

City of Missoula

Land Use and Planning Committee Agenda

Date: December 2, 2020, 9:00 am - 10:15 am

Location: ZOOM Webinar

Members: Stacie Anderson, Mirtha Becerra, John P. Contos, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse Ramos, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, Heidi West

Attend by computer:

[Join the meeting](#)

Attend by phone:

Cell phone users: 1-253-215-8782, 1-213-338-8477, or 1-267-831-0333; Landline users: 1-888-475-4499 or 1-877-853-5257

Webinar ID: 835 1289 8009 Password: 027222, Press *9 to raise your hand to be recognized for public comment

Watch the meeting:

[Web stream \(live or on demand\)](#), [YouTube](#), or Spectrum Cable Channel 190

For more ways to watch the meeting and submit public comment, see the Citizen Participation Guide.

Issues? Call the City Clerk 406-552-6078

Pages

1. ADMINISTRATIVE BUSINESS

1.1. Roll Call

1.2. Approval of the Minutes from November 18, 2020

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2. PUBLIC COMMENT

3. COMMITTEE BUSINESS

3.1. Affordable Housing Development Agreement

Eran Pehan

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Recommended motion:

Authorize the Mayor to execute an affordable housing development agreement with Pupaw LLC/Cade LLC to construct permanently affordable homes for purchase for households earning under 120% area median income.

3.2. Referral – Phased Development Review, Heron's Landing Subdivision, Phase W1

Dave DeGrandpre

18

Recommended motion:

Discussion only – Pre-public hearing

4. ADJOURNMENT

Missoula City Council Land Use and Planning Committee Minutes

November 18, 2020

1:30 pm

ZOOM Webinar

Members present: Stacie Anderson, Mirtha Becerra, John P. Contos, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse Ramos, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, Heidi West

1. ADMINISTRATIVE BUSINESS

1.1 Roll Call

The meeting was called to order at 1:40 pm.

1.2 Approval of the Minutes from November 4, 2020

The minutes were approved as submitted.

2. PUBLIC COMMENT

3. COMMITTEE BUSINESS

3.1 Referral – 601 W Broadway Riverfront Trail Development Agreement

Kaitlin McCafferty, associate planner with Community Planning, Development, and Innovations Department, presented on the 601 West Broadway Riverfront Trail Development Agreement. The City of Missoula and WGM group who represent the applicant, Wise Family Trust. She explained how the recent approval to rezone the property from Riverfront Triangle, Sub-district D to CBD-4 Central Business District requires the proposed agreement. The parcel is located West Broadway and the fork of Front Street. The development agreement addresses the construction and maintenance of the easement for the Riverfront Trail and would go into effect January 12, 2021. Ms. McCafferty also shared the different city departments involved in the agreement along with WGM Group representing the property owners. She provided a map showing the proposed easement for the western and eastern side of the parcel which both consist of a twenty foot wide trail easement for non-motorized public access and recommended approval and authorization for the Mayor to sign the 601 W Broadway Riverfront Trail Development Agreement.

Moved by: Amber Sherrill

Recommended Motion: Approve and authorize the Mayor to sign the 601 W Broadway Riverfront Trail Development Agreement

AYES: (10): Stacie Anderson, Mirtha Becerra, John Contos, Heather Harp, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, and Heidi West

ABSTAIN: (1): Julie Merritt

ABSENT: (1): Jesse Ramos

Vote results: Approved (10 to 0)

3.2 Trinity Mullan 2 Lot Minor Subdivision

Cassie Tripard, associate planner with Community Planning, Development, and Innovations Department presented on the Trinity Mullan 2 Lot Minor Subdivision and gave a brief overview of the proposed plan filed by Jamie Erbacher with WGM Group on behalf of Missoula County. The deadline for the proposal is December 2, 2020. Ms. Tripard shared a map of the site which is located on Mullan Road and West Broadway. She displayed the preliminary plot, which would split a 22.39 acre parcel into two lots, a 17.11 acre lot and a 5.28 acre lot. Ms. Tripard also explained the development on each lot. Lot 2 is the proposed 17.11 acre lot which would consist of the Missoula County Detention Center, Pre-Release Center, and evidence warehouse. Lot 1 is the proposed 5.28 acre lot and would consist of 30 permanent supportive housing units to assist those experiencing serious and chronic homelessness, 100 workforce housing units for people earning between \$9.00 to \$15.00 per hour. In addition, a Navigation Center would provide services to residents in the broader community.

Cassie Tripard also provided the subdivision review criteria which includes Zoning and Growth Policy, Agriculture, Agricultural Water User Facilities, Local Services, Natural Environment, Wildlife and Wildlife Habitat, and Public Health and Safety. The subject property is zoned M1R-2 Limited Industrial-Residential which permits a wide range of commercial, industrial, and residential uses. Ms. Tripard explained how the subdivision would be in compliance with current zoning requirements and explained the background in association with Title 20. The proposed project does comply with the Missoula City Growth Policy and won't impact agriculture. Lot 2 will require a 20 foot wide irrigation ditch easement and Lot 1 has requested an expansion of the irrigation ditch easement to 35 feet. She further explained the rights and uses of the irrigation ditch along with recommended conditions of approval for the installation of a ditch crossing connecting Lot 1 to Mullan Road. Local services won't be impacted by the subdivision with one exception: the fire department requested a new fire hydrant be installed where Maple Street meets Lot 1 with conditions of approval for installation of the hydrant. Cassie Tripard covered the School and Public Transit bus stops and the transportation layout of Mullan Road and Maple Street, including variance requests and recommended conditions of approval based on current and future plans of the property. On-site trails for Lot 1 would include a connector trail to West Broadway and a neighborhood connector trail along Mullan Road to Maple Street subject to a variance request. There is no anticipated impact on the natural environment, wildlife and wildlife habitat or Public health and Safety. Ms. Tripard went over the amended conditions of approval regarding landscaping and maintenance. Staff recommended approval on all variance requests and the Trinity Mullan 2 Lot Minor Subdivision.

Moved by: Mirtha Becerra

Approval of the variance request to allow a 66-footwide public access easement, 5-foot-wide sidewalks, and no boulevards for Mullan Road adjacent to the subject property.

AYES: (10): Stacie Anderson, Mirtha Becerra, John Contos, Heather Harp, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, and Heidi West

ABSTAIN: (1): Julie Merritt

ABSENT: (1): Jesse Ramos

Vote results: Approved (10 to 0)

Moved by: Mirtha Becerra

Approval of the variance request to allow 47.5 feet of right-of-way, 29.5-foot paved street width, curb and gutter, curbside sidewalk and parking lane on the south side of the street, 5-foot wide sidewalk and landscaped boulevard on the north side of Maple Street between West Broadway and the subject property, subject to the conditions of approval.

AYES: (10): Stacie Anderson, Mirtha Becerra, John Contos, Heather Harp, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, and Heidi West

ABSTAIN: (1): Julie Merritt

ABSENT: (1): Jesse Ramos

Vote results: Approved (10 to 0)

Moved by: Mirtha Becerra

Approval of the variance request to allow a 5-foot-wide sidewalk and no bike lane on the southwest side of West Broadway adjacent to the subject property.

AYES: (10): Stacie Anderson, Mirtha Becerra, John Contos, Heather Harp, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, and Heidi West

ABSTAIN: (1): Julie Merritt

ABSENT: (1): Jesse Ramos

Vote results: Approved (10 to 0)

Moved by: Mirtha Becerra

Approval of the variance request to allow a 6-foot-wide public access easement and 5-foot-wide improved surface for the pedestrian trail between Maple Street and Mullan Road.

AYES: (10): Stacie Anderson, Mirtha Becerra, John Contos, Heather Harp, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, and Heidi West

ABSTAIN: (1): Julie Merritt

ABSENT: (1): Jesse Ramos

Vote results: Approved (10 to 0)

Moved by: Mirtha Becerra

Approval of the Trinity Mullan 2 Lot Minor Subdivision, based on the findings of fact and subject to the conditions of approval in the staff report, as amended by Land Use and Planning Committee on November 18, 2020.

AYES: (10): Stacie Anderson, Mirtha Becerra, John Contos, Heather Harp, Jordan Hess, Gwen Jones, Amber Sherrill, Sandra Vasecka, Bryan von Lossberg, and Heidi West

ABSTAIN: (1): Julie Merritt

ABSENT: (1): Jesse Ramos

Vote results: Approved (10 to 0)

3.3 City Subdivision and Townhouse Exemption Development (TED) Regulation Review Project – Update; Laval Means and Jessica Garrow (with consultant firm Design Workshop)

A weblink for this material and additional background is <https://www.engagemissoula.com/missoula-subdivision-regulations-review>

Laval Means, Planning manager with City of Missoula, presented an update on the City Subdivision and Townhouse Exemption Development (TED) Regulation Review Project update. Development Services is working with consultants, Design Workshop, to conduct a process of identifying issues and potential opportunities, and provide a recommended approach to revising City Subdivision Regulations along with potential changes to Missoula City Zoning related to the subdivision exemption process for TED.

Jessica Garrow with Design Workshop provided a walk-through of the recommendation report. She has been working since May to understand current regulations and provide a road map for future changes.

Ms. Garrow reviewed the project goals, which were identified very early in the process. The goals include:

- Engagement with key stakeholders,
- focus on outcomes,
- consider possible new ideas,
- solutions tailored for Missoula,
- charts the course for prioritized,
- comprehensive development regulation changes,
- aligns with State law and Missoula policy documents,
- leads to a land use review process that is easy to administer and understand.

Work has been divided into three different phases: stakeholder involvement, research and analysis, and a best practices report. All of these have influenced where the report is at today. Ms. Garrow reviewed the working group, which included a diverse group from throughout Missoula.

The third phase of their work has fallen into three categories: administrative, programs and policy, and code and state law recommendations. These categories will be reviewed today with feedback requested.

These recommendations are intended to address projects that are on an individual site scale as well as larger subdivisions.

The implementation time frame and the estimated implementation costs for each of the recommendations was reviewed.

Ms. Garrow reviewed the seven administrative recommendations and the implementation recommendations, including understanding staffing needs and support learning/hiring, and consistency in process and staff.

A committee member asked about the increase in staff capacity and how that might be financed. Ms. Garrow explained that the report did not delve into it from a cost perspective, but they outlined a short, medium, and long term implementation step for this recommendation. Short term includes an evaluation of current staff to understand what gaps there might be in training. Medium term includes doing a more comprehensive review of job descriptions and making sure they align with work that's being done. Then, when funding is available, that can go toward funding new positions.

In response to a question about combining two of the recommendations, Ms. Garrow explained that the recommendation to update checklists and flow charts is about creating handouts and a set of checklists that people can use. There won't be any process change to do this step. Whereas, recommendation A4 (implementing a formal documentation process) is more of a process change.

Ms. Garrow explained the project champion as an experienced staff member or a more senior level staff member who has some kind of decision making authority to work with the project team. As an example, if an applicant received seemingly contradictory information, they can go to the champion to ask for clarification.

Heather McMilin, a member of the working group, suggested looking at examples of past projects and breaking them apart to see what worked and what didn't in the process.

In response to a question about the realignment currently taking place in the Development Services division, Ms. Garrow said that the reorganization is an opportunity to look at how the departments and review staff can work together. The project champion, as an example of someone who sticks with this project from start to finish, works well with the new focus on functional teams and making sure there's cross communication and collaboration between the different entities involved in the development review process.

Laval Means added that the recommendations emphasize operations more than organization.

Dale Bickel, Chief Administrative Office with the City of Missoula, added that two aspects of functional teams are that they're going to be formal, and that the project champion is going to be granted authority related to that team. The champion will not only be the point of contact, but they will also hold the other members of functional work team to timelines and review criteria.

A committee member asked about what agencies are included in the key agencies referred to in recommendation A5 (requiring key agencies to be present at scoping or pre-application meetings). Ms. Garrow stated that the recommendation is focused on city

agencies and other governmental agencies reviewing the project, but the applicant could be added to that recommendation as well.

Heather McMilin added that not every aspect of a project is a city agency, and noted that Northwest Energy is an example.

Ms. Garrow reviewed the code and state law recommendations and recommended implementations which include establishing a regular update cycle, and an expedited review for small projects.

In regard to an inquiry about recommendation C3, adjusting neighborhood meetings, Ms. Garrow stated that the recommendation focused on having the neighborhood meeting as early in the process as possible so neighbors can have a meaningful impact on a project. Perhaps prior to the pre-application meeting. Ideally, an applicant would be going to a neighborhood council, having a conversation about their expectations, concerns, and comments, and then the development team could incorporate that feedback or explain why they couldn't, before going to the review process with the City. Another recommendation, assuming the current process is continued, would be to focus on best practices around meetings, which might include additional record keeping.

A committee member questioned who is included when referring to the neighborhood. Ms. Garrow explained that they've identified some different ways to hold the neighborhood meetings or to provide opportunities for neighborhood feedback, including notifying adjacent property owners or using the Engage Missoula website.

A committee member suggested making sure the developer is ready to have the conversation with the neighborhoods before the notice goes out, and making sure that staff and the developer are coordinated on that messaging.

Heather McMilin noted that education ought to be included in the neighborhood engagement to allow neighborhoods to understand when they have a say and when they don't. This will help to build trust among both parties.

A committee member brought up two issues to be aware of with neighborhood and public participation: participation doesn't always equal the desired outcome and that the message has to be tailored to the audience. It should be explained that participation doesn't necessarily mean you're going to get your way, and that education and outreach must be delivered in a way that can be best received by specific members of the community, like the elderly. The City ought to work with the neighborhoods office to best deliver that information in a format that's accessible to all.

A committee member recommended moving toward more transparency, that transparency in the process builds trust in the process.

Ms. Garrow continued reviewing the code and state law recommendations.

The committee discussed recommendation C7, updating the code to allow or encourage ADUs and Cottage Homes, as well as the recommended implementation of determining thresholds for code flexibility. Ms. Garrow stated that there's a fine balance between allowing innovation and flexibility and predictability within the regulation. She suggested identifying things in our development parameters that are so important that they should never be flexible, as well as identifying things that have been flexible in the past and have worked really well.

In regards to TED development, Ms. Garrow suggested the city coordinate with the City Attorney's office as these relate to state law.

Citizen Mike Morgan spoke to the implementation of recommendation C8, the removal of minimum lot sizes. He stated that the removal of minimum lot sizes would help with small infill development at the most affordable possibility.

A committee member suggested that neighborhoods might be ready to have discussions regarding recommendation C9, an update to the code to allow parking reductions in certain areas. Some neighborhood corner commercial lots are undeveloped due to current parking regulations. This should be a part of the communication and education process with neighborhoods.

In response to an inquiry regarding the recommendation C13, adopting a Unified Development Code (UDO), Ms. Garrow explained that for such a process, the City would want to have all key agencies as a part of the project team, and suggested hiring a consultant to assist with the significant undertaking. She provided an example of a city who has adopted a UDO. She stated that the development process in Bozeman takes less time and money than in Missoula, but that they also have very strict requirements.

Ms. Garrow stated that the UDO document tends to be more visual, incorporating flow charts that walk one through a process, in addition to describing it in a more accessible way than legalese.

Further recommendations for programs and policies include mapping constrained lands. The committee asked about an additional layer of legal constraints to which Ms. Garrow answered that that level of detail would involve a deeper dive into individual parcels, and could potentially be time and cost intensive and prohibitive.

The committee expressed a desire to have several other community-wide goals incorporated in some way into the code, including clean electricity and zero waste. Ms. Garrow explained that while aspirational policy documents are important, until they're in some kind of code, they're not as likely to be implemented. You see their implementation in building, land use, and municipal codes in general.

Laval Means stated that they have been thinking about incentives and using an incentive-based approach to elevate certain new green infrastructure ideas.

The committee further suggested weaving in some of the City's policies and documents as a good way to achieve broader goals, specifically related to transportation and complete street resolutions.

Ms. Garrow reviewed the high priority recommendations, including short or long term implementations and the cost associated with each of those.

The next steps in this process include finalizing the report, work program alignment, and the city beginning Phase 2 of the regulation and process updates.

The committee expressed their appreciation for the work that has gone into this project.

4. ADJOURNMENT

The meeting was adjourned at 4:51 pm.



City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Land Use and Planning

Item: Affordable Housing Development Agreement

Date: December 2, 2020

Sponsor(s): Eran Pehan

Prepared by: Eran Pehan

Ward(s) Affected:

<input type="checkbox"/> Ward 1	<input type="checkbox"/> Ward 4
<input type="checkbox"/> Ward 2	<input type="checkbox"/> Ward 5
<input checked="" type="checkbox"/> Ward 3	<input type="checkbox"/> Ward 6
<input type="checkbox"/> All Wards	<input type="checkbox"/> N/A

Action Required:

Approve Affordable Housing Development Agreement

Recommended Motion(s):

I move the City Council: Authorize the Mayor to execute an affordable housing development agreement with Pupaw LLC/Cade LLC to construct permanently affordable homes for purchase for households earning under 120% area median income.

Timeline:

Referral to committee:	November 23, 2020
Committee discussion:	December 2, 2020
Council action (or sets hearing):	December 7, 2020
Public Hearing:	n/a
Deadline:	n/a

Background and Alternatives Explored:

On November 18th, 2019 the Missoula City Council adopted Resolution 8395, declaring their intention to close and vacate a portion of right-of-way located near Ronald Ave. north and South 4th Street east to support a residential development. The City Council place six conditions on this right-of-way vacation, one of which addressed housing affordability.

The condition as approved states that, "the developer shall address housing affordability by executing a Development Agreement, prior to building permit approval of the first structure that includes a voucher preference for new multi-dwelling rental units or constructing permanently affordable homeownership units, subject to review and approval by the Office of Housing and Community Development. The developer will work with the Office of Housing and Community Development on the terms of the Development Agreement to include appropriate pricing for affordable units for 20% of the dwelling units for purchase rounded up".

The developer has opted to construct permanently affordable homeownership units, as outlined in the submitted Affordable Housing Development agreement. A key strategy of the adopted housing policy, A Place to Call Home, is incentivizing affordable housing development. This developer agreement enables the city to test an incentives structure using the Right of Way Vacation in return for permanent affordability for seven homes. Additionally, it is important to the

housing policy and its ultimate goal of improving housing affordability in Missoula to create new homeownership opportunities for Missoulians making below 120% of Area Median Income (AMI). This project includes a significant number of permanently affordable homeownership opportunities in a Missoula neighborhood that trends as one of the most expensive.

Financial Implications:

n/a

Links to external websites:

n/a

**AFFORDABLE HOUSING DEVELOPMENT AGREEMENT BETWEEN PUPAW LLC/CADE
LLC AND CITY OF MISSOULA FOR SOUTH 4TH EAST AND RONALD AVE**

This Development Agreement is executed by and between PUPAW LLC/CADE LLC, 496 Graceland Drive, Laguna Beach, CA 92651-25522 (hereinafter referred to as “Developer”) and the CITY OF MISSOULA, 435 Ryman Street, Missoula, Montana 59802 (hereinafter referred to as “City”).

1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of the Agreement are the following:

- a. The Developer intends to remove the existing structures and redevelop the site with multi-dwelling structures with underground parking. The above activities are hereinafter referred to as the “Project.”
- b. The properties are identified as follows: MONTANA ADDITION, S22, T13 N, R19 W, BLOCK 12, Lot 8, & W16' OF 7 and MONTANA ADDITION, S22, T13 N, R19 W, BLOCK 12, Lot 1 - 6, & E14' OF 7 (hereinafter referred to as “South 4th East and Ronald Ave”).
- c. As a condition to close and vacate public right of way (to refer, Exhibit A: Resolution 8410) the Developer is required to address housing affordability by including a voucher preference for new multi-family rental units or by constructing permanently affordable homeownership units for a minimum of 20 percent of the total dwelling units for purchase. The Developer has elected to construct permanently affordable home ownership units for purchase.
 - i. The unit configuration for the minimum 20 percent affordable dwelling units for purchase (hereinafter referred to as “dedicated affordable homes”) will consist of a mix of studios and one bedrooms. The unit count is as follows:

Market Rate Homes (Condos for Sale)	28
Dedicated Affordable Homes (Condos for Sale)	7
Market Rate Rental Homes (Condos for Rent)	13

- ii. Pricing for the dedicated affordable homes will not exceed affordability for households earning up to 120 percent of Area Median Income annually. As calculated at the time of the execution of this developer agreement, affordable homes may not exceed the following sales pricing:

Unit Type	Studio	1 Bedroom
*Maximum Sales Price	\$215,121	\$243,138

*Maximum sales prices at first point of sale. Future maximum sales price will be calculated by the Office of Housing and Community Development or their agent prior to listing and subsequent sale.

- iii. The dedicated affordable homes must be sold to households earning up to 120 percent of Area Median Income as defined by the Department of Housing and Urban Development. The Office of Housing and Community Development must income certify all potential buyers.
- iv. The Developer shall work with the Office of Housing and Community Development to create a sales and marketing plan, to be finalized prior to the sale of the first affordable unit, to address factors such as multiple-buyer management, marketing materials, responsibilities for marketing affordable homes, actions to be taken in the event of

inability to identify qualified buyers, procedures for certification of buyer eligibility, purchase contracts, and full disclosures to buyers of their obligations and rights.

- v. The developer, or the city or its agent if the city is involved in the sale of an affordable home, shall cause to be recorded in the offices of the Missoula County Clerk and Recorder, simultaneously with the recording of each deed of conveyance for the affordable units, a restrictive covenant, deed restriction, or other legal instrument, approved as to form by the Missoula City Attorney, that fulfills the resale requirements as defined by the Office of Housing and Community Development to ensure permanent affordability.
- vi. The dedicated affordable units must serve as the primary residence of the purchaser and meet the conditions set forth in Resolution 8410.

2. Undertakings of the City. Subject to the conditions herein, the City or its agent agrees as follows:

- a. Set pricing at first point of sale and at subsequent points of sale for the dedicated affordable units that does not exceed affordability, with a methodology to be set out in the Affordable Housing Trust Fund Administrative Policies and Procedures to 1.c.v above, for households earning up to 120 percent of Area Median Income.
- b. Screen potential buyers at first point of sale and at subsequent points of sale for eligibility by completing income qualification.
- c. Enter into a contract with homebuyers of each unit, including subsequent homebuyers, to ensure appropriate marketing and eligibility screening for subsequent sales of the dedicated affordable homes.
- d. Complete annual compliance monitoring to ensure dedicated affordable units remain the primary residence and meet the condition set forth in Resolution 8410.

3. Default and Remedies:

- a. The following shall be Events of Default under this Agreement:
 - i. Failure by the Developer to construct the dedicated affordable homes.
 - ii. Developer is, for any reason, financially unable to complete the Project.
- b. The following remedies may be exercised in the Event of Default by Developer:
 - i. If during construction the Developer is found not to be complying with the terms of this agreement with respect to construction of the designated affordable units or through the pre-sale of the designated affordable units, a Stop Work order will be issued by the City Building Official preventing further work until the issue is resolved.
 - ii. Exercise the remedies set forth in a Restrictive Covenant to be recorded against South 4th East and Ronald Ave, in a form mutually acceptable to the City and the Developer, evidencing, securing, and giving public notice of the Developer's obligation to provide dedicated affordable homes pursuant to Resolution 8410 and this Development Agreement.
 - iii. Bring an action for specific performance.
 - iv. Bring an action for damages for breach of contract.
- c. The following remedies may be exercised in the Event of Default by City:
 - i. Bring an action for specific performance.
 - ii. Bring an action for damages for breach of contract.

- d. **Notice of default.** The City and Developer agree that upon the occurrence of an Event of Default by either party under this Agreement, the non-defaulting party shall notify the defaulting party in writing of the event of default and the non-defaulting party's intention to pursue the remedies set forth in this Agreement with respect to the default.
- e. **Defaulting party's right to cure.** Prior to exercising any remedy set forth in this Agreement, the defaulting party will have the right to cure an event of default, subject to the limitations in this agreement.
- f. **Waiver and non-waiver of events of default.** No delay or failure of either party to exercise any right or power accruing upon the occurrence of an event of default will impair that right or power or be construed to be a waiver of or acquiescence to any subsequent occurrence of that event of default. If either party waives an event of default, then both parties will be restored to their former positions and rights under this Agreement prior to the event of default, but no such waiver will extend to any subsequent or other event of default or impair any right accruing to either party upon the occurrence of any subsequent or other event of default.

4. General Provisions. The following terms and conditions apply:

- a. This Development Agreement may be mutually agreed to be amended or terminated if any of the conditions herein stated are altered, subject to the review and written approval of both parties.
- b. This Development Agreement is not intended to supersede, replace or amend any agreements or contracts the Developer may have between the Developer and other parties.
- c. All firms doing business with any agency of the City of Missoula must be in compliance with the City of Missoula's Non-Discrimination and Affirmative Action Policy as well as Title 49, Montana Code Annotated, or forfeit the right to continue such business dealings (to refer, Attachment B: Non-Discrimination and Affirmative Action Policy).
- d. The City shall have no civil liability whatsoever for any of Developer's actions or undertakings. It is Developer's sole responsibility to ensure that Developer and all of Developer's contractors, sub-contractors, designers, architects, and engineers have adequate liability insurance, workers compensation insurance and property insurance for the project. The Developer will hold harmless, indemnify and defend the City for the conduct of the Developer or the Developer's contractors and subcontractors.
- e. With respect to the drafting and implementation of this Development Agreement, each party to this Agreement is responsible for their own attorney fees. In any action arising under or related to this Development Agreement, the ultimate prevailing party shall be entitled to be paid its reasonable attorney fees, expenses and costs by the non-prevailing party, whether in arbitration, at trial or on appeal.
- f. This Agreement expires 30 days after issuance of a Certificate of Occupancy and the filing of all required deed restrictions.
- g. If any section, sentence, clause or portion of this Development Agreement is declared unlawful or unconstitutional for any reason, the remainder of this Development Agreement shall continue in full force and effect.
- h. This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall

supersede all previous communications, representations, or agreements, either oral or written, between the parties.

- i. This Agreement shall be construed in accordance with the laws of the State of Montana. The venue for any action seeking to interpret or enforce this Agreement shall be in the Fourth Judicial District of Montana.

CONTRACTOR:

MAYOR
City of Missoula, Montana

John Engen

ATTEST:

APPROVED AS TO FORM AND CONTENT:

Martha L. Rehbein, CMC, City Clerk

Jim Nugent, City Attorney

(SEAL)

Return to: City Clerk
City of Missoula
435 Ryman Street
Missoula MT 59802-4297

Resolution Number 8410

A resolution to vacate public right-of-way being the portion of Ronald Avenue north of the alley adjacent to Lot 1 in Block 12 of Montana Addition and adjacent to Lots 10 & 11 north and south of the ditch in Block 13 of Montana Addition, as well as a portion of South 4th Street East right-of-way, generally the southerly 22 feet of South 4th Street East adjacent to property legally described as Lots 1-8 of Block 12 Montana Addition in Section 22, Township 13 N, Range 19 W, P.M.M., as shown in Exhibit A.

Be it resolved by the City Council of the City of Missoula, Montana.

SECTION I. THAT it is the intention of the City Council of the City of Missoula, Montana, to close and vacate all that portion of right-of-way described below and shown on attached Exhibit A, subject to the seven (7) conditions of approval noted in Section II:

The portion of Ronald Avenue north of the alley adjacent to Lot 1 in Block 12 of Montana Addition and adjacent to Lots 10 & 11 north and south of the ditch in Block 13 of Montana Addition, as well as a portion of South 4th Street East right-of-way, generally the southerly 22 feet of South 4th Street East adjacent to property legally described as Lots 1-8 of Block 12 Montana Addition in Section 22, Township 13 N, Range 19 W, P.M.M.

SECTION II. THAT the vacated right-of-way will revert to and combine with adjacent private property upon vacation approval and shall attach to the adjacent properties and the titled owners in accordance with Section 70-16-202 of the Montana Code Annotated as follows:

The portion of Ronald Avenue north of the alley adjacent to Lots 1 in Block 12 and Lots 10 & 11 in Block 13 of Montana Addition and the portion of South 4th Street East adjacent to Lots 1 through 8 in Block 12 of Montana Addition, on file and of record in Missoula County, Montana, located in Section 22, Township 13 North, Range 19 West, P.M.M.

FURTHER, that the vacation is contingent upon the approval of the rezoning and the following six (6) conditions of approval for the vacation:

1. The developer shall prepare plans for and construct right-of-way improvements to South 4th Street East, including but not limited to paving, curb, gutter, sidewalks, drainage and storm water facilities, and additional on-street parking, prior to approval of the first building permit on Lots 1 through 8, subject to review and approval of the City Engineer.
2. The developer shall prepare plans for and construct right-of-way improvements within the remaining and vacated portions of Ronald Avenue from South 5th Street East to South 4th Street East, including but not limited to paving, curb, gutter, drainage and storm water facilities, five (5) foot wide sidewalk and seven (7) foot wide boulevard within the Ronald Avenue right-of-way from South 5th Street East to the alley and a five (5) foot wide sidewalk/stairs within a public access easement from the alley north to South 4th Street East through the vacated portion of Ronald Avenue, prior to approval of the first building permit on Lots 1 through 8, subject to review and approval of the City Engineer.
3. The developer shall coordinate with the City of Missoula Parks and Recreation Department to allow staff to harvest all native grasses growing in the South 4th Street East right-of-way proposed to be vacated prior to May 1, 2020.
4. The developer shall secure a contract by April 1, 2020 to relocate those contributing structures (as identified by the Historic Preservation Officer in Attachment A) that have been determined as feasible for relocation, to an off-site location for reuse, subject to review and approval by the City Attorney and the Historic Preservation Officer. The intent is the structures would be relocated by May 1 2020, and the contract shall specify the deadline for relocation of structures. The applicant shall contribute a minimum of \$12,500.00 per structure for each contributing structure that is designated as feasible for relocation, towards the cost of the relocation of the structures if a contract with a party interested in relocation of the structures is secured. In the event the applicant is unable to secure a contract with an interested party to relocate the contributing structures, the developer shall meet the standards outlined in Attachment B provided by the Historic Preservation Officer regarding documentation of the historic resources, deconstruction, and mitigation, prior to demolition permit approval, subject to review and approval by the Historic Preservation Officer.
5. The developer shall address housing affordability by executing a Development Agreement, prior to building permit approval of the first structure that includes a voucher preference for new multi-dwelling rental units or constructing permanently affordable homeownership units, subject to review and approval by the Office of Housing and Community Development. The developer will work with the Office of Housing and Community Development on the terms of the Development Agreement to include appropriate pricing for affordable units for 20% of the dwelling units for purchase rounded up.
6. The developer shall include the following rental restriction in the Development Covenants which shall be filed with the Missoula County Clerk and Recorder for the subject property, prior to the building permit approval of the first structure, subject to review and approval by Development Services: "All dwelling units shall be owner occupied or rented with a minimum 30 day (month-to-month) lease with the option for units to be leased as short term rentals no more than sixty (60) days per calendar year. Parking for all dwelling units shall be provided on-site, including all lease options. This covenant may not be amended or deleted from the Development Covenants without City Council approval."
7. Commercial uses are prohibited on the subject property. The applicant shall file a deed restriction that prohibits commercial uses on the subject property, subject to the review and approval of the City Attorney and Development Services, prior to approval of the first building permit.

WHEREAS, the City Council adopted on the 18th day of November, 2019 Resolution No. 8395 declaring the City Council's intention to close and vacate said right-of-way herein described; and

WHEREAS, the City Council heard, on the 27th day of January, 2020, all matters pertaining to the proposed closing and vacation of said right-of-way as herein described; and

WHEREAS, the property intended to be vacated is subject to any and all utility easements over and across said property in accordance with Section 7-14-4115 of the Montana Code Annotated to continue the installation, maintenance, and repair of any and all public utilities. The property owners benefiting from the vacated right-of-way assume all risk for the installation, placement or construction of any improvement over any easement in which a municipal utility is located and the City shall in no way be liable for any damage to those improvements occasioned by the repair and maintenance of any utilities.

FURTHER, in the event the conditions are not met, this vacation approval shall be withdrawn, the vacation will be declared null and void and the right-of-way shall be returned to public use.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL of the City of Missoula, Montana, that the aforesaid right-of-way as herein before described, be and the same is, hereby closed and vacated subject to the four conditions of approval noted herein and subject to any utility easements over and across said property to continue the installation, maintenance, and repair of any and all public utilities. The property owners benefiting from the vacated right-of-way assume all risk for the installation, placement or construction of any improvement over any easement in which a municipal utility is located and the City shall in no way be liable for any damage to those improvements occasioned by the repair and maintenance of any utilities.

PASSED by the City Council of Missoula, Montana, and approved by the Mayor this 27th day of January, 2020.

ATTEST:

/s/ Martha L. Rehbein

Martha L. Rehbein, CMC
City Clerk

APPROVED:

/s/ John Engen

John Engen
Mayor

(SEAL)





City of Missoula, Montana
Item to be Referred to City Council Committee

Committee: Land Use and Planning

Item: Referral – Phased Development Review, Heron's Landing Subdivision, Phase W1

Date: November 19, 2020

Sponsor(s): Dave DeGrandpre

Prepared by: Dave DeGrandpre

Ward(s) Affected:

<input type="checkbox"/> Ward 1	<input type="checkbox"/> Ward 4
<input checked="" type="checkbox"/> Ward 2	<input type="checkbox"/> Ward 5
<input type="checkbox"/> Ward 3	<input type="checkbox"/> Ward 6
<input type="checkbox"/> All Wards	<input type="checkbox"/> N/A

Action Required:

Discussion only – Pre-public hearing

Discussion only – pre public hearing

Timeline:

Referral to committee: November 23, 2020

Committee discussion: December 2, 2020

Council sets public hearing: November 23, 2020 Recommended motion: Set a public hearing on December 7, 2020 for the Phased Development Review of Heron's Landing Subdivision, Phase W1 for land located in the NW ¼ of Section 13, Township 13 North, Range 20 West, P.M.M. and refer the item to the Land Use and Planning Committee.

Public Hearing: December 7, 2020 Recommended motion: Approval of the Phased Development Review for Phase W1 of the Heron's Landing Subdivision based on the findings of fact and conclusions of law in the staff report.

Deadline: December 10, 2020

Financial Implications: None anticipated.

Links to external websites: <https://www.ci.missoula.mt.us/2674/Herons-Landing>



October 26, 2020

Dave DeGrandpre, AICP
PLANNING SUPERVISOR
City of Missoula Development Services
435 Ryman Street
Missoula, MT 59802

Re: Heron's Landing - Phase W1 Final Plat
City Project Number: 2020-049

Dear Dave:

This letter and attachments are written notice of our intent to commence with recording the Final Plat of the Heron's Landing Subdivision - Phase W1 as per Montana Code Annotated Section 76-3-617. The attachments to this letter are:

1. Current, approved Phasing Plan for the Subdivision
2. Heron's Landing Subdivision - Phase W1 draft Final Plat
3. Typical road sections for phase W1
4. Heron's Landing Declaration of Covenants, Conditions, Restrictions and Easements - Draft for review

This is the first phase of this development, if any additional items are needed to get our public hearing scheduled with the City Council, please let us know as soon as possible. Heron's Landing final public hearing for the subdivision approval was on September 21, 2020. There have been no changes to any subdivision review criteria impacts and no new information has arisen since City Council approved the Heron's Landing development.

Sincerely,
WGM Group, Inc.

Ryan J. Salisbury, P.E.
PRINCIPAL ENGINEER/VICE PRESIDENT

RJS:la

Encl.

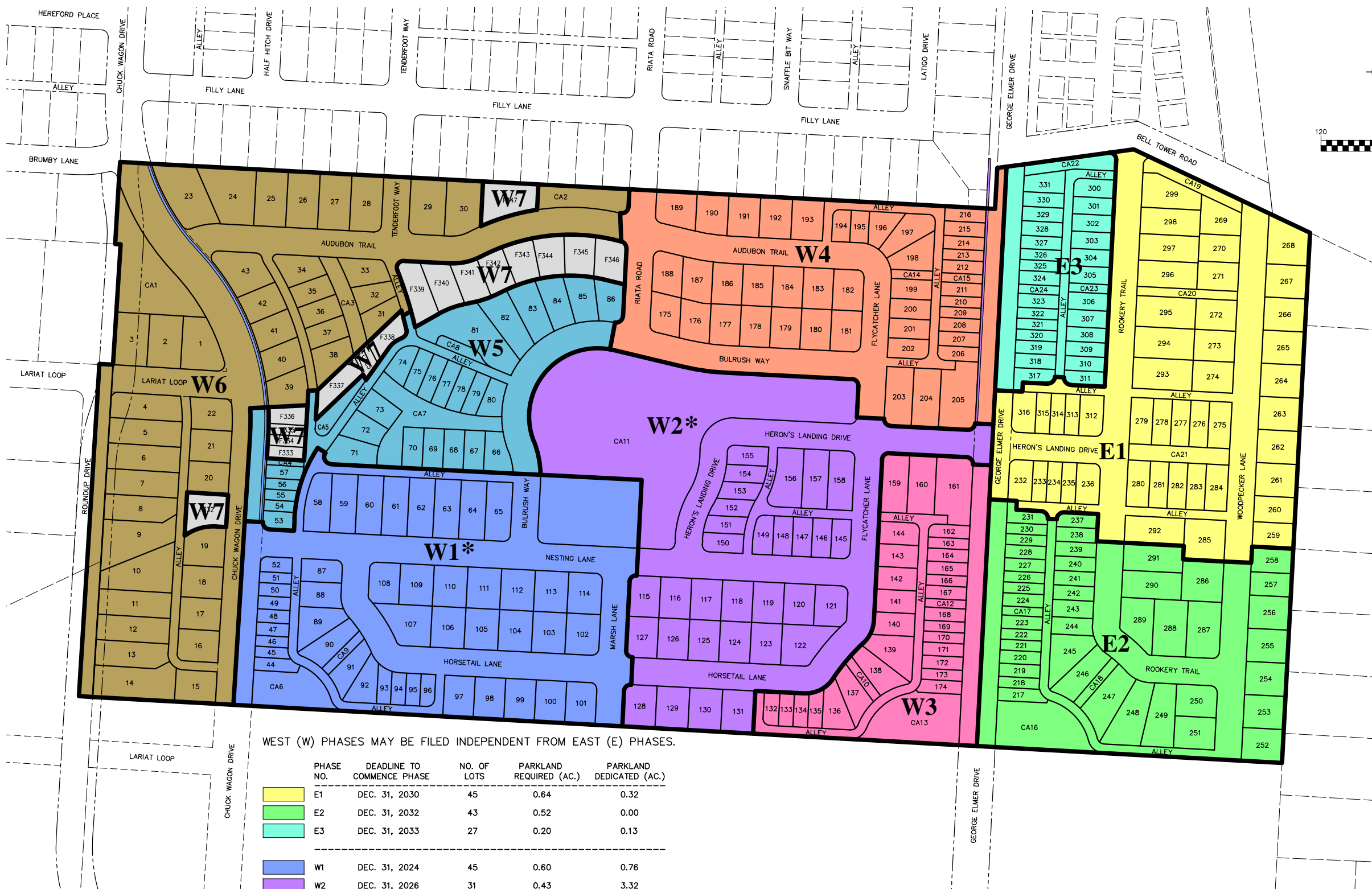
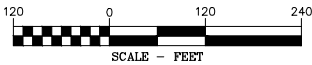
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WGM GROUP
WWW.WMGROUP.COM

PRELIMINARY

PLOTTED: 4/7/20
SAVED: 4/7/20



WEST (W) PHASES MAY BE FILED INDEPENDENT FROM EAST (E) PHASES.

PHASE NO.	DEADLINE TO COMMENCE PHASE	NO. OF LOTS	PARKLAND REQUIRED (AC.)	PARKLAND DEDICATED (AC.)
E1	DEC. 31, 2030	45	0.64	0.32
E2	DEC. 31, 2032	43	0.52	0.00
E3	DEC. 31, 2033	27	0.20	0.13
W1	DEC. 31, 2024	45	0.60	0.76
W2	DEC. 31, 2026	31	0.43	3.32
W3	DEC. 31, 2028	29	0.29	0.00
W4	DEC. 31, 2035	42	0.53	0.00
W5	DEC. 31, 2037	26	0.31	0.39
W6	DEC. 31, 2039	43	0.85	0.17
W7	DEC. 31, 2040	16	0.21	0.05
TOTALS			4.58	5.14

PHASE LINE

E3 PHASE NO.

CA COMMON AREA

* PHASES W1 AND W2 SHALL INSTALL 5' ADA ACCESSIBLE ASPHALT PATHS CONNECTING TO EXISTING SIDEWALKS NORTH OF HERON'S LANDING AS SHOWN ON THIS PHASING PLAN.

PHASING PLAN

HERON'S LANDING

MISSOULA, MONTANA

REVISIONS:		
NO.	DESCRIPTION	DATE

PROJECT: 18-11-01
LAYOUT: Layout1
SURVEYED: ---
DESIGN: ---
DRAFT: CEG
APPROVE: DH
DATE:

APRIL 2020

SHEET

1 OF 1

SUBDIVISION PLAT OF
HERON'S LANDING, PHASE W1
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE NW 1/4 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA

CERTIFICATE OF DEDICATION :

THE UNDERSIGNED HEREBY CERTIFIES THAT IT HAS CAUSED TO BE SURVEYED, SUBDIVIDED AND PLATTED INTO LOTS, COMMON AREAS, STREETS, AND ALLEYS AS SHOWN ON THIS PLAT, THE FOLLOWING DESCRIBED TRACT OF LAND, TO-WIT:

LEGAL DESCRIPTION : PERIMETER

A TRACT OF LAND BEING A PORTION OF TRACT 1 OF CERTIFICATE OF SURVEY NO. 5963, ON FILE AND OF PUBLIC RECORD IN MISSOULA COUNTY, MONTANA, LOCATED IN THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 13 NORTH, RANGE 20 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 1; THENCE S 86°49'20" E ALONG THE SOUTHERLY LINE OF SAID TRACT 1, 289.90 FEET TO THE POINT OF BEGINNING; THENCE N 03°30'42" E, 404.42 FEET; THENCE S 86°29'18" E, 80.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO LAST SAID POINT BEARS N 86°29'18" W; THENCE SOUTHEASTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 90°35'42", AN ARC LENGTH OF 23.72 FEET; THENCE S 87°05'00" E, 54.24 FEET; THENCE N 02°55'00" E, 26.60 FEET TO A POINT ON A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 310.00 FEET; THENCE NORTHEASTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 30°34'48", AN ARC LENGTH OF 165.45 FEET; THENCE S 56°30'12" E, 20.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 16.00 FEET, A RADIAL LINE TO LAST SAID POINT BEARS N 56°30'12" W; THENCE SOUTHWESTERLY, SOUTHERLY, AND SOUTHEASTERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 120°34'48", AN ARC LENGTH OF 33.67 FEET; THENCE S 87°05'00" E, 682.42 FEET; THENCE S 02°55'00" W, 210.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO LAST SAID POINT BEARS N 02°55'00" E; THENCE SOUTHWESTERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 23.56 FEET; THENCE S 02°55'00" W, 150.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET; THENCE SOUTHEASTERLY ALONG LAST SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 23.56 FEET; THENCE S 02°55'00" W, 60.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO LAST SAID POINT BEARS N 02°55'00" E; THENCE SOUTHWESTERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 23.56 FEET; THENCE S 02°55'00" W, 77.49 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID TRACT 1; THENCE N 86°49'20" W ALONG SAID SOUTHERLY LINE, 894.98 FEET TO THE POINT OF BEGINNING; CONTAINING 10.68 ACRES, MORE OR LESS; BEING SURVEYED AND MONUMENTED ACCORDING TO THIS PLAT.

THE ABOVE TRACT IS TO BE KNOWN AND DESIGNATED AS HERON'S LANDING, PHASE W1; AND THE LANDS INCLUDED IN ALL STREETS AND ALLEYS SHOWN ON SAID PLAT ARE HEREBY DEDICATED, GRANTED, AND DONATED TO THE USE OF THE PUBLIC FOREVER; AND THE USE OF THE LANDS INCLUDED IN ALL PUBLIC STORM DRAINAGE EASEMENTS, PUBLIC SIDEWALK MAINTENANCE EASEMENTS, AND PUBLIC NON-MOTORIZED ACCESS EASEMENTS SHOWN ON SAID PLAT ARE HEREBY DEDICATED, GRANTED, AND DONATED TO THE USE OF THE PUBLIC FOREVER; AND THE LANDS INCLUDED IN THE COMMON AREAS IS HEREBY DEDICATED, GRANTED, AND DONATED TO THE HERON'S LANDING HOMEOWNERS ASSOCIATION.

FURTHERMORE, THIS PLAT CONFORMS TO THE PRELIMINARY PLAT PREVIOUSLY REVIEWED AND APPROVED BY THE GOVERNING BODY.

FURTHERMORE, THIS SURVEY IS EXEMPT FROM REVIEW BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 76-4-125(1)(d) M.C.A. TO-WIT: AS CERTIFIED PURSUANT TO 76-4-127: (i) NEW DIVISIONS SUBJECT TO REVIEW UNDER THE MONTANA SUBDIVISION AND PLATTING ACT; (ii) DIVISIONS OR PREVIOUSLY DIVIDED PARCELS RECORDED WITH SANITARY RESTRICTIONS; OR (iii) DIVISIONS OR PARCELS OF LAND THAT ARE EXEMPT FROM THE MONTANA SUBDIVISION AND PLATTING ACT REVIEW UNDER 76-3-203 OR 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), OR (1)(f); AND PURSUANT TO SECTION 76-4-127 M.C.A. TO-WIT: NOTICE OF CERTIFICATION THAT ADEQUATE STORM WATER DRAINAGE AND ADEQUATE MUNICIPAL FACILITIES WILL BE PROVIDED.

FURTHERMORE, FEDERAL, STATE, AND LOCAL PLANS, POLICIES, REGULATIONS, AND/OR CONDITIONS OF SUBDIVISION APPROVAL, AS REQUIRED BY THE REVIEWING AGENCY, THAT MAY LIMIT THE USE OF THE PROPERTY, INCLUDING THE LOCATION, SIZE, AND USE ARE SHOWN ON THE CONDITIONS OF APPROVAL SHEET OR AS OTHERWISE STATED.

FURTHERMORE, BUYERS OF PROPERTY SHOULD ENSURE THAT THEY HAVE OBTAINED AND REVIEWED ALL SHEETS OF THE PLAT AND ALL DOCUMENTS RECORDED AND FILED IN CONJUNCTION WITH THE PLAT, AND THAT BUYERS OF PROPERTY ARE STRONGLY ENCOURAGED TO CONTACT THE LOCAL PLANNING DEPARTMENT AND BECOME INFORMED OF ANY LIMITATIONS ON THE USE OF THE PROPERTY PRIOR TO CLOSING.

FURTHERMORE, ALL OR PART OF THE REQUIRED PUBLIC IMPROVEMENTS HAVE BEEN INSTALLED AND/OR SECURITY REQUIREMENTS, PURSUANT TO 76-3-507, MCA, SECURE THE FUTURE CONSTRUCTION ON ANY REMAINING PUBLIC IMPROVEMENTS TO BE INSTALLED.

THE UNDERSIGNED HEREBY GRANT UNTO EACH AND EVERY PERSON, FIRM, OR CORPORATION, WHETHER PUBLIC OR PRIVATE, PROVIDING OR OFFERING TO PROVIDE TELEPHONE, TELEGRAPH, ELECTRIC POWER, GAS, CABLE TELEVISION, WATER, OR SEWER SERVICE TO THE PUBLIC, THE RIGHT TO THE JOINT USE OF AN EASEMENT FOR THE CONSTRUCTION, MAINTENANCE, REPAIR, AND REMOVAL OF THEIR LINES AND OTHER FACILITIES, IN, OVER, UNDER, AND ACROSS EACH AREA (INCLUDING THOSE AREAS LYING OUTSIDE OF AND ADJACENT TO THE EXTERIOR BOUNDARY OF THIS SUBDIVISION) DESIGNATED ON THIS PLAT AS "UTILITY EASEMENT" TO HAVE AND TO HOLD FOREVER.

MULLAN ROAD PARTNERS L.L.C., A WYOMING LIMITED LIABILITY COMPANY

BY: _____

TITLE: _____

ACKNOWLEDGEMENT*****

STATE OF _____
COUNTY OF _____

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY

OF _____, 20_____, BY _____, ACTING IN

THE CAPACITY OF _____ FOR MULLAN ROAD PARTNERS L.L.C.,
A WYOMING LIMITED LIABILITY COMPANY.

SS _____

PRINTED NAME

SURVEYOR'S CERTIFICATE*****

I, KIRK F. ADKINS, PROFESSIONAL LAND SURVEYOR, MONTANA LICENSE NO. 16734LS, HEREBY CERTIFY THOSE ITEMS SHOWN ON THIS PLAT PERTAINING TO THE PRACTICE OF LAND SURVEYING AS DEFINED IN TITLE 37, CHAPTER 67, MONTANA CODE ANNOTATED, REPRESENT A SURVEY MADE UNDER MY DIRECT SUPERVISION, AND FURTHER THIS SURVEY WAS COMPLETED ON THE DATE SHOWN HEREON ACCORDING TO THE PROVISIONS OF TITLE 76, CHAPTER 3, MONTANA CODE ANNOTATED.

KIRK F. ADKINS, P.L.S.
MONTANA LICENSE NO. 16734LS
FOR WGM GROUP, INC.

DATE

UNLESS SIGNED, SEALED, AND DATED, THIS IS A PRELIMINARY OR UNOFFICIAL DOCUMENT AND CANNOT BE RELIED UPON IN WHOLE OR PART.

EXAMINED & APPROVED*****

CERTIFICATION OF CITY PLANNER

DATED THIS _____ DAY OF _____, 20_____,
LAND USE PLANNER

CERTIFICATE OF MISSOULA CITY/COUNTY HEALTH DEPARTMENT

DATED THIS _____ DAY OF _____, 20_____,
CITY/COUNTY SANITARIAN

CERTIFICATE OF CITY ENGINEER

I, _____, CITY ENGINEER OF THE CITY OF MISSOULA, MISSOULA COUNTY, MONTANA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT AND I FIND THAT IT CONFORMS TO THE SURVEYING AND ROADWAY REQUIREMENTS OF STATE AND LOCAL REGULATIONS ENACTED PURSUANT THERETO.

DATED THIS _____ DAY OF _____, 20_____,
CITY ENGINEER

CERTIFICATE OF CITY ATTORNEY

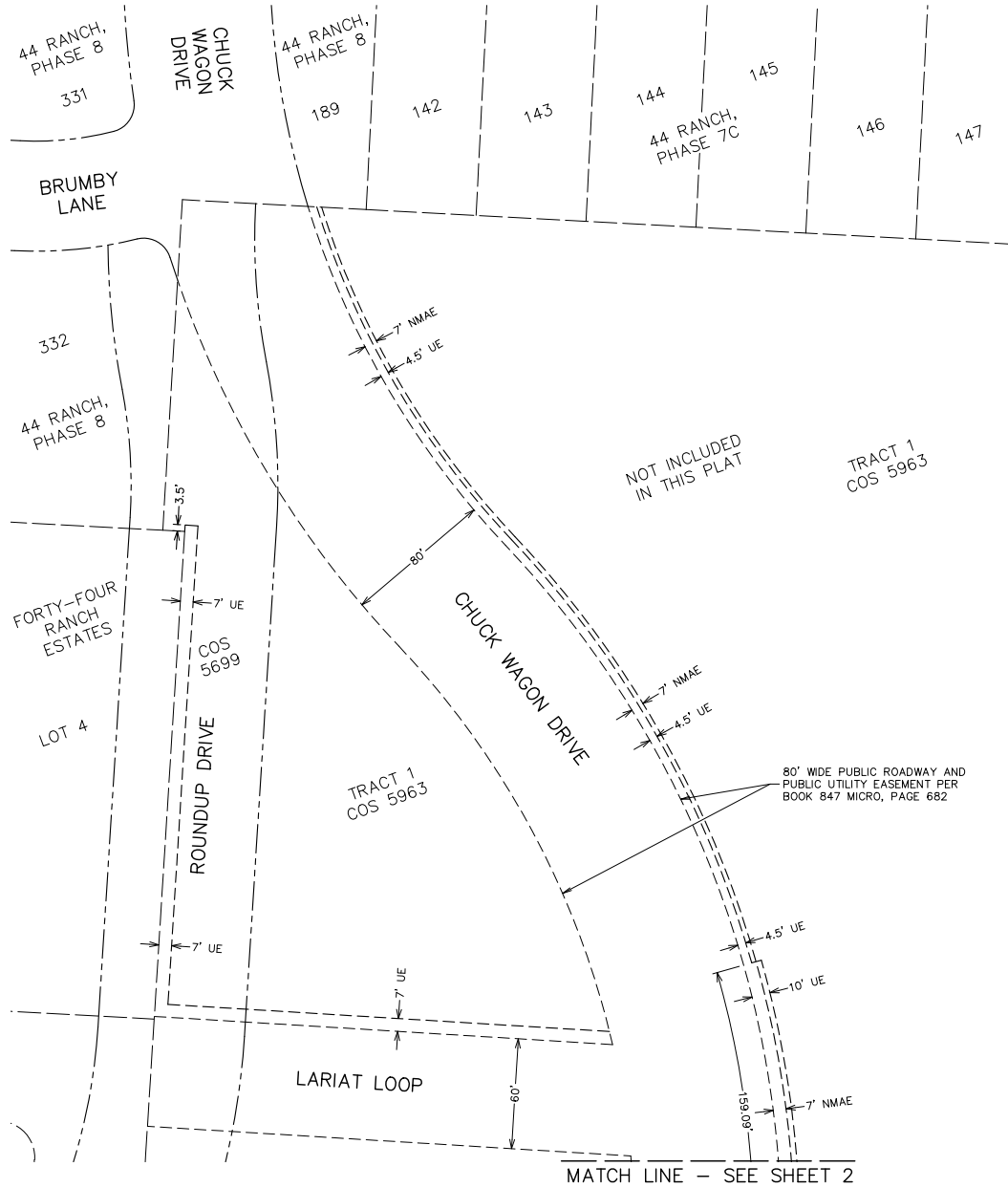
I, _____, CITY ATTORNEY OF THE CITY OF MISSOULA, MISSOULA COUNTY, MONTANA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE CERTIFICATE OF TITLE OF THIS PLAT AND FIND THAT IT CONFORMS TO THE REQUIREMENTS OF SECTION 76-3-612, M.C.A., AND STATE AND LOCAL REGULATIONS ENACTED PURSUANT THERETO.

DATED THIS _____ DAY OF _____, 20_____,
CITY ATTORNEY

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20_____, AND IT HAVING BEEN MADE TO APPEAR THAT THIS PLAT, BEING THE PLATTED AREA HEREIN CONTAINED, AND IT SO APPEARING THAT IT IS IN THE PUBLIC INTEREST TO ACCEPT AND APPROVE FOR THE PUBLIC, ALL STREET AND ALLEY RIGHTS-OF-WAY, PUBLIC SIDEWALK MAINTENANCE EASEMENTS, PUBLIC NON-MOTORIZED ACCESS EASEMENTS, PUBLIC STORM DRAINAGE EASEMENTS, AND UTILITY EASEMENTS WITHIN SAID TRACT AND UTILITY EASEMENTS LYING OUTSIDE OF AND ADJACENT TO SAID TRACT. THEREFORE, HAVING BEEN DULY APPROVED BY THE COUNCIL OF THE CITY OF MISSOULA, MONTANA ON THIS DATE, IT IS HEREBY CERTIFIED APPROVED BY THE UNDERSIGNED.

DATED THIS _____ DAY OF _____, 20_____,
MAYOR, CITY OF MISSOULA, MONTANA

CLERK, CITY OF MISSOULA, MONTANA



OWNER

MULLAN ROAD PARTNERS L.L.C., A
WYOMING LIMITED LIABILITY COMPANY

SURVEY COMMISSIONED BY:
TETON LAND DEVELOPMENT

SHEET 1 OF 4
DATE: OCTOBER 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 181101_FPLAT-W1.DWG
LAYOUT TAB: SHT1



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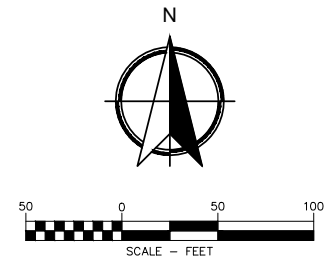
PRELIMINARY

PLOTTED: 10/23/20
SAVED: 10/19/20

MISSOULA COUNTY TRACKING #20-_____

1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	13	13N.	20W.
<input type="checkbox"/>	___	___	___

SUBDIVISION PLAT OF
HERON'S LANDING, PHASE W1
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE NW 1/4 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA



BASIS OF BEARINGS
CERTIFICATE OF SURVEY NO. 5963

LOT AREA TABLE

LOTS	
LOT NO.	LOT AREA (SQ.FT.)
44	2,724
45	1,789
46	1,727
47	2,078
48	2,070
49	2,061
50	2,052
51	1,692
52	2,314
58	6,809
59	7,378
60	7,378
61	7,378
62	7,378
63	7,378
64	7,378
65	7,329
87	4,451
88	5,071
89	6,608
90	6,070
91	5,193
92	4,979
93	2,438
94	2,261

95	2,252
96	2,208
97	6,087
98	6,107
99	6,128
100	6,148
101	6,095
102	6,612
103	6,660
104	6,660
105	6,660
106	6,660
107	8,763
108	5,969
109	6,660
110	6,660
111	6,660
112	6,660
113	6,660
114	6,612
CA 6	13,213
CA 9	2,292
CA 11-W1	33,215



LEGEND

- SET 5/8 in. X 24 in. REBAR WITH 1 1/4 in. YELLOW PLASTIC CAP (WGM GROUP KFA 16734LS)
- ⊙ FOUND 1 1/4 in. YELLOW PLASTIC CAP (WGM GROUP KFA 16734LS)
- RM REFERENCE MONUMENT
- UE UTILITY EASEMENT
- SDE PUBLIC STORM DRAINAGE EASEMENT
- SWE PUBLIC SIDEWALK MAINTENANCE EASEMENT
- NMAE PUBLIC NON-MOTORIZED ACCESS EASEMENT
- NAS NO ACCESS STRIP (ACCESS CONTROL LINE)
- CA COMMON AREA
- COS CERTIFICATE OF SURVEY
- NTS NOT TO SCALE
- R1 RECORD DATA PER CERTIFICATE OF SURVEY NO. 5963
- FD FOUND DATA

NOTE:
ALL BEARINGS, DISTANCES, AND CORNER DATA SHOWN
ARE FOUND OR SET, UNLESS OTHERWISE NOTED.

AREAS

LOT AREA = 5.44 ACRES (236,905 SQ.FT.)
COMMON AREA = 1.12 ACRES (48,720 SQ.FT.)
STREET AREA = 4.12 ACRES (179,547 SQ.FT.)
TOTAL AREA = 10.68 ACRES (465,172 SQ.FT.)

1/4	SEC.	T.	R.
13	13N.	20W.	

SHEET 2 OF 4
DATE: OCTOBER 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 181101_FPLAT-W1.DWG
LAYOUT TAB: SHT2

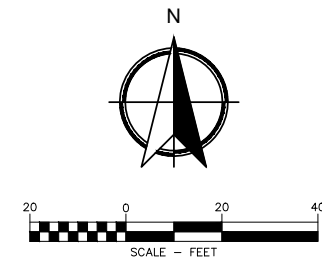


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PRELIMINARY
PLOTTED: 10/23/20
SAVED: 10/19/20

SUBDIVISION PLAT OF
HERON'S LANDING, PHASE W1
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE NW 1/4 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA

SEE SHEET 2



SEE SHEET 1



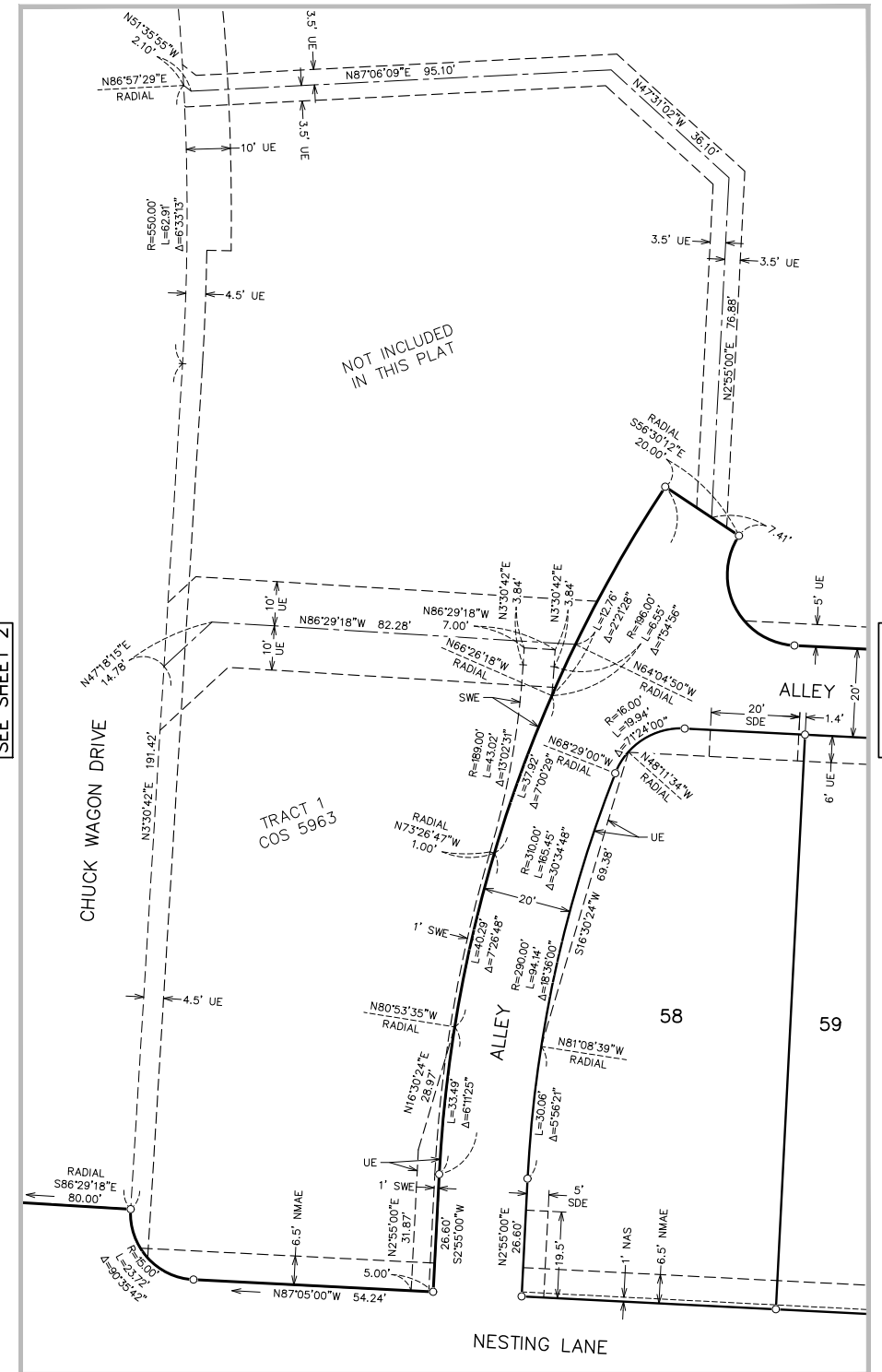
SEE SHEET 2

LEGEND

- SET 5/8 in. X 24 in. REBAR WITH 1 1/4 in. YELLOW PLASTIC CAP (WGM GROUP KFA 16734LS)
- FOUND 1 1/4 in. YELLOW PLASTIC CAP (WGM GROUP KFA 16734LS)
- RM REFERENCE MONUMENT
- UE UTILITY EASEMENT
- SDE PUBLIC STORM DRAINAGE EASEMENT
- SWE PUBLIC SIDEWALK MAINTENANCE EASEMENT
- NMAE PUBLIC NON-MOTORIZED ACCESS EASEMENT
- NAS NO ACCESS STRIP (ACCESS CONTROL LINE)
- CA COMMON AREA
- COS CERTIFICATE OF SURVEY
- NTS NOT TO SCALE
- R1 RECORD DATA PER CERTIFICATE OF SURVEY NO. 5963
- FD FOUND DATA

NOTE:
ALL BEARINGS, DISTANCES, AND CURVE DATA SHOWN
ARE FOUND OR SET, UNLESS OTHERWISE NOTED.

SEE SHEET 2



SEE SHEET 2

1/4	SEC.	T.	R.
13	13N.	20W.	

SHEET 3 OF 4
DATE: OCTOBER 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 181101_FPLAT-W1.DWG
LAYOUT TAB: SHT3

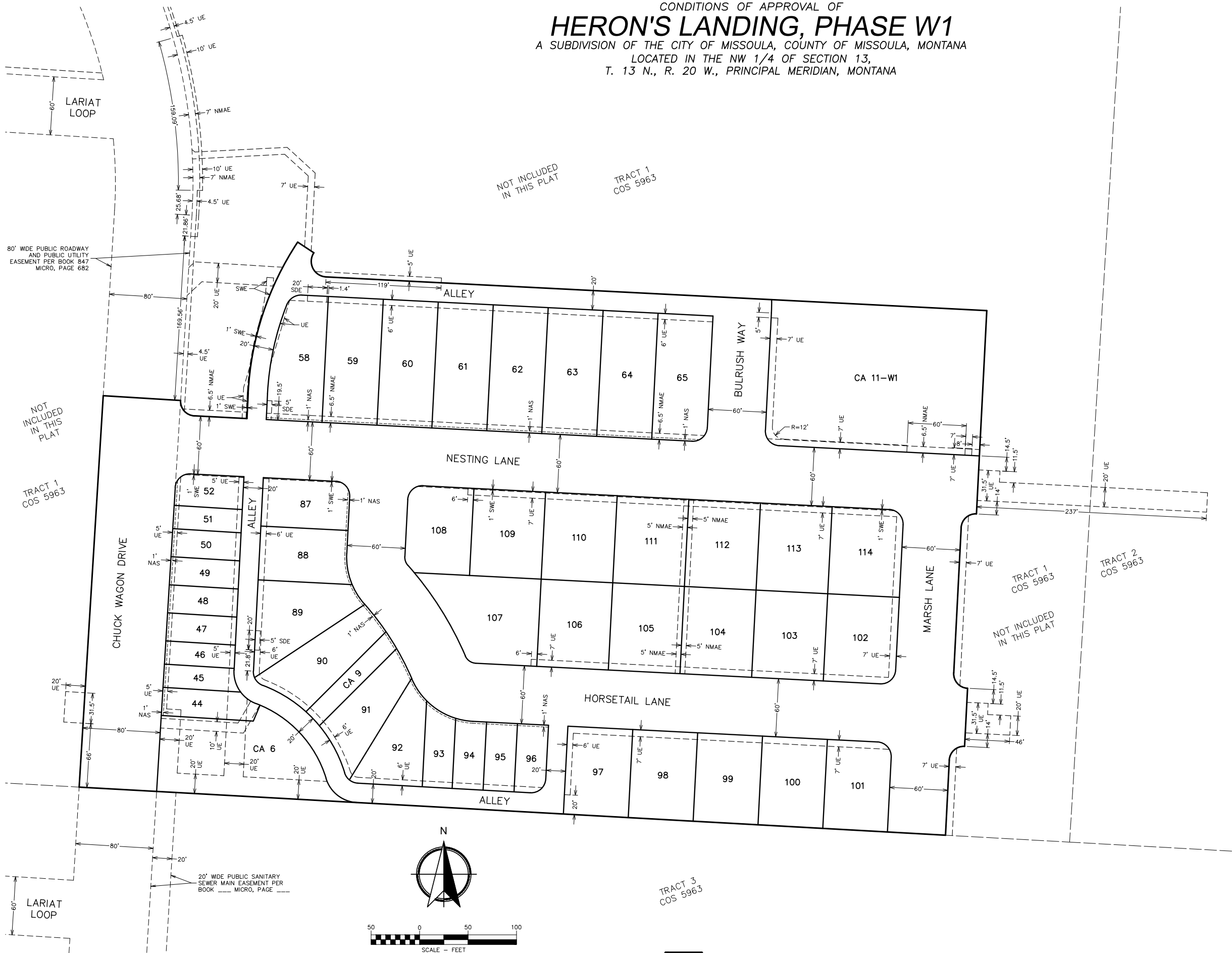


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PRELIMINARY
PLOTTED: 10/23/20
SAVED: 10/19/20

MISSOULA COUNTY TRACKING #20-_____

CONDITIONS OF APPROVAL OF
HERON'S LANDING, PHASE W1
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE NW 1/4 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA



LEGEND

UE	UTILITY EASEMENT
SDE	PUBLIC STORM DRAINAGE EASEMENT
SWE	PUBLIC SIDEWALK MAINTENANCE EASEMENT
NMAE	PUBLIC NON-MOTORIZED ACCESS EASEMENT
NAS	NO ACCESS STRIP (ACCESS CONTROL LINE)
CA	COMMON AREA
COS	CERTIFICATE OF SURVEY

CERTIFICATE OF LANDOWNER:

THE UNDERSIGNED HEREBY CERTIFIES THAT THE TEXT AND/OR GRAPHICS SHOWN ON THE CONDITIONS OF APPROVAL SHEET (SHEET 4 OF 4 OF THIS PLAT) REPRESENT REQUIREMENTS BY THE GOVERNING BODY FOR FINAL PLAT APPROVAL AND THAT ALL CONDITIONS OF SUBDIVISION APPLICATION FOR THIS PHASE OF THE SUBDIVISION HAVE BEEN SATISFIED; AND THE INFORMATION SHOWN IS CURRENT AS OF THE DATE OF THE CERTIFICATION REQUIRED IN ARM 24.183.1107(4)(b), AND THAT CHANGES TO ANY LAND USE RESTRICTIONS OR ENCUMBRANCES MAY BE MADE BY AMENDMENTS TO COVENANTS, ZONING REGULATIONS, EASEMENTS, OR OTHER DOCUMENTS AS ALLOWED BY LAW OR BY LOCAL REGULATIONS.

MULLAN ROAD PARTNERS L.L.C., A WYOMING LIMITED LIABILITY COMPANY

BY: _____

TITLE: _____

ACKNOWLEDGEMENT*****

STATE OF _____
COUNTY OF _____

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY

OF _____, 20____, BY _____, ACTING

IN THE CAPACITY OF _____ FOR MULLAN ROAD PARTNERS L.L.C., A WYOMING LIMITED LIABILITY COMPANY.

SS _____

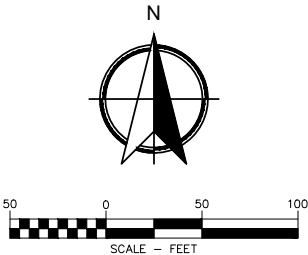
PRINTED NAME

THE FOLLOWING NOTES ARE PLACED HEREON AS REQUIRED BY THE CITY OF MISSOULA:

- 1) ACCEPTANCE OF A DEED FOR A LOT WITHIN THIS SUBDIVISION SHALL CONSTITUTE THE ASSENT OF THE OWNERS TO ANY FUTURE SID/RSID, BASED ON BENEFIT, FOR THE UPGRADING OF STREETS WITHIN THIS SUBDIVISION, INCLUDING BUT NOT LIMITED TO PAVING, CURBS AND GUTTERS, NON-MOTORIZED FACILITIES, STREET WIDENING AND DRAINAGE FACILITIES.
- 2) THIS PROPERTY IS IN THE AIRPORT INFLUENCE AREA AND SUBJECT TO THE REQUIREMENTS OF THE AIRPORT INFLUENCE AREA RESOLUTION. THE HERON'S LANDING SUBDIVISION MAY ALSO BE WITHIN AN EXTENDED APPROACH AND DEPARTURE ZONE FOR A PROPOSED SECOND RUNWAY AS SHOWN IN THE AIRPORT AUTHORITY'S 2004 PLAN AND LOT OWNERS SHOULD BE AWARE OF THE RESULTANT SAFETY RISK. LOT OWNERS SHOULD CONSULT THE AIRPORT LAYOUT PLAN AND ANY RELEVANT DOCUMENTS TO DETERMINE THE STATUS OF THE PROPOSED RUNWAY LOCATION AT THE TIME OF PURCHASE.
- 3) THERE ARE NO WATER RIGHTS ASSOCIATED WITH HERON'S LANDING LEGALLY DESCRIBED AS TRACTS 1 AND 2 OF CERTIFICATE OF SURVEY NO. 5963.

1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	13	13N.	20W.
<input type="checkbox"/>			
<input type="checkbox"/>			

SHEET 4 OF 4
DATE: OCTOBER 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 181101_FPLAT-W1.DWG
LAYOUT TAB: SHT4



WGM GROUP
24WWW.GMGROUP.COM

PRELIMINARY

PLOTTED: 10/23/20
SAVED: 10/19/20



WGM GROUP
WWW.WGMGROUP.COM

PRELIMINARY

PLOTTED: 10/6/20
SAVED: 10/6/20

TYPICAL SECTIONS

HERON'S LANDING PHASE W1

MISSOULA, MONTANA

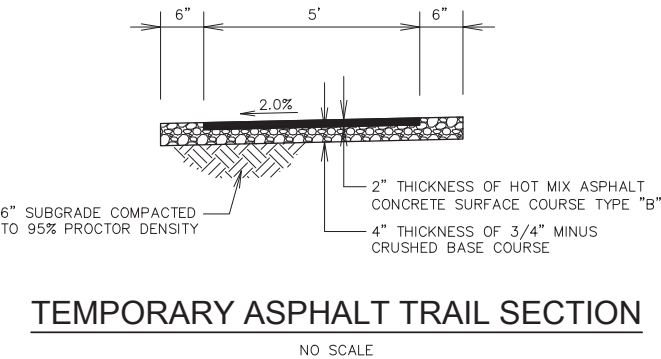
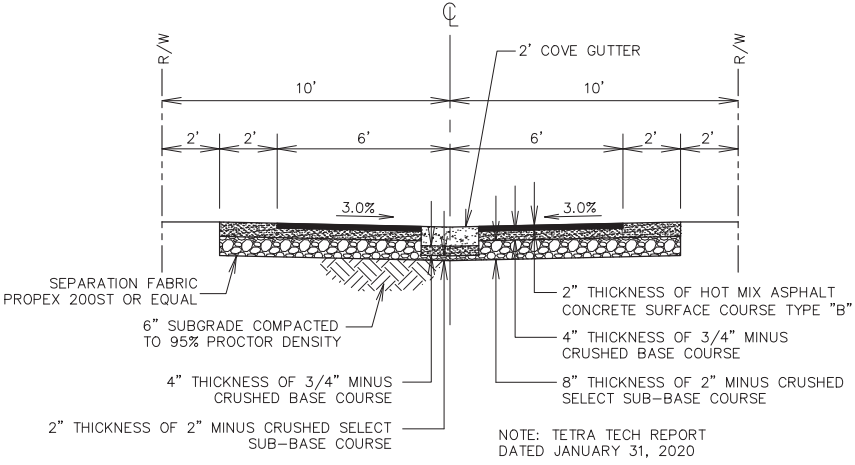
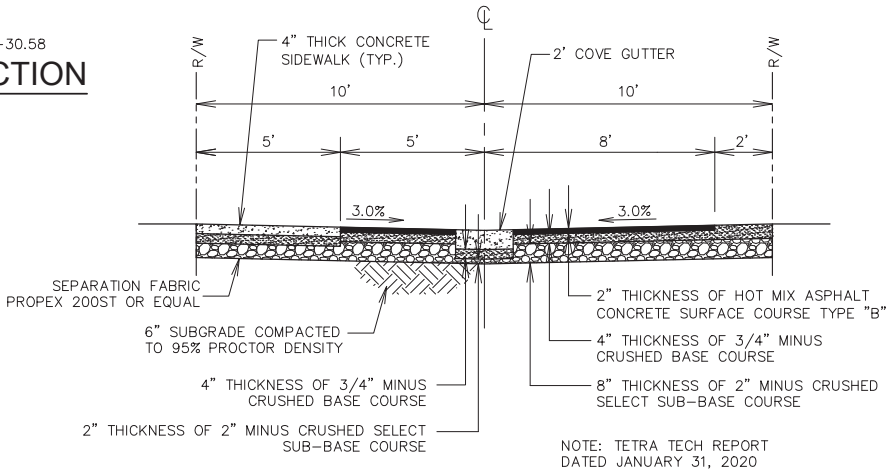
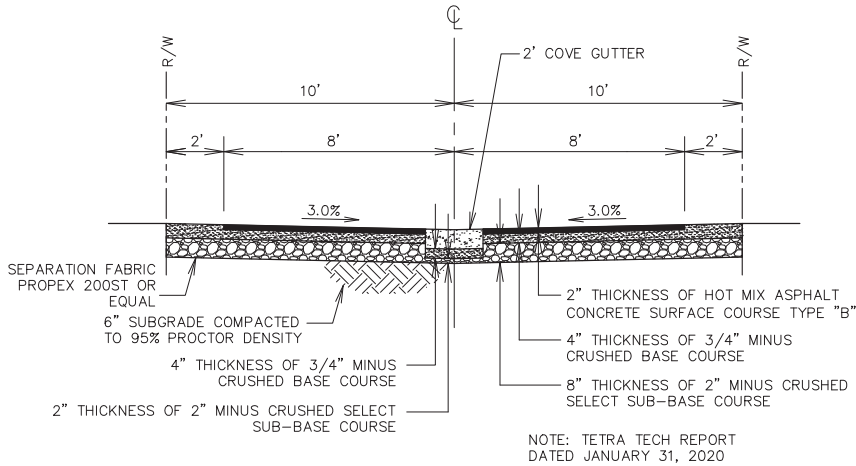
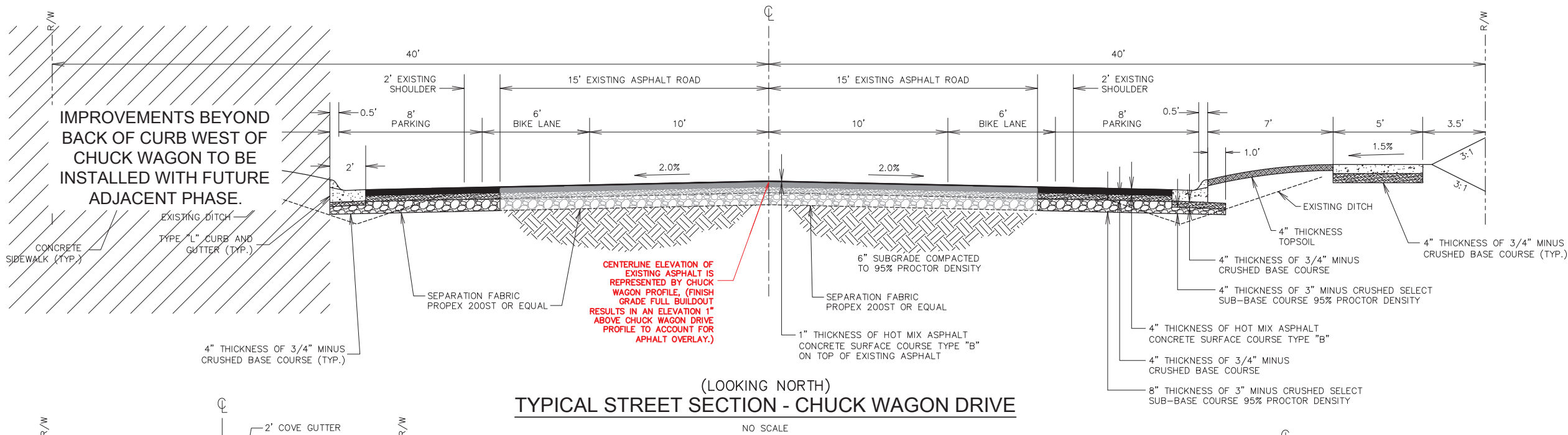
REVISIONS:		
NO.	DESCRIPTION	DATE

PROJECT: 18-11-01
LAYOUT: ST14
SURVEYED: WGM GROUP
DESIGN: DH
DRAFT: RH
APPROVE: RJS
DATE:

OCTOBER 2020

SHEET
ST14

FILE: W:\Projects\18101\CAD Data\Design\1810101ST.dwg

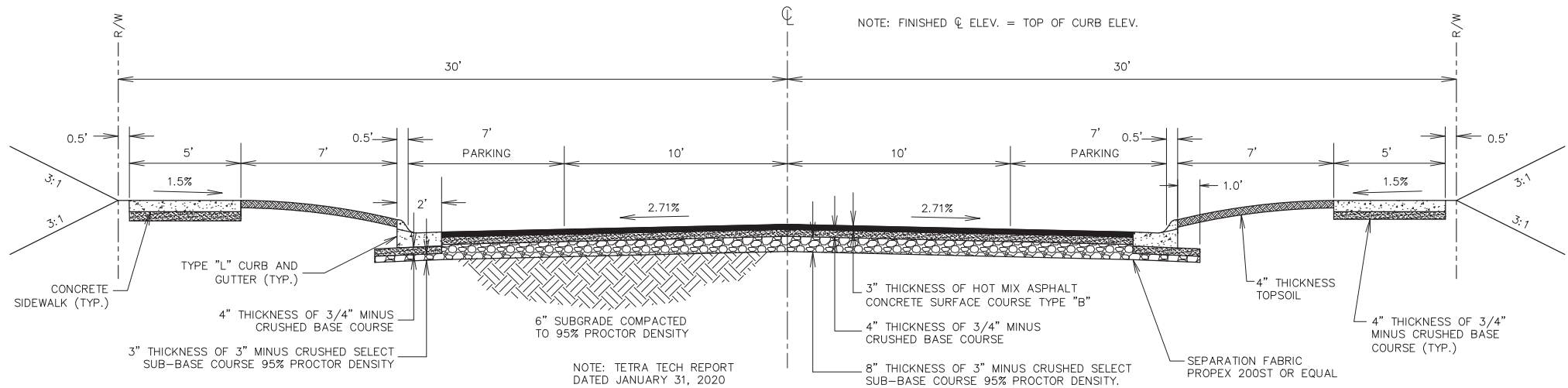




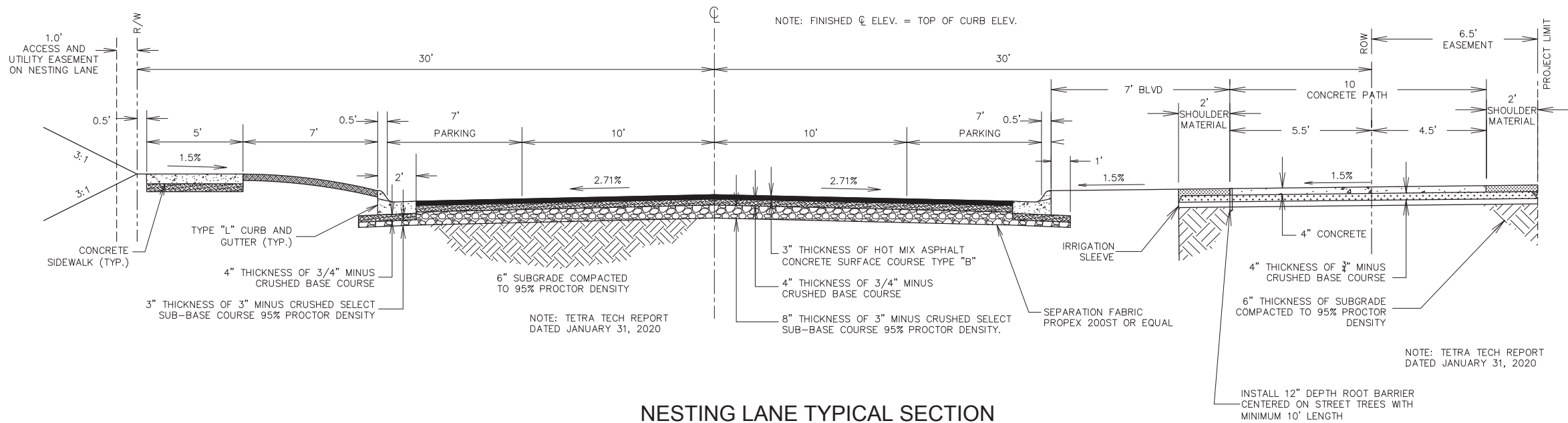
WGM GROUP
WWW.WGMGROUP.COM

PRELIMINARY

PLOTTED: 10/6/20
SAVED: 10/6/20



HORSETAIL LANE, BULRUSH WAY,
AND MARSH LANE
TYPICAL STREET SECTION - LOCAL RESIDENTIAL STREET
NO SCALE



NESTING LANE TYPICAL SECTION
NO SCALE

TYPICAL SECTIONS

HERON'S LANDING PHASE W1

MISSOULA, MONTANA

REVISIONS:		
NO.	DESCRIPTION	DATE

PROJECT: 18-11-01
LAYOUT: ST15
SURVEYED: WGM GROUP
DESIGN: DH
DRAFT: RH
APPROVE: RJS
DATE:

OCTOBER 2020

SHEET
ST15

FILE: W:\Projects\18101\CAD Data\Design\18101ST15.dwg

After recording return to:
William VanCanagan
Datsopoulos, MacDonald & Lind, P.C.
201 W. Main Street, Suite 201
Missoula, MT 59802
Phone: (406) 728-0810

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR HERON'S LANDING**

This Declaration of Covenants, Conditions, Restrictions and Easements for Heron's Landing (this "**Declaration**") is made this ____ day of _____, 2020 (the "**Effective Date**"), by Mullan Road Partners, LLC, a Wyoming limited liability company ("**Declarant**").

RECITALS

WHEREAS, Declarant is the owner of certain real property in Missoula County, Montana, legally described as Heron's Landing located in the SE ¼ of Section 12 and the N ½ of Section 13, T. 13 N, R.20 W., Principal Meridian, Montana hereto (the "**Property**"); and

WHEREAS, Declarant intends to develop single-family homes and townhouses upon the Property (the "**Project**"); and

WHEREAS, Declarant may develop and submit the Property to this Declaration in phases and in connection therewith may submit additional property to the provisions of this Declaration subsequent to the Effective Date; and

WHEREAS, Declarant wishes to provide a governance structure and a flexible system of standards and procedures for the overall administration, maintenance and preservation of the Property as a residential community; and

WHEREAS, Declarant desires to establish the Association to operate and maintain the Common Elements and to administer and enforce the provisions of this Declaration; and

WHEREAS, Declarant desires to establish certain covenants, conditions, restrictions and easements for the common benefit and enjoyment of the Owners from time to time in order to promote, preserve and enhance the value and desirability of the Property and the aesthetic quality of the improvements erected thereon and to facilitate the continuing care and maintenance thereof,

and in furtherance thereof, intends to submit the Property to the provisions of this Declaration;

NOW, THEREFORE, Declarant, as the owner of the Property, hereby declares that the Property is hereby submitted to the following covenants, conditions, restrictions and easements, which shall run with the land and bind and inure to the benefit of all Owners and any other Persons from time to time having or acquiring any right, title or interest in the Property or any portion thereof:

1. **Incorporation**. The foregoing recitals and all exhibits attached hereto are hereby incorporated into this Declaration by reference as if fully set forth in this Section 1.

2. **Definitions**. Capitalized terms used in this Declaration shall have the following meanings:

a. **“Additional Property”** means any part of the Property not included in the Plat, which may be submitted to this Declaration in whole or in part subsequent to the Effective Date pursuant to Section 3 below.

b. **“Appearance Review Committee”** has the meaning given that term in Section 15 below.

c. **“Assessments”** means the annual assessments, special assessments and specific assessments levied in accordance with this Declaration.

d. **“Association”** means the Heron’s Landing Homeowners Association and its successors and assigns.

e. **“Board”** means the Board of Directors of the Association.

f. **“Bylaws”** means the Bylaws adopted by the Association, as the same may be amended from time to time. To the extent the Association has not adopted Bylaws separate from this Declaration, then the applicable provisions of this Declaration shall be deemed to be the Bylaws of the Association. In no event shall any separate Bylaws adopted by the Association be inconsistent or in conflict with the provisions of this Declaration.

g. **“Common Elements”** means all of the common areas designated on the Plat and such other areas, elements, facilities and improvements designated as Common Elements to be maintained by the Association pursuant to this Declaration.

h. **“Common Expenses”** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the benefit of all Lots, including, but not limited to, the expenses incurred or anticipated to be incurred in carrying out the rights and responsibilities of the Association as set forth in Section 9.a below.

i. **“Declarant”** means Mullan Road Partners, LLC and any successor or assign designated as such by the preceding Declarant in writing.

j. **“Declaration”** means this Declaration, as it may be amended and supplemented from time to time.

k. **“Director”** means an appointed or elected member of the Board of Directors. Except for Directors appointed by Declarant, each Director shall be an Owner.

l. **“Effective Date”** has the meaning given to it in the preamble of this Declaration.

m. **“Home”** means any attached or detached single-dwelling residence or townhouse and its appurtenant improvements constructed or to be constructed on the Property (a primary single-dwelling residence and a so-called “accessory dwelling unit” located on the same Lot shall be considered to be a single “Home” for purposes of this Declaration).

n. **“Lot”** means any lot within the Property designated on the Plat as intended for development of a Home.

o. **“Owner”** means one or more Persons who hold record title to any Lot or an interest as a purchaser under a contract for deed for any Lot. “Owner” shall not include a Person holding an interest merely as security for the performance of an obligation, or a Person who is a seller under a contract for deed for any Lot. Where this Declaration imposes responsibility for conduct of an Owner and where otherwise appropriate given the context, the term “Owner” shall include such Owner’s occupants, tenants, guests, contractors, invitees and licensees.

p. **“Party Wall”** means a wall, including the foundations thereof, constituting the barrier and separation between any two attached Homes.

q. **“Person”** means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

r. **“Plans and Specifications”** has the meaning given that term in Section 15.b below.

s. **“Plat”** means the final Plat of Subdivision for the Property dated ____ and recorded in the public land records of Missoula County as Document No. _____, as amended from time to time, a copy of which is attached hereto as Exhibit “A”, together with any final plat or plats of subdivision hereafter recorded in the public land records of Missoula County for the Additional Property or any part thereof.

t. **“Project”** has the meaning given to it in the recitals.

u. **“Property”** means the real property in Missoula County, Montana, legally described in the recitals above.

v. **“Turnover Date”** has the meaning given that term in Section 7.a below.

3. Submission of Additional Property. This Declaration shall apply to that portion of the Property depicted on the Plat, and to Additional Property to the extent the Additional Property is submitted to the provisions of this Declaration. Declarant may, in its sole discretion and without the further consent of the Board, the Association or the Owners, submit all or any part of the Additional Property to this Declaration by duly executing and recording an amendment or supplement to this Declaration in the public land records of Missoula County, whereupon such

Additional Property or portion thereof so submitted, including all Lots and Common Elements therein, shall constitute part of the “Property” for all purposes of this Declaration.

4. Formation of the Association. The Association has been, or will be, formed as a non-profit corporation under Montana law having the name the “Heron’s Landing Homeowners Association” and shall be the governing body for the Association and all Owners for the maintenance, repair, replacement, administration and operation of the Property. The Association shall not be deemed to be conducting a for-profit business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of the Owners in accordance with this Declaration.

5. Association Membership. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot, except as may otherwise be required by law. Ownership of a Lot shall be the sole qualification to be a member of the Association. Each Owner, by acceptance of a deed or other conveyance of a Lot, thereby becomes a member of the Association, whether or not a declaration of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Where a Lot has multiple Owners, such Owners shall designate in writing a single Person to act as the representative member on behalf of all such Owners with regard to Association membership, and in the absence of such a written designation, the Declarant, Board and Association may rely upon the action, representation or vote by any one of such Owners and may hold such action, representation or vote as conclusively binding upon all Owners of such Lot.

6. Board of Directors.

a. The Board shall be the governing body of the Association. Declarant shall have the right to select and appoint the Persons who shall initially serve as Directors or exercise the powers of the Board as provided herein. The initial Board designated by Declarant shall consist of not less than one (1) Director who shall serve without compensation. Such initial Board shall serve for a period commencing on the date the Association is formed by the filing of the articles of incorporation in the office of the Secretary of State of Montana and ending upon the election of Directors at the initial meeting of the Association membership.

b. At the first meeting of the Association membership provided for in Section 7.a below, the Owners shall elect five (5) Directors who shall replace those Directors appointed by Declarant. Each Director’s term of office shall be three years, except that the Directors elected at the first annual meeting shall have terms of one (1), two (2) and three (3) years, such that one Director position expires and is up for election each year thereafter. All Directors shall serve without compensation.

c. Any Director may be removed from office by the affirmative vote of the Owners representing two-thirds (2/3) of all Lots, provided that Declarant’s prior written consent shall be required to remove any Director prior to the Turnover Date. Vacancies in the Board shall be filled by the majority vote of remaining Directors, or if no majority prevails, by the Owners in accordance with the procedures for electing Directors set forth herein.

d. The Board shall meet at least once annually but may meet more often at its discretion. A majority of Directors may call for a special meeting of Board. Notice shall be

given to each Director not less than ten (10) days prior to each regularly scheduled and special meeting of the Board. The presence of a majority of Directors constitutes a quorum. A majority of a quorum is required for Board action.

e. The Board shall elect from among its members a President who shall preside over all meetings and who shall be the chief executive officer of the Board and Association, a Secretary who shall keep minutes of all meetings, a Treasurer, and such other officers as the Board shall see fit. Officers shall serve without compensation.

7. Meetings of the Association Membership.

a. The initial meeting of the Association membership shall be held upon not less than ten (10) days' prior written notice from Declarant to all Owners. Such notice must be given no later than the earliest to occur of: (a) one hundred twenty (120) days following the date upon which Declarant no longer holds any interest in the Property or the Additional Property, or (b) such earlier date as may be elected by the Declarant in its sole discretion or required by applicable law (the "**Turnover Date**").

b. There shall be an annual meeting of the Association membership on or about each anniversary of such initial meeting, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board. Special meetings may be called at any time for any purpose consistent with this Declaration on not less than ten (10) days' notice from a majority of the Board, or by the Owners representing at least one-third (1/3) of all Lots.

c. On matters put to a vote of the Association membership, there shall be one vote per Lot, except that Declarant shall have five votes for each Lot it owns. The presence in person or by proxy of the Owners holding a majority of the voting power in the Association shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken by a majority of a quorum. In the event a quorum is not present at any meeting of the Association membership, another meeting may be called by notice from the Board.

8. Powers of the Board. Except as expressly otherwise provided by the Association's articles of incorporation or this Declaration or otherwise required by law, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in the Board and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of the Owners. Without limiting the foregoing, the Board, acting in accordance with Section 6 above, shall have the following powers:

a. To levy Assessments as set forth in Section 11 below.

b. After giving at least ten (10) days prior written notice to all Owners, to adopt rules and regulations governing the use, maintenance and administration of the Common Elements and the Property for the health, comfort, safety and general welfare of the Owners and for the protection of property values.

c. To enter into contracts on behalf of, and to purchase or secure in the name of, the Association any materials, supplies, insurance, equipment, fixtures, labor, services and

advice required by the terms of this Declaration, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and the Property.

d. To enter upon, and to have its contractors, subcontractors and agents enter upon, the Common Elements and the exterior of any Lot as may be required to exercise all of the rights and obligations granted to or imposed upon it pursuant to this Declaration.

e. To maintain one or more bank accounts (granting authority as the Board shall desire to one or more Persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.

f. To procure appropriate casualty and liability insurance policies for the Association, the Board and the Common Elements.

g. To borrow money on behalf of the Association provided, however, that the Board shall not secure any such borrowings by encumbering any part of the Property or any Lots. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the Assessments due the Association hereunder.

h. To enter into a contract for the management of the Property with a professional manager or management company on such reasonable terms as the Board shall determine; provided that any such contract shall have a term not to exceed two years, and shall be terminable by the Association with cause upon not more than 30 days written notice.

i. To acquire and hold real property constituting Common Elements, and to acquire, hold, and dispose of tangible and intangible personal property.

j. To take such other action as may be required to enforce the provisions of this Declaration and the rules and regulations made herein.

k. To exercise any and all other powers, rights and authorities of a non-profit corporation under Montana law for the common benefit of the Property and the Owners.

9. Maintenance Responsibilities of the Association and the Owners.

a. Common Elements. The Association, at its expense, shall be responsible for the maintenance, repair, replacement and resurfacing of, and, where applicable, snow removal from, all Common Elements, including, without limitation:

- i. common areas and open spaces;
- ii. walkways between Lots providing connections between and among streets, parks and open spaces;
- iii. parking lots;
- iv. entry monuments and directional signage; and

- v. the shared use path depicted on the Circulation Plan for the Property on file with the City of Missoula, other recreational trails or paths located in common areas outside of rights-of-way, and non-motorized access easements.

In addition, all accessory structures and uses constituting Common Elements shall be approved and maintained by the Association.

b. Public Way Improvements. The Association, at its expense, shall be responsible for snow removal from the sidewalks on both sides of George Elmer Drive within or abutting the Property. Excepting the foregoing limited responsibility of the Association, each Owner shall be responsible for all (i) maintenance (including, without limitation, snow removal), repair, and replacement of sidewalks adjacent to such Owner's Lot in accordance with City ordinances and regulations; and (ii) tree maintenance such as installation, maintenance, replacement, treatment and boulevard landscaping including species selection and placement within public rights-of-way require tree maintenance permit applications to be signed and approved by the City Forester or his or her designee. All tree work must be performed in accordance with City of Missoula ordinances and regulations.

c. Responsibility of Owners. Except for those improvements which are the Association's responsibility as provided in Section 9.a or 9.b above, Each Owner shall be solely responsible for, at such Owner's expense, all maintenance, repair and replacement of such Owner's Lot or Home, including, without limitation, all buildings, landscaping, fencing, irrigation systems, driveways, walkways, utility facilities, and all other improvements, fixtures, finishes, furnishings and equipment upon or within such Owner's Lot or serving such Owner's Lot or Home exclusively. Each Owner shall keep his or her Home and Lot in good order and repair including, without limitation, repainting and replacing elements of the Home in disrepair and keeping landscaping and lawns properly watered and trimmed. Each Owner shall maintain his or her Lot in conformity with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan attached hereto as Exhibit B and shall be responsible for the control of noxious weeds and vegetation on the entirety of such Owner's Lot.

d. Limitation of Association Liability. Nothing contained in this Declaration shall be construed to impose a contractual liability upon the Association for maintenance, repair or replacement of the Common Elements or any other portion of the Property, but the Association's liability shall be limited to damages resulting from gross negligence or willful misconduct. Further, no Owner shall have a claim against the Association for any work ordinarily the responsibility of the Association, but which the Owner has performed or paid for, unless such an arrangement shall have been duly approved in advance by the Board.

10. Liability of Declarant, the Board and Officers. None of Declarant, the Directors or the officers of the Association shall be liable to the Association or the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever, and, to the fullest extent permitted by law, the Association and the Owners shall indemnify, defend and hold harmless Declarant and each of the Directors and officers of the Association from and against, all claims,

demands, costs, fees, suits, judgments and other liabilities arising out of acts or omissions of Declarant, the Directors or the officers of the Association acting pursuant to this Declaration, unless such act or omission is found by a court of competent jurisdiction to be ineligible for indemnification under applicable law.

11. Assessments.

a. In General; Lien for Assessments. Each Owner, by acceptance of a deed to, or other interest in, a Lot, whether or not it shall be so expressed in any such deed or other conveyance for such Lot, hereby covenants and agrees to pay Assessments and other costs and fees levied pursuant to this Declaration. Such Assessments, costs and fees, not paid when due, together with interest thereon at the rate of twelve percent (12%) per annum, late fees in the amount of five percent (5%) of the total amount past due, and costs of collection (including, without limitation, attorneys' fees incurred in respect thereto whether or not suit shall be instituted), shall be a charge and a continuing lien upon the Lot against which such levy is made.

b. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Owners and, in particular, for (i) payment of Common Expenses; (ii) the establishment of such reasonable reserves as the Board deems appropriate; (iii) the performance of the duties of the Board as set forth in this Declaration, including the enforcement of the provisions thereof; and (iv) in general, carrying out the purposes of the Association as stated herein and in the articles of incorporation of the Association.

c. Annual Assessments. Each year on or before December 1st, the Board shall estimate the total amount necessary to pay the Common Expenses for the ensuing calendar year (which estimate shall include a reasonable amount considered by the Board to be desirable for reserves). Such amount shall be apportioned equally among all Lots and, on or before the fifth (5th) day of each calendar month of said year, each Owner shall be liable for and obligated to pay one-twelfth (1/12) of such Owner's share of the total annual assessment.

d. Special Assessments. The Board may at any time or from time to time levy special assessments for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, service, labor or materials not provided for in the annual assessment for the then current calendar year. Special assessments may be approved by an affirmative vote of a majority of the voting power in the Association at an annual or a special meeting of the Association membership. Special assessments shall be apportioned equally among all Lots.

e. Specific Assessments. The Board shall have the power to levy specific assessments against a particular Lot and the Owner(s) thereof (i) to cover costs incurred in bringing a nonconforming Lot into compliance with this Declaration or any rules or regulations of the Association; and/or (ii) to cover costs or liabilities incurred as a consequence of the conduct of such Owner(s).

f. Nonpayment of Assessments. Any Assessment which is not paid when due shall be deemed delinquent, with no requirement for notice to the delinquent Owner. If an Assessment is not paid within five (5) days after the delinquency date, such Assessment shall be subject to interest and late fees as provided in Section 11.a above from the delinquency date. If an Owner fails to pay when due any Assessment, charge, fee, cost, or other amount authorized to be charged to the Owner hereunder, such amount shall constitute a default hereunder and a lien on the Lot of such Owner. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce collection as permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses, shall be charged to and assessed against such Owner (and shall constitute a personal liability of such Owner) and shall be added to and deemed part of that Owner's Assessment.

g. Subordination of Lien to Mortgage. The lien for Assessments provided for herein shall be subordinate to the lien of any prior, recorded first mortgage or trust deed on a Lot made to any bona fide lender not related to or affiliated with the Owner of said Lot, except for the amount of any Assessments which becomes due and payable from and after the date such lender obtains title to or possession of such Lot pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such transfer of title or possession shall not relieve any Owner from personal liability for any Assessments.

h. Failure to Levy or Notify. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments.

i. No Withholding of Payment. No Owner shall be entitled to withhold, offset or abate Assessments for any reason without prior approval of the Board. Specifically, but without limitation, no Owner shall withhold Assessments due to interruption to services or due to an Owner's failure or refusal to benefit from Common Elements or Association services.

j. Commencement of Assessments. The obligation for Assessments with respect to each Lot commences upon the sale or transfer of such Lot by the Declarant to any Person not succeeding to the rights of Declarant hereunder. Notwithstanding any provision of this Declaration to the contrary, Lots owned by Declarant are not subject to Assessments, provided, however, Declarant shall contribute to the payment of Common Expenses as they are incurred in proportion to the number of Lots owned by Declarant.

12. Easements. Declarant hereby declares, grants and establishes the following non-exclusive, perpetual easements:

a. Use of Common Elements. Subject to the provisions of this Declaration and the rules and regulations that may be adopted by the Board from time to time (which rules may include, without limitation, restrictions on the nature and extent of permitted uses of the Common Elements), the Declarant, the Association, and each Owner shall have the non-exclusive right to use the Common Elements for their intended purposes in common with

the all other Owners.

b. Easement for Maintenance and Enforcement. A blanket easement over the Property is hereby granted in favor of Declarant and the Association for the purpose of exercising their respective rights and performing their respective duties under this Declaration. The authorized representatives of Declarant and the Association or the Board, or of the management company for the Property, shall be entitled to reasonable access to, over and through the Common Elements and Lots as may be required in connection with the operation, maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving the Common Elements.

c. Utilities. Subject to review and approval of utility facility plans by the Declarant or the Board, as applicable, an easement is hereby granted in and to the Common Elements in favor of the City of Missoula and utility companies for purposes of providing the Property with necessary and appropriate utility services, including a right of reasonable access in the Common Elements to install, operate, maintain, repair and replace facilities providing such services.

13. Covenants, Conditions and Restrictions on Use. The Property shall at all times be subject to the following covenants, conditions and restrictions on use:

a. Zoning. The Property is subject to the zoning ordinances and regulations of the City of Missoula, as the same may be amended from time to time, and each Owner hereby covenants and agrees to keep his or her Lot and Home in compliance with said ordinances and regulations at all times.

b. Residential Use. All Lots shall be known and described as residential Lots and no business, trade, or commercial activity of any kind or description shall be conducted thereon, other than lawful home occupations that are not advertised with signage on the Property and, with the exception of children's daycares, do not involve clients or customers visiting the Home.

c. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done thereon which constitutes an annoyance or nuisance to the neighborhood.

d. Manufactured Homes. High-quality, factory-built buildings may be considered and approved by the Appearance Review Committee. Declarant shall not be restricted from maintaining trailers on the Property during construction, nor from manufacturing or assembling components of structures off-site.

e. Trash and Garbage. No part of the Property shall be used or maintained as a dumping ground, nor shall any salvage, rubbish, trash, garbage or other waste be allowed to accumulate except in sanitary containers which shall be emptied on at least a weekly basis by a local garbage collection firm. All garbage shall be stored in containers of metal, plastic, or other suitable material which have sufficiently tight-fitting covers to prevent the escape of noxious odors and to prevent entrance by animals. All trash receptacles shall be kept in the alleys or indoors only.

f. Parking. No vehicles shall at any time be placed or parked so as to impede, obstruct or interfere with pedestrian or vehicular traffic along any street, alley, sidewalk, trail or right-of-way within the Property. Trucks exceeding one ton capacity, semi-tractors, semi-trailers, mobile homes, equipment, unsightly vehicles, recreational vehicles such as motor homes, travel trailers, fifth wheel trailers, pickup truck campers, boats, snowmobiles, or utility trailers are not permitted on the streets, alleys or upon the front or side yards of any Lots for more than twenty-four (24) hours unless stored in the backyard of a Lot, a garage or other structure as approved by the Appearance Review Committee.

g. Outdoor Storage. Outdoor storage of personal property is not permitted except outdoor furniture fit for outdoor use unless approved by the Appearance Review Committee. Such outdoor furniture must be kept in good order and repair. Storage sheds and playhouses may be located in backyards only. Storage sheds and playhouses must be constructed of materials and with design standards and color schemes similar to those of the dwelling they serve. Storage sheds may not exceed one hundred (100) square feet and cannot exceed a height of eight feet (8') from grade to the highest point of the structure.

h. Animals. There shall be no livestock whatsoever allowed upon the Property. No more than two dogs or two cats or one cat and one dog may be kept on each Lot. No cats or dogs shall be permitted or allowed to run at large. Any kennel must be located in the backyard area, out of sight from other Lots. No commercial breeding operation may be maintained on the Property. Dogs should be kept in an enclosed structure when not under the direct supervision of its owner. Excessive barking will be considered a nuisance. Pet food shall be stored indoors.

i. Temporary Dwellings. No structure of a temporary character shall be constructed, placed or used on any Lot at any time as a residence or otherwise, nor shall any building be occupied for residential purposes until it is completely finished in accordance with the plans approved by the Appearance Review Committee. Campers, trailers, mobile homes or recreational vehicles shall not be used as either permanent or temporary dwellings. Nothing herein shall prohibit Declarant from maintaining construction trailers and other temporary structures on the Property.

j. Wood Burning Devices. No solid fuel burning devices of any type shall be permitted or used on the Property. This specifically includes, but is not limited to, fireplaces, wood burning stoves, pellet stoves, fireplace inserts, or similar devices. Charcoal grills are permitted in back yards only.

k. Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted on any Lot, excepting customary realty signs upon Lots that are for sale and political campaign signs that are placed not more than sixty (60) days prior to, and removed not more than ten (10) days following, the date of the election to which such signs pertain. All signs shall be subject to applicable City of Missoula regulations. Nothing herein shall prohibit Declarant from installing and maintaining any type or number of signs relating to the development, marketing or sale of the Property or any part thereof.

l. Mining. No mining or mineral removal activity, including the removal of gravel or

sand, shall be permitted on the Property except for as necessary for construction of the Project.

m. Wildlife. The Declarant advises the Owners of the potential problems associated with the occasional presence of bears, mountain lions, deer and other wildlife. Owners are advised to protect vegetation from damage, to confine their pets and to properly store garbage and other items that might attract wildlife. Artificial feeding of wildlife is prohibited. Owners should refer to Montana Fish Wildlife and Parks brochure, entitled “Living with Wildlife” and exert their best efforts to adhere to the information and practices provided therein.

n. RSID/SID Waiver. Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for the upgrading of streets within this subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, drainage facilities, and maintenance.

o. Weed Management. All weed management conducted on the Property shall conform to the Weed Management and Revegetation Plan as set forth in Exhibit “B”, attached hereto.

14. Home Construction and Appearance Review Committee. The following regulations shall apply to the construction of Homes and all other improvements upon the Property:

a. Type of Residential Structures. No residential structures shall be erected, altered, placed or permitted to remain on any Lot other than one Home (including a primary single-dwelling residence and one so-called “accessory dwelling unit”). All Homes shall be constructed of new materials. However, suitable used materials or recycled materials, such as used brick or beams, may be utilized for aesthetic purposes and but must have prior approval by the Appearance Review Committee.

b. Residential Structure Size. The ground floor area of each detached single-dwelling residence, exclusive of open porches and garages, shall be not less than eight hundred (800) square feet for a one-story house and one thousand one hundred (1,100) square feet for a one and one-half story or two-story house. Attached townhouses and accessory dwelling units shall not be subject to this requirement.

c. Re-Subdivision. No Lot may be further subdivided.

d. Maintenance of Original Design. No Home shall be renovated or remodeled so as to change the external appearance from its original design (including, without limitation, repainting or retaining of the exterior) without prior approval of the Appearance Review Committee.

e. Garages. Garages may be attached to the Home or constructed as a detached structure. All garages must be constructed with materials and design standards and color schemes similar to and compatible with those of the Home they serve. No open carports are permitted.

- f. Boundary Control Monuments. It shall be the responsibility of each Owner to provide for immediate professional replacement of any survey monuments that are removed or become lost from his or her Lot.
- g. Seeding and Planting. Within six (6) months of the completion or occupancy of each Home, whichever occurs first, the Owner thereof shall seed, plant and landscape the entire Lot in accordance with plans approved by the Appearance Review Committee.
- h. Fences. No fence or comparable structure shall be constructed or placed on any Lot until after the height, color, type, materials, design and location thereof shall have been approved by the Appearance Review Committee. No fence shall be allowed in the front of any Home. No fence shall be placed outside of a property line. The height of such fences shall be no greater than six feet (6'). Installation and maintenance shall be in conformance with existing City regulations.
- i. Decks. Decks are permitted in backyard and side yard areas subject to the prior approval of the Appearance Review Committee.
- j. Grade. All buildings shall be situated such that the finished grade has positive drainage away from buildings.
- k. Utility Connection Costs. The Owner of each Lot shall pay all utilities and utility connection costs for such Lot including, without limitation, water, sewer, electricity, gas, internet and cable television.
- l. Utilities, Wiring and Antennas. All utility service lines shall be located underground. No exterior television or radio antennas, or satellite dishes larger than one meter in diameter shall be placed or permitted to remain on any Lot and shall be located so as to be as inconspicuous as possible, at such locations as approved by the Appearance Review Committee.
- m. Transformers. Electrical above-ground transformers may be located on the Property by Declarant or its electrical contractor. There must be a ten-foot (10') clearance between transformers and any combustible structures or walls. A non-combustible wall or surface must be constructed a minimum of two feet (2') from the transformer of 500kVA, or less, and a minimum of three and one-half feet (3.5') from transformers of 750kVA, or more.
- n. Radon Mitigation. The EPA has designated Missoula County as having a high radon potential (Zone 1). All Homes should incorporate passive radon mitigation systems into the design.
- o. Address Signs. All Owners shall post address signs visible from the street. Address numbers must be placed on a contrasting background. All signs must be approved by the Appearance Review Committee and of a size and design as meets the requirements of the Missoula City Engineer and Missoula City Fire Department standards.
- p. Basements. Basements shall be subject to prior approval of the Appearance Review Committee and may be prohibited if it is determined there could be adverse impacts to or

from adjacent irrigation ditches. Floor-to-ceiling height of basements shall not exceed nine feet (9').

q. Water Wells. The Lots are supplied by a public water system and service. In order to protect the aquifer and the public water supply, no individual water wells shall be allowed on any Lot. This restriction does not apply to facilities located upon and serving the Common Elements.

r. Water Ditches and Water Rights. The Lots have no surface water rights. To the extent water ditches adjoin any Lot, the water in such ditches is not the property of the Owner nor the Association, and they are not allowed to use such water for any purpose or to interfere with the delivery of water through such ditch. No structures (e.g., bridges, barriers or diversions) or vegetation shall be placed in a manner that will interfere with the construction, operation, maintenance, repair and inspection of any water ditch. In the event of an emergency concerning a ditch (e.g., ditch berm breaks or leaks, the ditch is blocked and starts overflowing its banks), the affected Owner should contact emergency services at 911.

s. Energy Efficiency. Builders should consider using energy efficient building techniques such as building orientation to the sun, appropriately sized eaves, wind breaks, super insulation techniques, day lighting, passive solar design, photovoltaic cells, and ground source heat pumps for heating/cooling. Ground source heat pumps are usually more efficient and so create less pollution than other systems for heating and cooling. Increased energy efficiency reduces air pollution, reduces the need for people to use heating methods that pollute more and helps protect the consumer from energy price changes.

15. Appearance Review Committee.

a. Appointment. Upon the Turnover Date, the Board shall appoint an Appearance Review Committee consisting of three (3) members. No person shall be a member of the Appearance Review Committee who is not actively engaged and/or experienced in land development, land planning, architecture, landscape architecture, exterior or interior design, engineering, or such other fields that would lend background experience to such person to responsibly and reasonably judge the intent of these restrictions and the conformity of the submitted plans and specifications to this Declaration. The members of the Appearance Review Committee shall serve without compensation, provided, however, where the Board determines that there are not a sufficient number of Owners who have the requisite experience and are willing to serve on the Appearance Review Committee, then the Board may approve of the payment of reasonable consulting fees to Persons who are not Owners but who have the requisite expertise and are willing to serve on the Appearance Review Committee.

b. Submission of Plans and Specifications. No site work or preparation shall be commenced, no building or other structure shall be started, constructed, installed, erected or maintained on any Lot, nor shall any addition, renovation or remodeling thereto or change or alteration therein, be made, until complete Plans and Specifications therefor have

been submitted to and approved in writing by the Appearance Review Committee. Such plans and specifications shall include the following (collectively, the “**Plans and Specifications**”):

- i. a dimensioned site plan including Lot boundaries and the location of all existing and proposed structures, improvements, walkways, driveways, and parking areas;
 - ii. a site grading and contour plan;
 - iii. a utility plan showing the location of all existing and proposed utility facilities serving the Lot;
 - iv. schematic floor plans with dimensions and floor areas;
 - v. elevations of all sides of each structure including specifications for all exterior building materials, fixtures, finishes, and colors;
 - vi. Material samples for exterior siding, paint and stain samples, roofing materials and others samples as deemed necessary by the Appearance Review Committee.
 - vii. a landscaping plan, including any required street trees;
 - viii. such other information as the Appearance Review Committee may reasonably request in order to properly review the project contemplated by the Plans and Specifications.
- c. Standard of Review. The Plans and Specifications shall conform to the Heron’s Landing Design Guidelines, as the same may be amended by Declarant (or the Board, following the Turnover Date) from time to time. Any application for approval submitted to the Appearance Review Committee shall include an itemized statement from the Owner’s architect detailing how the Plans and Specifications conform to such design guidelines.
- d. Review of Plans and Specifications. The Appearance Review Committee may require the payment of a reasonable fee application fee for review of Plans and Specifications, which shall be deposited into the Association’s general fund. Approval or disapproval by the Appearance Review Committee shall be in writing. A denial shall be accompanied by specific reasons for such denial. If the Appearance Review Committee fails to approve or deny a written request for approval within sixty (60) days of the submission of all required Plans and Specifications and payment of required fees, then the Appearance Review Committee shall be deemed to have approved the submitted Plans and Specifications. The Appearance Review Committee shall not be liable to any Owner for any damage, loss or prejudice suffered as a result of the performance by the Appearance Review Committee of its responsibilities hereunder, provided the Appearance Review Committee has acted in good faith. The Appearance Review Committee will not review the Plans and Specifications for, and shall have no liability whatsoever relating to,

compliance with applicable codes and regulations, the quality of design or materials, the adequacy of space or facilities, the integrity of structures or enclosures, or the existence of design or construction defects.

e. Construction. All construction shall be undertaken in substantial conformance with the Plans and Specifications approved by the Appearance Review Committee. Any material changes to or departures from the Plans and Specifications following approval by the Appearance Review Committee shall require review and approval of the Appearance Review Committee according to the procedures provided for in this Declaration.

16. Party Walls. The provisions of this Section 16 shall apply to any and all attached Homes constructed upon the Property.

a. Rights. Each Owner shall have the obligations, rights and privileges set forth in this Section, as well as those not inconsistent herewith, embraced within the general rules of law regarding party walls. Each Owner shall have the right to use Party Walls for support of such Owner's Home, including any replacement thereof, and the rebuilding of a Party Wall, including all pipes, conduits and ducts located herein.

b. Restrictions. Each Owner shall refrain from using Party Walls in any manner that interferes with the equal use and enjoyment thereof by other Owners. No openings shall be made through a Party Wall other than for ordinary wall-mounted furnishings and decorations. Except for wall-mounted televisions, wall-mounted or in-wall devices that could cause noise or vibration, such as speakers, are expressly prohibited in and on Party Walls. No Owner shall take any action that diminishes the structural integrity of such Party Wall, its fire resistancy, or its sound-deadening quality.

c. Damage. If any Party Wall is damaged or destroyed due to the act or omission of an Owner, then such Owner shall, at its own cost, promptly repair or reconstruct the same to a condition at least as good as that which existed prior to such damage or destruction in accordance with plans approved by the Appearance Review Committee. If such Owner shall fail, within a reasonable time after such damage or destruction, to perform such repair or reconstruction, the Board may cause such repair or reconstruction to be performed, and the cost thereof, along with all other reasonable costs and expenses incurred by the Board, the Association, and other Owners in connection with such damage or destruction, shall be charged to the Owner who, through act or omission, caused such damage or destruction.

d. Disagreement. In the event of a disagreement between the Owners of attached Homes with respect to their Party Wall rights and obligations, upon the written request of either Owner, the matter shall be adjudicated by the Board, whose decision with respect thereto shall be final and binding.

17. Airport Influence/Affected Area. The Property is in the Airport Influence/Affected Area and subject to the requirements of the Airport Influence Area Resolution. The Property may also be within an Extended Approach and Departure Zone for a proposed second runway as shown in the Airport Authority's 2004 Plan and all Owners should be aware of the resultant safety risk. Owners should consult the Airport Layout Plan and any relevant documents to determine the status

of the proposed runway location at the time of purchase. The placement and construction of any proposed second runway is subject to prior governmental approval.

The portion of the Property that is located within the Missoula County Airport Influence/Affected Area is subject to the requirements of the Missoula County Airport Influence/Affected Area Resolutions. The resolutions that created the Airport Influence Area were adopted by the Board of County Commissioners for Missoula County pursuant to resolution No. 78-96 and amended by Resolution No. 78-187 dated July 5, 1978 and December 6, 1978, respectively, and recorded in Book 121 of Micro Records, page 1391 (Resolution 78-96), Book 135 of Micro Records, page 474 (Amendment by Resolution 78-187) and Book 749 of Micro Records, Page 1077 (Amendment by Resolution 2005-033). The limitations and restrictions set out in these documents should be reviewed carefully prior to purchase by all prospective purchasers of Lots. Prospective purchasers and Owners are advised that the operations at the airport may change and/or expand in the future, thereby changing and/or expanding the impacts felt on the portion of the Property subject to the Avigation Easement. Prospective purchasers and Owners are advised and should consider before purchasing a Lot that noise, vibration, dust, fumes, smoke, vapor and other such similar effects from aircraft may occur, which may cause inconvenience or annoyance that may vary from Lot to Lot and that may affect people in different ways or extent. Federal funding for soundproofing, other mitigation of these impacts, or for acquisition of these properties is not available at present, nor in the future. The provisions of paragraph 3 of the above-described Avigation Easement executed by the Declarant provides for a full waiver and release by each Owner and Declarant of any right or cause of action which it now has or may have in the future against the Missoula County Airport Authority, its successors and assigns, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor or other similar effects heretofore or hereafter caused by the aircraft in said air space and/or by operations at the Missoula County Airport. The acquisition of a Lot or Lots subject to the Avigation Easement and the aforementioned Resolutions by a prospective purchaser shall constitute an express acknowledgement and agreement by such prospective purchaser, on behalf of himself or herself, and his or her heirs, personal representatives, successors and assigns, that they fully waive and release Declarant and the Missoula County Airport Authority and its successors and assigns, of any right or cause of action which they may have now or in the future, on account of or arising out of such noise, vibration, dust, fumes, smoke, vapor or other similar effects heretofore or hereafter caused by the operation of aircraft in the air space and/or by the operations at the Missoula County Airport within the Missoula County Airport Influence/Affected Area. This paragraph may not be amended without the written consent of the Missoula County Airport Authority, which consent shall not be unreasonably withheld.

18. Reserved Rights of Declarant. Without limiting any other rights of Declarant provided by this Declaration or by law, Declarant hereby expressly reserves the following rights.

- a. Until the Turnover Date, all rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board shall be held and performed solely by the initial Board designated by Declarant in accordance with Section 6.
- b. Notwithstanding any provision of this Declaration to the contrary, until the Turnover Date, Declarant reserves the right and power to prepare, execute and record amendments to this Declaration (i) to correct clerical or typographical or similar errors in

this Declaration or any exhibit hereto; (ii) to submit the Additional Property or any portion thereof to this Declaration as provided in Section 3 above, or (iii) to make any other changes to this Declaration which do not materially and adversely affect the rights or responsibilities of any Owner. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make or consent to such an amendment on behalf of each Owner as proxy or attorney in fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record such amendments.

c. Nothing in this Declaration shall be construed to prohibit Declarant (including its contractors, employees and agents) from undertaking any activity upon, or use of, the Property or any portion thereof in furtherance of development and disposition of the Project including, without limitation, activities related to advertising, construction, demolition, excavation, grading, maintenance, marketing, planning, surveying, sales and leasing. To the extent any provision of this Declaration could be construed to limit any such activity by Declarant upon the Property or any portion thereof, Declarant shall be deemed to be exempt from such limitation.

19. General Provisions.

a. Manner of Giving Notices. Notices provided for in this Declaration to be given to the Board or Association shall be in writing and addressed to the address of each member of the Board or at such other address as otherwise provided herein. Unless otherwise provided in this Declaration, notices provided for in this Declaration to any Owner shall be in writing and addressed to the address of said Owner's Home. Any Owner may designate a different address or addresses for notices by giving written notice thereof to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to an Owner, when posted on such Owner's Home or deposited in such Owner's mailbox at such address as is designated pursuant hereto.

b. Partial Invalidity. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

c. Term; Perpetuities and Other Invalidity. This Declaration shall continue in effect in perpetuity. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of the rule against perpetuities, the rule restricting restraints on alienation, or any other statutory or common law rules imposing time limits, then such provision shall continue for so long as permitted by law.

d. Amendments. Subject to the Declarant's rights as set forth in Section 18.b above, this Declaration may only be amended by a written instrument that is signed and

acknowledged by the President of the Board, and approved by the Owners having, in the aggregate, at least three fourths (3/4) of the voting power in the Association, at a special meeting of the Association membership called for that purpose, written notice of which shall be given to all Owners at least thirty (30) days in advance of such meeting setting forth such purpose. No such amendment shall change the boundaries of any Lot, the quorum or voting requirements for action by the Association, or liability for Common Expenses assessed against any Lot. No amendment to this Declaration may remove, revoke, or modify any right or privilege of Declarant without the prior written consent of Declarant.

e. No Waivers. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

f. Enforcement. The Association, any Owner or the Declarant shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include legal action seeking an injunction to prohibit any violation, to recover damages, or both. Should any lawsuit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Declaration, the prevailing party in such proceeding shall be entitled to reimbursement for the costs of such proceeding, including reasonable attorneys' fees.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the Effective Date.

MULLAN ROAD PARTNERS, LLC
a Wyoming limited liability company

By: _____
Its: Authorized Signatory

STATE OF _____)
) SS
COUNTY OF _____)

Acknowledged before me this _____ day of _____, 2020 by _____, authorized signatory of Mullan Road Partners, LLC.

Notary Public for the State of _____
Printed Name: _____
Residing At: _____
My Commission Expires: _____

EXHIBIT B

WEED MANAGEMENT AND REVEGETATION PLAN FOR HERON'S LANDING SUBDIVISION

INTRODUCTION

This Weed Management and Revegetation Plan is prepared for the Heron's Landing Subdivision (Subject Property) to comply with the Missoula County Noxious Weed Management Act, Title 7 Chapter 22, Sections 7-22-2102 through 7-22-2153. The plan is intended to provide a method for weed control and vegetative rehabilitation for the Subject Property.

Mullan Road Partners, LLC is the current Owner of the Subject Property and Teton Land and Development Group is the Developer for this proposed project. The Subject Property encompasses 72.11 acres. The proposed development is classified as a major subdivision, with 322 lots spanning 39.2 acres, 11.32 acres of common area spaces, and 21.53 acres of street. The proposed development would contain 29 common area lots. Weed management shall be the responsibility of the Owner until management duties can be transferred to the new lot owners and the future Home Owners Association (HOA). This Weed Management and Revegetation Plan is intended to meet requirements of the Missoula County Regulations and the conditions of plat approval for Heron's Landing Subdivision. The Owner plans to file a petition for annexation to the City of Missoula before development occurs.

CURRENT CONDITION AND ORGANIZATION OF THE SUBJECT PROPERTY

The Subject Property is located on the western edge of Missoula city limits, north of Mullan Rd, between George Elmer Dr and Roundup Dr. The Subject Property is currently vacant and was historically used for agriculture and grazing. A site visit with Bryce Christiaens, Weed District Manager for Missoula County, was conducted on June 3, 2019. Numerous noxious weed species were identified on the Subject Property, including: Spotted Knapweed, Canada Thistle, Leafy Spurge, Common Tansy, and Houndstongue. The attached Site Map depicts the location of the densest weed patches on the Subject Property. Tumble Mustard, Smooth Brome, Bull Thistle, and Intermediate Wheatgrass were also found across the Subject Property, which are non-native species but non-noxious.

Development at the Subject Property is proposed to begin in the spring of 2020. Weeds must be treated at least two weeks prior to any soil disturbance. A broadcast herbicide application treatment is recommended in the spring during the rosette stage, or in the fall before the first frost. The seasonal periods of efficacy for each herbicide is listed below in **Tables 1, 2, and 3**. Cutting vegetation or disturbing soil too soon after spraying weeds will reduce weed control. After the ground is disturbed, it may be necessary to implement subsequent herbicide treatments to target noxious weeds disbursed during construction, which should be done by the current Owner or HOA. To prevent weed establishment in disturbed areas, the ground around driveways, roads, and other disturbed areas should be reseeded as soon as possible; however, seeding should not occur when soils are dry. If initial infrastructure construction occurs in early spring of 2020 as planned, broadcast seeding across disturbed ground should

occur before late May. Otherwise, a dormant seeding in late fall to early winter, when the ground is frozen, is recommended. If a broadcast seeding technique is used, rather than a no till drill technique, twice as much seed should be applied to account for loss from birds.

MANAGEMENT GOALS

The purpose of the plan is to reduce and manage the spread of noxious weeds and to maintain and enhance healthy plant communities. Early detection of noxious weeds by present and future owners is important for effective weed control. It is important to continue annual monitoring of weed growth in late spring or early summer. If the noxious weed community shifts from the current conditions, the Owner should consult with the Missoula County Weed District to determine the proper weed control tool. There are more options for successful control when infestations are caught in their small, early stages.

MANAGEMENT STRATEGY

Broadcast herbicide spraying treatments should be used to suppress existing noxious weeds in undisturbed areas. The following tables specify numerous herbicides for specific noxious weeds on the Subject Property. Each product has different seasonal windows of efficacy.

The following herbicides are recommended for Canada Thistle and Spotted Knapweed growing throughout the Subject Property, as illustrated on the attached Site Map.

TABLE 1. RECOMMENDED HERBICIDES FOR CANADA THISTLE AND SPOTTED KNAPWEED

TRADE NAME	ACTIVE INGREDIENT	RATE	EFFICACY	COMMENTS
Curtail	Clopyralid + 2, 4-D	2-4 qts per acre	Most effective in rosette to bud stages	Do not apply to shallow groundwater areas.
Milestone	Aminopyralid	5-7 oz. per acre	Most effective on actively growing plants in spring or fall	Cannot be applied to areas that may have vegetable gardens, fruit trees, and ornamental trees or shrubs in the future
Transline	Clopyralid	1-1.3 pints per acre	Least effective herbicide listed	Do not apply to shallow groundwater areas.

The following herbicides are recommended for Leafy Spurge, which is growing in at least two locations on the Subject Property.

TABLE 2. RECOMMENDED HERBICIDES FOR LEAFY SPURGE

TRADE NAME	ACTIVE INGREDIENT	RATE	EFFICACY	COMMENTS
Tordon 22k + 2,4-D	Picloram + 2,4-D	1-2 pints picloram + 1 qt 2,4-D per acre	Most effective at full flower or fall	Cannot be applied near surface water, shallow groundwater, or to areas that may have vegetable gardens, fruit trees, and ornamental trees or shrubs in the future
Plateau	Imazapic	8-10 oz. per acre	Most effective in fall prior to first frost	

The following herbicides are recommended for Common Tansy and Houndstongue, which is concentrated along the western fence line parallel to Roundup Dr. Common Tansy is also growing densely along the ditch.

TABLE 3. RECOMMENDED HERBICIDES FOR COMMON TANSY AND HOUNDSTONGUE

TRADE NAME	ACTIVE INGREDIENT	RATE	EFFICACY	COMMENTS
Escort	metsulfuron	0.5-1 oz per acre	Most effective in bolt or bud stages	Cannot be used near wells, surface water, or shallow groundwater
Telar	chlorsulfuron	0.5-1 oz per acre	Most effective in bolt or bud stages	
MSM 60	metsulfuron	0.5-1 oz per acre	Most effective in bolt or bud stages	Do not apply to turf less than one year old/

Cutting or disturbing soil too soon after spraying weeds will reduce weed control; the herbicide requires at least 14 days to be effective. Mowing can be an additional mitigation technique to reduce seed production if applied at the appropriate time, typically in June or July when plants begin to flower.

Disturbed areas should be reseeded as soon as possible, but seeding should not occur when soils are dry. If construction occurs in the dry season, then a dormant seeding should be used during winter when the ground is frozen. If a broadcast seeding technique is used, rather than a no till drill technique, twice as much seed should be applied to account for loss from birds. The following dryland/common area grass mixes are recommended for disturbed areas if the developer is not able to lay turf sod or plant ornamentals directly after ground disturbance. The roadside grass mixes recommended below should be used on ground disturbances around driveways and roads.

TABLE 4. RECOMMENDED GRASS MIXES FOR DISTURBED AREAS

Dryland/Common Area Grass				
Common Name	Species	% mix	Seeds/lb.	PLS pounds /acre
Bluebunch Wheatgrass	<i>Pseudoroegneria spicata</i>	20.00%	114,000	6.1
Slender Wheatgrass	<i>Elymus trachycaulus</i>	20.00%	144,000	4.8
Junegrass	<i>Koeleria macrantha</i>	20.00%	1,800,000	0.4
Sandberg's Bluegrass	<i>Poa secunda</i>	20.00%	1,000,000	0.7
Western Wheatgrass	<i>Pascopyrum smithii</i>	20.00%	187,000	3.7
	Grand Totals	100.00%		15.8
Roadside Grass Mixture				
Common Name	Species	% mix	Seeds/lb.	PLS pounds /acre
Hard Fescue	<i>Festuca longifolia</i>	33.30%	400,000	2.9
Western Wheatgrass	<i>Pascopyrum smithii</i>	33.30%	187,000	6.2
Streambank Wheatgrass	<i>Elymus lanceolatus</i>	33.30%	155,000	7.5
	Grand Totals	99.90%		16.6

This Weed Management Plan is not all-inclusive regarding methods, products, or techniques to control weeds and to revegetate the ground. The Owner shall consult with the Missoula County Weed District from initial planning to application, monitoring, and evaluation. The Plan will assist in preventing the spread of noxious weeds in Missoula County by investigating what options are available if a noxious weed problem is identified and to select an option in keeping with good land stewardship practices.

Signed this _____ day of _____, 2020.

Bryce Christiaens, Weed District Manager, Missoula County Weed District



DEVELOPMENT SERVICES

435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

October 16, 2020

Ryan Salisbury, P.E.
WGM Group, Inc.
1111 E. Broadway
Missoula, MT 59802

RE: Heron's Landing Phased Subdivision, Annexation with Zoning, and Rezoning

Dear Mr. Salisbury,

At its regularly scheduled meeting of September 21, 2020 the Missoula City Council voted to annex Tracts 1 and 2 of Certificate of Survey No. 5963 into the municipal boundaries and apply the RT5.4 Residential zoning, subject to the conditions of annexation; approve the adoption of an ordinance to apply the Heron's Landing Neighborhood Character Overlay District; and approve the Heron's Landing Phased Subdivision, subject to the conditions in the attached document entitled "Conditions of Approval." The reasons for the decision to approve the subdivision and zoning, including the imposition of conditions of approval, may also be found in the attached document entitled "Findings of Fact and Conclusions of Law." The Resolution to Annex with conditions of annexation is attached, and will be assigned a resolution number and placed on the City's website here:

<https://www.ci.missoula.mt.us/DocumentCenter/View/1010/Ordinance-Index-and-Ordinances?bidId=>

As part of these actions the City Council approved the following motions:

1. **Adopt** a resolution to annex and incorporate within the boundaries of the City of Missoula, Montana a certain parcel of land described as Tracts 1 and 2 of COS No. 5963 in the SE ¼ of Section 12 and the N ½ of Section 13, Township 13 North, Range 20 West, P.M.M., and zone the property RT5.4 Residential in the city, based on the findings of fact in the staff report, subject to the recommended conditions of annexation approval as amended by City Council.
2. **Adopt** an ordinance to establish the Heron's Landing Neighborhood Character Overlay District and to rezone the subject property from RT5.4 Residential to RT5.4 Residential / NC-HL Heron's Landing Neighborhood Character Overlay, based on the findings of fact in the staff report.
3. **Approve** the variance request from Section 3-020 Table .2A, allowing George Elmer Drive improvements to be made within the existing 80-foot right-of-way instead of a 90-foot right-of-way.
4. **Approve** the variance request from Section 3-020 Table .2A, allowing Chuck Wagon Drive improvements to be made within the existing 80-foot right-of-way instead of a 90-foot right-of-way.
5. **Approve** the variance request from Section 3-020.2A(2), allowing Block A to be longer than 480 feet.

6. **Approve** the variance request from Section 3-020.2A(2), allowing Blocks B, C, D, E, F, G, and J to be longer than 480 feet.
7. **Approve** the variance request from Section 3-020.2A(2), allowing Block H to be longer than 480 feet.
8. **Approve** the variance request from Section 3-020.2A(2), allowing Block I to be longer than 480 feet.
9. **Approve** the variance request from Section 3-020.15.D.1, allowing a 10-foot wide Secondary Commuter Trail along street rights-of-way within an additional 6 ½-foot easement.
10. **Approve** the variance request from Section 3-020 Table .2A allowing Heron's Landing Drive, Nesting Lane, and Audubon Trail (Loop) to be built within 60-foot rights-of-way instead of 70, so long as an additional one-foot access and utility easement is provided along the outer edge of each right-of-way to allow for maintenance.
11. **Approve** the Heron's Landing Phased Subdivision, based on the findings of fact and subject to the recommended conditions of approval in the staff report as amended by City Council.

If you wish to appeal this decision on the subdivision, you must follow the procedure established by M.C.A. §76-3-625(2), which states as follows:

A party . . . who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

The statute includes the applicant within the definition of an aggrieved party.

According to M.C.A. §76-3-617(3) all phases of a phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

If you have further questions, please contact me at 529-0709 or email me at degrandpred@ci.missoula.mt.us.

Sincerely,



Dave DeGrandpre, AICP
Planning Supervisor, Development Services

Copy:
Gary Schnell, Teton Land Development Group, LLC
Mary McCrea, Development Services
Kevin Slovarp, Development Services
Troy Monroe, Development Services
Eric Anderson, Development Services

CONDITIONS OF APPROVAL
HERON'S LANDING PHASED SUBDIVISION
September 21, 2020

Note 1: Montana Code Annotated (MCA) Section 76-3-604(9)(a) states review and approval, conditional approval, or denial of a proposed subdivision may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review. The Heron's Landing Phased Subdivision application was deemed sufficient for review on May 14, 2020. The City of Missoula Subdivision Regulations Amended June 28, 2010 and 2019 Montana Subdivision and Platting Act were in effect at that time. The 2019 Montana Subdivision and Platting Act includes provisions for phased subdivisions in Section 76-3-617. Those provisions apply to the Heron's Landing Phased Subdivision.

Note 2: The Heron's Landing Phased Subdivision application includes a phasing plan that lists the anticipated platting of W phases to the west of George Elmer Drive and E phases to the east of George Elmer Drive. The subdivider has indicated the sequence of final platting depends in part on construction of George Elmer Drive, which is planned to be developed as part of the Mullan BUILD project. The City of Missoula acknowledges that under 76-3-617, MCA the subdivider may seek to amend the phasing plan in the future, following review and approval by City Council.

Streets, General

1. All street and non-motorized improvements shall be designed and built in accordance with City of Missoula Public Works Standards and Specifications and City of Missoula Subdivision Regulations (except as modified by variance). All plans must comply with Americans with Disabilities Act requirements. All plans must be reviewed and approved by the City Engineer in accordance with City policies. *City Subdivision Regulations Section 3-020.2*
2. The subdivider shall provide a street naming exhibit to be reviewed and approved by Development Services prior to final plat filing of the first phase. *Subdivision Regulations Section 3-020.12*
3. The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices to be reviewed and approved by the City Engineer and City Fire Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 3-020.4(H)(2)*
4. The following statement shall appear on the face of each plat, in the covenants, and on each instrument of conveyance:
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for the upgrading of streets within this subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities" *City Subdivision Regulations Section 5-050.4(M&N)*
5. All proposed rights-of-way shall be dedicated to the public on the face of each plat and approved by the City Engineer. *City Subdivision Regulations Section 3-020.3.B*
6. All proposed easements, except as modified by these conditions, shall be shown on the face of each plat and identified for their width and purpose, including easements for vehicular and pedestrian access, utilities, and irrigation ditches. *City Subdivision Regulations Section 3-060.1*

7. Street lighting shall be installed within the subdivision along Chuck Wagon Drive and George Elmer Drive in accordance with the Missoula Public Works Standards and Specifications Manual. The subdivider shall install lighting along Chuck Wagon Drive and George Elmer Drive prior to filing any plat that abuts those streets as part of that phase's improvements. Prior to final plat filing of the first phase, the subdivider shall petition to create a new street light improvement district. *Missoula Public Works Standards and Specifications Manual Section 7.3.6*

Specific Streets

8. The Heron's Landing Phased Subdivision is located within the Mullan BUILD project area and George Elmer Drive, which provides access to the subdivision property, is planned to be improved as part of the Mullan BUILD project. Federal funds are planned to pay for a portion of the Mullan BUILD improvements. Funding mechanisms are currently being explored to pay for the remainder of the improvements. The funding mechanisms may include, but are not limited to, a special improvement district, impact fee, latecomers fee, or cost share agreements that allow the City of Missoula and Missoula County to recover the cost of constructing infrastructure from the properties that benefit from the Mullan BUILD project. To the extent that such funding mechanism(s) is created in accordance with state law and applicable principles of land use law, the subdivider, successors, and assigns shall participate in and be bound by the fees assessed and not oppose the creation of or participation in such a district. *Montana Code Annotated 76-3-510*
9. Chuck Wagon Drive through the length of the subdivision shall be improved to Urban Collector (with parking) standards as proposed including two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks within the existing 80-foot wide right-of-way. All improvements to Chuck Wagon Drive from back of curb to back of curb shall be reviewed and approved adjacent to Phase W1 prior to final plat approval of Phase W1. All improvements to Chuck Wagon Drive from back of curb to back of curb north of Phase W1 shall be reviewed and approved prior to final plat approval of the third west phase. All other street improvements including boulevards and sidewalks shall be reviewed and approved prior to final plat approval of each adjacent phase. *Subdivision Regulations Table .2A modified by variance.*
10. Heron's Landing Drive, Nesting Lane, and Audubon Loop shall be designed and built to Low Density Urban Local Street standards including two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (except where the Secondary Commuter Trail is to be located) within 60-foot rights-of-way. The subdivider shall provide an additional access and utility easement at least one foot wide along the outer edge of the sidewalks and secondary commuter trail along these streets to allow for maintenance. *Subdivision Regulations Table .2A modified by variance, Correspondence with City Engineer.*

Drainage

11. The subdivider shall submit complete grading and drainage plans prior to final plat approval of each applicable phase showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities shall be constructed in accordance with the approved plan and accommodate the planned runoff from all upgradient phases. *City Subdivision Regulations Section 5-020.11*

Transit

12. The subdivider shall petition for the property to be included in the Missoula Urban Transportation District prior to final plat filing of the first phase. *City Subdivision Regulations Section 3-010.7 and 3-020.1, City of Missoula Annexation Policy*

Water System and Sewer System

13. The subdivider shall submit plans for water supply and sewage disposal for review and approval of the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of each applicable phase. Construction of all water supply and sewer systems shall be in accordance with City policies. *City Subdivision Regulations Sections 3-070.01 and 3-070.04*

Solid Waste

14. The subdivider shall submit plans for solid waste disposal for review and approval of the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of each applicable phase. *City Subdivision Regulations Sections 3-070.01*

Parkland

15. The subdivider shall meet the parkland dedication requirement as depicted on the Phasing Plan Exhibit and on the Parkland Dedication Exhibit of the application by providing 5.14 acres of dedicated common area to be maintained by the Heron's Landing Homeowners Association. *City Subdivision Regulations Section 3-080.3.A*
16. The subdivider shall draft an agreement for review and approval of the Parks and Recreation Department and City Attorney to provide for the dedication of land and/or payment of money prior to final platting of each phase. The agreement shall provide for different circumstances including where more than the required land is dedicated per phase, where an insufficient amount of land is dedicated per phase and cash is also required to make up for the insufficient amount of land, and where refunds may be issued by the City when more land is dedicated than needed to meet the dedication requirement. The agreement shall be submitted, reviewed and approved prior to final plat filing of the first phase. *City Subdivision Regulations Section 3-080.6*
17. When cash in lieu of parkland is proposed, the amount shall be equal to the fair market value of the amount of land that is statutorily required to be dedicated for that phase. The fair market value shall be determined by a Montana certified general real estate appraiser, hired and paid by the subdivider. Fair market value means the value of the unsubdivided, unimproved land based on the zoning designation that applies to the property at that time. The City reserves the right to require a separate appraisal for each phase. *City Subdivision Regulations Section 3-080.7*
18. The subdivider shall submit a park and common area landscape and maintenance plan and a boulevard landscaping plan to be reviewed and approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 5-050.4*

Covenants, Conditions, and Restrictions

19. Final covenants, conditions, and restrictions meeting the requirements of City Subdivision Regulations Section 5-020-14.K shall be submitted for review and approval prior to final plat filing of the first phase. *City Subdivision Regulations Section 5-020-14.K*

Non-Motorized Transportation Facilities

20. The subdivider shall provide five-foot sidewalks along all street frontages (except for where the Secondary Commuter Trail is to be located) and at the proposed mid-block locations depicted on the circulation plan exhibit. The subdivider shall provide a 10-foot Secondary Commuter Trail in the locations, dimensions, and within the rights-of-way and easements proposed in the preliminary plat phased subdivision submittal and approved by City Council. All sidewalk and trail plans, including specifications for ADA accessibility and safe street crossings, shall be reviewed and approved by the City Engineering and Parks and Recreation departments prior to final plat filing of each applicable phase. Construction of the non-motorized transportation facilities shall occur as proposed in the application submittal and as required to serve each phase. *City Subdivision Regulations Section 3-020.15 and Table .2A*
21. The subdivider shall provide a five-foot ADA accessible asphalt path connecting to existing sidewalks north of Heron's Landing along Chuck Wagon Drive in conjunction with Phase W1 and George Elmer Drive in conjunction with Phase W2 as depicted on the Phasing Plan. *Subdivision Application Phasing Plan*

Fire Protection

22. The subdivider shall provide plans for address signage and a fire hydrant plan for review and approval prior to final plat filing of each applicable phase. All approved fire protection improvements shall be installed in accordance with the approved plans. *City Subdivision Regulations Section 3-010.1.F*

Noxious Weeds

23. The Weed Management and Revegetation Plan for Heron's Landing shall be appended to the covenants, conditions and restrictions. The subdivider shall provide evidence of plan implementation and noxious weed control prior to final plat filing of each phase. *City Subdivision Regulations Section 5-020.14.K*

Airport Influence Area

24. Each final plat shall include the following statement:
"This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase." *City Subdivision Regulations Section 3-010.2*

Zoning

25. The Heron's Landing Neighborhood Character Overlay Zoning District shall be adopted concurrent with City Council approval of the subdivision request based on the findings.

FINDINGS OF FACT & CONCLUSIONS OF LAW
HERON'S LANDING PHASED SUBDIVISION
September 21, 2020

A. GROWTH POLICY COMPLIANCE

Findings of Fact:

1. City of Missoula Subdivision Regulations Section 3-010.1.I. requires that subdivisions be reviewed for compliance with the growth policy and its amendments.
2. The *2035 Our Missoula City Growth Policy* contains a future land use map with land use designations that visually depict the community's desired direction as it meets new growth challenges and changing times. The land use descriptions and recommended locations help to set a broad understanding of future land use patterns that enables city services and agencies along with residents, property owners, and neighborhoods to plan effectively for the future. The mapping is a visual representation of the balanced, value-based review of the goals, objectives, and actions recommended as part of the growth policy.
3. The *2035 Our Missoula City Growth Policy* future land use map provides a land use designation of Residential Medium Density – 3 to 11 Dwelling Units Per Acre for the property.
4. The subdivision is intended to create 347 lots from the 72.11 acres, for a density of 4.8 dwelling units per acre.

Conclusions of Law

1. City Council determined the Heron's Landing Phased Subdivision substantially complies with the *2035 Our Missoula City Growth Policy*.

B. PRIMARY CRITERIA COMPLIANCE

CRITERION 1: EFFECTS ON AGRICULTURE & AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

Agriculture

1. The USDA Natural Resources Conservation Service lists three soil types on these tracts: Desmet loam, Grantsdale loam, and Moiese gravelly loam.
2. The NRCS Soil Survey classifies these soil types as "Prime Farmland if Irrigated" and "Farmland of Local Importance." Roughly 2/3 of the site is Prime Farmland if Irrigated, with the remaining 1/3 in the southeast corner of the site Farmland of Local Importance.
3. The application submittal states the land has been used for raising livestock and growing hay in the past, although not within the past three years.
4. The property is currently zoned by Missoula County as C-RR1 Residential, which provides a maximum residential density of one dwelling unit per acre. The existence of County residential zoning on the parcels anticipates their use for residential rather than agricultural purposes. The *Our Missoula City Growth Policy* designates the property for urban scale residential development.

Agricultural Water User Facilities

5. The Flynn Lowney Irrigation Ditch crosses the property from roughly the center of the northern boundary running southwest to the western boundary. An irrigation ditch is also located along part of the north boundary of the property.
6. The preliminary plat sheets show culverts are planned to be installed where the Flynn Lowney Ditch intersects planned roadways and easements to provide for access and maintenance of the ditches.
7. Fifteen proposed lots numbered F332 through F346 are encumbered by the irrigation ditch to the extent the lots are undevelopable at present. These lots are labeled on the phasing plan as W7, the last potential lots to be created. The application states there is only one downstream user of the irrigation water and discussion has occurred to possibly abandon and vacate the ditch at the discretion of the Hellgate Valley Irrigation Company. If the ditch remains, the lots in this phase will not be developed.
8. The property owner has no rights to the irrigation water. Future homeowners in this subdivision would not have any rights to the irrigation ditch water either. There is a note on the plat which indicates this, and it is also specified in the covenants.

Conclusions of Law:

1. This subdivision would prevent use of productive soils for agriculture. However, the property is zoned for residential use and is planned for urban scale residential development.
2. City Council determined that no impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision.

CRITERION 2: EFFECTS ON LOCAL SERVICES

Transportation and Drainage

Findings of Fact:

Streets and Alleys

1. Access to the subdivision would be from George Elmer Drive and Chuck Wagon Drive, both classified as Urban Collector Streets. The internal subdivision road network includes Low Density Urban Local Streets and Local Residential Streets, differentiated by the anticipated daily traffic volumes. The subdivider would be responsible for designing and building/upgrading all of the transportation facilities within the subdivision, including George Elmer Drive and Chuck Wagon Drive, in accordance with City Public Works Standards and Specifications and the City Subdivision Regulations (except as may be modified by variance). The plans must comply with Americans with Disabilities Act requirements and be approved by the City Engineer.
2. The subdivision application submittal includes a traffic impact study. The study indicates that currently planned transportation improvements to reduce congestion and increase safety along Mullan Road are pending and include a two-way left turn lane at the Mullan Road / Chuck Wagon Drive intersection and a traffic signal and eastbound left turn lane at the Mullan Road / George Elmer Drive intersection. The traffic impact study states the planned transportation improvements are sufficient to accommodate the site generated traffic at the Mullan Road intersections and that no further intersection improvements are required to mitigate the site generated traffic. The study also indicates the proposed internal street network design is sufficient to accommodate projected levels of traffic within and travelling through the subdivision.

3. Many of the lots are planned so the fronts of homes would face the street with rear access via alleyways. The City Subdivision Regulations require alley rights-of-way to be at least 20 feet wide with a paved surface of at least 12 feet. The proposed alleys meet these requirements. All of the lots appear to be suitable for driveway or alley access in accordance with the subdivision regulations.
4. Street names are provided on the preliminary plat. Section 3-020.12 of the City Subdivision Regulations requires the street naming plan to be reviewed and approved prior to final plat approval. This requirement is reflected in a condition of preliminary plat approval.
5. Section 3-020.4(H)(2) of the City Subdivision regulations requires street signs and traffic control devices to be approved by the City Engineer and consistent with the Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation. A condition of approval requires a signage plan reviewed and approved by City Fire and the City Engineer prior to final plat approval of each applicable phase and installation of signage meeting the above-named standards prior to platting of each phase.
6. All streets and alley rights-of-way are to be dedicated to the public. Section 3-020.3(A)(1) of the City Subdivision regulations requires each public road to provide for construction and perpetual maintenance of the road. Section 5-050.4(M & N) of the City Subdivision regulations requires the Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance. A condition of approval requires a SID statement on the plat and in the subdivision covenants for future improvements and maintenance to all streets providing access to the subdivision lots.
7. Section 3-060.1 of the City Subdivision Regulations requires easements be provided for vehicular and pedestrian access, utilities and irrigation ditches and City Engineer approval of the easements. A condition of approval requires that the location and width of all easements including streets, utilities and the irrigation ditches shall be approved by the City Engineer prior to final plat approval of each phase.
8. Subdivision Regulations Section 3-020.2 and .3C requires improvements to streets within or adjacent to a subdivision to meet the standards prescribed in Table .2A.

George Elmer Drive and Chuck Wagon Drive

9. George Elmer Drive and Chuck Wagon Drive are classified as Urban Collectors (with parking). Table .2A shows Urban Collectors with parking require a minimum 90-foot wide right-of-way that includes two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total, with a small amount of additional space for maintenance). Table .2A also includes the possibility of a center turn lane, which would require additional space.
10. The subdivider requested separate variances to build the required street improvements within 80-foot rights-of-way instead of 90 for both George Elmer Drive and Chuck Wagon Drive. These requests are addressed below.
11. George Elmer Drive was also proposed to include 20-foot access and utility easements on the east and west sides to allow for a meandering sidewalk and commuter trail (discussed below) as well as for utility placement and maintenance.

Heron's Landing Drive, Nesting Lane, and Audubon Loop

12. Subdivision Regulations Table .2A identifies Low Density Urban Local Streets as those streets serving less than 12 dwelling units per acre and having an average daily traffic of up to 2,500 vehicle trips. (Residential streets with more than 250 and less than 2,500 ADT.)

According to the traffic impact study and supplemental analyses, Heron's Landing Drive, Nesting Lane, and Audubon Loop fall into this category. Table .2A shows Low Density Urban Local Streets to have a minimum 70-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp requested an additional one-foot easement along the outer edge of the street improvements to allow for maintenance.

13. The subdivider requested a variance to build the above street improvements within 60-foot rights-of-way instead of 70. This request is addressed below.

Lariat Loop, Tenderfoot Way, Riata Road, Flycatcher Lane, Bulrush Way, Horsetail Lane, Marsh Lane, Rookery Trail, and Woodpecker Lane

14. Subdivision Regulations Table .2A identifies Local Residential Streets as those streets with up to 250 average daily vehicle trips. According to the traffic impact study and supplemental analyses, the above-listed streets fall into that category. Table .2A shows Local Residential Streets to have a minimum 47-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp requested an additional one-foot easement along the outer edge of the street improvement to allow for maintenance.
15. The subdivider is proposing that the above-listed streets be built in accordance with Table .2A within 60-foot wide rights-of-way in compliance with the subdivision regulations.

Drainage

16. The City of Missoula Storm Water Specifications and Design Standards and Section 3-040 of the City Subdivision Regulations provide minimum standards for site grading and control of stormwater runoff.
17. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation. The proposed method of managing storm runoff is grading the site and developing a storm drainage system with drywell sumps to collect and infiltrate runoff, with backup or overflow retention on Common Area 1 and Common Area 6. The overflow area is also provided in the event of irrigation ditch flooding. The hydrogeologic evaluation addresses risk of basement flooding on-site due to increases in the water table elevation caused by flooding in Grant Creek; risk of basement flooding on- and off-site from the use of sumps during an extreme storm event (100-year, 24-hour), and the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes there is no risk of basement flooding within the subdivision boundary even during an extreme storm event; there is no risk of flooding of basements on-site or on surrounding properties associated with the planned use of sumps for on-site storm water management, and the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary.
18. Section 3-040.2 and Section 5-020.11 of the City Subdivision Regulations require a complete grading and drainage plan showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas to be submitted prior to final plat approval meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities must be constructed in accordance with the approved plan as per Section 5-020.11.B and due to the phased development, must be constructed to accommodate the planned runoff from all upgradient phases.

Transit

19. Section 3-010.7 and 3-020.1 of the City Subdivision Regulations require subdividers to provide safe, efficient, and convenient transportation corridors for motorists, pedestrians, bicyclists and bus riders. Section 3-020.4.E requires subdivision circulation systems to provide for various modes of transportation such as automobiles, pedestrians, bicycles, buses, and emergency vehicles. The City of Missoula Annexation Policy states that where appropriate, proposed annexation areas should be conditions to join the Missoula Urban Transportation District.
20. The property is not currently within the Missoula Urban Transportation District, which is necessary to provide for future transit service. A condition of approval is the subdivider is required to petition into the district prior to final plat approval of the first phase.

Non-Motorized Transportation

21. City Subdivision Regulations Section 3-020.15 requires sidewalks and boulevards adjacent to all streets in accordance with Table .2A.
22. The subdivision application submittal includes preliminary plat sheets and a circulation plan exhibit that show five-foot wide sidewalks along street frontages and in several mid-block locations.
23. The circulation plan exhibit also shows a 10-foot wide Secondary Commuter Trail extending from Roundup Drive near the southwest corner of the property along the Flynn Lowney Irrigation Ditch, Nesting Lane, Heron's Landing Drive, George Elmer Drive, and through common area and across the irrigation ditch past the northeast extent of the subdivision. The trail is intended to provide bike and pedestrian access as part of a larger trail network that is hoped to eventually connect the Old Milwaukee railroad grade to the southwest with Tipperary Way and Hellgate Elementary School to the east. Providing a Secondary Commuter Trail instead of sidewalk along street frontage requires a variance from City Subdivision Regulations, as addressed below. City Subdivision Regulations Section 3-020.15.g requires trails to be constructed in accordance with the subdivision regulations and Missoula City Public Works Standards and Specifications.

Conclusions of Law:

1. City Council determined the subdivision will meet the Subdivision Regulations requirements for streets and non-motorized improvements if the variance requests are approved and the conditions of approval are imposed and met.
2. City Council determined the subdivision will meet the City of Missoula Storm Water Specifications and Design Standards and grading and drainage standards in the Missoula City Subdivision Regulations if the condition of approval is imposed and met.
3. City Council required final grading, drainage and stormwater plans will be reviewed and approved by Montana DEQ and the City Engineer prior to final plat approval of each phase.
4. City Council determined the subdivision will meet the transit standards in the City Subdivision Regulations if the condition of approval is imposed and met.

Water System and Sewer System

Findings of Fact:

1. The property is within the Missoula Wastewater Facility Service Area and planned to be connected to existing water and sanitary sewer mains that were extended into the area for the

44 Ranch development, Flynn Ranch development, and RSID #8474 sewer mains along north side of Mullan Road.

2. The subdivision application submittal includes preliminary sewer and water design reports. The City of Missoula provided a letter stating the intent to provide water and sewer service to the subdivision in June of 2019. Individual water and sanitary sewer mains internal to the subdivision are planned to be extended as the project builds out.
3. As per Sections 3-070.01 and 3-070.04 of the City Subdivision Regulations, water supply and sewage disposal systems require review and approval from the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of any phase. This is required as a condition of approval.

Conclusions of Law:

1. City Council determined water and sewer are available to the subdivision.
2. City Council determined review of water and sewer systems is under the jurisdiction of City Engineering and state and local health authorities under the Montana Sanitation in Subdivision Act.
3. City Council determined the water and sewer systems will meet the subdivision regulations if the conditions of approval are imposed and met.

Solid Waste

Findings of Fact:

1. Republic Services is expected to provide disposal service to the subdivision.
2. Solid waste systems must meet the minimum standards of the Montana Department of Environmental Quality and City/County Health Code as per Section 3-070.1 of the City Subdivision Regulations. This requirement is a condition of approval.

Conclusions of Law:

1. City Council determined solid waste disposal service are expected to be available to the subdivision and in compliance with Subdivision Regulations.
2. City Council determined review of solid waste disposal is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

Parks and Recreation

Findings of Fact:

1. Section 3-080.3A of the City Subdivision Regulations requires parkland dedication equal to 11% of the net lotted area in subdivisions with residential lots of 0.5 acres or smaller.
2. The total lotted acreage of the subdivision at 41.6 acres. Eleven percent of 41.6 acres is 4.58 acres, the amount needed to meet the parkland dedication requirement. The subdivider is proposing 5.14 acres of dedicated common area including a 4-acre central park area to be maintained by the Heron's Landing Homeowners Association.
3. Section 3-080.6 and 7 of the City Subdivision Regulations also provides for cash donation in lieu of land dedication.
4. The subdivider proposed to phase the dedication of parkland in conjunction with platting individual phases of the subdivision. However, the application materials state the subdivider is not sure which phase, W1 or E1, will be filed first. Some phases do not include the required parkland dedication acreage required for that phase, while others include more

parkland than required for that phase. (For example, Phase E1 would require 0.64 acres of parkland but only includes 0.32 acres, while Phase W1 requires 0.6 dedicated acres and includes 0.76 acres.) To address this issue, the subdivider proposed to enter into an agreement with the City so that land and cash could be dedicated in phases where sufficient land is not provided and cash could be refunded in phases where more land is dedicated than required.

5. Per Section 5-020.14.H of the City Subdivision Regulations, a landscaping and maintenance plan may be required for common areas and parkland. Section 5-050.4 also requires a boulevard landscaping plan to be reviewed and approved prior to final platting of each applicable phase. The draft covenants, conditions, and restrictions state the Heron's Landing Homeowners Association would be responsible for maintenance of common areas and the secondary commuter trail. A condition of approval is for the subdivider to submit a landscape and maintenance plan and boulevard landscaping plan to be approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase.
6. The subdivider is proposing covenants, conditions, and restrictions as a way to manage affairs of the homeowners association and to communicate information and requirements to lot purchasers. City Subdivision Regulations Section 5-020.14.K. contains requirements for covenants including that the property owners' association be formed before any property is sold, the association is responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities, and other matters. A condition of approval is for the subdivider to submit final covenants, association bylaws, and articles of incorporation along with the final plat materials for the first phase.

Conclusion of Law:

1. Parkland dedication is required in this subdivision in accordance with the City Subdivision Regulations. City Council determined the subdivider's proposal would meet the parkland dedication requirements if the conditions are imposed and met.
2. City Council determined the parkland and common areas are to be managed by a homeowners association and the City Subdivision Regulations require homeowners association documents to include specific provisions that will be reviewed prior to final platting of the first phase if the recommended condition is imposed and met.
3. City Council determined the City Subdivision Regulations require plans for landscaping, maintenance, and boulevard landscaping, which will be reviewed and approved prior to final platting of the each applicable phase if the condition is imposed and met.

Schools

Findings of Fact

1. The subdivision will create up to 347 additional residential lots with an estimated addition of 65 – 174 school age children to Hellgate Elementary and Big Sky High School. Several school bus stops are located in close proximity to the subdivision. The application says Hellgate Elementary officials have stated capacity exists with completion of a new building in 2020, and this development expands their tax base.

Conclusion of Law:

1. City Council determined no adverse impacts to schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

1. The Missoula City Fire Department will serve the subdivision. The closest station is located at 3011 Latimer Street, approximately 2.5 miles from the subdivision.
2. Subdivision Regulations Section 3-070.1 requires that water supply for fire protection be provided via a public or community water system with 1,000 gallons per minute minimum flow, or via residential sprinkler systems.
3. Water supply for fire protection for this subdivision is planned to be supplied via 20 new fire hydrants. A fire hydrant spacing exhibit provided with the subdivision application shows each hydrant and indicates a minimum 1,000 gallons per minute would be provided. Missoula City Fire Marshall Dax Fraser signed the exhibit, indicating approval.
4. The Missoula City Fire Department regularly requires an addressing system to be developed that conforms to the addressing requirements of the City. All new buildings are assigned an address at the time of building permit approval, and are required to meet City standards for signage.
5. A condition of approval requires the developer to provide plans for address signage and a fire hydrant plan subject to review and approval of the Missoula City Fire Department prior to final plat approval of each applicable phase. Fire hydrants shall be installed prior to combustible construction as required by the City Fire Department approved hydrant plan.

Conclusion of Law:

1. City Council determined fire service is available to the subdivision if the condition of approval is imposed and met.

Law Enforcement

Findings of Fact:

1. The subdivision is located within the jurisdiction of the Missoula Police Department.
2. The Missoula Police Department did not provide comments on the subdivision application.

Conclusion of Law:

1. City Council determined law enforcement service is expected to be available to the subdivision.

CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. The subject property was historically used for hay and livestock production. It does not have trees or significant vegetative cover. The property does not have naturally occurring surface water, high groundwater, or wetlands. The only water sources are two irrigation ditches.
2. The property does not contain critical plant communities or support vegetative species of concern.
3. The property is surrounded by residential development on three sides. It is located between Mullan Road and West Broadway in an area being planned for urban development.

4. The property may support common wildlife mammals including rodents, deer, skunks, and fox. Potential bird species of concern in the area are yellow-billed cuckoo, bobolink, ferruginous Hawk and sharp-tailed grouse. Section 13.m of the covenants advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict.
5. The subdivision is not located adjacent to public lands and will therefore have no impact on public land uses, public land management policies, or public land access.
6. No riparian resources or regulated floodplain exist on the property.
7. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation that assesses the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary.
8. Section 5-020.14.K of the City Subdivision Regulations requires that a management plan be developed for common areas and that the management plan address noxious weeds.
9. The covenants, conditions, and restrictions include a weed management and revegetation plan for the entire property that identifies numerous noxious weed species including spotted knapweed, Canada thistle, leafy spurge, houndstongue, and others. The plan recommends herbicide treatments and reseedling of exposed soils. A condition of approval is the final covenants include the weed management and revegetation plan and evidence of plan implementation to be submitted to Development Services prior to final plat approval of each phase.

Conclusion of Law:

1. City Council determined no impacts to the natural environment and wildlife habitat are foreseen as a result of this subdivision if the condition to manage noxious weeds is imposed and met.

CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

Hazardous Land

1. Subdivision Regulations Section 3-010.2 requires the mitigation of hazards to subdivision development, including but not limited to flooding and slopes of 25% or more.
2. The subject property is outside of the FEMA-identified 1% annual chance flood hazard areas and floodplain.
3. Outside of irrigation ditches, the property does not contain slopes of 25% or more.

Wood Stoves

4. The property is located within an air stagnation zone. The Section 13. J. of the covenants, conditions, and restrictions includes language prohibiting wood burning devices (fire places, wood burning and pellet stoves, etc.)

Airport Influence Area

5. The property is located within an airport influence area of Missoula International Airport. A portion of the property is also within an extended approach and departure area.

6. The preliminary plat includes the following statement, which is required to be included on each final plat in the Heron's Landing Subdivision:

"This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase."

Conclusion of Law:

1. City Council determined if the airport influence area statement is printed on the plats, no adverse impacts to public health and safety are foreseen as a result of this subdivision.

**C.) COMPLIANCE:
SURVEY REQUIREMENTS**

Findings of Fact

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3. Forthcoming review of the final plats will ensure compliance with state subdivision and platting law.

Conclusion of Law:

1. City Council determined this proposal will meet the survey requirements of state law.

D) SUBDIVISION REGULATIONS

Findings of Fact

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

1. City Council determined the plat will be brought into compliance with the local subdivision regulations if the requested variances are approved and the conditions of approval are imposed.

E) REVIEW PROCEDURE

Findings of Fact

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations and the Montana Subdivision and Platting Act.
2. The public hearing before the Missoula Consolidated Planning Board occurred on August 18, 2020. The Missoula City Council hearing occurred on September 14, 2020.
3. Development Services staff sent notices of the public hearings by certified mail to adjacent property owners and the subdivider on July 30, 2020. Five posters were placed on the property August 3, 2020. Legal notice of the public hearings was published in the Missoulian August 2nd and 9th. All noticing occurred at least 15 days prior to the public hearings.
4. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within 30 days of such decision. The application must specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a

contiguous landowner, an owner of land within the City of Missoula who can establish a likelihood of material injury to property or its material value, or the City Council. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

1. City Council determined this subdivision proposal followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations.

F) PROVISION OF EASEMENTS FOR UTILITIES:

Findings of Fact:

1. City Subdivision Regulations Section 3-060 requires that easements be provided for utilities, drainage, ditch, vehicular, and pedestrian access and that easements be reviewed and approved by the City Engineering Division.
2. Access to utilities is planned to be provided to the subdivision from the north and south within public access and utility easements and public rights-of-way.
3. All utilities necessary to serve the subdivision, including water, sewer, electrical, phone and power, are planned to be located within public access and utility easements and public rights-of-way.

Conclusion of Law:

1. City Council determined utility services are available to this subdivision and the subdivision will be in compliance with the Subdivision Regulations if the condition of approval is imposed and met.

E) PROVISION OF LEGAL AND PHYSICAL ACCESS:

Finding of Fact:

1. Legal and physical access is planned to be provided to the subdivision via George Elmer Drive and Chuck Wagon Drive, which are publicly dedicated rights-of-way within the Missoula city limits. Each lot is designed with access to an alley or roadway that is to be located within easements or rights-of-way of appropriate width, with approval of certain variances.

Conclusion of Law:

1. City Council determined that with the approval of certain variances, the subdivision proposal meets the legal and physical access requirements of the Subdivision Regulations.

F) VARIANCE REQUESTS

VARIANCE REQUEST #1:

A variance was requested from Section 3-020 Table .2A, which requires an Urban Collector roadway – George Elmer Drive -- to be located within a 90-foot wide right-of-way. The applicant requested to provide all required improvements within an 80-foot wide right-of-way.

DECISION:

City Council **approved** the variance request, allowing George Elmer improvements to be made within an 80-foot wide right-of-way, based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposed street improvements, including standard urban collector driving lanes, bike lanes, parking lanes, curbs and gutters, boulevards and pedestrian facilities, can all fit within the existing 80-foot right-of-way. The lots along George Elmer Drive are proposed with 20-foot access and utility easements that would allow for a meandering sidewalk and the proposed Secondary Commuter Trail, in addition to utilities. The traffic impact study concludes that turning lanes onto Heron's Landing Drive are not warranted. No impacts to other persons or property are expected. Based on these findings, granting this variance is not expected to result in a threat to the public safety, health, or welfare, and would not be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The 80-foot right-of-way for George Elmer Drive north and south of the property already exists and was annexed into the City of Missoula in anticipation of future growth. This condition is fairly unique to the property and area. It is not applicable more generally to other property across the City or other areas of the City.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance is not the result of physical surroundings or topographical conditions. It is the result of past decisions where it was determined 80 feet of right-of-way would be sufficient to provide efficient and effective transportation for future growth in this area. Requiring an additional 10 feet of right-of-way would not be consistent with the road section in the 44 Ranch development to the north. Such disparate treatment would result in a hardship to the landowner if the strict letter of the regulations were to be enforced.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where an 80-foot right-of-way was deemed sufficient to accommodate safe and efficient travel in this area.

VARIANCE REQUEST #2:

A variance was requested from Section 3-020 Table .2A, which requires an Urban Collector roadway – Chuck Wagon Drive -- to be located within a 90-foot wide right-of-way. The applicant requested to provide all required improvements within an 80-foot wide right-of-way.

DECISION:

City Council **approved** the variance request the variance allowing Chuck Wagon Drive improvements to be made within an 80-foot wide right-of-way, based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposed street improvements, including standard urban collector driving lanes, bike lanes, parking lanes, curbs and gutters, boulevards and pedestrian facilities, can all fit within the existing 80-foot right-of-way. The traffic impact study concludes that turning lanes into the subdivision are not warranted. No impacts to other persons or property are expected. Based on these findings, granting this variance is not expected to result in a threat to the public safety, health, or welfare, and would not be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The 80-foot right-of-way for Chuck Wagon Drive north and south of the property already exists and was annexed into the City of Missoula in anticipation of future growth. This condition is fairly unique to the property and area. It is not applicable more generally to other property across the City or other areas of the City.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance is not the result of physical surroundings or topographical conditions. It is the result of past decisions where it was determined 80 feet of right-of-way would be sufficient to provide efficient and effective transportation for future growth in this area. Requiring an additional 10 feet of right-of-way would not be consistent with the road section in the 44 Ranch development to the north. Such disparate treatment would result in a hardship to the landowner if the strict letter of the regulations were to be enforced.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where an 80-foot right-of-way was deemed sufficient to accommodate safe and efficient travel in this area.

VARIANCE REQUEST #3:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block A (far eastern edge of the subdivision) is longer than 480 feet.

DECISION:

City Council **approved** the variance request the variance, allowing Block A to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

Block A is proposed to be approximately 1,203 feet long. Land to the east of the proposed lots has been platted and developed without plans for a future road extension. However, there is an existing 15-foot wide public pedestrian / bike easement in the adjoining West Ranch Estates Subdivision. The Heron's Landing subdivider proposed to provide a 10-foot wide non-motorized access and utility easement between lots 258 and 259 to generally align with this pedestrian /bike easement. The new easement would be a benefit to public safety, health and the general welfare. Granting the variance would not be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The subdivision to the east is already platted and developed. It does not include a street extension to the Heron's Landing property so there would be no point in providing a street extension from Heron's Landing to the east. This is a condition that is unique to the property and not applicable generally to other property.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance is the result of a development pattern made years ago on the subdivision to the east. The subdivider proposed to break up the block by providing a 10-foot non-motorized easement that will allow connection to the east. Enforcing the strict letter of the subdivision regulations to require the developer to further break up the block would result in a hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where no connection from the adjoining subdivision to this property was provided.

VARIANCE REQUEST #4:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Blocks B, C, D, E, F, G, and J are longer than 480 feet.

DECISION:

City Council **approved** the variance, allowing Blocks B, C, D, E, F, G, and J to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has reasonable access either via street,

alley, or both. Each of these blocks is planned with one or more pedestrian corridor in common area to allow for connectivity through the subdivision. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The curved shape of the existing Chuck Wagon Drive right-of-way, the presence of the existing George Elmer Drive right-of-way, the Flynn Lowney irrigation ditch, and the shape / dimensions of the property in relation to these features present design challenges. This situation is unique to the property and not generally applicable to other properties. The variance request states that longer blocks, along with the proposed pedestrian corridors, are a design solution to these conditions.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance request is a result of existing rights-of-way, the irrigation ditch, and the shape and dimensions of the property. The proposed design allows for a reasonable level of access and connectivity with lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property and measures proposed by the subdivider to allow for connectivity and access, enforcing the strict letter of the law would result in an undue hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

VARIANCE REQUEST #5:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block H is longer than 480 feet.

DECISION:

City Council **approved** the variance, allowing Block H to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has reasonable access either via street, alley, or both. A common area is planned to provide pedestrian connection through the block,

with several of the lots facing the common area. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The curved shape of the existing Chuck Wagon Drive right-of-way and the Flynn Lowney irrigation ditch present design challenges. This situation is unique to the property and not generally applicable to other properties. The variance request states that longer blocks are a design solution to these conditions.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance request is a result of existing right-of-way and irrigation ditch as well as design choices. The proposed design allows for a reasonable level of connectivity and lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property, enforcing the strict letter of the law would result in an undue hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

VARIANCE REQUEST #6:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block I is longer than 480 feet.

DECISION:

City Council **approved** the variance, allowing Block I to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has alley access and street frontage. A Secondary Commuter Trail is proposed along the Flynn Lowney Ditch through this block, which would allow connectivity from Roundup Drive to Chuck Wagon Drive and on through the subdivision. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The north extent of the block allows for an extension of Lariat Loop, which continues across Roundup Drive to the west. The property dimensions do not allow for connection to the southern leg of Lariat Loop. The Flynn Lowney Irrigation Ditch bisects this block, providing a design challenge. These conditions are unique and not applicable generally to properties.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance request is a result of existing Lariat Loop right-of-way and irrigation ditch as well as design choices. The proposed design allows for a reasonable level of connectivity and lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property, enforcing the strict letter of the law would result in an undue hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

VARIANCE REQUEST #7:

A variance was requested from Section 3-020.15.D.1, which requires sidewalks adjacent to all streets, and Section 3-02015.F(6)(b), which states that rights-of-way and easements for trails may not be less than 10 feet wide if adjacent to the roadway. The subdivider proposed to construct a separated 10-foot wide Secondary Commuter Trail instead of a standard sidewalk within an additional 6 ½-foot easement extending from the 60-foot street rights-of-way along Nesting Lane and Heron's Landing Drive. The location of the trail is shown on the block length variance exhibit and the circulation plan exhibit.

DECISION:

City Council **approved** the variance, allowing the proposed Secondary Commuter Trail as proposed in the application based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposal was to provide a 10-foot wide, concrete, separated trail instead of a 5-foot sidewalk along subdivision roadways. Nesting Lane and Heron's Landing Drive were proposed to have 60-foot rights-of-way, which include boulevards. The trail would be located north of the boulevards, which would result in a separated bike and pedestrian path. According to the application, the 10-foot wide Secondary Commuter Trail would only require

an additional 6 ½-foot easement instead of the required 10 additional feet. The subdivider plans to provide enhanced crossings at Chuck Wagon Drive and George Elmer Drive and make all crossings in accordance with industry standards with review and approval by Parks and Recreation. Based on agency comments from the Engineering and Parks and Recreation, there is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

A portion of the trail is planned to be located along the Flynn Lowney Irrigation Ditch and there has been discussion about continuing the trail along the ditch through the property. However, as the ditch leaves the property to the north, space was not reserved in the adjacent 44 Ranch development to extend the trail so another alignment is necessary. Instead, the trail is proposed to follow the ditch through Heron's Landing from Roundup Drive to Chuck Wagon Drive, then run east along Nesting Lane, along the 4-acre park area, and north and east along Heron's Landing Drive before crossing George Elmer Drive and heading north and east again and ultimately crossing the ditch onto Bell Tower Road. This provides a reasonable route given site conditions that are unique and not applicable generally to other properties.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

The trail would provide a community asset of greater benefit than a standard sidewalk. Based on the plans submitted with the application, additional easement is not necessary for maintenance so requiring it would result in an unnecessary hardship by diminishing the land area for lot development and common area.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent.

VARIANCE REQUEST #8:

A variance was requested from Section 3-020 Table .2A, which requires 70-foot rights-of-way for Low Density Urban Local streets with average daily traffic up to 2,500 vehicle trips. Based on average daily traffic projections in the traffic impact study, Heron's Landing Drive, Nesting Lane, and Audubon Trail (Loop) are planned to be built in accordance with City standards (10-foot driving lanes, 7-foot parking lanes, curbs and gutters, 7-foot boulevards and 5-foot sidewalks) within 60-foot rights-of-way instead of 70.

DECISION:

City Council **approved** the variance, allowing the streets to have 60-foot rights-of-way instead of 70, but only if an additional one-foot access and utility easement is provided along the outer

edge of each right-of-way to allow for sidewalk maintenance. The decision is based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposal would allow the streets to be built in accordance with City standards for Low Density Urban Local streets including driving lanes, parking lanes, curbs and gutters, boulevards and sidewalks. This would not result in a threat to public health, safety, or welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The conditions are unique to this subdivision in that additional right-of-way for turning lanes is not required now and is unlikely to be necessary in the future based on the configuration of the subdivision and projected traffic flows. This is not necessarily the case in other subdivisions.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

Granting the variance would allow more area to be used for lot development. It is not necessarily due to physical surroundings, shape, or topography, but would benefit the future lot owners. The hardship is that additional right-of-way is not necessary to provide for this subdivision now and in the future.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent.



DEVELOPMENT SERVICES

435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

October 16, 2020

Ryan Salisbury, P.E.
WGM Group, Inc.
1111 E. Broadway
Missoula, MT 59802

RE: Heron's Landing Phased Subdivision, Annexation with Zoning, and Rezoning

Dear Mr. Salisbury,

At its regularly scheduled meeting of September 21, 2020 the Missoula City Council voted to annex Tracts 1 and 2 of Certificate of Survey No. 5963 into the municipal boundaries and apply the RT5.4 Residential zoning, subject to the conditions of annexation; approve the adoption of an ordinance to apply the Heron's Landing Neighborhood Character Overlay District; and approve the Heron's Landing Phased Subdivision, subject to the conditions in the attached document entitled "Conditions of Approval." The reasons for the decision to approve the subdivision and zoning, including the imposition of conditions of approval, may also be found in the attached document entitled "Findings of Fact and Conclusions of Law." The Resolution to Annex with conditions of annexation is attached, and will be assigned a resolution number and placed on the City's website here:

<https://www.ci.missoula.mt.us/DocumentCenter/View/1010/Ordinance-Index-and-Ordinances?bidId=>

As part of these actions the City Council approved the following motions:

1. **Adopt** a resolution to annex and incorporate within the boundaries of the City of Missoula, Montana a certain parcel of land described as Tracts 1 and 2 of COS No. 5963 in the SE ¼ of Section 12 and the N ½ of Section 13, Township 13 North, Range 20 West, P.M.M., and zone the property RT5.4 Residential in the city, based on the findings of fact in the staff report, subject to the recommended conditions of annexation approval as amended by City Council.
2. **Adopt** an ordinance to establish the Heron's Landing Neighborhood Character Overlay District and to rezone the subject property from RT5.4 Residential to RT5.4 Residential / NC-HL Heron's Landing Neighborhood Character Overlay, based on the findings of fact in the staff report.
3. **Approve** the variance request from Section 3-020 Table .2A, allowing George Elmer Drive improvements to be made within the existing 80-foot right-of-way instead of a 90-foot right-of-way.
4. **Approve** the variance request from Section 3-020 Table .2A, allowing Chuck Wagon Drive improvements to be made within the existing 80-foot right-of-way instead of a 90-foot right-of-way.
5. **Approve** the variance request from Section 3-020.2A(2), allowing Block A to be longer than 480 feet.

6. **Approve** the variance request from Section 3-020.2A(2), allowing Blocks B, C, D, E, F, G, and J to be longer than 480 feet.
7. **Approve** the variance request from Section 3-020.2A(2), allowing Block H to be longer than 480 feet.
8. **Approve** the variance request from Section 3-020.2A(2), allowing Block I to be longer than 480 feet.
9. **Approve** the variance request from Section 3-020.15.D.1, allowing a 10-foot wide Secondary Commuter Trail along street rights-of-way within an additional 6 ½-foot easement.
10. **Approve** the variance request from Section 3-020 Table .2A allowing Heron's Landing Drive, Nesting Lane, and Audubon Trail (Loop) to be built within 60-foot rights-of-way instead of 70, so long as an additional one-foot access and utility easement is provided along the outer edge of each right-of-way to allow for maintenance.
11. **Approve** the Heron's Landing Phased Subdivision, based on the findings of fact and subject to the recommended conditions of approval in the staff report as amended by City Council.

If you wish to appeal this decision on the subdivision, you must follow the procedure established by M.C.A. §76-3-625(2), which states as follows:

A party . . . who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

The statute includes the applicant within the definition of an aggrieved party.

According to M.C.A. §76-3-617(3) all phases of a phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

If you have further questions, please contact me at 529-0709 or email me at degrandpred@ci.missoula.mt.us.

Sincerely,



Dave DeGrandpre, AICP
Planning Supervisor, Development Services

Copy:
Gary Schnell, Teton Land Development Group, LLC
Mary McCrea, Development Services
Kevin Slovarp, Development Services
Troy Monroe, Development Services
Eric Anderson, Development Services

CONDITIONS OF APPROVAL
HERON'S LANDING PHASED SUBDIVISION
September 21, 2020

Note 1: Montana Code Annotated (MCA) Section 76-3-604(9)(a) states review and approval, conditional approval, or denial of a proposed subdivision may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review. The Heron's Landing Phased Subdivision application was deemed sufficient for review on May 14, 2020. The City of Missoula Subdivision Regulations Amended June 28, 2010 and 2019 Montana Subdivision and Platting Act were in effect at that time. The 2019 Montana Subdivision and Platting Act includes provisions for phased subdivisions in Section 76-3-617. Those provisions apply to the Heron's Landing Phased Subdivision.

Note 2: The Heron's Landing Phased Subdivision application includes a phasing plan that lists the anticipated platting of W phases to the west of George Elmer Drive and E phases to the east of George Elmer Drive. The subdivider has indicated the sequence of final platting depends in part on construction of George Elmer Drive, which is planned to be developed as part of the Mullan BUILD project. The City of Missoula acknowledges that under 76-3-617, MCA the subdivider may seek to amend the phasing plan in the future, following review and approval by City Council.

Streets, General

1. All street and non-motorized improvements shall be designed and built in accordance with City of Missoula Public Works Standards and Specifications and City of Missoula Subdivision Regulations (except as modified by variance). All plans must comply with Americans with Disabilities Act requirements. All plans must be reviewed and approved by the City Engineer in accordance with City policies. *City Subdivision Regulations Section 3-020.2*
2. The subdivider shall provide a street naming exhibit to be reviewed and approved by Development Services prior to final plat filing of the first phase. *Subdivision Regulations Section 3-020.12*
3. The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices to be reviewed and approved by the City Engineer and City Fire Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 3-020.4(H)(2)*
4. The following statement shall appear on the face of each plat, in the covenants, and on each instrument of conveyance:
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for the upgrading of streets within this subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities" *City Subdivision Regulations Section 5-050.4(M&N)*
5. All proposed rights-of-way shall be dedicated to the public on the face of each plat and approved by the City Engineer. *City Subdivision Regulations Section 3-020.3.B*
6. All proposed easements, except as modified by these conditions, shall be shown on the face of each plat and identified for their width and purpose, including easements for vehicular and pedestrian access, utilities, and irrigation ditches. *City Subdivision Regulations Section 3-060.1*

7. Street lighting shall be installed within the subdivision along Chuck Wagon Drive and George Elmer Drive in accordance with the Missoula Public Works Standards and Specifications Manual. The subdivider shall install lighting along Chuck Wagon Drive and George Elmer Drive prior to filing any plat that abuts those streets as part of that phase's improvements. Prior to final plat filing of the first phase, the subdivider shall petition to create a new street light improvement district. *Missoula Public Works Standards and Specifications Manual Section 7.3.6*

Specific Streets

8. The Heron's Landing Phased Subdivision is located within the Mullan BUILD project area and George Elmer Drive, which provides access to the subdivision property, is planned to be improved as part of the Mullan BUILD project. Federal funds are planned to pay for a portion of the Mullan BUILD improvements. Funding mechanisms are currently being explored to pay for the remainder of the improvements. The funding mechanisms may include, but are not limited to, a special improvement district, impact fee, latecomers fee, or cost share agreements that allow the City of Missoula and Missoula County to recover the cost of constructing infrastructure from the properties that benefit from the Mullan BUILD project. To the extent that such funding mechanism(s) is created in accordance with state law and applicable principles of land use law, the subdivider, successors, and assigns shall participate in and be bound by the fees assessed and not oppose the creation of or participation in such a district. *Montana Code Annotated 76-3-510*
9. Chuck Wagon Drive through the length of the subdivision shall be improved to Urban Collector (with parking) standards as proposed including two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks within the existing 80-foot wide right-of-way. All improvements to Chuck Wagon Drive from back of curb to back of curb shall be reviewed and approved adjacent to Phase W1 prior to final plat approval of Phase W1. All improvements to Chuck Wagon Drive from back of curb to back of curb north of Phase W1 shall be reviewed and approved prior to final plat approval of the third west phase. All other street improvements including boulevards and sidewalks shall be reviewed and approved prior to final plat approval of each adjacent phase. *Subdivision Regulations Table .2A modified by variance.*
10. Heron's Landing Drive, Nesting Lane, and Audubon Loop shall be designed and built to Low Density Urban Local Street standards including two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (except where the Secondary Commuter Trail is to be located) within 60-foot rights-of-way. The subdivider shall provide an additional access and utility easement at least one foot wide along the outer edge of the sidewalks and secondary commuter trail along these streets to allow for maintenance. *Subdivision Regulations Table .2A modified by variance, Correspondence with City Engineer.*

Drainage

11. The subdivider shall submit complete grading and drainage plans prior to final plat approval of each applicable phase showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities shall be constructed in accordance with the approved plan and accommodate the planned runoff from all upgradient phases. *City Subdivision Regulations Section 5-020.11*

Transit

12. The subdivider shall petition for the property to be included in the Missoula Urban Transportation District prior to final plat filing of the first phase. *City Subdivision Regulations Section 3-010.7 and 3-020.1, City of Missoula Annexation Policy*

Water System and Sewer System

13. The subdivider shall submit plans for water supply and sewage disposal for review and approval of the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of each applicable phase. Construction of all water supply and sewer systems shall be in accordance with City policies. *City Subdivision Regulations Sections 3-070.01 and 3-070.04*

Solid Waste

14. The subdivider shall submit plans for solid waste disposal for review and approval of the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of each applicable phase. *City Subdivision Regulations Sections 3-070.01*

Parkland

15. The subdivider shall meet the parkland dedication requirement as depicted on the Phasing Plan Exhibit and on the Parkland Dedication Exhibit of the application by providing 5.14 acres of dedicated common area to be maintained by the Heron's Landing Homeowners Association. *City Subdivision Regulations Section 3-080.3.A*
16. The subdivider shall draft an agreement for review and approval of the Parks and Recreation Department and City Attorney to provide for the dedication of land and/or payment of money prior to final platting of each phase. The agreement shall provide for different circumstances including where more than the required land is dedicated per phase, where an insufficient amount of land is dedicated per phase and cash is also required to make up for the insufficient amount of land, and where refunds may be issued by the City when more land is dedicated than needed to meet the dedication requirement. The agreement shall be submitted, reviewed and approved prior to final plat filing of the first phase. *City Subdivision Regulations Section 3-080.6*
17. When cash in lieu of parkland is proposed, the amount shall be equal to the fair market value of the amount of land that is statutorily required to be dedicated for that phase. The fair market value shall be determined by a Montana certified general real estate appraiser, hired and paid by the subdivider. Fair market value means the value of the unsubdivided, unimproved land based on the zoning designation that applies to the property at that time. The City reserves the right to require a separate appraisal for each phase. *City Subdivision Regulations Section 3-080.7*
18. The subdivider shall submit a park and common area landscape and maintenance plan and a boulevard landscaping plan to be reviewed and approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 5-050.4*

Covenants, Conditions, and Restrictions

19. Final covenants, conditions, and restrictions meeting the requirements of City Subdivision Regulations Section 5-020-14.K shall be submitted for review and approval prior to final plat filing of the first phase. *City Subdivision Regulations Section 5-020-14.K*

Non-Motorized Transportation Facilities

20. The subdivider shall provide five-foot sidewalks along all street frontages (except for where the Secondary Commuter Trail is to be located) and at the proposed mid-block locations depicted on the circulation plan exhibit. The subdivider shall provide a 10-foot Secondary Commuter Trail in the locations, dimensions, and within the rights-of-way and easements proposed in the preliminary plat phased subdivision submittal and approved by City Council. All sidewalk and trail plans, including specifications for ADA accessibility and safe street crossings, shall be reviewed and approved by the City Engineering and Parks and Recreation departments prior to final plat filing of each applicable phase. Construction of the non-motorized transportation facilities shall occur as proposed in the application submittal and as required to serve each phase. *City Subdivision Regulations Section 3-020.15 and Table .2A*
21. The subdivider shall provide a five-foot ADA accessible asphalt path connecting to existing sidewalks north of Heron's Landing along Chuck Wagon Drive in conjunction with Phase W1 and George Elmer Drive in conjunction with Phase W2 as depicted on the Phasing Plan. *Subdivision Application Phasing Plan*

Fire Protection

22. The subdivider shall provide plans for address signage and a fire hydrant plan for review and approval prior to final plat filing of each applicable phase. All approved fire protection improvements shall be installed in accordance with the approved plans. *City Subdivision Regulations Section 3-010.1.F*

Noxious Weeds

23. The Weed Management and Revegetation Plan for Heron's Landing shall be appended to the covenants, conditions and restrictions. The subdivider shall provide evidence of plan implementation and noxious weed control prior to final plat filing of each phase. *City Subdivision Regulations Section 5-020.14.K*

Airport Influence Area

24. Each final plat shall include the following statement:
"This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase." *City Subdivision Regulations Section 3-010.2*

Zoning

25. The Heron's Landing Neighborhood Character Overlay Zoning District shall be adopted concurrent with City Council approval of the subdivision request based on the findings.

FINDINGS OF FACT & CONCLUSIONS OF LAW
HERON'S LANDING PHASED SUBDIVISION
September 21, 2020

A. GROWTH POLICY COMPLIANCE

Findings of Fact:

1. City of Missoula Subdivision Regulations Section 3-010.1.I. requires that subdivisions be reviewed for compliance with the growth policy and its amendments.
2. The *2035 Our Missoula City Growth Policy* contains a future land use map with land use designations that visually depict the community's desired direction as it meets new growth challenges and changing times. The land use descriptions and recommended locations help to set a broad understanding of future land use patterns that enables city services and agencies along with residents, property owners, and neighborhoods to plan effectively for the future. The mapping is a visual representation of the balanced, value-based review of the goals, objectives, and actions recommended as part of the growth policy.
3. The *2035 Our Missoula City Growth Policy* future land use map provides a land use designation of Residential Medium Density – 3 to 11 Dwelling Units Per Acre for the property.
4. The subdivision is intended to create 347 lots from the 72.11 acres, for a density of 4.8 dwelling units per acre.

Conclusions of Law

1. City Council determined the Heron's Landing Phased Subdivision substantially complies with the *2035 Our Missoula City Growth Policy*.

B. PRIMARY CRITERIA COMPLIANCE

CRITERION 1: EFFECTS ON AGRICULTURE & AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

Agriculture

1. The USDA Natural Resources Conservation Service lists three soil types on these tracts: Desmet loam, Grantsdale loam, and Moiese gravelly loam.
2. The NRCS Soil Survey classifies these soil types as "Prime Farmland if Irrigated" and "Farmland of Local Importance." Roughly 2/3 of the site is Prime Farmland if Irrigated, with the remaining 1/3 in the southeast corner of the site Farmland of Local Importance.
3. The application submittal states the land has been used for raising livestock and growing hay in the past, although not within the past three years.
4. The property is currently zoned by Missoula County as C-RR1 Residential, which provides a maximum residential density of one dwelling unit per acre. The existence of County residential zoning on the parcels anticipates their use for residential rather than agricultural purposes. The *Our Missoula City Growth Policy* designates the property for urban scale residential development.

Agricultural Water User Facilities

5. The Flynn Lowney Irrigation Ditch crosses the property from roughly the center of the northern boundary running southwest to the western boundary. An irrigation ditch is also located along part of the north boundary of the property.
6. The preliminary plat sheets show culverts are planned to be installed where the Flynn Lowney Ditch intersects planned roadways and easements to provide for access and maintenance of the ditches.
7. Fifteen proposed lots numbered F332 through F346 are encumbered by the irrigation ditch to the extent the lots are undevelopable at present. These lots are labeled on the phasing plan as W7, the last potential lots to be created. The application states there is only one downstream user of the irrigation water and discussion has occurred to possibly abandon and vacate the ditch at the discretion of the Hellgate Valley Irrigation Company. If the ditch remains, the lots in this phase will not be developed.
8. The property owner has no rights to the irrigation water. Future homeowners in this subdivision would not have any rights to the irrigation ditch water either. There is a note on the plat which indicates this, and it is also specified in the covenants.

Conclusions of Law:

1. This subdivision would prevent use of productive soils for agriculture. However, the property is zoned for residential use and is planned for urban scale residential development.
2. City Council determined that no impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision.

CRITERION 2: EFFECTS ON LOCAL SERVICES

Transportation and Drainage

Findings of Fact:

Streets and Alleys

1. Access to the subdivision would be from George Elmer Drive and Chuck Wagon Drive, both classified as Urban Collector Streets. The internal subdivision road network includes Low Density Urban Local Streets and Local Residential Streets, differentiated by the anticipated daily traffic volumes. The subdivider would be responsible for designing and building/upgrading all of the transportation facilities within the subdivision, including George Elmer Drive and Chuck Wagon Drive, in accordance with City Public Works Standards and Specifications and the City Subdivision Regulations (except as may be modified by variance). The plans must comply with Americans with Disabilities Act requirements and be approved by the City Engineer.
2. The subdivision application submittal includes a traffic impact study. The study indicates that currently planned transportation improvements to reduce congestion and increase safety along Mullan Road are pending and include a two-way left turn lane at the Mullan Road / Chuck Wagon Drive intersection and a traffic signal and eastbound left turn lane at the Mullan Road / George Elmer Drive intersection. The traffic impact study states the planned transportation improvements are sufficient to accommodate the site generated traffic at the Mullan Road intersections and that no further intersection improvements are required to mitigate the site generated traffic. The study also indicates the proposed internal street network design is sufficient to accommodate projected levels of traffic within and travelling through the subdivision.

3. Many of the lots are planned so the fronts of homes would face the street with rear access via alleyways. The City Subdivision Regulations require alley rights-of-way to be at least 20 feet wide with a paved surface of at least 12 feet. The proposed alleys meet these requirements. All of the lots appear to be suitable for driveway or alley access in accordance with the subdivision regulations.
4. Street names are provided on the preliminary plat. Section 3-020.12 of the City Subdivision Regulations requires the street naming plan to be reviewed and approved prior to final plat approval. This requirement is reflected in a condition of preliminary plat approval.
5. Section 3-020.4(H)(2) of the City Subdivision regulations requires street signs and traffic control devices to be approved by the City Engineer and consistent with the Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation. A condition of approval requires a signage plan reviewed and approved by City Fire and the City Engineer prior to final plat approval of each applicable phase and installation of signage meeting the above-named standards prior to platting of each phase.
6. All streets and alley rights-of-way are to be dedicated to the public. Section 3-020.3(A)(1) of the City Subdivision regulations requires each public road to provide for construction and perpetual maintenance of the road. Section 5-050.4(M & N) of the City Subdivision regulations requires the Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance. A condition of approval requires a SID statement on the plat and in the subdivision covenants for future improvements and maintenance to all streets providing access to the subdivision lots.
7. Section 3-060.1 of the City Subdivision Regulations requires easements be provided for vehicular and pedestrian access, utilities and irrigation ditches and City Engineer approval of the easements. A condition of approval requires that the location and width of all easements including streets, utilities and the irrigation ditches shall be approved by the City Engineer prior to final plat approval of each phase.
8. Subdivision Regulations Section 3-020.2 and .3C requires improvements to streets within or adjacent to a subdivision to meet the standards prescribed in Table .2A.

George Elmer Drive and Chuck Wagon Drive

9. George Elmer Drive and Chuck Wagon Drive are classified as Urban Collectors (with parking). Table .2A shows Urban Collectors with parking require a minimum 90-foot wide right-of-way that includes two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total, with a small amount of additional space for maintenance). Table .2A also includes the possibility of a center turn lane, which would require additional space.
10. The subdivider requested separate variances to build the required street improvements within 80-foot rights-of-way instead of 90 for both George Elmer Drive and Chuck Wagon Drive. These requests are addressed below.
11. George Elmer Drive was also proposed to include 20-foot access and utility easements on the east and west sides to allow for a meandering sidewalk and commuter trail (discussed below) as well as for utility placement and maintenance.

Heron's Landing Drive, Nesting Lane, and Audubon Loop

12. Subdivision Regulations Table .2A identifies Low Density Urban Local Streets as those streets serving less than 12 dwelling units per acre and having an average daily traffic of up to 2,500 vehicle trips. (Residential streets with more than 250 and less than 2,500 ADT.)

According to the traffic impact study and supplemental analyses, Heron's Landing Drive, Nesting Lane, and Audubon Loop fall into this category. Table .2A shows Low Density Urban Local Streets to have a minimum 70-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp requested an additional one-foot easement along the outer edge of the street improvements to allow for maintenance.

13. The subdivider requested a variance to build the above street improvements within 60-foot rights-of-way instead of 70. This request is addressed below.

Lariat Loop, Tenderfoot Way, Riata Road, Flycatcher Lane, Bulrush Way, Horsetail Lane, Marsh Lane, Rookery Trail, and Woodpecker Lane

14. Subdivision Regulations Table .2A identifies Local Residential Streets as those streets with up to 250 average daily vehicle trips. According to the traffic impact study and supplemental analyses, the above-listed streets fall into that category. Table .2A shows Local Residential Streets to have a minimum 47-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp requested an additional one-foot easement along the outer edge of the street improvement to allow for maintenance.
15. The subdivider is proposing that the above-listed streets be built in accordance with Table .2A within 60-foot wide rights-of-way in compliance with the subdivision regulations.

Drainage

16. The City of Missoula Storm Water Specifications and Design Standards and Section 3-040 of the City Subdivision Regulations provide minimum standards for site grading and control of stormwater runoff.
17. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation. The proposed method of managing storm runoff is grading the site and developing a storm drainage system with drywell sumps to collect and infiltrate runoff, with backup or overflow retention on Common Area 1 and Common Area 6. The overflow area is also provided in the event of irrigation ditch flooding. The hydrogeologic evaluation addresses risk of basement flooding on-site due to increases in the water table elevation caused by flooding in Grant Creek; risk of basement flooding on- and off-site from the use of sumps during an extreme storm event (100-year, 24-hour), and the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes there is no risk of basement flooding within the subdivision boundary even during an extreme storm event; there is no risk of flooding of basements on-site or on surrounding properties associated with the planned use of sumps for on-site storm water management, and the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary.
18. Section 3-040.2 and Section 5-020.11 of the City Subdivision Regulations require a complete grading and drainage plan showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas to be submitted prior to final plat approval meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities must be constructed in accordance with the approved plan as per Section 5-020.11.B and due to the phased development, must be constructed to accommodate the planned runoff from all upgradient phases.

Transit

19. Section 3-010.7 and 3-020.1 of the City Subdivision Regulations require subdividers to provide safe, efficient, and convenient transportation corridors for motorists, pedestrians, bicyclists and bus riders. Section 3-020.4.E requires subdivision circulation systems to provide for various modes of transportation such as automobiles, pedestrians, bicycles, buses, and emergency vehicles. The City of Missoula Annexation Policy states that where appropriate, proposed annexation areas should be conditions to join the Missoula Urban Transportation District.
20. The property is not currently within the Missoula Urban Transportation District, which is necessary to provide for future transit service. A condition of approval is the subdivider is required to petition into the district prior to final plat approval of the first phase.

Non-Motorized Transportation

21. City Subdivision Regulations Section 3-020.15 requires sidewalks and boulevards adjacent to all streets in accordance with Table .2A.
22. The subdivision application submittal includes preliminary plat sheets and a circulation plan exhibit that show five-foot wide sidewalks along street frontages and in several mid-block locations.
23. The circulation plan exhibit also shows a 10-foot wide Secondary Commuter Trail extending from Roundup Drive near the southwest corner of the property along the Flynn Lowney Irrigation Ditch, Nesting Lane, Heron's Landing Drive, George Elmer Drive, and through common area and across the irrigation ditch past the northeast extent of the subdivision. The trail is intended to provide bike and pedestrian access as part of a larger trail network that is hoped to eventually connect the Old Milwaukee railroad grade to the southwest with Tipperary Way and Hellgate Elementary School to the east. Providing a Secondary Commuter Trail instead of sidewalk along street frontage requires a variance from City Subdivision Regulations, as addressed below. City Subdivision Regulations Section 3-020.15.g requires trails to be constructed in accordance with the subdivision regulations and Missoula City Public Works Standards and Specifications.

Conclusions of Law:

1. City Council determined the subdivision will meet the Subdivision Regulations requirements for streets and non-motorized improvements if the variance requests are approved and the conditions of approval are imposed and met.
2. City Council determined the subdivision will meet the City of Missoula Storm Water Specifications and Design Standards and grading and drainage standards in the Missoula City Subdivision Regulations if the condition of approval is imposed and met.
3. City Council required final grading, drainage and stormwater plans will be reviewed and approved by Montana DEQ and the City Engineer prior to final plat approval of each phase.
4. City Council determined the subdivision will meet the transit standards in the City Subdivision Regulations if the condition of approval is imposed and met.

Water System and Sewer System

Findings of Fact:

1. The property is within the Missoula Wastewater Facility Service Area and planned to be connected to existing water and sanitary sewer mains that were extended into the area for the

44 Ranch development, Flynn Ranch development, and RSID #8474 sewer mains along north side of Mullan Road.

2. The subdivision application submittal includes preliminary sewer and water design reports. The City of Missoula provided a letter stating the intent to provide water and sewer service to the subdivision in June of 2019. Individual water and sanitary sewer mains internal to the subdivision are planned to be extended as the project builds out.
3. As per Sections 3-070.01 and 3-070.04 of the City Subdivision Regulations, water supply and sewage disposal systems require review and approval from the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of any phase. This is required as a condition of approval.

Conclusions of Law:

1. City Council determined water and sewer are available to the subdivision.
2. City Council determined review of water and sewer systems is under the jurisdiction of City Engineering and state and local health authorities under the Montana Sanitation in Subdivision Act.
3. City Council determined the water and sewer systems will meet the subdivision regulations if the conditions of approval are imposed and met.

Solid Waste

Findings of Fact:

1. Republic Services is expected to provide disposal service to the subdivision.
2. Solid waste systems must meet the minimum standards of the Montana Department of Environmental Quality and City/County Health Code as per Section 3-070.1 of the City Subdivision Regulations. This requirement is a condition of approval.

Conclusions of Law:

1. City Council determined solid waste disposal service are expected to be available to the subdivision and in compliance with Subdivision Regulations.
2. City Council determined review of solid waste disposal is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

Parks and Recreation

Findings of Fact:

1. Section 3-080.3A of the City Subdivision Regulations requires parkland dedication equal to 11% of the net lotted area in subdivisions with residential lots of 0.5 acres or smaller.
2. The total lotted acreage of the subdivision at 41.6 acres. Eleven percent of 41.6 acres is 4.58 acres, the amount needed to meet the parkland dedication requirement. The subdivider is proposing 5.14 acres of dedicated common area including a 4-acre central park area to be maintained by the Heron's Landing Homeowners Association.
3. Section 3-080.6 and 7 of the City Subdivision Regulations also provides for cash donation in lieu of land dedication.
4. The subdivider proposed to phase the dedication of parkland in conjunction with platting individual phases of the subdivision. However, the application materials state the subdivider is not sure which phase, W1 or E1, will be filed first. Some phases do not include the required parkland dedication acreage required for that phase, while others include more

parkland than required for that phase. (For example, Phase E1 would require 0.64 acres of parkland but only includes 0.32 acres, while Phase W1 requires 0.6 dedicated acres and includes 0.76 acres.) To address this issue, the subdivider proposed to enter into an agreement with the City so that land and cash could be dedicated in phases where sufficient land is not provided and cash could be refunded in phases where more land is dedicated than required.

5. Per Section 5-020.14.H of the City Subdivision Regulations, a landscaping and maintenance plan may be required for common areas and parkland. Section 5-050.4 also requires a boulevard landscaping plan to be reviewed and approved prior to final platting of each applicable phase. The draft covenants, conditions, and restrictions state the Heron's Landing Homeowners Association would be responsible for maintenance of common areas and the secondary commuter trail. A condition of approval is for the subdivider to submit a landscape and maintenance plan and boulevard landscaping plan to be approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase.
6. The subdivider is proposing covenants, conditions, and restrictions as a way to manage affairs of the homeowners association and to communicate information and requirements to lot purchasers. City Subdivision Regulations Section 5-020.14.K. contains requirements for covenants including that the property owners' association be formed before any property is sold, the association is responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities, and other matters. A condition of approval is for the subdivider to submit final covenants, association bylaws, and articles of incorporation along with the final plat materials for the first phase.

Conclusion of Law:

1. Parkland dedication is required in this subdivision in accordance with the City Subdivision Regulations. City Council determined the subdivider's proposal would meet the parkland dedication requirements if the conditions are imposed and met.
2. City Council determined the parkland and common areas are to be managed by a homeowners association and the City Subdivision Regulations require homeowners association documents to include specific provisions that will be reviewed prior to final platting of the first phase if the recommended condition is imposed and met.
3. City Council determined the City Subdivision Regulations require plans for landscaping, maintenance, and boulevard landscaping, which will be reviewed and approved prior to final platting of the each applicable phase if the condition is imposed and met.

Schools

Findings of Fact

1. The subdivision will create up to 347 additional residential lots with an estimated addition of 65 – 174 school age children to Hellgate Elementary and Big Sky High School. Several school bus stops are located in close proximity to the subdivision. The application says Hellgate Elementary officials have stated capacity exists with completion of a new building in 2020, and this development expands their tax base.

Conclusion of Law:

1. City Council determined no adverse impacts to schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

1. The Missoula City Fire Department will serve the subdivision. The closest station is located at 3011 Latimer Street, approximately 2.5 miles from the subdivision.
2. Subdivision Regulations Section 3-070.1 requires that water supply for fire protection be provided via a public or community water system with 1,000 gallons per minute minimum flow, or via residential sprinkler systems.
3. Water supply for fire protection for this subdivision is planned to be supplied via 20 new fire hydrants. A fire hydrant spacing exhibit provided with the subdivision application shows each hydrant and indicates a minimum 1,000 gallons per minute would be provided. Missoula City Fire Marshall Dax Fraser signed the exhibit, indicating approval.
4. The Missoula City Fire Department regularly requires an addressing system to be developed that conforms to the addressing requirements of the City. All new buildings are assigned an address at the time of building permit approval, and are required to meet City standards for signage.
5. A condition of approval requires the developer to provide plans for address signage and a fire hydrant plan subject to review and approval of the Missoula City Fire Department prior to final plat approval of each applicable phase. Fire hydrants shall be installed prior to combustible construction as required by the City Fire Department approved hydrant plan.

Conclusion of Law:

1. City Council determined fire service is available to the subdivision if the condition of approval is imposed and met.

Law Enforcement

Findings of Fact:

1. The subdivision is located within the jurisdiction of the Missoula Police Department.
2. The Missoula Police Department did not provide comments on the subdivision application.

Conclusion of Law:

1. City Council determined law enforcement service is expected to be available to the subdivision.

CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. The subject property was historically used for hay and livestock production. It does not have trees or significant vegetative cover. The property does not have naturally occurring surface water, high groundwater, or wetlands. The only water sources are two irrigation ditches.
2. The property does not contain critical plant communities or support vegetative species of concern.
3. The property is surrounded by residential development on three sides. It is located between Mullan Road and West Broadway in an area being planned for urban development.

4. The property may support common wildlife mammals including rodents, deer, skunks, and fox. Potential bird species of concern in the area are yellow-billed cuckoo, bobolink, ferruginous Hawk and sharp-tailed grouse. Section 13.m of the covenants advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict.
5. The subdivision is not located adjacent to public lands and will therefore have no impact on public land uses, public land management policies, or public land access.
6. No riparian resources or regulated floodplain exist on the property.
7. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation that assesses the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary.
8. Section 5-020.14.K of the City Subdivision Regulations requires that a management plan be developed for common areas and that the management plan address noxious weeds.
9. The covenants, conditions, and restrictions include a weed management and revegetation plan for the entire property that identifies numerous noxious weed species including spotted knapweed, Canada thistle, leafy spurge, houndstongue, and others. The plan recommends herbicide treatments and reseeded of exposed soils. A condition of approval is the final covenants include the weed management and revegetation plan and evidence of plan implementation to be submitted to Development Services prior to final plat approval of each phase.

Conclusion of Law:

1. City Council determined no impacts to the natural environment and wildlife habitat are foreseen as a result of this subdivision if the condition to manage noxious weeds is imposed and met.

CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

Hazardous Land

1. Subdivision Regulations Section 3-010.2 requires the mitigation of hazards to subdivision development, including but not limited to flooding and slopes of 25% or more.
2. The subject property is outside of the FEMA-identified 1% annual chance flood hazard areas and floodplain.
3. Outside of irrigation ditches, the property does not contain slopes of 25% or more.

Wood Stoves

4. The property is located within an air stagnation zone. The Section 13. J. of the covenants, conditions, and restrictions includes language prohibiting wood burning devices (fire places, wood burning and pellet stoves, etc.)

Airport Influence Area

5. The property is located within an airport influence area of Missoula International Airport. A portion of the property is also within an extended approach and departure area.

6. The preliminary plat includes the following statement, which is required to be included on each final plat in the Heron's Landing Subdivision:

"This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase."

Conclusion of Law:

1. City Council determined if the airport influence area statement is printed on the plats, no adverse impacts to public health and safety are foreseen as a result of this subdivision.

**C.) COMPLIANCE:
SURVEY REQUIREMENTS**

Findings of Fact

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3. Forthcoming review of the final plats will ensure compliance with state subdivision and platting law.

Conclusion of Law:

1. City Council determined this proposal will meet the survey requirements of state law.

D) SUBDIVISION REGULATIONS

Findings of Fact

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

1. City Council determined the plat will be brought into compliance with the local subdivision regulations if the requested variances are approved and the conditions of approval are imposed.

E) REVIEW PROCEDURE

Findings of Fact

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations and the Montana Subdivision and Platting Act.
2. The public hearing before the Missoula Consolidated Planning Board occurred on August 18, 2020. The Missoula City Council hearing occurred on September 14, 2020.
3. Development Services staff sent notices of the public hearings by certified mail to adjacent property owners and the subdivider on July 30, 2020. Five posters were placed on the property August 3, 2020. Legal notice of the public hearings was published in the Missoulian August 2nd and 9th. All noticing occurred at least 15 days prior to the public hearings.
4. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within 30 days of such decision. The application must specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a

contiguous landowner, an owner of land within the City of Missoula who can establish a likelihood of material injury to property or its material value, or the City Council. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

1. City Council determined this subdivision proposal followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations.

F) PROVISION OF EASEMENTS FOR UTILITIES:

Findings of Fact:

1. City Subdivision Regulations Section 3-060 requires that easements be provided for utilities, drainage, ditch, vehicular, and pedestrian access and that easements be reviewed and approved by the City Engineering Division.
2. Access to utilities is planned to be provided to the subdivision from the north and south within public access and utility easements and public rights-of-way.
3. All utilities necessary to serve the subdivision, including water, sewer, electrical, phone and power, are planned to be located within public access and utility easements and public rights-of-way.

Conclusion of Law:

1. City Council determined utility services are available to this subdivision and the subdivision will be in compliance with the Subdivision Regulations if the condition of approval is imposed and met.

E) PROVISION OF LEGAL AND PHYSICAL ACCESS:

Finding of Fact:

1. Legal and physical access is planned to be provided to the subdivision via George Elmer Drive and Chuck Wagon Drive, which are publicly dedicated rights-of-way within the Missoula city limits. Each lot is designed with access to an alley or roadway that is to be located within easements or rights-of-way of appropriate width, with approval of certain variances.

Conclusion of Law:

1. City Council determined that with the approval of certain variances, the subdivision proposal meets the legal and physical access requirements of the Subdivision Regulations.

F) VARIANCE REQUESTS

VARIANCE REQUEST #1:

A variance was requested from Section 3-020 Table .2A, which requires an Urban Collector roadway – George Elmer Drive -- to be located within a 90-foot wide right-of-way. The applicant requested to provide all required improvements within an 80-foot wide right-of-way.

DECISION:

City Council **approved** the variance request, allowing George Elmer improvements to be made within an 80-foot wide right-of-way, based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposed street improvements, including standard urban collector driving lanes, bike lanes, parking lanes, curbs and gutters, boulevards and pedestrian facilities, can all fit within the existing 80-foot right-of-way. The lots along George Elmer Drive are proposed with 20-foot access and utility easements that would allow for a meandering sidewalk and the proposed Secondary Commuter Trail, in addition to utilities. The traffic impact study concludes that turning lanes onto Heron's Landing Drive are not warranted. No impacts to other persons or property are expected. Based on these findings, granting this variance is not expected to result in a threat to the public safety, health, or welfare, and would not be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The 80-foot right-of-way for George Elmer Drive north and south of the property already exists and was annexed into the City of Missoula in anticipation of future growth. This condition is fairly unique to the property and area. It is not applicable more generally to other property across the City or other areas of the City.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance is not the result of physical surroundings or topographical conditions. It is the result of past decisions where it was determined 80 feet of right-of-way would be sufficient to provide efficient and effective transportation for future growth in this area. Requiring an additional 10 feet of right-of-way would not be consistent with the road section in the 44 Ranch development to the north. Such disparate treatment would result in a hardship to the landowner if the strict letter of the regulations were to be enforced.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where an 80-foot right-of-way was deemed sufficient to accommodate safe and efficient travel in this area.

VARIANCE REQUEST #2:

A variance was requested from Section 3-020 Table .2A, which requires an Urban Collector roadway – Chuck Wagon Drive -- to be located within a 90-foot wide right-of-way. The applicant requested to provide all required improvements within an 80-foot wide right-of-way.

DECISION:

City Council **approved** the variance request the variance allowing Chuck Wagon Drive improvements to be made within an 80-foot wide right-of-way, based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposed street improvements, including standard urban collector driving lanes, bike lanes, parking lanes, curbs and gutters, boulevards and pedestrian facilities, can all fit within the existing 80-foot right-of-way. The traffic impact study concludes that turning lanes into the subdivision are not warranted. No impacts to other persons or property are expected. Based on these findings, granting this variance is not expected to result in a threat to the public safety, health, or welfare, and would not be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The 80-foot right-of-way for Chuck Wagon Drive north and south of the property already exists and was annexed into the City of Missoula in anticipation of future growth. This condition is fairly unique to the property and area. It is not applicable more generally to other property across the City or other areas of the City.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance is not the result of physical surroundings or topographical conditions. It is the result of past decisions where it was determined 80 feet of right-of-way would be sufficient to provide efficient and effective transportation for future growth in this area. Requiring an additional 10 feet of right-of-way would not be consistent with the road section in the 44 Ranch development to the north. Such disparate treatment would result in a hardship to the landowner if the strict letter of the regulations were to be enforced.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where an 80-foot right-of-way was deemed sufficient to accommodate safe and efficient travel in this area.

VARIANCE REQUEST #3:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block A (far eastern edge of the subdivision) is longer than 480 feet.

DECISION:

City Council **approved** the variance request the variance, allowing Block A to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

Block A is proposed to be approximately 1,203 feet long. Land to the east of the proposed lots has been platted and developed without plans for a future road extension. However, there is an existing 15-foot wide public pedestrian / bike easement in the adjoining West Ranch Estates Subdivision. The Heron's Landing subdivider proposed to provide a 10-foot wide non-motorized access and utility easement between lots 258 and 259 to generally align with this pedestrian /bike easement. The new easement would be a benefit to public safety, health and the general welfare. Granting the variance would not be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The subdivision to the east is already platted and developed. It does not include a street extension to the Heron's Landing property so there would be no point in providing a street extension from Heron's Landing to the east. This is a condition that is unique to the property and not applicable generally to other property.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance is the result of a development pattern made years ago on the subdivision to the east. The subdivider proposed to break up the block by providing a 10-foot non-motorized easement that will allow connection to the east. Enforcing the strict letter of the subdivision regulations to require the developer to further break up the block would result in a hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions where no connection from the adjoining subdivision to this property was provided.

VARIANCE REQUEST #4:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Blocks B, C, D, E, F, G, and J are longer than 480 feet.

DECISION:

City Council **approved** the variance, allowing Blocks B, C, D, E, F, G, and J to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has reasonable access either via street,

alley, or both. Each of these blocks is planned with one or more pedestrian corridor in common area to allow for connectivity through the subdivision. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The curved shape of the existing Chuck Wagon Drive right-of-way, the presence of the existing George Elmer Drive right-of-way, the Flynn Lowney irrigation ditch, and the shape / dimensions of the property in relation to these features present design challenges. This situation is unique to the property and not generally applicable to other properties. The variance request states that longer blocks, along with the proposed pedestrian corridors, are a design solution to these conditions.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance request is a result of existing rights-of-way, the irrigation ditch, and the shape and dimensions of the property. The proposed design allows for a reasonable level of access and connectivity with lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property and measures proposed by the subdivider to allow for connectivity and access, enforcing the strict letter of the law would result in an undue hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

VARIANCE REQUEST #5:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block H is longer than 480 feet.

DECISION:

City Council **approved** the variance, allowing Block H to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has reasonable access either via street, alley, or both. A common area is planned to provide pedestrian connection through the block,

with several of the lots facing the common area. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The curved shape of the existing Chuck Wagon Drive right-of-way and the Flynn Lowney irrigation ditch present design challenges. This situation is unique to the property and not generally applicable to other properties. The variance request states that longer blocks are a design solution to these conditions.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

This variance request is a result of existing right-of-way and irrigation ditch as well as design choices. The proposed design allows for a reasonable level of connectivity and lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property, enforcing the strict letter of the law would result in an undue hardship.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

VARIANCE REQUEST #6:

A variance was requested from Section 3-030.2.A.(2) Blocks, which states blocks may not exceed a maximum length of 480 feet in urban-suburban subdivisions. As shown on the block length variance exhibit, Block I is longer than 480 feet.

DECISION:

City Council **approved** the variance, allowing Block I to be longer than 480 feet based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The variance request states the subdivision road network has been designed in coordination with the City Police and Fire Departments. Every lot has alley access and street frontage. A Secondary Commuter Trail is proposed along the Flynn Lowney Ditch through this block, which would allow connectivity from Roundup Drive to Chuck Wagon Drive and on through the subdivision. There is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

The north extent of the block allows for an extension of Lariat Loop, which continues across Roundup Drive to the west. The property dimensions do not allow for connection to the southern leg of Lariat Loop. The Flynn Lowney Irrigation Ditch bisects this block, providing a design challenge. These conditions are unique and not applicable generally to properties.

- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.**

This variance request is a result of existing Lariat Loop right-of-way and irrigation ditch as well as design choices. The proposed design allows for a reasonable level of connectivity and lots of varying sizes that would allow for a mixture of housing types. Given the conditions of the property, enforcing the strict letter of the law would result in an undue hardship.

- D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.**

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

- E. The variance will not cause an increase in public costs.**

Approval of the variance will not cause an increase in public costs.

- F. The hardship has not been created by the applicant or the applicant's agent or assigns.**

The hardship has not been created by the applicant or the applicant's agent. The hardship is the result of past decisions regarding transportation corridor design, property boundaries, and the Flynn Lowney Irrigation Ditch.

VARIANCE REQUEST #7:

A variance was requested from Section 3-020.15.D.1, which requires sidewalks adjacent to all streets, and Section 3-02015.F(6)(b), which states that rights-of-way and easements for trails may not be less than 10 feet wide if adjacent to the roadway. The subdivider proposed to construct a separated 10-foot wide Secondary Commuter Trail instead of a standard sidewalk within an additional 6 ½-foot easement extending from the 60-foot street rights-of-way along Nesting Lane and Heron's Landing Drive. The location of the trail is shown on the block length variance exhibit and the circulation plan exhibit.

DECISION:

City Council **approved** the variance, allowing the proposed Secondary Commuter Trail as proposed in the application based on the following findings of fact:

FINDINGS:

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The proposal was to provide a 10-foot wide, concrete, separated trail instead of a 5-foot sidewalk along subdivision roadways. Nesting Lane and Heron's Landing Drive were proposed to have 60-foot rights-of-way, which include boulevards. The trail would be located north of the boulevards, which would result in a separated bike and pedestrian path. According to the application, the 10-foot wide Secondary Commuter Trail would only require

an additional 6 ½-foot easement instead of the required 10 additional feet. The subdivider plans to provide enhanced crossings at Chuck Wagon Drive and George Elmer Drive and make all crossings in accordance with industry standards with review and approval by Parks and Recreation. Based on agency comments from the Engineering and Parks and Recreation, there is no reason to believe that granting the variance would result in a public safety or health threat, negatively impact the public welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

A portion of the trail is planned to be located along the Flynn Lowney Irrigation Ditch and there has been discussion about continuing the trail along the ditch through the property. However, as the ditch leaves the property to the north, space was not reserved in the adjacent 44 Ranch development to extend the trail so another alignment is necessary. Instead, the trail is proposed to follow the ditch through Heron's Landing from Roundup Drive to Chuck Wagon Drive, then run east along Nesting Lane, along the 4-acre park area, and north and east along Heron's Landing Drive before crossing George Elmer Drive and heading north and east again and ultimately crossing the ditch onto Bell Tower Road. This provides a reasonable route given site conditions that are unique and not applicable generally to other properties.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

The trail would provide a community asset of greater benefit than a standard sidewalk. Based on the plans submitted with the application, additional easement is not necessary for maintenance so requiring it would result in an unnecessary hardship by diminishing the land area for lot development and common area.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent.

VARIANCE REQUEST #8:

A variance was requested from Section 3-020 Table .2A, which requires 70-foot rights-of-way for Low Density Urban Local streets with average daily traffic up to 2,500 vehicle trips. Based on average daily traffic projections in the traffic impact study, Heron's Landing Drive, Nesting Lane, and Audubon Trail (Loop) are planned to be built in accordance with City standards (10-foot driving lanes, 7-foot parking lanes, curbs and gutters, 7-foot boulevards and 5-foot sidewalks) within 60-foot rights-of-way instead of 70.

DECISION:

City Council **approved** the variance, allowing the streets to have 60-foot rights-of-way instead of 70, but only if an additional one-foot access and utility easement is provided along the outer

edge of each right-of-way to allow for sidewalk maintenance. The decision is based on the following findings of fact:

FINDINGS:

A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.

The proposal would allow the streets to be built in accordance with City standards for Low Density Urban Local streets including driving lanes, parking lanes, curbs and gutters, boulevards and sidewalks. This would not result in a threat to public health, safety, or welfare, or be injurious to other persons or property.

B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.

The conditions are unique to this subdivision in that additional right-of-way for turning lanes is not required now and is unlikely to be necessary in the future based on the configuration of the subdivision and projected traffic flows. This is not necessarily the case in other subdivisions.

C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of the regulations is enforced.

Granting the variance would allow more area to be used for lot development. It is not necessarily due to physical surroundings, shape, or topography, but would benefit the future lot owners. The hardship is that additional right-of-way is not necessary to provide for this subdivision now and in the future.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance or the Growth Policy.

Granting the variance would not in any manner violate provisions of the City zoning ordinance, the Growth Policy, or other plans for the area.

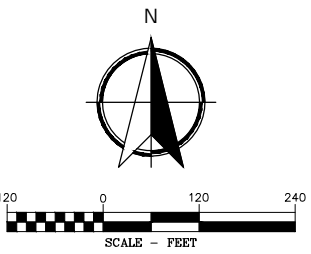
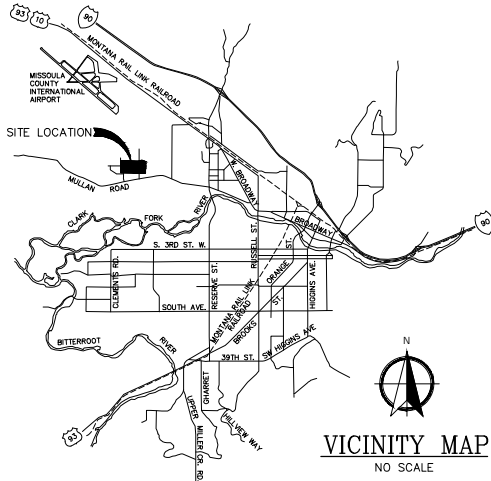
E. The variance will not cause an increase in public costs.

Approval of the variance will not cause an increase in public costs.

F. The hardship has not been created by the applicant or the applicant's agent or assigns.

The hardship has not been created by the applicant or the applicant's agent.

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA



LEGAL DESCRIPTION
TRACTS 1 AND 2 OF CERTIFICATE
OF SURVEY NO. 5963

BASIS OF BEARINGS
CERTIFICATE OF SURVEY NO. 5963

OWNER/SUBDIVIDER
MULLAN ROAD PARTNERS, LLC

COMPREHENSIVE PLAN
RESIDENTIAL MEDIUM

TYPE OF SUBDIVISION
RESIDENTIAL

ZONING
HERON'S LANDING NEIGHBORHOOD
CHARACTER OVERLAY DISTRICT

VERTICAL DATUM
NORTH AMERICAN VERTICAL DATUM 1988

OVERALL MAP

—SEE SHEETS 3 THROUGH 6 FOR DETAIL MAPS.
—SEE PHASING PLAN SUBMITTED IN SECTION 2 OF THE SUBDIVISION APPLICATION
FOR DETAILS ON PHASING AND DEADLINES TO COMMENCE PHASES.
—SEE BLOCK LENGTH VARIANCE EXHIBIT SUBMITTED IN SECTION 4 OF THE
SUBDIVISION APPLICATION FOR BLOCK LENGTHS.

AREAS

LOT AREA = 41.60 ACRES
COMMON AREA = 7.88 ACRES
STREET AREA = 22.63 ACRES
TOTAL AREA = 72.11 ACRES

NOTE:

SEE SHEET 2 FOR LEGENDS, LOT AREA
TABLE, AND STREET LENGTH TABLE.

- THE FOLLOWING NOTES ARE PLACED HEREON AS REQUIRED BY THE CITY OF MISSOULA:
- 1) ACCEPTANCE OF A DEED FOR A LOT WITHIN THIS SUBDIVISION SHALL CONSTITUTE THE ASSENT OF THE OWNERS TO ANY FUTURE SID/RSID, BASED ON BENEFIT, FOR THE UPGRADE OF STREETS WITHIN THIS SUBDIVISION, INCLUDING BUT NOT LIMITED TO PAVING, CURBS AND GUTTERS, NON-MOTORIZED FACILITIES, STREET WIDENING AND DRAINAGE FACILITIES, AND MAY BE USED IN LIEU OF THEIR SIGNATURES ON AN SID/RSID PETITION.
 - 2) THIS PROPERTY IS IN THE AIRPORT INFLUENCE AREA AND SUBJECT TO THE REQUIREMENTS OF THE AIRPORT INFLUENCE AREA RESOLUTION. THE HERON'S LANDING SUBDIVISION MAY ALSO BE WITHIN AN EXTENDED APPROACH AND DEPARTURE ZONE FOR A PROPOSED SECOND RUNWAY AS SHOWN IN THE AIRPORT AUTHORITY'S 2004 PLAN AND LOT OWNERS SHOULD BE AWARE OF THE RESULTANT SAFETY RISK. LOT OWNERS SHOULD CONSULT THE AIRPORT LAYOUT PLAN AND ANY RELEVANT DOCUMENTS TO DETERMINE THE STATUS OF THE PROPOSED RUNWAY LOCATION AT THE TIME OF PURCHASE.
 - 3) THERE ARE NO WATER RIGHTS ASSOCIATED WITH HERON'S LANDING LEGALLY DESCRIBED AS TRACTS 1 AND 2 OF CERTIFICATE OF SURVEY NO. 5963.

1/4 SEC.	T.	R.
<input checked="" type="checkbox"/>	12	13N. 20W.
<input checked="" type="checkbox"/>	13	13N. 20W.

SHEET 1 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT1



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PRELIMINARY

PLOTTED: 4/3/2020
SAVED: 4/3/2020

CERTIFICATE OF ENGINEER

I HEREBY CERTIFY THAT THE PRELIMINARY STREET, STORM DRAINAGE, SEWER, AND WATER PLANS WERE PREPARED UNDER MY SUPERVISION.

Ryan J. Salvo

CERTIFICATE OF SURVEYOR

I HEREBY CERTIFY THAT THE BOUNDARY AND PRELIMINARY LOT DESIGNS OF THIS PROPOSED SUBDIVISION WERE PREPARED UNDER MY SUPERVISION.

W. J. Salvo

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA

LEGEND-EXISTING

	SUBJECT PROPERTY BOUNDARY
	RIGHT OF WAY
	EASEMENT LINE
	LOT LINE
	CONCRETE SIDEWALK
	EDGE OF ASPHALT
	CURB AND GUTTER
	CURB AND GUTTER W/LAYDOWN
	EDGE OF GRAVEL
	WATER MAIN
	SANITARY SEWER MAIN
	STORM DRAIN
	CULVERT
	FENCE
	CONTOUR (1 FOOT INTERVAL)
	WATER VALVE
	FIRE HYDRANT
	BLOW OFF
	SANITARY SEWER MANHOLE
	DRAINAGE SUMP

LEGEND-PROPOSED

	EDGE OF ASPHALT
	CURB AND GUTTER
	CURB AND GUTTER W/DRIVEWAY OPENING
	4" THICK CONCRETE SIDEWALK
	WATER MAIN
	SANITARY SEWER MAIN
	STORM DRAIN
	CULVERT
	CONTOUR (1 FOOT INTERVAL)
	WATER VALVE
	FIRE HYDRANT
	BLOW OFF
	SANITARY SEWER MANHOLE
	DRAINAGE SUMP
	STORM DRAIN MANHOLE
	DRAINAGE SUMP (CURB BACKED LID)
	MAILBOX CLUSTER
	STREET GRADE
	FUTURE LOT
	COMMON AREA
	UTILITY EASEMENT
	PUBLIC STORM DRAIN EASEMENT
	PUBLIC NON-MOTORIZED ACCESS EASEMENT
	NO ACCESS STRIP (ACCESS CONTROL LINE)
	PRIVATE IRRIGATION DITCH EASEMENT
	NO-BUILD ZONE
	EXISTING UTILITY EASEMENT PER 44 RANCH PLATS
	EXISTING UTILITY EASEMENT PER BOOK ____ MICRO, PAGE ____
	PHASE NO.
	PHASE LINE

LOT AREA TABLE

LOTS		LOTS		LOTS		LOTS		LOTS	
LOT NO.	LOT AREA (SQ.FT)	LOT NO.	LOT AREA (SQ.FT)	LOT NO.	LOT AREA (SQ.FT)	LOT NO.	LOT AREA (SQ.FT)	LOT NO.	LOT AREA (SQ.FT)
1	9,091	76	3,466	151	3,389	226	2,160	301	3,420
2	8,584	77	3,500	152	3,291	227	2,610	302	3,420
3	8,575	78	3,421	153	3,319	228	2,610	303	3,420
4	8,715	79	3,227	154	3,398	229	2,160	304	3,420
5	8,946	80	3,774	155	3,747	230	2,160	305	3,420
6	8,949	81	16,100	156	8,282	231	2,955	306	3,420
7	8,950	82	8,386	157	7,280	232	4,632	307	3,420
8	8,638	83	7,509	158	7,232	233	2,880	308	2,880
9	12,631	84	6,360	159	7,752	234	2,880	309	2,880
10	12,108	85	6,062	160	7,800	235	2,880	310	2,880
11	8,952	86	5,333	161	11,350	236	4,633	311	2,825
12	8,953	87	4,451	162	2,555	237	2,825	312	4,633
13	8,788	88	5,072	163	2,160	238	2,880	313	2,880
14	12,993	89	6,608	164	2,610	239	2,880	314	2,880
15	6,340	90	6,070	165	2,610	240	2,880	315	2,880
16	6,252	91	5,193	166	2,160	241	2,880	316	4,632
17	6,300	92	4,979	167	2,610	242	2,880	317	3,225
18	6,300	93	2,438	168	2,610	243	3,420	318	2,880
19	7,443	94	2,261	169	2,160	244	3,452	319	2,610
20	6,300	95	2,252	170	2,160	245	7,292	320	2,160
21	6,300	96	2,208	171	2,610	246	6,765	321	2,160
22	6,299	97	6,087	172	2,610	247	8,940	322	2,160
23	12,796	98	6,107	173	2,160	248	9,526	323	2,745
24	12,816	99	6,128	174	2,731	249	8,495	324	2,745
25	8,660	100	6,148	175	5,694	250	6,252	325	2,160
26	8,660	101	6,095	176	5,797	251	6,345	326	2,160
27	8,660	102	6,612	177	5,955	252	6,574	327	2,610
28	8,611	103	6,660	178	5,976	253	6,554	328	2,880
29	9,725	104	6,660	179	5,976	254	6,565	329	2,880
30	9,173	105	6,660	180	5,976	255	6,575	330	2,880
31	4,382	106	6,660	181	5,946	256	6,586	331	3,878
32	4,351	107	8,763	182	5,946	257	4,647	F332	6,919
33	5,517	108	5,970	183	5,976	258	4,985	F333	2,378
34	5,761	109	6,660	184	5,976	259	4,991	F334	1,968
35	4,321	110	6,660	185	5,976	260	5,197	F335	1,973
36	4,370	111	6,660	186	5,994	261	6,628	F336	3,366
37	4,321	112	6,660	187	6,112	262	6,638	F337	5,587
38	6,021	113	6,660	188	5,924	263	6,649	F338	4,273
39	6,369	114	6,612	189	6,706	264	6,659	F339	7,315
40	5,934	115	6,072	190	6,179	265	6,670	F340	6,417
41	5,862	116	6,120	191	6,360	266	6,680	F341	5,488
42	5,862	117	6,120	192	6,348	267	6,691	F342	5,414
43	8,889	118	6,120	193	6,335	268	8,444	F343	5,625
44	2,724	119	6,120	194	2,763	269	6,167	F344	5,625
45	1,789	120	6,120	195	2,819	270	5,400	F345	5,979
46	1,727	121	6,348	196	4,142	271	5,603	F346	6,239
47	2,079	122	8,293	197	6,257	272	6,120	F347	9,005
48	2,070	123	6,120	198	5,703	273	6,120	CA1	25,271
49	2,061	124	6,120	199	3,915	274	6,120	CA2	9,799
50	2,052	125	6,120	200	3,915	275	5,004	CA3	7,563
51	1,692	126	6,120	201	3,915	276	4,182	CA4	1,148
52	2,314	127	6,072	202	3,860	277	4,182	CA5	4,348
53	2,744	128	6,623	203	7,752	278	4,182	CA6	13,213
54	1,679	129	6,695	204	7,800	279	4,998	CA7	18,068
55	1,743	130	6,719	205	11,350	280	4,998	CA8	2,510
56	1,851	131	6,726	206	2,825	281	4,182	CA9	2,292
57	2,353	132	2,482	207	2,880	282	4,182	CA10	2,157
58	6,809	133	2,372	208	2,700	283	4,182	CA11	177,474
59	7,377	134	2,380	209	2,160	284	5,004	CA12	1,710
60	7,378	135	2,578	210	2,160	285	8,100	CA13	20,193
61	7,378	136	5,247	211	2,700	286	8,100	CA14	1,814
62	7,377	137	5,450	212	2,610	287	9,113	CA15	1,800
63	7,377	138	5,941	213	2,160	288	9,162	CA16	19,393
64	7,377	139	7,053	214	2,610	289	7,176	CA17	1,800
65	7,329	140	4,568	215	2,880	290	7,864	CA18	2,589
66	4,811	141	4,499	216	2,873	291	7,864	CA19	6,046
67	4,050	142	4,499	217	2,930	292	7,864	CA20	4,421
68	4,050	143	4,499	218	2,165	293	8,912	CA21	7,958
69	4,050	144	4,379	219	2,160	294	8,912	CA22	5,776
70	4,050	145	3,621	220	2,610	295	8,912	CA23	1,800
71	6,067	146	3,670	221	2,160	296	7,601	CA24	1,800
72	4,703	147	3,670	222	2,160	297	7,601	FCA25	2,199
73	4,469	148	3,670	223	2,610	298	7,601		
74	3,742	149	3,619	224	2,610	299	7,959		
75	3,319	150	3,746	225	2,160	300	3,581		

STREET LENGTH TABLE	
STREET	LENGTH
CHUCK WAGON DRIVE	1,247 L.F.
LARIAT LOOP	329 L.F.
ROUNDUP DRIVE	701 L.F.
AUDUBON TRAIL	1,552 L.F.
FLYCATCHER LANE	686 L.F.
TENDERFOOT WAY	154 L.F.
RIATA ROAD	333 L.F.
BULRUSH WAY	1,204 L.F.
HERON'S LANDING DRIVE	1,165 L.F.
NESTING LANE	1,361 L.F.
HORSETAIL LANE	1,462 L.F.
MARSH LANE	362 L.F.
GEORGE ELMER DRIVE	1,274 L.F.
ROOKERY TRAIL	1,381 L.F.
WOODPECKER LANE	1,396 L.F.

PRELIMINARY
PLOTTED: 4/3/2020
SAVED: 4/3/2020



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1/4	SEC.	T.	R.
	12	13N.	20W.
	13	13N.	20W.

SHEET 2 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT2

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA

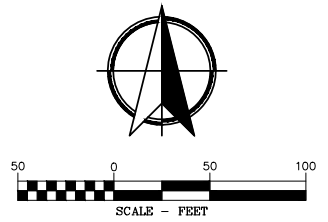


1/4 SEC.	T.	R.
<input checked="" type="checkbox"/> 12	13N.	20W.
<input checked="" type="checkbox"/> 13	13N.	20W.

SHEET 3 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT3

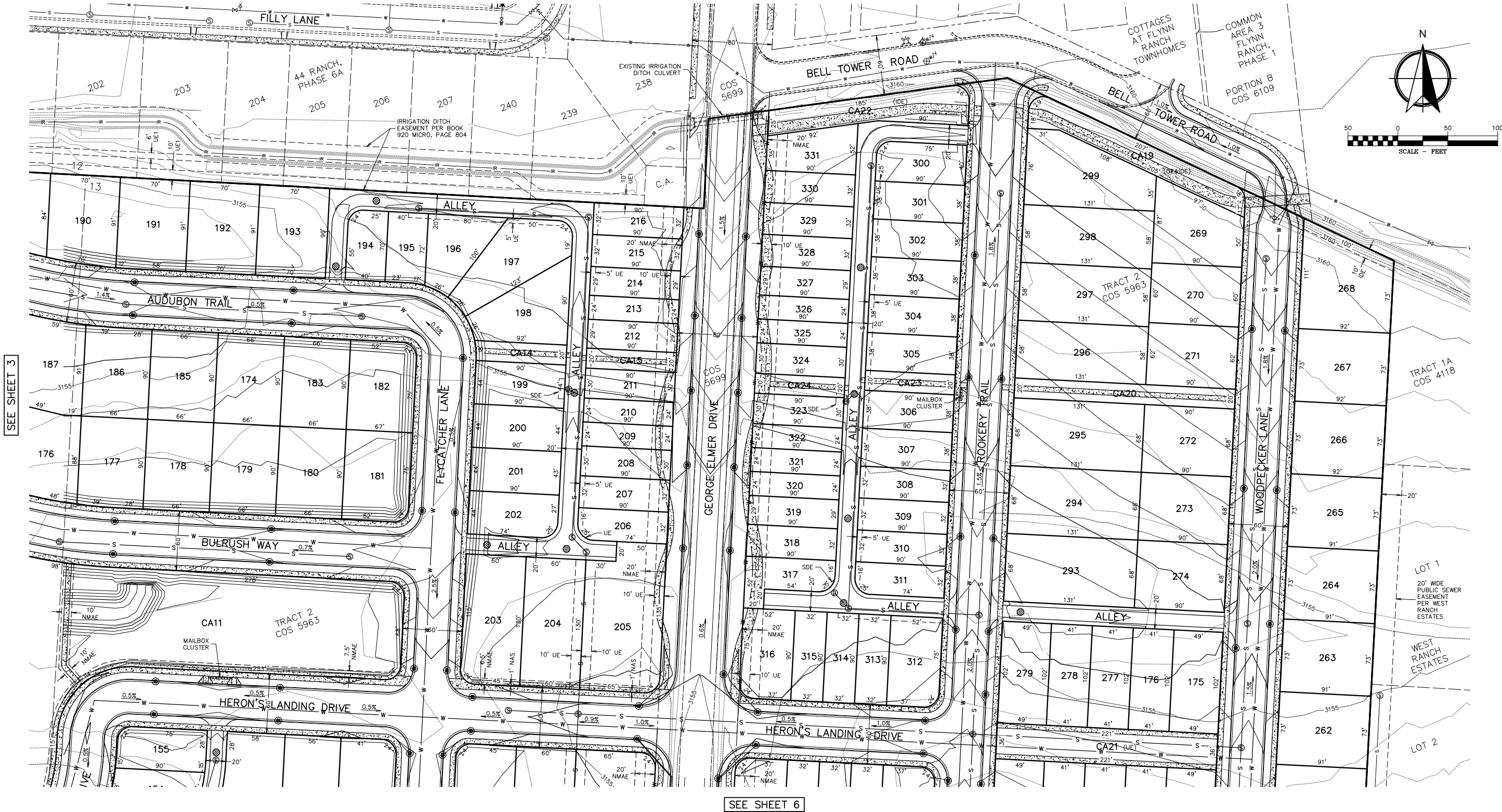


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PRELIMINARY
PLOTTED: 4/3/2020
SAVED: 4/3/2020

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA



1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	12	13N.	20W.
<input checked="" type="checkbox"/>	13	13N.	20W.

SHEET 4 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT4



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PRELIMINARY
PLOTTED: 4/3/2020
SAVED: 4/3/2020

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA

SEE SHEET 3



SHEET 5 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT5

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA

SEE SHEET 4



SEE SHEET 5

TRACT 3
COS 5963

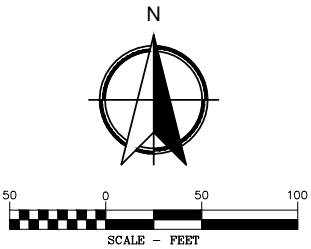
80' WIDE PUBLIC
ROADWAY EASEMENT
PER BOOK 728 MICRO,
PAGE 567

10' WIDE PUBLIC SANITARY
SEWER LINE EASEMENT
PER BOOK 728 MICRO, PAGE 567

TRACT 3
COS 5963

1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	12	13N.	20W.
<input checked="" type="checkbox"/>	13	13N.	20W.

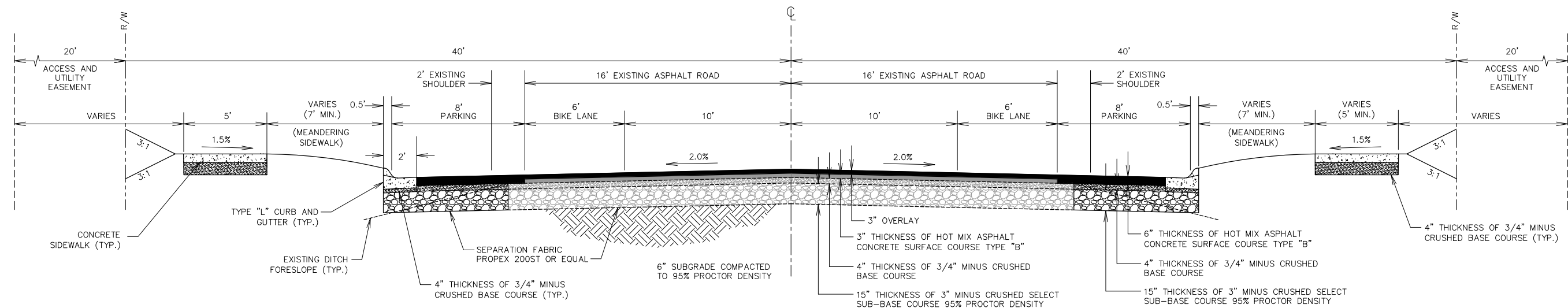
SHEET 6 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT6



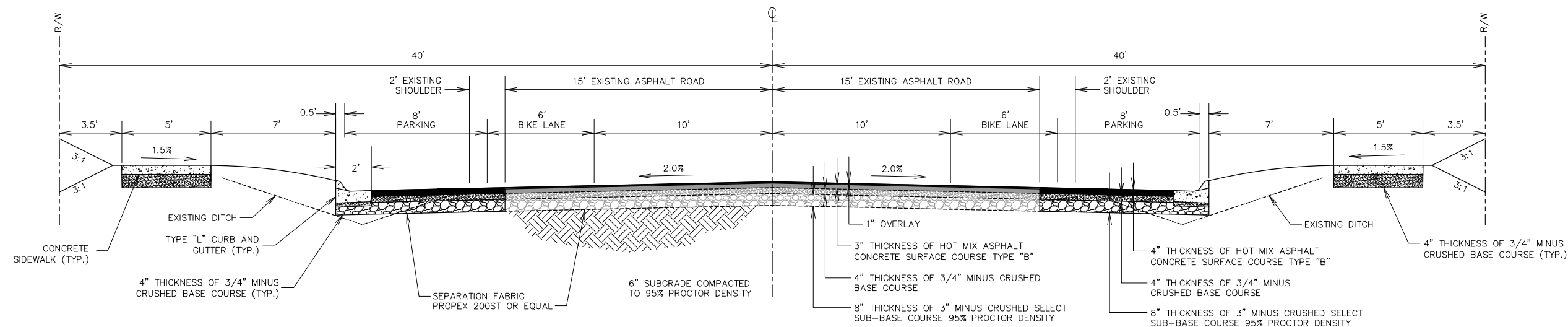
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PRELIMINARY
PLOTTED: 4/3/2020
SAVED: 4/3/2020

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA



(LOOKING NORTH)
TYPICAL STREET SECTION - GEORGE ELMER DRIVE
NO SCALE



TYPICAL STREET SECTION - CHUCK WAGON DRIVE
NO SCALE

1/4	SEC.	T.	R.
<input checked="" type="checkbox"/>	12	13N.	20W.
<input checked="" type="checkbox"/>	13	13N.	20W.

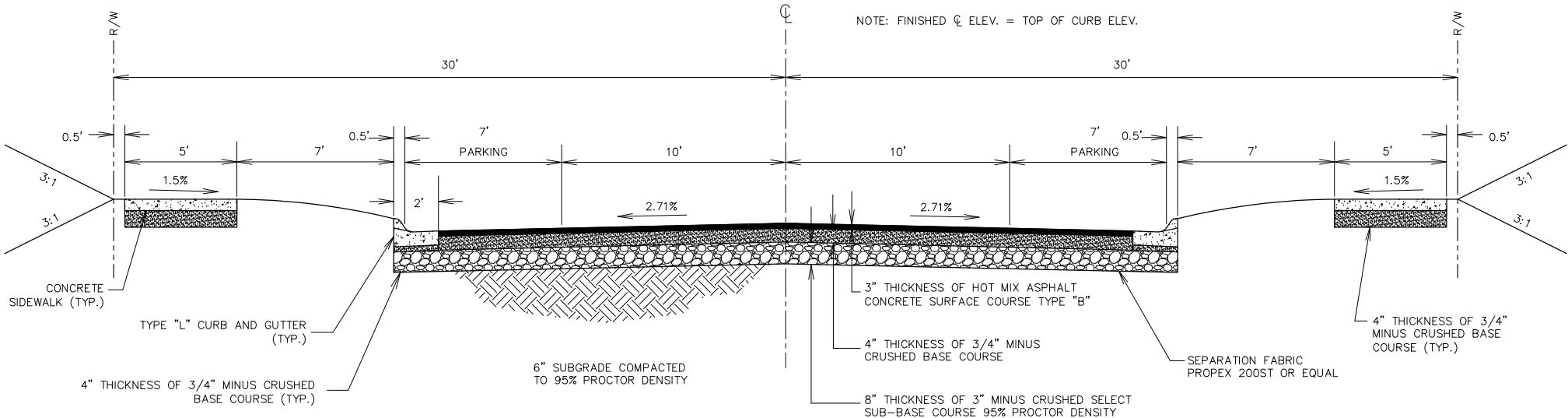
SHEET 7 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT7



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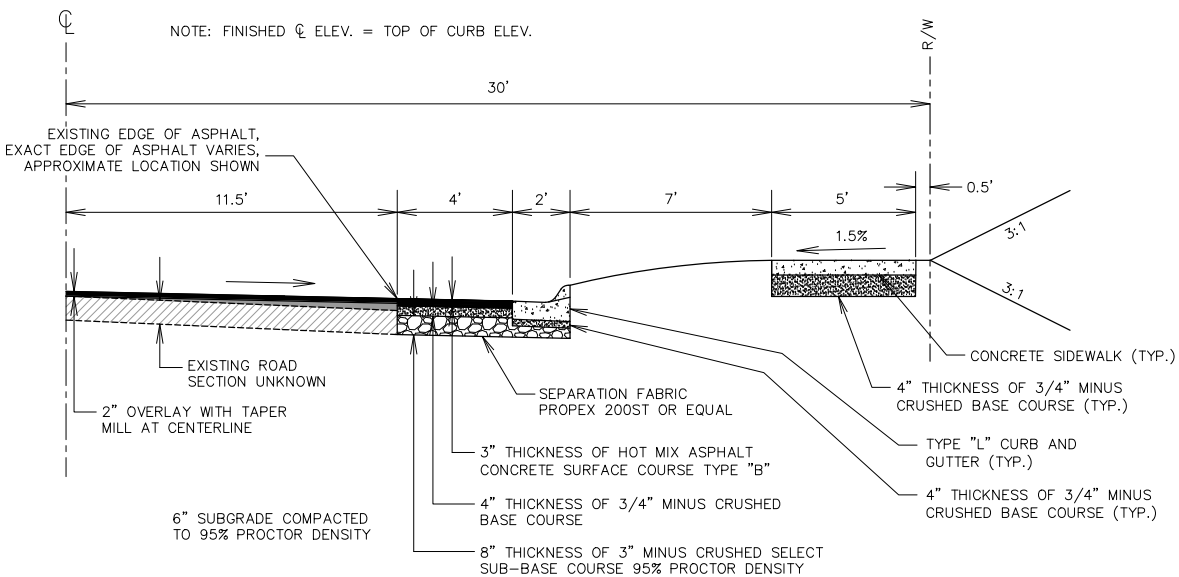
PRELIMINARY
PLOTTED: 4/3/2020
SAVED: 4/3/2020

PRELIMINARY PLAT OF
HERON'S LANDING
A SUBDIVISION OF THE CITY OF MISSOULA, COUNTY OF MISSOULA, MONTANA
LOCATED IN THE SE 1/4 OF SECTION 12 AND THE N 1/2 OF SECTION 13,
T. 13 N., R. 20 W., PRINCIPAL MERIDIAN, MONTANA



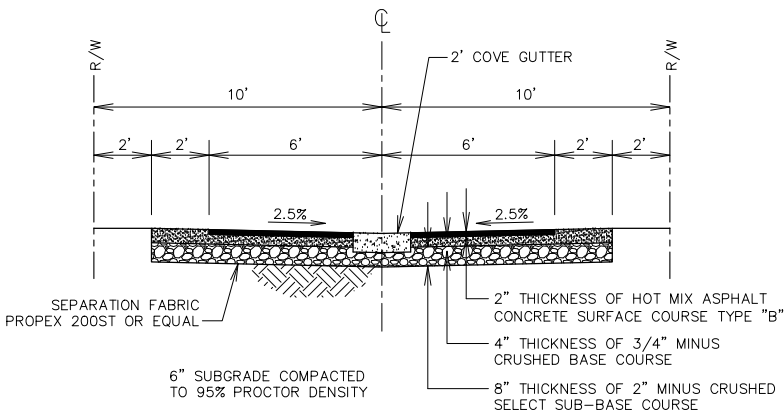
LARIAT LOOP, AUDUBON LOOP, TENDERFOOT WAY,
RIATA ROAD, BULRUSH WAY, HERON'S LANDING DRIVE,
NESTING LANE, MARSH LANE, AND ROOKERY LOOP

TYPICAL STREET SECTION - LOCAL RESIDENTIAL STREET

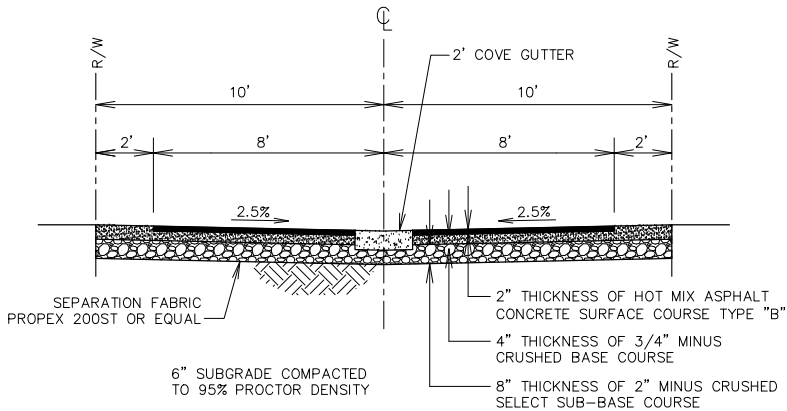


ROUNDUP DRIVE (LOOKING NORTH)
TYPICAL STREET SECTION - LOCAL RESIDENTIAL STREET

NO SCALE

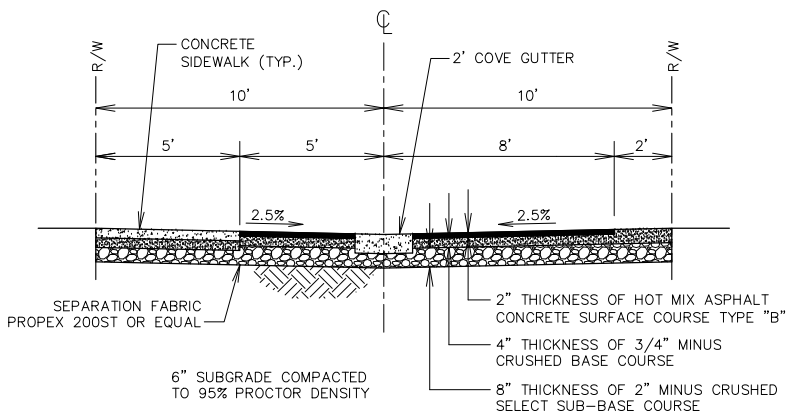


TYPICAL 16' ALLEY SECTION





APPLIES TO ALLEYS DEPICTED ON FIRE MARSHALL APPROVAL OF FIRE HYDRANT SPACING EXHIBIT, SUBMITTED IN SECTION 5 OF THE SUBDIVISION APPLICATION.

TYPICAL 20' ALLEY SECTION



APPLIES TO ALLEYS DEPICTED ON FIRE MARSHALL APPROVAL OF FIRE HYDRANT SPACING EXHIBIT, SUBMITTED IN SECTION 5 OF THE SUBDIVISION APPLICATION.

TYPICAL 20' ALLEY/PEDESTRIAN CORRIDOR SECTION

1/4	SEC.	T.	R.
	<u>12</u>	<u>13N.</u>	<u>20W.</u>
	<u>13</u>	<u>13N.</u>	<u>20W.</u>

SHEET 8 OF 8
DATE: APRIL 2020
DRAFT: CEG
PROJECT NO.: 18-11-01
FILE NO.: 18-11-01_PPLAT.DWG
LAYOUT TAB: SHT8



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PRELIMINARY

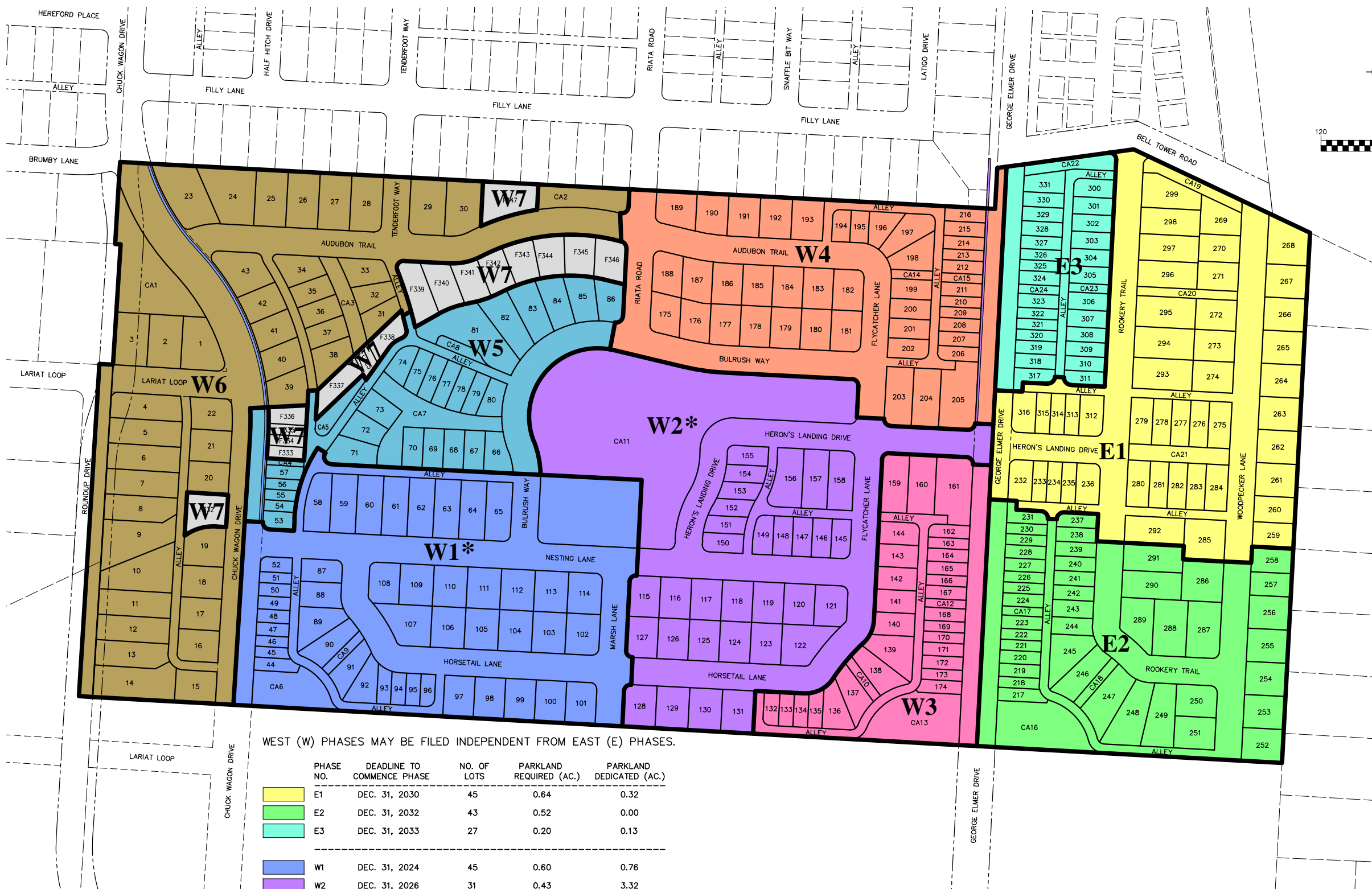
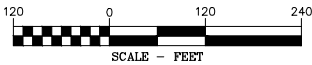
PLOTTED: 4/3/2020
SAVED: 4/3/2020



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PRELIMINARY

PLOTTED: 4/7/20
SAVED: 4/7/20



WEST (W) PHASES MAY BE FILED INDEPENDENT FROM EAST (E) PHASES.

PHASE NO.	DEADLINE TO COMMENCE PHASE	NO. OF LOTS	PARKLAND REQUIRED (AC.)	PARKLAND DEDICATED (AC.)
E1	DEC. 31, 2030	45	0.64	0.32
E2	DEC. 31, 2032	43	0.52	0.00
E3	DEC. 31, 2033	27	0.20	0.13
W1	DEC. 31, 2024	45	0.60	0.76
W2	DEC. 31, 2026	31	0.43	3.32
W3	DEC. 31, 2028	29	0.29	0.00
W4	DEC. 31, 2035	42	0.53	0.00
W5	DEC. 31, 2037	26	0.31	0.39
W6	DEC. 31, 2039	43	0.85	0.17
W7	DEC. 31, 2040	16	0.21	0.05
TOTALS			4.58	5.14

PHASE LINE
E3 PHASE NO.
CA COMMON AREA

* PHASES W1 AND W2 SHALL INSTALL 5' ADA ACCESSIBLE ASPHALT PATHS CONNECTING TO EXISTING SIDEWALKS NORTH OF HERON'S LANDING AS SHOWN ON THIS PHASING PLAN.

PHASING PLAN

HERON'S LANDING

MISSOULA, MONTANA

REVISIONS:		
NO.	DESCRIPTION	DATE

PROJECT: 18-11-01
LAYOUT: Layout1
SURVEYED: ---
DESIGN: ---
DRAFT: CEG
APPROVE: DH
DATE:

APRIL 2020

SHEET

1 OF 1

FILE: W:\Projects\18101\CAD Data\Pre Plot\18101-phasing.dwg

EXECUTIVE SUMMARY

CASE PLANNER: Dave DeGrandpre

PUBLIC MEETINGS LUP: Dec. 2, 2020 (Info Item)
CC: Dec. 7, 2020 (Public Hearing)

30-DAY DEADLINE: Dec. 10, 2020

**APPLICANT &
FEE OWNER:** Gary Schnell
Mullan Road Partners, LLC
970 W. Broadway #446
Jackson, WY 83001

AGENT: Ryan Salisbury
WGM Group
1111 E. Broadway
Missoula, MT 59802



LOCATION OF REQUEST: North of Mullan Road, east of Chuck Wagon Drive, and south of the 44 Ranch Subdivision.

ZONING: RT5.4 Residential /NC-HL Heron's Landing Neighborhood Character Overlay.

GROWTH POLICY: The *2035 Our Missoula City Growth Policy* recommends a land use designation of "Residential Medium – 3 to 11 dwelling units per acre."

RECOMMENDATION: **Motion** that there are no changed primary criteria impacts or new information that creates new potentially significant adverse impacts for Phase W1 of the Heron's Landing Subdivision based on the findings of fact and conclusions of law provided in the staff report. Therefore, no new additional conditions of approval are necessary for this phase.

SURROUNDING LAND USES

North: Residential
South: Residential / Vacant
East: Residential
West: Residential

SURROUNDING ZONING

Special District – 44 Ranch
C-RR1 Residential (County)
C-RR1 Residential (County)
C-RR1 Residential (County)

MISSOULA CITY COUNCIL
November 25, 2020
Heron's Landing Subdivision Phase W1

I. INTRODUCTION

Development Services has received written notice from Mullan Road Partners, LLC, represented by WGM Group, Inc., of intent to move forward with Phase W1 of the Heron's Landing Subdivision. Phase W1 is located east of Chuck Wagon Drive and legally described as a portion of Tract 1 of Certificate of Survey No. 5963 in the northwest ¼ of Section 13, Township 13 North, Range 20 West, P.M.M., in the City of Missoula.

At its regularly scheduled meeting on September 21, 2020, the Missoula City Council voted to approve the preliminary plat for the Heron's Landing Subdivision in 10 phases, subject to 25 conditions of approval. For phased subdivisions, per Montana Code Annotated 76-3-617(4), the governing body (Missoula City Council) shall determine whether any changed primary criteria impacts or new information exists that create new potentially significant adverse impacts for each phase.

Phase W1 consists of 45 of the 347 total residential lots. This is the first phase requested to move forward with final platting. The applicant requests City Council review and approve findings of no new adverse impacts for Phase W1. No changes are proposed to this phase as approved with the preliminary plat application. There have been no changes in applicable regulations or ordinances since preliminary plat approval that impact this phase.

Attached to this report are the Heron's Landing preliminary approval letter, which includes findings of fact and conditions of approval; the approved preliminary plat, and the approved phasing plan.

II. SUBDIVISION PRIMARY CRITERIA COMPLIANCE

A. EFFECTS ON AGRICULTURE & AGRICULTURE WATER USER FACILITIES

Findings of Fact:

1. There are no irrigation water user facilities within Phase W1.
2. The findings of fact at the time of preliminary plat approval regarding the effects on agriculture and agriculture water user facilities are unchanged.

Conclusions of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on agriculture and agriculture water user facilities are still valid for Phase W1.

B. EFFECTS ON LOCAL SERVICES

Roads, Driveways, Non-motorized Facilities, and Drainage

Findings of Fact:

1. Phase W1 includes a portion of Chuck Wagon Drive, which is classified as an urban collector roadway. Condition of preliminary approval #9 requires the subdivider to improve Chuck Wagon Drive through the subdivision as phases are developed, including a portion to be improved prior to final platting of Phase W1.
2. Chuck Wagon Drive intersects Mullan Road to the south of the subdivision. This intersection is planned to be improved to reduce wait times and increase traffic safety. The improvements are planned to be made in part through an improvement district which would include Heron's Landing property owners.

3. Phase W1 includes portions of Nesting Lane, Horsetail Lane, Marsh Lane, and Bulrush Way, which are new local residential streets to be built by the subdivider prior to final platting of Phase W1 as per conditions of approval.
4. All of the lots in Phase W1 can be accessed from the local residential streets and new alleys in conformance with City standards.
5. Condition of preliminary approval #12 requires the subdivider to petition the property to be included in the Missoula Urban Transportation District prior to final plat filing of the first phase.
6. Phase W1 improvements also include a five-foot asphalt trail to be extended to the north along Chuck Wagon Drive to the 44 Ranch Subdivision. This trail will be temporary and replaced with a sidewalk when Phase W6 is developed.
7. Condition of preliminary approval #11 requires the subdivider to submit complete grading and drainage plans prior to final plat approval of each phase and a storm water pollution prevention plan meeting Montana DEQ standards and subject to approval of the City Engineer. All drainage facilities must be constructed in accordance with the approved plan and accommodate the planned runoff from all upgradient phases.

Conclusions of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on local services for roads, driveways, and active transportation facilities are still valid for Phase W1.
2. The findings of fact at the time of preliminary plat approval regarding the effects on local services for drainage and storm water facilities are still valid for Phase W1.

Water and Sewer Systems and Solid Waste

Finding of Fact:

1. Water and sewer systems are planned to be provided by City of Missoula utilities. Solid waste disposal services are planned to be provided by a private hauler. The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of public water and sewer and solid waste disposal are still valid for Phase W1.

Conclusion of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of public water and sewer and solid waste disposal are still valid for Phase W1.

Parks and Recreation

Findings of Fact:

1. Section 3-080.3A of the City Subdivision Regulations requires parkland dedication equal to 11% of the net lotted area in subdivisions with residential lots of 0.5 acres or smaller. (All of the residential lots in Phase W1 are smaller than 0.5 acres.) Cash in lieu of parkland may also be used to meet the dedication requirement.
2. The parkland dedication requirement for Phase W1 is 0.6 acres. The parkland to be dedicated in Phase W1, located in the northeast corner of the phase, is 0.76 acres

Conclusion of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of parkland are still valid for Phase W1.

Schools

Finding of Fact:

1. Based on agency correspondence during the recent preliminary plat review stage, Missoula public schools are expected to be able to adequately serve future school-age children who reside in Phase W1. The findings of fact at the time of preliminary plat approval regarding the effects on local services for schools are still valid for Phase W1.

Conclusion of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on local services for schools are still valid for Phase W1.

City Fire and Police

Findings of Fact:

1. Based on agency correspondence during the recent preliminary plat review stage, City Fire and Police Departments are expected to be able to adequately serve the future residents. The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of fire and police services are still valid for Phase W1.

Conclusions of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of fire and police services are still valid for Phase W1.

C. EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT

Natural Environment, Wildlife & Wildlife Habitat, and Weed Management

Finding of Fact:

1. No conditions are known or suspected to have changed since the preliminary plat application was reviewed. The findings of fact at the time of preliminary plat approval regarding effects on the natural environment, wildlife and wildlife habitat, and noxious weed management are still valid.

Conclusion of Law:

1. The findings of fact at the time of preliminary plat approval regarding effects on the natural environment, wildlife and wildlife habitat, and noxious weed management are still valid for Phase W1.

D. EFFECTS ON PUBLIC HEALTH AND SAFETY

Finding of Fact:

Hazardous Lands, Wood Stoves, Airport Influence Area

1. The findings of fact at the time of preliminary plat approval regarding effects on public health and safety related to public health and safety hazards are still valid for Phase W1.

Conclusion of Law:

1. The findings of fact at the time of preliminary plat approval regarding the effects on public health and safety related to hazards are still valid for Phase W1.

E. COMPLIANCE WITH SURVEY REQUIREMENTS

Finding of Fact:

Compliance with Survey Requirements

1. The seal of a professional land surveyor or engineer is required on all final plats, which states the subdivision plat complies with Montana Code Annotated Section 76-3 Part 4. Forthcoming review of the final plat will ensure compliance with state subdivision and platting law.

Conclusion of Law:

1. A process is in place to ensure the final plat for Phase W1 complies with the survey requirements of Montana law.

F. COMPLIANCE WITH SUBDIVISION REGULATIONS AND REVIEW PROCEDURE

Findings of Fact:

Compliance with Subdivision Regulations and Review Procedure

1. The City of Missoula Subdivision Regulations in effect when the preliminary plat application was reviewed are still in effect today. The preliminary plat was found to comply with those regulations and no changes to the plat or other subdivision elements have been made that would bring Phase W1 out of compliance.
2. Montana Code Annotated Section 76-3-617 provides a review procedure for individual subdivision phases. Phase W1 is being reviewed in accordance with Montana law.

Conclusion of Law:

1. Phase W1 complies with the City of Missoula Subdivision Regulations and is being reviewed in accordance with Montana law.

G. PROVISION OF EASEMENTS FOR THE INSTALLATION OF PLANNED UTILITIES

Finding of Fact:

Provision of Easements for Planned Utilities

1. The findings of fact at the time of preliminary plat approval regarding the provision of easements for the installation of planned utilities within and to the subdivision are still valid for Phase W1.

Conclusion of Law:

1. Easements are being provided for planned utilities within and to the lots in Phase W1 in accordance with City standards.

H. PROVISION OF LEGAL AND PHYSICAL ACCESS TO EACH PARCEL

Finding of Fact:

Provision of Legal and Physical Access

1. Legal and physical access is to be provided to Phase W1 by Chuck Wagon Drive. Legal and physical access to each lot is to be provided by new dedicated City streets and alleys that are built to City standards, some of which were modified by variance as allowed under the City Subdivision Regulations.

Conclusion of Law:

1. Phase W1 and all 45 of the lots will be provided with legal and physical access meeting approved City design standards for streets and alleys.

III. RECOMMENDED MOTION

There are no changed primary criteria impacts or new information that creates new potentially significant adverse impacts for Phase W1 of Heron's Landing Subdivision based on the findings of fact and conclusions of law provided in this staff report. Therefore, no new conditions of approval are necessary.

IV. EXHIBITS

Exhibit #1 – Heron’s Landing Preliminary Approval Letter (includes findings of fact and conditions)

Exhibit #2 – Approved Heron’s Landing Preliminary Plat

Exhibit #3 – Approved Heron’s Landing Phasing Plan