



"Local Common-Sense Conservation"

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July 1, 2022

Broadwater County Officials
515 Broadway Street
Townsend, MT 59644

RE: *Horse Creek Hills Major Subdivision (HCHMS), 2nd Letter of Concern*

Dear Broadwater County Commissioners,

Because the Horse Creek Hills Major Subdivision (HCHMS) decision making process has become rather convoluted over the past nine months or so, the Board of Supervisors of the Broadwater Conservation District (BCD) is submitting this second letter of concern. While going on the record to provide comment in a succinct, clear, and respectful fashion, we feel it is also important to convey our frustration and hesitation with not only the HCHMS application, but also the process by which such is being decided upon.

Prior to any county commissioner meeting agenda being finalized or posted for the week of July 4th, BCD made an official request on June 29th to be placed on the next County Commissioners Meeting Agenda to:

1. Share and discuss with the commission procedures and mechanics of BCD in dealing with natural resource and citizen concerns in Broadwater County, working with local government, BCD Supervisors and Planning Board Members, BCD's official letter (12.15.21) and concerns regarding the HCHMS.
2. Offer up 'new information' regarding the HCHMS presented by BCD advisors/supervisors, and to be on the record and officially considered **prior** to any determinations regarding HCHMS. (Yes, per Acting County Attorney, Jania Hatfield, BCD is aware that either the county commissioners or the developer/engineer may determine whether or not information is in fact 'new information' and would lead to a new public hearing with the local planning board.)

NOTE: Acting County Attorney Hatfield emailed BCD the same day, stating a July 5th agenda already included the meeting on HCHMS. She indicated BCD would be welcome to comment during the Public Comment portion and bring any information the district would like to bring forward; at which time the Commission would review the document(s) under the rules set forth in the statute and determine whether the document(s) is new information or not. Ms. Hatfield felt some of the topics BCD stated above were not related to HCHMS and she would try to get BCD on the commission's July 18, 2022, agenda. ***(Even though BCD questions Ms. Hatfield opinion on items not being related to the subdivision, we will try to present during Public Comment for Items Not on the Agenda at 11:00 am, July 5th. If that does not happen, then BCD looks forward to being on the July 18th agenda to proceed with items not previously addressed or requiring further discussion.)***

(It is worth noting that at the time of this letter going to print, BCD had requested the timing and protocol for getting on a Commission's agenda, a copy of the Commission's July 5th agenda, and

shared that from what many have observed, Commission agendas are posted at the earliest the end of a Thursday, and sometimes on a Friday morning prior to a Commission meeting; hence BCD felt it was making an important timely request that could have been granted; especially given the fact (in our opinion) all points were related to the HCHMS and should be heard prior to any Commission decisions regarding the subdivision. BCD also requested further details on the statute the Commission follows regarding new information, how the timing works, and a summary of the criteria and rules in which they follow to determine if information is considered "new." Our requests remain valid.)

In reference to **Item 2** above, longtime BCD Advisor and MTFWP fishery biologist, Ron Spoon has worked with longtime BCD Associate Supervisor and retired engineer, Jim Beck on summarizing some very important data regarding Confederate Creek and the surrounding area connected with the proposed HCHMS location. BCD goes on the record as being in full support of Ron and/or Jim bringing this pertinent information forward. We are certain the Commission will find this information imperative to the subdivision decision making process and will allow for another public hearing with the local planning board.

To circle back to **Item 1** above, in regard to the HCHMS procedures and mechanics:

- A. **BCD is keenly aware of the fact that our role is to merely supply comment and recommendations.** Acting County Attorney Hatfield informed BCD on 5/9/22 that HCHS is outside of the jurisdiction of the CD and as a result it is improper for the CD to set a discussion of the HCHS on any meeting agenda. She went on to say that essentially the jurisdiction of the CD is the conservation of the soil and water resources and preventing and controlling erosion. She further stated the CD has already discussed HCHS and submitted a letter to the Commission regarding the subdivision, and that that letter will be included with the public comment for the Commission to review. Furthermore, she felt there was no additional work that the CD needed to do regarding the subdivision; therefore, it is improper for the CD to meet regarding the subdivision and the CD is exposing the CD and the county to legal liability by doing so.

- i. Based on MCA, a conservation district's jurisdiction goes beyond what the acting county attorney indicated:

In Montana State Law (MCA 76-15-102) "It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state."

- ii. The topic of the HCHMS is totally within BCD's confines to discuss, and there is nothing improper about discussing this subdivision or any other subdivision or doing so on multiple occasions; especially if the supervisors or constituents they serve have concerns regarding such, and if the topic is fluid and changing, which is certainly the case with HCHMS. In fact, we are approaching roughly six or seven months of new information, meeting cancellations, and changes and updates to the application by the engineer/developer. Frankly, it is imperative that all involved, and all affected stay engaged and do our due diligence. Additionally, the conservation district is quite capable of determining if and when no additional

work needs to be done regarding a subdivision of this magnitude or any other topic of concern within our jurisdiction.

- iii. If/when BCD is allowed to receive clarification, we would kindly ask Acting County Attorney Hatfield to please explain how BCD is exposing the CD and the county to legal liability.

B. **BCD's December 15, 2021, letter:** At the last planning board public hearing and meeting held on June 28th it was brought to our attention that **the planning board never received the BCD letter**. A planning board member requested to see the BCD letter that was never included in her planning board packet because she felt it was very important to review prior to voting and making informed conditions of approval for the subdivision. Ms. Hatfield indicated that the Commission has the document and would be reviewing said letter prior to making a decision. If BCD is understanding correctly, because the planning board already made a ruling regarding HCHMS prior to receiving the BCD letter, any info. for them to review from that time forward could only be that of "new information."

- i. The planning board voted to deny the subdivision on October 27, 2021, then made no recommendation on November 30, 2021, and never received the BCD letter that included numerous topics of concern. BCD requests a more detailed explanation on this, please.
- ii. BCD submitted the letter just prior to the Commission stating they were going to be deciding on the subdivision the following Monday/Wednesday. Coincidentally, late on Friday, December 17th after the county received the BCD letter and Attorney Kim Wilson's letter the HCHMS meetings for the following week were cancelled. BCD would also like confirmation if the planning board received Attorney Wilson's letter or if that too was only provided to the Commission for review prior to making a determination.

C. **Planning Board Member:** As stated in MCA 76-1-211, at least one member of a county planning board must be a member (associate member or member of a grazing district) of the governing board of a conservation district. Dallas Diehl serves in this capacity. In early 2022, Mr. Diehl had been told and was advised by Ms. Hatfield (via Nichole Brown, Broadwater County Community Development Director) to recuse himself. Ms. Hatfield later confirmed her stance via email with BCD and Attorney Caitlin Overland that Dallas was told to recuse himself for **exparte communication outside of the Planning Board, which consisted of taking a position in opposition to the subdivision by both voting for and signing a letter in opposition to the subdivision. She indicated Dallas still remains on the planning board for all other matters.**

NOTE: Dallas, nor BCD for that matter, never took a position in opposition to the subdivision, never voted in opposition to the subdivision, and never signed a letter in opposition to the subdivision. What Dallas (and BCD) did do was take a stance in opposition of an incomplete and erroneous application for a major subdivision, expressed his concerns with such, questioned those involved, attempted to gather information to make informed decisions, and sought guidance from the county.

To those that were privy to and thoroughly read the December 2021 BCD letter they would have seen our strong hesitations and concerns at hand for the application. BCD felt there was sufficient cause to deny the HCHS application, at least as it had been presented at that time. BCD felt there was both lack of sufficiency and inadequate mitigation measures in place. Certainly, it was obvious

the planning board had similar concerns which could have led to them denying the application before any BCD decisions or letter of concern.

(The BCD 12.15.21 letter ended with:

Our agency is not against development, and certainly wishes to see this county and its citizens thrive, but we believe we must ensure we are doing our due diligence. It is our responsibility as elected officials of BCD to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. We do not take this job lightly. Hence, BCD requests the Commissioners of Broadwater County deny the current Horse Creek Hills Subdivision application. (Key word is application NOT subdivision.)

Once the applicant has adequately addressed concerns, discrepancies, inadequacies, and mitigation steps on the HCHS application, is compliant with the laws of the state, and has fully completed the application then we are certain the Broadwater County Planning Board and Broadwater County Commissioners will make an informed and wise decision regarding this subdivision application.)

NOTE: Acting Attorney Jania Hatfield also made it known to BCD on 5.24.22 via email that it was her advice to the Planning Board that Dallas needed to recuse himself from HCHMS. She also noted that ultimately the decision to recuse is the board member's (Dallas Diehl), and that she was simply advising.

It is BCD's understanding that now that Dallas Diehl more fully understands the process, he wishes to re-engage with the other members of the Planning Board on the HCHMS if/when this specific subdivision comes back to them for any further action or regarding any new information. All Planning Board members have voted to deny, voted to make no recommendation, and only recently (6.21.22) voted on specific conditions of approval for the Commission to consider regarding the HCHMS, with no new motion of approval, denial, or conditional approval of the subdivision application. Was this type of motion standard protocol? Dallas would simply be proceeding like all other members of the Planning Board and should certainly be given the opportunity to do so. After all, he is but one vote. And like the rest of the members, who are also quite new as well, we are confident Mr. Diehl will continue to learn and serve Broadwater County to the best of his ability.

ADDITIONAL COMMENTS:

BCD formally requests that Acting County Attorney Hatfield attend a BCD monthly board meeting in the near future to learn how we conduct our meetings, provide agency reports and address concerns that are part of our jurisdiction. The District has had a great working relationship with County Attorney Cory Swanson and we look forward to working with and learning from Ms. Hatfield as well.

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On June 30th BCD requested from the Planning and Development Director, Nichole Brown, a copy of the fully completed HCHMS Checklists (Appendix C –overall checklist and Appendix E- for the EA) that was included in the packets for the Planning Board to use and refer to regarding the subdivision. It was BCD's understanding that these checklists should have been completed in their entirety by the Planning Board Dept. and the Developer. On July 1 Nichole was able to provide Appendix C but was unable to submit Appendix E due to technical reasons; she would try again on July 5th.

It appears that Appendix C is incomplete. Please clarify. Also, please provide what was submitted for Items 28 and 38.

Based on the November 9, 2021, Planning Board Minutes, we understand there needs to be **documentable and clearly defined impacts on agriculture, agricultural water uses or facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.**

In conclusion Broadwater Conservation District understands the Planning Board and the County Commissioners (the final decision makers) have been inundated with a tremendous amount of information to wade through before making well-informed decisions. Many concerned citizens, knowledgeable entities and others have worked tirelessly on this endeavor, so we hope everyone's concerns, documentation, and recommendations are heeded. Thank you in advance for being thorough in your review, and unbiased and insightful in your decision.

Respectfully,



Darrell Baum, Chairman

Broadwater Conservation District