Information showing that the subdivision will substantially increase human
15 impacts to wildlife on the Refuge through increased visitation and trespass,
16 increased poaching, increased predation by housecats, increased mortality by
17 automobiles, decreased use of habitats, and other factors, leading to the
18 impairment of the Refuge and loss of enjoyment by the public
- 19
- 20 d. Information on public health, safety and welfare on the Eastside Highway,
21 Porter Hill Road, Highway 93 because of increased traffic on substandard roads
22 without requiring the necessary improvements to protect public health and
23 safety;
- 24
- 25 e. Information on impacts on the public school system, fire and police protection
26 and other social and safety services;
- 27
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- f. Information on impacts on adjoining property owners including potential diminution of property values;
- g. Information on impacts to the degradation of the Metcalf Refuge as an economic asset to the County;
- h. Information on impacts from increased air pollution.

23. Plaintiff and its members also presented information regarding substantial and effective mitigation measures to minimize harm to the resources covered by the seven review criteria in § 76-3-608, MCA. The Board did not adequately consider or address these proposed measures, much less adopt them.

24. In its August 14, 2013 Preliminary Plat Decision, the Board failed to substantively address – and in many cases, even acknowledge – the potentially significant impacts identified during the review process including but not limited to those stated in Paragraph 17 above. The failure in the record, including the environmental assessment, to address and respond to the comments of the BFP, the public, and government agencies, and to fully and adequately address potential impacts under the review criteria, renders the final decision arbitrary, capricious, and unlawful under the MSPA.

25. The mitigation measures set forth in the August 14 Preliminary Plat Decision, fail to adequately address the potentially significant impacts identified in the review process. Many of the mitigation measures depend on voluntary compliance and future actions beyond the Board's control, and are therefore arbitrary and capricious and inadequate as a matter of law.

26. In its review and approval of the Legacy Ranch subdivision application, the Board has failed to comply, or require the subdividers to comply, with the *Subdivision Act*. The failure to consider relevant information supplied during the review process, to require preparation of an

1 adequate environmental and community impact assessment, and to adequately address and
2 mitigate impacts to seven review criteria under §76-3-608, MCA, is arbitrary and capricious and
3 in violation of the law.

4 5 **COUNT TWO**

6 **(Violation of the Montana Subdivision and Platting Act – Effects on Agriculture)**

7 27. Plaintiff realleges, as if fully set forth herein, each and every allegation contained
8 in the preceding paragraphs.

9 28. The Montana Subdivision and Platting Act, MCA §76-3-608, requires the Board to
10 base its decision on the Legacy Ranch preliminary plat on, inter alia, the effects the proposal will
11 have on agriculture.

12 29. The amended Ravalli County subdivision regulations require only that the Board,
13 in considering a preliminary plat application, consider the impacts of the proposal on “adjacent
14 agriculture.” The Ravalli County regulation is different than the plain language requirement of
15 the MSPA regarding agriculture.

16 30. The narrower wording of the local regulation cannot serve to abrogate or limit the
17 mandatory provisions of §76-3-608(3), MCA, which require the Board to consider the proposed
18 subdivision’s effects on “agriculture,” not merely on “adjacent agriculture.”

19 31. During the review of the Legacy Ranch application, members of the public
20 presented specific information showing the proposal would have potentially significant impacts
21 on agriculture, both on the subject parcels themselves and in the surrounding area of Ravalli
22 County. The Planning Board stated it would limit its consideration to information on “adjacent
23 agriculture” as directed by its subdivision regulations. The Defendant then falsely assumed that
24 the Planning Board addressed adjacent agriculture which it did not do. The Defendant relied on
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COUNT SEVEN

(Failure to Use Proper Subdivision Regulations)

57. Plaintiff realleges all allegations as if set forth in full.

58. This subdivision was proposed in 2006. Review of the proposal commenced under the subdivision regulations in effect at that time.

59. In 2012 the County encouraged the developer to urge the County to use new regulations adopted in 2012 that are on their face more lenient and favorable to the developer and hence less protective of public resources. Encouraging the developer to use more lenient regulations for the largest and most impactful subdivision in Ravalli County history is a breach of the public trust entrusted to the Planning Department and Ravalli County.

60. As a matter of law the Board erred in adopting a preliminary plat based on 2012 regulations when the application was filed in 2006 and the Planning Department used the existing regulations for the first six years of the review process.

COUNT SEVEN

(Application for Declaratory Judgment)

61. Plaintiff realleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

62. Pursuant to the provisions of the Montana Uniform Declaratory Judgment Act, §27-8-101, *et seq.*, MCA, Plaintiffs seek and are entitled to a determination of the issues outlined above in Count One through Count Seven, as well as a declaration of the rights of the parties under the Montana Subdivision and Platting Act, the Montana Constitution, the Ravalli County Subdivision Regulations, and any other provisions of governing law.

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REQUEST FOR RELIEF

Based on the foregoing, the Plaintiffs request the following relief:


1. A declaratory judgment stating that the Board's August 14, 2013 Preliminary Plat Decision approving the Legacy Ranch Subdivision is contrary to law for the reasons set forth herein.

2. An order setting aside the Board's August 14, 2013 Preliminary Plat Decision and directing that the Board require the subdivider to submit a new preliminary plat application and to comply with all requirements of the Subdivision and Platting Act and all applicable law before reaching a decision approving or denying the preliminary plat for the reasons set forth herein.

3. For their reasonable attorney fees and costs of suit.

4. For any additional relief as the Court deems just.

Dated this 10th day of September, 2013



Jack R. Tuholske
Attorney for Plaintiff/Petitioner