



COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

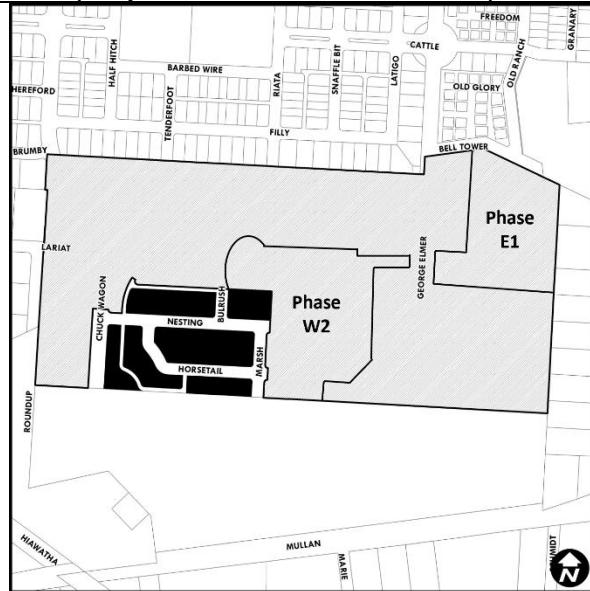
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REFERRAL & STAFF REPORT – PHASED DEVELOPMENT REVIEW FOR PHASE W2 and E1 OF HERON'S LANDING SUBDIVISION

Agenda item:	Referral and Staff Report – Phased Development Review for Phase W2 and E1 of Heron's Landing Subdivision
Report Date:	4/26/2022
Case Planner:	Alex Eidam, Senior Planner
Reviewed & Approved By:	Mary McCrea, Permits and Land Use Supervisor

GENERAL PROJECT INFORMATION

Applicant & Owner:	Mullan Road Partners, LLC
Representative:	Ryan Salisbury, WGM Group
Location of request:	North of Mullan Road, east of Chuck Wagon Drive, and south of 44 Ranch Subdivision in the Captain John Mullan Neighborhood Council area.
Legal description:	Parcel 1 and 2 of Certificate of Survey number 5963, located in Section 13, Township 13 North, Range 20 West, P.M.M.
Notification:	Legal notice was published in the Missoulian on April 17 th , 2022 and April 24 th , 2022. Adjacent Property owners were notified on April 15 th , 2022.
Public Meetings and Hearings:	<p><u>May 2nd, 2022</u> City Council Consent Agenda: Set public hearing and refer to Land Use and Planning Committee</p> <p><u>May 4th, 2022</u> Land Use and Planning Committee: Pre-public hearing information only item</p> <p><u>May 9th, 2022</u> City Council Public Hearing and Final Consideration</p>



DECISION AND REGULATORY FRAMEWORK

The Missoula City Council shall determine whether any changed primary review criteria impacts or new information exists that create new potentially significant adverse impacts for each phase prior to the subdivider commencing with installation of infrastructure or submitting the final plat application for each phase. City Council may approve additional conditions of approval based on the new information or changes in regulations resulting in new findings of fact from those approved by City Council at the time of preliminary plat approval.

Applicable state law:	Title 76 Montana Code Annotated dated 76-3-617(4) https://leg.mt.gov/bills/mca/title_0760/chapter_0030/part_0060/section_0170/0760-0030-0060-0170.html
Applicable Growth Policy and Plans	The parcel is within the urban growth area, the Utility Service Area and the Air Stagnation Zone . Regional plan(s): 2035 Our Missoula Growth Policy

		The applicable land use designation is Residential Medium Density (3 to 11 dwelling units per acre) <u>Vicinity plan(s)</u> : Sxwtpqyen Area Master Plan The Sxwtpqyen Area Master Plan was approved on December 14, 2020, after the subdivision was approved and does not apply to the subdivision.	
Local zoning law:		Title 20, Missoula Municipal Code	
Zoning:		The parcel is zoned RT5.4 Residential (two-unit/townhouse)/NC-HL Heron’s Landing Neighborhood Character Overlay	
Subdivision regulations:		City of Missoula subdivision regulations adopted by City Council as amended on May 19, 2014	
Floodplain:		Unshaded Zone X	
	Surrounding Land Uses:	Surrounding Zoning	Adjacent Jurisdiction:
North	Detached houses	Special District – 44 Ranch	City
South	Manufactured home park	Community Center Neighborhood Unit	County
East	Detached houses	C-RR1 Residential	County
West	Detached houses	C-RR1 Residential	County
RECOMMENDED MOTIONS			
City Council Consent Agenda (5/2/2022)	Set a public hearing on May 9 th , 2022 for the phased development review of Heron’s Landing Subdivision, Phase W2 and E1 for the property legally described as Parcel 1 and 2 of Certificate of Survey number 5963, located in Section 13, Township 13 North, Range 20 West, P.M.M. and refer the item to the Land Use and Planning Committee		
LUP Pre-public Hearing (5/4/2022)	Introductory presentation and discussion on the proposal and staff recommended motion and recommended conditions of approval.		
City Council Public Hearing and Final Consideration (5/9/2022)	Approval of the phased development review of Heron’s Landing Subdivision, Phase W2 and E1 for the property legally described as Parcel 1 and 2 of Certificate of Survey number 5963, located in Section 13, Township 13 North, Range 20 West, P.M.M. based on the findings of fact and conclusions of law, and subject to the amended conditions of approval in the staff report.		
PROJECT SUMMARY			
Development Services has received written notice from Mullan Road Partners, LLC, represented by WGM Group, of intent to move forward with Phase W2 and E1 of the Heron’s Landing Subdivision. Phase W2 is located west of George Elmer Drive, and Phase E1 is located to the east of George Elmer Drive and legally described as Parcel 1 and 2 of Certificate of Survey number 5963, located in Section 13, Township 13 North, Range 20 West, P.M.M. in the City of Missoula.			
At its regularly scheduled meeting on September 21, 2020, the Missoula City Council voted to approve the preliminary plat for the Heron’s Landing Subdivision in 10 phases, subject to 25 conditions of approval. For phased subdivisions, per Montana Code Annotated 76-3-617(4), the governing body (Missoula City Council) shall determine whether any changed primary criteria impacts or new information exists that create new potentially significant adverse impacts for each phase.			
Heron’s Landing Subdivision, Phase W1 final plat was filed September 21 st , 2021 and consisted of 45 lots, Phase W2 consists of 31 lots and Phase E1 consists of 45 lots of the total 347 residential lots approved for the Heron’s Landing Subdivision. The applicant requests City Council review and approve Phases W2 and E1. No changes are proposed to the phasing plan as approved with the preliminary plat application.			
City staff has identified the following new information or changes in regulations resulting in new findings of fact from those approved by City Council at the time of preliminary plat approval: relocation of the Secondary			

Commuter Trail, renaming of roadways, the City acquiring the irrigation ditch and ditch easements, and new information regarding Mullan BUILD grant and construction of George Elmer Drive/Mullan Road intersection.

As a result City Staff has amended three conditions of approval and added one condition of approval for the irrigation ditch since the City of Missoula purchased the irrigation ditch since preliminary plat approval.

PHASED DEVELOPMENT REVIEW - PRIMARY CRITERIA COMPLIANCE

Zoning and Growth Policy/Comprehensive Plan Compliance:

Commentary: City Council approved the phasing plan on September 21, 2020 with 10 phases. The subdivision was approved for 347 single dwelling lots on 72.11 acres, for a density of 4.8 dwelling units per acre. Phase W1 included 45 lots and was filed September 23rd, 2021. The applicant has provided written notice of intent to file the final plat for Phase W2 and E1. The final plat submittal deadlines are December 31, 2026 for Phase W2 and December 31, 2030 for Phase E1. Phase W2 includes 31 lots on 10.70 acres. Phase E1 includes 45 lots on 9.49 acres.

Below are the findings of fact and conclusions of law from the subdivision approval letter dated October 16th, 2020. The findings of fact and conclusions of law that have changed since preliminary plat approval are shown in underline / strikethrough.

Finding(s) of Fact:

1. City of Missoula Subdivision Regulations Section 3-010.1.I requires that subdivision be reviewed for compliance with the growth policy and its amendments.
2. The 2035 *Our Missoula Growth Policy* contains a future land use map with land use designations that visually depict the community's desired direction as it meets new growth challenges and changing times. The land use descriptions and recommended locations help to set a broad understanding of future land use patterns that enables city services and agencies along with residents, property owners, and neighborhoods to plan effectively for the future. The mapping is a visual representation of the balanced, value-based review of the goals, objectives, and actions recommended as part of the growth policy. (*Growth Policy* page 114)
3. The 2035 *Our Missoula City Growth Policy* future land use map provides a land use designation of Residential Medium Density – 3 to 11 Dwelling Units Per Acre for the property. (*2035 City Growth Policy Future Land Use Designation Map*)
4. The subdivision creates 347 lots from the 72.11 acres, for a density of 4.8 dwelling units per acre. (*Preliminary Plat*)
5. No changes are proposed to the phasing plan or the final plat submittal deadlines.
6. The property is zoned RT5.4 Residential /NC-HL Heron's Landing Neighborhood Character Overlay.
7. The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on zoning and the Growth Policy are unchanged.

Conclusion(s) of Law:

1. The approved Heron's Landing Phased Subdivision substantially complies with the 2035 *Our Missoula City Growth Policy*.
2. The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on zoning and the Growth Policy are still valid for Phase W2 and E1.

Primary Compliance Criteria

Criterion 1: Effects on Agriculture and Agricultural Water User Facilities

Finding(s) of Fact:

Agriculture

Commentary - The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on agriculture are unchanged. Below are the findings of fact and conclusions of law from the subdivision approval letter dated October 16th, 2020. The findings of fact and conclusions of law that have changed since preliminary plat approval are shown in underline / strikethrough. The property has been annexed and zoned in the City, therefore finding of fact #4 has been struck.

1. The USDA Natural Resources Conservation Service lists three soil types on these tracts: Desmet loam, Grantsdale loam, and Moiese gravelly loam. (*Subdivision Application Section 6, NRCS Soil Report*)
2. The NRCS Soil Survey classifies these soil types as “Prime Farmland if Irrigated” and “Farmland of Local Importance.” Roughly 2/3 of the site is Prime Farmland if Irrigated, with the remaining 1/3 in the southeast corner of the site Farmland of Local Importance. (*Subdivision Application Section 2, Agricultural Production Exhibit*)
3. The application submittal states the land has been used for raising livestock and growing hay in the past, although not within the past three years. (*Subdivision Application page 8, Project Summary*)
4. ~~The property is currently zoned by Missoula County as C-RR1 Residential, which provides a maximum residential density of one dwelling unit per acre. The existence of County residential zoning on the parcels anticipates their use for residential rather than agricultural purposes. The *Our Missoula City Growth Policy* designates the property for urban scale residential development. (*Subdivision Application page 3, City Growth Policy*)~~

Agriculture Water User Facilities:

Commentary - Following the preliminary plat approval in September 2020, the City of Missoula obtained all right, title and interest in water rights held by the Hellgate Valley Irrigation Company (HVIC) on November 1, 2021, along with ditch easements and related infrastructure and appurtenances necessary to divert and convey the entirety of HVIC’s water rights. This includes the portions of the Flynn Lowney Irrigation Ditch that crosses Heron’s Landing Subdivision. The City intends to retain ownership of the ditch easements it acquired from HVIC through the Heron’s Landing Subdivision for the purpose of conveying water either through an open ditch or a piped conveyance.

Below are the findings of fact and conclusions of law from the subdivision approval letter dated October 16th, 2020. The findings of fact and conclusions of law that have changed since preliminary plat approval are shown in underline / strikethrough.

5. The Flynn Lowney Irrigation Ditch crosses the property from roughly the center of the northern boundary running southwest to the western boundary. An irrigation ditch is also located along part of the north boundary of the property. (*Project Summary, Subdivision Application pages 8-9*)
6. ~~The preliminary plat sheets show culverts are planned to be installed where the Flynn Lowney Ditch intersects planned roadways and easements to provide for access and maintenance of the ditches. (*Preliminary Plat*)~~
6. On November 1, 2021, the City of Missoula obtained all right, title and interest in water rights held by the Hellgate Valley Irrigation Company (HVIC), along with ditch easements and related infrastructure and appurtenances necessary to divert and convey the entirety of HVIC’s water rights. The City intends to retain ownership of the ditch easements it acquired from HVIC through the Heron’s Landing Subdivision.
7. Fifteen lots numbered F332 through F346 are encumbered by the irrigation ditch to the extent the lots are undevelopable at present. These lots are labeled on the phasing plan as W7, the last potential lots to be created. ~~The application states there is only one downstream user of the irrigation water and discussion has occurred to possibly abandon and vacate the ditch at the discretion of the Hellgate~~

~~Valley Irrigation Company.~~ The City acquired the water rights and ditch easements for the irrigation ditch in Phase W7. It's the City's intention to retain the irrigation ditch easements even though the open-air ditch may be converted to piped facilities in this area. So long as the ditch easement remains in place, the lots in this phase will not be developed.

8. With the removal of the Secondary Commuter Trail adjacent to Bell Tower Road within Common Area 22, Common Area 19, and the irrigation ditch easement, the City authorizes and requires the subdivider to fill the open-air ditch, and install curb, gutter, 7-foot landscaped boulevard, and 5-foot sidewalk along the Bell Tower Road frontage in Phase E1 and Phase E3. Beyond this activity required by the City, no action is authorized within the irrigation ditch easement prior to executing the Flynn Lowney Ditch Use Agreement, which is intended to establish the terms and conditions regarding access and use of the ditch easement in areas where an open-air ditch is likely to be converted to a piped ditch.
9. Staff recommends added condition of approval No. 26 that requires the subdivider to maintain the 20-foot irrigation ditch easements through the Heron's Landing Subdivision, fill a portion of the open-air ditch, and install curb, gutter, 7-foot boulevard, and 5-foot sidewalks along the Bell Tower Road frontage in Phase E1 and Phase E3, subject to the review and approval of the City Engineer, prior to final plat approval for each phase; and execute the Flynn Lowney Ditch Use Agreement prior to any action being taken within the ditch easement beyond what has been authorized by the City.

Conclusion(s) of Law:

1. This subdivision would prevent use of productive soils for agriculture. However, the property is zoned for residential use and is planned for urban scale residential development.
- ~~2. No impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision.~~
3. The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on agriculture are still valid for Phase W2 and E1.
4. The City's ownership and retention of the water rights and irrigation ditch easements through the Heron's Landing Subdivision is new information that amends the findings of fact at the time of preliminary plat approval.
5. There will be no impacts to agriculture water users or water user facilities as a result of this subdivision if City Council imposes condition of approval No. 26 and adopts the amendments to the findings of fact.

Criterion 2: Effects on Local Services

Transportation and Drainage Finding(s) of Fact:

Streets and Alleys

Commentary - Phase W2 includes a portion of Heron's Landing Drive and Nesting Lane, and Horsetail Lane. Phase E1 includes a portion of Heron's Landing Drive, Rookery Trail, and Woodpecker Lane.

Below are the findings of fact and conclusions of law from the subdivision approval letter dated October 16th, 2020. The findings of fact and conclusions of law that have changed since preliminary plat approval are shown in underline / strikethrough.

1. Access to the subdivision is from George Elmer Drive and Chuck Wagon Drive, both classified as Urban Collector Streets. The internal subdivision road network includes Low Density Urban Local Streets and Local Residential Streets, differentiated by the anticipated daily traffic volumes. The subdivider is responsible for designing and building/upgrading all of the transportation facilities within the subdivision, including George Elmer Drive and Chuck Wagon Drive, in accordance with City Public

Works Standards and Specifications and the City Subdivision Regulations (except as may be modified by variance). The plans must comply with Americans with Disabilities Act requirements and be approved by the City Engineer. (*Project Summary, Subdivision Application page 17, Subdivision Regulations Section 3-020.2.*)

2. The subdivision application submittal includes a traffic impact study. The study indicates that currently planned transportation improvements to reduce congestion and increase safety along Mullan Road are pending and include a two-way left turn lane at the Mullan Road / Chuck Wagon Drive intersection and a traffic signal and eastbound left turn lane at the Mullan Road / George Elmer Drive intersection. The traffic impact study states the planned transportation improvements are sufficient to accommodate the site generated traffic at the Mullan Road intersections and that no further intersection improvements are required to mitigate the site generated traffic. The study also indicates the approved internal street network design is sufficient to accommodate projected levels of traffic within and travelling through the subdivision. (*Traffic Impact Study, Supplemental Traffic Analyses, Project Summary page 4*)
3. Many of the lots are planned so the fronts of homes face the street with rear access via alleyways. The City Subdivision Regulations require alley rights-of-way to be at least 20 feet wide with a paved surface of at least 12 feet. The approved alleys meet these requirements. All of the lots appear to be suitable for driveway or alley access in accordance with the subdivision regulations. (*Preliminary Plat Sheets, City Subdivision Regulations Section 3-020.10*)
4. Street names are provided on the preliminary plat. Section 3-020.12 of the City Subdivision Regulations requires the street naming plan to be reviewed and approved prior to final plat approval. This requirement is reflected in a recommended condition of preliminary plat approval. (*Preliminary Plat Sheets, City Subdivision Regulations Section 3-020.12*)
5. Section 3-020.4(H)(2) of the City Subdivision regulations requires street signs and traffic control devices to be approved by the City Engineer and consistent with the Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation. A condition of approval requires a signage plan reviewed and approved by City Fire and the City Engineer prior to final plat approval of the first phase and installation of signage meeting the above-named standards prior to platting of each phase.
6. All streets and alley rights-of-way will be dedicated to the public. Section 3-020.3(A)(1) of the City Subdivision regulations requires each public road to provide for construction and perpetual maintenance of the road. Section 5-050.4(M & N) of the City Subdivision regulations requires the Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance. A condition of approval requires a SID statement on the plat and in the subdivision covenants for future improvements and maintenance to all streets providing access to the subdivision lots.
7. Section 3-060.1 of the City Subdivision Regulations requires easements be provided for vehicular and pedestrian access, utilities and irrigation ditches and City Engineer approval of the easements. A condition of approval requires that the location and width of all easements including streets, utilities and the irrigation ditches shall be approved by the City Engineer prior to final plat approval of each phase.
8. Subdivision Regulations Section 3-020.2 and .3C requires improvements to streets within or adjacent to a subdivision to meet the standards prescribed in Table .2A.
9. Condition of approval No. 8 outlines funding mechanisms to cover a portion of the cost for construction of George Elmer Drive not covered by the Mullan BUILD project. City Engineering

commented that improvements to George Elmer Drive/Mullan Road intersection 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.

10. Staff recommends condition of approval No. 8 be amended as follows:

8. The Heron's Landing Phased Subdivision is located within the Mullan BUILD project area and George Elmer Drive, which provides access to the subdivision property, is planned to be improved as part of the Mullan BUILD project. Federal funds are planned to pay for a portion of the Mullan BUILD improvements. Funding mechanisms are currently being explored to pay for the remainder of the improvements. The funding mechanisms may include, but are not limited to, a special improvement district, impact fee, latecomers fee, or cost share agreements that allow the City of Missoula and Missoula County to recover the cost of constructing infrastructure from the properties that benefit from the Mullan BUILD project. To the extent that such funding mechanism(s) is created in accordance with state law and applicable principles of land use law, the subdivider, successors, and assigns shall participate in and be bound by the fees assessed and not oppose the creation of or participation in such a district. Improvements to the George Elmer Drive/Mullan Road intersection 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.

George Elmer Drive and Chuck Wagon Drive

11. George Elmer Drive and Chuck Wagon Drive are classified as a Urban Collectors (with parking). Table .2A shows Urban Collectors with parking require a minimum 90-foot wide right-of-way that includes two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total, with a small amount of additional space for maintenance). Table .2A also includes the possibility of a center turn lane, which would require additional space. (*Subdivision Regulations, Table .2A*)
12. The subdivider has requested separate variances to build the required street improvements within 80-foot rights-of-way instead of 90 for both George Elmer Drive and Chuck Wagon Drive. These requests are addressed below. (*Variance Request #1 and #2*)
13. George Elmer Drive also includes a 20-foot access and utility easements on the east and west sides to allow for a meandering sidewalk and commuter trail (discussed below) as well as for utility placement and maintenance. (*Preliminary Plat, Circulation Plan Exhibit*)

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

Commentary - Audubon Loop was renamed to Audubon Trail.

14. Subdivision Regulations Table .2A identifies Low Density Urban Local Streets as those streets serving less than 12 dwelling units per acre and having an average daily traffic of up to 2,500 vehicle trips. (Residential streets with more than 250 and less than 2,500 ADT.) According to the traffic impact study and supplemental analyses, Heron's Landing Drive, Nesting Lane, and Audubon ~~Loop~~ Trail fall into this category. Table .2A shows Low Density Urban Local Streets to have a minimum 70-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovarp has requested an additional one-foot easement along the outer edge of the street improvement to allow for maintenance. (*Traffic Impact Study, Turn Lane Analysis, Projected ADT Volumes Exhibit, Correspondence with City Engineer*)

15. City Council approved a variance to build the above street improvements within 60-foot rights-of-way instead of 70. This is addressed below. (*Variance Request #8*)

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

Commentary - The preliminary plat approval had Horsetail Lane running west to east along the southern side of Phase W1 and W2 then continuing north and turning into Flycatcher Lane. This street no longer switches names and is now entirely Horsetail Lane; there is no Flycatcher Lane.

16. Regulations Table .2A identifies Local Residential Streets as those streets with up to 250 average daily vehicle trips. According to the traffic impact study and supplemental analyses, the above-listed streets fall into that category. Table .2A shows Local Residential Streets to have a minimum 47-foot wide right-of-way that includes two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (approximately 59 feet total). City Engineer Kevin Slovrap has requested an additional one-foot easement along the outer edge of the street improvement to allow for maintenance. (*Traffic Impact Study, Turn Lane Analysis, Projected ADT Volumes Exhibit, Correspondence with City Engineer.*)
17. The subdivider will build the above-listed streets in accordance with Table .2A within 60-foot wide rights-of-way in compliance with the subdivision regulations. (*Preliminary Plat Sheet #8*)

Drainage

Commentary - The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for the provisions of drainage are unchanged.

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

21. The Health Department and Stormwater Utility staff will work with the subdivider to inform them of best practices to avoid Air Quality and Stormwater violations. In addition, City staff will monitor and enforce the regulations if violations occur.

Transit

Commentary - The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for the provisions of transit are unchanged.

22. Section 3-010.7 and 3-020.1 of the City Subdivision Regulations require subdividers to provide safe, efficient, and convenient transportation corridors for motorists, pedestrians, bicyclists and bus riders. Section 3-020.4.E requires subdivision circulation systems to provide for various modes of transportation such as automobiles, pedestrians, bicycles, buses, and emergency vehicles. The City of Missoula Annexation Policy states that where appropriate, proposed annexation areas should be conditions to join the Missoula Urban Transportation District.
23. The property is within the Missoula Urban Transportation District, which is necessary to provide for future transit service. A condition of approval is the subdivider be required to petition into the district prior to final plat approval of the first phase. (*Missoula Urban Transportation District Parcel Viewer online map*)

Non-Motorized Transportation

Commentary - The approved preliminary plat included a 10-foot wide Secondary Commuter Trail that crossed George Elmer Drive at the intersection of Heron's Landing Drive and continued north along the eastern side of George Elmer Drive and then turned east to follow along the south side of Bell Tower Road adjacent to Phase E1. The location of the Secondary Commuter Trail has been modified and no longer crosses George Elmer Drive at the intersection of Heron's Landing Drive, but instead heads north along the western side of George Elmer Drive, crossing George Elmer Drive north of the intersection of Heron's Landing Drive, continues north along George Elmer Drive along the east side of Phase E3 and eventually connects with Pius Way, roughly 0.22 miles north of this subdivision. The Secondary Commuter Trail is no longer located along the south side of Bell Tower Road adjacent to Phase E1 and E3.

Below are the findings of fact and conclusions of law from the subdivision approval letter dated October 16th, 2020. The findings of fact and conclusions of law that have changed since preliminary plat approval are shown in underline / strikethrough.

24. City Subdivision Regulations Section 3-020.15 requires sidewalks and boulevards adjacent to all streets in accordance with Table .2A.
25. The subdivision application submittal includes preliminary plat sheets and a circulation plan exhibit that show five-foot wide sidewalks along street frontages and in several mid-block locations.
26. The circulation plan exhibit also shows a 10-foot wide Secondary Commuter Trail extending from Roundup Drive near the southwest corner of the property along the Flynn Lowney Irrigation Ditch, Nesting Lane, Heron's Landing Drive, along the west side of George Elmer Drive, crossing George Elmer Drive north of the intersection of Heron's Landing Drive, continuing north along George Elmer Drive along the east side of Phase E3 and eventually connects with Pius Way, roughly 0.22 miles north of this subdivision. ~~and through common area and across the irrigation ditch past the northeast extent of the subdivision.~~ The trail is intended to provide bike and pedestrian access as part of a larger trail network, ~~that is hoped to eventually connect the Old Milwaukee railroad grade to the southwest with Tipperary Way and Hellgate Elementary School to the east.~~ Providing a Secondary Commuter Trail instead of sidewalk along street frontage requires a variance from City Subdivision Regulations,

as addressed below. City Subdivision Regulations Section 3-020.15.g requires trails to be constructed in accordance with the subdivision regulations and Missoula City Public Works Standards and Specifications. (*Subdivision Block Length Variance Exhibit, Circulation Plan Exhibit, Parkland Dedication Exhibit, Variance Request #7, City Resolution No. 8232, Agency Comment*)

27. Condition of approval No. 20 references the Secondary Commuter Trail in locations included in the preliminary plat approval. Staff recommends condition of approval No. 20 be revised as follows to reflect the new location for the Secondary Commuter Trail:

The subdivider shall provide five-foot sidewalks along all street frontages (except for where the Secondary Commuter Trail is to be located) and at the proposed mid-block locations depicted on the circulation plan exhibit. The subdivider shall provide a 10-foot Secondary Commuter Trail in the locations, dimensions, and within the rights-of-way and easements proposed in the preliminary plat phased subdivision submittal and approved by City Council, except as amended along George Elmer Drive and deleted from the subdivision frontage along Bell Tower Road as shown in Exhibit No. 1. All sidewalk and trail plans, including specifications for ADA accessibility and safe street crossings, shall be reviewed and approved by the City Engineering and Parks and Recreation departments prior to final plat filing of each applicable phase. Construction of the non-motorized transportation facilities shall occur as proposed in the application submittal and as required to serve each phase.

Conclusions of Law:

1. The subdivision will meet the Subdivision Regulations requirements for streets and non-motorized improvements if the variance requests are approved and the conditions of approval are imposed and met.
2. The subdivision will meet the City of Missoula Storm Water Specifications and Design Standards and grading and drainage standards in the Missoula City Subdivision Regulations if the condition of approval is imposed and met.
3. Final grading, drainage and stormwater plans will be reviewed and approved by Montana DEQ and the City Engineer prior to final plat approval of each phase.
4. The subdivision will meet the transit standards in the City Subdivision Regulations if the condition of approval is imposed and met.
5. The relocation of the Secondary Commuter Trail, renaming of roadways, the City acquiring of the HVIC water rights and ditch easements, and new information regarding Mullan BUILD grant and construction of George Elmer Drive/Mullan Road intersection is new information that amends the findings of fact at the time of preliminary plat approval.
6. The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for streets will be valid for Phase W2 and E1 if City Council imposes the recommended amendments to conditions of approval No. 8 & 10 and adopts the amendments to the findings of fact.
7. The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for non-motorized facilities are still valid, if City Council imposes the recommended amendments to condition of approval No. 20 and adopts the amendments to the findings of fact.

Water System and Sewer System

Findings of Fact:

Commentary - The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of public water and sewer are still valid for Phase W2 and E1.

1. The property is within the Missoula Wastewater Facility Service Area and planned to be connected to existing water and sanitary sewer mains that were extended into the area for the 44 Ranch development, Flynn Ranch development, and RSID #8474 sewer mains along north side of Mullan Road. *Wastewater Service Area Map, Project Summary page 5*
2. The subdivision application submittal includes preliminary sewer and water design reports. The City of Missoula provided a letter stating the intent to provide water and sewer service to the subdivision in June of 2019. Individual water and sanitary sewer mains internal to the subdivision are planned to be extended as the project builds out. (*Water and Sanitation Report, Wastewater Service Area Map, Utility Plan Exhibit, Project Summary page 8, June 27, 2019 Letter from Missoula Development Services*)
3. As per Sections 3-070.01 and 3-070.04 of the City Subdivision Regulations, water supply and sewage disposal systems require review and approval from the City Engineer, City/County Health Department, and Montana Department of Environmental Quality prior to final platting of any phase. This is required as a condition of approval.

Conclusions of Law:

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

Solid Waste

Findings of Fact:

Commentary - The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of solid waste disposal are still valid for Phase W2 and E1.

1. Republic Services is expected to provide disposal service to the subdivision. (*Subdivision Application, page 21*)
2. Solid waste systems must meet the minimum standards of the Montana Department of Environmental Quality and City/County Health Code as per Section 3-070.1 of the City Subdivision Regulations. This requirement a condition of approval.

Conclusions of Law:

1. Solid waste disposal service are available to the subdivision and in compliance with Subdivision Regulations.
2. Review of solid waste disposal is under jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

Parks and Recreation

Findings of Fact:

Commentary - The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for the provision of parkland are still valid for Phase W2 and E1. Staff added a finding of fact to indicate the amount of parkland included in Phase W1, W2 and E1.

Below are the findings of fact and conclusions of law from the subdivision approval letter dated October 16th, 2020. The findings of fact and conclusions of law that have changed since preliminary plat approval are shown in underline / strikethrough.

1. Section 3-080.3A of the City Subdivision Regulations requires parkland dedication equal to 11% of the net lotted area in subdivisions with residential lots of 0.5 acres or smaller.
2. The total lotted acreage of the subdivision is 41.6 acres. Eleven percent of 41.6 acres is 4.58 acres, the amount needed to meet the parkland dedication requirement. The subdivider is proposing 5.14 acres of dedicated common area including a 4-acre central park area to be maintained by the Heron's Landing Homeowners Association. *(Parkland Dedication Exhibit, Subdivision Application page 25, Covenants, Conditions and Restrictions)*
3. 3-080.6 and.7 of the City Subdivision Regulations also provides for cash donation in lieu of land dedication.
4. City Council has approved phasing the dedication of parkland in conjunction with platting individual phases of the subdivision. However, the application materials state the subdivider is not sure which phase, W1 or E1, will be filed first. Some phases do not include the required parkland dedication acreage required for that phase, while others include more parkland than required for that phase. (For example, Phase E1 would require 0.64 acres of parkland but only includes 0.32 acres, while Phase W1 requires 0.6 dedicated acres and includes 0.76 acres.) To address this issue, the subdivider is proposing to enter into an agreement with the City so that land and cash could be dedicated in phases where sufficient land is not provided and cash could be refunded in phases where more land is dedicated than required. (Project Summary, Parkland Dedication Exhibit, Phasing Plan Exhibit)
5. Per Section 5-020.14.H of the City Subdivision Regulations, a landscaping and maintenance plan may be required for common areas and parkland. Section 5-050.4 also requires a boulevard landscaping plan to be reviewed and approved prior to final platting. The draft covenants, conditions, and restrictions state the Heron's Landing Homeowners Association would be responsible for maintenance of common areas and the secondary commuter trail. A recommended condition of approval is for the subdivider to submit a landscape and maintenance plan and boulevard landscaping plan to be approved by the City Parks and Recreation Department prior to final plat filing of the first phase.
6. The subdivider is proposing covenants, conditions, and restrictions as a way to manage affairs of the homeowners association and to communicate information and requirements to lot purchasers. City Subdivision Regulations Section 5-020.14.K. contains requirements for covenants including that the property owners' association be formed before any property is sold, the association is responsible for liability insurance, local taxes, and the maintenance of recreational and other facilities, and other matters. A recommended condition of approval is for the subdivider to submit final covenants, association bylaws, and articles of incorporation along with the final plat materials for the first phase.
7. Phase W1 dedicated 0.76 acres of parkland towards the central 4-acre park. Phase W2 will dedicate 3.3 acres of parkland for the remaining area of the central park. Phase E1 will dedicate 0.42 acres of parkland for three different pieces of common area ranging in size from 4,421 square feet to 7,958 square feet. Phase W1, Phase W2, and Phase E1 collectively account for 4.48 acres of total parkland dedication for the Heron's Landing Subdivision.

Conclusions of Law:

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

Schools

Finding of Fact:

Commentary - The finding of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for the provision of parkland are still valid for Phase W2 and E1.

1. The subdivision will create up to 347 additional residential lots with an estimated addition of 65 – 174 school age children to Hellgate Elementary and Big Sky High School. Several school bus stops are located in close proximity to the subdivision. The application says Hellgate Elementary officials have stated capacity exists with completion of a new building in 2020, and this development expands their tax base. (Subdivision Application, page 23; Bus Stops Exhibit; Project Summary, pages 6-7)

Conclusion of Law:

1. No adverse impacts to schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

Commentary - The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on local services for the provision of parkland are still valid for Phase W2 and E1.

1. The Missoula City Fire Department will serve the subdivision. The closest station is located at 3011 Latimer Street, approximately 2.5 miles from the subdivision. (*Subdivision Application, page 24*)
2. Subdivision Regulations Section 3-070.1 requires that water supply for fire protection be provided via a public or community water system with 1,000 gallons per minute minimum flow, or via residential sprinkler systems.
3. Water supply for fire protection for this subdivision is planned to be supplied via 20 new fire hydrants. A fire hydrant spacing exhibit provided with the subdivision application shows each hydrant and indicates a minimum 1,000 gallons per minute would be provided. Missoula City Fire Marshall Dax Fraser signed the exhibit, indicating approval. *Fire Hydrant Spacing Exhibit*
4. The Missoula City Fire Department regularly requires an addressing system to be developed that conforms to the addressing requirements of the City. All new buildings are assigned an address at the time of building permit approval, and are required to meet City standards for signage. *Subdivision Regulations Section 3-010.1.F*
5. A condition of approval requires the developer to provide plans for address signage and a fire hydrant plan subject to review and approval of the Missoula City Fire Department prior to final plat approval of the first phase. Fire hydrants shall be installed prior to combustible construction as required by the City Fire Department approved hydrant plan. *Subdivision Regulations Section 3-010.1F*

Conclusion of Law:

1. Fire service is available to the subdivision if the recommended condition of approval is imposed and met.
<p><u>Law Enforcement</u></p> <p><u>Findings of Fact:</u></p> <p><i>Commentary - The findings of fact at the time of preliminary plat approval regarding the effects on local services for the provision of police services are still valid for Phase W2 and E1.</i></p> <ol style="list-style-type: none"> 1. The subdivision is located within the jurisdiction of the Missoula Police Department. (<i>Subdivision Application page 24</i>) 2. The Missoula Police Department did not provide comments on the subdivision application.
<p><u>Conclusions of Law:</u></p> <ol style="list-style-type: none"> 1. Law enforcement service will be available to the subdivision.
Criterion 3 and 4: Effects on the Natural Environment and Wildlife and Wildlife Habitat
<p><u>Findings of Fact:</u></p> <p><i>Commentary – The findings of fact at the time of preliminary plat approval regarding effects on the natural environment, wildlife and wildlife habitat, and noxious weed management are still valid.</i></p> <ol style="list-style-type: none"> 1. The subject property was historically used for hay and livestock production. It does not have trees or significant vegetative cover. The property does not have naturally occurring surface water, high groundwater, or wetlands. The only water sources are two irrigation ditches. <i>Vicinity Map, Site Aerial, Field Observation, Subdivision Application page 12</i> 2. The property does not contain critical plant communities or support vegetative species of concern. <i>Subdivision application page 13, Montana Natural Heritage Program Information, Tab 6</i> 3. The property is surrounded by residential development on three sides. It is located between Mullan Road and West Broadway in an area being planned for urban development. <i>Subdivision Application page 3, Draft Mullan Area Master Plan</i> 4. The property may support common wildlife mammals including rodents, deer, skunks, and fox. Potential bird species of concern in the area are yellow-billed cuckoo, bobolink, ferruginous Hawk and sharp-tailed grouse. Section 13.m of the covenants advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict. <i>Subdivision Application page 15, Covenants, Conditions, and Restrictions</i> 5. The subdivision is not located adjacent to public lands and will therefore have no impact on public land uses, public land management policies, or public land access. <i>Vicinity Map Subdivision Application, page 9</i> 6. No riparian resources or regulated floodplain exist on the property. <i>Floodplain Map, Field Observation</i> 7. The subdivision application submittal contains a preliminary storm drainage report and hydrogeologic evaluation that assesses the risk to groundwater quality impacts from the use of sumps following a typical storm event. The evaluation concludes the use of sumps would result in no detectable concentrations in nitrate in groundwater beyond the site boundary. <i>Newfields Hydrogeologic Evaluation and Addendum</i> 8. Section 5-020.14.K of the City Subdivision Regulations requires that a management plan be developed for common areas and that the management plan address noxious weeds. 9. The covenants, conditions, and restrictions include a weed management and revegetation plan for the entire property that identifies numerous noxious weed species including spotted knapweed, Canada thistle, leafy spurge, houndstongue, and others. The plan recommends herbicide treatments and

reseeding of exposed soils. A recommended condition of approval is the final covenants include the weed management and revegetation plan and evidence of plan implementation to be submitted to Development Services prior to final plat approval of each phase. *Subdivision Application page 13, Weed Management and Revegetation Plan, Tab 7*

Conclusion of Law:

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

Criteria 5: Effects on Public Health and Safety

Commentary - The findings of fact at the time of preliminary plat approval regarding the primary review criteria effects on public health and safety related to hazardous lands, wood stoves, and the Airport Influence Area are still valid for Phase W2 and E1

Hazardous Lands

Findings of Fact:

1. Subdivision Regulations Section 3-010.2 requires the mitigation of hazards to subdivision development, including but not limited to flooding and slopes of 25% or more.
2. The subject property is outside of the FEMA-identified 1% annual chance flood hazard areas and floodplain. *Floodplain Map*
3. Outside of irrigation ditches, the property does not contain slopes of 25% or more. *Subdivision Application, page 13, Existing Conditions Map*

Wood Stoves

Finding of Fact:

4. The property is located within an air stagnation zone. The Section 13. J. of the covenants, conditions, and restrictions includes language prohibiting wood burning devices (fire places, wood burning and pellet stoves, etc.). *Subdivision Application page 16, Covenants, Conditions and Restrictions*

Airport Influence Area

Findings of Fact:

5. The property is located within an airport influence area of Missoula International Airport. A portion of the property is also within an extended approach and departure area. *Airport Influence Area Exhibit*
6. The preliminary plat includes the following statement, which is recommended to be included on each final plat in the Heron's Landing Subdivision:
This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase.

Conclusion of Law:

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

PHASED DEVELOPMENT REVIEW - CONDITIONS OF APPROVAL

Road Improvements, Non-Motorized Facilities and Transit

1. All street and non-motorized improvements shall be designed and built in accordance with City of Missoula Public Works Standards and Specifications and City of Missoula Subdivision Regulations (except as modified by variance). All plans must comply with Americans with Disabilities Act

requirements. All plans must be reviewed and approved by the City Engineer in accordance with City policies. *City Subdivision Regulations Section 3-020.2*

2. The subdivider shall provide a street naming exhibit to be reviewed and approved by Development Services prior to final plat filing of the first phase. *Subdivision Regulations Section 3-020.12*
3. The subdivider shall provide a street signage plan in accordance with the Manual on Uniform Traffic Control Devices to be reviewed and approved by the City Engineer and City Fire Department prior to final plat filing of each applicable phase. *City Subdivision Regulations Section 3-020.4(H)(2)*
4. The following statement shall appear on the face of each plat, in the covenants, and on each instrument of conveyance:

“Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for the upgrading of streets within this subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities” *City Subdivision Regulations Section 5-050.4(M&N)*
5. All proposed rights-of-way shall be dedicated to the public on the face of each plat and approved by the City Engineer. *City Subdivision Regulations Section 3-020.3.B*
6. All proposed easements, except as modified by these conditions, shall be shown on the face of each plat and identified for their width and purpose, including easements for vehicular and pedestrian access, utilities, and irrigation ditches. *City Subdivision Regulations Section 3-060.1*
7. Street lighting shall be installed within the subdivision along Chuck Wagon Drive and George Elmer Drive in accordance with the Missoula Public Works Standards and Specifications Manual. The subdivider shall install lighting along Chuck Wagon Drive and George Elmer Drive prior to filing any plat that abuts those streets as part of that phase’s improvements. Prior to final plat filing of the first phase, the subdivider shall petition to create a new street light improvement district. *Missoula Public Works Standards and Specifications Manual Section 7.3.6*
8. The Heron’s Landing Phased Subdivision is located within the Mullan BUILD project area and George Elmer Drive, which provides access to the subdivision property, is planned to be improved as part of the Mullan BUILD project. Federal funds are planned to pay for a portion of the Mullan BUILD improvements. Funding mechanisms are currently being explored to pay for the remainder of the improvements. The funding mechanisms may include, but are not limited to, a special improvement district, impact fee, latecomers fee, or cost share agreements that allow the City of Missoula and Missoula County to recover the cost of constructing infrastructure from the properties that benefit from the Mullan BUILD project. To the extent that such funding mechanism(s) is created in accordance with state law and applicable principles of land use law, the subdivider, successors, and assigns shall participate in and be bound by the fees assessed and not oppose the creation of or participation in such a district. Improvements to the George Elmer Drive/Mullan Road intersection 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. *Montana Code Annotated 76-3-510*
9. Chuck Wagon Drive through the length of the subdivision shall be improved to Urban Collector (with parking) standards as proposed including two 10-foot drive lanes, 6-foot bike lanes, 8-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks within the existing 80-foot wide right-of-way. All improvements to Chuck Wagon Drive from back of curb to back of curb shall be reviewed and approved adjacent to Phase W1 prior to final plat approval of Phase W1. All improvements to Chuck Wagon Drive from back of curb to back of curb north of Phase W1 shall be reviewed and approved prior to final plat approval of the third west phase. All other street improvements including boulevards and sidewalks shall be reviewed and approved prior to final plat approval of each adjacent phase. *Subdivision Regulations Table .2A modified by variance.*

10. Heron's Landing Drive, Nesting Lane, and Audubon ~~Loop Trail~~ shall be designed and built to Low Density Urban Local Street standards including two 10-foot drive lanes, 7-foot parking lanes, curb and gutter, 7-foot boulevards, and 5-foot sidewalks (except where the Secondary Commuter Trail is to be located) within 60-foot rights-of-way. The subdivider shall provide an additional access and utility easement at least one foot wide along the outer edge of the sidewalks and secondary commuter trail along these streets to allow for maintenance. *Subdivision Regulations Table .2A modified by variance, Correspondence with City Engineer.*

Drainage

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

Transit

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

Water System, Sewer System and Solid Waste

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

Parkland

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

18. The subdivider shall submit a park and common area landscape and maintenance plan and a boulevard landscaping plan to be reviewed and approved by the City Parks and Recreation Department prior to final plat filing of each applicable phase. <i>City Subdivision Regulations Section 5-050.4</i>
Covenants, Conditions, and Restrictions
19. Final covenants, conditions, and restrictions meeting the requirements of City Subdivision Regulations Section 5-020-14.K shall be submitted for review and approval prior to final plat filing of the first phase. <i>City Subdivision Regulations Section 5-020-14.K</i>
Non-Motorized Transportation Facilities
20. The subdivider shall provide five-foot sidewalks along all street frontages (except for where the Secondary Commuter Trail is to be located) and at the proposed mid-block locations depicted on the circulation plan exhibit. The subdivider shall provide a 10-foot Secondary Commuter Trail in the locations, dimensions, and within the rights-of-way and easements proposed in the preliminary plat phased subdivision submittal and approved by City Council, <u>except as amended along George Elmer Drive and deleted from the subdivision frontage along Bell Tower Road as shown in Exhibit No. 1</u> . All sidewalk and trail plans, including specifications for ADA accessibility and safe street crossings, shall be reviewed and approved by the City Engineering and Parks and Recreation departments prior to final plat filing of each applicable phase. Construction of the non-motorized transportation facilities shall occur as proposed in the application submittal and as required to serve each phase. <i>City Subdivision Regulations Section 3-020.15 and Table .2A</i>
21. The subdivider shall provide a five-foot ADA accessible asphalt path connecting to existing sidewalks north of Heron's Landing along Chuck Wagon Drive in conjunction with Phase W1 and George Elmer Drive in conjunction with Phase W2 as depicted on the Phasing Plan. <i>Subdivision Application Phasing Plan</i>
Fire Protection
22. The subdivider shall provide plans for address signage and a fire hydrant plan for review and approval prior to final plat filing of each applicable phase. All approved fire protection improvements shall be installed in accordance with the approved plans. <i>City Subdivision Regulations Section 3-010.1.F</i>
Noxious Weeds
23. The Weed Management and Revegetation Plan for Heron's Landing shall be appended to the covenants, conditions and restrictions. The subdivider shall provide evidence of plan implementation and noxious weed control prior to final plat filing of each phase. <i>City Subdivision Regulations Section 5-020.14.K</i>
Airport Influence Area
24. Each final plat shall include the following statement: "This property is in the airport influence area and subject to the requirements of the Airport Influence Area Resolution. The Heron's Landing Subdivision may also be within an extended approach and departure zone for a proposed second runway as shown in the Airport Authority's 2004 plan and lot owners should be aware of the resultant safety risk. Lot owners should consult the airport layout plan and any relevant documents to determine the status of the proposed runway location at the time of purchase." <i>City Subdivision Regulations Section 3-010.2</i>
Zoning
25. The Heron's Landing Neighborhood Character Overlay Zoning District shall be adopted concurrent with City Council approval of the subdivision request based on the findings.
Irrigation Ditch

26. The subdivider shall maintain the 20-foot irrigation ditch easements through the Heron's Landing Subdivision, fill a portion of the open-air ditch, and install curb, gutter, 7-foot boulevard, and 5-foot sidewalks along the Bell Tower Road frontage, subject to the review and approval of the City Engineer, prior to final plat approval of Phase E1 and Phase E3; and execute the Flynn Lowney Ditch Use Agreement prior to any action being taken within the ditch easement beyond what has been authorized by the City.