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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

LAUREL CARED, Plaintiff, v. STATE OF MONTANA BOARD OF INVESTMENTS & DPHHS, Defendants.	Cause No. DV 26-0855 JUDGE ED ZINK **ORDER GRANTING IN PART PRELIMINARY INJUNCTION**

This matter comes before the Court on Plaintiff Laurel CARED's ("Plaintiff") *Motion for Temporary Restraining Order and Preliminary Injunction* filed on June 25, 2026. [Dkt. 2]. Plaintiff's underlying *Complaint* alleges certain Montana Environmental Procedures Act ("MEPA") and Montana Constitutional violations against the Montana Board of Investments and Montana Department of Health and Human Services ("BOI" and "DPHHS," collectively "Defendants"). The alleged MEPA violations include inadequate explanation and rationale in Defendant's Final Environmental Assessment ("Final EA") and a lack of sufficient public participation in the process leading up to the issuance of the Final EA.

Defendants submitted the Final EA in relation to its proposed location for a 32-bed Forensic Mental Health Facility just west of the city of Laurel. Plaintiff seeks to enjoin Defendants from proceeding with construction until these alleged MEPA violations are addressed.

Defendants filed their *Joint Response in Opposition to Plaintiff's Motion* on July 13, 2026. [Dkt. 14]. Defendants assert that Plaintiff's motion relied on the general injunction standard under Mont. Code Ann. § 27-19-201 when Mont. Code Ann. § 75-1-201(5)(c)(iii) provides a more stringent standard to meet for cases involving alleged MEPA violations.

Plaintiff filed its *Reply in Support of Motion* on July 16, 2026. [Dkt. 15]. Plaintiff maintains its position that the injunction standard outlined in Title 27 should apply. In the alternative, Plaintiff asserts that its motion also satisfies the stricter requirements in Title 75.

The Court held a hearing on this pending motion on August 10, 2026. The Court heard oral argument from both parties. After hearing arguments and reviewing the record, the Court **GRANTS** Plaintiff's motion for preliminary injunctive relief for the reasons articulated below.

BACKGROUND

The following contains the relevant factual background of the forensic mental health facility project as laid out in Plaintiff's *Complaint* and Defendants' answers.

In June 2025, Governor Gianforte signed House Bill 5 into effect. *Compl*. ¶ 25. This bill set aside $26.5 million for the construction of a forensic mental health facility ("Facility"). *Id.* In July of 2025, the BOI, state legislators, and local Billings and Laurel leaders toured five possible site locations in the Billings-Laurel area for the Facility. *Compl*. ¶ 26. During the site visits, state officials allegedly explained they needed a 10-acre property. *Id*. Laurel Chief Administrative Officer Kurt Markegard allegedly mentioned a site on Old Highway 10 that he saw for sale. *Id*.

On August 20, 2025, BOI Executive Director Dan Villa announced that BOI would pause the project. *Compl*. ¶ 27. This announcement followed certain disagreements over the BOI's authority to construct the Facility as well as the viability of the sites toured in July. *Id*. Markegard called Villa this same day for an update on the progress of the project. *Compl*. ¶ 29. The two also discussed the Old Highway 10 site. *Id*.

On August 22, Markegard emailed Villa, DPHHS Director Charles Brereton, and Director of

Budget and Program Planning Ryan Osmundson additional information regarding the Old Highway 10 site. *Compl*. ¶ 30. Markegard stated in his email that the site could possibly utilize water and sewer infrastructure associated with nearby Love's Travel Center. *Id*. Villa responded by stating he would be in touch once the BOI had more guidance on the project. *Id*.

On September 10, Governor Gianforte resumed site selection for the Facility. *Compl*. ¶ 31. This announcement was contained in a Letter to the Montana Board of Investments. *BOI Ans.* ¶ 31.

On October 6, DPHHS Director Brereton sent a letter to Villa about site selection. *Compl.* ¶ 32. The letter stated that "it is important that all Eastern Montana communities equipped with adequate infrastructure and a potential workforce are afforded the opportunity to submit proposals for hosting our new facility." *Id*. On October 7, DPHHS announced that it would be soliciting proposals from Montana communities to host the Facility. *Compl.* ¶ 33. The deadline for such applications was November 10, 2025. *Id*. The BOI and DPHHS agreed to use a Due Diligence Questionnaire, and the process was designed to explore interest and expand potential sites for the Facility. *BOI Ans.* ¶ 33. Only Big Horn County and Custer County responded to the Due Diligence Questionnaire by the deadline. *Compl*. ¶ 34. Neither Yellowstone County nor the city of Laurel submitted a response. *Id*.

On November 17, Markegard sent Villa a letter explaining why the city of Laurel did not submit a Due Diligence Questionnaire. *Compl.* ¶ 36. The letter explained that the Old Highway 10 location was a strong candidate because of its access to existing or forthcoming utility services. *Id*. The letter also discussed the annexation process and pointed out that, in Laurel, annexation is a requirement for access to local water and sewer services. *Id*. After Markegard sent the letter, he reached out to Villa to set up a meeting with Laurel mayor Dave Waggoner, DPHHS Director Brereton, and Office of Budget and Program Planning Finance Manager Brian Hannan. *Compl*. ¶ 37; *BOI Answer* ¶ 37. The meeting took place on November 20, 2025, at Laurel City Hall. *Id*.

On November 26, DPHHS and BOI submitted a plan to State Budget Director Ryan Osmundson to construct a 32-Bed forensic mental health facility in Laurel. *Compl.* ¶ 38. BOI would

oversee construction and own the land, and DPHHS would lease and operate the Facility. *Id*. On November 28, DPHHS announced Laurel as the selected site but did not specify exactly which site in Laurel. *Compl*. ¶ 39.

On December 9, DPHHS and BOI representatives informed the Laurel City Council that it would be the first to hear of any potential buy-sell agreement, and the BOI would follow all local regulatory processes. *Compl*. ¶ 40. On January 13, 2026, the BOI executed a buy-sell agreement with Miller Trois LLC to purchase three lots off Old Highway 10 just outside Laurel city limits. *Compl.* ¶ 41. The land totaled 114 acres for $4.25 million. *Id*. The BOI paid $42,500 in earnest with the remaining due by July 13, 2026, the agreed-upon closing date. *Id.* The buy-sell agreement specified the BOI had the right to terminate the contract for any reason prior to July 1, 2026. *Id*.

On January 20, 2026, Villa sent written comments to the Laurel City Council. MT001983-1984. In his comments, Villa informed the Laurel City Council that the BOI had executed the buy-sell agreement for the proposed Facility location. *Id*. Villa also stated that the BOI would make a formal request to begin the annexation process for the property. *Id*.

On January 27, 2026, the Laurel City Council held a meeting to allow residents to voice their concerns regarding the location of the Facility. *Compl*. ¶ 45. These concerns included discussions of safety, property values, and the potential strain on local resources. *Id*. On this same day, the Laurel Public Schools Board of Trustees and Superintendent Matthew Torix announced their "unified opposition" to the Facility. *Compl.* ¶ 46. The proposed location of the facility is located within one half mile from the Laurel Elementary School. *Compl*. ¶ 42.

On March 3, 2026, the Laurel City Council sent a letter to Governor Gianforte, Villa, and Brereton. *Compl.* ¶ 47. This letter raised concern regarding the city of Laurel's meaningful engagement with the site selection of the Facility. *Id*. The City of Laurel never received a response. *Id*.

On April 22, 2026, public hearings on the Facility were held at the Laurel Public Library at 10:00 a.m. and 4:00 p.m. *Compl.* ¶ 53; *BOI Ans.* ¶ 53. The Draft Environmental Assessment (Draft

EA) was provided on the House Bill 5 website two days prior. Plaintiff was present at the hearings and testified. *Id*. Written comments were also accepted until an extended deadline of May 6, and Plaintiff submitted written comments. *Id.*

Sometime after the written comment period closed, Defendants announced via the House Bill 5 website that another public hearing would be held, this time in Billings at 1:00 p.m., on June 2. *Compl*. ¶ 54. On May 18, the Final Environmental Assessment (Final EA) was added to the House Bill 5 website in anticipation of the June 2 hearing. *Compl*. ¶ 55. Several people, including representatives of Plaintiff, attended and testified at the June 2 public hearing. *Compl*. ¶ 57.

On June 12, 2026, the BOI closed on the property just outside Laurel, and this information was publicly reported on June 16. *Compl.* ¶ 59. On this same day, Defendants updated the House Bill 5 website to note that the Final EA found no significant impact on the environment. *Compl.* ¶ 58.

A full copy of the Final EA is in the Court record. It is contained in Exhibit 12 of the *Declaration of Elizabeth Forster*. [Dkt. 10]. It is also found in the certified administrative record at MT000001 through MT000289[1].

The Final EA considered three alternatives for the Facility: (1) the Proposed Action, (2), the Alternative Sites Considered Prior to Selection, and (3) the No Action Alternative. *Compl*. ¶ 61.

The Proposed Action was "to construct a 32-bed (potentially expanding to 64-bed) forensic mental health facility on approximately 14 acres of an 114-acre parcel located in Yellowstone County…" MT000007. The site alternatives are briefly discussed in Appendix E of the Final EA. The No Action Alternative was to decline to build the Facility at all. MT000014.

When evaluating site alternatives, the Final EA set forth a variety of factors, including accessibility, transportation, and logistics; site configuration and suitability; utilities, public services, and infrastructure; fiduciary considerations; and permanent workforce availability. MT000012, 13. The Final EA, including all appendices, consists of 291 pages of reports, analysis, and rationale.

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[1] All "MT" citations are to the certified administrative record provided by Defendants.

Ultimately, the Final EA concluded that the Old Highway 10 site just west of Laurel "most clearly satisfied the State's selection criteria and demonstrated superior long-term viability for [the Facility]." MT000013.

Plaintiff claims two MEPA violations related to the Final EA and the public participation process. Plaintiff's first claim alleges that Defendants failed to "rationally evaluate the direct, secondary, or cumulative impacts to the physical and human environment posed by the construction of [the Facility]." *Compl*. ¶ 124. Plaintiff's second claim alleges inadequate public participation in violation of MEPA. Plaintiff now seeks an injunction to halt the progress of construction of the Facility until these alleged MEPA violations are addressed.

In separate answers, Defendants deny these allegations and maintain that the Final EA is adequately supported. *See* [Dkt. 19, *BOI Answer*] and [Dkt. 21, *DPHHS Answer*]. Further, Defendants jointly oppose the relief sought in Plaintiff's motion. *See* [Dkt. 14, *Defendants' Joint Response in Opposition to Plaintiff's Motion*].

ANALYSIS

As an initial matter, the Court must address two threshold issues raised by the parties. First, the Court must decide whether it may consider supplemental evidence offered at the hearing. Second, the Court must decide the applicable injunction standard to apply to this case, that contained in Title 27 or that set forth in Title 75.

Supplementation of the Record is Necessary in this case

Plaintiff offered a proposed exhibit at the August 10th hearing, comprised of recent correspondence between engineers for the State of Montana and Laurel Public Works concerning utility availability from the City of Laurel for the Facility. The Court provisionally received the proposed exhibit and ordered simultaneous briefing regarding the Court's ability to supplement the certified record with this proposed exhibit.

Plaintiff seeks to supplement the certified record with this proposed exhibit. *See* [Dkt. 31,

Plaintiff's Brief in Support] and [Dkt. 32, *Decl. of Elizabeth Forster*]. At issue is correspondence about water availability and sufficiency between Cushing Terrell, an engineering firm hired by Defendants, and Laurel Public Works Director Matt Wheeler. The proposed Exhibit 1 contains two letters. The first, dated June 16, 2026, is from Cushing Terrell to Laurel Public Works Director Wheeler requesting a will-serve letter confirming that the City of Laurel will provide municipal water and sewer services for the Facility. [Dkt. 32, at p. 12]. The letter provided the anticipated service requirements and also requested a certified fire hydrant flow test for the nearest adjacent fire hydrant. *Id*.

The second letter is the response from Laurel Public Works Director Wheeler, dated June 29, 2026. *Decl. of Forster*, at p. 13-14. This letter states "At this time, the City cannot provide you with either a will-serve letter or a certified fire flow test. . . . Unfortunately, at this time, the City cannot answer whether it has adequate water capacity to meet these requirements. The City has recently identified low water pressure as a concern of the newly extended service main along Highway 10, which is where we assume the proposed Forensic Mental Health Facility seeks to connect to the City's water system." *Id*., at 13. The response noted pending further water engineering analysis for the area and its recently installed water mains. *Id*. The response continued with a discussion about the City's 2008 annexation policy and noted that it precluded water or sewer services outside of the incorporated City limits without meeting several conditions. *Id*. at 14.

Defendants jointly oppose supplementation of the certified record. *See* [Dkt. 30, *Defendant's Joint Response in Opposition*]. Defendants assert that the information contained in the proposed exhibit is not new, material, or significant. Further, Defendants assert that even if the proposed exhibit presented any new, material, and significant information, Defendants have already considered its contents had determined it did not require any modification to the Final EA. *See Defendant's Joint Response in Opposition*, *Exhibit 2*.

"When a district court reviews an administrative agency decision, it must base its review on 'the record before the governing body at the time of its decision.'" *Belk v. Mont. Dep't of Envtl. Qual.*,

2022 MT 38, ¶ 33, 408 Mont. 1, 504 P.3d 1090 (*quoting Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 66, 360 Mont. 207, 255 P.3d 80). "In certain circumstances, a court may need to admit extra-record evidence, materials beyond those considered by the agency, if it would make clear what the agency should have considered." *Id*. (emphasis in original). "[W]ithout this evidence, it may be 'impossible for the court to determine whether the agency took into consideration all relevant factors.'" *Id*. (*quoting Skyline Sportsmen's Assn. v. Bd. of Land Comm'rs*., 286 Mont. 108, 113, 951 P.2d 29, 32 (1997)). That information must be "new, material, and significant"; "not publicly available before the agency's decision"; and "relevant to the decision or the adequacy of the agency's environmental review." Mont. Code Ann. § 75-1-201(5)(b).

Both parties agree that some of the information provided in the proposed exhibit is already contained in the certified record, but they dispute its import on the State's decision-making or ultimate relevance to the Final EA. The Court finds that the information contained in the proffered letters is necessary to the Court's understanding of relevant city of Laurel ordinances and procedures when considering annexation. Further, it provides additional context to the Court regarding whether the annexation requirement and water pressure issues were sufficiently considered by the State of Montana in its decision making here. *See*, *e.g.*, *Bold Alliance v. U.S. DOJ*, 572 F. Supp. 3d 943, 947-48 (D. Mont. 2020).

For these reasons, the Court will admit the proposed Exhibit 1 into the certified record and its contents will be discussed further below.

INJUNCTION STANDARDS

The parties dispute whether the injunction standard of Title 27 Chapter 19 or that of Title 75 should apply here. Mont. Code Ann. § 27-19-201(1) provides the general injunction standard while Mont. Code Ann. § 75-1-201(5)(c)(iii) sets forth the injunction standard when MEPA violations are alleged.

Plaintiff argues that the standard set forth in § 75-1-201(5)(c)(iii) should not apply here because

Plaintiff's allegations do not involve "the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82." Plaintiff argues that the language of § 75-1-201(5)(c)(iii) makes clear reference to permits and must apply only when a party is challenging the issuance or validity of a permit under either Title 75 or Title 82. Plaintiff asserts that its causes of action do not concern permit issuance.

The text of § 75-1-201(5)(c)(i) makes clear that "the remedies provided in this section for successful challenges to a decision of the agency or the adequacy of the statement are exclusive." Mont. Code Ann. § 75-1-201(5)(c)(i). Here, Plaintiff's Count 1 clearly challenges the adequacy of the Final EA's analysis and rationale regarding site selection.

Further, the Montana Supreme Court has held that when a complaint is filed under MEPA, relief may only be found "through the exclusive injunctive relief provisions of that Act." *Protect the Clearwater v. Montana Dept. of Environmental Quality*, 2024 Mont 181 ¶ 20, 417 Mont. 527, 535, 554 P.3d 197, 202. Here, Plaintiff's Count I and II allege MEPA violations, so the relief sought must be found within Title 75.

The Court will apply these stricter standards in this case. Section 75-1-201(5)(c)(iii) sets out the standard for an injunction involving a MEPA challenge as follows:

> Notwithstanding the provisions of 27-19-201 and 27-19-314, a court having considered the pleadings of parties and intervenors opposing a request for a temporary restraining order, preliminary injunction, permanent injunction, vacatur, or other equitable relief may not enjoin, void, nullify, revoke, modify, or suspend the issuance or effectiveness of a license or permit or a part of a license or permit issued pursuant to Title 75 or Title 82 unless the court specifically finds that the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law and, in the absence of a temporary restraining order, a preliminary injunction, a permanent injunction, vacatur, or other equitable relief, that the:
>
> A. Party requesting the relief will suffer irreparable harm in the absence of the relief;
> B. Issuance of the relief is in the public interest. In determining whether the grant of the relief is in the public interest, a court:
>
> (I) May not consider the legal nature of any party; and

(II) Shall consider the implications of the relief on the local and state economy and make written findings with respect to both.

C. Relief is as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer. In tailoring the relief, the court shall ensure, to the extent possible, that the project or as much of the project as possible can go forward while also providing the relief to which the applicant has been determined to be entitled.

The first element requires that "the party requesting the relief is more likely than not to prevail on the merits of its complaint given the uncontroverted facts in the record and applicable law." Mont. Code Ann. § 75-1-201(5)(c)(iii).

An agency decision is reviewed under the arbitrary and capricious standard. *Hillcrest Natural Area Foundation, Inc. v. Montana DEQ*, 2022 MT 240 ¶ 9, 411 Mont. 30, 38, 521 P.3d 766, 771. The decision must be well-supported by the record and include a rational connection between the facts found and the choice made. *Id*. While the record may contain inconsistent evidence or evidence that may support a different result, the decision cannot "appear random, unreasonable or seemingly unmotivated based on the existing record." *Montana Wildlife Federation v. Montana Bd. Of Oil & Gas Conservation*, 2012 MT 128 ¶ 25, 365 Mont. 232, 243, 280 P.3d 877, 885. Further, "agency decisions involving substantial agency expertise are generally given great deference." *Water for Flathead's Future, Inc. v. Montana DEQ*, 2023 MT 86 ¶ 11, 412 Mont. 258, 265, 530 P.3d 790, 795 (internal citation and quotations omitted). "[A]ssessment of environmental impact fits squarely within an agency's significant technical and scientific expertise." *Id* ¶ 21 (internal citation and quotations omitted).

DISCUSSION

Plaintiff's complaint contains multiple MEPA-related challenges: (1) the Final EA does not adequately evaluate or explain certain environmental impacts, including water capacity, water pressure, and the strain on city services; and (2) the public was not given an adequate opportunity to participate in the environmental review process.

The Court finds on some allegations that Plaintiffs have established that they will more likely than not succeed on the merits and suffer irreparable injury in the absence of preliminary injunctive relief. The Court finds that issuance of the relief is in the public interest. Finally, as required, the Court's relief here is narrowly tailored to address only those identifiable deficiencies as discussed below.

I. ANALYSIS OF PLAINTIFF'S CLAIMS

Plaintiff's first MEPA challenge questions whether certain conclusions contained in the Final EA are adequately supported by the record. The Court will address them in sequence.

1. Water pressure and capacity for the proposed facility is disputed

First, Plaintiff asserts that the Final EA has not adequately addressed the public's concerns regarding water pressure and capacity. The Defendants dispute this. The Court reasonably concludes the concerns—pressure and capacity—are related, but they are not necessarily the same. For the purposes of this analysis, the Court will briefly address each. The Final EA concludes that "sufficient capacity is available to provide water supply to this proposed facility." MT000016. In support of this position, the Final EA explains that the Love's Late-Comer's and Development Agreement[2], which provides a means for other developments to connect to the infrastructure in the area, was approved by the Laurel City Council in Resolution R25-39. The Final EA seems to state that this Agreement and approval demonstrate the city of Laurel's contemplation of additional developments drawing on water resources in the area, and it shows that the necessary infrastructure is already in place. *See* MT000016; MT000019.

Regarding water *capacity* issues, the Defendant offered additional explanation at hearing to explain the difference between its estimated Facility water usage of 2,000 gpd as opposed to the higher possible number derived from the DEQ Circular D (DEQ's methodology). The State asserted that the estimate of 2,000 gpd was a precise estimate and explained that the Facility was intentionally engineered to use less water. The State further explained that the higher estimate generated by the

[2] The Late-Comer's and Development Agreement is found beginning at MT002715. The Laurel City Council approved this Agreement in Resolution No. R25-39, which is found beginning at MT003651.

methodology within Circular D was merely theoretical and was generated in response to a public comment that highlighted the Circular D analysis. The State in essence suggested that the higher number wasn't reliable, but was included, nevertheless. The State has consistently maintained that water capacity is sufficient, regardless of whether the lower or the higher number estimate is used.

To the extent that this explanation is new, and not contained within the current Final EA, the Court finds that Plaintiff is more likely than not to succeed on the issue of whether the explanation was sufficient. The requested remedy was the inclusion of additional language by the Defendant in a revised Final EA, which would then be subject to public comment.

The issue over water *pressure* is separate. Plaintiff notes that the public concern regarding water pressure developed after the Love's Truck Stop began operation and the State did not sufficiently address this issue in the Final EA. *Compl.*, at ¶¶ 87-90. The Court's review of the record supports that public comment has covered this issue.[3] Plaintiff noted that the Final EA referenced the need for installation of a domestic water pump to ensure adequate pressure but was otherwise thin on details. *Id*. at ¶ 90. *See* Final EA at MT000017.

In response, the State asserts the pressure issues are readily addressed. In post-hearing briefing to the Court, Defendants submitted an affidavit from BOI Director Villa. [Dkt. 30, Ex. 2. "Director Affidavit"]. In this affidavit, the director avers the reasons why the State's position is unchanged. Briefly summarized here, Director Villa obtained the engineering analysis completed for Love's truck stop that was previously provided to DEQ by the City of Laurel and gave it to a separate engineering firm—Cushing Terrell—for its further study. *Id*. at 3. Cushing Terrell concluded that there was more than adequate capacity to service the Facility as designed, and that conclusion does not change even if using the higher estimated usage numbers generated by the DEQ Circular D. *Id*. Lastly, the State noted that the contracted City Planner for the City of Laurel confirmed on June 23, 2026, that the issues are pressure related, and to be remedied by Love's with the installation of a booster pump. *Id*.

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[3] Public comments for the April 22, 2026, meeting comprised 376 pages. MT000653-1028. Public comments for the June 2, 2026, meeting comprised 593 pages. MT001029-1621.

The Court finds that Plaintiff is more likely than not to succeed on this point, insofar as the Final EA does not adequately address or explain away the water pressure concerns raised as early as the April 2026 comment period. The requested remedy was the inclusion of additional language by the Defendant in a revised Final EA, which would then be subject to public comment.

2. The issue of Annexation as a prerequisite to water supply is unsettled and places availability of water to the Facility in doubt

Second, Plaintiff asserts that the Final EA has not addressed the annexation concern sufficiently. *Compl.*, ¶ 36. Plaintiff asserts that annexation by the City of Laurel is a requirement before any city services, including water and sewer, are supplied. This places at issue the availability of water in the first place. Although the record reflects discussion on this specific issue, the Final EA is essentially silent as to this aspect.

In early communications from Laurel Administrator Markegard with the State, he noted that annexation was a prerequisite for connection to city services. *Id*. Throughout the entire environmental review process, Plaintiff and other members of the public have pointed out through public comment and other means that the city of Laurel generally requires annexation for a development to tap into local infrastructure.

The more recent correspondence between the City of Laurel Public Works and Cushing Terrell provides further clarity on this issue. It reiterated that Laurel's annexation policy, Resolution No. R08-22, requires annexation of property outside city limits before water or sewer services may be provided. Further, the correspondence explains that the City of Laurel imposed a moratorium on annexation applications on April 28, 2026, through Ordinance No. 026-02. *See*, *also*, *Compl.* ¶ 91. The Laurel City Council announced at a public works meeting held in June 2026 that it intended to extend that moratorium indefinitely. *Id*. At the evidentiary hearing, Plaintiff represented to the Court that the moratorium is still in effect. *Hrg. Trans.* pp. 53-54. On July 14, 2026, the Laurel City Council passed Ordinance No. 026-03, which extended the annexation application moratorium by an additional 90

days. That annexation application moratorium is in effect as of the date of this Order.

The subject of annexation is not new to the parties, but it is addressed in the Final EA only in limited fashion. On this topic, the Final EA simply states that the State will "consent to annexation if the City [of Laurel] requests it." MT000020. It does not discuss the significance, or lack thereof, of either the city of Laurel's annexation policy or the moratorium.

The Court inquired of the parties at the evidentiary hearing whether annexation is a prerequisite to water service for the proposed Facility. Plaintiffs continue to assert that it is. The Defendants disagree and argue that annexation would not be a prerequisite for access to water and sewer services because the State's eminent domain authority would allow Defendants to obtain the services if necessary. *Hrg Trans*. p. 49. This potential exercise of the State's eminent domain authority is not discussed anywhere in the Final EA or the certified record. The Court makes no findings and expresses no opinion on its applicability.

However, this appears to be a shift from Defendants' original position regarding annexation. In email communications between BOI Director Villa and Laurel Administrator Markegard in December 2025 through January 2026, there is a discussion seeking clarity on what is needed for annexation. On January 20, 2026, Director Villa informed the Laurel City Council of the BOI's intent to begin the formal process for annexation. MT001983-1984. For these reasons, the Court finds that Plaintiff is more likely than not to succeed on this point that the Final EA does not adequately address the ready availability of city services and the need, or not, of annexation.

3. The Final EA provides a rational basis for its conclusions that emergency services needs are adequately addressed

Plaintiff asserts that the Final EA does not adequately analyze and articulate the anticipated strain on local law enforcement and emergency services. On this point, the Final EA is rather thorough. The Final EA explains that the proposed facility "is designed and will be operated so as not to impose additional demands on those local services[.]" MT000020. Further, the Final EA explains that the

proposed facility will be staffed at all-times with "on-site safety personnel and patient-care staff trained and equipped to respond to clinical, behavioral, and life-safety events." *Id*. Also, the Final EA explains that DPHHS will pursue "inter-facility transfer agreements with hospital systems and independent emergency medical service providers in Billings" to avoid relying on the city of Laurel's ambulance and hospital resources. *Id.* This rationale clearly supports the Final EA's conclusion that the proposed facility "does not impose meaningful new operating demands on Laurel's fire department, police department, or emergency medical services." *Id*. While the record may contain inconsistent evidence or evidence that may support a different result, the decision does not "appear random, unreasonable or seemingly unmotivated based on the existing record." *Montana Wildlife Federation*, *supra*, 2012 MT 128 ¶ 25. Further, "agency decisions involving substantial agency expertise are generally given great deference." *Water for Flathead's Future, Inc.*, *supra*, 2023 MT 86 ¶ 11. The Court finds that Plaintiff is not more likely than not to succeed on this point.

4. The Final EA analysis of rejected alternative site locations is sufficient

Plaintiff challenges the adequacy of the Final EA's analysis of alternative site locations. Plaintiff asserts that the Final EA is dismissive of considered alternatives and does not even address the Due Diligence Questionnaires received from Big Horn County and Custer County.

The alternative locations which were analyzed are found in Appendix E of the Final EA, and each alternative location includes a list of reasons why they were not selected. MT000283-284. The Due Diligence Questionnaires submitted by Big Horn County and Custer County begin at MT002530 and MT002553, respectively.

The Final EA states that site visits for alternatives located in Yellowstone County took place in the Summer of 2025. Site visits to Big Horn and Custer Counties took place in the Fall of 2025. MT000012. Further, the Final EA explains that a variety of factors were considered in the final site determination, including accessibility, transportation, and logistics; site configuration and suitability; utilities, public services, and infrastructure; fiduciary considerations; and permanent workforce

availability. MT000012-13.

The administrative rules concerning environmental assessments require an "analysis of reasonable alternatives to a proposed action *whenever alternatives are reasonably available and prudent to consider*…" ARM 17.4.609(f). Here, the Final EA and the certified record both demonstrate that these alternative sites were visited by various officials. These visits, along with a comprehensive evaluation process, led Defendants to conclude that the sites would not be viable alternatives for the Facility. *See* MT000013; MT002461. As stated above, the decision does not "appear random, unreasonable or seemingly unmotivated based on the existing record." *Montana Wildlife Federation*, *supra*, 2012 MT 128 ¶ 25. The Court gives great deference to the agency conclusion that the rejected sites were not suitable for the reasons set out, albeit short. *Water for Flathead's Future, Inc.*, *supra*, 2023 MT 86 ¶ 11. Having found that these sites would not be viable alternatives for the Facility, the Final EA did not need to include a detailed analysis of reasonable alternatives. The Court finds that Plaintiff has not met its burden on this point.

5. The public comment requirement will be satisfied by the granting of partial injunctive relief

Plaintiff's Count II challenges the adequacy of allowed-for public participation. Due to the Court's decision to grant partial injunctive relief, this will be remedied in the short term. Defendants held two public hearings during the environmental review process. Plaintiff asserts that the public should have been given the opportunity to comment on the Final EA and certain material information which was used to produce the Final EA. Defendants maintain that sufficient opportunity to participate was provided to the public.

Defendants first held a public hearing on April 22, 2026, at the Laurel Public Library. A Draft EA containing both substantive material and placeholder sections was made publicly available two days prior. Defendants heard oral testimony from Plaintiff representatives and other members of the public, and written comments were accepted until May 6.

After the written comment period closed, Defendants announced on the House Bill 5 website that another public hearing would take place on June 2, 2026, in Billings. On May 18, a more complete document titled "Final Environmental Assessment" was made publicly available for review. Both oral testimony and written comments were accepted during the June 2 hearing. Following the June 2 hearing, Defendants released the Final EA on June 12.

The process for public comment and review of an environmental assessment under MEPA is described in ARM 17.4.610, which states that "[t]he level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public reviews to match these factors."

Thus, the ARM dictates the amount of public participation is ultimately left to the agency to determine. Here, the Court notes—and the record reflects—the public interest in this case is high. Subsection (3) restates that the agency is responsible for providing additional opportunities for public review consistent with these factors, and it provides a list of methods for accomplishing public review. ARM 17.4.610(3).

ARM 17.4.610(6) provides next steps after reviewing public comments and states the following:

> (6) The agency shall consider the substantive comments received in response to an EA and proceed in accordance with one of the following steps, as appropriate:
>
> a) Determine that an Environmental Impact Statement ("EIS") is necessary;
>
> b) Determine that the EA did not adequately reflect the issues raised by the proposed action and issue a revised document; or
>
> c) Determine that an EIS is not necessary and make a final decision on the proposed action, with appropriate modification resulting from the analysis in the EA and analysis of public comment.

Here, no one has asserted that an EIS was necessary. The record indicates that Defendants likely followed both steps (b) and (c). Defendants first issued a Draft EA with placeholder sections for public review. Then, Defendants provided a more substantive EA for review and took public comment. Defendants reviewed these comments and made certain modifications before finally submitting the Final EA and making a final decision.

While the State did provide opportunities to comment and participate in the decision-making process, it then disclosed material facts about the Facility's impacts after the public comment period ended, as discussed above. As required by ARM 17.4.610(6)(c), some of these facts were directly responsive to issues raised in public comments. The question then becomes how much is required by the law. Here, the remand to the agency for further investigation and explanation will also provide the public with another opportunity to weigh in.

For these reasons, the Court finds that Defendants provided adequate opportunity for public comment but also notes this opportunity will be renewed given this *Order* granting partial injunctive relief.

II. IRREPARABLE HARM ANALYSIS

Next, the Court must determine whether Plaintiff would suffer irreparable harm if the relief sought is not granted. Mont. Code Ann. § 75-1-201(5)(c)(iii)(A). A party seeking preliminary relief "must demonstrate that irreparable injury is likely, not merely speculative, in the absence of injunction." *Stephenson v. Lone Peak Preserve, LLC*, 2025 MT 148 ¶ 38, 423 Mont. 46, 65, 571 P.3d 1042, 1056. "Issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy." *Mercer v. Montana Dept. of Public Health and Human Services* 2025 MT 9 ¶ 23, 420 Mont. 201, 212, 562 P.3d 502, 511 (internal quotation and citation omitted).

The core of Plaintiff's claimed irreparable harm is essentially this: the State will continue to spend resources and make progress on construction of the Facility, making it nearly impossible to

obtain relief regarding Plaintiff's MEPA challenges later if preliminary relief is not granted now. *See Pl. Brief in Support* p. 17. Plaintiff asserts that if preliminary relief is not granted here, Defendants will have committed substantial resources into the current location for the Facility, making reconsideration of the site, if necessary, unfeasible. *Id*. pp. 18-19.

The certified record makes clear that Defendants have already purchased the land for the Facility. The buy-sell agreement was closed on July 13, 2026. *See* MT002602-2610. Further, counsel for the BOI stated at the August 10 hearing that construction for the Facility is set to begin in September. *Hrg. Trans.* p. 81.

As discussed above, Plaintiff has raised several MEPA challenges to Defendants' Final EA and ultimate decision to site the Facility west of Laurel. Plaintiff seeks to have Defendants address these challenges before carrying out the project to ensure certain concerns regarding water resources are adequately explained and addressed. If construction of the Facility begins before these challenges are fully addressed, Plaintiff's ability to seek this relief will be irreparably harmed. Therefore, the Court concludes that preliminary relief is necessary to prevent this irreparable harm.

III. PUBLIC INTEREST CONSIDERATIONS, INCLUDING ECONOMIC IMPLICATIONS

Third, issuance of the relief must be in the public interest. Mont. Code Ann. § 75-1-201(5)(c)(iii)(B). When making this determination, the Court must not consider the legal nature or character of any party and shall consider the implications of the relief on the local and state economy. Mont. Code Ann. § 75-1-201(5)(c)(iii)(B)(I) and (II).

Here, the Facility seeks to address a growing public need for increased forensic mental health capability, particularly in the eastern and central portions of Montana. The Final EA discusses this throughout, particularly under Section 1.3 at MT000006 and Section 4.1.1 starting at MT000021. Plaintiffs do not dispute this growing need or the fact that constructing the Facility serves the public interest in this regard.

The Court finds the need for increased mental health services for the underserved population areas in central and eastern Montana is acute and urgent.

However, there is also a strong public interest in ensuring that government officials and agencies follow Montana law, here MEPA. MEPA was designed "to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans." Mont. Code Annot. § 75-1-102(2). The provisions of MEPA require "an agency to review projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment in order to make informed decisions." *Montana Wildlife Federation* ¶ 32. MEPA requires DEQ to "take a 'hard look' at the environmental impacts of a given project or proposal." *Montana Wildlife Federation* ¶ 43. Properly implemented, "MEPA's procedural mechanisms…enabl[e] fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment." *Park Cnty. Envtl. Council v. Mont. Dep't of Envtl. Quality*, 2020 MT 303, ¶ 70, 402 Mont. 168, 477 P.3d 288.

Here, Plaintiff has raised several concerns regarding Defendants' environmental review of the Facility, which would directly go against these provisions. Plaintiff and its members, as members of the public, have a strong interest in ensuring that Defendants have adequately reviewed the environmental impacts of the Facility, particularly because Plaintiff has raised several challenges to the Final EA, and the Facility is set to be located just outside the city of Laurel (where Plaintiff and its members reside).

While there are compelling interests on both sides, the public interest consideration weighs in favor of Plaintiff here. The public has a strong interest in ensuring the site selection for the Facility was done after sufficient analysis of the environmental impacts to the area. Plaintiff has raised several challenges to the Final EA. Most significant are the challenges pertaining to the City of Laurel's ability to supply adequate water and sewer infrastructure. In this regard, there is strong public interest in ensuring public tax dollars are expended judiciously. Counsel for BOI acknowledged as much when he

stated at hearing that the Board of Investments owes a fiduciary duty to the citizens of Montana. *Hrg. Trans.* p. 50. Because water *availability* to the proposed Facility is—at present—uncertain, the public interest is undoubtedly served by a definitive answer to this question.

As to the implications of the requested relief on the state and local economy, the record contains sparse information regarding this consideration. Counsel for the BOI stated upon information and belief at the August 10 hearing that the State will lose roughly $8,222 per day in costs of delay if relief is granted. *Hrg. Trans.* pp. 25-26. It is certain that the State will suffer some amount of economic harm should construction of the Facility be temporarily paused.

The local economy will also be impacted negatively in some way. If construction is paused, the Laurel area will temporarily miss out on an influx of workers and attendant economic activity. The Court may only speculate as to how the local economy will be affected by the requested relief.

But Plaintiff, and by extension the local public, is the one seeking the relief and is essentially acquiescing to the potential impact on the local economy. By its nature, injunctive relief—even if only partial and temporary—will have a negative impact in this case on the local and state economy.

IV. WHETHER REQUESTED RELIEF IS AS NARROWLY TAILORED AS THE FACTS ALLOW

Lastly, the requested relief must be "as narrowly tailored as the facts allow to address both the alleged noncompliance and the irreparable harm the party asking for the relief will suffer." Mont. Code Ann. § 75-1-201(5)(c)(iii)(C). Further, the relief must be tailored, to the extent possible, to ensure as much of the project may go forward while also providing the relief sought. *Id*.

Here, Plaintiff asks the Court to temporarily enjoin Defendants from proceeding with all "permitting, design, construction, and other planning requirements" for the Facility until Plaintiff's alleged MEPA violations are reviewed. *Pl. Mot. for Temp. Restraining Order and Prelim. Injunction*.

Defendants argue in their opposition brief that the requested relief is not narrowly tailored because it would halt the project in its entirety and would not allow any portion of it to proceed.

The Court is uncertain what part of this project could be continued during preliminary relief. While the requested relief would certainly prevent any portion of the project from proceeding, it is the Court's intention this relief be as short-lived as is reasonably possible. Counsel for the Defendants asserted its compliance with injunctive relief and revision of the Final EA with additional analysis could be achieved relatively quickly if necessary. *Hrg. Trans.* p. 40. Also, the irreparable harm Plaintiff is likely to suffer absent relief calls for a temporary pause on construction of the Facility. Given the facts and circumstances of this case, parts of the requested relief are appropriate here.

CONCLUSION AND ORDER

The provisions of MEPA require government agencies to provide sufficient rationale and consideration in support of its decision. MEPA mandates procedures, but not particular outcomes. Based on the pleadings and arguments of counsel at an evidentiary hearing, the Court finds partial preliminary injunctive relief is necessary to preserve the status quo and ensure the State of Montana adequately addresses gaps or shortcomings in its required environmental analysis. The balance of facts and equities weighs in favor of granting Plaintiffs some of the relief requested.

Here, the Court concludes the Final EA fails to provide a well-reasoned and factually supported assessment on two points, clarity on the Facility's potable water demand and the availability utility services from the City of Laurel without annexation. Further investigation and explanation—such as that offered at hearing—is necessary.

However, the Court finds that Defendant's analysis of alternate site locations is sufficient and its decision to forego these alternative locations was neither arbitrary nor capricious.

Construction of the Facility is set to begin soon. Partial preliminary relief is necessary here to ensure Plaintiff's challenges are adequately addressed and resolved before the Facility is further developed.

THEREFORE, THE COURT ORDERS AS FOLLOWS:

1. Pending further Order of the Court, the Defendants are enjoined in taking any acts in

furtherance of the construction of the Facility, including any permitting, ground-breaking activities or other on-site work. However, off-site planning and design work may continue pending judicial review of the agencies' MEPA compliance.

2. The Final EA is remanded to the agencies—the Board of Investments and DPHHS—for additional investigation and explanation as to all water supply issues, including infrastructure capacity and water availability to service the proposed Facility.

3. Defendants shall ensure that a revised final environmental assessment is completed and the public is provided a reasonable opportunity to participate in the State's decision-making process, consistent with MEPA's public comment provisions.

4. The Court will conduct a status conference with counsel in the near future to discuss timing for subsequent proceedings and additional judicial review.

ELECTRONICALLY SIGNED AND DATED BELOW

cc: Elizabeth Forster / Timothy Bechtold
Christopher Stoneback / Mason DuMars
Robert Cameron

Electronically Signed By:
Hon. Judge Ed Zink
Wed, Aug 26 2026 12:38:16 PM