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9 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

10 FLATHEAD LAKE PROTECTION
11 ASSOCIATION, a Montana nonprofit public
12 benefit corporation, BRUCE A. YOUNG, and
13 JOHN GURALCHUK,

14 Plaintiffs,

15 v.

16 BOARD OF COUNTY COMMISSIONERS OF
17 FLATHEAD COUNTY, the governing body of
18 the County of Flathead,

19 Defendant.

20 Cause No. DV-07-894C

21 **STEWART E STADLER**

22 **COMPLAINT**

23 **Introduction**

24 With this lawsuit plaintiffs challenge the action taken by the Board of County
25 Commissioners of Flathead County on November 6, 2007, approving the preliminary plat for
26 Eagle's Crest Subdivision Phases 5-9. Plaintiffs bring this action to ensure that the Board
27 of County Commissioners complies with Montana statutes, the Montana Constitution, and
28 County regulations governing subdivisions and public participation.

CLERK OF DISTRICT COURT
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1 **Parties**

2 1. The Flathead Lake Protection Association (FLPA) is a Montana nonprofit
3 public benefit corporation dedicated to preserving and enhancing water quality in Flathead
4 Lake, and to participation in the public assessment of development impacts. FLPA and its
5 members have participated in the decision-making process regarding the Eagle's Crest
6 Subdivision Phases 5-9 (Subdivision), both before the Flathead County Planning Board and
7 the Board of County Commissioners (Commissioners). Members of the FLPA own property
8 within Flathead County, and they are aggrieved by the Commissioners' approval of the
9 preliminary plat for the Subdivision, within the meaning of § 76-3-625, MCA.
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12 2. Bruce A. Young is a long-time owner of property and a business in the
13 community of Lakeside, in Flathead County, as well as a civic leader, and director of FLPA.
14 He is aggrieved by the Commissioners approval of the preliminary plat for the Subdivision,
15 within the meaning of § 76-3-625, MCA.
16

17 3. John Guralchuk is a long-time owner of property near the community of
18 Lakeside, which property is near to and downgradient from the Subdivision. He is aggrieved
19 by the Commissioners' approval of the preliminary plat for the Subdivision, within the
20 meaning of § 76-3-625, MCA.
21

22 4. The Board of County Commissioners of Flathead County (Commissioners)
23 forms the governing body of Flathead County, with the jurisdiction and power, under such
24 limitations and restrictions as are prescribed by law, to represent the County, and is entrusted
25 with the care of Flathead County property and the management of the business and concerns
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1 of the County in all cases where no other provision is made by law, as provided in Title 7 of
2 the Montana Code. All claims herein are asserted against the Board of County
3 Commissioners in its official capacity acting for and on behalf of Flathead County.
4

5 **Jurisdiction and Venue**

6 5. This Court has jurisdiction over this case pursuant to § 76-3-625, MCA; § 2-3-
7 114, MCA; and the Montana Constitution.
8

9 6. Venue is proper in this judicial district as all plaintiffs and defendant reside or
10 are located within Flathead County, Montana.

11 **Factual Background**

12 7. On or about February 12, 2007, the Strategic Development Corporation
13 submitted to the Flathead County Planning and Zoning Office on behalf of owners Montana
14 Eagle Acquisitions, LLC, and Montana Eagle Holdings, LLC (Developer) an application for
15 a major subdivision preliminary plat approval for the Eagle's Crest Subdivision Phases 5-9
16 (Subdivision). The Developer proposed to subdivide 1,354 acres, or approximately 2.1
17 square miles, into 821 residential and commercial units on 739 lots. If the lots designated
18 as Village Urban or Mixed Use are developed as condominiums, then up to 1,000 primary
19 dwelling units could be built, together with an additional guest house for each residential lot
20 in the Subdivision. Sixty-nine percent of the lots are smaller than one acre, and at least 240
21 lots are smaller than one-half acre. The proposed Subdivision is a gated golf course
22 community, located on steep slopes on the west side of U.S. Highway 93 approximately one
23 mile south of the community of Lakeside, and less than one-half mile upgradient from
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1 Flathead Lake. The area proposed for the Subdivision is a high fire hazard area. Numerous
2 species of wildlife utilize this area, and almost the entire Subdivision consists of important
3 winter range for elk, white-tailed deer and mule deer.
4

5 8. On February 20, 2007, the Flathead County Planning and Zoning Office
6 (Planning Office) issued a "completeness review letter" indicating that the application
7 contained the items required in § 2.4 of the Flathead County Subdivision Regulations (FCSR)
8 as required by the Montana Subdivision and Platting Act (Subdivision Act) at §§ 76-3-
9 504(1)(a), and -604(1), MCA.
10

11 9. On March 13, 2007, the Planning Office issued a "sufficiency review" letter
12 for the proposed Subdivision, indicating that the application was sufficient to allow review
13 as required by § 76-3-604(2), MCA.
14

15 10. On April 12, 2007, the Developer submitted additional material, including a
16 second set of preliminary plat maps that contained information that the first set of preliminary
17 plat maps did not contain.
18

19 11. On April 17, 2007, the Developer submitted additional material regarding the
20 trails, recreational amenities and developed park areas within the proposed Subdivision.
21

22 12. On April 23, 2007, the Planning Office issued its first Staff Report on the
23 proposed Subdivision. The Staff Report noted a number of deficiencies with Developer's
24 proposal. This included noting the Lakeside County Water & Sewer District (LCWSD)
25 written comments on the Wastewater Treatment Agreement entered into between the
26 Developer and LCWSD on 02/08/06. The agreement allows only 800 total connections,
27

1 while the Developer proposed to connect a total of approximately 1,000 units for Eagle's
2 Crest, Phases 1-9. In addition, the Staff Report noted that the Developer's application
3 materials did not comply with a number of the requirements of the Flathead County
4 Subdivision Regulations, including the required contents of the preliminary plat.
5

6 13. On April 30, 2007, the Developer again submitted additional material,
7 including the third set of preliminary plat maps, which the Developer submitted after the
8 Planning Staff notified the Developer of lot depth to width ratio non-compliance with
9 regulations, as well as building site and driveway location non-compliance.
10

11 14. On May 2, 2007, the Developer again submitted additional material, including
12 the fourth set of preliminary plat maps.
13

14 15. Also on May 2, 2007, the Planning Office issued a report to the Flathead
15 County Planning Board on the problematic history of the Eagle's Crest Subdivision Phases
16 5-9 submissions, with the stated purpose that: "This historical account will demonstrate why
17 the subdivision report reviewed a different set of preliminary plat maps than what has been
18 included with the Flathead County Planning Board packets."
19

20 16. On May 11, 2007, the Developer again submitted additional material, intended
21 to reply to the April 23, 2007 Staff Report, contending: "Based on the lack of information
22 available when the report was written, I believe the report provides a somewhat incomplete
23 picture of the project." (Developer's May 11, 2007 submission at p. 1.)
24

25 17. On May 14, 2007, the Developer again submitted additional material to the
26 Planning Office, including requested findings of fact.
27

1 18. On May 16, 2007, the Planning Staff supplemented its previous Staff Report
2 with Exhibit A, which consisted of a statement of proposed conditions. Also on May 16,
3 2007, the Flathead County Planning Board reviewed the Subdivision. A motion to deny
4 passed by a majority vote of 6 to 2. Included among the concerns identified by the Planning
5 Board were the size of the project; vehicular hazard created by inadequate ingress and egress
6 on U.S. Highway 93; the fire hazard created by the road design; the disruption of wildlife
7 habitat and migration corridors; inadequate storm water runoff and drainage information; the
8 lack of affordable housing; the creation of a separate gated community not a part of
9 Lakeside; the need to update the existing Lakeside Neighborhood Plan; and noise and health
10 hazards from rifle ranges.
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14 19. On June 5, 2007, the Commissioners reviewed the Eagle's Crest Subdivision
15 and approved a motion to continue consideration until June 28, 2007, based on late
16 submittals by the Developer. Comments made by the Flathead Lake Protection Association
17 established a number of deficiencies with the Developer's application and the attendant
18 review, including the failure of the Developer to comply with the provisions of § 76-3-
19 604(8), MCA, which provides:
20

21 Review and approval, conditional approval, or denial of a proposed
22 subdivision under this chapter may occur only under those regulations in effect
23 at the time a subdivision application is determined to contain sufficient
24 information for review as provided in subsection (2). (Emphasis added).
25

26 20. Here, the sufficiency determination by the Flathead County Planning Office
27 was made on March 13, 2007, based on the Planning Office's review of the application
28 submitted on February 12, 2007. Thus, the rules and regulations in effect on March 13, 2007,

1 govern. The then applicable Flathead County Subdivision Regulations required that: “Each
2 lot shall contain a satisfactory building site which is properly located to topography and
3 conforms to health department, zoning, flood plain, and these regulations and the applicable
4 master plan. . . .” FCSR § 3.6, p. 24; see also FCSR § 3.2, p. 22 (emphasis added). The
5 Commissioners did not adopt the new Growth Policy until March 19, 2007. The “sufficiency
6 determination” was made by the Planning Office on March 13, 2007. Thus, the old Master
7 Plan, not the new Growth Policy was the “applicable master plan.” The Developer’s
8 application, including specifically the Environmental Assessment, did not include disclosure
9 and consideration of Master Plan provisions as required.
10
11

12 21. On June 28, 2007, the Commissioners again considered the Eagle’s Crest
13 Subdivision Phases 5-9, and approved a motion to remand the matter to the Planning Board
14 for another public hearing on August 15, 2007. The Commissioners determined that the
15 public had not had an adequate opportunity to review all of the information submitted by the
16 Developer prior to the Planning Board’s public hearing. The Commissioner allowed the
17 Developer to submit new information and preliminary plats, and the Commissioners and
18 Developer agreed that all new materials would be submitted on or before July 13, 2007.
19
20

21 22. On July 13, 2007, the Developer once again submitted new information, which
22 included information related to topography, water, drainage, and transportation.
23

24 23. On August 10, 2007, the Developer once again submitted additional
25 information to the Planning Office, related to geology, topography, water, vegetation,
26 wildlife habitat, agriculture, timber production, historical and cultural features, emergency
27

1 services, and high voltage power lines. As a result of this late submission by the Developer,
2 which was in violation of the agreement with the Commissioners to submit all new materials
3 on or before July 13, 2007, the Planning Office cancelled the August 15, 2007 Planning
4 Board hearing.
5

6 24. On August 15, 2007, the Developer once again submitted additional
7 information to the Planning Office, which included information pertaining to groundwater,
8 sewage treatment, water supply, storm water drainage, roads, emergency services, highway
9 improvements, fire suppression and hydrants, well logs, soils, air strips, agriculture and
10 timber production, local services, golf courses, wildlife habitat, and surrounding land uses.
11

12 25. On August 21, 2007, the Planning Office issued another Staff Report intended
13 to reflect the additional materials submitted by the Developer.
14

15 26. On September 10, 2007, the Planning Board held a second public hearing on
16 the proposed Subdivision. Concerns identified by the public included urban density
17 development on an area characterized by steep slopes, high fire hazard areas, and critical
18 winter range wildlife habitat; drainage and storm water runoff impacting Flathead Lake water
19 quality; an incomplete Environmental Assessment which did not sufficiently advise the
20 public *vis a vis* disclosure of required information; incorrect information submitted by the
21 Developer regarding soil characteristics, while the correct information indicates that soil
22 characteristics do not support the proposed density or uses, with a "very limited" NCRS
23 rating; the proposed development does not comply with the 1987 Master Plan; the proposed
24 development does not comply with Flathead County Subdivision Regulation § 3.3, "Lands
25
26
27

1 Unsuitable for Development”; the Developer’s slope analysis is inaccurate and inadequate,
2 as are the Developer’s storm water runoff and water supply calculations; the Lakeside
3 County Water & Sewer District infrastructure does not have the capacity to accommodate
4 the proposed Subdivision; the proposed Subdivision internal road system does not comply
5 with maximum cul-de-sac length standards of 750 feet for high fire hazard areas, according
6 to FCSR § 3.9; eighty (80%) percent of the lots in the proposed Subdivision do not comply
7 with DNRC fire prevention standards for Wildland - Urban Interface lands; the proposed
8 Subdivision creates traffic hazards both for future and existing residents of Eagle’s Crest
9 accessing onto U.S. Highway 93, and Lakeside community residents; and the density and size
10 of lots pose a significant threat to public health and safety. The Planning Staff discussed the
11 potential significant problems attendant to the absence of an approved transportation impact
12 study for all phases of the Subdivision. Eventually, the Planning Board voted 5 to 4 to
13 recommend approval of the proposed Subdivision with numerous findings of fact and
14 conditions, including the following findings of fact:
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19 #28. As a result of the subdivision creating future vehicular traffic hazard,
20 Montana Department of Transportation has asked for continuing traffic studies
21 to monitor increasing dangers and may impose new conditions between future
22 phases if they seem necessary. Standard conditions and unique conditions #26
23 and 27 attempts to address this finding.

24 #36. The following lots have an average building site cross slope greater than
25 25% with a 2% margin of error: Lots 16-21, 35, 36, 49, 247, 293, 296, 302,
26 315, 316, 318, 333, 334, 383, 384, 391, 463, 464, 471, 485, 486, 488, 490,
27 505, 506, 509, 512, 544, 576-79, 627, 642, 655, 666, 676 and 702.

28 #37. The Lakeside Water System 2007 Preliminary Engineering Report
indicates that the system’s piping and other infrastructure will be inadequate
to serve the proposed subdivision, particularly as other proposed subdivisions,

1 some of which have also received approval for connections, are developed.

2 #42. New information related to the Environmental Assessment was provided
3 by the applicant after the July 13th deadline.

4 #44. Serious concerns regarding the adequacy of the Environmental
5 Assessment and related submittals from the applicant were raised during the
6 public hearing. There is some confusion as to the legal status of the additional
7 submittals.

8 Included among the recommended conditions were the following:

9 # 26. The applicant shall provide an approved encroachment permit onto the
10 nearest Flathead County maintained road from the Flathead County Road and
11 Bridge Department for the final plat of **Phase 6**.

12 #27. The applicant shall construct a primary access road with a 24' paved
13 travel surface and Right-of-Way to the nearest Flathead County maintained
14 road.

15 #35. No guest houses shall be permitted on any residential lot.

16 27. On November 6, 2007, the Commissioners approved Eagle's Crest Subdivision
17 Phases 5-9, on a 2 to 1 vote (Commissioners Hall and Lauman in favor, Brenneman against).

18 The Commissioners eliminated the requirements of Condition #26 and Condition #27, on
19 which basis the Planning Staff no longer supported approval of the Subdivision, and on
20 which basis the Planning Board had previously recommended approval of the proposed
21 Subdivision. In addition, the Commissioners did not adopt other findings of fact and
22 conditions approved by the Planning Board, including findings # 35, #36, and #37, and
23 Condition #35.
24

25 28. The procedures followed by the Board of County Commissioners and its agents
26 are in violation of §§ 76-3-504, -603, -604, -605, -615, and -622, MCA. The Commissioners
27

1 failed to adopt regulations in compliance with the above-referenced statutes, and new
2 information was submitted and considered in violation of these statutes, and the basic
3 principles of due process and fair play.
4

5 29. The proposed Subdivision will have numerous adverse environmental and
6 community impacts which were not disclosed in Developer's Environmental Assessment and
7 which were not evaluated by the Commissioners, in violation of the Subdivision Act and
8 Subdivision Regulations.
9

10 30. The Flathead Lake Protection Association and its members, as well as the
11 individual plaintiffs, will be harmed by and suffer material injury to their property or its
12 value, by the Commissioners' approval of the Eagle's Crest Subdivision Phases 5-9,
13 preliminary plat in violation of applicable provisions of the Subdivision Act and Flathead
14 County Subdivision Regulations.
15

16 **1. Violation of the Subdivision and Platting Act**
17 **and County Subdivision Regulations.**

18 31. All paragraphs above are incorporated by this reference.
19

20 32. The Board of County Commissioners and/or its agents violated §§ 76-3-102,
21 -504, -601, -603, -604, -605, -608, -615, -620, and -622, MCA, and the implementing
22 Flathead County Subdivision Regulations (FCSR), including the process required by FCSR
23 § 2.4, the design standards set forth in FCSR Chapter 3, the variance standards and
24 procedures set forth in FCSR Chapter 7, and the disclosure requirements of FCSR Appendix
25 A and Appendix B. Moreover, the Commissioners failed to adopt regulations in compliance
26 with §§ 76-3-504(1)(o), -604, -605, -615, and -622 MCA.
27

1 33. The Developer submitted an "Environmental Assessment" as part of its
2 application, which is required by § 76-3-603, MCA, and the Flathead County Subdivision
3 Regulations (FCSR), § 2.4 and Appendix B. The Environmental Assessment did not
4 provide, and the Board of County Commissioners and its agents failed to require the
5 Developer to provide, relevant material information required to be included in the
6 Environmental Assessment, including critical information on: geology and soils; surface and
7 subsurface water; wildlife; sewage treatment; water supply; drainage; roads; land use;
8 economic benefits and costs; emergency services; and lands unsuitable for subdivision,
9 including high fire hazard areas and steep slope areas. The Environmental Assessment
10 contained legally inadequate consideration of the probable impacts of the proposed
11 Subdivision on the criteria set forth in the above-referenced statute and regulations, and
12 contained no consideration of cumulative impacts. The Flathead County Subdivision
13 Regulations require that the Developer submit a complete application. FCSR § 2.4, p. 6.
14 The Subdivision Regulations also provide that, "Incomplete Environmental Assessments
15 will not be accepted." FCSR, Appendix B, p. 80. In approving the proposed Subdivision,
16 the Commissioners and its agents violated the Flathead County Subdivision Regulations
17 requirement that the Developer submit a complete application and that incomplete
18 Environmental Assessments will not be accepted.
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24 34. The Developer failed to submit, and the Commissioners and its agents failed
25 to require the Developer to submit, required information on sewage treatment and water
26 supply, as required by §§ 76-3-501, -504, -601, -603, -604, and -622, MCA, and FCSR
27

1 Chapter 3 and Appendices A and B, and applicable Department of Environmental Quality
2 statutes and regulations.

3
4 35. In approving the preliminary plat for the proposed Subdivision, the
5 Commissioners failed to consider all relevant evidence, as required by § 76-3-605(1), MCA,
6 including evidence related to geology and soil limitations, surface and subsurface water,
7 wildlife and wildlife habitat, sewage treatment, water supply, drainage, and impacts to the
8 water quality of Flathead Lake, roads, and safe ingress and egress to the Subdivision,
9 economic benefits, land use and applicable Master Plan provisions, and lands unsuitable for
10 subdivision on the basis of soil characteristics, steep slopes, high hazard fire areas, vehicular
11 traffic hazards, environmental degradation, and the placement of unreasonable burdens on
12 the general public, including the excessive expenditure of public funds. Moreover, § 76-3-
13 608, MCA, requires that, “the governing body shall issue written findings of fact that weigh
14 the criteria in subsection (3), as applicable.” While the Commissioners adopted Conditions
15 as “Exhibit A” to its Statement of Approval dated November 6, 2007, and Findings of Fact
16 as “Exhibit B,” the Commissioners failed to comply with §§ 76-3-605(1) and -608, MCA,
17 and the Commissioners’ decision was unlawful, arbitrary and capricious, without a rationale
18 basis, and not supported by substantial evidence. In addition, while the Commissioners did
19 attach conditions to its approval of the preliminary plat, apparently intended to mitigate
20 impacts, the Commissioners failed to issue written findings and a written statement detailing
21 the evidence that justifies the imposition of the conditions as required by § 76-3-608(4) and
22 § 76-3-620, MCA, and FCSR § 2.4.E.1.
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1 40. The Flathead County Master Plan (FCMP) recognizes the importance of
2 limiting the density of residential development in big game winter range:

3 Development of all non-riparian, big-game winter range should not exceed a
4 maximum density of one unit per 20 acres.

5 FCMP § 4.7, p. 17; see also *id.*, § 4.6.

6
7 41. As explained in the April 11, 2007 letter (at p. 1) from Montana Fish, Wildlife
8 & Parks (MFW&P) to the Planning Office in regards to the Subdivision, numerous species
9 of wildlife utilize the area now proposed for this intense development:

10 White-tailed deer, black bear, mountain lion, elk, and moose frequently utilize
11 this area. Mule deer and lynx can also occur in the area on occasion, along
12 with the typical complement of smaller native mammals, birds, amphibians,
13 and reptiles. Grizzly bears, as stated in the EA, could occupy this general area
14 in the future, and a sighting would not be surprising currently. Wolves, which
15 were not mentioned in the EA, could also be expected to inhabit the general
16 area in the future, as there is currently a known pack within 15 miles of the
17 proposed subdivision, and transients would be expected currently (a collared
18 wolf was documented within 1 mile of the proposed subdivision, and there
19 was also a sighting).

20 42. The publicly available information at the website maintained by the Montana
21 Natural Resources Information System (NRIS website), confirms that with the exception of
22 the easternmost portions of the proposed Subdivision, virtually the entire subdivision
23 consists of winter range for white-tailed deer, mule deer, and elk.

24 43. The MFW&P explained in their 04/11/07 letter (at p. 2) why this winter range
25 is critical:

26 Winter ranges are the most limiting habitat type for ungulates and serve the
27 winter needs for animals migrating from hundreds of square miles of higher
28 elevation “summer” ranges as well as providing for the yearlong habitat needs
of a lower density of resident animals.

1 44. As acknowledged in the August 21, 2007 Staff Report (at p. 26):

2 Eagle's Crest Phases 5-9 will not comply with policies 4.6 through 4.8 of the
3 Flathead County 1987 Master Plan because the subdivision proposes an
4 average density of 1.83 acres per lot in an area identified by MT Fish,
5 Wildlife, and Parks as Winter Range Riparian Areas. The proposed
6 development also exceeds a maximum density of 1 unit per 20 acres.

7 45. The Flathead County Subdivision Regulations, Appendix B, p. 88, contain
8 the following disclosure requirement for Environmental Assessments:

9 Describe any comprehensive plan recommendations and other land use
10 regulations on and adjacent to the site. . . .

11 46. The Environmental Assessment submitted by the Developer failed to disclose
12 the above-referenced provisions in the Flathead County Master Plan regarding wildlife, and
13 the limitation on maximum density of one unit per 20 acres in big game winter range.

14 47. The Developer also failed to disclose in the Environmental Assessment the
15 Master Plan's applicable provisions regarding soil limitations affecting road construction
16 and residential construction (FCMP §§ 4.12, -.13); surface water and drainage (FCMP §§
17 2.12, -3.1, -3.5); roads (FCMP Goal 6A); and emergency services and fire protection (FCMP
18 §§ 8.1, -8.2, and -8.3).

19 48. The Developer failed to disclose applicable Master Plan policies in the
20 Environmental Assessment, and in fact erroneously submitted provisions from the Flathead
21 County Growth Policy which did not apply to the review of this Subdivision. The Flathead
22 County Subdivision Regulations require that the Developer submit a complete application.
23 FCSR § 2.4, p. 6. The Subdivision Regulations also provide that, "Incomplete
24 Environmental Assessments will not be accepted." FCSR, Appendix B, p. 80. In approving
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1 the proposed Subdivision, the Board of County Commissioners and its agents violated the
2 Flathead County Subdivision Regulations regarding the Master Plan and the requirements
3 that the Developer submit a complete application and that incomplete Environmental
4 Assessments will not be accepted.
5

6 **3. Violation of Mont.Const. Art. II, § 3 and Art. IX, § 1.**

7 49. All paragraphs above are incorporated by this reference.

8
9 50. The proposed Subdivision will have potentially significant impacts to the
10 environment, including impacts to water quality, wildlife, and human health and safety.

11 51. The Commissioners' actions violate the Montana Constitution by failure to
12 protect plaintiffs' fundamental rights to a clean and healthful environment as provided in
13 Art. II, § 3 of the Montana Constitution, and by failure to protect and maintain a clean and
14 healthful environment as provided in Art. IX, § 1.
15

16 52. The Commissioners, in failing to articulate its reasons for approving a
17 Subdivision which will have serious adverse impacts to the environment, has failed to
18 demonstrate a compelling state interest in approving the Subdivision, and as such, the
19 approval violates Art. II, § 3 of the Montana Constitution.
20

21 **4. Violation of right to participate.**

22 53. All paragraphs above are incorporated by this reference.

23
24 54. Article II, § 8, of the Montana Constitution gives the public the right to
25 participate in the operation of government before agencies make final decisions. The
26 Montana Public Participation Act, § 2-3-101, *et seq.*, MCA, implements this constitutional
27

1 right.

2 55. The Montana Subdivision and Platting Act and Flathead County Subdivision
3 Regulations require that the Developer make mandatory disclosures in the preliminary plat
4 application and Environmental Assessment, which disclosures were not made as regards the
5 Eagle's Crest Subdivision Phases 5-9. As a consequence, the public did not have a
6 reasonable opportunity to participate in the Commissioners' decision approving the
7 preliminary plat for the Eagle's Crest Subdivision Phases 5-9.
8
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the Plaintiffs pray for relief against the Commissioners as follows:

12 1. For an Order declaring void *ab initio* the Board of County Commissioners'
13 November 6, 2007, approval of the preliminary plat for the Eagle's Crest Subdivision
14 Phases 5-9.
15

16 2. For judgment establishing that in approving the preliminary plat for the
17 Eagle's Crest Subdivision Phases 5-9:
18

- 19 a. the Commissioners violated Art. II, § 3, and Art. IX, § 1 of the
20 Montana Constitution;
21 b. the Commissioners violated Art. II, § 8, of the Montana Constitution
22 and §§ 2-3-101, *et seq.*, MCA;
23 c. the Commissioners violated the Montana Subdivision and Platting Act,
24 §§ 76-3-101, *et seq.*, MCA, and the Flathead County Subdivision
25 Regulations;
26
27

- 1 d. the Commissioners failed to act in accordance with the Flathead
2 County Master Plan, as required and implemented through the
3 provisions of the Montana Subdivision and Platting Act and the
4 Flathead County Subdivision Regulations; and
5
6 e. the Commissioners acted arbitrarily, capriciously, and not in
7 accordance with the applicable laws of Montana and applicable
8 regulations of Flathead County.
9

10 3. For reasonable attorneys fees and litigation expenses under the private
11 attorney general theory or as otherwise provided by law.

12 4. For costs of suit.

13
14 5. For such further relief as the Court deems equitable and just.

15 Dated this 5 day of December, 2007.

16 McGARVEY, HEBERLING, SULLIVAN
17 & McGARVEY, P.C.

18 By: 

19 Roger M. Sullivan
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