

From: [John Engen](#)
To: [All Council](#)
Cc: [Mary McCrea](#); [Jeremy Keene](#); [Jim Nugent](#); [Alan F. McCormick](#); [Marty Rehbein](#); [Dale Bickell](#); [Eran Pehan](#)
Subject: Hillview Crossing Townhome Exemption Development conditional use
Date: Friday, August 9, 2019 11:12:50 AM
Attachments: [Conditions of Approval.Draft Amendments Plus LWW & Fences & Amended COA 9.080919.pdf](#)
[ATT00001.htm](#)

Council members, the Hillview Crossing Townhome Exemption Development conditional-use application was first heard in the Land Use and Planning Committee in December 2018 and is returning to committee on August 14 after a long hiatus for the committee's consideration.

The committee and the applicant appear in disagreement over three issues decided in split votes by the committee: First, the necessity of a geotechnical report in advance of council approval; second, a stormwater report in advance of council approval; third, the width of the road serving the housing project.

While I understand committee members' concern over ground and stormwater conditions, the applicant has made it clear in correspondence that demanding those reports in advance of a conditional approval and an agreed-upon design is untenable. Toward that end, I've asked staff to provide alternative conditions that meet what appears to be the committee's intent with regard to protecting public safety, health and welfare. These alternative conditions, which I hope the committee will consider, provide the City with the necessary information for a review of zoning compliance and building permits in an order that makes practical sense for the applicant and staff.

In addition, the applicant has asked through correspondence that the committee reconsider the change it made to widen the street and will likely make that request in the LUP meeting. Widening the street is clearly council's prerogative, but I'd suggest that the original design of the road met engineering standards and that if there are concerns regarding stormwater management and cost of maintenance of the private road, a wider section seems at odds with those concerns. And while public-safety staff, when asked, will always advocate for wider streets, agencies signed off on the 28-foot street width very early in the process.'

Attached are revised conditions prepared by staff for your consideration. These conditions are largely what the committee has approved, with alternate language regarding geotech and stormwater, along with a new "Living with Wildlife" condition that the applicant has not opposed.

The applicant is in agreement with the new conditions, but will argue for a narrower street design.

My hope is that you'll consider these conditions, adopt them and allow the full council to make a decision on the request in a timely manner.

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DEVELOPMENT SERVICES

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Hillview Crossing TED Conditional Use – Amended Conditions of Approval (including Living with Wildlife and Fences conditions) August 5, 2019

CONDITIONS OF APPROVAL:

1. The Hillview Crossing townhome exemption development conditional use shall comply with all applicable portions of Title 20. Plans submitted at the time of zoning compliance approval of the townhome exemption declaration and of building permit application shall substantially conform to the plans submitted at the time of conditional use review, subject to the review and approval of Development Services.
2. The applicant shall revise the ~~Stormwater~~ Storm Water Plan to address both Section 5.2B and Section 5.2C related to ~~stormwater~~ storm water calculations as specified in the email message from the ~~City~~ Assistant City Engineer dated October 9, 2018, prior to zoning compliance approval of the townhome exemption declaration. The Geotechnical Engineer shall review and approve all locations of storm water detention/retention basins and facilities for conformance with the recommendations in the updated Geotechnical Report. The final ~~stormwater plan~~ Storm Water Plan for construction shall be reviewed and approved by City Engineering and the Geotechnical Engineer prior to zoning compliance approval of the townhome exemption declaration. ~~Stormwater~~ Storm water facilities shall be installed prior to building permit approval for the first structure or included in an Improvements Agreement guaranteed by a security subject to review and approval of the City Engineer.
3. The final ~~stormwater~~ storm water plan shall specify long-term maintenance requirements for the ~~stormwater~~ storm water facilities. The applicant shall specify in the Development Covenants that the maintenance of the ~~stormwater~~ storm water facilities shall be the responsibility of the Developer, transferring to the Homeowners' Association once formed and shall include all maintenance and replacement costs as outlined in the final ~~stormwater~~ storm water plan, subject to review and approval of Development Services, prior to zoning compliance approval of the townhome exemption declaration.
4. The applicant shall prepare plans for and install a pedestrian crossing at the intersection of Hillview Way and the southern segment of Road "A" to include crosswalk markings, crossing beacon and ADA accessible ramps. Plans shall be approved by the City Engineer prior to zoning compliance approval of the townhome exemption declaration. Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval of the City Engineer.
5. The applicant shall provide a minimum 20-foot wide non-motorized trail easement and construct the trail within the easement through the subject property to connect the existing Tonkin Trail south of the TED to Wapikya Park. Plans shall be reviewed and approved by City Parks and Recreation and Development Services prior to zoning compliance approval of the townhome exemption declaration and improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval of the City Engineer and City Parks and Recreation. The developer shall work with the City's Conservation Land Manager to determine the exact width and location for the trail and shall construct the trail during construction of development to maximize cost-efficiency and reduce disturbance.
6. The applicant shall provide a 20-foot wide public access easement in the location of the east-west trail as shown on the site development plan, subject to review and approval by City Parks and Recreation and Development Services, prior to zoning compliance approval of the townhome

exemption declaration. The developer shall employ effective means to protect the trail easement areas from construction disturbance such as a temporary fence throughout construction.

7. The applicant shall provide a minimum 20-foot wide non-motorized trail easement and construct the portion of the relocated Tonkin Trail where it connects with Hillview Way as shown on the site development plan. Plans shall be reviewed and approved by City Parks and Recreation and Development Services prior to zoning compliance approval of the townhome exemption declaration and improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval of the City Engineer and City Parks and Recreation.
8. The applicant shall prepare a plan for protection of trail easement areas during construction, subject to review and approval of City Parks and Recreation and Development Services, prior to zoning compliance approval of the townhome exemption declaration. The developer shall employ effective means to protect the trail easement areas from construction disturbance such as a temporary fence throughout construction.
9. The applicant shall dedicate a trail easement and prepare plans for and install a trail meeting recreational trail standards of City Parks and recreation along the eastern edge of the property per the handout from the applicant received at the April 3, 2019 Land Use and Planning Committee meeting, subject to review and approval by City Parks and Recreation prior to zoning compliance approval of the townhome exemption declaration. The trail at the eastern edge of the property shall be maintained by the developer and/or the Homeowner's Association. If the trail plans for the trail at the eastern edge of the property do not meet City Parks and Recreation recreational trail standards of slopes of 10% - 15% with limited areas not exceeding 20% slope, the applicant shall dedicate a minimum 20-foot wide easement and construct a paved pedestrian pathway/stairs from southern segment of Road "A" through the common area extending between unit ownership parcel numbers 8 and 9, crossing Road "B" then continuing between unit ownership parcel number 18 and 19, crossing the common area and extending between unit ownership parcels 38 and 39, crossing the northern segment of Road "A" then continuing between unit ownership parcel number 56 and 57. An easement for future trail improvements shall be dedicated from northern parcel boundaries of unit ownership parcel numbers 56 & 57 northward through the common area and connecting to the east-west trail easement near the northern property line of the TED. Plans for the pedestrian pathway/stairs shall be reviewed and approved by Development Services prior to zoning compliance approval of the townhome exemption declaration. Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval by Development Services.
10. The applicant shall specify in the Development Covenants that the maintenance of the paved pedestrian pathway/stairs shall be the responsibility of the developer, transferring to the Homeowners' Association once formed and shall include maintenance and replacement, drainage facilities and snow removal, subject to review and approval of Development Services, prior to zoning compliance approval of the townhome exemption declaration.
11. The applicant shall prepare plans and install road improvements for the northern segment of Road "A" and Road "B" resulting in a 28-foot wide back-of-curb to back-of-curb road section within a 52-foot wide public access easement including paving, curb and gutter, drainage facilities, ADA improvements and 5-foot wide curbside sidewalk on each side of the road per the Site Development Plan Exhibit in the Conditional Use application packet. Plans for road improvements shall be approved by the City Engineer prior to zoning compliance approval of the townhome exemption declaration. Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval of the City Engineer.
12. The applicant shall prepare plans and install road improvements for the southern segment of Road "A" resulting in a 21-foot wide back-of-curb to back-of-curb road section within a 40-foot wide public access easement including paving, curb and gutter, drainage facilities, ADA improvements and a 5-foot wide curbside sidewalk on one side of the road per the Site Development Plan Exhibit in the Conditional Use application packet. Plans for road improvements shall be approved by the City Engineer prior to zoning compliance approval of the townhome exemption declaration.

Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements Agreement guaranteed by a security, subject to review and approval of the City Engineer.

13. The Development Covenants shall include a statement that parking is prohibited on one side of the northern segment of Road "A" and Road "B" and both sides of the southern segment of Road "A" subject to review and approval of Development Services, prior to zoning compliance approval of the townhome exemption declaration. The road improvement plans for Road "A" and Road "B" shall include provisions for restricting parking on one side of the northern segment of Road "A" and Road "B" and on both sides of the southern segment of Road "A" in the form of painting the curb yellow and installation of No parking signage, subject to review and approval of the City Engineer, prior to zoning compliance approval of the townhome exemption declaration.
14. The following statement shall appear in the Development Covenants, subject to review and approval by Development Services, prior to zoning compliance approval of the townhome exemption declaration: "The purchaser and/or owner of the lot or unit understands and agrees that private road construction, maintenance, drainage facilities and snow removal for Road "A" and Road "B" are the obligation of the owner or property owners' association and that the City of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the City of Missoula for maintenance."
15. The applicant shall provide a boulevard landscaping and maintenance plan attached to the Development Covenants for the boulevards within the public access easement for the northern and southern segment of Road "A" and Road "B" including tree palette, general planting plan and irrigation, subject to review and approval by City Parks and Recreation and Development Services, prior to zoning compliance approval of the townhome exemption declaration. The boulevard landscaping shall be included in an Improvements Agreement guaranteed by a security, subject to review and approval by City Parks and Recreation.
16. The applicant shall petition into the Missoula Urban Transportation District prior to zoning compliance approval of the townhome exemption declaration.
17. The applicant shall provide a hydrant plan to include existing or proposed hydrant locations meeting fire code standards, subject to review and approval by City Fire, prior to zoning compliance approval of the townhome exemption declaration. For new hydrants required to serve the TED, hydrant installation shall occur prior to combustible construction.
18. The applicant shall provide a Missoula County Weed District approved Revegetation Plan for disturbed areas of the site prior to zoning compliance approval of the townhome declaration, subject to review and approval by Development Services.
19. The applicant shall provide a Missoula County Weed District approved Weed Management Plan for common areas and undeveloped portions of the site prior to zoning compliance approval of the townhome declaration, subject to review and approval by Development Services. The Weed Management Plan shall specify that the developer is responsible for weed management for all undeveloped land including the common area. Once the Homeowners' Association is established, weed management of the common areas and boulevard areas within the public access easement of the private roads transfers from the developer to the Homeowners' Association. Control of weed management on developed unit ownership parcels shall transfer from the developer to each unit owner at the time of sale.
20. The Weed Management Plan approved by the Missoula County Weed District shall be attached as an Appendix to the Development Covenants prior to zoning compliance approval of the townhome exemption declaration, subject to review and approval by Development Services.
21. The applicant shall include a common area landscaping and maintenance plan for all common areas, including irrigation, street trees along the portions of Road "A" and Road "B" adjacent to common areas and parks and lawn for park areas shown with hatching on the Site Development Plan, subject to review and approval by City Parks and Recreation and Development Services prior to zoning compliance approval of the townhome exemption declaration. Improvements shall be installed prior to building permit approval of the first structure or included in an Improvements

Agreement guaranteed by a security, subject to review and approval of City Parks and Recreation and Development Services.

22. The following statements shall appear in the Development Covenants, subject to review and approval by Development Services, prior to zoning compliance approval of the townhome exemption declaration:
- a. "Radon Mitigation: The EPA has designated the Missoula area as having a high radon gas potential (Zone 1). Therefore, the Missoula City-County Health Department recommends that all new buildings incorporate radon resistant construction features."
 - b. "Wood Stoves: The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces inside the Air Stagnation Zone. This development is inside the Air Stagnation Zone. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet Stoves require an installation permit from the Health Department."
 - c. "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 cheaper heating methods that pollute more and helps protect the consumer from energy price changes."
23. The applicant shall include the following Amendments section in the Development Covenants subject to review and approval by Development Services, prior to zoning compliance approval of the townhome exemption declaration: "Amendments: Sections relating to Common Area Landscaping and Maintenance Plan, Weed Management Plan, Boulevard Landscaping and Maintenance Plan, Pedestrian Pathway/Stairs and Sidewalk Maintenance, Private Road Maintenance, Parking on Road "A" (north and south segments) and Road "B", Stormwater-Storm Water Facilities Maintenance, Radon Mitigation, Woodstoves, Private Maintenance Acknowledgement of Infrastructure and Facilities, Living With Wildlife, Fences, and Energy Efficiency may not be amended or deleted without prior written approval of the governing body."
25. The townhome exemption declaration for the Hillview Crossing TED shall be submitted in one zoning compliance permit application and shall include all sixty-eight (68) TED unit ownership parcels, all infrastructure, and meeting conditions of approval for the conditional use, subject to review and approval of Development Services, prior to approval of the zoning compliance permit of the townhome exemption declaration. All infrastructure shall be constructed within five years of approval of the Geotechnical report and an improvements agreement guaranteed by a security that covers the cost of all the roads, sidewalks, pedestrian pathways, storm water facilities, retaining walls and site grading is approved by City Engineering prior to zoning compliance permit approval of the townhome exemption declaration.
26. A Geotechnical Report is required for each two unit townhouse structure submitted with the building permit application, subject to review and approval by City Engineering, prior to building permit approval.
25. The applicant shall provide a Grading and Drainage Plan and an updated Geotechnical Report for mass site grading for roads, pedestrian walkways, and infrastructure such as utilities, sewer, water and storm water facilities, retaining wall locations, locations for storm water detention/retention, locations for construction staging of topsoil, erosion control measures during construction, and including any excavation or embankment locations, subject to review and approval by City Engineering, prior to zoning compliance approval of the townhome exemption declaration. The scope of the Geotechnical Report shall include an evaluation of existing conditions, recommendations for excavation and embankment, requirements for construction and oversight and requirements for submission of as-built and testing results to the City Engineer. The Geotechnical report shall be part of the design submittal for roads and infrastructure and be valid for five (5) years from the date the report was approved by City Engineering.

26. At completion of construction of storm water facilities, the applicant shall provide a Storm Water Management System As-Built and Maintenance Manual to the Home Owners Association (HOA), for use by the HOA in managing and maintaining the storm water infrastructure designed and constructed within this development. An equal copy of this document shall be provided to the City of Missoula Storm Water Utility for permanent record and future inspection for compliance, as required by the Montana Department of Environmental Quality (MDEQ), Municipal Separate Storm Sewer System (MS4) Permit. All storm water management infrastructure shall be constructed and placed within a "Public Storm Water Drainage Easement" on the development plat for future legal and rightful access by the City Storm Water Utility for inspection for compliance with the operations and maintenance document. This easement shall also provide for maintenance access, if necessary.
27. The following statement shall appear on the TED Ownership Unit Site Plan and in the Development Covenants prior to zoning compliance approval of the townhome exemption declaration. The TED Ownership Unit Site Plan and Development Covenants shall be provided to all Ownership Unit purchases within this development: " Private Maintenance Acknowledgement of Infrastructure and Facilities: The project developer and all future property owners acknowledge and accept that by purchasing a Townhome Exemption Development (TED) Ownership Unit within this development, that maintenance of all roadways, sidewalks, storm drainage facilities, and other infrastructure within the development are the responsibility of the Home Owners Association (HOA). In the event that the City of Missoula must act to protect public safety, adjacent private property, or compliance with applicable permits and regulations, all resultant costs shall be equally divided among all Ownership Units and assessed to their property tax bills."
28. The following section on Living With Wildlife shall be included in the Development Covenants, subject to review and approval of Development Services, prior to zoning compliance approval of the townhome exemption declaration:

"Section : Living with Wildlife

Homeowners and residents must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, and other potential attractants. Homeowners must be aware of potential problems associated with the presence of wildlife such as deer, black bear, mountain lion, coyote, fox, skunk and raccoon. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for information that can help homeowners "live with wildlife." Alternatively, see FWP's web site at <http://fwp.mt.gov>.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems.
- b. **Landscaping** comprised of native vegetation is less likely to suffer extensive feeding damage by deer than non-native plants. Native flowering plants will benefit pollinating insects, and native shrubs and trees produce favorable food sources and nesting sites for a variety of bird species. Landscape plants can often spread beyond the original planting site, so using native plants also avoids problems with non-native plants spreading in nearby open areas.
- c. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe and rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.

- d. This townhouse development is in the City of Missoula's **Bear Buffer Zone** (Municipal Code, Chapter 8.28.085, Special provisions for the accumulation and storage of garbage within the Bear Buffer Zone), which has regulations related to garbage handling in this area. Store all **garbage** in a bear-resistant container, bear-resistant enclosure, or enclosed building to avoid attracting wildlife such as bears or raccoons. If your garbage containers are not bear-resistant, you must keep them inside a bear-resistant enclosure or enclosed building. These containers may only be outside the enclosure between 5:00 a.m. and 9:00 p.m. on the day of waste pickup.
- e. **Do not feed wildlife** or offer supplements (including salt blocks), attractants, or bait for deer or other wildlife, including during the winter. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (§ 87-3-13Q MCA) to purposely or knowingly attract any ungulates (deer, elk, etc.), bears, or mountain lions with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer can attract mountain lions to an area.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and/or kill big game and small birds and mammals. Under current state law it is illegal for a dog to chase, stalk, pursue, attack, or kill a hooved game animal, and the owner may be held personally responsible (§ 87-6-404, MCA). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, and raccoons. **When feeding pets** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. **Bird feeders** attract bears and should not be used from March to December 1. If used, bird feeders should: a) be suspended a minimum of 20-feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- i. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean, because food spills and smells on/near the grill can attract bears and other wildlife. (Due to the potential hazard of fire and explosion, propane cylinders for gas-fueled grills should be disconnected and kept outdoors. Under no circumstances should propane cylinders be stored indoors.)
- j. **Compost piles** can attract skunks and bears. If used, they should be kept in wildlife-resistant containers or structures. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Do not add food scraps. Adding lime can reduce smells and help decomposition. (Due to the potential fire hazard associated with decomposition of organic materials, compost piles should be kept at least 10 feet from structures.)
- k. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the wire or injuring themselves when trying to jump the fence. (Contact FWP or see its website for information or a brochure regarding building fence with wildlife in mind.)"

29. The following section on Fencing shall be included in the Development Covenants, subject to review and approval of Development Services, prior to zoning compliance approval of the townhome exemption declaration:

“Section : Fencing:

Fencing at the perimeter of the subject property shall comply with boundary fencing standards in sub-section K of the Living with Wildlife: no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the wire or injuring themselves when trying to jump the fence.

Fencing is prohibited in the following locations of each TED ownership unit: Front yard, Side Interior yard, and may not extend into the Side Interior yard portion of the Rear yard.”