

**HORSE CREEK HILLS MAJOR SUBDIVISION
PRELIMINARY PLAT APPROVAL
BROADWATER COUNTY COMMISSION**

At a regular meeting of the Broadwater County Commissioner, held on July 11, 2022, the Board of Commissioners made the following Findings and Conditions for the preliminary plat approval of Horse Creek Hills Major Subdivision.

SUBDIVIDER: 71 Ranch, LP
40 71 Ranch Lane
Martinsdale, MT 59053

SUBDIVIDER'S REPRESENTATIVE: Allied Engineering Services, Inc.
32 Discovery Drive
Bozeman, MT 59718

LEGAL DESCRIPTION: Situated in Section 31, Township 9 North, Range 2
East, Broadwater County, Montana

GENERAL LOCATION: The proposed subdivision is located off Lower Confederate Road, approximately eighteen and one half (18.5) miles northeast of Townsend, Montana.

BACKGROUND

The forty-one lot subdivision consists of thirty-nine residential lots and two commercial lots. Lots range in size from 5.35 acres to 31.77 acres. Open space is proposed as consisting of 14.18 acres. Waster water will be provided via individual on-site wastewater treatment systems for each lot. Water will be provided to each lot via individual on-site wells. Access will be provided from Lower Confederate Road via a proposed internal road network.

The Preliminary Plat Application was received on August 12, 2020 and was deemed sufficient on August 17, 2021 by Community Development Director Nichole Brown. The Broadwater County Planning Board held a public hearing on September 29, 2021. A second public hearing was held before the County Planning Board on October 27, 2021 and the County Planning Board recommended the subdivision be denied. The Broadwater County Commission held a first reading on the application on November 1, 2021. An extension of the review period was granted on November 6, 2021. The subdivision was remanded back to the County Planning Board. The County Planning Board held another public meeting on November 30, 2021 and made no recommendation on the application. A second extension of the review period was granted on December 17, 2021. The County Commission held a public meeting on January 19, 2022 and it was determined new information had been provided. Two additional County Planning Board Public Hearings were held on April 5, 2022 and June 21, 2022 regarding the new information. The County Commission held Public Meetings on July 5, 2022 and July 11, 2022. On July 11, 2022, the County Commissioners recommended conditional approval of the Preliminary Plat Application.

I. EXISTING DEVELOPMENT AND USES

The property is currently vacant, unirrigated land. Historically, the property has been used for grazing.

II. ADJACENT LAND USES

North: State owned—agricultural land

South: U.S. Bureau of Reclamation Land – recreational use

East: Agricultural

West: State Owned and/or U.S. Bureau of Reclamation Land

III. PROJECT BACKGROUND

This project is a phased subdivision, with development to occur in four (4) phases. Phase 1 will include eleven residential lots and 1 commercial lot. Phases 2 and 3 will each contain 11 residential lots. Phase 4 includes 6 residential lots and 1 commercial lot as well as approximately 14 acres dedicated to open space. The commercial lot developed in Phase 4 will be the only lot in excess of 20 acres.

ANALYSIS

Review was performed pursuant to the Montana Subdivision and Platting Act, Title 76, Chapter 3, Montana Codes Annotated, the 2012 Broadwater County Subdivision Regulations and the 2003 Broadwater County Growth Policy. The proposed preliminary plat, Horse Creek Hills Major Subdivision, as submitted by the Subdivider, together with the required supplementary plans and information, satisfies the requirements of these regulations and comply with the Broadwater County Growth Policy, with the appropriate mitigation.

CRITERIA FOR REVIEW:

In accordance with 76-3-608(3), MCA, a subdivision proposal must undergo review for impacts on the following primary criteria: 1. Agriculture; 2. Agricultural Water User Facilities; 3. Local services; 4. Natural Environment; 5. Wildlife and Wildlife Habitat; 6. Public Health and Safety; 7. Compliance with the County's Subdivision Regulations; 8. Compliance with Survey Requirements; 9. The provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and 10. A provision for providing legal and physical access to each parcel within the proposed subdivision.

FINDINGS OF FACT AND CONCLUSIONS:

A. IMPACTS ON AGRICULTURE:

1. **DEFINITION OF AGRICULTURE:** Considers all aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock,

bees, fur-bearing animals or poultry; and any practice including foresting or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market. *Broadwater County Subdivision Regulations Appendix A, Definition 5.*

2. NARRATIVE: According to the preliminary plat application, this property is not considered prime farmland even if irrigated. However, adjacent property to the east is utilized for agricultural purposes. The responsibility to maintain boundary fences will be the individual lot owners.
3. FINDING: This proposed subdivision should not have an effect on agricultural productivity since the land is not currently utilized for any agricultural purposes. However, the subdivision may have impacts on neighboring agricultural properties due to noxious weeds, domestic pets and livestock on the new subdivision lots. Individual lot owners should maintain boundary fences to avoid impact on neighboring agricultural properties. (*Source Environmental Assessment, June 2021; Application for Preliminary Plat: Appendix F—Weed Management Plan*).
4. COMPLIANCE WITH GROWTH POLICY (2003): According to the 2003 Growth Policy, specifically *Growth and Land Use Goal 5*, new land development on productive agricultural lands should be discouraged; development should be in preferred areas; and should be near existing communities. This land has historically been used for grazing and is not considered productive agricultural land; however, the development is not within a preferred site as identified in Appendix A and it is approximately 18.5 miles from Townsend, the closest existing community. The proposed subdivision is not in compliance with *Growth and Land Use Goal 5*.
5. CONCLUSION: The impacts on agriculture can be mitigated by the following conditions: 21, 22, 24h, 24i, 24k, 24l, 24m, 24n, 25 and 26.

B. IMPACTS ON AGRICULTURAL WATER USER FACILITIES:

1. DEFINITION OF AGRICULTURAL WATER USER FACILITIES: Considers those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities. *Broadwater County Subdivision Regulations, Appendix A, Definition 6.*
2. NARRATIVE: The proposed subdivision will create thirty-nine residential lots between 6.24 and 16.57 acres and two commercial lots ranging from 5.35 to 31.77 acres. There will be one open lot, approximately 14.18 acres in size, dedicated to open space

3. FINDINGS: The area in the proposed subdivision does not contain existing irrigation ditches, pipes, head gates or other water conveying facilities for irrigation or stock watering to agricultural lands. (*Source: Environment Assessment, June 2021*)
4. COMPLIANCE WITH GROWTH POLICY (2003): According to the 2003 Growth Policy, specifically *Growth and Land Use Goal 3*, developments should be designed to avoid diminishing or contaminating adjacent agricultural water usage. It is not anticipated that this proposed subdivision will interfere with any irrigation systems or any agricultural operations in the vicinity and is, therefore, in compliance with *Growth and Land Use Goal 3*.
5. CONCLUSION: The impacts on agricultural water user facilities can be mitigated by the following conditions: 10, 11 and 25.

C. IMPACTS ON LOCAL SERVICES:

1. DEFINITION OF LOCAL SERVICES: Considers any and all services that local governments, public and private utilities are authorized to provide for the benefit of their citizens. *Broadwater County Subdivision Regulations, Appendix A, Definition 66.*
2. NARRATIVE: The proposed subdivision will be accessed from Lower Confederate Road. It is within the jurisdiction of the Broadwater County Sheriff's Office as well as the Townsend School System. Fire protection will be offered by the Broadwater County Rural Fire District.
3. FINDINGS:

a. SOLID WASTE:

Individual lot owners will haul their solid waste to Broadwater Solid Waste Canister either in Townsend or at Dry Gulch. Subdivision residents will have the option of hiring an independent contractor to pick up their solid waste or transport it themselves. (*Source: Environmental Assessment, June 2021*)

b. MAIL DELIVERY:

It is anticipated that mail will be delivered by the United States Postal Service and plans for any mail receptacles on-site are subject to review and approval by the United States Postal Service. (*Source: Environmental Assessment, June 2021*)

c. UTILITIES:

It is anticipated that Vigilante Electric and Century Link will provide utilities to the proposed subdivision. Three-phase overhead power will be extended from the east.

Future dry utilities are anticipated to be installed underground. (*Source: Environment Assessment*)

d. ROADS AND TRAFFIC:

No transportation plan has been officially adopted for this area. One road within the proposed subdivision intersects with Lower Confederate Road, a county road, at two points. The most significant impact is anticipated to be on Lower Confederate Road.

The estimated Average Daily Trips (ADT) for thirty- nine (39) residential lots and two (2) commercial lots is three-hundred fifty-two (352) ADT. The internal subdivision roads will be required to be built to a #1 Local Road Standard. This standard requires a minimum road width of twenty-four (24) feet and the road must consist of 6" of base material covered with 3" of crushed top surface. The internal roads should be dedicated to public use and must be maintained by a property owners' association or a road maintenance agreement, binding on each lot owner in perpetuity.

The Subdivider will also be required to pay the proportionate share of improvements to the county road leading to this development. According to a Traffic Impact Study (TIS) performed by Abelin Traffic Services, Inc. and included in the preliminary plat application. The total length of Lower Confederate Road surface to be improved is approximately 3.96 miles in length from the point of beginning at Highway 284 to the furthest south entrance to the proposed development. The TIS did not establish a baseline level of use for Lower Confederate Road and a new TIS will be needed. By county standards, road paving is required at 400 trips per day.

Road names for any internal subdivision roads must be submitted to the County Address Coordinator for review and approval, and the road names shall be shown on the final plat and all other documents of the proposed subdivision. A signing plan for traffic control and street identification signs must be submitted to the County Public Works Department for review and approval and all signs installed in accordance with the approved plans.

A Rural Improvement District or Special District should be set up to assist in funding on-going road maintenance and fire protection improvements within the proposed subdivision. (*Source: Environmental Assessment, June 2021; Application for Preliminary Plat, Appendix I—Traffic Letter and Draft Road Plans*)

e. SCHOOLS:

The proposed subdivision is served by the Townsend Schools and subdivision could potentially produce 60 students. The potential for new students from this development could have an impact on existing bus routes which may need to be altered once the subdivision is at full build-out. A letter from Townsend Schools Superintendent Erik Wilkerson was received on December 6, 2019. According to Mr. Wilkerson the Townsend School District has ample educational services available to accommodate

these new students. (Source: *Environmental Assessment, June 2021; Application for Preliminary Plat, Appendix H—Utility Service Providers and Affected Agencies Correspondence*)

f. EMERGENCY SERVICES:

The proposed subdivision is within the Broadwater Sheriff Department's jurisdiction. Due the rural nature of this subdivision, response times for emergency services could be longer than expected. (Source: *Environmental Assessment, June 2021; Application for Preliminary Plat, Appendix H—Utility Service Providers and Affected Agencies Correspondence, Email from Wynn Meehan Dated November 14, 2019*)

g. FIRE SERVICES

The proposed subdivision is located within the Broadwater Rural Fire District. The nearest firehouse is Duck Creek Fire, an unmanned, volunteer fire house. The Subdivider will need to propose a fire protection plan for review and approval by the Broadwater Rural Fire District. (Source: *Environmental Assessment, June 2021; Application for Preliminary Plat, Appendix H—Utility Service Providers and Affected Agencies Correspondence*)

4. COMPLIANCE WITH GROWTH POLICY (2003): According to the 2003 Growth Policy, *Public Facilities and Services, Goals 1 and 2*, development needs to achieve efficiency by sharing services and needs to provide and maintain county roads. Additionally, under *Fire Protection, Goal 3*, development needs to ensure that Broadwater County Rural Fire District has adequate fire fighting capabilities.

The proposed subdivision can and will be served by the Townsend School District. The proposed subdivision will have an impact on county roads; however sufficient plans are in place to ensure that county roads are maintained to County Road Standards.

The subdivider will need to submit plans to the Broadwater County Rural Fire District to ensure adequate firefighting capabilities within the subdivision. Currently, the proposed subdivision application is not in compliance with *Fire Protection, Goal 3*.

5. CONDITIONS: The impacts on local services can be mitigated by the following conditions: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15a, 15b, 16, 17, 18, 19, 20a, 20b, 20c, 20d, 24d, 24e, 24f, 24j, 27, 28a, 28b, 28c and 28d.

D. IMPACTS ON THE NATURAL ENVIRONMENT

1. DEFINITION OF NATURAL ENVIRONMENT: Considers impacts on the

physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light, and objects of historic and aesthetic significance. *Broadwater County Subdivision Regulations Appendix A, Definition 81.*

2. NARRATIVE: According to the preliminary plat application approximately 80% of the property consists of slopes less than 15%. The majority of the development will not consist of excessive slopes. Each lot will have buildable areas with slopes less than 15%. No rock outcroppings were identified by the Subdivider's representative. The property consists mainly of native grasses with sporadic conifer trees that are generally located within the drainages located near the western portion of the proposed subdivision. There are no marsh, shrub or forestlands located on the property. There are sparse trees and vegetation cover. The proposed subdivision is outside of the FEMA mapped 100-year floodplain.
3. FINDINGS:

The property is located within the Intermountain Seismic Belt that extends through western Montana and frequently produces small earthquakes and has previously developed some major earthquakes. Property damage and risk can be minimized with construction techniques and earthquake planning. To mitigate any potential negative impacts with future home site locations, the Subdivider's representative recommends specific geotechnical investigations be performed by future lot owners, in order to review soil conditions on each property and provide appropriate recommendations. (*Source: Environmental Assessment, June 2021*)

No critical plant species have been identified. Existing vegetation will only be disturbed for necessary construction of roads, driveways, utilities and structures. Any construction disturbance will be reseeded with an approved grass seed mix. A Weed Management Plan has been approved by the Broadwater County Noxious Weed District to control and prevent the growth of noxious weeds. The Subdivider will be responsible for adhering to the Weed Management Plan until all lots are sold or the responsibility is turned over to a homeowners' association. (*Source: Environmental Assessment, June 2021; Application for Preliminary Plat: Appendix F—Weed Management Plan*).

The proposed subdivision will have 14.18 acres of open space and will provide a 20-foot-wide trail easement to the south, to property owned by the US Bureau of Reclamation. There is a public trail easement adjacent to State lands on the northern border of the proposed subdivision. (*Source: Environmental Assessment, June 2021*)

A letter was received from the Montana Historical Society (MHS) on November 5, 2019, to determine if there are any known historical, cultural or archaeological sites which may be affected by the proposed development. According to Damon Murdo, MHS Cultural Records Manager, there have been three (3) previously recorded sites within the designated area. Those sites are

identified as the Confederate Gulch Wildlife Improvement Project, the Archaeology of the Canyon Ferry Region, and a cultural resource inventory for a shoreline stabilization project for Beaver Creek and Confederate Bays. It is presumed that these previously recorded sites should not be negatively impacted by future homesites on this property. (Source: *Environmental Assessment, June 2021; Application for Preliminary Plat Appendix H: Utility Service Providers & Affected Agencies Correspondence, Letter from Damon Murdo dated November 5, 2019*)

4. COMPLIANCE WITH GROWTH POLICY (2003): According to the 2003 Growth Policy, *Growth and Land Use, Goal 3*, development needs to establish a weed management plan. Additionally, development should consider whether or not native vegetation will be disturbed and whether cutting, filling, and grading will be reseeded in the same season. A weed management plan has been presented to the Broadwater County Noxious Weed District and approved. Vegetation on the site is native grasses and conifer tree and individual lot owners will be responsible for their own landscaping. The subdivision will be in compliance with *Growth and Land Use, Goal 3*.
5. CONDITIONS: The impacts on the natural environment can be mitigated by the following conditions: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 20, 21, 245b, 24c, 24g, 24j, 24k and 24r.

E. IMPACT ON WILDLIFE AND WILDLIFE HABITAT

1. DEFINITION OF WILDLIFE AND WILDLIFE HABITAT: Considers those animals that are not domesticated or tamed as well as the place or area where wildlife naturally lives or travels through. *Broadwater County Subdivision Regulations, Appendix A, Definitions 135 and 136*.

2. NARRATIVE:

Wildlife such as antelope, mule deer, white-tailed deer, elk, upland game birds, other small birds, snakes, rabbits, fox and coyote occasionally utilize the proposed subdivision. Specifically, as noted in the subdivider's Weed Management Plan, Long Billed Curlew, a ground nesting bird, has been observed on the property of the proposed subdivision. Additionally, the lower end of Confederate Creek provides habitat for moose, mountain lions, and black bears.

The proposed subdivision borders state trust land that allows public access for hunting. Hunter and homeowner conflicts could arise due to hunting taking place on State of Montana lands directly adjacent to the north boundary of this proposed subdivision.

It is the recommendation of MT FWP Wildlife Biologist that covenants should include requirements for future homeowners to fence gardens and bear-proof any bear attractants such as garbage, outdoor pet feeding, bird feeders, fruit trees and outdoor

barbeque grills. It was also recommended that a trail easement be provided to the State of MT lands to the north. The property is not known to be part of any big game wintering range or calving areas, migration route, riparian habitat or habitat for rare or endangered species or wetlands.

3. FINDINGS:

The impacts on wildlife habitat will be negligible based upon the surrounding uses. Landowners are encouraged to install wildlife friendly fencing, contain domestic animals, and secure solid waste to reduce wildlife incidents whenever possible. Additionally, landowners should take steps to bear-proof any bear attractants. Further, landowners are encouraged to avoid ground nest sites when applying herbicides and all broadcast herbicide applications should be minimized to protect wildlife habitats and native plants. (Source: *Environmental Assessment, June 2021; Application for Preliminary Plat, Appendix H: Utility Service Providers & Affected Agencies Correspondence, Letter from Ron Spoon, dated November 5, 2019; Letter from Adam Grove, dated December 3, 2019; Letter from Marina Yoshioka, dated October 27, 2021, Weed Management Plan, dated December 2021*)

4. COMPLIANCE WITH GROWTH POLICY (2003): The 2003 Growth Policy *Recreation Goal 5* requires consideration of whether development is in a significant wildlife habitat or critical wildlife areas. Additionally, development should consider the impact of pets and human activity on wildlife. This proposed subdivision is not within a significant wildlife habitat or a critical wildlife area. Sufficient covenants will be put in place to mitigate the human effect on wildlife, including fencing requirements and bear-proofing. The proposed subdivision is in compliance with *Recreation, Goal 5*.
5. CONDITIONS: The impacts on wildlife and wildlife habitat can be mitigated by the following conditions: 22, 24i, 24l, 24n, 24o, 24p and 24q.

F. IMPACT ON PUBLIC HEALTH AND SAFETY:

1. DEFINITION OF PUBLIC HEALTH AND SAFETY: Considers the prevailing healthful, sanitary condition of well-being for the community at large. Conditions that relate to public health and safety include but are not limited to disease control and prevention; emergency services; environmental health; flooding; fire or wildfire hazards; rockfalls or landslides; unstable soils; steep slopes and other natural hazards; high voltage lines or high-pressure gas lines; and air or vehicular traffic safety hazards. *Broadwater County Subdivision Regulations, Appendix A, Definition 95*.
2. NARRATIVE: The proposed subdivision will be served by on-site wells. Each lot will have its own wastewater system and well as stormwater pond.

3. FINDINGS:

a. WATER SUPPLY:

The proposed subdivision is not within the service area of a public water system. The proposed lots will be served by individual on-site water wells, drilled into each lot, according to the Amended Application. Each phase of the phased development will have a combined estimated total domestic volume of use of 10-acre feet/year. The use of these exempt wells is subject to review and approval by the DNRC and DEQ. (Source: *Environmental Assessment, June 2021; Letter from DNRC date February 2, 2020; Application for Preliminary Plat: Wastewater and Stormwater Plans*)

Well Log data in the vicinity of the subdivision was provided in the preliminary plat application. Average depth of the wells is one-hundred seventy-four (174) feet deep and static water level averages ninety-two (92) feet. Yield average is ninety-three (93) gallons per minute. (Source: *Environmental Assessment, June 2021; Application for Preliminary Plat: Soil Survey Well Logs*)

b. WASTEWATER

Wastewater for the proposed subdivision will be provided by the use of individual on-site wastewater treatment systems (septic/drainfields). The DEQ will review and issue approval for forty (40) of the lots for adequacy and impact of the wastewater systems on groundwater quality. The DEQ will issue a determination of non-significant impacts in a Certificate of Subdivision Approval. One (1) lot, Lot 41, will be reviewed approved by the Broadwater County Sanitarian. (Source: *Environmental Assessment, June 2021; Letter from DNRC date February 2, 2020; Application for Preliminary Plat: Wastewater and Stormwater Plans*)

c. STORMWATER

There is a natural drainage system traversing the western portion. The lot lines of the proposed subdivision fall along these natural drainages to minimize potential negative impacts of stormwater. Each individual lot will have a stormwater pond which will be reviewed and approved by DEQ and/or the Broadwater County Sanitarian. (Source: *Environmental Assessment, June 2021; Letter from DNRC date February 2, 2020; Application for Preliminary Plat: Wastewater and Stormwater Plans*)

4. COMPLIANCE WITH GROWTH POLICY (2003): The 2003 Growth Policy, *Growth and Land Use Goal 2*, requires consideration of whether the subdivision is subject to potential hazards such as flooding, snow or rockslides, high winds, or potential man-made hazards. This proposed subdivision is not within a FEMA mapped 100-year floodplain. The subdivision will be served by exempt wells, subject

to review and approval by the DEQ and DNRC. Additionally, all on-site wastewater and stormwater plans are subject to review and approval by the DEQ and/or the Broadwater County Sanitarian. Utility lines will be installed underground. The proposed subdivision is in compliance with *Growth and Land Use Goal 2*.

5. CONDITIONS: The impacts on public health and safety can be mitigated by the following conditions: 1, 2, 3, 4, 5, 6, 7, 8, 9, 15a, 15b, 16, 17, 18, 19, 20a, 20b, 20d, 24b, 24c, 24d, 24f, 27 and 28b.

G. COMPLIANCE WITH SUBDIVISION REGULATIONS

1. FINDINGS:

The proposed subdivision meets all Subdivision Regulations, and it will remain in compliance with these regulations if all conditions of approval are satisfied. No variances have been requested. This is a phased development, to be completed in four phases. (*Source: Application for Preliminary Plat: Plat Maps Phases 1, 2, 3, and 4*)

2. CONDITIONS: The following conditions should apply: 1, and 24a.

H. COMPLIANCE WITH SURVEY REQUIREMENTS

1. FINDINGS:

A land survey and plat completed by a registered land surveyor in the state of Montana will need to be prepared. A review of the plat by the Community Development Department and the Examining Land Surveyor at the time of final plat application will ensure that the plat conforms to all conditions of approval, plat rules and regulations.

2. CONDITIONS: The following conditions should apply: 12, 23, 26, 29a and 29c.

I. PROVISION OF EASEMENTS WITHIN AND TO THE PROPOSED SUBDIVISION FOR THE LOCATION AND INSTALLATION OF ANY PLANNED UTILITIES

1. FINDINGS:

Utility easements will have to be shown and described on the plat, in accordance with the Subdivision Regulations and in consultation with the utility providers, where utilities are or will be installed, and where necessary for the future extension of services.

2. CONDITIONS: The following conditions should apply: 23a, 23b, 23c, 24e and 28d.

J. PROVISION OF LEGAL AND PHYSICAL ACCESS TO EACH PARCEL WITHIN SUBDIVISION

1. FINDINGS:

Legal and physical access to the subdivision is provided at two points off Lower Confederate Road. All roads within the subdivision will have to be dedicated as County Road easements and shown on the final plat as County Road easements.

A condition of approval will require the Subdivider to apply for approach permits for roads accessing onto existing County Roads.

2. CONDITIONS: The following conditions should apply: 14, 15a, 15b, 18, 23c, 24f, 28a and 28b.

X. RECOMMENDED CONDITIONS

The Horse Creek Hills Major Subdivision is granted preliminary plat approval with the following conditions:

1. Any and all adopted State and County requirements and standards which apply to this proposed subdivision must be met unless otherwise waived for cause by the governing body. (*Section 76-3-608, MCA; Chapter I, County Subdivision Regulations.*)
2. Plans for sewage treatment and water supply shall be submitted to the Montana Department of Environmental Quality and the Broadwater County Environmental Health Department for review and approval. The Certificate of Subdivision Approval shall be filed with the final plat. All specifications in the approved plans shall be met. (*Sections 76-4-101, et. Seq., MCA; Sections 17.36.101, et. seq., ARM; Sections 76-3-102(4), 501(1)(f)(iii), and 608(3)(a), MCA; Chapters IV-A. 9 and IV-A. 10., County Subdivision Regulations*)
3. Prior to submitting a Final Subdivision Plat application for each phase of the subdivision, the Subdivider, its successors and assigns, shall submit a storm water drainage plan, meeting the requirements of the Montana Department of Environmental Quality (DEQ). The plan shall be designed by an engineer registered in the State of Montana. All specifications and requirements of the approved plan shall be met prior to submitting the Final Subdivision Plat application for each phase of the subdivision. An engineer registered in the State of Montana shall certify all constructed storm water improvements as meeting the approved storm water drainage plan. (*Sections 76-3-102, 501, 504(1)(g)(ii) and 76-3-608(3), MCA*)
4. For all lots less than twenty (20) acres, the stormwater drainage plan shall be submitted to DEQ for review and approval or the governing body shall approve stormwater drainage plans for any lot greater than 5 acres in size that is exempt under Montana Department of Environmental Quality statutes and rules. All specifications

and requirements of the approved plan shall be met. (*Sections 76-3-102(4), 501(1), 504(1)(f)(ii) and 76-3-608(3)(a), MCA; Chapter IV-A-8., County Subdivision Regulations Section 76-4-104(6)(3), MCA and proposed DEQ ARM 17.36.119*)

5. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the governing body for Lot 41 or any lot greater than 5 acres in size that is exempt under Montana Department of Environmental Quality statutes and rules. (*Section 76-3-622(1)(b), MCA, 2012 Broadwater County Subdivision Regulations IV-A.8.; Section 76-4-104(6)(3), MCA and proposed DEQ ARM 17.36.119*)
6. Prior to submitting a Final Subdivision Plat application for each phase of the subdivision, if one or more acres of ground disturbance is planned, the Applicant, its successors and assigns, shall, at the Subdivider's expense, contact DEQ to obtain a Montana Pollutant Discharge Elimination System (MPDES) permit. All requirements and specifications of the permit shall be met by the Applicant, its successors and assigns, prior to final plat approval. (*ARM 17.30.1102(28); Sections 76-3-102, 501, and 608(3), MCA*)
7. A grading and drainage plan must meet the requirements of current DEQ Regulations and the 2012 Broadwater County Subdivision Regulations and/or be subject to approval by the Planning Department for Lot 41. (*Section 76-3-622(1)(b), MCA, 2012 Broadwater County Subdivision Regulations IV-A.8.*)
8. The Montana Department of Environmental Quality shall review and approve solid waste for all lots under 20 acres. (*Sections 76-4-101, et. seq., MCA*)
9. For Lot 41, the proposed method of storing and disposing of solid waste generated within the subdivision must comply with the requirements of the local Solid Waste Department and shall be approved by the Broadwater County Commission. (*2012 Broadwater County Subdivision Regulations IV-A.11.*)
10. A hydrogeological survey shall be completed prior to final plat approval and reviewed by an independent, agreed upon hydrogeologist, and shall provide proof of adequate water prior to final plat approval of Phase 1. This study shall be performed at the expense of the developer. (*Based on public comments received from Jan Finn, Philip Fingar, Charles Plymale and the Missouri Water Keepers and Broadwater County Subdivision Regulations V-A*)
11. Water meters shall be installed on each water supply well for each lot within the Subdivision for water monitoring purposes. Each lot owner shall report all annual water monitoring data certified by a licensed professional to the Montana Department of Natural Resources and Conservation. (*Based on public comments received from Jan Finn, 76-3-510, MCA and Broadwater County Subdivision Regulations V-A*)
12. The Subdivider will be required to submit the preliminary and final plat

drawings in electronic format to Broadwater County in ARCGIS, AutoCAD or Microstation format. Additional materials may be requested by the County in electronic format to facilitate review of application materials. (*Chapter II and Appendix Q, County Subdivision Regulations*)

13. Plans for the location and installation of individual mailboxes shall be reviewed and approved by the United States Postal Service prior to installation. The Subdivider shall submit documentation from the United States Postal Service verifying their review and approval. When required, Subdivider shall provide an off-street area for mail delivery. The Subdivider, its successors and assigns shall be responsible for all costs associated with meeting this condition of approval. (*Sections 76-3-102(4), 76-3-501(1), and 76-3-608(3)(a)-(b); Chapter IV-A-7 b. 8, County Subdivision Regulations.*)

14. Prior to filing the Phase 1 application for final plat, the Subdivider shall submit an updated Traffic Impact Study (TIS). A TIS shall be completed every two (2) years. This TIS shall establish a baseline for existing trips per day on Lower Confederate Road. The updated TIS shall be conducted during summer months (June-September) and all recommendations of the TIS will be implemented before final plat approval. The data collected from this TIS will be used to calculate the subdivider's proportionate share for road improvements.

15. Prior to filing the application for final plat for each phase, the Subdivider shall adequately fund or improve a proportionate share of Lower Confederate Road. The road improvements shall be constructed to a minimum of the county road design standards and must be certified as meeting County Road Standards by an independent Professional Engineer. All specifications and requirements of the approved plan shall be met. Final plans for the improvements will be submitted to the County Planning Department and County Road Department for approval prior to construction. (*Section 76-3-510; Chapter IV-A-7. and Appendix N, County Subdivision Regulations*)

- a. The Subdivider, its successors and assigns, will be required to pay a proportionate share of the costs associate with improving 3.96 miles of Lower Confederate Road, from its intersection with Hwy 284 to the furthest southern entrance to the proposed subdivision, to the specifications required by the County Subdivision Regulations and the County Public Works Manual.
- b. The proportionate share shall be calculated based upon an updated Traffic Impact Study and use a factor of eight (8) vehicle trips per day per dwelling unit and twenty (20) vehicle trips per day per commercial lot (see Condition 14 above).

All funds collected for the proportionate share of road improvements not required to improve Lower Confederate Road to a Local Road Low to Medium Density Standard shall be placed into an escrow account subject to an escrow agreement between the County and the Subdivider, its successors and assigns, so that when a proposed phase triggers Local Road Medium to High Density Standards and

paving is required, funds will be released to the subdivider to fund the paving.

If the Subdivider does not receive final plat approval for the final phases of this subdivision that would trigger the paving requirement, the funds in the escrow account shall be released to the Subdivider by the County.

16. All internal subdivision roads must be designed in accordance with the Broadwater County Subdivision Road Standards, stamped by a Professional Engineer, and submitted to the County Planning Department for review and approval. A letter from the P.E. shall be provided to the County stating that the road and any improvements have been constructed in accordance with the approved plans and specifications and that they have completed an inspection of the road and any improvements. (*Chapter IV-A-7 and Appendix N, County Subdivision Regulations.*)

17. All internal subdivision roads dedicated for public use must be owned and maintained by a property owner's association or a road maintenance agreement that is binding on each lot owner. Such road maintenance agreement shall run with lot in perpetuity. (*Chapter IV-A-7 a. 4 and Appendix N, County Subdivision Regulations*)

18. Prior to any development, an Approach Permit shall be requested from the County Road Department for the access point off Lower Confederate Road. All requirements of the approved permit shall be met. (*Sections 76-3-102(3)-(4), 76-3-501(1) and 76-3-608(3)(d), MCA; Appendix O County Subdivision Regulations*)

19. The internal access roads shall be given unique road name that is reviewed and approved by the County Community Development Department. The name of the internal access roads shall be shown on the face of the final plat and reflected in all documents of the subdivision (covenants, road easements, etc.). (*Sections 76-3-102, 402, 501, 504, and 608(3), MCA; Rule 24.183.1107, ARM; Chapter II-F County Subdivision Regulations*)

20. The Subdivider shall provide a fire protection plan, approved by the Fire Protection Authority Having Jurisdiction (FPAHJ). (*Section 76-3-608(3)(a), MCA; Chapter IV-A-17 and Appendix I, County Subdivision Regulations*)

- a. For residential lots, the Subdivider shall provide water supply of sufficient volume for effective fire control. Such water supplies shall be maintained to their original performance capability in perpetuity by the property owners.
- b. For commercial lots, a fire protection water supply shall be provided that meets or exceeds the minimum required fire flow and flow duration for buildings as described in the current edition of the Fire Code, as adopted by the State of Montana.
- c. Access for emergency responders and the public's evacuation shall be provided.

- d. The subdivision shall provide a minimum of two ingress/egress roads that are integral to and have approaches directly connected to the subdivision to ensure adequate escape routes and access for emergency responders.
21. Prior to any development and/or soil disturbance, a Weed Management Plan for the proposed development shall be submitted to the County Weed District for review and approval. All specifications and requirements of the approved plan shall be met. *(Sections 76-3-102(5 and 6), 501(1), and 608(3)(a), MCA; Chapter IV-A 18, County Subdivision Regulations)*
 22. A boundary fence shall be installed, enclosing all exterior boundaries of this property prior to the Subdivider applying for approval of final plat of Phase 1. *(76-3-608(3), MCA)*
 23. The final plat shall be prepared in accordance with the applicable State survey requirements, Montana Subdivision and Platting Act survey requirements and the County Subdivision Regulations. The final plat shall be in substantial compliance with the plat and plans submitted for preliminary plat review, except as modified by these conditions. The final plat shall provide for the following: *(Section 76-3-102, 76-3-402, 76-3-501, 76-3-504, and 76-3-608(3), MCA; Rule 24.183.1107, ARM; Chapter II-F, County Subdivision Regulations)*
 - a. All existing and proposed utility easements on the subject property, including a 10-foot by 10-foot utility easement on each lot adjacent to the right-of-way easement;
 - b. All existing access and utility easements adjacent to the subject property;
 - c. Adjacent and proposed County Road and utility easements; and
 - d. All trail easements dedicated to public use and providing access to public lands.
 24. The Book and Page reference to the restrictive covenants (filed with the County Clerk and Recorder) shall be indicated on the face of the final plat for each phase. In addition, restrictive covenants, revocable or alterable only with the consent of the Board of County Commissioners, shall be placed upon the property and shall provide for the following *(Section 76-3-608(3)(a), MCA; Chapters I and IV, County Subdivision Regulations)*
 - a. Notice is hereby given that Lots 2-40 are permitted for one single-family residential use and Lots 1 and 41 are permitted for commercial use. Commercial lots shall comply with all state and federal laws and regulations. *(Chapter I, County Subdivision Regulations)*
 - b. Notice is hereby given that all individual wastewater treatments systems are required to be reviewed and approved by the DEQ and/or the Broadwater County Environmental Health Office. *(Sections 76-4-101, et. Seq., MCA; Sections*

17.36.101, et. seq., ARM; Sections 76-3-102(4), 501(1)(f)(iii), and 608(3)(a), MCA; Sections IV-A. 9 and IV-A. 10., County Subdivision Regulations)

- c. Notice is hereby given that all dwelling units within the subdivision should be constructed to specifications which meet or exceed equivalent provisions in the applicable state building code for this seismic zone (Zone 3); *(Section 76-3-608(3)(a), MCA)*
- d. Notice is hereby given of that response times for emergency services may increase due the rural nature of this proposed subdivision. *(Section 76-3-308(3)(a), MCA)*
- e. Notice is hereby given that any additional, replacement, or relocated utility lines shall be installed underground, in accordance with the Broadwater County Subdivision Regulations, unless otherwise determined by the utility provided; *(Section 76-3-608(3)(a), MCA; Section IV-A 12, County Subdivision Regulations)*
- f. Notice is hereby given of a “no access” restriction along Lower Confederate Road, with the exception of the two (2) approaches onto Lower Confederate Road for the internal access roads, and the approaches for each of the two commercial lots as approved by Broadwater County Public Works Director. *(Section 76-3-608(3)(a), MCA, Chapter IV-A 7, County Subdivision Regulations)*
- g. Notice is hereby given that any exterior lighting shall be directed downward to minimize visibility beyond the property lines; *(Section 76-3-608(3)(a), MCA; Chapter IV-A 7, County Subdivision Regulations)*
- h. Notice is hereby given of the presence of agricultural operations in the vicinity and that such operations may occur at varying times and seasons and include, but are not limited to, the noises and odors due to the operation of machinery, the pasturing and feeding of livestock, irrigation, and the application of fertilizers, herbicides, and pesticides to fields. *(Section 76-3-608(3)(a), MCA)*
- i. Notice is hereby given that boundary fences shall be maintained by each individual lot owner. *(Section 76-3-608(3)(a), MCA)*
- j. Notice is hereby given that each owner of any lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, waives of the right to protest joining a Rural Improvements District and/or a Special District for the installation, maintenance, preservation, and report of the following: roads that provide access to the subdivision; stormwater improvements for the subdivision; fire protection improvements for the subdivision. *(Sections 76-3-102, 76-3-501, 76-3-504 and 76-3-608(3)(a), MCA)*
- k. Notice is hereby given that each lot shall be maintained in a clean, attractive, and weed-free manner; Noxious weeds must be pulled, sprayed or cut prior to seed maturity; the subdivision is subject to an approved Weed Management Plan with the Broadwater County Weed Board. *(Sections 76-3-102(5)-(6), 76-2-501(1), and 76-3-608(3)(a), MCA; Section IV-A 18, County Subdivision Regulations)*

- l. Notice is hereby given of a prohibition of the storage of foods, garbage, or continuous feeding of domestic pets outdoors or other activities that creates an attractive nuisance for wildlife species (hay or alfalfa storage and feeding are not prohibited where livestock are permitted) (*Section 76-3-608(3)(a), MCA, Appendix F, County Subdivision Regulations*)
- m. Notice is hereby given that lots shall only allow for livestock if a small acreage livestock management plan is reviewed and approved by the County Extension Agent. Each lot owner shall be required to create and adhere to their own livestock management plan. (*Section 76-3-608(3)(a) and Appendix F, County Subdivision Regulations*)
- n. Notice is hereby given that all cats and dogs must be restrained, penned, or otherwise under the control of their owner at all times (*Section 76-3-608(3)(a), MCA and Appendix F, County Subdivision Regulations*)
- o. Notice is hereby given that lots shall fence gardens and bear-proof any bear attractants, including garbage, outdoor pet feeding, bird feeders, fruit trees and outdoor barbeque grills. (*Section 76-3-608(3)(a), MCA, Appendix F, County Subdivision Regulations*)
- p. Notice is hereby given that lots shall install wildlife friendly fencing, contain domestic animals and secure solid waste. (*Section 76-3-608(3)(a), MCA, Appendix F, County Subdivision Regulations*)
- q. Notice is hereby given that all herbicide application shall avoid any ground nest sites and all broadcast herbicide application shall be minimized to protect all native plants and wildlife. (*Section 76-3-608(3)(a), MCA, Appendix F, County Subdivision Regulations*)
- r. A covenant shall be imposed on the final plat that and in the covenants for the subdivision that will set forth the maximum irrigated areas for each lot. (*Section 76-3-622(1)(e), MCA and Subdivider Offered Mitigation, Water Usage Summary*)

25. The Subdivider shall provide one and a half (1.5) miles of fencing materials to be installed along the western boundary of the Lower Confederate Road county road easement directly adjacent to lands of the 'State of Montana' directly north of the proposed subdivision property. The fence shall be installed by the Rancher leasing the 'State of Montana' lands for cattle pasture. The Subdivider shall also provide a cattle underpass to be installed by the Broadwater County Public Works Department. (*Section 76-3-608(3)(a), and based on comments received by Brad and Toby Dundas*)

26. The Subdivider shall include a notarized "Right to Farm" declaration with final plat affirming that "No agricultural or farming operation, place, establishment or facility or any of its appurtenances or the operation thereof is or becomes a public or private nuisance because of the normal operations thereof as a result of changed residential or commercial conditions in or around it locality of the agricultural or farming operation, place, establishment or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation." (*Section 27-30-*

101, MCA and Chapter IV-A 20, County Subdivision Regulations.)

27. The Subdivider, its successors and assigns, shall submit a signing plan for traffic control and street identification signs, that meets the applicable County regulations, for the internal access roads that provide legal and physical access to all lots within the proposed subdivision to the County Community Development Department and Public Works Department for review and approval. All specifications and requirements of the approved plan shall be met at the cost of the Subdivider, its successors and assigns. *(Section 76-3-608(3), MCA; Chapter IV-A 7 and 17, County Subdivision Regulations)*

28. Prior to submitting the final plat for each phase, the following improvements shall be installed or otherwise guaranteed. *(Sections 76-3-507 and 76-3-608(3)(a), MCA and Chapter IV-A, County Subdivision Regulations)*

- a. Proportionate impact funds for roads shall be placed into an escrow account which cannot be released without County approval;
- b. Any necessary improvements required by the stormwater drainage plan, weed management plan, fire protection plan, or approach permits;
- c. Installation of mail delivery facilities; and
- d. Utilities abutting and available to each lot.

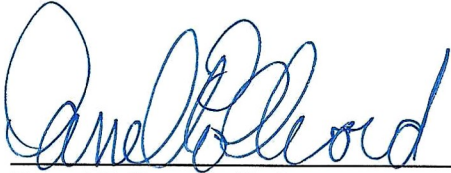
If said improvements are not installed, then the Subdivider shall enter into a written subdivision improvements agreement with Broadwater County, guaranteeing the construction and installation of such improvements and shall provide an acceptable financial security guarantee, in accordance with County Subdivision Regulations *(Appendix R, County Subdivision Regulations)*

29. Prior to submitting final plat for each phase, the Subdivider shall:

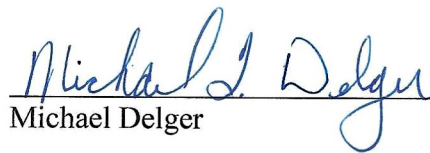
- a. Provide proof that all taxes and special assessments assessed and levied on the property are paid for the current tax year, including any past delinquencies. *(Section 76-3-611(1)(b), MCA)*
- b. Provide documentation (abstract of title or platting certificate) showing that the Subdivider is the lawful owner of the property with the apparent authority to subdivide the same. *(Section 76-3-612, MCA)*
- c. Provide a subdivision guarantee by a licensed title company showing the owners of record, the name of any lien holders or claimants of record against the land, and the written consent to the subdivision from any lien holders or claimants of record against the land. *(Section 76-3-612, MCA; Chapter II, County Subdivision Regulations)*

DATED this 28th day of July, 2022

BROADWATER COUNTY COMMISSION



Darrel Folkvord, Chairperson

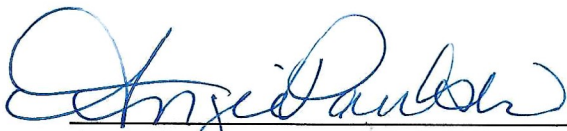


Michael Delger



Debi Randolph

ATTEST:



Angie Paulsen,

Clerk & Recorder