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MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT
CARBON COUNTY

JACK and BONNIE MARTINELL, husband
and wife; THOMAS and HAZEL
MCDOWELL, husband and wife; THOMAS
SHAFFREY; and BARETT and KARI
KAISER, husband and wife,

Plaintiffs,

v.

BOARD OF COUNTY COMMISSIONERS
OF CARBON COUNTY, the governing body
of the County of Carbon, acting by and through
JOHN GREWELL, JOHN PRINKKI, and
DOUG TUCKER; ENERGY CORPORATION
OF AMERICA; DOUG and DENISE
AISENBREY, husband and wife; WILLIS and
THERESE HERDEN, husband and wife;
DUANE and DENA HERGENRIDER,
husband and wife; KAREN HERGENRIDER;
RUDOLPH HERGENRIDER; SHELLEY
BAKICH LECHNER, as personal
representative of the Milovan Bakich estate;
and STEVEN and MONICA THUESEN,
husband and wife,

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY RELIEF**

INTRODUCTION

1. This case seeks to vindicate the rights of private property owners in the Silvertip area near Belfry, Montana, to protect their land and livelihoods from the deleterious impacts of oil and gas drilling, including the particularly harmful impacts of hydraulic fracturing.

2. Montana law empowers landowners to initiate the development of land use regulations for the protection of their land and community by petitioning their county commissioners to establish planning and zoning districts. Mont. Code Ann. § 76-2-101.

3. In November 2014, following many months of research, advocacy, and collaboration with local officials, a group of Silvertip landowners availed themselves of this right by submitting to the Board of Commissioners for Carbon County, Montana (the “Commissioners”) a petition to establish the Silvertip Zoning District.

4. The proposed Silvertip District encompasses more than 2,700 acres of private agricultural and residential property near the Clark’s Fork of the Yellowstone River northeast of the town of Belfry. The District is home to family farms raising cash crops, organic produce, hay, horses, and cattle. It boasts pristine air, streams, and soils and spectacular views of the nearby Beartooth Mountains.

5. The proposed Silvertip District also overlies oil and gas deposits that have been the subject of recently renewed commercial interest and exploratory drilling. The petition to establish the Silvertip District was driven by the petitioning landowners’ need to protect the agricultural and rural residential character of their land, their surface and ground water resources, soils, and spectacular scenery from degradation due to drilling activity. Having lobbied for these protections to no effect before the Montana Board of Oil and Gas Conservation, the Silvertip

landowners turned to Montana's citizen-initiated zoning statute, Mont. Code Ann. § 76-2-101, as their only recourse for preserving their property, health, and way of life.

6. On December 15, 2014, after reviewing the petition and supporting materials and hearing public comments in support and in opposition, the Commissioners determined that establishing the Silvertip District for purposes of regulating oil and gas production therein would serve the public interest and convenience. The Commissioners specifically found that establishing the District would advance the protection of public health, safety, and welfare and the protection of public infrastructure in the area. Accordingly, the Commissioners voted unanimously in favor of proceeding with establishment of the District.

7. One month later, however, the Commissioners reversed course and denied the petition. The Commissioners rescinded their public interest finding on the ground that landowners holding the majority (60.7%) of property within the proposed District had protested its establishment. The Commissioners stated that, under the "protest provision" of the citizen-initiated zoning statute, Mont. Code Ann. § 76-2-101(5), they lacked authority to establish the Silvertip District as intended because of this landowner protest. The Commissioners did not make any factual findings on the record to contradict their prior determination that establishing the Silvertip District would serve the public interest and convenience by protecting public health, safety, welfare, and infrastructure from the adverse impacts of unconventional oil and gas drilling.

8. The Commissioners' reliance on the protest provision was unconstitutional because the provision unlawfully delegates to a subset of landowners the legislative power to make zoning decisions and determine where the public interest lies.

9. To the extent the Commissioners claim they separately justified their decision as a proper exercise of discretion to approve or deny citizen zoning petitions—a theory belied by the record in this case—that rationale cannot sustain the challenged decisions. Any discretionary determination to rescind the Commissioners’ public interest finding and reject the Silvertip District petition was arbitrary, capricious, and an abuse of discretion because the Commissioners relied on the mere existence of opposition to the petition—hardly an uncommon circumstance—and made no factual findings contradicting their determination that establishing the District would serve the public interest.

10. Further, any discretionary decision to reject the petition based on the mere existence of opposition by a minority of landowners violated the Silvertip landowners’ constitutional right to a clean and healthful environment. In light of this fundamental right and the Commissioners’ obligation to protect it, the Commissioners cannot lawfully abdicate their zoning authority where, as here, its exercise is needed to serve constitutionally protected environmental values.

JURISDICTION AND VENUE

11. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-201, 202; Mont. Const. Art. II, §§ 3 and 17; Mont. Const. Art. III, § 1; Mont. Const. Art. IX, § 1; and Mont. Code Ann. § 76-2-110, which provides to any person aggrieved by a decision of the county commissioners a right of appeal to the district court for the county in which the affected property is located. See also Williams v. Bd. of Cnty. Comm’rs of Missoula Cnty., 2013 MT 243, 371 Mont. 356, 308 P.3d 88 (exercising jurisdiction over claim that county commissioners’ decision rested on unconstitutional statutory provision).

12. Venue is proper in this District under Mont. Code Ann. §§ 25-2-126, 25-2-117, 25-2-118, and 76-2-110 because the challenged decision concerns the establishment of a planning and zoning district in Carbon County and at least one of the individually named defendants resides in Carbon County.

PARTIES

13. Jack and Bonnie Martinell, Thomas and Hazel McDowell, Thomas Shaffrey, and Barrett and Kari Kaiser (“Plaintiffs”) are residents of Carbon County and own land within the proposed Silvertip Zoning District. Plaintiffs signed the petition to establish the Silvertip Zoning District that is the subject of this appeal in order to protect their private property rights, health, and livelihoods from the adverse impacts of oil and gas development, particularly hydraulic fracturing. Plaintiffs are aggrieved by the Commissioners’ unlawful denial of their petition, which deprives them of the opportunity to secure zoning regulations for the protection of their land.

14. John Grewell, John Prinkki, and Doug Tucker are residents of Carbon County and are the duly elected Commissioners who serve as the Board of County Commissioners of Carbon County. The Board of County Commissioners forms the governing body of Carbon County, with the jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and manage county business, property, and concerns in all cases where no other provision is made by law, as provided in Title 7 of the Montana Code. All claims herein are asserted against the Board of County Commissioners, and its individual members, in their official capacities acting for and on behalf of Carbon County.

15. Energy Corporation of America (“ECA”) is a privately held company engaged in the discovery, development, exploration, extraction, production, transportation, and marketing of

natural gas and oil in the United States and internationally. ECA is based in Denver, Colorado and maintains an office in Billings, Montana. ECA conducted exploratory oil and gas drilling in the Silvertip area of Belfry, Montana in 2014. ECA representatives participated in public meetings concerning establishment of the Silvertip Zoning District and, through its attorney, ECA submitted extensive comments to the Commissioners opposing the District's establishment. No relief is sought against ECA, but it is considered a necessary party because of its interest in the outcome of this appeal.

16. Doug and Denise Aisenbrey, Willis and Therese Herden, Duane and Dena Hergenrider, Karen Hergenrider, Rudolph Hergenrider, and Steven and Monica Thuesen own property in the proposed Silvertip Zoning District and submitted protests to the Commissioners opposing establishment of the District. No relief is sought against these individuals, but they are considered necessary parties because of their interest in the outcome of this appeal.

17. Shelley Bakich Lechner is the personal representative of the Milovan Bakich estate, which owns property in the proposed Silvertip Zoning District. Ms. Lechner submitted a protest to the Commissioners opposing establishment of the District on behalf of the Milovan Bakich estate. Ms. Lechner is named in her capacity as personal representative of the Milovan Bakich estate. No relief is sought against Ms. Lechner or the Milovan Bakich Estate, but Ms. Lechner is considered a necessary party because of the interest of the Milovan Bakich estate in the outcome of this appeal.

LEGAL BACKGROUND

18. The Montana legislature has afforded Montana citizens the right to petition for the creation of planning and zoning districts in their community. Under the citizen-initiated or "Part One" zoning statute, "whenever the public interest or convenience may require and upon petition

of 60% of the affected real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.” Mont. Code Ann. § 76-2-101(1). The citizen petition process does not determine the content of zoning regulations but rather initiates the county government’s consideration and adoption of appropriate land use regulations for the district.

19. For a citizen zoning petition to be approvable, the proposed district must consist of at least 40 acres and may not contain land that already has been zoned by an incorporated city. Id. § 76-2-101(2)-(3).

20. Subsection (5) of the citizen-initiated zoning statute is known as the “protest provision.” The protest provision states that “[i]f real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district.” Id. § 76-2-101(5). If a citizen zoning petition is rejected because of a protest satisfying the requisites of the protest provision, the statute prohibits county commissioners from considering any citizen zoning petition concerning the same lands for at least one year. Id.

21. In 2013, the Montana Supreme Court struck down a nearly identical protest provision in the parallel county-initiated, or “Part Two,” zoning statute, Mont. Code Ann. § 76-2-205(6). Williams, ¶ 51. The Court held that the “Part Two” protest provision—which, similar to its “Part One” counterpart, prevents county commissioners from establishing a proposed zoning district if property owners representing 50% of the agricultural and forest land within the district protest—is an unconstitutional delegation of legislative power because it allows a subset of landowners to make the ultimate determination of the public’s best interests regarding a

zoning proposal, without any standards or opportunity for review by a legislative body empowered to override the protest. Id. ¶¶ 51-54.

22. Because zoning is a county’s primary vehicle for adopting land use restrictions necessary to “promot[e] the public health, safety, morals, and general welfare” of its residents, Mont. Code Ann. § 76-2-201, the rational exercise of zoning authority is necessary to satisfy the county’s obligations under the Montana Constitution’s environmental provisions, Mont. Const. Art. II, § 3 and Art. IX, § 1. Cf. Robinson Twp. v. Commonwealth of Pennsylvania, 83 A.3d 901, 977-78 (Pa. 2013) (holding state law depriving municipalities of zoning authority over oil and gas drilling violated citizens’ constitutional right to clean environment and municipalities’ obligations thereunder). Article II, Section 3 guarantees Montanans “the right to a clean and healthful environment.” Article IX, Section 1 imposes a concomitant obligation on the State and its citizens, providing that “[t]he State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.” These provisions do not “merely prohibit that degree of environmental degradation which can be conclusively linked to ill health or physical endangerment.” Mont. Env’tl. Info. Ctr. v. Dep’t of Env’tl. Quality (“MEIC”) 1999 MT 248, ¶ 77, 296 Mont. 207, 988 P.2d 1236. Together, they provide environmental “protections which are both anticipatory and preventative.” Id.

FACTUAL BACKGROUND

I. THE BEARTOOTH FRONT

23. The region of southern Montana encompassing the towns of Belfry, Bridger, and Red Lodge, surrounding areas of Carbon and Stillwater Counties, and adjacent public lands—known as the “Beartooth Front”—is rich in natural and cultural resources. The region’s communities have deep agricultural roots, hosting numerous family farms that have sustained

generations of residents and shaped the character of the local land and culture. Encompassing the northeast corner of the greater Yellowstone ecosystem, the Beartooth Front also boasts unspoiled wilderness and vast tracts of National Forest lands that are home to black and grizzly bears, elk, moose, deer, and countless other species of native wildlife and plants. The region's pristine air, water, and soil, unspoiled scenery, and intact wild lands make the Beartooth Front a uniquely beautiful, healthy, and productive place to farm, live, and recreate.

24. The Beartooth Front also contains substantial oil and gas resources. Though some of these resources have been developed by conventional drilling methods for decades, oil and gas companies have expressed interest in greatly expanding development with the proliferation of modern drilling techniques such as horizontal drilling and hydraulic fracturing. Indeed, in October 2013, ECA chief executive John Mork told the Billings Gazette that his company hopes “to bring something like the Bakken” to the Beartooth Front and nearby areas of Montana and Wyoming, specifically crediting new, unconventional drilling methods for ECA's renewed interest. Jan Falstad, [Denver Energy Company Opens Billings Office, Plans to Drill Near Beartooths](#), Billings Gazette, Oct. 24, 2013. ECA subsequently drilled a test well immediately upstream from the proposed Silvertip District and oil and gas companies have approached Silvertip landowners concerning development of mineral resources there.

II. ADVERSE IMPACTS OF OIL AND GAS DRILLING

25. Oil and gas drilling in shale formations such as that underlying the Silvertip area is commonly accomplished through hydraulic fracturing, or “fracking,” which involves pumping millions of gallons of chemical-laced water and sand into the ground to release trapped oil and gas. After the well is fractured, substantial quantities of this contaminated water—which contains high concentrations of salt, drilling chemicals, heavy metals, and radioactive material—

return to the surface, where it is frequently stored in open containment ponds that pose substantial risks of leaks or failures. As much as one-third of the contaminated water can remain underground after drilling is completed, threatening soil and groundwater pollution.

26. Numerous chemicals used for hydraulic fracturing are linked to serious human health problems, including respiratory distress, rashes, convulsions, organ damage, and cancer. However, federal and Montana law provide only limited restrictions on the use of these dangerous chemicals in hydraulic fracturing and do not require prior notification to adjacent landowners of well fracturing or mandate surface or ground water testing to detect contamination.

27. Landowners in numerous states—including Alabama, Colorado, New Mexico, Pennsylvania, Virginia, West Virginia, and Wyoming—have reported changes in water quality following hydraulic fracturing activity near their homes. These changes include the presence of sediment, iron precipitates, grease, and benzene—a known human carcinogen; diesel or petroleum odors; high methane concentrations; and diminishment or total depletion of well production. The Associated Press reports that, since 2009, Pennsylvania regulators have confirmed more than one hundred cases of well-water contamination from oil and gas drilling in that state alone. Kevin Begos, Associated Press, [Some States Confirm Water Pollution from Drilling](http://bigstory.ap.org/article/some-states-confirm-water-pollution-drilling), Jan. 5, 2014, [available at http://bigstory.ap.org/article/some-states-confirm-water-pollution-drilling](http://bigstory.ap.org/article/some-states-confirm-water-pollution-drilling) (last visited February 12, 2015).

28. In addition, toxic air pollutants such as benzene, toluene, and formaldehyde are released throughout the oil and gas drilling process. Exposure to these pollutants is known to cause cancer, organ damage, nervous system disorders, and birth defects. Oil and gas drilling

also produces ground-level ozone, or smog, which causes decreased lung function, respiratory distress, bronchitis, and asthma.

29. Oil and gas drilling is a heavy industrial activity involving substantial truck traffic, high noise levels from the operation of drilling equipment and natural gas compressors, and industrial lighting. When interposed in residential and agricultural areas, these activities can dramatically disrupt domestic life and work and the health and well-being of residents.

III. THE CITIZEN PETITION TO ESTABLISH THE SILVERTIP ZONING DISTRICT

30. On August 18, 2014, a group of concerned Silvertip landowners submitted to the Carbon County Board of Commissioners a Petition for Creation of Citizen-Initiated Zoning District (Exhibit A). The petition asked the Commissioners to establish, pursuant to Mont. Code Ann. § 76-2-101, a planning and zoning district to be known as the “Silvertip Zoning District,” encompassing agricultural and residential lands owned by the petitioners and several neighbors. The petition asked the Commissioners to appoint a planning and zoning commission for the District with authority to make and adopt a development pattern, propose planning and zoning regulations to the Commissioners, and establish an advisory group of District property owners.

31. Through the citizen-initiated zoning process provided by Mont. Code Ann. § 76-2-101, the petitioning landowners sought to protect their health, property values, rural lifestyle, farming and ranching traditions, water and soil, and public infrastructure through reasonable regulation of oil and gas production in the District. The petition focused exclusively on regulation of oil and gas activities and did not seek comprehensive land use regulation that would affect grazing, horticulture, agriculture, timber harvest, or other activities.

32. The petitioning landowners asked the Commissioners to find that establishment of the Silvertip District would be in the public interest or convenience because inadequately

regulated oil and gas development poses a substantial threat to public health, safety and welfare; private property; public property such as county roads and bridges; the quality and quantity of both surface and ground water; air quality; the quality and quantity of soil; and the rural residential and agricultural character of the proposed District. The petitioning landowners submitted extensive supplemental materials supporting their position that regulation of oil and gas development within the proposed District would serve the public interest, including reports of documented water pollution from oil and gas drilling, evidence of adverse economic and cultural impacts to Montana communities from increased drilling activity, and regulatory approaches responding to drilling-related pollution concerns in other states (Exhibit B).

33. The petitioning landowners also submitted proposed regulations for the District consistent with the petition's objectives to preserve the quality of life, natural resources, and private property in the District and the complementary objectives of the Carbon County Growth Policy (Exhibit C). The proposed regulations mandate, inter alia, that all oil and gas operations within the District (1) secure a "conditional use" permit from the District planning and zoning commission; (2) avoid or mitigate significant adverse impacts to enumerated land use, public infrastructure, and environmental values; and (3) follow specified best management practices to protect land and property; public infrastructure; and air, water, soil, wildlife, scenic, and other environmental resources.

34. The petition certified that, as required by Mont. Code Ann. § 76-2-101(2)-(3), the proposed District includes at least 40 acres and does not contain any land that has been zoned by an incorporated city. The petition further certified that the petitioning landowners represent at least sixty percent of the affected real property owners in the proposed district.

35. On September 17, 2014, the Commissioners convened a public meeting at the Belfry School concerning the proposed District. The Commissioners invited Michael Dockery, an attorney retained by ECA; Seth Nolte, ECA project manager; and Jim Halvorson, petroleum geologist for the Montana Board of Oil and Gas Conservation, to make presentations. Mr. Halvorson did not attend. At the commencement of the meeting, the Commissioners offered plaintiff Bonnie Martinell, a Silvertip landowner and petitioner, the opportunity to speak on behalf of the petitioning landowners. Members of the public were also provided an opportunity to ask the presenters questions and offer comments.

36. The following day, September 18, 2014, the Commissioners advised the petitioning landowners at a public meeting that they must redraw the boundaries of the District as proposed in their August 2014 petition so that the District consists of a single contiguous parcel of land.

37. The petitioning landowners made the requested revisions and resubmitted their petition to the Commissioners on November 20, 2014 (Exhibit D). The final petition was signed by twenty landowners, representing more than sixty percent of landowners in the proposed District. The District as proposed in the final Petition is a single contiguous area encompassing 2,741.34 acres of private land.

IV. THE COMMISSIONERS' ACTIONS ON THE AMENDED PETITION

A. The December 15, 2014 Commissioners' Meeting

38. The Commissioners addressed the Silvertip District petition at their public meeting on December 15, 2014. Commissioners Doug Tucker, John Grewell, and John Prinkki; County Attorney Alex Nixon; and various members of the public were in attendance. A video recording of the December 15, 2014, Commissioners' meeting is available at

<http://vimeo.com/114639300> (last visited February 11, 2015). The Commissioners' Minutes are attached as Exhibit E.

39. At the start of the meeting, Commissioner Grewell read into the record four items of correspondence concerning the proposed District and oil and gas development therein. The correspondence included a letter from ECA describing its intention not to move forward with development of its test well in the Silvertip area and a letter from ECA's attorney, Michael Dockery, presenting legal argument in opposition to the petition.

40. Commissioner Grewell noted for the record that the Commissioners had received a letter from the County Clerk and Recorder certifying that at least sixty percent of the landowners in the proposed Silvertip District had signed the petition for its establishment, as required by Mont. Code Ann. § 76-2-101(1).

41. The Commissioners heard statements from attorneys Hertha Lund and Susan Swimley, who offered legal arguments in support of the Petition.

42. Steve Thuesen, a landowner in the proposed District, informed the Commissioners that landowners holding more than fifty percent of the acreage in the District had signed or expressed their intention to sign a letter protesting the District's establishment pursuant to the protest provision, Mont. Code Ann. § 76-2-101(5). Mr. Thuesen presented the Commissioners with the protest letters in his possession.

43. The Commissioners then heard comments from, and asked questions of, various members of the public audience concerning the petitioning landowners' method for delineating the boundaries of the Silvertip District, the merits of utilizing the Commissioners' zoning authority to regulate oil and gas development within a citizen-initiated zoning district, the extent

of landowner protest against the District, and the proper procedure for the Commissioners' action on the petition.

44. At the close of discussion, Commissioner Prinkki made a motion that the Commissioners adopt a resolution of intent to grant the petition and establish the Silvertip Zoning District, based on a finding that establishing the District would serve the public interest and convenience; public health, safety, and welfare; and protection of public infrastructure. The Commissioners voted unanimously in favor of Commissioner Prinkki's motion and, based on their finding of public interest and convenience, adopted a resolution of intent to establish the Silvertip District.

45. The Commissioners determined to reconvene on January 15, 2015, to address landowner protests and take further action on their resolution of intent.

B. The January 15, 2015 Commissioners' Meeting

46. The Commissioners convened a public meeting to discuss the Silvertip District as scheduled on January 15, 2015. Commissioners Grewell, Prinkki, and Tucker were present for discussion of the Silvertip District petition, as well as County Attorney Alex Nixon and various members of the public. A video recording of the Commissioners' January 15, 2015, meeting is available at <http://vimeo.com/116899053> (last visited February 11, 2015). The Commissioners' Minutes are attached as Exhibit F.

47. Commissioner Prinkki reported that landowners holding 1,665.04 acres, or 60.7% of the total acreage in the proposed District, had submitted certified protests to the Commissioners (protest letters attached as Exhibit G).

48. Commissioner Grewell made a motion to rescind the Commissioners' resolution of intent to create the Silvertip Zoning District, which he stated was based on two reasons. First,

Commissioner Grewell stated that it was in the Commissioners' discretion to rescind their public interest finding in light of the "now certified protest acreage." Second, Commissioner Grewell stated that establishing the District would be contrary to law because the Commissioners had received landowner protests satisfying the protest provision of the citizen-initiated zoning statute, Mont. Code Ann. § 76-2-101(5).

49. In the course of the ensuing discussion, attorney Hertha Lund, speaking on behalf of the Silvertip landowners, asked the Commissioners to clarify whether their decision to reject the petition was based on the protest provision, Mont. Code Ann. § 76-2-101(5), or a finding of what is in the public interest.

50. In response, Commissioner Grewell stated, "My motion is based on subsection 5 [Mont. Code Ann. § 76-2-101(5)]. We're not allowed to create the district."

51. County Attorney Alex Nixon interjected that the motion was also based on Mont. Code Ann. § 76-2-101(1) and a rescission of the Commissioners' finding that establishing the District would serve the public interest and convenience.

52. In response to a further clarifying question from Ms. Lund, Commissioner Grewell restated that his motion rested on two reasons. The first reason, he said, was that the previous public interest finding "no longer applies due to the fact that" landowners holding more than 60% of the acreage in the proposed District protested its creation, "so it's obviously not in their public interest or convenience."

53. Commissioner Prinkki requested a vote on the motion to rescind the Commissioners' public interest finding as stated by Commissioner Grewell. The Commissioners voted unanimously in favor of the motion.

54. Commissioner Grewell then moved to deny the petition to establish the proposed Silvertip District based on the previous motion. Following limited further discussion, Commissioner Prinkki stated that the petition failed “under section 5, because of the protests. We couldn’t move forward with this if we wanted to. It fails from that fact alone. And besides from the others.”

55. Fewer than 20 minutes after the meeting began, the Commissioners voted unanimously in favor of the motion to deny the petition to establish the Silvertip District.

56. Because the Commissioners’ January 2015 actions left the Silvertip landowners largely without protection from potential deleterious effects of hydraulic fracturing, Plaintiffs file the present appeal.

FIRST CAUSE OF ACTION
(Reliance on Unconstitutional Protest Provision,
Mont. Const. Art. II, § 17, Art. III, § 1 – Delegation of Legislative Authority)

57. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 56.

58. The Montana Constitution prohibits the delegation of legislative authority to private individuals. Mont. Const. Art. III, § 1 (requiring separation of powers); Mont. Const. Art. II, § 17 (due process); see also Williams, ¶ 45 (citing constitutional due process guarantees as source of prohibition against delegating legislative power to private parties); In re Petition to Transfer Territory, 2000 MT 342, ¶¶ 13-15, 303 Mont. 204, 15 P.3d 447 (citing Montana Constitution’s separation of powers provision as source of prohibition against delegation of legislative power).

59. Because the protest provision in Mont. Code Ann. § 76-2-101(5) vests private individuals with legislative power, it is unconstitutional. See Williams, ¶¶ 51-54 (holding that

substantially similar protest provision in Mont. Code Ann. § 76-2-205(6) was unconstitutional delegation of legislative power to private parties).

60. Accordingly, the Commissioners' reliance on the protest provision in Mont. Code Ann. § 76-2-101(5) was unconstitutional and cannot sustain the Commissioners' January 2015 decisions to withdraw the "Resolution of Intent" to create the Silvertip Zoning District and to reject the Silvertip District petition. Because the Commissioners failed to articulate any basis for their January 2015 actions independent from the existence of landowner protests that nominally satisfied the requirements of Mont. Code Ann. § 76-2-101(5), the actions must be set aside.

SECOND CAUSE OF ACTION
(Arbitrary and Capricious Reversal of Public Interest Finding)

61. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 60.

62. It is a fundamental principle of administrative law that state and local government boards must rationally articulate the factual basis for their decisions. See N. 93 Neighbors, Inc. v. Bd. of County Comm'rs of Flathead County, 2006 MT 132, ¶¶ 30-31, 34-35, 332 Mont. 327, 137 P.3d 557 (holding that general principles of administrative law require county commission to identify facts in the record on which their decision is based).

63. Here, the Commissioners failed to articulate a rationale for rescinding their public interest finding that is distinct from their unconstitutional reliance on the landowner protest. Accordingly, the substance of the Commissioners' decision amounted to a single rationale constituting a violation of the Montana Constitution, as alleged above. However, even assuming that the Commissioners articulated an intelligible "public interest" rationale for withdrawing the Resolution of Intent and rejecting the Silvertip District petition independent from the protest provision, the Commissioners' evaluation of the public interest under Mont. Code Ann. § 76-2-101(1) was arbitrary and capricious and an abuse of discretion.

64. The Commissioners in December 2014 determined that establishing the Silvertip District was in the interest of “public health, convenience, and to protect public infrastructure.” In the January 2015 meeting, the Commissioners did not identify any basis in the record for reversing this determination. Instead, the Commissioners cited only the “now certified protest acreage” and no evidence pertaining to the public health, convenience, and public infrastructure to support their change of heart.

65. Because the record does not reflect rational consideration by the Commissioners of public comments and evidence received by the Commissioners demonstrating that the Silvertip District would serve the public interest by protecting landowners from the health, safety, and environmental harms of oil and gas drilling—nor any evidence that the Silvertip District is not in the public interest—the Commissioners’ January 2015 reversal of their public interest finding was arbitrary and capricious and an abuse of discretion.

66. Thus, even assuming that the Commissioners’ public interest determination constituted an independent ground for withdrawing the Resolution of Intent and rejecting the Silvertip District petition—a theory that is belied by the record—that determination was unreasoned and unlawful and cannot sustain the Commissioners’ January 2015 actions.

THIRD CAUSE OF ACTION
(Unconstitutional Deprivation of Plaintiffs’ Right to Clean and Healthful Environment,
Mont. Const. Art. II, § 3, Art. IX, § 1)

67. Plaintiffs hereby reallege and incorporate Paragraphs 1 through 66.

68. To the extent the Commissioners proffered a “public interest” rationale for their decisions distinct from the landowner protest provision, that alternative rationale also is unconstitutional. Plaintiffs have a fundamental right to a clean and healthful environment, Mont. Const. Art. II, § 3, and both Plaintiffs and the Commissioners have a constitutional obligation to

maintain and improve the environment, id. Art. IX, § 1. These constitutional provisions are violated when citizens are deprived of a legislatively prescribed process for preventing unreasonable environmental degradation. See Mont. Env'tl. Info. Ctr., ¶ 80 (holding that statute requiring DEQ to review activities and make certain factual findings before authorizing activities that may degrade water quality was reasonable legislative implementation of the Constitution's environmental provisions, and blanket statutory exemption from nondegradation review process for certain activities implicated Mont. Const. Art. II, § 3, Art. IX, § 1); Robinson Twp., 83 A.3d at 977-78 (holding state law depriving municipalities of zoning authority over oil and gas drilling violated citizens' constitutional right to clean environment and municipalities' obligations thereunder).

69. To the extent the Commissioners purported to conclude that the mere existence of opposition to the Silvertip District nullified the public interest in creating the District, the Commissioners violated the Silvertip landowners' fundamental constitutional right to a clean and healthful environment and abdicated their constitutional obligation to maintain and improve the environment, Mont. Const. Art. II, § 3 and Art. IX, § 1.

70. Zoning is the primary means by which local governments protect private property owners from the harmful health and safety effects of incompatible land uses. The legislature has authorized citizens to petition for the creation of zoning districts in order to allow landowners to enact restrictions on the use of property to address local concerns. Here, the Silvertip landowners petitioned the Carbon County Commission to create such a district for the purpose of ensuring that oil drilling and associated industrial activity would not interfere with their right to a clean and healthful environment in their own backyards.

71. The Commissioners concluded in December 2014 that creation of the Silvertip District was in the public interest for the reasons advanced in the petition, supporting materials, and public comments. However, in January 2015, the Commissioners allowed the mere existence of opposition to the district to defeat the Silvertip landowners' effort to maintain a clean and healthful environment for themselves, without any analysis of whether the protesting landowners' interests were of a nature and magnitude sufficient to outweigh the Silvertip landowners' fundamental constitutional rights.

72. In light of the Commissioners' constitutional responsibility to maintain and improve a clean and healthful environment, they may not rely on the mere existence of landowner opposition—without reasoning grounded in the public interest—to reject zoning measures that advance environmental protection. Mont. Const. Art. II, § 3, Art. IX, § 1. Furthermore, the Commissioners' denial of the zoning petition unconstitutionally deprived the Silvertip landowners of their legislatively prescribed remedy for maintaining a clean and healthful environment. Mont. Const. Art. II, § 3, Art. IX, § 1. For these reasons, too, the Commissioners' January 2015 actions must be declared unlawful and void.

REQUEST FOR RELIEF

THEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Mont. Code Ann. § 76-2-101(5) violates the nondelegation doctrine established under the due process and separation of powers provisions of the Montana Constitution, Art. II, § 17 and Art. III, § 1, and therefore is void;
2. Declare that the Commissioners' January 2015 decisions to withdraw the Resolution of Intent to create the Silvertip District and to reject the landowners' petition to establish the Silvertip District were arbitrary, capricious, and an abuse of discretion and therefore

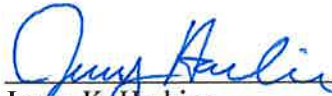
are void;

3. Declare that the Commissioners' January 2015 decisions to withdraw the Resolution of Intent to create the Silvertip District and to reject the landowners' petition to establish the Silvertip District violated the Constitution's environmental provisions, Mont. Const. Art. II, § 3, Art. IX, § 1, and therefore are void.

4. Require County Commissioners to pay Plaintiffs their reasonable fees, costs, and expenses, including attorneys fees, associated with this litigation; and

5. Grant Plaintiffs such additional relief as the Court may deem just and proper.

Respectfully submitted on this 12th day of February, 2015,



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