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FROM: Kevin Smith, Engineering Bureau Chief

DATE: May 4, 2021

SUBJECT: Timbrshor Homeowners Association – Proposed Subdivision

Thank you for providing the memorandum summarizing the conference call held February 16, 2021 between the Department of Environmental Quality (DEQ), Hydrometrics, Inc., and the Timbrshor Homeowners Association (THOA). The February 17, 2021 memo written by Hydrometrics, summarized the discussion about:

- 1) the proposed rewrite of the certificate of subdivision approval (COSA),
- 2) the Lake County Planning Department building moratorium,
- 3) the approved wastewater treatment systems,
- 4) the proposed rewrite of the water systems, and,
- 5) the water rights status relative to the, as of yet, unresolved Flathead Reservation Water Compact.

In 1977 a COSA was issued for the Borchers of Finley Point project that included one lot with 50 proposed lease residential building sites (units), to be served by community surface water systems and community sewer systems (#24-77-K902). The property also included 16 existing units and a lodge served by individual water and sewer systems that were exempt from subdivision approval because their development predated the Sanitation in Subdivisions Act.

The approvals for both the community public water and sewer systems expired before the systems were constructed.

In an email dated August 20, 2015, DEQ mentioned a meeting that was held between DEQ and Lake County Health Dept. the previous year, where "... DEQ and Lake County agreed that the scope of the Timbrshor project would solely be wastewater at that time. The constraints of Flathead Reservation water rights and unresolved Water Compact leave water in a situation where it cannot be legally resolved at this time. At a future date, when water rights can legally be processed, DEQ will likely require Timbrshor to update the water approval."

In 2016, Hafferman Engineering applied for a rewrite of the COSA on behalf of the THOA to address the wastewater treatment systems. In September 2016, COSA EQ#15-1971 was issued and superseded COSA #24-77-K902 for the wastewater treatment systems only, and stated that “...the original conditions not changed by this approval are still in effect.” and, “the original July 27, 1977 community Water supply system approval (E.S. 77/K345) is not being modified and, ... the on-site storm water evaluation is not part of the scope of this wastewater re-write.”

Unfortunately, since the approval for the water supply systems had expired in 1980, this left the subdivision without an approved water supply. Also, the 2016 COSA did actually include some additional changes. It added a proposed unit to the development (#317) that had been inadvertently omitted from the previous COSA, and exempted (established sanitary restrictions on) one of the previously approved units (#217) at the request of the owner. In addition, six of the previously approved units (#202, 319, 413, 420, 423 and 425) were restricted from development per the “Restriction on Development of Identified Lots”, agreed to by Lake County Commissioners on April 16, 2015.

Under EQ#15-1971, proposed multi-user and public wastewater treatment systems were reviewed and approved to serve all the proposed or existing units in the development, including the 16 units and lodge that had previously been exempt from the 1977 COSA. All the approved wastewater treatment systems have been constructed.

On April 15, 2020, DEQ approved plans and specifications for the location and construction only, of four public water supply wells. A fifth well, the existing McCarthy well, was also approved to serve as a multi-user water source.

MDEQ stated that approval of the PWS/multi-user water supply systems could only be obtained by completing and testing the wells to verify yield and water quality. Once well yields are determined and quality is confirmed, MDEQ can review a complete public water system plan set and specifications concurrently with an application for a COSA rewrite. A COSA approval will require that the building moratorium issued by Lake County be lifted, and that a letter from the Department of Natural Resources and Conservation stating that the water supply, either is exempt from water rights permitting requirements, or has a water right, as defined in 85-2-422, MCA. This will likely require a resolution of the Flathead Reservation Water Compact.

The THOA has established ‘Well Groups’ (units served by a single water supply system), and has drafted Well User Agreements, with each group being responsible to build, operate and pay for their respective water system.

THOA is proposing a phased approach for review and approval of the plans and specifications for three public or multi-user water supply systems to serve three “well groups” in the subdivision, and to obtain an associated COSA for each phase of the subdivision (one served by well #4, one served by wells #5 and 9, and one served by the McCarthy water system. Well #6 is proposed as a backup source).

- 1) THOA will submit design plans and specifications for the multi-user water supply system serving the McCarthy group and submit an application to rewrite COSA EQ#15-1791 for the McCarthy well group only (units 317, 318, 320, and 414). DEQ will review the subdivision rewrite application and the multi-user water system design concurrently for compliance with the rules and regulations of Montana. As specified in the April 15, 2020 water well approval, the McCarthy well, though classified as a multi-user well, must be sampled at a minimum for Nitrate and Total Coliform bacteria, on the same frequency as the PWS wells, during the months of use. Results from sampling must be maintained by the owner and made available to DEQ upon request.

Upon approval, DEQ will issue a COSA that will supersede EQ#15-1971 for the McCarthy Well Group only. The COSA will specify that “all previous copies of the COSA should be marked superseded, except that the original conditions not changed by this approval are still in effect.

Upon receipt of the McCarthy Well Group COSA rewrite, THOA intends on petitioning Lake County for release of the building moratorium for the McCarthy well group.

- 2) Applications for the review and approval of subsequent well groups and associated water supply systems will be addressed in a phased approach. As part of the April 15, 2020 approval prepared by DEQ, THOA received approval to drill the proposed public water supply(PWS) wells. THOA will pursue obtaining water rights (filing a Notice of Completion Water Certificate) for each of the proposed public wells and proceed with application, review and approval of the proposed waters supply systems and COSA rewrites for the identified well groups.