



MEMO No. 1

To: Missoula City Council

From: Cassie Tripard, Planning Supervisor

Copy: Jim Nugent, City Attorney
Eran Pehan / Walter Banziger / Mary McCrea / Dave DeGrandpre, CPDI Staff
Evergreen Housing Solutions, LLC
Joe Dehnert / Danny Oberweiser, IMEG Corp.

Date: December 8th, 2022

Subject: Potential Amendments to Riverfront Trails PUD Subdivision, Annexation, and Neighborhood Character Overlay Rezoning

At Land Use and Planning Committee (LUP) on December 7th, 2022 City Council members suggested that staff provide possible language for amendments to conditions of approval for the Riverfront Trails Planned Unit Development (PUD) Subdivision, Annexation, and Riverfront Trails Neighborhood Character Overlay. If City Council would like to make amendments, proposed amendments to findings of fact, conclusions of law, and conditions of approval reflecting the LUP discussion are provided below for Council's consideration.

Additionally, staff recommend changes to two conditions of approval regarding boulevard landscaping and water rights removal in order to align with City Policies and procedures and to correct an error in the language.

Riverfront Trails PUD Subdivision Preliminary Plat and Annexation

Proposed Amendment

1. Suggestion that developer shall install a round-about at the intersection of Lower Miller Creek Road and Old Bitterroot Road and shall cover the full cost of the round-about. This condition of approval would be added to both the annexation and PUD Subdivision.

Findings of Fact

1. The subject property is adjacent to the intersection of Old Bitterroot Road and Lower Miller Creek Road (*Preliminary Plat*).
2. Prior to the application for subdivision, the City of Missoula had plans to install a round-about at the intersection of Old Bitterroot Road and Lower Miller Creek Road, two urban collector roads, in order to improve safety (*City of Missoula Community Investment Program and correspondence with City Engineer for Surface Transportation*).
3. The Riverfront Trails Subdivision will add residents to the area and increase traffic at the intersection of Lower Miller Creek Road and Old Bitterroot Road (*Appendix N – Riverfront Trails TIS*).

4. City Council determined future residents of the Riverfront Trails Subdivision will impact the intersection and will receive the most benefit from improved safety at the round-about (12/7/22 LUP Discussion).
5. City Council proposes a condition of approval requiring the developer to provide plans for and installation of the round-about at the intersection of Lower Miller Creek Road and Old Bitterroot Road, instead of the City installing the round-about using an SID.

Annexation Conclusion of Law

Roads, Alleys, and Non-Motorized

22. The road, alley, and non-motorized infrastructure within the proposed annexation area will equitably provide the same levels of service and infrastructure as other parts of the municipality with similar zoning if the recommended conditions of approval, as amended by City Council, are imposed.

Subdivision Conclusions of Law

CRITERION C: IMPACT ON LOCAL SERVICES

1. The Riverfront Trails PUD Subdivision will meet the road improvement and non-motorized facility standards in the Missoula City Subdivision Regulations if the recommended conditions of approval, as amended by City Council are imposed.

Condition of Approval for Annexation

21. The subdivider shall provide plans for and install a round-about at the intersection of Old Bitterroot Road and Lower Miller Creek Road, subject to review and approval by Public Works & Mobility, prior to final plat approval for Phase 1A.

Condition of Approval for Subdivision

50. The subdivider shall provide plans for and install a round-about at the intersection of Old Bitterroot Road and Lower Miller Creek Road, subject to review and approval by Public Works & Mobility, prior to final plat approval for Phase 1A.

New Subdivision and Annexation Motions if Council Imposes the Amendment

[Resolution] Adopt a resolution to annex the subject property legally described in Exhibit C, as shown on Exhibit B, and zone upon annexation to RT5.4 Residential, subject to the conditions of approval, based on the findings of fact and conclusions of law in the staff report, as amended by City Council.

Approve the Riverfront Trails PUD Subdivision preliminary plat application, subject to the recommended conditions of approval in the staff report, based on the findings of fact and conclusions of law in the staff report, as amended by City Council.

Riverfront Trails Neighborhood Character Overlay Rezoning Heights

City Council members raised concerns at LUP that the height limits modified by the /NC-RT Overlay on Lots 1, 2, and 176 may not ensure compatible urban growth, a review criteria for rezonings. Below are several options for amendments that City Council may determine ensure compatible urban growth. Note that not all amendments are compatible with each other; some options for mitigating height conflict with other options.

Proposed Amendments

2. Suggestion that the zoning on Lot 176 shall be restricted to a maximum height of 35 feet instead of 45 feet.

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

1. Lot 176 of the Riverfront Trails Subdivision is proposed to be within the Neighborhood Center South Subdistrict of the Riverfront Trails Neighborhood Character Overlay. The maximum proposed height of the Neighborhood Center South Subdistrict is 45 feet (Appendix S, RT NC Overlay; Preliminary Plat).
2. Lot 176 directly abuts three lots to the south zoned R20 Residential which allows a maximum height of 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater (County Property Information System; Table 20.05-3, Title 20 Zoning Code).
3. City Council determined the proposed height of 45 feet for Lot 176 is not compatible with the heights permitted on abutting lots to the south.
4. In order to ensure the zoning considers the promotion of compatible urban growth and integration of the development into an existing neighborhood, City Council proposes a condition of approval requiring the applicant to amend the Riverfront Trails Neighborhood Character Overlay to reduce the maximum height allowance on Lot 176 to 35 feet.
5. Single dwelling residential lots directly abutting Lot 176 are to the south. Development on Lot 176 will not impact provision of adequate light from the south for directly abutting lots.

Rezoning Conclusions of Law

1. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:
 - e. Whether the zoning considers the reasonable provision of adequate light and air;
 - iii. The /NC-RT overlay allows an increased height of 45 feet for Lots 1, and 2, and 176. These two free lots are bounded by right-of-way on at least three sides and will not impact provision of adequate light and air on adjacent properties.
 - g. Whether the zoning considers the promotion of compatible urban growth;
 - ii. The zoning will consider the promotion of compatible urban growth if City Council imposes a condition of approval requiring an amendment to the Neighborhood Character Overlay establishing 35 feet as the maximum height on Lot 176.

Condition of Approval

1. The /NC-RT Riverfront Trails Neighborhood Character Overlay shall be amended to restrict the maximum height to 35 feet for Lot 176, subject to review and approval by Development Services, prior to the effective date of the ordinance.

3. Suggestion that zoning on Lots 1 and 2 shall restrict the maximum height to 35 feet instead of 45 feet. **Note amendment 3 is not compatible with amendments 4 and 5.**

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

1. Lot 1 of the Riverfront Trails Subdivision is proposed to be within the Neighborhood Center South Subdistrict and Lot 2 is proposed to be within the Neighborhood Center North Subdistrict of the Riverfront Trails Neighborhood Character Overlay. The maximum proposed height of these subdistricts is 45 feet (Appendix S, RT NC Overlay; Preliminary Plat).
2. Adjacent properties to the south of the subdivision and across Lower Miller Creek Road to the east of Lots 1 and 2 are zoned R20 Residential. The adjacent property to the north of Lot 2 is zoned R215 Residential. R20 and R215 allow a maximum height of 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater (County Property Information System; Table 20.05-3, Title 20 Zoning Code).
3. City Council determined the proposed height of 45 feet for Lots 1 and 2 is not compatible with the heights permitted on adjacent properties.
4. In order to ensure the zoning considers the promotion of compatible urban growth and integration of the development into an existing neighborhood, City Council proposes a condition of approval requiring the applicant to amend the Riverfront Trails Neighborhood Character Overlay to reduce the maximum height allowance on Lots 1 and 2 to 35 feet.

Rezoning Conclusions of Law

22. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:
 - e. Whether the zoning considers the reasonable provision of adequate light and air;
 - ~~iii. The /NC-RT overlay allows an increased height of 45 feet for Lots 1, 2, and 176. These three lots are bounded by right-of-way on at least three sides and will not impact provision of adequate light and air on adjacent properties.~~
 - g. Whether the zoning considers the promotion of compatible urban growth;
 - ii. The zoning will consider the promotion of compatible urban growth if City Council imposes a condition of approval requiring an amendment to the Neighborhood Character Overlay establishing 35 feet as the maximum height on Lots 1 and 2.

Condition of Approval

1. The /NC-RT Riverfront Trails Neighborhood Character Overlay shall be amended to restrict the maximum height on Lots 1 and 2 to 35 feet, subject to review and approval by Development Services, prior to the effective date of the ordinance.

4. Suggestion that zoning on Lots 1 and 2 shall allow a maximum height of 35 feet to top of parapet or bottom of roof eave, and that a pitched roof may extend to a maximum height of 45 feet, instead of a general maximum height of 45 feet. **Note that amendments 3, 4 and 5 are not compatible and should not both be approved by City Council together.**

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

1. Lot 1 of the Riverfront Trails Subdivision is proposed to be within the Neighborhood Center South Subdistrict and Lot 2 is proposed to be within the Neighborhood Center North Subdistrict of the Riverfront Trails Neighborhood Character Overlay. The maximum proposed height of these subdistrict is 45 feet (*Appendix S, RT NC Overlay: Preliminary Plat*).
2. Adjacent properties to the south of the subdivision and across Lower Miller Creek Road to the east of Lots 1 and 2 are zoned R20 Residential. The adjacent property to the north of Lot 2 is zoned R215 Residential. R20 and R215 allow a maximum height of 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater (*County Property Information System; Table 20.05-3, Title 20 Zoning Code*).
3. City Council determined the proposed height of 45 feet for Lots 1 and 2 is not compatible with the heights permitted on adjacent properties.
4. In order to ensure the zoning considers the promotion of compatible urban growth and integration of the development into an existing neighborhood, City Council imposed a condition of approval requiring the applicant to amend the Riverfront Trails Neighborhood Character Overlay to reduce the maximum height allowance on Lots 1 and 2 to allow a maximum height of 35 feet to the top of parapet or bottom of roof eave, and that a pitched roof may extend to a maximum height of 45 feet.

Rezoning Conclusions of Law

1. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:
 - g. Whether the zoning considers the promotion of compatible urban growth;
 - ii. The zoning will consider the promotion of compatible urban growth if City Council imposes a condition of approval requiring an amendment to the Neighborhood Character Overlay establishing a maximum height of 35 feet to the top of parapet or bottom of roof eave, and that a pitched roof may extend to a maximum height of 45 feet on Lots 1 and 2.

Condition of Approval

1. The /NC-RT Riverfront Trails Neighborhood Character Overlay shall be amended to restrict the maximum height on Lots 1 and 2 to 35 feet at the top of parapet or bottom of roof eave, and that a pitched roof may extend to a maximum height of 45 feet, subject to review and approval by Development Services, prior to the effective date of the ordinance.

5. Suggestion that zoning on Lots 1 and 2 shall have 35 foot maximum height at the setback line, and shall gradually allow more height further from the setback line, in order to reduce the impacts of a 45 foot height maximum on adjacent properties. **Note that amendments 3, 4 and 5 are not compatible and should not both be approved by City Council together.**

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

1. Lot 1 of the Riverfront Trails Subdivision is proposed to be within the Neighborhood Center South Subdistrict and Lot 2 is proposed to be within the Neighborhood Center North Subdistrict of the Riverfront Trails Neighborhood Character Overlay. The maximum proposed height of these subdistrict is 45 feet (*Appendix S, RT NC Overlay; Preliminary Plat*).
2. Adjacent properties to the south of the subdivision and across Lower Miller Creek Road to the east of Lots 1 and 2 are zoned R20 Residential. The adjacent property to the north of Lot 2 is zoned R215 Residential. R20 and R215 allow a maximum height of 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater (*County Property Information System; Table 20.05-3, Title 20 Zoning Code*).
3. City Council determined the proposed height of 45 feet for Lots 1 and 2 is not compatible with the heights permitted on adjacent properties.
4. In order to ensure the zoning considers the promotion of compatible urban growth and integration of the development into an existing neighborhood, City Council proposes a condition of approval requiring the applicant to amend the Riverfront Trails Neighborhood Character Overlay to allow a maximum building height at the point of the required minimum setback line of 35 feet, and that the height may be increased above 35 feet by up to one foot (vertical) for each 6 inches of building setback or upper floor step-back, to a maximum of 45 feet on Lots 1 and 2.

Rezoning Conclusions of Law

1. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:

g. Whether the zoning considers the promotion of compatible urban growth;

ii. The zoning will consider the promotion of compatible urban growth if City Council imposes a condition of approval requiring an amendment to the Neighborhood Character Overlay establishing a maximum building height at the point of the required minimum setback line of 35 feet, and that the height may be increased above 35 feet by up to one foot (vertical) for each 6 inches of building setback or upper floor step-back, to a maximum of 45 feet on Lots 1 and 2.

Condition of Approval

1. The /NC-RT Riverfront Trails Neighborhood Character Overlay shall be amended to restrict the maximum building height at the point of the required minimum setback line to 35 feet, and that the height may be increased above 35 feet by up to one foot (vertical) for each 6 inches of building setback or upper floor step-back, to a maximum of 45 feet on Lots

1 and 2, subject to review and approval by Development Services, prior to the effective date of the ordinance.

6. Suggestion that Title 20, Section 20.110.060.B.1 be not applicable to Lot 2 within the Riverfront Trails Neighborhood Character Overlay.

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

1. Title 20, Section 20.110.060.B.1 lists features which are not counted in the measurement of building height.
2. Lot 2 is surrounded by roads and has two front yard setbacks and two street side setbacks (Preliminary Plat; Section 20.110.050.A.1, Title 20 Zoning Code).
3. Adjacent properties to the south of the subdivision and across Lower Miller Creek Road to the east are zoned R20 Residential. The adjacent property to the north of Lot 2 of Riverfront Trails Subdivision is zoned R215 Residential. R20 and R215 allow a maximum height of 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater (County Property Information System; Table 20.05-3, Title 20 Zoning Code).
4. City Council determined the exceptions to height provided in Title 20, Section 20.110.060.B.1 are not compatible with adjacent residential development.
5. In order to ensure the zoning considers the promotion of compatible urban growth and integration of the development into an existing neighborhood, City Council imposed a condition of approval requiring the applicant to amend the Riverfront Trails Neighborhood Character Overlay state Title 20, Section 20.110.060.B.1 are not applicable to Lot 2 within the overlay.

Rezoning Conclusions of Law

1. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:
 - g. Whether the zoning considers the promotion of compatible urban growth;
 - ii. The zoning will consider the promotion of compatible urban growth if City Council imposes a condition of approval requiring an amendment to the Neighborhood Character Overlay stating the exceptions to height measurement found in Title 20, Section 20.110.060.B.1 do not apply to Lot 2 within the Overlay.

Condition of Approval

1. The /NC-RT Riverfront Trails Neighborhood Character Overlay shall be amended to state Title 20, Section 20.110.060.B.1 is not applicable to Lot 2 within the Riverfront Trails Neighborhood Character Overlay, subject to review and approval by Development Services, prior to the effective date of the ordinance.

Riverfront Trails Neighborhood Character Overlay Rezoning Uses

Proposed Amendments

7. Suggestion that the Neighborhood Character Overlay be amended to restrict group living uses on Lot 1 to community residential facility 8 or fewer, community residential facility 9+, and group living for seniors where at least 80% of the units have at least one occupant who is 55 years of age or older.

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

22. All uses regularly permitted in the RT5.4 zoning district will continue to be permitted as-of-right in the /NC-RT Overlay (Appendix S, RT NC Overlay)-, except as amended by conditions.
23. Group Living (General) and Community Residential Facilities (9+) were conditional uses in the RT5.4 zoning district at the time the applicant submitted the /NC-RT Overlay. The /NC-RT Overlay proposed to modify the permitted uses of the RT5.4 zoning district to allow Group Living (General) and Community Residential Facilities (9+) permitted as-of-right within the Neighborhood Center South subdistrict. As of November 28, 2022, per the City Council approved Interim Ordinance, Group Living (General) and Community Residential Facilities (9+) are permitted uses in the RT5.4 zoning district. The Neighborhood Center South subdistrict is only applicable to Lots 1 and 176 of the Riverfront Trails Subdivision (Appendix S, /NC-RT Overlay; Preliminary Plat).
25. All other uses requiring conditional use approval in the RT5.4 zoning district will remain conditional in the /NC-RT Overlay (Appendix S, RT NC Overlay).
26. Lot 1 is intended to be developed as a Group Living senior assisted living facility or a Group Living (General) Senior living facility where at least 80% of the units have at least one occupant who is 55 years of age or older. The intent is for there to be programming between Jeannette Rankin Elementary School and the senior living facility in order to create a multi-generational neighborhood character (pgs. 30, 55, and 69, *Riverfront Trails PUD Subdivision*).
27. City Council determined the Health Care Facility and Covenant/Monastery use types under group living are not appropriate for meeting the character of the multi-generational Riverfront Trails Neighborhood Character Overlay. The zoning as proposed does not consider the character of the district and its peculiar suitability for particular uses.
28. In order to ensure the zoning considers the multi-generational character of the overlay district and is peculiar suitability for particular uses, City Council imposed a condition of approval requiring an amendment to the /NC-RT Overlay restricting group living uses on Lot 1 to community residential facility 8 or fewer, community residential facility 9+, and group living for seniors where at least 80% of the units have at least one occupant who is 55 years of age or older.

Rezoning Conclusions of Law

1. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:

h. Whether the zoning considers the character of the district and its peculiar suitability for particular uses; and

iii. The character of the district and the peculiar suitability for particular uses are met if City Council's recommended conditions of approval are imposed.

Condition of Approval

1. The Riverfront Trails Neighborhood Character Overlay shall be amended to restrict group living uses on Lot 1 to community residential facility 8 or fewer, community residential facility 9+ and group living for seniors where at least 80% of the units have at least one occupant who is 55 years of age or older, subject to review and approval by Development Services, prior to ordinance effective date.

8. Suggestion that the Neighborhood Character Overlay be amended to restrict group living uses on Lot 176 to community residential facility 8 or fewer.

Findings of Fact

Riverfront Trails Neighborhood Character Overlay District:

22. All uses regularly permitted in the RT5.4 zoning district will continue to be permitted as-of-right in the /NC-RT Overlay (Appendix S, RT NC Overlay)-, except as amended by conditions.

23. Group Living (General) and Community Residential Facilities (9+) were conditional uses in the RT5.4 zoning district at the time the applicant submitted the /NC-RT Overlay. The /NC-RT Overlay proposed to modify the permitted uses of the RT5.4 zoning district to allow Group Living (General) and Community Residential Facilities (9+) as-of-right within the Neighborhood Center South subdistrict. As of November 28, 2022, per the City Council approved Interim Ordinance, Group Living (General) and Community Residential Facilities (9+) are permitted uses in the RT5.4 zoning district. The Neighborhood Center South subdistrict is only applicable to Lots 1 and 176 of the Riverfront Trails Subdivision (Appendix S, RT NC Overlay; Preliminary Plat).

25. All other uses requiring conditional use approval in the RT5.4 zoning district will remain conditional in the /NC-RT Overlay (Appendix S, RT NC Overlay).

26. Lot 176 directly abuts three lots to the south zoned R20 Residential (County Property Information System).

27. City Council determined group living use types Group Living (General), community residential facility 9+, health care facility, and covenant/monastery are not appropriate uses abutting detached house residential. The zoning as proposed does not consider the character of the district and its peculiar suitability for particular uses.

28. In order to ensure the zoning considers the character of properties abutting Lot 176 and the overlay district's peculiar suitability for particular uses, City Council imposed a condition of approval requiring an amendment to the /NC-RT Overlay restricting group living uses on Lot 176 to community residential facility 8 or fewer.

Rezoning Conclusions of Law

2. Title 20, Section 20.85.040.G; In reviewing and making decisions on zoning amendments, the zoning officer, Planning Board and City Council must consider at least the following criteria:

h. Whether the zoning considers the character of the district and its peculiar suitability for particular uses; and

iii. The character of the district and the peculiar suitability for particular uses would be met if City Council's recommended conditions of approval are imposed.

Condition of Approval

1. The Riverfront Trails Neighborhood Character Overlay shall be amended to restrict group living uses on Lot 176 to community residential facility 8 or fewer, subject to review and approval by Development Services, prior to ordinance effective date.

New Motion if Council Imposes the Amendment

[Second and Final Reading] Adopt an ordinance to rezone the subject property legally described in Exhibit E from R215 Residential to OP2 Open and Resource, to rezone the subject property legally described in Exhibit F from R215 Residential to RT5.4 Residential (two-unit/townhouse) / NC-RT Riverfront Trails Neighborhood Character Overlay, and to rezone the subject property legally described in Exhibit G from RT5.4 Residential to RT5.4 Residential / NC-RT Riverfront Trails Neighborhood Character Overlay, as shown on Exhibit D, subject to the conditions of Neighborhood Character Overlay approval imposed by City Council, based on the findings of fact and conclusions of law in the staff report, as amended by City Council.

Staff Recommended Amendments to Conditions of Approval

Proposed Amendments

9. Staff recommendation to amend conditions of approval related to boulevard landscaping to describe installation and maintenance requirements more accurately per City policies. These conditions of approval would be added to both the annexation and PUD Subdivision.

Findings of Fact

1. The conditions of approval in the staff report related to boulevard landscaping installation do not properly reflect City requirements for timing of installation. The future lot owners are responsible for installation of boulevard landscaping prior to issuance of certificate of occupancy for their structure. The condition as written required the developer to install all boulevard landscaping. The developer is required to install all boulevard landscaping that is not adjacent to developable lots, such as boulevards adjacent to open space. Additionally, some boulevards are adjacent to properties still within the County in which the City cannot require the county property owners to install landscaping or maintain the boulevard.
2. Staff recommend amending the conditions of approval to require the developer to install boulevard landscaping adjacent to open spaces and parcels not within City limits. The developer would still be required to provide plans for boulevard landscaping for the entire subdivision.

3. Staff recommend a condition of approval requiring a statement in the covenants, making future property owners aware of the requirement to install boulevard landscaping and to maintain the landscaping adjacent to the property. Additionally, the covenants would make the Home Owner's Association aware of the requirement to maintain boulevards adjacent to open spaces and properties not within city limits. These conditions accurately describe how boulevard landscaping is regulated within the City of Missoula.

Annexation Conclusion of Law

Roads, Alleys, and Non-Motorized

23. The road, alley, and non-motorized infrastructure within the proposed annexation area will equitably provide the same levels of service and infrastructure as other parts of the municipality with similar zoning if the recommended conditions of approval, as amended by City Council, are imposed.

Subdivision Conclusions of Law

Parks and Recreation

3. City Subdivision Regulations require plans for and installation of boulevard landscaping, which will be reviewed and approved prior to final plat approval for each phase if the recommended conditions of approval, as amended by City Council are imposed. Installation of boulevard landscaping adjacent to developable lots will be the responsibility of the lot owner prior to certificate of occupancy.

Condition of Approval for Annexation

20. The applicant shall provide plans for and installation of boulevard landscaping adjacent to common area and parkland open spaces and adjacent to parcels not within city limits, subject to review and approval by Parks and Recreation, prior to final plat approval for each phase. The installation shall include a commercial grade irrigations system and maintenance of the boulevard landscaping is the responsibility of the applicant until a Home Owners Association (HOA) is formed and maintenance can transfer to HOA. The applicant shall amend the Development Covenants to include the irrigation and maintenance responsibilities noted above, subject to review and approval by Parks and Recreation and Development Services, prior to final plat approval of Phase 1A.

21. The applicant shall provide plans for boulevard landscaping for all roads within and adjacent to development lots, subject to review and approval by Parks and Recreation, prior to final plat approval for Phase 1A. The applicant shall amend the Development Covenants to indicate that installation, irrigation and maintenance of boulevard landscaping adjacent to a lot is the responsibility of each Lot owner and installation is required at the time of building permit, subject to review and approval by Parks and Recreation and Development Services, prior to final plat approval of Phase 1A.

Condition of Approval for Subdivision

43. The subdivider shall provide plans for and installation of boulevard landscaping adjacent to common area and parkland open spaces and adjacent parcels not within city limits, subject to review and approval by Parks and Recreation, prior to final plat approval for each phase (5-050.5.C, City Subdivision Regulations).

50. The subdivider shall provide plans for boulevard landscaping for all roads within and adjacent to development lots, subject to review and approval by Parks and Recreation, prior to final plat approval for Phase 1A. The subdivider shall amend the Development Covenants to state that "Lot Owners shall be responsible for obtaining a boulevard landscaping permit prior to building permit approval and for installation of boulevard landscaping adjacent to development lots prior to certificate of occupancy. The Home Owners Association shall maintain all boulevard landscaping adjacent to open spaces and County parcels not within the Riverfront Trails Subdivision", prior to Phase 1A final plat approval subject to review and approval by City Parks and Recreation and Development Services. (5-050.5.C, City Subdivision Regulations).

10. Staff recommendation to amend a condition of approval related to water rights removal to more accurately describe the applicable City Subdivision Regulations.

Findings of Fact

Agricultural Water Users

9. Though the applicant intends to remove water rights from the PUD subdivision, the water rights have not been removed at this time (pg. 43, Riverfront Trails PUD Subdivision; Appendix J Water Rights Consultant Confirmation).
10. Section 3-060.3 of the City Subdivision Regulations requires the subdivider to provide irrigation easements to allow for delivery of water for irrigation to persons and land legally entitled to the water.
11. Section 3-060.4 of the City Subdivision Regulations states irrigation easements are not required if the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights and/or if the subdivider discloses and notifies potential buyers of lots that the land is classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable. If removing water rights, the fact that the water rights have been removed must be denoted on the face of the plat (MCA 76-3-504(1)(j); 3-060.4, City Subdivision Regulations).
12. Staff recommend a condition of approval requiring the subdivider to ~~either provide irrigation easements to each lot in the subdivision,~~ have the water rights removed; and/or the subdivider shall amend the covenants to include notification that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable, prior to final plat approval of each phase (MCA 76-3-504(1)(j); 3-060.4, City Subdivision Regulations).

Subdivision Conclusions of Law

Agricultural Water Users

2. No impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision, if the recommended conditions of approval, as amended by City Council, are imposed.

Condition of Approval for Subdivision

Irrigation

39. The subdivider shall ~~present documentation that either provide irrigation easements to each lot in the subdivision; or the subdivider shall either have the water rights have been removed and provide a statement on the face of each final plat~~ and in the Development Covenants as follows: that w“Water rights have been removed from the property; and lot owners are or the subdivider shall amend the covenants to include notification that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable.” subject to review and approval by Development Services, prior to final plat approval of each phase (MCA 76-3-504(1)(j); 3-060.4, City Subdivision Regulations).

New Subdivision and Annexation Motions if Council Imposes the Amendments

[Resolution] Adopt a resolution to annex the subject property legally described in Exhibit C, as shown on Exhibit B, and zone upon annexation to RT5.4 Residential, subject to the conditions of approval, based on the findings of fact and conclusions of law in the staff report, as amended by City Council.

Approve the Riverfront Trails PUD Subdivision preliminary plat application, subject to the recommended conditions of approval in the staff report, based on the findings of fact and conclusions of law in the staff report, as amended by City Council.