



MEMO No. 1

TO: City Council
DATE: April 14, 2022
FROM: Lauren Stevens, Associate Planner, Development Services
RE: **Remington Flats Phase 2 and 3 Phased Development Review**

After the staff report for the Phased Development Review for Phases 2 and 3 of Remington Flats Subdivision was issued on April 7th, 2022, Public Works and Mobility staff provided additional information and proposed new wording for the recommended amendments to Findings of Fact included in the staff report. The following are recommended revisions for City Council's consideration:

- A. Public Works and Mobility Engineering staff commented that they have had issues retaining a contractor to perform the construction work, therefore it is unlikely that some anticipated City-initiated CIP work will be completed this year as originally thought. Additional information regarding the timing of Mullan BUILD grant work was also provided.

Green text below indicates the recommended amendments from staff included in the staff report issued on April 7th, 2022. Red text (underlined/strikethrough) is to indicate updated recommended amendments.

The following are revised recommended amendments to Findings of Fact for City Council consideration:

1. For Finding of Fact #2:
 2. The subdivision application submittal includes a traffic impact study. The study indicates that due to vehicle trips generated from this and other nearby subdivisions, a right-turn deceleration lane will likely be needed on Mullan Road for westbound traffic at the Chuck Wagon Drive intersection by Phase 2 of Remington Flats development. Improvements to that intersection are currently planned and anticipated to be installed this year as part of a City-initiated CIP.
2. For Finding of Fact #13
 13. Improvements to the intersection of George Elmer Drive / Mullan Road are planned to be funded in part through the Mullan BUILD grant and in part through City and County contributions. The City and County are exploring cost recovery mechanisms from subdividers and future residents who will benefit from these investments. Conditions of approval include a requirement for the subdivider and/or future residents to contribute a proportionate share to George Elmer Drive / Mullan Road intersection improvements including potential participation in a special improvement district, impact fees, latecomers fees, or other mechanism. This is reflected in a condition of approval. Improvements to the George Elmer Drive/Mullan Road intersection will be installed this year are anticipated to be installed in 2023 through the Mullan BUILD grant. At this time Transportation Impact Fees have been adopted as one of the cost recovery methods.

At the April 13th, 2022 meeting of the Land Use and Planning Committee, City Council directed staff to produce a memo providing information regarding stormwater and air quality regulations for development in the City, the associated enforcement of those regulations, and how monitoring of violations occurs. Community Planning, Development and Innovation staff requested information from Public Works and Mobility Stormwater Division staff and City-County Health Department staff, and has compiled it below to help address these questions. For more in-depth conversations regarding the two relevant departments'

processes, staff recommends City Council request a discussion at a future Public Works Committee meeting.

- B. Public Works and Mobility Stormwater Division staff and City-County Health Department Air Quality staff provided information pertaining to their regulations as noted below.

Stormwater

Regulations in Place

The City's stormwater code can be found in the [Missoula Municipal Code Chapter 13.27](#), which allows the Public Works and Mobility Department to develop a stormwater management program. The [2022 Stormwater Management Program](#) is available on the City's website, and there is an Engage Missoula page that provides the public an opportunity to comment on the program. The [Missoula City Public Works Standards & Specifications Manual \(MCPWSS\)](#) is also available online, and gives information about infrastructure standards for developers and the review process of that infrastructure. Stormwater System standards are addressed in [Chapter 6](#) and Erosion Control standards are in [Chapter 8](#). City stormwater regulations are relatively new; new rules were instituted in 2020, and January 2021 was the beginning of the new required permit. The more robust stormwater requirements are to help maintain the City's own requirements for pollutants discharged via stormwater through their MS4 permit. This permit is issued to the City by the Montana Department of Environmental Quality (DEQ) to prevent point-source pollution from being introduced into the environment, because stormwater does not go to the wastewater treatment plant and is mainly infiltrated into the underground aquifer through a system of sumps.

The City requires a Stormwater Permit for any project disturbing 2,500 square feet of land through construction, infrastructure installation, or landscaping. In addition to a City Stormwater Permit, projects over 1 acre in size require coverage under the Montana DEQ Construction General Permit. The Construction General Permit requires a Stormwater Pollution Prevention Plan (SWPPP), which is a comprehensive plan that addresses how the project will mitigate negative impacts to stormwater, and often includes measures such as a silt fence and a tracking pad for vehicles entering and leaving the project site.

The biggest emphasis for stormwater regulations is to prevent the transport of sediment off-site, either by it being tracked onto adjacent streets or as dust traveling through the air. The goal is to retain soil on the ground on its original site. Historically, sediment was more likely to be displaced by being tracked off-site on the ground. Much of the development has occurred in areas with coarse-grained, rocky soils. Dust issues from fine-grained clay soils are relatively new, as major development of the Sxwtpqyen Area has not occurred until recently.

Enforcement and Violations

Appendix H of the 2022 Stormwater Management Program includes the Enforcement Response Plan. Enforcement of regulations includes both routine monitoring of standards on-site and response to complaints. Often, staff on-site conducting inspections for other project elements will also take note of any stormwater issues that are apparent. Inspections may also be conducted after large storm events.

If inspectors find a violation on-site, they will let the contractor know and give some action items to address the area of concern. Generally, this is enough to correct the issue. If corrections have still not been made, a Notice of Violation (NOV) will be issued. A NOV allows the City to issue a stop-work order on the construction site. Most of the time, a NOV will result in addressing the problem because contractors do not want to risk receiving a stop-work order on their project. Stormwater staff is currently exploring the addition of a re-inspection fee to help encourage faster correction of violations, which would be implemented prior to a stop-work order.

Air Quality

Regulations in Place

The Missoula City-County Air Program does not issue permits for construction projects. However, Chapter 8 of the Missoula City-County Air Pollution Control Program requires “reasonable measures” be taken to control fugitive emissions. This rule applies for permitted or unpermitted activities. What constitutes a “reasonable measure” can be subjective, and cost is a consideration. Reasonable measures generally include watering or other chemical suppressant application to travel lanes, water application where actively digging, frequent cleaning of paved access roads and prevention of drag out from the construction site.

The Air Pollution Control Program does not have coarse monitors operating near construction sites. Monitors available on [“Montana’s Today’s Air”](#) are for fine particulate matter and would not show most of the coarse particulate matter generated at construction sites.

Enforcement and Violations

Enforcement by the Air Program is generally started by a complaint, with follow-ups as needed if the situation persists. Enforcements starts with informational conversations or letters. Next steps include a formal Notice of Violation and an Order to Take Corrective Action letter.

Current Situation and Next Steps

City Stormwater staff advised that, while there have been a number of complaints regarding dust and stormwater issues in the Sxwtpqyen Area, most of them have originated from a small number of concerned citizens submitting multiple complaints. The Remington Flats Subdivision currently under Phased Development Review for Phases 2 and 3 has not been issued any Notice of Violations, and is attempting to mitigate impacts by grading the site on a phase-by-phase basis, rather than conducting mass grading. A nearby project in the area, which is not part of a phased subdivision, has opted to mass grade their full site at one time. Stormwater staff noted that, even though they have utilized various strategies to mitigate dust and sediment transport, it can be extremely challenging to fully control the issue with the soil type in the area without extremely costly strategies that would promptly be removed at the next phase of construction. The project in question was issued a Notice of Violation, but worked to correct the issue and is no longer in a Violation status.

Staff has expressed a general consensus that opening up multiple acres at a time through mass grading may lead to stormwater and air quality issues in this area, regardless of the intensity of mitigation measures in effect. Currently, the City does not have a mechanism to discourage or prevent the mass grading of a development site.

One potential additional condition that could be added to future development in the Sxwtpqyen Area or through all SWPPP permits would be the inclusion of a separate plan sheet showing erosion control and stormwater measures for each “construction sequence.” These sequences are processes such as site grading, the installation of dry utilities, vertical construction, and landscaping and should not be conflated to mean phases such as within a phased subdivision. This specific plan for each sequence is currently required for the state SWPPP permit. The contents of a project’s state SWPPP permit is required to be submitted to obtain the City SWPPP permit, so this would not be additional work for an applicant to provide those individual plan sets for each sequence. City Council should work with Public Works and Mobility Stormwater Division staff if they would like to pursue this requirement.