



December 23, 2020

Submitted via electronic mail to sean.ocallaghan@gallatin.mt.gov

Gallatin County Floodplain Administrator
Sean O'Callaghan
311 West Main St, Rm 180
Bozeman, MT 59715

Re: Comments in Opposition to the Proposed Pfeil Glampground Floodplain Permit

Mr. O'Callaghan:

On behalf of Upper Missouri Waterkeeper and its members I write to express our serious concerns about the water resource impacts that approval of the Pfeil Glampground Floodplain Permit could incite. Upper Missouri Waterkeeper requests that you, on the factual and legal basis described below, deny the proposed floodplain permit.

Upper Missouri Waterkeeper is a non-partisan, Montana based, clean water advocacy nonprofit that works to defend fishable, swimmable, drinkable water throughout the 25,000 square miles of Southwest and West-central Montana's Upper Missouri River Basin. The Gallatin River, the life-blood of Gallatin County's thriving outdoors-based economy, is but one of the thirteen river systems in which we leverage strong science, community action, and the law on behalf of the public's right to clean water. We've collaborated and worked successfully with various Gallatin County not-for-profit, for-profit, and state and local governmental entities on a range of environmental issues affecting the quality of Gallatin County's environment over the past 8 years including but not limited to seasonal Gallatin water quality monitoring, decisionmaking surrounding upgrades to various sewer district treatment facility upgrades, regulation of sprawl and suburban development and resulting negative impacts on local water quality, and the importance of science-based land use planning decisions that prioritize protections for our namesake waterway.

Applicable Legal Framework

Gallatin County's adopted Floodplain Ordinance (hereinafter "Ordinance") is specifically designed to restrict land uses in floodplains that are dangerous to health, safety or property and to identify lands unsuitable for development because of flood hazards. *See* Ordinance, Purpose, 1.03(B). The Floodplain Administrator is required to grant, condition, or deny permit applications on the basis of whether baseline requirements of the Ordinance are met, including:

1. the danger to life and property due to increased flood heights, increased flood water velocities or alterations in the pattern of flood flow caused by encroachments;
2. the danger that materials may be swept onto other lands or downstream to the injury of others;

3. the proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions, and whether septic systems will be located to avoid impairment or contamination during flooding;
4. the susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
5. the importance of the services provided by the facility to the community;
6. the proposed development will be reasonably safe from flooding;
7. the drainage at the site is adequate to reduce exposure to flood hazards;
8. the requirement of the facility for a water-front location;
9. the availability of alternative locations not subject to Flooding for the proposed use;
10. the compatibility of the proposed use with existing development and anticipated development in the foreseeable future;
11. the relationship of the proposed use to any adopted growth policy or other plans covering the project area;
12. the safety of access to property in times of flooding for ordinary and emergency services; and
13. such other factors as are in harmony with the purposes of these Regulations, the Montana Floodplain and Floodway Management Act and the National Flood Insurance Program.

See Ordinance, 4.01(B). The Ordinance also makes clear that excavation of material from pits and pools, stream crossings, limited filling, the placement and burial or suspension of utility lines, the storage of materials, the placement of domestic water supply wells, the development of public or private campgrounds and recreational vehicle parks, the development of accessory structures, and substantial improvements to other structures all categorically require a Floodplain Permit. *Id.* 5.02(B).

Finally, we note that the Ordinance places responsibility on the Administrator to ensure an applicant also gains necessary 404 permit(s) from the Army Corps of Engineers. *See* Ordinance 4.01(B). The Glampground application checklist suggests that although the Project will include several significant earthmoving activities, including those in riparian and/or wetland areas and/or adjacent natural springs (AKA, “waters of the United States”) on the property, each of which constitute the removal and placement of dredge or fill materials requiring a 404 permit authorization under the federal Clean Water Act, Section 404(b)(1), the proponent has not applied for or obtained a 404 permit. The Administrator should clearly communicate the legal responsibility of the Glampground applicant to obtain a 404 permit for any earthmoving activities that will reasonably result in discharges affecting the chemical, physical, or biological integrity of waters or wetlands hydrologically connected to the Gallatin River.

The Proposed Glampground Violates the Letter and Spirit of Gallatin County’s Floodplain Ordinance and Should Be Denied a Floodplain Permit

The proposed Glampground’s application demonstrates that it categorically requires a Floodplain Permit and, so too, provides a sound basis for the County to deny the requested permit. The proposed development will, in brief, create a “glamping retreat” compound complete with access roads and sanitary sewer and public water supply systems. As a contextual matter it must be noted that the proposed Glampground qualifies under a plain reading of the Montana Subdivision and Platting Act as a nontraditional subdivision, a distinction that is relevant here insofar as it clarifies the scale and significance of activities proposed for use in a floodplain.

Indeed, the creation of new seasonal and permanent structures, supporting utilities of scale and scope to support substantial recreational and commercial level impacts, and substantial

earthmoving activities both adjacent to waters of the United States and on dryland, all of which would take place fully within the Gallatin River's floodplain, should immediately raise red flags as to compliance issues with the Ordinance. At its most basic level the Glampground should be denied the requested floodplain permit because it is a prima facie case of new, significant development that is unsuitable for the landscape in question because, by virtue of placement within the Gallatin Floodplain, the project creates an unnecessary risk of flood risk and harms the public's interest in sound land and water use management that protects and improves health, safety, and welfare and fails to reduce the risk of flooding.

At a more granular level the Glampground application should be denied because no rational basis finding can determine that the proposal satisfies the aforementioned thirteen (13) criteria for issuance of a floodplain permit under the Ordinance. For example, the placement of 63 units and several permanent structures and substantial improvements, all of which would be located within the floodplain, create an unnecessary danger to life and property by virtue of their unsuitable proximate location in a flood-prone corridor, and likewise would, should a flood event occur, present a high risk of damage to both the owner and to downstream, and therefore exacerbate – not reduce – flood risk. There is similarly no factual showing that the project would decrease threat of flooding on the property: rather, the project would incentivize and create more risk of harm to the public by enticing increased use of the floodplain during potentially hazardous periods. So too would development of the site *increase* prospective flooding damage/risk by virtue of hardscaping and like substantial site improvements and their propensity to remove vegetation and thereby reduce an undisturbed and/or wooded floodplain's natural ability to take on and absorb excess water during times of flood. From a fluvial geomorphological point of view the proposed Glampground exacerbates the risk of flood damage on the proposed site and reduces flood buffering capabilities downstream.

Waterkeeper also takes issue with any alleged positive finding of the Glampground's contribution of services to the larger community: to wit, it would not provide "important" services to the County, to nearby Gallatin Gateway, or to adjacent landowners. Rather, the Glampground would singularly benefit the financial interests of a single business owner, while externalizing cumulative costs on the broader community and landscapes. Whether transportation impacts to rural Gallatin Gateway, material changes to the character of the immediate river corridor, or the increased impacts that commercial use of the floodplain would entail, the Glampground's effects would be uniformly and significantly negative for the larger community. Similarly, the Glampground is incompatible with the existing, undeveloped nature of the floodplain both on the proponent's land and the character and nature of adjacent lands. In fact, the vast majority of adjacent parcels and landscapes both upstream and downstream are held by individuals who've publicly held out their parcels as examples of conservation ethics that prioritize healthy, natural floodplain flora and fauna with no significant existing or proposed future development. Therefore the Glampground conflicts with both prevailing existing and proposed future development in the immediate locale.

More broadly, the Glampground also conflicts with regional planning efforts underway at the County and municipal levels. Community and governmental planning regarding the Triangle region prioritize core density regions and speak to the importance of protecting sensitive riparian zones from development and the unnecessary water quality impacts that result from poor land use choices. Likewise, the Department of Environmental Quality's new designation of the Lower Gallatin Watershed as a priority conservation watershed and attendant emphasis on incentivizing sound science-based planning, addressing the impacts of sprawl development on water resources, and incentivizing waterway restoration efforts that decrease flood risk and solve poor land use practices contributing to unhealthy water quality, directly conflicts with the

proposed use of a sensitive floodplain for financial gain. Put simply there is growing citizen, community, and regulator awareness and agreement in Gallatin County that we as a society need to be prioritizing low impact development strategies that protect our sensitive waterways and riparian habitat and concentrate land use impacts in more appropriate existing urban and ex-urban centers. The Glampground proposal swims directly against that prevailing current.

All of these facts weigh heavily against any finding that the Glampground adheres to the spirit or letter of the County's Floodplain Ordinance and are reasons for denying the requested permit.

Conclusion

Undeniably, a functioning and healthy Gallatin River floodplain benefits not just the health of the watershed, but so too vital economic and cultural activities in Gallatin County. Recent and relentless development pressures confronting Gallatin County, as seen in the instant proposal seeking to capitalize on tourism and profit from the draw of our clean, healthy Gallatin River, should not be reason to sidestep the reasonable and prudent regulation of unsuitable activities within floodplains.

As described above, ample factual and legal rationales support denying the Glampground's requested floodplain permit under the County's Ordinance. We also note that the Administrator remains responsible for ensuring the proponent also seeks – and obtains – a 404 permit from the Army Corps of Engineers before this Floodplain permit would become ripe, an act that to the best of our knowledge has not yet occurred.

In closing Upper Missouri Waterkeeper urges the Floodplain Administrator to use the voluminous public record and facts detailed above to deny the proposed Glampground a Floodplain Permit.

Respectfully submitted-



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