



# COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

435 RYMAN | MISSOULA, MT 59802-4297 | 406.552.6630 | FAX 406.552.6053

## MAJOR SUBDIVISION AND REZONING STAFF REPORT

<b>Agenda Item:</b>		Greenough Heights Subdivision and Rezoning
<b>Report Date:</b>		3/11/2022
<b>Case Planner:</b>		Dave DeGrandpre, Planning Supervisor
<b>Public Meetings &amp; Hearing Schedule</b>		
<b>City Council:</b> 1 <sup>st</sup> Reading of the Ordinance and Referral to LUP		March 14, 2022
<b>Planning Board:</b> Public Hearing		March 22, 2022
<b>LUP Pre-Public Hearing:</b> Information Only Item		March 30, 2022
<b>City Council:</b> Public Hearing		April 4, 2022
<b>LUP Post-Public Hearing:</b> Information Only Item (Tentative)		April 6, 2022
<b>City Council:</b> Final Consideration		April 11, 2022
<b>Subdivider:</b>		Greenough Heights, LLC 8702 NE 17 <sup>th</sup> Street Vancouver, WA 98664
<b>Owner:</b>		Greenough Heights, LLC 8702 NE 17 <sup>th</sup> Street Vancouver, WA 98664
<b>Representative:</b>		Anna Vickers IMEG Corp. 1817 South Ave. W, Suite A Missoula, MT 59801
<b>Location of Request:</b>		1006 W. Greenough Drive, Missoula, MT 59802
<b>Legal description:</b>		That property described in Book 1046, Page 794, Micro records of Missoula County, and further shown as areas 15 and 16 on Deed Exhibit No. 3161, Records of Missoula County, located in the NE ¼ of the NE ¼ of Section 22, Township 13 North, Range 19 West, P.M.M.
<b>Legal Notice:</b>		One subdivision poster was placed on the property along W. Greenough Drive on March 4, 2022. Property owners within 150 feet of the property were notified on March 4, 2022. Legal notice was published in the Missoulian on March 6 and March 13, 2022.
<b>Growth policy:</b>		The Our Missoula 2035 City Growth Policy recommends a land use designation of Residential Medium Density (3 to 11 dwelling units per acre).
<b>Zoning:</b>		R8 Residential and OP1 Open Space
<b>Surrounding Land Uses</b>		<b>Surrounding Zoning</b>
<b>North:</b>	Residential multi-dwelling and detached housing	RM 1-45 (multi-dwelling) and RT 10 (two-unit / townhouse)
<b>South:</b>	Greenough Park	OP1 Open Space
<b>East:</b>	Greenough Park	OP1 Open Space

<b>West:</b>	Detached housing	R8 Residential 8
<b>RECOMMENDED MOTIONS</b>		
<b>City Council Consent Agenda (3/14/2022)</b>	[First reading and preliminary adoption] <b>Set a public hearing on April 4, 2022 and preliminarily adopt</b> an ordinance rezoning the subject property located at 1006 W. Greenough Drive and <b>refer this item</b> to the Land Use and Planning Committee for presentation and discussion on March 30 and April 6, 2022.	
<b>Planning Board Public Hearing (3/22/2022)</b>	<b>Recommend Motions:</b> <b>Rezoning Motion:</b> <b>Approve</b> adoption of an ordinance to rezone the subject property located at 1006 W. Greenough Drive from R8 Residential and OP1 Open Space to a different configuration of R8 Residential and OP1 Open Space based on the findings of fact and conclusions of law in the staff report. <b>Subdivision Motions:</b> <b>Variances:</b> <ol style="list-style-type: none"> <li><b>Approve</b> the variance request to allow Lots 19 and 20 have less than 2,000 square feet of contiguous buildable area.</li> <li><b>Approve</b> the variance request to allow no boulevard and a six-foot streetside sidewalk along the open space parcel adjacent to W. Greenough Drive without a boulevard.</li> </ol> <b>Approve</b> the Greenough Heights Subdivision preliminary plat application, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.	
<b>LUP pre-public hearing info only item (3/30/2022)</b>	Introductory presentation and discussion on the proposal and staff and planning board recommended motions regarding rezoning, each variance, and the preliminary subdivision plat application, subject to the recommended conditions of approval.	
<b>City Council Public Hearing (4/4/2022)</b>	Presentation, public comment, and discussion on the proposal and staff and planning board recommended motions regarding rezoning, each variance, and the preliminary subdivision plat application, subject to the recommended conditions of approval.	
<b>LUP post-public hearing info only item (tentative – 4/6/2022)</b>	Discussion on the proposal and recommended motions regarding rezoning, each variance, and the preliminary subdivision plat application, subject to the recommended conditions of approval.	
<b>City Council Final Consideration (4/11/2022)</b>	<b>Recommend Motions:</b> <b>Rezoning Motion:</b> <b>Approve</b> adoption of an ordinance to rezone the subject property located at 1006 W. Greenough Drive from R8 Residential and OP1 Open Space to a different configuration of R8 Residential and OP1 Open Space based on the findings of fact and conclusions of law in the staff report. <b>Subdivision Motions:</b> <b>Variances:</b> <ol style="list-style-type: none"> <li><b>Approve</b> the variance request to allow Lots 19 and 20 have less than 2,000 square feet of contiguous buildable area.</li> <li><b>Approve</b> the variance request to allow no boulevard and a six-foot streetside sidewalk along the open space parcel adjacent to W. Greenough Drive without a boulevard.</li> </ol> <b>Approve</b> the Greenough Heights Subdivision preliminary plat application, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.	

## I. RECOMMENDED CONDITIONS

- As shown on the preliminary plat, the subdivider shall dedicate the proposed public right-of-way for W. Greenough Drive, the internal subdivision road, and the alley on the face of the final plat, subject to

	the review and approval of Public Works & Mobility, prior to final plat approval. <i>City Subdivision Regulations Section 3-020.3.B.</i>
2.	The subdivider shall construct the street, boulevard, and sidewalk improvements shown in the submittal packet to W. Greenough Drive along the entire frontage of the subdivision, subject to the review and approval of Public Works & Mobility and Parks & Recreation, prior to final plat approval. <i>City Subdivision Regulations Section 3-020 Table .2A and Section 3-020.4.</i>
3.	The subdivider shall construct the internal street, boulevard, sidewalk, and alley improvements shown in the submittal packet, subject to review and approval of Public Works & Mobility, prior to final plat approval. <i>City Subdivision Regulations Section 3-020 Table .2A and Section 3-020.4.</i>
4.	The subdivider shall install a crosswalk across W. Greenough Drive between the sidewalk along Peggio Lane and the sidewalk at the northeastern entrance to the subdivision, subject to review and approval of the Public Works & Mobility Department, prior to final plat approval. <i>City Subdivision Regulations Section 3-020.4.C</i>
5.	The subdivider shall cause all street and non-motorized improvements to be designed and built in accordance with the City of Missoula Public Works Standards and Specifications and City of Missoula Subdivision Regulations except as modified by variance, and comply with the Americans with Disabilities Act requirements, subject to the review and approval by Public Works & Mobility, prior to final plat approval. <i>City Subdivision Regulations Section 3-020.2.</i>
6.	The subdivider shall cause the following statement to be shown on the final plat, in the development covenants, and on each instrument of conveyance, subject to review and approval of Development Services, prior to final plat approval: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/SLID, based on benefit, for the upgrading of streets and alley within this subdivision and W. Greenough Drive, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, street lighting and drainage facilities." <i>City Subdivision Regulations Section 5-050.3.AA and BB; Missoula City Public Works Standards and Specifications, Chapter 12.</i>
7.	The subdivider shall submit a geotechnical report providing an evaluation of and recommendations for mass site grading and surface runoff control, subject to review and approval of Public Works & Mobility and Parks & Recreation, prior to final plat approval. All disturbed slopes shall be graded according to the approved plan. Cut-and-fill slopes, and intersections of manufactured and natural slopes, shall have curved configurations that reflect the forms and shapes of surrounding topography. Graded slopes must be applied topsoil and planted with a vegetative ground cover no later than the first growing season to prevent erosion and weed invasion in consultation with the County Extension Office. All site grading and revegetation shall occur prior to final plat approval subject to review and approval of Public Works & Mobility and Parks & Recreation. <i>City Subdivision Regulations Section 3-040.3.K and L .</i>
8.	The subdivider shall include the following statement in the development covenants, subject to review and approval of Development Services, prior to final plat approval: A geotechnical report shall be required prior to development of each lot, and lot development shall follow recommendations in the report, subject to review and approval by the City of Missoula Public Works & Mobility Department, prior to building permit approval." Lot owners shall submit a geotechnical report by a licensed geotechnical engineer, subject to review and approval of Public Works & Mobility, prior to building permit approval. All lot development shall follow recommendations in the report. Deviations to the approved plans must be reviewed and approved by a geotechnical engineer and Public Works & Mobility prior to commencement of alternative building processes, not after the alterations have been made. <i>[76-3-608(6)(a), MCA Effects on Public Health and Safety based on the April 9, 2021 Geotechnical Evaluation by ALLWEST]</i>
9.	The subdivider shall submit complete grading and drainage plans showing grades of streets, drainage facilities, and a storm water pollution prevention plan meeting Montana Department of Environmental Quality standards, subject to the review and approval of the Public Works & Mobility and Parks & Recreation Departments, prior to final plat approval. <i>City Subdivision Regulations Sections 3-040 and 5-020.11.</i>

10.	The subdivider shall install all drainage facilities in accordance with approved plans, subject to review and approval of Public Works & Mobility, prior to final plat approval. <i>City Subdivision Regulations Sections 3-040.3.D.</i>
11.	The subdivider shall cause to be shown on the final plat all drainage easements, including identification of their width and purpose and providing for perpetual maintenance by the lot owners, subject to review and approval of Public Works & Mobility and Development Services. The final plat shall include a signed statement stating the drainage easements must remain clear, open, and may not be obstructed with fences, structures, or other impediments, and the responsibility for maintenance of drainage facilities located on the lots is the responsibility of the lot owner. This statement shall also be included in the development covenants. <i>City Subdivision Regulations Section 3-040.2.B and 3.H.</i>
12.	The subdivider shall update the Noxious Weed Management and Revegetation Plan, incorporating comments provided by Parks & Recreation, and append the revised plan to the development covenants, prior to final plat approval. The subdivider shall remove all Russian Olive trees from the property and provide evidence of noxious weed control and revegetation across the property in accordance with the approved plan, prior to final plat approval. The plan and implementation efforts shall be reviewed and approved by Parks & Recreation and Development Services prior to final plat approval. <i>City Subdivision Regulations Section 5-020.14.K.</i>
13.	The subdivider shall install all public and private utilities underground as proposed in the submittal packet, subject to review and approval of Public Works & Mobility, prior to final plat approval. Any utilities installed under street pavement shall be stubbed to the right-of-way line to minimize future disturbance of street and sidewalk improvements. <i>City Subdivision Regulations Section 3-050.</i>
14.	The subdivider shall demonstrate that all utilities, including but not limited to water lines in the vicinity of Peggio Lane needed to serve the subdivision, are located within public right-of-way or utility easements and all utility extensions are made in accordance with City policies, to be reviewed and approved by Public Works & Mobility, prior to final plat approval. <i>City Subdivision Regulations Section 3-070.6</i>
15.	The subdivider shall cause the final plat to include the following statement, subject to review and approval of Development Services, prior to final plat approval: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, 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 designed on this plat as "Utility Easement" to have and to hold forever. <i>City Subdivision Regulations Section 5-050.3.X</i>
16.	The subdivider shall submit water supply, sewage disposal, and solid waste disposal plans, subject to the review and approval of Public Works & Mobility, City-County Health Department, and Montana Department of Environmental Quality, prior to final plat approval. The subdivider shall install all approved water and sewer utilities prior to final plat approval. <i>City Subdivision Regulations Section 3-070.</i>
17.	The subdivider shall dedicate the proposed open space area to the City of Missoula on the final plat. <i>City Subdivision Regulations Section 3-080 and 5-050.3.Y.</i>
18.	The subdivider shall submit a boulevard landscaping plan for W. Greenough Drive frontage and the internal subdivision street, subject to review and approval of Parks & Recreation, prior to final plat approval. The subdivider shall obtain a boulevard landscape permit from Parks & Recreation Urban Forestry and install all street trees according to the approved plan prior to issuance of certificate of occupancy for each lot. <i>City Subdivision Regulations Section 5-020.14.H and Section 5-050.5.C.</i>
19.	The subdivider shall provide plans for address signage and fire hydrants, subject to the review and approval of Public Works & Mobility and City Fire, prior to final plat approval. The subdivider shall install all approved fire protection improvements in accordance with the approved plans, subject to review and approval of Public Works & Mobility and City Fire, prior to final plat approval. <i>City Subdivision Regulations Section 3-010.1.B and F.</i>
20.	The subdivider shall provide a street naming exhibit to be reviewed and approved by Development Services prior to final plat filing. <i>City Subdivision Regulations Section 3-020.12.</i>

21.	The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices, subject to review and approval of Public Works & Mobility and City Fire. The subdivider shall install all approved signs, subject to review and approval of Public Works & Mobility and City Fire, prior to final plat filing. <i>City Subdivision Regulations Section 3-020.4(H)(2).</i>
22.	The subdivider shall amend the development covenants, subject to review and approval by Development Services, prior to final plat approval. The covenants shall state these sections cannot be amended without governing body approval: SID/SLID statement, wildland urban interface fire protection standards, snow removal from all sidewalks including along the subdivision property and open space parcel along W. Greenough Drive, living with wildlife guidance, unencumbered access to and lot owner maintenance of stormwater facilities on lots, geotechnical design and review requirements for all lots, and noxious weed control. <i>[76-3-608(6)(a), MCA Effects on Public Health and Safety, Local Services, Wildlife, and the Natural Environment as Described in the Findings of Fact]</i>

## II. INTRODUCTION

Development Services received the Greenough Heights Subdivision and Rezoning application intended to subdivide a 5.79-acre property into 20 residential lots and one open space parcel. The property is located between W. Greenough Drive to the northwest and Greenough Park to the southeast in the Lower Rattlesnake Neighborhood Council area and City Council Ward One. The property is addressed as 1006 W. Greenough Drive and developed with a 1940s era single dwelling and outbuildings. Surrounding land uses include single-dwelling and multi-dwelling residential in addition to parks and open space.

Most of the property is currently zoned R8 Residential, with a strip of land bordering Greenough Park zoned OP1 Open Space. The subdivision includes a portion of Cherry Gulch that is proposed to be designated as open space, dedicated to the City of Missoula as parkland, and rezoned OP1 Open Space, while the strip of land along Greenough Park is proposed to be rezoned R8 Residential. This would result in all of the residential lots zoned R8 Residential and the parkland area zoned OP1 Open Space.

The 2035 Our Missoula City Growth Policy provides a land use designation in this area of Residential Medium Density (3 to 11 dwelling units per acre). The R8 Residential zoning district is listed in the City Growth Policy as a Current Relatable Zoning District to the Residential Medium Density growth policy designation.

The lots range in size from 6,670 square feet to 9,617 square feet. The maximum density permitted in the R8 Residential district is 5.44 dwellings per acre. After subtracting the open space, this subdivision would result in 3.87 dwelling units per acre, in compliance with the growth policy. All of the lots are proposed to receive City water and sewer services.

Access to the subdivision would be provided from W. Greenough Drive. A new public street and an alley would provide vehicle access to the lots. The applicant is proposing half-street improvements and additional right-of-way for W. Greenough Drive along the property frontage.

The applicant requests two variances from the design and improvement standards of the City Subdivision Regulations: one variance to create two lots that currently have less than 2,000 square feet of contiguous buildable area with less than 25% slope; the other variance to build a +/-75-foot stretch of sidewalk adjacent to W. Greenough Drive, as opposed to the sidewalk being separated from the street by a boulevard.

## III. SUBDIVISION FINDINGS OF FACT

### A. COMPREHENSIVE PLAN AND ZONING COMPLIANCE

#### Findings of Fact:

1. Subdivision Regulations Section 3-010.1.I requires that the subdivision be reviewed for compliance with the growth policy and its amendments.
2. The Our Missoula 2035 City Growth Policy is the applicable regional plan. The Growth Policy Land Use Map recommends a land use designation of Residential Medium Density (3 to 11 dwelling units per acre). This land use designation is intended to fit within many established residential

neighborhoods and acknowledges single dwelling residential building types as the primary use with the potential for accessory dwelling units. (*Our Missoula 2035 City Growth Policy Page 123 and the Growth Policy Land Use Map; What's My Zoning?; Application Packet Section A Subdivision Application page 2*).

3. According to the Our Missoula 2035 City Growth Policy, current relatable zoning districts in the Residential Medium Density (3 to 11 dwelling units per acre) area include RT10 Residential (two-unit/townhouse), R8 Residential, R5.4 Residential, and RT5.4 Residential (two-unit/townhouse).
4. The property is also located within the 1995 Rattlesnake Valley Comprehensive Plan Update area, which is considered an amendment to the growth policy. The land use map in that plan designates a portion of the property for residential use at a density of six to eight dwelling units per acre and a portion of the property abutting Greenough Park as Parks and Open Space. Describing the relationship between neighborhood plans and the growth policy, the growth policy recognizes neighborhood plans as being valid, but states, "The Our Missoula City Growth Policy is the overarching guide for community planning and policy direction for the City." (*2035 Our Missoula City Growth Policy Page 140-142; 1995 Rattlesnake Valley Comprehensive Plan Update Land Use Map*)
5. Relevant growth policy guidance related to housing include Goal H4: Provide for the diverse housing needs while protecting the strong sense of place in the community and neighborhoods through compatible residential developments; Housing Objective 1: Create zoning districts and rezone land to allow for diverse housing that is compatible with the surrounding areas such as mixed-use developments and mid-range residential densities with access to neighborhood commercial services; and include equity in land use by ensuring that every neighborhood in Missoula participates in addressing the City's housing issues. The City Housing Policy states that housing affordability is connected to the ability to achieve more compact development patterns. The proposed R8 Residential zoning district allows medium density development consistent with surrounding properties and is reflective of this goal. (*Our Missoula 2035 City Growth Policy*).
6. In several passages and policy statements, the growth policy promotes the protection of open space to provide a more sustainable and livable community, to protect environmental quality, to preserve scenic views, and to provide for accessible recreation opportunities in close proximity to neighborhoods. (*Our Missoula 2035 Growth Policy*)
7. Section 3-010.1.B of the City Subdivision Regulations states that subdivision plats must comply with the Missoula City Zoning Ordinance. The current Missoula City Zoning Ordinance is Title 20.
8. The proposed subdivision and rezoning would result in the 20 lots zoned R8 Residential, resulting in a density of 3.87 dwelling units per acre. This is consistent with the Residential Medium Density (3 to 11 dwelling units per acre) goals and the R8 Residential zoning district. The area surrounding Cherry Gulch, located at the southwestern edge of the property, would be dedicated parkland connecting to Greenough Park and zoned OP1 Open Space. Under Title 20, park and recreation areas are permitted land uses in the R8 Residential district. (*Title 20 Zoning Ordinance; Application Packet Section A Subdivision Application page 1-3 and Preliminary Plat, and Section B Zoning Map and Zoning District Standards*).
9. The R8 Residential setback requirements are 20 feet from the front and rear yard, seven-and one-half feet or 1/3 the building height from the interior side, and 10 feet from the street side. The maximum building height is 30 feet for a building with a dominant roof pitch of less than 8:12 or 35 feet for buildings with a dominant roof pitch of 8:12 or greater. As shown on the Supplemental Data Sheets submitted with the application, all of the lots have been designed to meet the required parcel and building standards of Title 20. (*Title 20 City Zoning Ordinance*).
10. The subject property currently contains one detached house, a small barn, and a shed, all of which are proposed to be removed as a result of this subdivision. The subdivision would create 20 lots. Each lot is proposed to contain one detached house, which would comply with the proposed zoning. (*Title 20 Zoning Ordinance; Personal Observation; Missoula County Property Information System; Application Packet Section A Subdivision Application, and Section B Zoning Map and Zoning District Standards*).

Conclusions of Law:



<ol style="list-style-type: none"> <li>1. The subdivision complies with both the Our Missoula 2035 City Growth Policy land use designation of Residential Medium Density (3 to 11 dwelling units per acre), and the standards of the R8 Residential and OP1 Open Space zoning districts.</li> <li>2. Per State Law MCA 76-1-605(2)(b) no land use proposal shall be conditioned or denied based solely upon the lack of compliance with the Growth Policy.</li> </ol>
<b>B. PRIMARY CRITERIA FOR SUBDIVISION COMPLIANCE</b>
<b>CRITERION A AND B: IMPACT ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES</b>
<p><u>Findings of Fact:</u></p> <p><u>Agriculture:</u></p> <ol style="list-style-type: none"> <li>1. Section 5-020.6.A of the City Subdivision Regulations states the applicant must demonstrate the subdivision proposal will have no adverse impacts on agriculture, or identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts.</li> <li>2. According to the City Subdivision Regulations, agriculture is defined as the use of the land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Agricultural land includes land used for agriculture or having a soil type defined the Natural Resources Conservation Service (NRCS) as having agricultural importance, including prime farmland, farmland of statewide importance, and farmland of local importance.</li> <li>3. The NRCS Soil Survey for Missoula County indicates there are three soil types on the property. Two of the three are listed as 'not prime' and 'urban,' and cover approximately one-half of the property. The third soil type, totelake gravelly loam two to eight percent slopes, is considered 'farmland of local importance.' (<i>Application Packet Section A Subdivision Application, and Section D NRCS Soil Survey</i>).</li> <li>4. The application states the property does not contain any active agricultural land, as confirmed by personal observation and a review of aerial photographs. (<i>Application Packet Section A Subdivision Application, Missoula County Property Information System</i>).</li> </ol> <p><u>Agricultural Water User Facilities:</u></p> <ol style="list-style-type: none"> <li>5. Section 5-020.6.B of the City Subdivision Regulations states in areas where agricultural water user facilities exist on the subject property or adjoin the property, the application packet must identify the agricultural water user, describe any proposed changes to the agricultural water use, and describe alterations to the availability of water.</li> <li>6. The application materials state there are no agricultural water user facilities on or in the vicinity of the property and the property does not have agricultural water rights. (<i>Application Form Page 9 and Application Packet Section D, Water Right Abstract and Water and Sanitation Report</i>).</li> </ol>
<p><u>Conclusions of Law:</u></p> <ol style="list-style-type: none"> <li>1. Because less than three acres contain soils deemed to be farmland of local importance and because the property is not and has not been used for agricultural production, this subdivision is not expected to have a significant adverse impact on agriculture.</li> <li>2. No impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision.</li> </ol>
<b>CRITERION C: IMPACT ON LOCAL SERVICES</b>
<ol style="list-style-type: none"> <li>1. Section 5-020.6.C of the City Subdivision Regulations states the application packet must identify the services and evaluate the impacts on those services including transportation elements, utilities, water supply, sewage disposal, solid waste disposal, schools, emergency services, and information pertaining to residential units and taxation.</li> <li>2. Section 3-101.5 of the City Subdivision Regulations states the subdivision must be served by adequate public facilities and services such as transportation systems (including non-motorized),</li> </ol>

parking, police and fire protection, drainage structures, solid waste disposal, water supply, and sanitary sewage disposal; or the subdivider will provide adequately for such services.

## TRANSPORTATION ELEMENTS

### Findings of Fact:

3. The property is accessed from W. Greenough Drive. The applicant proposes to build a new street and an alley to provide access to the lots. (*Application Packet Section 1 Project Summary, Preliminary Plat and Supplemental Datasheets, Variance Request #2, and Subdivision Application Form Pages 15-19*).

### W. Greenough Drive

4. City Subdivision Regulations Section 3-020.13 states that where primary access to a subdivision is to be provided by another road (in this case W. Greenough Drive), that road must meet the road standards in the City Subdivision Regulations.
5. W. Greenough Drive is functionally classified as an Urban Collector (without parking). City Subdivision Regulations Table .2A provides standards for Urban Collectors (without parking), which must include at least 80-foot rights-of-way, 10-foot travel lanes, five-foot bike lanes, seven-foot boulevards, and five-foot sidewalks.
6. W. Greenough Drive has an existing 30-foot roadway easement along the property. Within that space, W. Greenough Drive has two approximately 12.5-foot travel lanes and shoulders but no bike lanes, curbs, gutters, boulevards, or sidewalks. A guardrail is located along the southwestern portion of the property where W. Greenough Drive runs along a natural draw called Cherry Gulch. (*City of Missoula Functional Classification Map, Preliminary Plat, Grading, Drainage, and Road Plans Detail Sheet, and Personal Observation*)
7. The subdivider has proposed to dedicate to the City additional right-of-way of varying width along the property which would result in 40 feet of right-of-way easement from the centerline of W. Greenough Drive to the property boundary. The subdivider also proposes to improve the half of the street along the property to Urban Collector (without parking) standards by constructing an additional four-foot street surface to allow for a future bike lane, two-foot curb and gutter, plus seven-foot boulevard and five-foot sidewalk. (*Subdivision Packet Preliminary Plat and Supplemental Data Sheets*)
8. The subdivider is requesting a variance from City Subdivision Regulations Section 3-020 Table .2A along an approximately 75-foot stretch of W. Greenough Drive where it abuts a steep area that contains Cherry Gulch – the proposed open space parcel. In this area, the subdivider proposes to make half-street improvements to W. Greenough Drive, but has requested to not include a streetside boulevard and to provide a six-foot sidewalk as opposed to providing a seven-foot boulevard and five-foot sidewalk. This request is discussed in greater detail in the variance section of this report. The homeowners will be responsible for snow removal along all sidewalks, as recommended in a condition of approval, including along W. Greenough Drive. (*Subdivision Packet Section A Introduction, Preliminary Plat, Supplemental Data Sheets, Grading, Drainage, and Road Plans Detail Sheet, and Variance Request #2*)

### Internal Street

9. The internal street, shown as Road A on the plat, is functionally classified as a Low Density Local Residential Street. All 20 lots within the subdivision would have access to Road A, which is proposed to connect in two locations to W. Greenough Drive. (*City Subdivision Regulations Table .2A and Preliminary Plat*).
10. Low Density Local Residential Streets require at least a 45-foot-wide right-of-way and a 33-foot-wide street section including two 10-foot-wide travel lanes, two six-foot-wide parking lanes, curb and gutter, plus seven-foot wide boulevards and five-foot wide sidewalks. The proposed Road A meets these standards. (*Subdivision Regulations, Article 3, Section 3-020 Table .2A, Application Packet Section A Preliminary Plat and Supplemental Data Sheets and Section D Grading, Drainage, and Road Plans*).
11. City Subdivision Regulations Section 3-020.4.H requires street and traffic control signs to be reviewed and approved by the City Public Works & Mobility Department, installed by the developer, and in



conformance with the Manual on Uniform Traffic Control Devices. Staff recommends this as a condition of final plat approval.

12. Across W. Greenough Drive from the proposed northeastern subdivision road entrance is a City street called Peggio Lane. Peggio Lane includes a sidewalk that runs down to W. Greenough Drive.
13. City Subdivision Regulations Section 3-020.4.D requires subdividers to incorporate connections to existing non-motorized transportation facilities. A crosswalk between Peggio Lane and the sidewalk on the east side of the northeastern subdivision road entrance is recommended as a condition of approval.

#### Alley

14. An alley is proposed to provide rear vehicular access to Lots 1 – 6 and to be dedicated to the City of Missoula.
15. City Subdivision Regulations Section 3-020.10 provides specifications for alleys including a minimum right-of-way of 20 feet and minimum paved surface of 12 feet. The proposed alley is 22 feet wide with an 18-foot paved surface and curb for storm water runoff, meeting the requirements of the subdivision regulations.
16. 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 5-050.3.BB of the City Subdivision regulations requires a Special Improvement District (SID) statement to be provided on the final plat and on each instrument of conveyance.
17. Staff recommends conditions of approval stating the applicant shall construct the proposed improvements for W. Greenough Drive, the internal subdivision road, and the alley in accordance with City of Missoula standards; show and dedicate to the public all proposed right-of-way for W. Greenough Drive, the internal subdivision road, and the alley on the face of the plat, and include on the plat the required SID statement to provide for ongoing maintenance.

#### Conclusion of Law:

1. The subdivision will meet the road improvement and non-motorized facility standards in the Missoula City Subdivision Regulations and provide legal and physical access to the lots if the variance request is approved by City Council and the conditions of approval are imposed.

#### **TRANSIT**

##### Findings of Fact:

1. Per Section 3-020.15.B(1)(b) of the City Subdivision Regulations, the subdivider must provide active transportation facilities that provide safe routes to schools, playgrounds, bus stops, and public parks and common areas.
2. Section 5-050.3.BB of the City Subdivision Regulations requires final plats to include a statement that acceptance of a deed for a lot within the subdivision constitutes the assent of the owners to any future Special Improvement District, based on benefit, for future improvements and maintenance, including but not limited to paving, curbs and gutters, the installation of non-motorized facilities, street widening and drainage facilities. Additionally, the City Public Works Standards and Specifications Manual provides for street lighting improvements in certain locations, which are typically made through a Special Lighting Improvement District. Staff recommends these items as a condition of approval.
3. The subdivision application includes a school bus route map showing a Rattlesnake Elementary bus stop adjacent to the property and bus stops for Washington Middle School and Hellgate High School within 500 feet of the property to the southwest along W. Greenough Drive. There is no sidewalk between the subdivision property and the Washington and Hellgate bus stops. However, Missoula County Public Schools Safety & Operations Coordinator Terry Phelan wrote that any adjustments to the bus stops can be evaluated and adjusted as necessary once the project commences. (*Email correspondence with MCPS Safety & Operations Coordinator Terry Phelan, 3/2/22*)

4. According to the Mountain Line route map, a transit stop is located at the intersection of Van Buren and Broadway, approximately half a road mile from the property. The subdivider proposes to build sidewalk along the W. Greenough Drive property frontage. The nearest sidewalk on W. Greenough Drive is approximately 760 feet to the southwest of the property. This sidewalk leads to Greenough Park and connects with other sidewalks that can be used to reach the nearest Mountain Line bus stop. *(Supplemental Data Sheets, Grading, Drainage, and Road Plans, Missoula County Property Information Website)*
5. The Missoula Connect 2050 Long Range Transportation Plan includes a 'complete streets' upgrade project along W. Greenough Drive intended to facilitate multiple modes of travel including transit, although it is unclear when this project will be built. According to Aaron Wilson, City Infrastructure and Mobility Planning Manager, there currently is not a design for improvements on this stretch of road so any improvements made now would limit options in the future. Additionally, the existing right-of-way is not currently sufficient for non-motorized transportation improvements between the subdivision and the sidewalk. *(Email correspondence with Infrastructure & Mobility Planning Manager Aaron Wilson, 3/2/22)*
6. A recommended condition of approval is to require the subdivider to include the Special Improvement District (SID) statement on the plat and on each instrument of conveyance so when the W. Greenough Drive complete streets project is up for funding, the subdivision lot owners cannot protest the establishment of and participation in an improvement district for sidewalk connections.

#### Conclusion of Law:

1. The subdivision will provide active transportation facilities that provide safe routes to school and transit bus stops and Greenough Park in compliance with Section 3-020.15.B(1)(b) of the City Subdivision Regulations with the planned sidewalk improvements along the property frontage and with participation in a SID when the planned complete streets project is implemented.

### **GRADING AND DRAINAGE**

#### Findings of Fact:

1. Section 3-040 of the City Subdivision Regulations provides minimum standards for site grading and control of storm water runoff.
2. Section 3-040.2.E of the City Subdivision Regulations states all drainage systems must meet the minimum standards of the Montana Department of Environmental Quality (DEQ), as required by MCA Title 76, Chapter 4 and 5, Part 1, as amended, and all applicable state and local regulations.
3. The topography of the property is gently sloping in the center, with steeper slopes along the southwest boundary (the proposed Cherry Gulch open space area) and to the south near Greenough Park. The site generally slopes down to the south with an overall elevation change of approximately 50 feet. *(Supplemental Data Sheets)*
4. To build the street, alley, and to provide for homesites, mass site grading will be required. City Subdivision Regulations Sections 3-040.3.K & L require all disturbed slopes to be graded according to an approved grading plan, with slopes having curved configurations that reflect the forms and shapes of surrounding topography. Grading must incorporate elements to protect drainage systems and disturbed slopes must be replanted within the first growing season to prevent erosion and weed infestation. Staff recommends a condition of approval to address this issue. *(Subdivision Packet Section D, Geotechnical Evaluation, Grading, Drainage, and Road Construction Plans, Supplemental Data Sheets)*
5. The subdivision submittal contains a preliminary stormwater design report and a geotechnical evaluation. The stormwater reports states, "During the geotechnical analysis infiltration tests were performed and these results support the proposed use of drywell sumps on the site." The report goes on to state that based on conservative calculations, seven sumps are proposed to catch and infiltrate stormwater from the new street and alley. However, the geotechnical evaluation cautions that "intentional concentration of water in the vicinity of slopes can reduce the overall stability of those slopes. Accordingly, we recommend infiltration facilities not be used within the vicinity of lots along the

perimeter slopes.” As a result of this recommendation, above-surface swales are proposed to catch runoff from homes in some locations. All swales must be located within easement of appropriate size and must be unencumbered to allow for ongoing maintenance. (*City Subdivision Regulations Section 3-040.2 & 3*)

6. The geotechnical evaluation from ALLWEST Engineering documents subsurface conditions and contains several recommendations for site grading, removal of topsoil, the import, placement, and compaction of structural fill for streets and homesites, foundations, and other items. The report states, “Preliminary analysis indicates the lots within the proposed subdivision should be considered buildable from a slope stability standpoint and do not require ‘no-build’ zone designations. The recommendations herein are considered ‘confirmation-dependent’. An ALLWEST geotechnical engineer should review the proposed construction on each lot and be afforded the opportunity to review the geologic conditions exposed during foundation excavation.” The report goes on to state, “ALLWEST should be retained to provide geotechnical consultation before and during home construction on each individual lot. ALLWEST should also be retained to provide construction materials testing and observation to verify the soil and geologic conditions and the report recommendations are incorporated into the actual construction.” As a result of this recommendation and to protect public health and safety, staff recommends a condition of approval requiring geotechnical engineering approval prior to and following subdivision improvements, including home construction on each lot. [*Montana Code Annotated 76-3-608(3)(a) Effects on Public Health and Safety as recommended in the ALLWEST Geotechnical Evaluation*]
7. The applicant is required to submit complete grading and drainage plans showing proposed grades of streets, proposed drainage facilities, and a storm water pollution prevention for all lots, blocks and other areas meeting Montana Department of Environmental Quality standards, subject to the review and approval of the City Engineer, prior to filing the final plat, as per Section 3-040 and Section 5-020.11 of the City Subdivision Regulations. All drainage facilities must be constructed in accordance with the approved plans.

#### Conclusions of Law:

1. The subdivision will meet the grading and drainage standards in the Missoula City Subdivision Regulations and Montana Department of Environmental Quality if the recommended conditions of approval are imposed.
2. Final grading, drainage and stormwater plans will be reviewed and approved by Public Works & Mobility prior to final plat approval, and erosion control best management practices will be required to be implemented during site development through implementation of the stormwater pollution prevention plan permit.
3. Development of the subdivision including streets, sidewalks, and homes will be required to demonstrate approval of a licensed geotechnical engineer prior to, during, and following construction of subdivision infrastructure and development of each lot.

#### **WATER SUPPLY, SEWAGE DISPOSAL AND SOLID WASTE**

##### Findings of Fact:

1. This subdivision is within the Missoula Wastewater and Water Facilities Service Area. All 20 lots are planned to be connected to existing water mains to be extended from Peggio Lane. All 20 lots are also planned to utilize private E-One pumps that would connect to a public sewer force main that will connect to the existing public gravity sewer main located in W. Greenough Drive. (*Letter from Missoula Public Works & Mobility Department, Application Packet, Section D, Water & Sanitation Report*).
2. Based on information provided in the Water Main Extension section of the application, it appears a utility easement is needed to extend a water main in the vicinity of Peggio Lane to serve the subdivision. City Subdivision Regulations Section 3-070.6 states that all water mains must be placed in a public right-of-way or public utility easement. Staff recommends a condition of approval requiring the subdivider to demonstrate all easements are in place and all utilities can be extended in accordance with City policies.

<p>3. The existing home on the property is served by a City water line and non-permitted individual wastewater treatment system. The water and wastewater systems are planned to be abandoned and removed prior to subdivision construction. (<i>Application Packet, Section D, Water &amp; Sanitation Report</i>)</p> <p>4. Republic Services will provide disposal service to the subdivision. (<i>Application Packet Section A, Subdivision Application, Page 19</i>).</p> <p>5. Staff recommends a condition of approval that requires review and approval of the water system, sewage disposal system, and solid waste from the City Engineer, City and County Health Department, and Montana Department of Environmental Quality prior to filing the final plat per Section 3-070.1 of the City Subdivision Regulations and installation of the approved systems prior to final plat approval.</p>
<p><b>Conclusions of Law:</b></p> <p>1. Public sewer and water services are available to the subdivision. Each lot will be served by municipal sewer and water facilities in compliance with the Subdivision Regulations, if the recommended condition of approval is imposed.</p> <p>2. Solid waste disposal service will be available to the subdivision and will be in compliance with Subdivision Regulations, if the recommended condition of approval is imposed.</p> <p>3. Review of water supply, sewage disposal, and solid waste is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.</p>
<p><b>PARKS AND RECREATION</b></p>
<p><u>Findings of Fact:</u></p> <p>1. Section 3-080.3A of the City Subdivision Regulations requires parkland dedication equal to 11 percent of the net lotted area in subdivisions for residential lots of 0.5 acres or smaller. All of the lots within the Greenough Heights Subdivision are smaller than 0.5 acres.</p> <p>2. The total lotted acreage of the subdivision 3.55 acres. Eleven percent of 3.55 acres is 0.39 acres or 17,010 square feet, the amount needed to meet the parkland dedication requirement. (<i>Application Packet Section A, Subdivision Application, Page 23; Preliminary Plat</i>).</p> <p>3. The southwestern edge of the property contains a steep wooded drainage where Cherry Gulch is located. Cherry Gulch drains into Rattlesnake Creek. The applicant proposes to dedicate 27,557 square feet of open space containing the drainage to the City of Missoula to meet the parkland dedication requirement. This area is adjacent to Greenough Park. (<i>Application Packet Section A, Subdivision Application, pages 23-24 and Section D, Surface Water Memo</i>)</p> <p>4. According to former City of Missoula Parks and Trails Design / Development Manager Neil Miner, the City is open to accepting Cherry Gulch as public parkland as it provides for the preservation of a physical amenity including a stand of trees, significant wildlife habitat, stream, riparian resource area, and is significant enough for parkland dedication as per section 3-080.8.A of the City Subdivision Regulations. Staff recommends dedication of the proposed parkland area as a condition of approval. (<i>January 12, 2022 email from Neil Miner</i>)</p> <p>5. Section 5-050.4 of the City Subdivision Regulations requires the applicant to submit a boulevard landscaping plan. Staff recommends a condition of approval requiring the applicant to submit a boulevard landscaping plan, subject to the review and approval by the City Parks and Recreation Department, prior to filing the final plat.</p>
<p><u>Conclusion of Law:</u></p> <p>1. Parkland dedication is required in this subdivision in accordance with the City Subdivision Regulations. The subdivision, as proposed, will meet the parkland dedication requirements if the condition of approval is imposed.</p> <p>2. City Subdivision Regulations require plans for boulevard landscaping, which will be reviewed and approved prior to filing the final plat if the condition of approval is imposed.</p>
<p><b>SCHOOLS</b></p>

Findings of Fact:

1. Students will attend Rattlesnake Elementary, Washington Middle School, and Hellgate High School. (*Application Packet Section A, Page 22, and Section B, Bus Route Map*).
2. Based on US Census Bureau data, the application estimates approximately one child per two households, resulting in 10 school age children living in the subdivision at any given time. (*Application Packet Section A, Subdivision Application, Page 22*).
3. A School Bus Stop Exhibit was provided and shows an existing school bus stop for Rattlesnake Elementary adjacent to the property and stops for Washington Middle School and Hellgate High School within 500 feet of the property. (*Application Packet Section B, School Bus Stop Exhibit*).
4. An agency comment request was sent to the Missoula Superintendent of Public Schools office to determine if this subdivision would create any adverse impacts. No response has been received to date. (*Application Packet, Section A Page 33 Subdivision Application, Section E School Inquiry*).
5. Missoula County Public Schools Safety and Operations Coordinator Terry Phelan wrote that bus stops could be adjusted to serve the subdivision as needed. (*Email correspondence, 3/2/22*)

Conclusion of Law:

1. 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 nearest station is located approximately 0.5 road miles from the subdivision on East Pine Street (*Application Packet, Section A, Subdivision Application, Page 22, Missoula County Property Information System*).
2. Section 3-070.1 of the City Subdivision Regulations 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. The subdivision application states fire hydrants are proposed to be installed within the subdivision for fire protection purposes. Staff recommends a condition of approval to ensure the City's fire protection requirements are met prior to final plat filing. (*Application Packet Section A, Subdivision Application, Page 22*)
4. The property is located in the Wildland Urban Interface (WUI), defined as the geographic area where structures and other human development meets or intermingle with wildland or vegetative fuels. For subdivisions in the WUI, City Subdivision Regulations Section 3-010.2.B requires specific fire protection elements to be included in the development covenants. The proposed covenants include the required language. (*City Subdivision Regulations Section 2-020.131 and Supplemental Administrative Materials, Email from City Fire Marshall Dax Fraser 8/10/21*)

Conclusion of Law:

1. Fire service is available to the subdivision if the recommended condition of approval is imposed.

**LAW ENFORCEMENT**

Finding of Facts:

1. The subdivision is located within the jurisdiction of the Missoula Police Department. The police station is located at City Hall, less than one road mile from the property. (*Application Packet Section A, Subdivision Application, Page 22*).

Conclusions of Law:

1. Law enforcement services are available to the subdivision.

**CRITERIA D, E, AND F: IMPACT ON THE NATURAL ENVIRONMENT, WILDLIFE, AND WILDLIFE HABITAT**

#### Findings of Fact:

1. Section 5-020.6.D states the application packet must identify natural environmental resources and evaluate the subdivision's potential impacts on those resources including adjacent public lands, cultural resources, hydrological characteristics, soil characteristics and vegetative cover types.

#### Public Lands

2. The subject property is adjacent to Greenough Park. The subdivider proposes to dedicate to the City of Missoula a 27,557 square foot, undeveloped addition to Greenough Park that includes a portion of Cheery Creek and surrounding upland and riparian vegetation. The City Parks and Recreation Department has indicated a willingness to accept this open space for management as a natural area. (*Application Packet, Section A, Subdivision Application Page 23; Preliminary Plat; January 12, 2022 email from Neil Miner*).

#### Cultural Resources

3. The Montana State Historic Preservation Office (SHPO) provided comment stating that any structure over 50 years of age is considered historic and is potentially eligible for listing on the National Register of Historic Places. In such cases, SHPO recommends that the structures and site be recorded, and a determination of their eligibility be made prior to any disturbance taking place. (*Application Packet Section A, Subdivision Application Page 9; Section E, SHPO Report*).
4. City Historic Preservation Officer Emily Johnson commented on this subdivision, concurring with SHPO's recommendation and requested documentation from the applicant detailing the site history, providing photographs of the site and structures, and any historic images of the property. In response, the applicant commissioned and submitted a Montana Historic Property Record report. Ms. Johnson reviewed the report, stated that the structures and site are unlikely to be eligible for inclusion on the National Register of Historic Places, and expressed satisfaction with the documentation. (*Emails from City Historic Preservation Officer Elizabeth Johnson 9/9/21 and 11/16/21*)

#### Hydrological & Soil Characteristics

5. Based on measurements taken from the onsite well and a nearby monitoring well in Greenough Park, the subdivision application states water under the subdivision property can be estimated to range between 33.5 and 36 feet below ground surface, depending on the time of year. The application states that this distance to groundwater will provide a protective buffer and adequate soil depth for adsorption of phosphorus and filtration of other nutrients and chemicals associated with residential household use. (*Application Packet Section A, Subdivision Application, Page 11; Section D, Surface Water Memo*)
6. The application packet contains a Surface Water Memo. The memo states Cherry Creek is an intermittent stream located in a ravine on the southwestern portion of the property. The stream is approximately one-foot wide when it flows, typically in the spring. The Cherry Creek area on the property is densely vegetated with riparian and upland vegetation. This area is proposed to remain undeveloped in a dedicated open space area managed by the City and connecting to Greenough Park. (*Application Packet Section D, Surface Water Memo and Preliminary Plat, Personal Observation*)
7. Cherry Creek empties into Rattlesnake Creek approximately 100 feet from the property. Rattlesnake Creek is not on the Montana Department of Environmental Quality year 2020 Section 303(d) list of impaired water bodies. (*Application Packet Section D, Surface Water Memo*)
8. City Subdivision Regulations Section 3-040.2 requires the subdivider to submit a complete grading and drainage plan and a Stormwater Pollution Prevention Plan (SWPPP). The Surface Water Memo states that during construction there is the greatest potential for runoff or additional sediment load to enter the Cherry Creek basin and Rattlesnake Creek. To prevent this, the subdivider will be required to submit and follow a SWPPP, incorporating state and local requirements, best management practices, and reseeding disturbed soils to prevent erosion and sedimentation of surface water. Staff recommends this as a condition of approval.



9. The Surface Water Memo states that adopted regulations require new stormwater that is created from subdivision improvements to be retained onsite and slowly infiltrate into the soil, so this subdivision should not impact Rattlesnake Creek water quality over time.
10. The application states this property is not within a 100-year or Special Flood Hazard Area based on Floodplain Panel 30063C1215E. (*Application Packet Section A, Subdivision Application Page 16 Subdivision Application*).

#### Vegetation

11. City Subdivision Regulations Section 3-010.4 states the design and development of subdivisions must substantially preserve or enhance the unique character of an area, the natural terrain, natural drainage, existing topsoil, trees, and natural vegetation to the maximum extent possible and must be arranged to minimize the increase of land area devoted to impervious surfaces.
12. The application packet includes a generalized vegetation map showing the Cherry Creek drainage area, mature trees, shrubs, and bushes concentrated along the western and southern areas, and the central portion of the property covered with unirrigated grasses, weeds, and small trees and shrubs. Of note are the large pine trees located in the southwestern and southern portions of the property. In a December 18, 2021 email reviewing the subdivision proposal, City of Missoula Ecosystem Services Superintendent Morgan Valliant wrote, "Some of those trees are likely over 300 years old. They have significant value to the urban forest, Rattlesnake Creek, and future homeowners."
13. In response to Mr. Valliant's comments, the applicant stated the dedicated open space area will keep a large majority of the trees in the area protected and the property lines protect vegetation on the back side of each lot. Staff agrees the proposed open space area, which contains the majority of the large trees, will be helpful in maintaining the natural environment and character of the area. (*Email correspondence from Anna Vickers, 3-3-22*)
14. Subdivision Regulations Section 3-010.1F requires the subdivision to comply with other regulations applicable to the land proposed for subdivision.
15. The Missoula County Noxious Weed Management Plan, adopted by Resolution 2012-063, requires a weed management plan as part of subdivision plans.
16. The application packet includes a weed management and revegetation plan that is intended to be appended to the subdivision covenants. The plan states the current site is dominated by Smooth Brome with a few sporadic Houndstongue and states weeds will be managed with a combination of hand pulling, spot herbicide treatment, and revegetation using a quick establishing grass mix. It states areas disturbed during construction should be reseeded as soon as possible to prevent weed establishment. (*Application Packet Section C, Weed Management Plan*).
17. Agency comment from Morgan Valliant states the plan should be amended to address the thickets of Russian Olive and Japanese Knotweed, which are listed as a noxious weed and are more impactful to riparian and other areas than Houndstongue. Based on agency comment, staff recommends the Russian Olive trees be removed from the property and the weed management and revegetation plan be amended to incorporate Russian Olive and Japanese Knotweed prior to final plat filing. (*Application Packet Section 3 Covenants and Agency Comment*).

#### Wildlife and Wildlife Habitat

18. The subdivision application includes a wildlife exhibit indicating the property may support a wide variety of wildlife adapted to the semi-urban environment. Section 22 of the covenants includes information for lot purchasers about living with wildlife and advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict. (*Application Packet Section 3 Covenants, Wildlife Exhibit*).

#### Conclusion of Law:

1. Limited impacts to the natural environment, wildlife, and wildlife habitat are foreseen as a result of this subdivision if the recommended conditions of approval are imposed.

2. No historic or cultural resources are likely to be impacted as a result of this subdivision.

#### **CRITERION G: EFFECTS ON PUBLIC HEALTH AND SAFETY**

##### Findings of Fact:

1. Section 5-020.6.G of the City Subdivision Regulations states the applicant must demonstrate that the subdivision will have no adverse impact on conditions that relate to the public health and safety including disease control and prevention, emergency services, environmental health, flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards, high voltage lines or high pressure gas lines, on-site or nearby off-site land uses that create a nuisance (e.g. noise, dust, smoke, unpleasant odors), and air or vehicular traffic safety hazards.
2. 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.
3. The subject property is outside of the FEMA-identified 1% annual chance flood hazard areas and floodplain (*What's My Zoning National Flood Hazard Layer, FIRM Panel No. 30063C1215E*).
4. The property is located within the Wildland Urban Interface. City Subdivision Regulations Section 3-010.2B requires specific fire protection elements to be added to the development covenants. The proposed covenants include the required language. (*City Subdivision Regulations and Supplemental Administrative Materials, Draft Covenants, Email from City Fire Marshall Dax Fraser 8/10/21*)
5. The application documents include a Slope Analysis Report and Slope Map that indicate the property contains land with existing grades in excess of 25% slope. These areas are generally on the southwest and southeast sides of the property. The application also includes a Geotechnical Evaluation that assesses soil conditions and makes recommendations for development of the road and lots. The Slope Analysis Report states, "The Geotechnical Engineer will approve final grading plans for the site. Additionally, conditions will be put in place requiring lot owners to obtain approval of residence plans by a geotechnical engineer prior to construction." Staff recommends these and related provisions of the geotechnical report be made conditions of final plat approval.

##### Conclusion of Law:

1. No adverse impacts to public health and safety are foreseen as a result of this subdivision if the recommended conditions of approval are imposed.

#### **IV. PRIMARY CRITERIA COMPLIANCE**

This subdivision complies with:

##### **1. 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.
2. City Subdivision Regulations Section 4-070 includes a process to ensure final plats contain all necessary seals and certificates prior to filing and comply with state survey requirements.

###### Conclusion of Law:

1. This proposal meets the survey requirements.

##### **2. 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. The plat will be brought into compliance with the local subdivision regulations if the conditions of approval are imposed.

### 3. 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.
2. Notice of a public hearing for this subdivision was posted on the property on March 4, 2022 and letters were mailed to adjacent property owners on March 4, 2022. Legal notice was published in the Missoulian on March 6 and March 13, 2022.
3. The Planning Board public hearing is scheduled for March 22, 2022 and the City Council public hearing is scheduled for April 4, 2022.
4. City Council is scheduled to give final consideration to this subdivision on April 11, 2022. The 60-working day review period for this subdivision expires on April 13, 2022.

#### Conclusion of Law:

1. This subdivision review has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations and the Montana Subdivision and Platting Act.

## V. PROVISION OF EASEMENTS FOR UTILITIES

#### Findings of Fact:

1. The subdivision is proposed to be served by City water and sewer. City Subdivision Regulations Section 3-070.6 requires that all water mains must be placed in a public right-of-way or public utility easement.
2. All utilities within the subdivision, including water, sewer, electrical, phone and power, are planned to be located within public rights-of-way, which meets the intent of Section 3-070.6. This project does not propose overhead utilities. (*Application Packet Section A Preliminary Plat, Supplemental Data Sheets, Subdivision Application*).
3. A water main is planned to be extended to the subdivision from an existing main located to the north of the subdivision in the vicinity of Peggio Lane. At this time it is unclear whether the existing main is within a public right-of-way or utility easement. Therefore, staff recommends a condition of approval that all utilities be located within a public right-of-way or utility easement that complies with City policies. (*Water Main Extension Construction Plans*)
4. The subdivision will be served by Northwestern Energy for electricity and gas within appropriate easements. (*Application Packet Section A Page 30 Subdivision Application*).
5. Staff recommends a condition of approval that requires access and utility easements be provided per 3-060 of the City Subdivision Regulations prior to filing the final plat, including .

#### Conclusion of Law:

1. 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.

## VI. PROVISION OF LEGAL AND PHYSICAL ACCESS

#### Finding of Fact:

1. Legal and physical access would be provided to the subdivision from W. Greenough Drive via a new, publicly dedicated subdivision road and an alley providing rear access to Lots 1 – 6. Sidewalks are also proposed along the W. Greenough Drive property frontage and the internal subdivision road. All access improvements are being designed in accordance with the City Subdivision Regulations

standards except as authorized by variance. (*Application Packet Section A Project Summary, Preliminary Plat, and Road Plans*).

Conclusion of Law:

1. The subdivision proposal meets the physical and legal access requirements of the City Subdivision Regulations.

## VII. VARIANCE REQUEST

### VARIANCE REQUEST #1 – Contiguous Building Site

A variance is requested from City Subdivision Regulations Section 3-140.3, which states, “All lots must have a contiguous building site area of at least 2,000 square feet, none of which may contain slopes greater than 25%.” For the purposes of these regulations, slopes are measured prior to grading and development, but if approved, may be modified as part of the lot development process.

According to the Slope Category Map provided with the application, Lots 1 - 18 contain contiguous 2,000+ square foot sites, with less than 25% slope, and that are located outside of the required building setback areas. Lots 19 and 20 do not comply with this standard. Lot 19 has 1,132 square feet and Lot 20 has 1,670 square feet contiguous area with less than 25% slope located outside of the required building setbacks.

These lots are located along the existing driveway. The variance application indicates that historic site grading was required to make a mildly sloping driveway to the homesite, which resulted in areas of steeper slopes dropping to the southwest on those lots, which necessitates the variance.

RECOMMENDATION:

Development Services recommends **APPROVAL** of the variance request to allow Lots 19 and 20 to be created without 2,000 square feet of contiguous buildable area based on these 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.**

Granting of the variance would not result in a threat to public safety, health, or welfare. During site development the existing driveway will be removed and the building sites on Lots 19 and 20 will be re-graded to make suitable building sites within the required setback areas. The application states stormwater management and erosion controls will be implemented during and after construction to prevent sedimentation of Cherry Creek, which are recommended conditions of approval. The application also contains a Geotechnical Evaluation that provides stringent recommendations for site preparation and development including onsite observation of soils conditions during excavation and recommendations for foundations and other elements to ensure structural support and erosion controls. These recommendations are incorporated into the conditions of subdivision approval to protect public health, safety, and welfare. No other properties would be impacted by granting this variance. (*Application Packet Section A Variances, Slope Analysis Report and Map, and Geotechnical Analysis*)

- 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 site is sloped and contains an existing driveway that was graded in and contains small but relatively steep slopes on the downhill side. These conditions result in the need for a variance and are unique to the property. (*Application Packet Section A Variances, Slope Analysis Report and Map, and Geotechnical Analysis*)

- 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 variance request is based on site-specific historic and topographical conditions resulting from the driveway construction and resulting downhill slopes on either side of the driveway. If the variance is denied, Lots 19 and 20 would not be created, which could be deemed to be a hardship considering the concerns regarding structural safety, erosion control, and water quality protection can be adequately mitigated. (*Application Packet Section A Variances, Slope Analysis Report and Map, and Geotechnical Analysis*)

**D. The variances will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Missoula County Growth Policy;**

Approving this variance request will not violate the provisions of the Missoula City Zoning Ordinance or Our Missoula 2035 City Growth Policy. The application includes a City Hillside Property Density Worksheet based on Title 20 requirements and concludes that the site can support the proposed density of development. (*Application Packet Section A Variances, Slope Analysis Report and Map, and Geotechnical Analysis*)

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

Approval of the variance will not cause an increase in public costs because the lots are to be developed and maintained privately, without public assistance. (*Application Packet Section A Variances, Slope Analysis Report and Map, and Geotechnical Analysis*)

**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 or assigns. The hardship is a result of the historic driveway and resulting fill slope on the downhill side. (*Application Packet Section A Variances, Slope Analysis Report and Map, and Geotechnical Analysis*)

**VARIANCE REQUEST #2 – W. Greenough Drive**

W. Greenough Drive is functionally classified as an Urban Collector (without parking). A variance is requested from City Subdivision Regulations Section 3-020.13, which says that primary access roads leading to the subdivision must be built in accordance with the adopted road standards, and Section 3-020 Table .2A, which states that urban collectors (without parking) require 80 feet of right-of-way (40 feet on each side of the road centerline), with five-foot bike lanes, seven-foot boulevards, and five-foot sidewalks.

Currently W. Greenough Drive along the property exists within a 30-foot roadway easement and contains two travel lanes and shoulders, but does not include bike lanes, curbs and gutters, boulevards, and sidewalks, as per the current City of Missoula standards. A worn path along the side of the road indicates bicyclists and pedestrians currently use the road shoulder to avoid vehicular traffic.

The applicant proposes to provide additional right-of-way so there would be 40 feet of right-of-way along the subdivision property, which complies with adopted standards. The applicant also proposes to install half-street improvements including additional paved road surface, curb and gutter, boulevard, and sidewalk along the majority property.

However, along the 75-foot proposed open space area above the Cherry Gulch drainage, the applicant proposes to provide an additional four feet of paved surface, a two-foot curb and gutter, six-foot sidewalk, additional guardrail and retaining wall. In this location, there would be no boulevard and a six-foot streetside sidewalk instead of the typical five-foot sidewalk that is separated from the roadway by boulevard. Hence, the request for a variance along this 75-foot stretch of road.

**RECOMMENDATION:**

Development Services recommends **APPROVAL** of the variance request to allow for no boulevard and a streetside six-foot sidewalk along the open space area as proposed by the subdivider based on the 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.**

Granting the requested variance would not pose a threat to public safety, health, or welfare. Although having a boulevard between the street and sidewalk would provide a more comfortable walking experience, the sidewalk would be separated from and elevated above the roadway by a curb, and the sidewalk would be one foot wider - six feet instead of five - than a typical sidewalk. The proposed sidewalk, although not ideal, would provide a safer pedestrian experience than what exists today and would therefore not be injurious to other persons or property. (*Application Packet Section A Variances, and Supplemental Data Sheets and Grading, Drainage, and Road Plans*).

**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 surrounding this request for variance are unique to the property due to the presence of Cherry Gulch, which drops steeply to the south on this side of W. Greenough Drive. To add a seven-foot boulevard in this location would require significant engineering, road fill, and road construction that would extend further into the gulch. Additional construction would impact mature vegetation that provides a streamside buffer, which protects water quality and provides wildlife habitat. Given the existing lack of sidewalk in this area, a new six-foot, elevated streetside sidewalk would be a significant safety improvement in this location. This is a unique circumstance that is not applicable generally to other property. (*Application Packet Section A Variances, and Supplemental Data Sheets and Grading, Drainage, and Road Plans*)

**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.**

Enforcing the strict letter of the regulations would result in a hardship to the owner. The topography of Cherry Gulch is the reason for the request. The subdivider is proposing to build curb, boulevard, and sidewalk along the rest of the property frontage but in this specific location, due to the steep drop-off, requiring a boulevard would be a disproportionate hardship when another reasonable alternative is available. (*Application Packet Section A Variances, and Supplemental Data Sheets and Grading, Drainage, and Road Plans*)

**D. The variances will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Missoula County Growth Policy;**

This variance request will not violate the provisions of the Missoula City Zoning Ordinance or Our Missoula 2035 City Growth Policy as those documents do not address this circumstance. (*Application Packet Section A Variances, and Supplemental Data Sheets and Grading, Drainage, and Road Plans*)

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

Granting this variance will not cause an increase in public costs. All improvements are to be made by the subdivider. No additional or unusual maintenance costs are expected. (*Application Packet Section A Variances, and Supplemental Data Sheets and Grading, Drainage, and Road Plans*).

**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. It is due to the steep drop-off along W. Greenough Drive in this location. (*Application Packet Section A Variances, and Supplemental Data Sheets and Grading, Drainage, and Road Plans*).

## **VIII. REZONING REVIEW CRITERIA**

### **Criterion 1a. Whether the zoning is made in accordance with a growth policy;**

1. The rezoning complies with the Growth Policy because the R8 Residential zoning district is a current relatable district of the Residential Medium Density (3 to 11 dwelling units per acre) growth policy land use designation.



<p>2. The rezoning complies with many of the goals and objectives of the growth policy because it would be compatible with the surrounding residential neighborhood and Greenough Park, provide a relatively compact development pattern, and protect environmental quality through preservation of the open space area.</p>
<p><b>Criterion 2a. Whether the zoning is designated to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; 2b. Whether the zoning considers the effects on motorized and non-motorized transportation systems;</b></p>
<p>1. The rezoning facilitates the adequate provision of public services including transportation, water, schools, parks, and other public requirements. The subject property can be served by City water and sewer and Missoula County public schools, it will add to Greenough Park, and is close to City police and fire departments. Further, the rezoning and subsequent development will allow for improvements to the motorized and non-motorized transportation facilities along W. Greenough Drive.</p>
<p><b>Criterion 3. Whether the zoning considers the promotion of compatible urban growth;</b></p>
<p>1. The rezoning reflects compatible urban growth because it implements the focus inward goals of the 2035 Our Missoula City Growth Policy and provides for medium density residential development in an established residential area while promoting efficient use of existing infrastructure.</p>
<p><b>Criterion 4a. Whether the zoning is designated to promote public health, public safety, and the general welfare; 4b. Whether the zoning is designed to secure safety from fire and other dangers; 4c. Whether the zoning considers the reasonable provision of adequate light and air; 4d. Whether the zoning conserves the value of buildings and encourages the most appropriate use of land throughout the jurisdictional area;</b></p>
<p>1. The rezoning will promote public health, public safety, and the general welfare by providing for residential lots to be zoned with an appropriate residential designation instead of being partially zoned residential and partially zoned for open space. The open space zoning would protect the Cherry Gulch drainage from future development, which would conserve established vegetation, wildlife habitat, and water quality. The zoning would also allow for future development to receive sewer, water, emergency services, streets, public parks, schools, and other urban services.</p> <p>2. Emergency services are available to the site. Law enforcement personnel and facilities area available to address potential problems of noise, property damage, or personal injury. Fire project is also available to the site.</p> <p>3. This rezoning should not adversely impact the provision of adequate light and air as all future development will meet the required internal and external zoning, building, and engineering requirements.</p> <p>4. This rezoning encourages appropriate use of the land because the R8 Residential zoning district allows a density that aligns with the Growth Policy Residential Medium Density (3 to 11 dwelling units per acre) land use designation.</p>
<p><b>Criterion 5. Whether the zoning considers the character of the district and its peculiar suitability for particular uses;</b></p>
<p>1. Rezoning the majority of the property to R8 Residential is suitable for the subject property and gives reasonable consideration to the character of the neighborhood because the proposal allows for similar density and building types as surrounding properties.</p> <p>2. As the property abuts Greenough Park, the rezoning of the Cherry Gulch area to OP1 Open Space is uniquely suitable as it would add a unique natural feature to the historic park area.</p>
<p><b>Criterion 6a. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition; 6b. Whether the proposed zoning amendment is in the best interests of the city as a whole;</b></p>
<p>1. The zoning amendment is a map amendment and not a text amendment, therefore there is no change to the Title 20 zoning ordinance with the proposed amendment to reconfigure zoning on the subject property.</p> <p>2. The rezoning is in the best interest of the City as a whole because the rezoning implements the recommendations of the 2035 Our Missoula City Growth Policy for areas designated Residential</p>

Medium Density and will help preserve a natural drainage that contributes to the quality of the natural environment in the City of Missoula.

## IX. REFERENCES CITED

The following materials are referenced throughout this document. For ease of reading, short versions of the citations are used in-text, and full citations are included here.

### Plans and Regulations

M.C.A.: Montana Code Annotated, 2019

<https://leg.mt.gov/bills/mca/index.html>

Subdivision Regulations: City of Missoula Subdivision Regulations, adopted by the Missoula City Council and amended April 28, 2014

<http://www.ci.missoula.mt.us/DocumentCenter/View/22394>

2035 Our Missoula City Growth Policy

<http://www.ci.missoula.mt.us/1748/Our-Missoula>

Title 20: Title 20 Missoula Zoning Ordinance, adopted by the City Council

[https://library.municode.com/mt/missoula/codes/municipal\\_code](https://library.municode.com/mt/missoula/codes/municipal_code)

### Elements of the Application Packet for Governing Body Review

Project Summary

City Major Subdivision Application

City Rezone Application

Variance Requests

Preliminary Plat and Supplemental Data Sheets

Rezoning Application

Vicinity Map

Zoning Map and Zoning District Standards

Growth Policy Land Use Designation Map

Aerial Photo

Adjacent Properties and Ownership

USGS Vicinity Map

Floodplain Map

Vegetation Exhibit

Wildlife Exhibit

Bus Route Map

Sight Triangles Exhibits

Certificates of Survey

Preliminary Title Report & Ownership Deeds

Covenants

Weed Management and Revegetation Plan

Defensible Space Plan for Fire Protection  
Water & Sanitation Report  
Surface Water Memo  
Intent to Serve Letter for Municipal Facilities  
Water Rights Abstract  
NRCS Soil Report  
Slope Analysis Report and Map  
Geotechnical Analysis  
Riparian Resource Plan and Map  
Grading and Drainage Report  
Road Construction Plans  
Utility Construction Plans – Sewer Force Main and Water Main Extension  
Sewer Stage 2 Construction Plans  
SHPO Report  
Neighborhood Meeting Notes

Agency Comments Cited

Elizabeth Johnson, City of Missoula Historic Preservation Officer  
Dax Fraser, City of Missoula Fire Marshal  
Neil Miner, City of Missoula Parks and Trails Design/Development Manager  
Terry Phelan, Missoula County Public Schools Safety & Operations Coordinator  
Morgan Valliant, City of Missoula Ecosystem Services Superintendent  
Aaron Wilson, City Infrastructure and Mobility Planning Manager

Other Resources

Missoula County Property Information System

<https://gis.missoulacounty.us/propertyinformation/>

“What’s My Zoning?”

<https://www.ci.missoula.mt.us/1529/Whats-My-Zoning>