



COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

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MAJOR SUBDIVISION, ANNEXATION, AND MASTER SITE PLAN STAFF REPORT

Agenda Item: West End Homes Major Subdivision, Annexation, and Master Site Plan Review.

Report Date: December 1, 2022

Case Number: 2022-MSS-SMA-00001

Case Planner: Cassie Tripard, Land Use Supervisor

Report Review & Approved by: Mary McCrea, Permits and Land Use Manager

Governing Body Review Deadline: January 23, 2023

Public Meetings & Hearings:

City Council (11/28/22): Approval of resolution of intent to annex, referral to committee and set public hearing

Planning Board (12/6/22): Public hearing

LUP (12/14/22): Pre-public hearing informational item

City Council (12/19/22): Public hearing

LUP (12/21/22 tentative): Post-public hearing informational item

City Council (1/9/23): Final consideration

I. GENERAL PROJECT INFORMATION

Owners:

Dougherty Ranch, LLC
1185 E Cooper Lake Shore
Ovando, MT 59854

Fletcher Ray & Justin Metcalf
541 Plymouth St.
Missoula, MT 59801

Subdivider:

Evergreen Housing Solutions, LLC
131 S Higgins Ave. STE P-1
Missoula, MT 59802

Representative:

IMEG, Corp.
1817 South Ave. W, Suite A
Missoula, MT 59801

Location of Request: Tract E-1 of Certificate of Survey No. 6889 and Tract D of Certificate of Survey No. 6850, located in the Northwest Quarter and Southwest Quarter of Section 7 and the Northeast Quarter and Southeast Quarter of Section 12, Township 13 North, Range 20 West, P.M.M.

Legal Notification: The legal ad was published in the Missoulian on November 20, 2022 and November 27, 2022. Two subdivision posters were placed on the property on November 21, 2022. Adjacent property owners were notified by certified mail on November 15, 2022.

II. DECISION AND REGULATORY FRAMEWORK

The Missoula Consolidated Planning Board considers and makes a recommendation on the subdivision and master site plan. City Council considers and makes a decision on the annexation, subdivision and Sxwtpqyen master site plan.

Applicable State Law: [Montana Code Annotated 2021](#)

Annexation Policy: [Resolution 8363](#) adopted 7/22/2019. The property is within Annexation Area “A” and meets the majority of the city’s criteria to determine priority for annexation. Zoning upon annexation must comply with Title 20 Zoning Code, Section 20.85.040.I.

Growth Policy: The Sxwtpqyen Neighborhoods Master Plan is the applicable regional plan. The subject property is within Crossroads Center Neighborhood Unit Type.

Local Zoning Law: Title 21, Sxwtpqyen Neighborhoods Form Based Zoning Code adopted December 14, 2020.

Current and Proposed Zoning: The subject property is zoned Sxwtpqyen Neighborhoods Crossroads Center Neighborhood Unit Type in the County. If City Council approves the annexation and zoning upon annexation, the subject property would be zoned Sxwtpqyen Neighborhoods Form Based Zoning Code transect zones: OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, and T4-R Neighborhood General - Restricted.

Subdivision Regulations: [Missoula City Subdivision Regulations](#) adopted by City Council as amended on July 18, 2022.

Surrounding Land Uses:

North: Agriculture/vacant, residential (detached house),
South: School, agriculture/vacant
East: Residential (detached house), agriculture/vacant
West: Agriculture/vacant

Surrounding Zoning:

North: Crossroads Center and Town Center Neighborhood Unit (County)
South: Crossroads Center Neighborhood Unit, T2 Rural (County)
East: Pleasant View Homes Special District (City)
West: Community Center Neighborhood Unit (County)

III. RECOMMENDED MOTIONS

City Council (11/28/22)

[Resolution] Set a public hearing on December 19th, 2022 and adopt a resolution of intent to annex the subject property west of Flynn Lane, legally described as Tract E-1 of Certificate of Survey No. 6889 and Tract D of Certificate of Survey No. 6850, located in the Northwest Quarter and Southwest Quarter of Section 7 and the Northeast Quarter and Southeast Quarter of Section 12, Township 13 North, Range 19 West, P.M.M., as shown on Exhibit A, and zone upon annexation to Sxwtpqyen Area Form Based Zoning Code transects OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, and T4-R Neighborhood General - Restricted, and refer this item and the West End Homes Subdivision and master site plan to the Land Use and Planning Committee for presentation and discussion on December 14th 2022.

Planning Board Public Hearing (12/6/2022)

Recommend City Council approve the West End Homes Subdivision preliminary plat application and master site plan, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

Recommend City Council approve the variance request from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road, to allow 18 lots to be provided access via an alley and public access easement containing a pedestrian path.

Recommend City Council approve the variance request from Article 3, Section 3-080.8.B.3 of the City Subdivision Regulations, which requires parks to be adjacent to public streets on at least 50% of the parks perimeter, to allow for this requirement to be met with future adjacent development per a Development Agreement.

LUP pre-public hearing informational only item (12/14/2022)

Introductory presentation and discussion on the proposal and staff recommended motions to approve the annexation, preliminary subdivision plat application, variances, and master site plan, subject to the recommended conditions of approval.

City Council Public Hearing (12/19/2022)

Presentation, public comment, and discussion on the proposal and staff recommended motions to approve the annexation, preliminary subdivision plat application, variances, and master site plan, subject to the recommended conditions of approval.

LUP post-public hearing informational only item (tentative 12/21/2022)

Discussion on the proposal and staff recommended motions to approve the annexation, preliminary subdivision plat application, variances, and master site plan, subject to the recommended conditions of approval.

City Council Final Consideration (1/9/2023)

[Resolution] Adopt a resolution to annex the subject property legally described as Tract E-1 of Certificate of Survey No. 6889 and Tract D of Certificate of Survey No. 6850, located in the Northwest Quarter and Southwest Quarter of Section 7 and the Northeast Quarter and Southeast Quarter of Section 12, Township 13 North, Range 20 West, P.M.M., as shown on Exhibit A, and zone upon annexation to Title 21 Form Based Zoning Code transect zones: OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, and T4-R Neighborhood General – Restricted, subject to the conditions of approval, based on the findings of fact and conclusions of law in the staff report.

Approve the West End Homes Subdivision preliminary plat application and master site plan, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

Approve the variance request from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road, to allow 18 lots to be provided access via an alley and public access easement containing a pedestrian path.

Approve the variance request from Article 3, Section 3-080.8.B.3 of the City Subdivision Regulations, which requires parks to be adjacent to public streets on at least 50% of the parks perimeter, to allow for this requirement to be met with future adjacent development per the Development Agreement.

IV. INTRODUCTION

Development Services has received a request from IMEG Corp., on behalf of Evergreen Housing Solutions LLC, for a 260-lot major subdivision and annexation of 71.39 acres located west of Flynn Lane on Tract E-1 of Certificate of Survey No. 6889 and Tract D of Certificate of Survey No. 6850. The proposed subdivision is named West End Homes.

The project is within the Sxwtpqyen Neighborhoods Master Plan area and must comply with the Sxwtpqyen Neighborhoods Form Based Zoning Code (Title 21). Title 21 Form Based Zoning Code regulates street types, block perimeters, minimum and maximum densities, lots sizes, ratio of zoning districts (transect zones), uses, design and more. Title 21 requires that City Council either approve, approve with conditions, or deny the master site plan.

To comply with the Form Based Zoning Code, the applicant requests zoning upon annexation of Title 21 transect zones: OS Open Space (28.45 acres), T3 Neighborhood Edge (15.9 acres), T4-O Neighborhood General – Open (3.04 acres), and T4-R Neighborhood General – Restricted (5.95 acres). The T3 transect zone primarily permits residential uses at a density of 6 to 8 dwelling units per acre, some civic uses, and some educational uses. The T4-R transect zone primarily permits residential uses at a density of 12 to 36 dwelling units per acre, some civic, and some educational uses. The T4-O transect zone primarily permits residential uses at 12 to 36 dwelling units per acre, small scale lodging, commercial, some civic, and some educational uses. All lots zoned T3, T4-R, and T4-O are currently proposed to be used for only residential purposes. The average lot size in the T3 transect zone is 6,098 square feet (0.14 acres). The average lot size in the T4-R and T4-O transect zones is 2,614 square feet (0.06 acres).

The Form Based Code requires a minimum of three residential building types per zoning district. In the T3 zoning district the applicant proposes house, villa, and cottage building types. All three are considered single dwelling residential. In the T4-O and T4-R zoning districts the applicant proposes side yard, mansion apartment, and townhouse residential building types.

Access to the subdivision would be provided from Flynn Lane. The subject property contains the England Boulevard and Dougherty Drive county road easements. The subject property is within the Urban Growth Area, the Utility Service Area, and the Air Stagnation Zone. Development on each of the lots is proposed to be connected to City sewer and water.

The applicant is requesting variances to two of the City Subdivision Regulations. The first requested variance is to Article 3, Section 3-030.1.C.3 which requires each lot to abut and have access to a public or private street or road. Eighteen lots do not abut and have access from a street or road. Instead, the lots abut and are accessed from a public access easement containing a pedestrian path along the front and an alley names Sumac Lane. The second requested variance is to Article 3, Section 3-080.8.B.3 which requires parks to be adjacent to public streets on at least 50% of the parks perimeter.

Planning Board will provide a recommendation to City Council on the subdivision and master site plan. City Council will act and make a decision on the annexation, subdivision, and master site plan. City Council may approve, deny, or approve with conditions the annexation and subdivision requests. Upon annexation, the parcels would be located within City Council Ward 2 and the Captain John Mullan Neighborhood Council.

V. GENERAL FINDINGS OF FACT

The following findings of fact are applicable the annexation request, subdivision preliminary plat request, and the master site plan request.

1. The subject property is located at Tract E-1 of Certificate of Survey No. 6889 and Tract D of Certificate of Survey No. 6850, located in the Northwest Quarter and Southwest Quarter of Section 7 and the Northeast Quarter and Southeast Quarter of Section 12, Township 13 North, Range 20 West, P.M.M. (pg. 2, *City Major Subdivision Application*).
2. Surrounding land uses include school, detached house residential, and agriculture/vacant (*County Property Information System*).
3. The subject property is 71.39 acres, currently vacant, and was most recently used for agriculture (pgs. 2, 9, & 12, *City Major Subdivision Application*).
4. The subject property is zoned Sxwtpqyen Neighborhoods Crossroad Center Neighborhood Unit in the County (pg. 3, *City Major Subdivision Application*).
5. The subject property is within the Urban Growth Area, Utility Services Area Boundary, and the Air Stagnation Zone (*Missoula County Property Information System*).
6. The subject property has frontage on Flynn Lane which is functionally classified as a Neighborhood Bike Street (Two-Way Track) (pg. 22, *City Major Subdivision Application*).
7. The subject property is bisected by the England Boulevard and Dougherty Drive County Road Easements (*COS and Prior Subdivision History*).
8. The subject property is within floodplain designation Zone X, Area of Minimal Flood Hazard (*FEMA Map Service Center*).

VI. ZONING AND GROWTH POLICY FINDINGS OF FACT

The following findings of fact are applicable the annexation request, subdivision preliminary plat request, and the master site plan request.

1. The Sxwtpqyen Neighborhoods Master Plan is the applicable regional plan. The Master Plan recommends development based on neighborhood units and the subject property is located within the Crossroads Center neighborhood unit type.
2. The Crossroads Center neighborhood unit type requires 50% and 80% of the net lotted area proposed to be zoned T3 Edge (6 to 8 dwelling units per acre). The neighborhood unit type allows up to 10% of the net lotted area to be zoned T4-R Neighborhood General – Restricted (12 to 36 dwelling units per acre), and up to 10% to be zoned T4-O Neighborhood General – Open (12 to 36 dwelling units per acre). There are no minimum or maximum requirements for T2 Rural or C Civic. The minimum OS Open Space zoning requirements are calculated per Title 21, Section 2.1.C (Table 2-1 & Section 2.1.B.2.b, *Title 21 Zoning Code*).
3. Title 21, Section 1.4.E states all fractional results of calculations required by the code shall adhere to standard rounding rules.
4. Upon annexation, the applicant requests to zone 54.4% of the net lotted area proposed for development T3, to zone 10.4% T4-O, and 20.4% T4-R.
5. For more information on how the minimum OS Open Space and parkland dedication requirements are calculated, see the Subdivision section of this report. The applicant is required to dedicate a minimum acreage of OS Open Space. Title 21, Section 2.1.B.2.b states any Master Site Plan may consist of 100% Open Space. In order for Section 2.1.B.2.b to be true, excess parkland cannot be counted against the overall percentage, otherwise other zoning allocation standards will fall out of compliance.

6. Title 21, Section 2.1.D.1 provides an incentive for preservation of agricultural land by designating it as Open Space. The incentive states “for the Crossroads Center Neighborhood Unit Type, for each percentage of the master site plan area that is prime agricultural land if irrigated that is preserved (above the required Open Space), the maximum allowed allocation of T4-R shall be increased by one percent to a maximum of 20%”.
7. The subject property contains soils designated as agricultural land if irrigated (*NRCS Soils Report_Updated*).
8. The subdivider is proposing to utilize the incentive provided in Section 2.1.D.1 to zone 20.4% (rounded to 20%) of the net lotted area to T4-R. There is a condition of approval requiring the subdivider to provide parkland/Open Space dedication calculations demonstrating that the acreage in Open Space #4 meets the minimum parkland dedication requirement plus the open space required to apply the incentive in Title 21 Section 2.1.D.1, prior to Phase 1 final plat approval (*Master Site Plans*).
9. Title 21, as written, only allowed the incentive to be permitted outside of the Missoula International Airport Extended Approach and Departure Area (EADA) Zone. Staff issued a 2022 Zoning Officer Opinion allowing the incentive to be applied for preservation of agricultural land within the EADA, in order to meet the Master Plan goals of preserving agricultural land, clustering dense development, and promoting public health and safety. The Zoning Officer Opinion encourages less development in the EADA zone to protect public health and safety and preserve agricultural land by allowing more density to be transferred to the rest of the development.
10. Additional requirements apply to development within the EADA zone. Within the EADA zone, there is a maximum residential density of 4 dwelling units per acre and a requirement that residential development be clustered so that 50% of the master site plan area within the EADA zone is open space (2.1.E.2, *Title 21 Zoning Code*). The master site plan proposes a density of 4 dwelling units per acre in the EADA zone. Lots zoned for development in the EADA zone are clustered so that 78% of the master site plan within the EADA zone is open space (*Master Site Plans*).
11. All lot dimensions and block perimeters within the preliminary plat comply with the requirements of Title 21, Table 3-1 (*Preliminary Plat; Master Site Plans*).
12. Title 21, Section 3.1.C requires that each T3, T4-R, and T4-O transect zone contain at least three different permitted residential building types. In the T3 transect zone, the master site plan proposes house, villa, and cottage residential building types. In the T4-O and T4-R transect zones, the master site plan proposes side yard house, mansion apartment, and townhouse residential building types (*Master Site Plans*).
13. The proposed zoning allocation complies with the Sxwtpqyen Neighborhoods Master Plan, the Crossroads Center neighborhood unit type, and Title 21 Zoning Code, if the recommended conditions of approval are imposed.

ANNEXATION

I. RECOMMENDATION

Staff recommend City Council **adopt** a resolution to annex the subject property legally described as Tract E-1 of Certificate of Survey No. 6889 and Tract D of Certificate of Survey No. 6850, located in the Northwest Quarter and Southwest Quarter of Section 7 and the Northeast Quarter and Southeast Quarter of Section 12, Township 13 North, Range 20 West, P.M.M., as shown on Exhibit A, and zone

upon annexation to OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, and T4-R Neighborhood General – Restricted, subject to the conditions of approval, based on the findings of fact and conclusions of law in the staff report.

II. CONDITIONS OF ANNEXATION APPROVAL

Zoning

1. Approval of the annexation shall be contingent upon City Council approval of the West End Homes Subdivision and master site plan.

Road and Alleys

1. The applicant shall install secondary improvements to England Boulevard, as described in the existing right-of-way agreement, and amend the existing right-of-way agreement, prior to Phase 1 final plat approval, subject to review and approval by Public Works & Mobility. The amendment to the right-of-way agreement shall address crediting/offsets to Impact Fees for installation costs for secondary improvements, pursuant to Title 15.
2. The applicant shall provide plans for and installation of boulevards with bioswales on England Boulevard, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval of Phase 1.
3. The applicant shall provide plans for and install half street improvements to Flynn Lane, a Neighborhood Bike Street (Two-Way Track), including pave back to drive lane, curb and gutter, boulevard with bioswale, and a two-way pedestrian and bike track, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 1.
4. The applicant shall dedicate an additional 3 feet of right-of-way width for Flynn Lane on the west side of the existing right-of-way, along the eastern property boundary of the subject property, subject to review and approval by Public Works & Mobility, prior final plat approval for Phase 1.
5. The applicant shall provide plans for and install improvements to Tansy Lane, a neighborhood street, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 1.
6. The applicant shall provide plans for and install improvements to rear lanes, including paving and valley gutter, subject to review and approval by Public Works & Mobility, prior to final plat approval for each phase.
7. The applicant shall provide plans for and install improvements to alleys and Sumac Lane, including paving and valley gutter, subject to review and approval by Public Works & Mobility and City Fire, prior to final plat approval for each phase. Improvements to Sumac Lane shall include 20-foot-wide pavement for fire truck access.
8. The applicant shall provide plans for and install improvements to Dougherty Drive, a neighborhood collector, from England Boulevard to Lot 207, including two drive lanes, bike lanes, parking lanes, curb and gutter, boulevards with bioswales, and sidewalks, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 2.
9. The applicant shall provide plans for and install improvements to neighborhood streets Bellflower Way from England Boulevard to Lot 81 and Barberry Street from England Boulevard

to Lots 88 and 89, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 2.

10. The applicant shall provide plans for and install improvements to neighborhood streets Bellflower Way from Lot 81 through Burnet Drive, Barberry Street from Lots 88 and 89 through Burnet Drive, and Burnet Drive from Flynn Lane to Lots 155 and 219, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 3.
11. The applicant shall provide plans for and install improvements to neighborhood streets Bellflower Way from Burnet Drive to OS 1 and Barberry Street from Burnet Drive to Lots 124 and 125, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 4.
12. The applicant shall provide plans for and install improvements to neighborhood streets Bellflower Way from OS 1 through Mariposa Drive, Barberry Street from Lots 124 and 125 to Mariposa Drive, and Mariposa Drive from Flynn Lane to Bellflower Way, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 5.
13. The applicant shall provide plans for and install improvements to Bellflower Way, a neighborhood street, from Mariposa Drive to Flynn Lane, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 6.
14. The applicant shall provide plans for and install improvements to Burnet Drive, a neighborhood street, from Lots 155 and 219 through Sumac Lane, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 7.
15. The applicant shall provide plans for and install improvements to neighborhood streets, Burnet Drive from Sumac Lane to the northern property boundary and Camden Street from the western property boundary through Burnet Drive, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 8.
16. The applicant shall provide plans for and install improvements to Dougherty Drive, a neighborhood collector, from Open Space #3 to the northern property boundary, including two drive lanes, bike lanes, parking lanes, curb and gutter, boulevards with bioswales, and sidewalks, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 8 (6.7.I, *Title 21 Zoning Code*).
17. The applicant shall provide plans for and install improvements to Camden Street, a neighborhood street, from Burnet Drive to Flynn Lane, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 9.

Non-Motorized

18. The applicant shall provide plans for and installation of improvements to Tipperary Trail through the Common Area/Parkland and Flynn Lane Trail, and amend the existing right-of-way agreement, prior to Phase 1 final plat approval, subject to review and approval by Public Works & Mobility and Parks and Recreation. The amendment to the right-of-way agreement shall address crediting/offsets to Impact Fees for installation costs for these improvements, pursuant to Title 15.
19. The applicant shall provide plans for and installation of improvements to mid-block pedestrian paths within common area with non-motorized public access easements through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 1.
20. The applicant shall provide plans for and installation of improvements to a mid-block pedestrian path within common area with a non-motorized public access easement through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 2.
21. The applicant shall provide plans for and installation of improvements to the pedestrian path in Open Space #3 within a public access easement along the frontage of abutting lots to the north, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 2 .
22. The applicant shall provide plans for and installation of improvements to the pedestrian path in Open Space #2 within a public access easement along the frontage of abutting lots to the north, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 4.
23. The applicant shall provide plans for and installation of improvements to a mid-block pedestrian path within common area with a non-motorized public access easement through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 7.
24. The applicant shall provide plans for and installation of improvements to mid-block pedestrian paths in common areas with non-motorized public access easements through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services, prior to final plat approval for Phase 9.

Transit

25. The applicant shall petition for the property to be included in the Missoula Urban Transportation District, subject to review and approval by Development Services, prior to final plat approval for Phase 1.

Airport Influence Area

26. The applicant shall obtain an aviation easement from the Airport Authority, in compliance with the Airport Influence Area Resolution, and present evidence of the easement, subject to review and approval by Development Services, prior to final plat approval for Phase 1.

Fire Protection

27. The applicant shall provide plans for fire suppression water flow and hydrant placement, subject to review and approval by City Fire Department and Public Works & Mobility, prior to final plat approval for each phase. The applicant shall install fire hydrants prior to combustible construction for each phase, subject to review and approval by City Fire Department and Public Works & Mobility.

Utilities

28. The applicant shall provide plans for and installation of water supply and sewage disposal facilities for review and approval by Public Works & Mobility, City/County Health Department, and Montana Department of Environmental Quality prior to final plat approval for each phase. Construction of all water supply and sewer systems shall be in accordance with City policies.

Boulevard Landscaping

29. The applicant shall provide plans for and installation of boulevard landscaping adjacent to Common Area/Parkland and Open Space areas, subject to review and approval by Parks and Recreation, prior to final plat approval for each phase.
30. 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 1.

III. ANNEXATION FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Development Services received a petition from Joe Dehnert of IMEG Corp., on behalf of property owners Justin Metcalf, Fletcher Ray, and Dougherty Ranch, LLC for annexation of 71.39 acres into the City of Missoula, and zoning upon annexation to Title 21 transect zones OS Open Space, T3 Neighborhood Edge, T4-O Neighborhood General - Open, and T4-R Neighborhood General – Restricted.

Property Information

2. The findings of fact located in Section V. General Findings of Fact section of this report and are incorporated here by reference.
3. The subject property is adjacent to city limits to the east. Though parcels directly west of the subject property are still in the County, the McNett Flats Subdivision to the southwest of the subject property is within city limits. To the northwest of the subject property, land owned by the Missoula Airport is within city limits (*Missoula County Property Information System*).
4. Upon annexation, the subject property would become part of City Council Ward 2 and the Captain John Mullan Neighborhood Council.
5. Upon annexation, the subject property would be added to the service area for City Fire and Police Departments.
6. The subject property has frontage on Flynn Lane which is already annexed into the City of Missoula. The subject property is bisected by England Boulevard and Dougherty Drive county road easements. Upon annexation, the full width of England Boulevard and Dougherty Drive within the subject property would be annexed (*Missoula County Property Information System; COS and Prior Subdivision History*).

Annexation Request

7. The property owners, Justin Metcalf, Fletcher Ray, and Dougherty Ranch, LLC filed Petition No. 10121 requesting the annexation of the property (*Annexation Petition*).

Annexation Policy

8. The subject property is within Annexation Area “A” on the City Annexation Policy Map. Areas designated as Annexation Area “A” largely meet the guidelines of the City’s Annexation Policy. Per the City Annexation Policy, the City should prioritize the annexation of areas located within Annexation Area “A”.
9. The subject property is within the Urban Growth Area and Utility Service Area. Per the City Annexation Policy, the City should prioritize the annexation of areas located within the Utility Service Area.
10. The area proposed to be annexed is adjacent to Missoula city limits on the eastern property boundary. Though not directly adjacent, properties to the southwest and northwest of the subject property are within city limits (*Missoula County Property Information System*). Per the City Annexation Policy, the City should prioritize the annexation of properties that contribute to the logical growth pattern of the City by creating orderly and contiguous municipal boundaries; and properties that would fill gaps left by previous annexations that created islands and non-contiguous boundaries. Annexation of the subject property would fill in a gap in city limits created by previous annexations.
11. Per the City Annexation Policy, the City should prioritize the annexation of areas that meet current city standards, including water, sewer, and transportation infrastructure, and equitably provide the same levels of service and infrastructure as other parts of the municipality with similar topography, land use, and population density. This is reflected in the recommended annexation and subdivision conditions of approval.

Growth Policy and Zoning

12. The City Annexation Policy states that any annexation by the City should be guided by the current City Growth Policy applicable to the area.
13. The findings of fact located in Section VI. Zoning and Growth Policy Findings of Fact section of this report are incorporated here by reference.
14. The requested zoning upon annexation complies with the recommendations of the Sxwtpqyen Neighborhoods Master Plan, the Crossroads Center neighborhood unit type, and Title 21.
15. Missoula County adopted the Sxwtpqyen Neighborhoods Master Plan and the Sxwtpqyen Neighborhoods Zoning Code. The current county zoning for the subject property is the Crossroads Center neighborhood unit type, which was applied in anticipation of future development and zoning to transects permitted within the Crossroads Center neighborhood unit type (*Missoula County Property Information System*). The current county zoning aligns with the proposed zoning.
16. The requested annexation is contingent upon City Council approval of the West End Homes Subdivision preliminary plat and master site plan in order to comply with City regulations and avoid split zoning which is prohibited per Title 21, Section 2.3.D.2.c. Staff recommend a condition of approval stating the annexation is contingent upon City Council approval of the subdivision preliminary plat and master site plan.

Airport Influence Area

17. The subject property is located within the Airport Influence Area (AIA) Overlay, which is an overlay established to promote public health, safety, and general welfare, to protect the lives and property of users of the airport and of occupants of land in its vicinity, and to preserve the utility of the airport and the public investment in it.

18. Staff recommend a condition of approval requiring the applicant to obtain an aviation easement from the Airport Authority, in compliance with the Airport Influence Area Resolution.

Road Improvements, Non-Motorized Improvements, Transit, and Utility Infrastructure

Roads, Alleys, and Non-Motorized

19. Findings of fact for conditions of approval regarding roads, alleys, and non-motorized facilities are located in the Subdivision section of this report and are incorporated here by reference.
20. In order to meet current City Standards and the Annexation Policy, staff recommend conditions of approval requiring the applicant to provide plans for and installation of improvements to all roads (including boulevards), alleys, rear lanes, non-motorized facilities shown on the preliminary plat. Additionally, staff recommend conditions of approval requiring additional right-of-way on Flynn Lane to meet current City standards.
21. The road, alley, rear lane, 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 are imposed.

Transit

22. The nearest Mountain Line bus stops are located approximately 0.8 miles from the southeast corner of the subject property, at the intersections of Connery Way and Flannagin Lane, and Connery Way and American Way. These bus stop serve Route 11 (*Section B, Bus Route Map*). City Engineering (Public Works & Mobility) will not be requiring the installation of bus stop facilities for this subdivision.
23. The subject property is within the walking boundary for Hellgate Elementary and Middle School. The nearest school bus stop serving Big Sky High School is located at the intersection of England Boulevard and Mary Jane Boulevard, approximate 0.15 miles from the southeast corner of the subject property (*Section B, Bus Routes Map*).
24. Per the City Annexation Policy, proposed annexation areas should be conditioned to join the Missoula Urban Transportation District.
25. In order to comply with the City Annexation Policy, staff recommends a condition of approval that states the applicant shall petition the property into the Missoula Urban Transportation District.

Fire Protection

26. In order to provide the same level of service and infrastructure as other parts of the municipality with similar zoning, including adequate protection from fire, staff recommend a condition of approval requiring the applicant to provide plans for fire suppression water flow and hydrant placement, prior to final plat approval for each phase. The staff recommended condition of approval requires the applicant to install fire hydrants prior to combustible construction for each phase.

Utilities

27. In accordance with City policies and following annexation, future development of the property must include approved design, installation, and connection to municipal water and sewer services. The Annexation Policy states the City should prioritize the annexation of areas that meet current city standards, including water and sewer infrastructure.

28. The subject property is vacant and therefore no structures are connected to city water or sewer. New construction will be required to connect to city sewer and water (*City Central Maps*). The application includes a water and sanitation report and utility construction plans.
29. The subject property is within the Utility Service Area.
30. Findings of fact for conditions of approval regarding utilities are located in the Subdivision section of this report and are incorporated here by reference.
31. In order to meet the Annexation Policy and current City Standards, staff recommend conditions of approval requiring the applicant to provide plans for and installation of water supply and sewage disposal facilities.
32. The utility 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 are imposed.

Statutory Requirements

33. Section 7-2-4211 MCA requires municipalities to include the full width of any public street or road right-of-way that are adjacent to the property being annexed.
34. The subject property is adjacent to Flynn Lane which has already been annexed into the City of Missoula (*Missoula County Property Information System*).
35. The subject property proposed to be annexed includes the full width of the England Boulevard and Dougherty Drive county road easements (C.O.S No. 6889).
36. The city will meet the statutory requirements for a petition method annexation in regards to MCA 7-2-4601 and MCA 76-2-303 by considering the petition, adopting a resolution of intent and scheduling a public hearing regarding the zoning upon annexation, and advertising public notice for at least 15 days prior to the public hearing with the appropriate recommended zoning. The final step for council will be to adopt a resolution to adopt, adopt with conditions, or deny the resolution to annex.

Zoning Upon Annexation

37. MCA 76-2-303 allows a municipality to conduct a hearing on the annexation in conjunction with a hearing on the zoning of the property proposed for annexation. MCA 76-2-303 outlines the three review criteria which may be considered for zoning upon annexation. The following are the three criteria from MCA and staff's assessment as to whether the annexation complies with the criteria. An annexation must comply with at least **one** of the criteria. The zoning district classification assigned at the time of annexation must:

- a. **Authorize land uses comparable to the land uses authorized by [the] county zoning [classification that applied to the property immediately before it was annexed in the city]; or**

Staff Assessment

- i. The current county zoning classification is Sxwtpqyen Neighborhoods Crossroads Center neighborhood unit type (*Missoula County Property Information System*).
- ii. Missoula County and the City of Missoula both adopted the Sxwtpqyen Neighborhoods Form Based Zoning Code.
- iii. The proposed zoning complies with the Crossroads Center neighborhood unit type.

- iv. The proposed city zoning districts (transects) are comparable to the county zoning because the county zoning requirements at the time of development would be the same.
- v. The proposed zoning complies with MCA 76-303(3)(a)(i).

b. Authorize land uses that are consistent with [the] land uses approved by the Board of County Commissioners or the County Board of Adjustment; or

Staff Assessment

- i. The Missoula Board of County Commissioners and the Missoula City Council both adopted the Swxtpqyen Neighborhoods Master Plan and applied a Crossroads Center neighborhood unit type to the subject property.
- ii. The proposed zoning complies with the Swxtpqyen Neighborhoods Master Plan and the Crossroads Center neighborhood unit type.
- iii. The proposed city zoning districts (transects) are comparable to land uses approved by the Board of County Commissioners.
- iv. The proposed zoning complies with MCA 76-303(3)(a)(ii).

c. Be consistent with the zoning requirements recommended in the growth policy [for the subject area, as set forth in the “Swxtpqyen Neighborhoods Master Plan].”

Staff Assessment

- i. The Swxtpqyen Neighborhoods Master Plan is the applicable regional plan (i.e. the applicable Growth Policy). The Master Plan recommends development based on neighborhood units and the subject property is located within the Crossroads Center neighborhood unit type.
- ii. The proposed zoning complies with the Swxtpqyen Neighborhoods Master Plan and the Crossroads Center neighborhood unit type.
- iii. Based on compliance with the criteria in MCA 76-2-303(3)(a)(iii), staff recommend annexation of the subject property and zoning upon annexation to OS Open Space, T3 Edge, T4-R Neighborhood General – Restricted, and T4-O Neighborhood General – Open, subject to the recommended conditions of approval.
- iv. If the City Council does not approve the request to annex the subject property and/or the zoning upon annexation of the subject property, the Resolution to Annex and the zoning upon annexation of the property shall become null and void, and the property shall revert to its original status in the County of Missoula.

IV. ANNEXATION EXHIBITS AND ATTACHMENTS

Exhibits

- 1. Exhibit A Annexation Map

Attachments

- 2. Resolution of Intent to Annex

WEST END HOMES SUBDIVISION AND MASTER SITE PLAN

I. RECOMMENDATION

Staff recommend City Council **approve** the West End Homes Subdivision preliminary plat application and master site plan, subject to the recommended conditions of approval, based on the findings of fact and conclusions of law in the staff report.

II. CONDITIONS OF SUBDIVISION APPROVAL

Zoning

1. Approval of the West End Homes Subdivision preliminary plat and master site plan shall be contingent upon City Council approval of the annexation and zoning upon annexation.

Streets, General

2. The following statement shall appear on the face of each plat, in the covenants, conditions, and restrictions, and on each instrument of conveyance, subject to review and approval by Public Works & Mobility and Development Services, prior to final plat approval of each phase: "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 future improvements and maintenance of Flynn Lane, England Boulevard, Tansy Lane, Dougherty Drive, Bellflower Way, Barberry Street, Burnet Drive, Mariposa Drive, and Camden Street, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities, and may be used in lieu of their signatures on an SID petition." (5-050.3.AA, 5-050.3.BB, & 3-020.3.A.1, *City Subdivision Regulations*).
3. The subdivider shall pay the Sxwtpqyen Area Special Transportation Impact Fee prior to final plat approval for Phase 1, subject to review and approval by Public Works & Mobility (*City of Missoula Resolution 8502*).
4. The subdivider shall provide a street signage plan and install street signage in accordance with the Manual on Uniform Traffic Control Devices, subject to review and approval by Public Works & Mobility and the Fire Department, prior to final plat approval of each phase (3-020.4.H.2, *City Subdivision Regulations*).
5. The subdivider shall provide plans for and install collector corridor street lighting, and shall petition to create a new Special Improvement Lighting District (SILD) for streetlights on England Boulevard and Dougherty Drive, in accordance with Missoula City Subdivision Regulations and Missoula City Public Works Standards and Specifications Manual, subject to review and approval by Public Works & Mobility, prior to final plat approval of each applicable phase (Section 7.3.6, *Missoula Public Works Standards and Specifications Manual*).

Specific Streets

6. The subdivider shall install secondary improvements to England Boulevard, as described in the existing right-of-way agreement, and amend the existing right-of-way agreement, prior to Phase 1 final plat approval, subject to review and approval by Public Works & Mobility. The amendment to the right-of-way agreement shall address crediting/offsets to Impact Fees for installation costs for secondary improvements, pursuant to Title 15 (6.7.I, *Title 21 Zoning Code*).
7. The subdivider shall provide plans for and installation of boulevards with bioswales on England Boulevard, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval of Phase 1 (6.7.I, *Title 21 Zoning Code*).

8. The subdivider shall provide plans for and install half street improvements to Flynn Lane, a Neighborhood Bike Street (Two-Way Track), including pave back to drive lane, curb and gutter, boulevard with bioswale, and a two-way pedestrian and bike track, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 1 (6.7.O, *Title 21 Zoning Code*).
9. The subdivider shall dedicate an additional 3 feet of right-of-way width for Flynn Lane on the west side of the existing right-of-way, along the eastern property boundary of the subject property, subject to review and approval by Public Works & Mobility, prior final plat approval for Phase 1 (6.7.O, *Title 21 Zoning Code*).
10. The subdivider shall provide plans for and install improvements to Tansy Lane, a neighborhood street, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 1 (6.7.L, *Title 21 Zoning Code*).
11. The subdivider shall provide plans for and install improvements to rear lanes, including paving and valley gutter, subject to review and approval by Public Works & Mobility, prior to final plat approval for each phase (6.7.V, *Title 21 Zoning Code*).
12. The subdivider shall provide plans for and install improvements to alleys and Sumac Lane, including paving and valley gutter, subject to review and approval by Public Works & Mobility and City Fire, prior to final plat approval for each phase. Improvements to Sumac Lane shall include 20-foot-wide pavement for fire truck access (6.7.U, *Title 21 Zoning Code*).
13. The subdivider shall provide a 90-foot-wide easement for Dougherty Drive in the location shown on the preliminary plat, subject to review and approval by Public Works & Mobility, prior to final plat approval of Phase 1 (3-020.4.D, *City Subdivision Regulations*).
14. The subdivider shall provide plans for and install improvements to Dougherty Drive, a neighborhood collector, from England Boulevard to Lot 207, including two drive lanes, bike lanes, parking lanes, curb and gutter, boulevards with bioswales, and sidewalks, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 2 (6.7.I, *Title 21 Zoning Code*).
15. The subdivider shall provide plans for and install improvements to neighborhood streets Bellflower Way from England Boulevard to Lot 81 and Barberry Street from England Boulevard to Lots 88 and 89, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 2 (6.7.L, *Title 21 Zoning Code*).
16. The subdivider shall provide plans for and install improvements to neighborhood streets Bellflower Way from Lot 81 through Burnet Drive, Barberry Street from Lots 88 and 89 through Burnet Drive, and Burnet Drive from Flynn Lane to Lots 155 and 219, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 3 (6.7.L, *Title 21 Zoning Code*).
17. The subdivider shall provide plans for and install improvements to neighborhood streets Bellflower Way from Burnet Drive to OS 1 and Barberry Street from Burnet Drive to Lots 124 and 125, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 4 (6.7.L, *Title 21 Zoning Code*).

18. The subdivider shall provide plans for and install improvements to neighborhood streets Bellflower Way from OS 1 through Mariposa Drive, Barberry Street from Lots 124 and 125 to Mariposa Drive, and Mariposa Drive from Flynn Lane to Bellflower Way, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 5 (6.7.L, *Title 21 Zoning Code*).
19. The subdivider shall provide plans for and install improvements to Bellflower Way, a neighborhood street, from Mariposa Drive to Flynn Lane, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 6 (6.7.L, *Title 21 Zoning Code*).
20. The subdivider shall provide plans for and install improvements to Burent Drive, a neighborhood street, from Lots 155 and 219 through Sumac Lane, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 7 (6.7.L, *Title 21 Zoning Code*).
21. The subdivider shall provide plans for and install improvements to neighborhood streets, Burnet Drive from Sumac Lane to the northern property boundary and Camden Street from the western property boundary through Burnet Drive, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 8 (6.7.L, *Title 21 Zoning Code*).
22. The subdivider shall provide plans for and install improvements to Dougherty Drive, a neighborhood collector, from Open Space #3 to the northern property boundary, including two drive lanes, bike lanes, parking lanes, curb and gutter, boulevards with bioswales, and sidewalks, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 8 (6.7.L, *Title 21 Zoning Code*).
23. The subdivider shall provide plans for and install improvements to Camden Street, a neighborhood street, from Burnet Drive to Flynn Lane, including two drive lanes, parking lane, curb and gutter, sidewalks, and boulevards with bioswales, subject to review and approval by Public Works & Mobility and Parks and Recreation, prior to final plat approval for Phase 9 (6.7.L, *Title 21 Zoning Code*).

Non-Motorized

24. The subdivider shall provide plans for and installation of improvements to Tipperary Trail through the Common Area/Parkland and Flynn Lane Trail, and amend the existing right-of-way agreement, prior to Phase 1 final plat approval, subject to review and approval by Public Works & Mobility and Parks and Recreation. The amendment to the right-of-way agreement shall address crediting/offsets to Impact Fees for installation costs for these improvements, pursuant to Title 15 (3-020.15.F.1, *City Subdivision Regulations*).
25. The subdivider shall provide plans for and installation of improvements to mid-block pedestrian paths within common area with non-motorized public access easements through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 1 (2.4.A.3, *Title 21 Zoning Code*).
26. The subdivider shall provide plans for and installation of improvements to a mid-block pedestrian path within common area with a non-motorized public access easement through

blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 2 (2.4.A.3, *Title 21 Zoning Code*).

27. The subdivider shall provide plans for and installation of improvements to the pedestrian path in Open Space #3 within a public access easement along the frontage of abutting lots to the north, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 2 (3-020.15.F.1, *City Subdivision Regulations*).
28. The subdivider shall provide plans for and installation of improvements to the pedestrian path in Open Space #2 within a public access easement along the frontage of abutting lots to the north, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 4 (3-020.15.F.1, *City Subdivision Regulations*).
29. The subdivider shall provide plans for and installation of improvements to a mid-block pedestrian path within common area with a non-motorized public access easement through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 7 (2.4.A.3, *Title 21 Zoning Code*).
30. The subdivider shall provide plans for and installation of improvements to mid-block pedestrian paths in common areas with non-motorized public access easements through blocks with faces exceeding 600 feet in length, subject to review and approval by Development Services, prior to final plat approval for Phase 9 (2.4.A.3, *Title 21 Zoning Code*).

Rights-of-Way and Easements

31. All proposed rights-of-way and easements shall be shown on the face of each plat and identified for their width, purpose, and the recorded book and page numbers, in accordance with Missoula City Public Works Standards and Specifications Manual, subject to review and approval by Public Works & Mobility, prior to final plat approval for each applicable phase (3-020.3.B & 3-060.1, *City Subdivision Regulations*).

Storm Water and Drainage

32. The subdivider shall provide plans for and installation of grading, drainage, and stormwater facilities, subject to review and approval by Montana Department of Environmental Quality and Public Works & Mobility, prior to final plat approval of each phase (5-020.11, *City Subdivision Regulations*).

Water Systems, Sewer Systems, and Solid Waste Disposal

33. The subdivider shall provide plans for and installation of water supply and sewage disposal facilities for review and approval by Public Works & Mobility, City/County Health Department, and Montana Department of Environmental Quality prior to final plat approval for each phase. Construction of all water supply and sewer systems shall be in accordance with City policies. (3-010.5, *City Subdivision Regulations*).
34. The subdivider shall pay the Mullan BUILD Water and Special Sewer Development Fee prior to release for construction plans for Phase 1, subject to review and approval by Public Works & Mobility (*Resolution 8590*).
35. The subdivider shall submit plans for solid waste disposal for review and approval of Public Works & Mobility, City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval for each phase (3-070.1, *City Subdivision Regulations*).

Fire Protection

36. The subdivider shall provide plans for fire suppression water flow and hydrant placement, subject to review and approval by City Fire Department and Public Works & Mobility, prior to final plat approval for each phase. The subdivider shall install fire hydrants prior to combustible construction for each phase, subject to review and approval by City Fire Department and Public Works & Mobility (3-010.1.F, *City Subdivision Regulations*).
37. The subdivider shall include a note stating the following on the face of the Phase 8 final plat, prior to final plat approval for Phase 8, and in the Development Covenants under a section titled "Fire Protection", prior to final plat approval for Phase 1: "Attached houses (e.g. townhouses, rowhouses) on Lots 210 through 215 shall be installed with fire suppression sprinkler systems if small building access cannot be met, subject to review and approval by the City Fire Marshall.", subject to review and approval by Development Services, Public Works & Mobility, and City Fire (*Variance Request #1; Correspondence with City Engineering*).
38. The subdivider shall include a note stating the following on the face of the Phase 7 final plat, prior to final plat approval for Phase 7, and in the Development Covenants under a section titled "Fire Protection", prior to final plat approval for Phase 1: "Fences along the rear property line are not permitted on Lots 156 through 162. Structures on Lots 156 through 162 shall have access on the rear of the building through a man door. A garage door does not count as a man door. Address numbers shall be visible from Sumac Lane at the rear of Lots 156 through 162.", subject to review and approval by Development Services and City Fire (*Variance Request #1*).
39. The subdivider shall include a note stating the following on the face of the Phase 8 final plat, prior to final plat approval for Phase 8, and in the Development Covenants under a section titled "Fire Protection", prior to final plat approval for Phase 1: "Fences along the rear property line are not permitted on Lots 208 through 218. Structures on Lots 208 through 218 shall have access on the rear of the building through a man door. A garage door does not count as a man door. Address numbers shall be visible from Sumac Lane to the rear of Lots 208 through 218.", subject to review and approval by Development Services and City Fire (*Variance Request #1*).

Irrigation

40. The subdivider shall present documentation that the water rights have been removed and provide a statement on the face of each final plat and in the Development Covenants as follows: "Water rights have been removed from the property and lot owners are notified 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*).

Ground Water

41. The subdivider shall include the following note on each final plat and in the Development Covenants: "Basements shall be prohibited in all phases until such time as the developer provides sufficient evidence to the appropriate agencies that no threat to the public safety or loss of property will result in those areas proposed for basements", subject to review and approval by Development Services and Public Works & Mobility, prior to final plat approval for Phase 1 (3-010.2, *City Subdivision Regulations*).

Parkland Dedication, Boulevard Landscaping & Weeds

42. The subdivider shall provide plans for and installation of boulevard landscaping adjacent to Common Area/Parkland and Open Space areas, subject to review and approval by Parks and Recreation, prior to final plat approval for each phase (5-050.5.C, *City Subdivision Regulations*).

43. 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 1. 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”, prior to Phase 1 final plat approval subject to review and approval by City Parks and Recreation and Development Services. (5-050.5.C, *City Subdivision Regulations*).
44. The subdivider shall show on the Phase 1 final plat parcels for “Open Space #4” and “Open Space #5”, as shown on Exhibit B, prior to Phase 1 final plat approval, subject to review and approval by City Parks and Recreation and Development Services.
45. The subdivider shall provide parkland dedication calculations demonstrating that the amount of space in Open Space #4 meets the base minimum dedication requirement plus the additional land dedication required to apply a 10% increase in T4-R per the Title 21 incentive, Section 2.1.D.1, as shown on Exhibit B, and the area of Open Space #4 shall be dedicated on the Phase 1 final plat, subject to review and approval by Parks and Recreation and Development Services, prior to final plat approval for Phase 1 (3-080, *City Subdivision Regulations*; 2.1.C, *Title 21 Zoning Code*).
46. The subdivider shall include the following note on the Phase 1 final plat and in the Development Covenants: “The Developer retains the right to request approval of a subdivision and rezoning for Open Space #5 for future development in compliance with Title 21 Zoning Code and the Sxwtpqyen Neighborhoods Master Plan, as this land is not required for parkland dedication.”, prior to final plat approval for Phase 1, subject to review and approval by Development Services.
47. The subdivider shall provide plans for and installation of park improvements to all Open Spaces, including but not limited to: grading, application of topsoil, installation of commercial grade irrigation system, installation of turf grass and dryland seed or sod, and installation of park trees, subject to review and approval by Parks and Recreation, prior to final plat approval for each phase containing parcels zoned Open Space. Topsoil shall be approved by Parks and Recreation and shall have a minimum depth of 10 inches (5-020.14.H, *City Subdivision Regulations*).
48. The subdivider shall provide maintenance plans for common areas and mutually controlled facilities per Section 5-020.14.K.10 of the *City Subdivision Regulations*, subject to review and approval by Development Services and Parks and Recreation, prior to final plat approval of Phase 1.
49. The subdivider shall provide a Weed Management and Revegetation Plan, appended to the Development Covenants and approved by the Missoula County Weed District, subject to review and approval by Development Services, prior to final plat approval for Phase 1 (5-010.14.K, *City Subdivision Regulations*).

Airport Influence Area and EADA Zone

50. The 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 West End Homes Subdivision contains lots within the Extended Approach and Departure Area and lot owners should be aware of the resultant safety risk.”, subject to review and approval by Development Services, prior to final plat approval for Phase 1 (3-010.2, *City Subdivision Regulations*; *Airport Authority Comment*).

Development Covenants

51. The subdivider shall submit final Development Covenants meeting the requirements of City Subdivision Regulations Section 5-020-14.K, subject to review and approval by Development Services, prior to final plat approval of Phase 1.
52. The subdivider shall include the following statement in the Development Covenants, subject to review and approval by Development Services, prior to final plat approval for Phase 1;
“Sections of the Development Covenants regarding common area maintenance, wood burning devices, weed control, agricultural operations, radon mitigation, basements, water rights, SID/RSID, and fire protection may not be amended or deleted without written approval by the governing body” (5-010.14.K & 3-010.2, *City Subdivision Regulations; Variance Request #1*).

III. SUBDIVISION FINDINGS OF FACT

A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

1. City Subdivision Regulations Section 3-010.1 requires that the subdivision be reviewed for compliance with the Sxwtpqyen Neighborhoods Master Plan which is the applicable growth policy for the area.
2. The findings of fact located in Section V. General Findings of Fact section of this report are incorporated here by reference.
3. The findings of fact located in Section VI. Zoning and Growth Policy Findings of Fact section of this report are incorporated here by reference.
4. Section 3-010.B of the City Subdivision Regulations states that subdivision plats must comply with the Missoula City Zoning Ordinance. The applicable Missoula City Zoning Ordinance is Title 21.
5. Staff recommend a condition of approval stating approval of the subdivision and master site plan is contingent upon City Council approval of the annexation. For City Council to approve the subdivision, all land must be within city limits.

Conclusion of Law:

1. The subdivision complies with the Sxwtpqyen Neighborhoods Master Plan, the Crossroads Center neighborhood unit type, and Title 21 Zoning Code, subject to the recommended conditions of approval.
2. Per State Law MCA 76-1-605(2)(b), no land use proposal shall be conditioned or denied based solely upon the lack of compliance with the Growth Policy.

B. PRIMARY CRITERIA COMPLIANCE

CRITERION A AND B: IMPACT ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

Agriculture

1. Section 5-020.6.A of the City Subdivision Regulations states the subdivider must demonstrate the subdivision proposal will have no adverse impacts on agriculture, or must identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts. Mitigation of adverse impacts will not be

based on a loss of agricultural soils and set aside of land or monetary contribution for the loss of agricultural soils will not be required.

2. The application packet states the subject property has periodically been used for hay production (pg. 9, *Subdivision Application*).
3. The Natural Resources Conservation Service (NRCS) Soil Survey for Missoula County shows 96.3% of the subject property has a soil type classified as Prime Farmland if Irrigated. The remaining portion has a soil type classified as Farmland of Local Importance (pg. 9, *Subdivision Application*; *NRCS Soils Report_Updated*).
4. To preserve soils classified as Prime Farmland if Irrigated, the proposed subdivision contains 28.45 acres of open space which makes up 39.85% of the subject property (*Preliminary Plat*; pg. 9, *Subdivision Application*).
5. The subject property is located within the Sxwtpqyen Neighborhoods Master Plan area which was approved in 2020 in anticipation of future development. The Master Plan aims to conserve agricultural land while clustering dense development (pg. 6 & 68). The subdivision proposed to utilize an incentive allowing an increase in area zoned T4-R transect in exchange for preserving more agricultural land as open space than is required. See the Zoning section of this Subdivision Report for more information.
6. Surrounding parcels contain agricultural uses. The subdivider has included language in the covenants to apprise future residents of the adjacent agricultural operations and the potential for noise, dust, and odors (*Proposed Draft Covenants*).

Agricultural Water Users

7. Section 5-020.6.B of the City Subdivision Regulations states in areas where agricultural water user facilities exist on the subject property or adjoin the property, the application packet must identify the agricultural water user, describe any proposed changes to the agricultural water use, and describe alterations to availability of water.
8. There are no irrigation ditches or other agricultural water user facilities located on the subject property. The nearest agricultural water user facility is an existing wheel line on land located to the west of the subject property (pg. 11, *Subdivision Application*).
9. There are multiple surface water and groundwater rights for stock water and irrigation associated with the subject property. The subdivider intends to sever water rights from the land. The water rights will be retained by Dougherty Ranch, LLC (pg. 11, *Subdivision Application*; *Buy Sell Agreements*).
10. Though the applicant intends to remove water rights from the subdivision. The water rights have not been removed at this time (pg. 11, *Subdivision Application*; *Buy Sell Agreements*).
11. 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.
12. 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 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*).

13. Staff recommend a condition of approval requiring the subdivider to present documentation that the water rights have been removed and provide a statement on the face of each final plat and in the Development Covenants as follows: "Water rights have been removed from the property and lot owners are notified 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."

Conclusions of Law:

1. The subdivision would prevent use of productive soils for agriculture. However, the property is located within the Sxwtpqyen Neighborhoods Master Plan area which anticipates development.
2. As mitigation, the subdivider proposes more open space than is required to preserve productive soils for agriculture.
3. No impacts to agricultural water users or water user facilities are foreseen as a result of this subdivision, if the recommended conditions of approval are imposed.

CRITERION C: IMPACT ON LOCAL SERVICES

1. Section 5-020.6.C of the City Subdivision Regulations states the subdivider must identify services and evaluate the impacts on those services including transportation elements, utilities, water supply, sewage disposal, and solid waste disposal, schools emergency services, and information pertaining to residential units and taxation.
2. Section 3-010.5 of the City Subdivision Regulations states the subdivision must be served by adequate public facilities and services such as transportation systems (including non-motorized), parking, police and fire protection, drainage structures, solid waste disposal, water supply, and sanitary sewage disposal; or the subdivider will provide adequately for such services.

Transportation Elements

Findings of Fact:

3. The subdivider proposes to access the subdivision via Flynn Lane. The subject property currently contains country road easements for England Boulevard and Dougherty Drive. Five streets are proposed to be accessed from Flynn Lane, providing connection to the rest of the development: England Boulevard, Burnet Drive Mariposa Drive, Bellflower Way, and Camden Street. Three streets are planned to connect the subdivision to future development to the north: Dougherty Drive, Burnet Drive, and Tansy Lane. The subdivision also includes Barberry Street internal to the subdivision (*C.O.S No. 6889; Preliminary Plat*).
4. Flynn Lane Trail is proposed to be located within the Flynn Lane right-of-way, along the eastern boundary of the subject property (*Mullan BUILD*). Tipperary Trail is planned to be located within Open Spaces #4 and/or #5. Open Spaces #4 and #5 are depicted in Exhibit B.
5. The subject property is located within the Mullan BUILD project area. England Boulevard, Tipperary Trail, and Flynn Lane Trail provide access to the subject property and are planned to be improved as part of the Mullan BUILD project. The City received federal funds to pay for a portion of the Mullan BUILD improvements. The Sxwtpqyen Area Special Transportation Impact Fee was adopted to pay for the remainder of the improvements (*City of Missoula Resolution 8502*). Staff recommend a condition of approval requiring the

subdivider to pay the Sxwtpqyen Area Special Transportation Impact Fee prior to final plat approval for Phase 1.

6. 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. Sections 5-050.3.AA and .BB of the City Subdivision regulations requires the Special Improvement District (SID) statement to be provided on the plat and on each instrument of conveyance. Staff recommend a condition of approval requiring a SID/RSID statement on the plat and in the Development Covenants for future improvements to Flynn Lane, England Boulevard, Tansy Lane, Dougherty Drive, Bellflower Way, Barberry Street, Burnet Drive, Mariposa Drive, and Camden Street.
7. 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. Preliminary plans for street signs and traffic control devices are provided on the preliminary construction plans (*Preliminary Construction Plans*). Staff recommend a condition of approval requiring the subdivider to provide a street signage plan and installation of street signage in accordance with the Manual on Uniform Traffic Control Devices, subject to review by Public Works & Mobility (the City Engineer), and City Fire.
8. Section 3-010.1 of the City Subdivision Regulations requires the subdivision to comply with all applicable laws, ordinances, and regulations. Street lighting is required on streets functionally classified as Collectors. The City Engineer recommends a condition of approval requiring the subdivider to provide plans for and install street lighting on collector streets within the subdivision, England Boulevard and Dougherty Drive, and to petition to create a new Special Improvements Lighting District for streetlights on England Boulevard and Dougherty Drive, in accordance with Section 7.3.6 of the Missoula Public Works Standards and Specifications Manual. Section 5-050.3.AA of the City Subdivision Regulations requires SID waivers to be shown on the face of each plat and each instrument of conveyance.
9. Section 3-020.12 requires street names to be reviewed and approved by City Council. Preliminary street names are provided on the preliminary plat.
10. Section 3-020.4.J states the City Engineer may require a traffic study for subdivisions that will generate 200 or more average daily trips. A traffic analysis was completed as part of the Mullan BUILD project for the subject property and further analysis is not required (*Mullan BUILD Technical Memorandum #4*).
11. Section 3-020.2 of the City Subdivision Regulations requires improvements to roads within and adjacent to a subdivision. Title 21, Section 6.3.A.3 states streets shall adhere to the pre-approved new or improved street section provided in Section 6.7. Title 21, Section 1.3.E states that development shall comply with the City Subdivision Regulations, unless an exception (i.e. conflict) is provided in the Form Based Zoning Code. The street sections provided in the Form Based Zoning Code are more recently adopted and apply instead of the street sections provided in Table .2A of the City Subdivision Regulations.
12. Title 21, Section 6.3.A.1 states some dimensional flexibility is permitted for street types to account for varying right-of-way widths, however they shall be designed to have all the basic functional characteristics of the street type.

Flynn Lane

13. Flynn Lane, adjacent to the subject property, is functionally classified as a Neighborhood Bike Street (Two-Way Track). Title 21, Section 6.7.O shows Neighborhood Bike Streets

(Two-Way Track) require a minimum 60-foot-wide right-of-way that includes two 10-foot-wide drive lanes, curb and gutter, a 12-foot-wide two way track on one side, 6-foot-sidewalks, 8-foot-boulevards, and bioswales.

14. Flynn Lane adjacent to the subject property does not meet the standards in Title 21, Section 6.7.O for a Neighborhood Bike Street (Two-Way Track).
15. In order to accommodate all of the required facilities for a Neighborhood Bike Street (Two-Way Track), an additional 3 feet of right-of-way width is necessary. Staff recommend a condition of approval requiring the subdivider to dedicate 3 feet of right-of-way width for Flynn Lane on the west side of the existing right-of-way, along the eastern property boundary.
16. In order to meet the City Subdivision Regulations and Title 21 Zoning Code, staff recommend a condition of approval requiring the subdivider to provide plans for and installation of half street improvements to Flynn Lane, a Neighborhood Bike Street (Two-Way Track), including pave back to drive lane, curb and gutter, boulevard, bioswale, and a two-way pedestrian and bike track, prior to final plat approval for Phase 1.

England Boulevard

17. England Boulevard is functionally classified as a Neighborhood Collector. Title 21, Section 6.7.I shows Neighborhood Collectors require a minimum 90-foot-wide right-of-way that includes two 10-foot-wide drive lanes, curb and gutter, 6-foot-wide protected bike lanes, 7-foot-wide parking lanes, 6-foot-wide sidewalks, 9-foot-wide boulevards, and bioswales.
18. Improvements to England Boulevard were designated with the Mullan BUILD project. Per an existing right-of-way agreement, the City is responsible for cost and installation of primary improvements to England Boulevard including drive lanes and curb and gutter. Installation of primary improvements is currently in process. Secondary improvements including bike lanes, parking lanes, and sidewalks are to be funded through the Sxwtpqyen Area Special Transportation Impact Fees. The agreement states the City will install secondary improvements as funding becomes available but that the subdivider may install secondary improvements. The City Subdivision Regulations requires improvements to streets within the subdivision to be completed.
19. The City will not have funding available to install secondary improvements in time for final plat approval of the Phase 1 final plat. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.I, staff recommend a condition of approval requiring the subdivider to install secondary improvements to England Boulevard, as described in the existing right-of-way agreement, and amend the existing right-of-way agreement, prior to Phase 1 final plat approval. The amendment to the right-of-way agreement shall address crediting/offsets to Impact Fees for installation costs for secondary improvements incurred by the subdivider, pursuant to Title 15.
20. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.I, staff recommend a condition of approval requiring the subdivider to install of boulevards and bioswales for England Boulevard.

Dougherty Drive

21. Dougherty Drive is functionally classified as a Neighborhood Collector. Title 21, Section 6.7.I shows Neighborhood Collectors require a minimum 90-foot-wide right-of-way that includes two 10-foot-wide drive lanes, curb and gutter, 6-foot-wide protected bike lanes, 7-foot-wide parking lanes, 6-foot-wide sidewalks, 9-foot-wide boulevards, and bioswales.

22. Section 3-020.4.D of the City Subdivision Regulations requires the subdivider to incorporate connections to collector and arterial transportation corridors. Dougherty Drive is planned to connect to West Broadway, an arterial transportation corridor. In order to meet the City Subdivision Regulations and to ensure future connection from England Boulevard to West Broadway, staff recommend a condition of approval requiring the subdivider to provide a 90-foot-wide easement for Dougherty Drive in the location shown on the preliminary plat prior to final plat approval for Phase 1.
23. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.I, staff recommend two conditions of approval requiring the subdivider to provide plans for and installation of improvements to Dougherty Drive, a Neighborhood Collector, including two drive lanes, bike lanes, parking lanes, curb and gutter, boulevards, bioswales, and sidewalks, prior to each applicable phase.

Neighborhood Streets

24. Tansy Lane, Bellflower Way, Barberry Street, Burnet Drive, Mariposa Drive, and Camden Street are functionally classified as Neighborhood Streets. Title 21, Section 6.7.L shows Neighborhood Streets require a minimum 55-foot-wide right-of-way width that includes two 10-foot-wide drive lanes, curb and gutter, a 7-foot-wide parking lane on one side, 6-foot-wide sidewalks, 8-foot-wide boulevards, and bioswales.
25. In order to meet the City Subdivision Regulations and Title 21, Section 6.7.L, staff recommend nine conditions of approval requiring the subdivider to provide plans for and installation of improvements to Neighborhood Collectors Tansy Lane, Bellflower Way, Barberry Street, Burnet Drive, Mariposa Drive, and Camden Street, including two drive lanes, curb and gutter, parking lane, boulevards, bioswales, and sidewalks, prior to each applicable phase.

Alleys and Rear Lanes

26. Title 21, Section 6.3.F states “a continuous network of alleys and rear lanes is desirable to serve as the primary means of vehicular ingress to individual lots. Such networks are mandatory in the T5, T4-O, and T4-R Transect Zones, and encouraged in the T3 Transect Zone.”.
27. The subdivision provides a continuous network of alleys and rear lanes. All lots proposed to be zoned T4-O or T4-R are accessed by an alley or a rear lane. All but three lots proposed to be zoned T3 are accessed by an alley or rear lane (*Preliminary Plat; Master Site Plans*). The proposed subdivision complies with Title 21, Section 6.3.F.
28. Title 21, Section 6.7.U shows that alleys require a minimum 24-foot-wide right-of-way width, including 18-foot-wide pavement and an inverted crown (valley gutter). Sumac Lane, an alley, is the only fire access for some lots. See the variance request section of this report for more information. City Fire indicated 20-foot-wide pavement is necessary to provide adequate fire access to lots.
29. In order to meet Title 21, Section 6.3.U, staff recommend a condition of approval requiring plans for and installation of improvements to alleys including paving and valley gutter, prior to final plat approval for each phase. Staff recommend the condition state improvements to Sumac Lane shall include 20-foot-wide pavement for fire truck access.
30. Title 21, Section 6.7.V shows that rear lanes require a minimum 20-foot-wide right-of-way width, including 12-foot-wide pavement.

31. In order to meet Title 21, Section 6.3.V, staff recommend a condition of approval requiring plans for and installation of improvements to rear lanes including paving, prior to final plat approval for each phase.

Non-Motorized

32. Improvements to Flynn Lane Trail and Tipperary Trail were designated with the Mullan BUILD project. Trail improvements are to be funded through the Sxwtpqyen Area Special Transportation Impact Fees. The agreement states the City will install improvements as funding becomes available but that the subdivider may install improvements. Section 3-020.15.F.1 of the City Subdivision Regulations requires subdividers to construct trails depicted in local or neighborhood plans.
33. The City will not have funding available to install improvements to Flynn Lane Trail and Tipperary Trail in time for final plat approval of the Phase 1. In order to meet Section 3-020.15.F.1 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to install improvements to Flynn Lane Trail and Tipperary Trail, and to amend the existing right-of-way agreement, prior to Phase 1 final plat approval. The amendment to the right-of-way agreement shall address crediting/offsets to Impact Fees for installation costs for secondary improvements incurred by the subdivider, pursuant to Title 15.
34. Title 21, Section 2.4.A.3 requires any block face within the T3, T4-O, and T4-R transect zones that exceeds 600 feet in length to contain a mid-block pedestrian access of at least 12 feet in width. In order to comply with Title 21 zoning code, staff recommend four conditions of approval requiring the subdivider to provide plans for and installation of mid-block pedestrian paths within common areas with non-motorized public access easements through block faces exceeding 600 feet in length, prior to final plat approval of each applicable phase.
35. Section 3-020.15.B.1 of the City Subdivision Regulations requires the subdivision to provide active transportation facilities that provide continuous access to all lots within the subdivision and access to adjoining developments. The subdivision application packet shows sidewalks along all street frontages within the subdivision (*Grading, Drainage, and Road Plans*). Staff recommend conditions of approval requiring installation of sidewalks for all streets.
36. The subdivider is requesting a variance to Section 3-030.1.C.3 of the City Subdivision Regulations to create lots which do not abut a public or private street or road (*Variance Requests*). See the variance request section of this report for more information. Lots applicable to the variance front Open Space #2 and Open Space #3 rather than streets (*Preliminary Plat*). In order to comply with Section 3-020.15.B.1 of the City Subdivision Regulations requiring active transportation facilities to all lots, staff recommend two conditions of approval requiring plans for and installation of improvements to the pedestrian paths within these open spaces along the frontage of abutting lots.

Transit

37. Section 3-020.4.G of the City Subdivision Regulations states when development is adjacent to or within one quarter mile of an established public transit or school bus route, the subdivider may be required by the City Engineer to construct bus stop facilities along with accessible routes, meeting ADA standards, to those facilities.
38. City Engineering (Public Works & Mobility) will not be requiring the installation of bus stop facilities for this subdivision. The nearest Mountain Line bus stops are located

approximately 0.8 miles from the southeast corner of the subject property, at the intersections of Connery Way and Flannagin Lane, and Connery Way and American Way. These bus stop serve Route 11. The subject property is not within ¼ mile of an established public transit route (*Section B, Bus Route Map*).

39. The subject property is not within the Missoula Urban Transportation District. If City Council imposes staff's recommended conditions of annexation approval, the subdivider must petition to include the subject property within the Missoula Urban Transportation District.
40. The subject property is within the walking boundary for Hellgate Elementary and Middle School. The nearest school bus stop serving Big Sky High School is located at the intersection of England Boulevard and Mary Jane Boulevard, approximate 0.15 miles from the southeast corner of the subject property (*Section B, Bus Routes Map*).

Conclusions of Law:

1. The West End Homes Subdivision and master site plan will meet the road improvement and non-motorized facility standards in the Missoula City Subdivision Regulations and Title 21 Form Based Zoning Code if the recommended conditions of approval are imposed.
2. The West End Homes Subdivision and master site plan provides active transportation facilities that provide safe routes to bus stops, open space, other neighborhoods, and all lots within the subdivision in compliance with Section 3-010.7 and 3-020.15.B.1.b of the City Subdivision Regulations if the recommended conditions of approval are imposed.

Rights-of-Way and Easements

Findings of Fact:

1. Section 3-020.3.B of the City Subdivision Regulations requires all streets within a subdivision to be dedicated public right-of-way or, at the City Engineer's discretion, may be a private street and public access with private maintenance easement. Title 21, Section 2.3.D.2.e states new streets and alleys/rear lanes shall be dedicated to the City and publicly owned. Section 3-060.1 of the City Subdivision Regulations requires easements to be provided for utilities, drainage, watercourse, channel, ditch, stream, vehicular, and pedestrian access.
2. All streets, alleys, and rear lanes in the subdivision are proposed to be dedicated public right-of-way. All utilities and drainage are located within easements (*Preliminary Plat; Grading, Drainage, and Road Plans*).
3. In order to comply with Sections 3-020.3.B and 3-060.1 of the City Subdivision Regulations and Missoula City Public Works and Specifications Manual, staff recommend a condition of approval requiring all proposed rights-of-ways and easements to be shown on the face of each plat and identified for their width, purpose, and the recorded book and page numbers.

Conclusions of Law:

1. The West End Homes Subdivision will meet the easement and right-of-way requirements of Sections 3-020.3.B and 3-060.1 of the City Subdivision Regulations, and Title 21, Section 2.3.D.2.e, if the recommended conditions of approval are imposed.

Drainage

Findings of Fact:

1. Section 3-040 of the City Subdivision Regulations provides minimum standards for site grading and control of stormwater runoff.

2. Section 3-040.2.E of the City Subdivision Regulations states all drainage systems must meet the minimum standards of the Montana Department of Environmental Quality (DEQ), as required by MCA Title 76, Chapter 4 and 5, Part 1, as amended, and all applicable state and local regulations.
3. The subdivision application includes a Preliminary Grading Drainage Engineering Design Report that evaluates pre- and post-development conditions. Additionally, a Preliminary Stormwater Prevention Pollution Plan has been provided (*Grading, Drainage, and Road Plans*). Stormwater will be managed using drywell sumps and shallow detention ponds (pg. 1, *Preliminary Grading Drainage Engineering Design Report*).
4. Title 21, Section 4.7.B.1 requires the use of light imprint storm drainage methods. The subdivision proposes to utilize gutters, bioswales, yards, and detention ponds (*Preliminary Grading Drainage Engineering Design Report; Grading, Drainage, and Road Plans*).
5. Section 5-020.11 and 3-040 of the City Subdivision Regulations requires the subdivider to submit a complete grading and drainage plans showing proposed grade of streets, proposed drainage facilities, and a storm water pollution prevention plan for all lots, blocks, and other areas meeting Montana Department of Environmental Quality standards, subject to the review and approval of the City Engineer. All drainage facilities must be constructed in accordance with the approved plans.
6. In order to comply with Section 5-020.11 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to provide plans for and installation of grading, drainage, and stormwater facilities, subject to review and approval by Montana Department of Environmental Quality and Public Works & Mobility, prior to final plat approval for each phase.

Conclusions of Law:

1. The West End Homes Subdivision will meet the grading and drainage standards of the Missoula City Subdivision Regulations and the Montana Department of Environmental Quality, as well as the light imprint storm drainage requirements of Title 21 Zoning Code, if the recommended conditions of approval are imposed.
2. Final grading, drainage, and stormwater plans will be reviewed and approved by the City Engineer prior to final plat approval of each phase if the recommended conditions of approval are imposed.

Water Supply, Sewage Disposal, and Solid Waste

Findings of Fact:

1. The subject property is within the Utility Services Area Boundary (*City Central Maps*).
2. Section 3-010.5 of the City Subdivision Regulations requires subdivisions to be served by adequate public facilities and services including water supply, sewage disposal, and solid waste disposal.
3. The subject property is located within the Mullan BUILD project area and is subject to the Mullan BUILD Water and Sewer Special Development Fee which reimburses the City of Missoula for utility main extensions installed as part of the Mullan BUILD project adjacent to the subject property. Reimbursement is required prior to connection to a City of Missoula utility main (*City of Missoula Resolution 8590*). Staff recommend a condition of approval requiring the subdivider to pay the Mullan BUILD Water and Special Sewer Development Fee prior to release for construction plans for Phase 1.

4. Utility main extensions are planned from existing mains located in England Boulevard, Dougherty Drive, and Camden Street. The subdivision application includes a water and sanitation report (*Preliminary Construction Plans; Water and Sanitation Report*).
5. In order to comply with Section 3-010.5 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to provide plans for and installation of water supply and sewage disposal facilities for review and approval by Public Works and Mobility, City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval for each phase.
6. Section 3-070.1 of the City Subdivision Regulations states the means for solid waste disposal is subject to approval of the City Council. Republic Services is expected to provide solid waste disposal service to the subdivision (pg. 26, *Subdivision Application*). Staff recommend a condition of approval requiring the subdivider to submit plans for solid waste disposal for review and approval by City/County Health Department, and Montana Department of Environmental Quality, prior to final plat approval for each phase.

Conclusions of Law:

1. Public sewer and water services are available to the subdivision and will be in compliance with the City Subdivision Regulations, if the recommended conditions of approval are imposed.
2. Solid waste disposal service will be available to the subdivision and will be in compliance with the City Subdivision Regulations, if the recommended conditions of approval are imposed.
3. Review of water supply, sewage disposal, and solid waste is under jurisdiction of state and local health authorities under the Montana Sanitation and Subdivision Act.

Parks and Recreation

Findings of Fact:

1. Title 21, Section 2.1.C requires dedication of open space (parkland) equal to 11% or 0.02 acres per dwelling unit, to a maximum of 10 dwelling units, whichever is greater. The open space requirements are calculated based on the maximum allowable densities of each zoning district within the subdivision. The methods for calculation are clarified in a 2022 Zoning Officer Opinion (*Master Site Plan*).
2. The Master Site Plan and Exhibit B show 5 open spaces totaling 28.45 acres. Open Space #4, shown on Exhibit B, is proposed to meet the minimum open space dedication requirement plus the acreage necessary to utilize the incentive in Title 21, Section 2.1.D.1. All other open spaces are provided in excess of the minimum requirement. Staff recommend a condition of approval requiring the subdivider to show and label Open Space #4 and Open Space #5 on the Phase 1 final plat.
3. In order to comply with Title 21, Section 2.1.C, staff recommend a condition of approval requiring dedication of Open Space #4 and requiring the area of Open Space #4 to meet the minimum parkland dedication requirements plus the additional land dedication required to apply a 10% increase in the T4-R district (3-080, *City Subdivision Regulations; 2.1.C, Title 21 Zoning Code*).
4. Open Space #5 is in excess of the open space dedication requirements. The city cannot require dedication of Open Space #5, as the dedication requirement is already met

through Open Space #4. Staff recommend a condition of approval requiring a note on the Phase 1 final plat and in the Development Covenants stating the Developer retains the right to request approval of a subdivision and rezoning for Open Space #5 for future development in compliance with Title 21 Zoning Code and the Sxwtpqyen Neighborhoods Master Plan, as this land is not required for parkland dedication”.

5. Staff recommend a condition of approval requiring plans for and installation of improvements to all Open Spaces, including but not limited to: grading, application of topsoil, installation of commercial grade irrigation system, installation of turf grass and dryland seed or sod, and installation of park trees in compliance with Section 5-020.14.H of the City Subdivision Regulations.
6. Staff recommend a condition of approval requiring the subdivider to provide maintenance plans for common area per Section 5-020.14.K.10 of the City Subdivision Regulations which requires a maintenance program for common area and mutually controlled facilities.
7. Section 5-050.5.C of the City Subdivision Regulations requires the subdivider to submit a boulevard landscaping plan. For findings of fact regarding installation of boulevards, see the roads section of this report. Preliminary plans for boulevard landscaping are provided in the preliminary construction plans. Staff recommends a condition of approval requiring the subdivider to submit final plans for boulevard landscaping, prior to final plat approval. Staff recommend a condition of approval requiring the subdivider to install boulevard landscaping adjacent to Open Spaces. For boulevards adjacent to development lots, boulevard landscaping installation is the requirement of the lot owner, prior to Certificate of Occupancy. Staff recommend a condition of approval requiring the subdivider to include a note in the Development Covenants apprising future owners of this requirement.

Conclusion of Law:

1. Open Space (parkland) dedication is required in this subdivision in accordance with Title 21 Zoning Code and the City Subdivision Regulations. The subdivision, as proposed, will meet the open space dedication requirements if the recommended conditions of approval are imposed.
2. 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 are imposed.

Schools

Findings of Fact

1. The subject property is within the Hellgate Elementary and Middle School and Big Sky High School districts (pg. 29, *Subdivision Application*).
2. The Superintendent of Hellgate Elementary and Middle School indicated the school currently has 1,500 students but can accommodate up to 1,800 students, and if necessary up to 2,000 students (*Application Packet – School Inquiry*).
3. The Executive Director of Business and Operations for Missoula County Public Schools indicated Big Sky High School is currently experiencing growth and would be updating the district demographic study. No additional comments were received following request for agency comment at the time of sufficiency review (*Application Packet – School Inquiry*).

Conclusion of Law:

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

Fire Department

Findings of Fact:

1. The Missoula City Fire Department will serve the subdivision. The nearest station is located approximately 6.7 miles from the subject property (pg. 30, *Subdivision Application*).
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 new fire hydrants, proposed to be installed with each phase. A fire hydrant layout exhibit was provided with the subdivision application.
4. In order to comply with Section 3-070.1 of the City Subdivision Regulations, staff recommend a condition of approval requiring the subdivider to provide plans for fire suppression water flow and hydrant placement, prior to final plat approval for each phase.
5. 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 (3-010.1.F, *City Subdivision Regulations*).

Conclusion of Law:

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

Law Enforcement

Findings of Fact:

1. Upon annexation, the subdivision will be located within the jurisdiction of the Missoula Police Department.
2. The Missoula Police Department did not provide comments on the subdivision or annexation requests.

Conclusion of Law:

1. Law enforcement service is available to the subdivision.

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

Findings of Fact:

Natural Environment

1. Section 5-020.6.D states the subdivider must identify the resources and evaluate the impacts on those resources including adjacent public lands, cultural resources, hydrological characteristics, soil characteristics, and vegetative cover types.
2. The subject property is not adjacent to public lands containing natural resources (pg. 12, *Subdivision Application*).

3. The subject property is currently vacant and does not contain any surface water features, riparian vegetation, wetlands, critical plant communities, or steep slopes (*Preliminary Plat*; pgs. 12 & 19, *Subdivision Application*). The subject property is located within floodplain designation Zone X, area of minimal flood hazard (*FEMA Map Service Center*).
4. Subdivision Regulations Section 3-010.1F requires the subdivision to comply with other regulations applicable to the land proposed for subdivision.
5. The Missoula County Noxious Weed Management Plan adopted by Resolution 2012-063 requires a weed management plan as part of subdivision plans.
6. The application packet includes a weed management and revegetation plan. The subject property currently contains bare soil intermixed with cover crop and noxious weeds (*Section B, Vegetation Exhibit*). The weed management plan recommends herbicide treatments for the noxious weeds and revegetation of disturbed areas with red fescue and perennial rye grass (*Approved Weed Management and Revegetation Plan*).
7. Staff recommend a condition of approval requiring the subdivider to provide and append the Weed Management and Revegetation Plan to the Development Covenants, prior to final plat approval.
8. A Biological Assessment was conducted as part of the Mullan BUILD Project and was included in the application packet (*HDR Biological Assessment*). The subject property is within the Mullan BUILD area which was assessed for environmental impacts prior to development of the Sxwptqyen Master Plan and Title 21 Form Based Zoning Code for the area.
9. The application packet indicates the property may be in the range of Grosbeak, Western Spotted Skunk, Rufous Hummingbird, Little Brown Myotis, North American Porcupine, American Wolverine, Grizzly Bear, Yellow-billed Cuckoo, Loggerhead Shrike, Bald Eagle, and Golden Eagle. The covenants include information for lot purchasers about living with wildlife and advises lot owners of potential issues associated with wildlife concerning pets, garbage, and other potential areas of conflict (pg. 19, *Subdivision Application*; *Agency Comment MFWS*; *Proposed Draft Covenants*).
10. The parcel is currently vacant. No historical or cultural resources are located on the subject property. There is a historic structure located on an abutting parcel to the north, over 400 feet from the subject property. No historic or cultural resources will be disturbed as a result of the proposed subdivision (pgs. 12 & 13, *Subdivision Application*).

Conclusion of Law:

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

CRITERION G: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. Section 5-020.6.G of the City Subdivision Regulations states the subdivider must demonstrate the proposed subdivision will have no adverse impact on conditions that relate to public health and safety including disease control and prevention, emergency services, environmental health, flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes and other natural hazards, high voltage lines or high pressure gas lines, on-site or nearby off-site land uses that create nuisance (e.g. noise, dust, smoke, unpleasant odors), and are or vehicular traffic safety hazards.

2. The subject property does not contain steep slopes, floodplain, unstable soils, high voltage lines, or high-pressure gas lines (*FEMA Map Service Center*; pg. 21, *Subdivision Application*; *Master Site Plans*).
3. The subject property is located within an air stagnation zone. The Development Covenants include language stating no wood burning devices of any type shall be permitted or used within the subdivision and all lot owners shall abide by laws and regulations relating to air pollution (*Proposed Draft Covenants*).
4. Agency comment was provided by the Missoula Water Quality District stating there is high groundwater in the area. Additionally, realignment of a portion of Grant Creek to a more natural placement is proposed as part of the Mullan BUILD project. This realignment may influence groundwater dynamics. The Missoula Water Quality District recommends water elevation be reassessed throughout the development process to ascertain the appropriateness of basements (*Agency Comment – Missoula Water Quality District*).
5. A groundwater modeling study was provided in the application packet. The Groundwater Modeling Study shows the subject property may have a depth to groundwater of 10 to 16 feet for portions of the subject property.
6. Staff recommend a condition of approval requiring a note on the plat and in the covenants stating “Basements shall be prohibited in all phases until such time as the developer provides sufficient evidence to the appropriate agencies that no threat to the public safety or loss of property will result in those area proposed for basements”.
7. For findings of fact on provision of emergency services, see Criterion C of this report. For findings of fact and mitigation related to nuisances created by off-site agriculture, see Criteria A and B of this report.
8. The subject property is within the Airport Influence Area and a portion of the property is within the Extended Approach and Departure Area. Staff recommend a condition of approval requiring a statement on the plat noting the subject property is within the areas and apprising lot owners of associated risks (3-010.2, *City Subdivision Regulations*; *Airport Authority Comment*).

Conclusion of Law:

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

C. PRIMARY CRITERIA COMPLIANCE

This subdivision complies with:

1. SURVEY REQUIREMENTS

Findings of Fact:

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.
2. City Subdivision Regulations Section 4-070 includes a process to ensure final plats contain all necessary seals and certificates prior to filing and comply with state survey requirements.

Conclusion of Law:

1. This proposal meets the survey requirements.

2. SUBDIVISION REGULATIONS

Findings of Fact

1. Subdivisions are required to comply with the local subdivision regulations provided for in Part 5 of M.C.A. 76-3.

Conclusion of Law:

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

3. REVIEW PROCEDURE

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula City Subdivision Regulations.
2. Notice of a public hearing on this subdivision was posted on the property on November 21, 2022, and letters were mailed to adjacent property owners on November 15, 2022. Legal notice was published in the Missoulian on November 20, 2022 and November 27, 2022.
3. The public hearing before the Missoula Consolidated Planning Board is scheduled for December 6, 2022 at 6 pm. The public hearing before the City Council is scheduled for December 19, 2022 at 6 pm.
4. City Council is scheduled to give final consideration to this subdivision on January 9, 2022. The 80-working day review period for this subdivision expires on January 23, 2022.

Conclusion of Law:

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

D. PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

1. Section 3-020.3 requires that perpetual legal access to subdivisions must come from an established public road or by a public perpetual access easement or right-of-way adequate to serve the subdivision. Access to the subdivision will be from Flynn Lane, an existing public road classified as a Neighborhood Bike Street (Two-Way Track) (*Preliminary Plat*).
2. Legal and physical access would be provided to the subdivision via Flynn Lane. Additional new access to the lots would be provided via England Boulevard, Dougherty Drive, and six new public rights-of-way (*Preliminary Plat*).

Conclusion of Law:

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

VI. VARIANCE REQUEST #1 – ACCESS TO LOTS FROM STREET OR ROAD

A variance is requested from Article 3-030.1.C.3 of the City Subdivision Regulations which prescribes lot and block standards and states “each lot must abut on and have access to a public or private street or road”.

Lots 156 through 162 and Lots 208 through 218 do not abut on and have access to a public or private street or road. Said lots front open spaces that contain a public access easement with a pedestrian path. To the rear, the lots have vehicular access from an alley named Sumac Lane (*Preliminary Plat*).

RECOMMENDATION:

Approve the variance request from Article 3, Section 3-030.1.C.3 of the City Subdivision Regulations, which requires each lot to abut and have access to a public or private street or road, to allow 18 lots to be provided access via an alley and public access easement containing a pedestrian path.

FINDINGS:

The City Council must consider the following criteria and make a finding, based upon the evidence presented to it in each specific case, that

1. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.
 - a. Sumac Lane is proposed to have 20-foot-wide pavement which is sufficient for fire truck access (*Grading, Drainage, and Road Plans; Preliminary Plat*).
 - b. Both non-motorized and motorized access to the lots is provided (*Preliminary Plat*).
 - c. In order to ensure adequate fire access from Sumac Lane to the rear of the lots, staff recommend a condition of approval requiring a statement in the Development Covenants noting that Lots 156 through 162 and Lots 208 through 218 shall not allow fences along the rear property line, shall have address numbers visible from Sumac Lane, and structures shall have access on the rear of the building through a man door.
 - d. Lots 210 through 215 are sized and designed to allow for 6 attached houses (townhouses/rowhouses). If small building access cannot be met at the time of building permit approval, fire suppression sprinkler systems must be installed to meet Fire Code. Staff recommend a condition of approval requiring the Development Covenants to state that fire suppression sprinkler systems must be installed on these lots if small building access cannot be met (*Preliminary Plat; Correspondence with City Engineering*).
 - e. Lots without access from a public road or street have both pedestrian and vehicular access and can be served by City Fire if the recommended conditions of approval are imposed.
 - f. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;
 - a. The alignment of England Boulevard and Dougherty Drive were established with county road easements. Additionally, England Boulevard is part of the Mullan BUILD project. Camden Street is existing to the east of the subject property, and should continue through the subject property as proposed (*COS and Subdivision History; County Property Information System; Mullan BUILD*).

- b. Title 21, Table 3-1 establishes lot depth requirements. The design of the subdivision must work within the constraints of the existing Dougherty Drive, England Boulevard, and Camden Road street alignments while meeting the minimum lot depth requirements.
 - c. Section 1.2 of Title 21 Zoning Code states the code intends to provide a compact, pedestrian oriented development. The subdivision proposes access to the front of Lots 156 through 162 and 208 through 218 from pedestrian paths in open spaces within public access easements (*Preliminary Plat*).
 - d. The variance request is unique to the subject property which is constrained by existing street alignments. Additionally, the variance request is unique to the Sxwtpqyen Neighborhoods Area which promotes compact, pedestrian oriented design.
3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;
- a. The alignment of England Boulevard and Dougherty Drive were established with county road easements. Additionally, England Boulevard is part of the Mullan BUILD project. Camden Street is existing to the east of the subject property, and should continue through the subject property as proposed (*COS and Subdivision History; County Property Information System; Mullan BUILD*).
 - b. Title 21, Table 3-1 provides lot depth requirements. Lots zoned T4-R or T4-O shall have a minimum lot depth of 80 feet.
 - c. Immediately south of Camden Lane, blocks are proposed with two tiers of lots which is standard for ensuring lots have street access along the front. The lots within blocks immediately south of Camden Street are zoned T4-R and T4-O and have a depth of 98 feet, meeting the minimum depth requirements while remaining an appropriate size for compact development (*Preliminary Plat*).
 - d. Bellflower Way is proposed to access the subdivision from Flynn Lane, just south of the aforementioned blocks. Bellflower Way curves southwest at Lot 162 in order to prevent conflict with the Dougherty Drive and England Boulevard intersection (*Preliminary Plat*).
 - e. In order to provide a standard two-tiered block south of Camden Street, and to avoid conflicts with the existing alignment of the Dougherty Drive and England Boulevard intersection, Bellflower Way must curve southwest which creates additional space south of Lots 207 through 219 and 155 through 162. Rather than creating narrow lots with excessive depths in order to create frontage along Bellflower Way, the subdivider proposes to designate the additional space as Open Space.
 - f. Undue hardship is created by existing road alignments through the subject property.
4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy (Sxwtpqyen Neighborhoods Master Plan);
- a. The variance will not violate the provisions of Title 21 Zoning Code or the Sxwtpqyen Neighborhoods Master Plan.

5. The variance will not cause an increase in public costs;
 - a. The pedestrian paths will be maintained by the Home Owner's Association rather than by the City and will not result in costs to the public.
 - b. The variance will not cause an increase in public costs.
6. The hardship has not been created by the applicant or the applicant's agent or assigns.
 - a. The hardship has not been created by the applicant or the applicant's agent or assigns. The hardship is created by existing road alignments within the subject property.

VII. VARIANCE REQUEST #1 – PARKLAND ADJACENT TO STREET

A variance is requested from Article 3-080.8.B.3 of the City Subdivision Regulations which requires parks and open spaces to be "adjacent to public streets on at least 50% of the park's perimeter".

The open space area shown as "Flynn Square Park" in the application packet, including Open Space #4 and #5 in Exhibit B, does not have 50% of the perimeter adjacent to public streets. The open space area is adjacent to England Boulevard which is a public street and a rear lane (similar to an alley) which would be located in public right-of-way. Including England Boulevard and the rear lane, 42% of the open space area perimeter is adjacent to public right-of-way (*Variance Requests; Preliminary Plat*).

RECOMMENDATION

Approve the variance request from Article 3, Section 3-080.8.B.3 of the City Subdivision Regulations, which requires parks to be adjacent to public streets on at least 50% of the parks perimeter, to allow for this requirement to be met with future adjacent development per the Development Agreement.

FINDINGS:

The City Council must consider the following criteria and make a finding, based upon the evidence presented to it in each specific case, that

1. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.
 - a. Open Spaces #4 and #5 are proposed to be accessible to the public from England Boulevard and a rear lane. Both the England Boulevard and the rear lane are proposed to be public-right-of-way (*Preliminary Plat*).
 - b. The rear lane does not qualify as a street or road. However, 42% of the open space areas are adjacent to public right-of-way (*Variance Requests*).
 - c. The subdivision proposes more Open Space than is required. The majority of the Open Space is located within the Extended Approach and Departure Area (EADA) zone (*Master Site Plans*). Designating excess Open Space within the EADA zone in order to protect public health and safety creates constraints in terms of Open Space design and lot layout.
 - d. As mitigation, the subdivider proposes a development agreement, working with the adjacent property owner to the south, stating that future development on the parcel to the south will provide a road adjacent to the Open Space, meeting the requirements of Section 3-080.B.3 with future development (pg. 3, *Variance*

Requests). The city is currently working with the subdivider to establish final language for the development agreement. The development agreement will come before City Council at a future date.

- e. Currently, adequate access to the large Open Spaces can be provided from England Boulevard and the rear lane. Future development in the area will provide additional access to the Open Spaces from a public street or road.
 - f. The granting of this variances does not result in a threat to the public safety, health, or welfare and is not injurious to other persons or property. The variance provides additional protection of public safety by allowing for excess open space to be located within the EADA zone.
2. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;
 - a. The condition upon which the requires for variance is based is unique to the property because over 50% of the subject property is located within the Airport Extended Approach and Departure Area (EADA) zone (*Master Site Plans*).
 3. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, undue hardship to the owner would result if the strict requirements of these regulations are enforced;
 - a. Title 21 limits density within the EADA zone and requires clustering of lots intended for development to create Open Space areas within the EADA zone (2.1.E.2, *Title 21 Zoning Code*).
 - b. Over 50% of the subject property is located within the EADA zone, limiting potential lot layouts within the subdivision (*Master Site Plans*).
 - c. The requirement to have 50% of the Open Spaces adjacent to a public road or street would either result in the loss of developable lots within the EADA zone or would create non-contiguous open spaces, limiting options for design and recreational use.
 4. The variance will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the Growth Policy (Sxwtpqyen Neighborhoods Master Plan);
 - a. Approval of the variance request will not violate the provisions of Title 21 Zoning Code or the Sxwtpqyen Neighborhoods Master Plan.
 5. The variance will not cause an increase in public costs;
 - a. Approval of the variance request will not cause an increase in public costs. Approval of the variance could prevent installation of public roads that do not serve the purpose of improved connectivity or access, reducing the potential of future unnecessary road maintenance costs for the public.
 6. The hardship has not been created by the applicant or the applicant's agent or assigns.
 - a. The hardship has not been created by the applicant or the applicant's agent or assigns. The subdivision must comply with the density restrictions and developable lot clustering requirements of the EADA zone which covers 50% of the subject property.

VIII. SUBDIVISION ATTACHMENTS

1. Subdivision Attachment A: Final Plat Requirements
2. Subdivision Attachment B: Project History Form
3. Exhibit B: Proposed Open Spaces #4 and #5

IX. REFERENCES CITED

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

Plans and Regulations

M.C.A.: Montana Code Annotated, 2021

https://leg.mt.gov/bills/mca/title_0760/chapters_index.html

Subdivision Regulations: *City of Missoula Subdivision Regulations*, adopted by the Missoula City Council and amended on July 18, 2022

<https://www.ci.missoula.mt.us/DocumentCenter/View/58232/Missoula-City-Subdivision-Regulations2022-Amend?bidId=>

Annexation Policy, adopted July 22, 2019

http://www.ci.missoula.mt.us/DocumentCenter/View/50374/July-23_Annexation-Policy-as-Amended?bidId=#:~:text=City%20annexation%20provides%20a%20united,addressing%20community%20goals%20and%20values.

Title 21, Zoning Code, adopted December 14th, 2020

https://ehq-production-us-california.s3.us-west-1.amazonaws.com/820664ae4da9d4c9bda26447e634000203b170a4/original/1607714649/Mullan_FBC_FINAL-DRAFT_2020-12-10-RFS.pdf_8f9b839f173b7c586b82484c55447b9a?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQAKICO37GBEP%2F20221130%2Fus-west-1%2Fs3%2Faws4_request&X-Amz-Date=20221130T103943Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=a0191e48caffbdf79e469e95f5a4cfb582a23eed2edf6263fc9ce231ebe40b90

Missoula Public Works Standards and Specifications Manual, amended December 1, 2022

<http://www.ci.missoula.mt.us/2708/Public-Works-Standards-Specifications-Ma>

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NRCS Soils Report_Updated
Geotechnical Report – Updated Cover Letter

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Preliminary Plat Half Size
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Neighborhood Meeting Letter
School Inquiry
Service Area Inquiry
Stage 2 Engineering Comment
City of Missoula Lotted Area and Incentive Update
2022.04.05 DRT Update

Other References

Missoula County Property Information System

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

City Central Maps

<https://missoulamaps.ci.missoula.mt.us/portal/apps/sites/#/gis>

FEMA Map Service Center

<https://msc.fema.gov/portal/home>

Mullan BUILD

<https://www.mullanbuild.com/improvements-1>

City of Missoula Resolution 8502

<https://www.ci.missoula.mt.us/DocumentCenter/View/55978/Resolution-8502>

**SUBDIVISION ATTACHMENT A
WEST END HOMES SUBDIVISION
FINAL PLAT REQUIREMENTS**

If City Council preliminarily approves the proposed subdivision, the preliminary approval applies to the subdivision as proposed on the preliminary plat and in the application packet, as amended by any conditions of approval. Development Services and other applicable agencies will review for the following items, in addition to conditions of approval, Subdivision Regulations Section 5-050, and the final plat checklist, prior to final plat approval of each phase in order to ensure compliance with the subdivision regulations, other applicable regulations, and the proposed preliminary plat and submittal packet:

Grading and Drainage

- A.** As per Section 5-020.11 of the City Subdivision Regulations, the subdivder shall submit a complete grading and drainage plan that meets Montana DEQ standards prior to final plat approval, subject to review and approval of the City Engineer.

SUBDIVISION ATTACHMENT B SUBDIVISION PROJECT HISTORY

Project: West End Homes Subdivision, Sxwtpqyen Master Site Plan, and Annexation,
Applicant: Evergreen Housing Solutions, LLC
Representative: IMEG Corp.

Pre-application Meeting: Scoping Meeting 5/14/2021; Pre-application Meeting 8/2/2021.

Element: Submitted 1/7/2022, 2/7/2022, 3/14/2022, 4/22/2022, 5/9/2022; Complete 5/13/2022.

Sufficiency: Submitted 5/17/2022, 7/26/2022, 8/31/22; Sufficient 9/22/2022.

Start Governing Body Review: 9/23/2022

80-day Deadline: 1/23/2022

Extension Granted: No.

City Council Consent Agenda: 11/28/2022

Planning Board: 12/6/2022

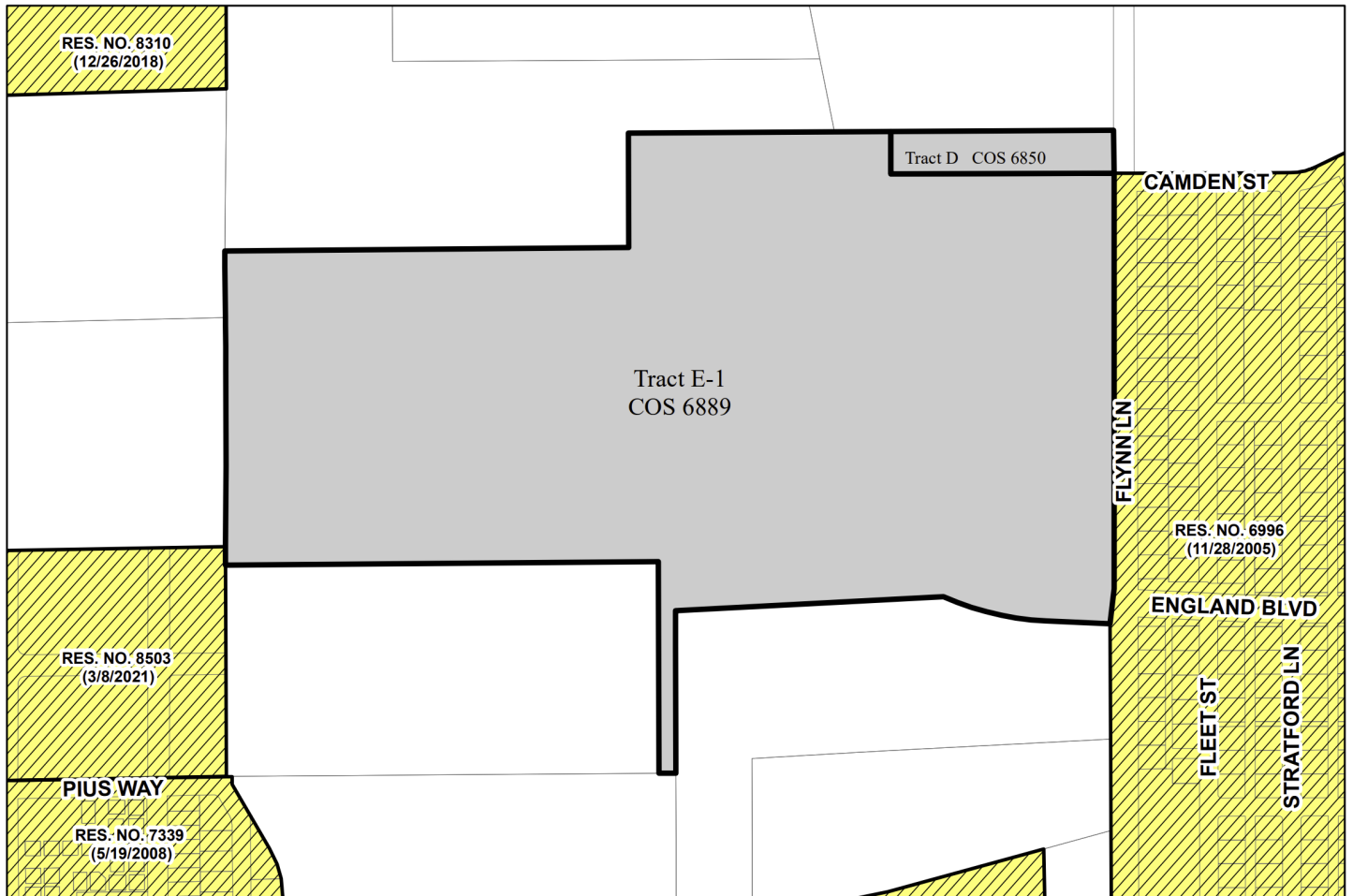
Land Use and Planning Committee: 12/14/2022; 12/21/2022 (tentative)

City Council Public Hearing: 12/19/2022

City Council Final Consideration: 1/9/2022

Public Notice: Posted 11/21/2022; Adjacent Property Owner Letters Sent 11/15/2022; Legal Ad in Missoulian 11/20/2022 and 11/27/2022.

EXHIBIT A: ANNEXATION MAP



**Tract E-1 of Certificate of Survey 6889
&
Tract D of Certificate of Survey 6850**

All Located in Section 7, T.13 N., R.19 W., P.M.M.
Prepared by: CITY OF MISSOULA GIS SERVICES



0 90 180 270 360 450
Feet

Legend

- Proposed Annexation
- Annexation Resolution
- Parcel Boundaries
- City Limits

EXHIBIT B: PROPOSED OPEN SPACES #4 AND #5

