

FINDINGS OF FACT AND ORDER REPORT

THREE RIVERS MAJOR SUBDIVISION

To: Broadwater County Commissioners
From: Broadwater County Planning Board
Subject: A proposed subdivision to be known as **Three Rivers Major Subdivision**

GENERAL INFORMATION

Date of Application: February 17, 2023
Date of Sufficiency: August 3, 2023
Public Hearing Date: September 27, 2023
Review Period Ends: October 30, 2023

APPLICANT: Greg Schob – Clearview Partners, LLC
779 Arrow Trail
Bozeman, MT 59718

APPLICANTS' REPRESENTATIVE: Faron Henderson – FH Engineering, LLC
P.O. Box 1632
Chinook, MT 59523

LEGAL DESCRIPTION: Situated in the West ½ of Section 9, Township 2 North, Range 1 East, Broadwater County, Montana

GENERAL LOCATION: The proposed subdivision is situated off of Wheatland Road, approximately thirty (30) miles south of the city of Townsend, Montana and approximately 1 mile north of the US Highway 287/I-90 Interchange.

I. EXECUTIVE SUMMARY:

The developers intend to create sixteen (16) lots from an existing 325 acre parcel. The minimum lot size proposed is 20.01 acres and the maximum lot size proposed is 21.18 acres. Water and wastewater services will be provided via individual wastewater treatment systems and individual wells. The lots will be required to undergo review and approval by the Broadwater County Environmental Health Department. Fire protection will be provided by the Three Forks Fire District. Access will be provided onto Wheatland Road via the proposed internal road network consisting of an internal looped subdivision road.

II. REQUEST:

Approval of a 16-lot Major Subdivision for Residential purposes.

III. STAFF RECOMMENDATION:

Staff recommends APPROVAL of the proposed Three Rivers Major Subdivision Preliminary

Plat subject to the conditions of approval based on the recommended findings of fact included in the Staff Report.

IV. LOCATION:

The proposed subdivision is located north of Wheatland Road in Section 9, T2N, R1E, P.M.M., Broadwater County, Montana.

V. EXISTING DEVELOPMENT AND USES:

The property is generally flat unirrigated farm land and has previously been unused and vacant.

VI. ADJACENT LAND USES:

North: Residential Subdivision
South: Agricultural
East: Residential Subdivision
West: Residential Subdivision

VII. PUBLIC COMMENT:

Public comment was taken at the September 27, 2023 public hearing and subsequent Planning Board Regular Business meeting and Commissioner Meeting(s). Please see the attached 'Exhibit A' included with this document.

VIII. PROJECT BACKGROUND

Water is proposed to be provided via individual wells. The plans for locations are subject to review and approval by the Broadwater County Environmental Health Office.

Wastewater treatment for the development is proposed to be provided via individual on-site wastewater treatment systems. The plans are subject to review and approval by the Broadwater County Environmental Health Office.

The Three Forks Rural Fire District will provide fire protection services to this development.

Access will be off of Wheatland Road, a county road, connecting to the proposed internal loop road system consisting. All internal roads will be built to Broadwater County Subdivision Road Standards.

IX. STAFF ANALYSIS

Review is performed pursuant to the Montana Subdivision and Platting Act, Title 76, Chapter 3, Montana Codes Annotated, the 2021 Broadwater County Subdivision Regulations and the 2020 Broadwater County Growth Policy Plan. The proposed preliminary plat, Three Rivers Major Subdivision, as submitted by the applicant, together with the required supplementary plans and information, appear to satisfy the requirements of these regulations and comply with the Broadwater County Growth Policy, with the suggested mitigating conditions.

X. 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 (water, wastewater, solid waste, utilities, roads, traffic, schools, emergency services and parkland); 4. The natural environment; 5. Wildlife; 6. Wildlife habitat; 7. Public health and safety; 8. Compliance with the County's Subdivision Regulations; 9. Compliance with survey requirements; 10. The provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and 11. The provision of legal and physical access to each parcel within the proposed subdivision. Listed below are the Findings of Fact and Conclusions regarding each primary criterion.

FINDINGS OF FACT AND CONCLUSIONS:

A. IMPACTS ON AGRICULTURE

1. **DEFINITION OF AGRICULTURE:** Farming or ranching include the cultivation or tilling of the soil, the production, cultivation growing, harvesting of agricultural or horticultural commodities that are on site, such as food, feed, and fiber, the raising of livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops, and including timberlands and forest lands. *Broadwater County Subdivision Regulations, Definition 3.*
2. **NARRATIVE:** According to the preliminary plat application, this subdivision will remove dryland farm ground from production. The soils consist of Sappington Clay Loam 2% to 5% slope and Delphill Loam 2% to 5% slope. Therefore, this ground is considered prime farmland if irrigated and farmland of statewide importance as defined by the NRCS.
3. **FINDING:** This proposed subdivision could have an effect on agricultural productivity since the land is being removed from agriculture. However, the subdivision should not have impacts on neighboring agricultural properties due to the proximity to adjacent subdivided lands and the relatively large size of the parcels being proposed.

Per Chapter V-A of the Broadwater County Subdivision Regulations, all subdivisions must be designed and developed to provide satisfactory building sites that properly relate to topography, and must, to the extent possible, preserve the natural environment.

The proposed subdivision property has slopes ranging from 0-40% with available building sites that will minimize the flow of stormwater and therefore minimize soil erosion that might occur due to the construction of buildings and associated infrastructure, which could negatively affect agriculture.

Conditions of approval for the proposed subdivision will require a Noxious Weed Management Plan be on file and recorded with the final plat; Restrictive covenants providing notice of agricultural operations in the vicinity; That the property shall be maintained in a weed-free manner; and restraining domestic pets on the property. Other conditions of approval will provide the opportunity to financially guarantee any improvements required by

the Weed Management Plan.

Conditions of Approval Numbers 12, 14-c, 14-g, 14-h, and 15 are required to mitigate impacts on agriculture. (A full list of the Conditions of Approval is found starting on page number 11)

B. IMPACTS ON AGRICULTURAL WATER USER FACILITIES:

1. **DEFINITION OF AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water for irrigation or stock watering to agricultural lands to produce agricultural products. Any part of an irrigation system historically used to produce an agricultural product on property used for agricultural purposes. These facilities include, but are not limited to, ditches, head gates, pipes and other water conveying facilities. *Broadwater County Subdivision Regulations, Definition 5.*
2. **NARRATIVE:** The proposed subdivision will create sixteen residential lots between 20.01 and 21.18 acres.
3. **FINDINGS:** The proposed subdivision property does not contain any irrigation water easements, and therefore should not have an effect on agricultural water user facilities.

Conditions of Approval Numbers 12-c, 12-g, 12-h and 13 are required to mitigate impacts on agricultural water user facilities. (A full list of the Conditions of Approval is found starting on page number 10)

CONCLUSION: The impacts to agricultural water user facilities, as set forth in the Findings of Fact, will be mitigated by the imposed Conditions of Approval, based upon the record, when satisfactorily completed.

C. IMPACTS ON LOCAL SERVICES:

1. **DEFINITION OF LOCAL SERVICES:** All services or facilities local government is authorized to provide that benefit their citizens, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation system, educational system, noxious weed control, as well as services that local government does not provide such as power, telephone, state highways, etc. *Broadwater County Subdivision Regulations, Definition 34.*
2. **NARRATIVE:** The proposed subdivision lots will be accessed from a newly constructed subdivision access road via the existing Wheatland Road. It is within the jurisdiction of the Broadwater County Sheriff's Office as well as the Three Forks School System. Fire protection will be offered by the Three Forks Fire District.

3. FINDINGS:

a. SOLID WASTE:

Individual lot owners will haul their solid waste to the Logan Landfill as this property is not within the Broadwater County Solid Waste District. Subdivision residents will have the option of hiring an independent contractor to pick up their solid waste or transport it themselves. (*Source: Environmental Assessment*)

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 Three Forks Post Office. (*Source: Environmental Assessment*)

c. UTILITIES:

It is anticipated that Vigilante Electric provide electrical service to the proposed subdivision. 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 loop road within the proposed subdivision intersects with Wheatland Road, a county road. The proposed development is not anticipated to cause a significant impact to the county road.

The estimated Average Daily Trips (ADT) for sixteen (16) residential lots is one-hundred twenty-eight (128) ADT. The internal subdivision road 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 road 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.

Road name for the internal subdivision road must be submitted to the County Address Coordinator for review and approval, and the road name shall be shown on the final plat and all other documents of the proposed subdivision. A signage 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 or Property Owners Association or a Road User Agreement should be set up to assist in funding on-going road maintenance within the proposed subdivision.

e. SCHOOLS:

The proposed subdivision is served by the Three Forks Schools and the subdivision

could potentially produce 24 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

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.

g. FIRE SERVICES

The proposed subdivision is located within the Three Forks Fire District. The nearest firehouse is the Three Forks Fire Hall, an unmanned, volunteer fire house. The Subdivider will need to propose a fire protection plan for review and approval by the Three Forks Fire District.

Conditions of Approval Numbers 2, 6, 7, 10, 11, 13, 14-b and 17 are required to mitigate impacts on local services. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: The impacts to local services, as set forth in the Findings of Fact, will be mitigated by the imposed Conditions of Approval, based upon the record, when satisfactorily completed.

D. IMPACTS ON THE NATURAL ENVIRONMENT

1. DEFINITION OF NATURAL ENVIRONMENT: The natural environment is defined as 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, Definition 47.*
2. NARRATIVE: According to the preliminary plat application some of the property consists of slopes in excess of 15% grade. However, each lot will have buildable areas with slopes less than 15%. No rock outcroppings were identified by the Subdivider's representative. 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.

Per Chapter V-B of the Broadwater County Subdivision Regulations, the design and development of subdivisions must provide satisfactory building sites which are properly related to topography, and must, to the extent possible, preserve the natural environment.

The proposed subdivision property is generally level and thus provides good building sites that will minimize the flow of stormwater and therefore minimize soil erosion that might occur due to the construction of buildings.

All grading, drainage and erosion control shall be in compliance with Chapter V-J of the Broadwater County Subdivision Regulations.

According to the preliminary plat application post development generated stormwater will be detained within the subdivision boundaries. A stormwater pollution prevention plan will be implemented and will remain in effect during the construction phase of this project and until disturbed soils are properly stabilized. The grading and drainage plan will be provided for review to the Environmental Health Officer.

Per Chapter V-R of the Broadwater County Subdivision Regulations, a Weed Management Plan shall be approved by the Broadwater County Weed Board prior to the subdivision application being considered complete.

A Noxious Weed Management Plan has been completed by the developer, submitted, and approved by the Broadwater County Weed Coordinator and the Broadwater County Weed Board. 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; Application for Preliminary Plat: Item 28—Weed Management Plan*).

A letter was received from the Montana Historical Society (MHS) on January 10, 2023 for the Three Rivers Major Subdivision, 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 not been any previously recorded sites within the designated area. (*Source: Environmental Assessment, June 2021; Application for Preliminary Plat: Item - 32, Email from Damon Murdo dated January 10, 2023*)

Conditions of Approval Numbers 12, 14-c and 16 are required to mitigate impacts on the natural environment. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: The impacts on the natural environment, as set forth in the Findings of Fact, will be mitigated by the imposed Conditions of Approval, based upon the record, when satisfactorily completed

E. IMPACT ON WILDLIFE AND WILDLIFE HABITAT

1. **DEFINITION OF WILDLIFE AND WILDLIFE HABITAT:** Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy; and the place or area where wildlife naturally lives or travels through. *Broadwater County Subdivision Regulations, Definitions 84 and 85.*
2. **NARRATIVE:** Wildlife such as antelope, mule deer, white-tailed deer, elk, upland game birds, other small birds, snakes, rabbits, and other rodents along with coyotes, fox and other predators occasionally utilize the proposed subdivision. However, there should be no displacement of wildlife since the surrounding area is residential and plowed fields, not conducive to permanent wildlife habitat (*Source: Environmental Assessment*)
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. (*Source: Environmental Assessment*)

Conditions of Approval Number 14-c and 14-h are required to mitigate impacts on wildlife habitat. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: The impacts to wildlife habitat, as set forth in the Findings of Fact, will be mitigated by the imposed Conditions of Approval, based upon the record, when satisfactorily completed.

F. IMPACT ON PUBLIC HEALTH AND SAFETY:

1. **DEFINITION OF PUBLIC HEALTH AND SAFETY:** 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, rock falls 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, Definition 59.*
2. **NARRATIVE:** The proposed subdivision will be served by on-site wells. Each lot will have its own wastewater system as 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 Preliminary Plat Application. Each lot will have an 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. Based on public comments received at the September 27, 2023 public hearing, the Planning Board deemed it necessary to require the developer to perform a hydrogeologic survey to determine the availability of water in this area. (Source: Application for Preliminary Plat: Item – 24, Sanitation Requirements)

b. WASTEWATER

Wastewater for the proposed subdivision will be provided by the use of individual on-site wastewater treatment systems (septic/drain fields). The Environmental Health Office will review and issue approval for the lots for adequacy and impact of the wastewater systems on groundwater quality and will issue a determination of non-significant impacts in a Certificate of Subdivision Approval. (Source: Application for Preliminary Plat: Item – 30, Sanitation Requirements)

c. STORMWATER

A stormwater retention plan will be created by the subdivider's engineer with concurrence by the Environmental Health Office prior to final plat approval. Based on public comments received at the September 27, 2023 public hearing the Planning Board deemed it necessary to require the developer to divert the majority of the stormwater to the large established drainage North and East of this proposed development.

Conditions of Approval Numbers 3, 4, 11, 14-c, 14-d, 14-e and 14-f are required to mitigate impacts on public health and safety. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: The impacts on public health and safety, as set forth in the Findings of Fact, will be mitigated by the imposed Conditions of Approval, based upon the record, when satisfactorily completed.

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.

All conditions of approval are required to address compliance with the Subdivision Regulations. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: Compliance with subdivision regulations, as set forth in the Findings of Fact, will be addressed by the imposed Condition of Approval, based upon the record, when satisfactorily completed.

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.

Condition of Approval number 5 and 13 are required to address compliance with survey requirements. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: Compliance with survey requirements, as set forth in the Findings of Fact, will be addressed by the imposed Condition of Approval, based upon the record, when satisfactorily completed.

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.

Conditions of Approval number 13 is required to address the provision of easements within and to the proposed subdivision for the location and installation of planned utilities. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: The provision of easements within and to the proposed subdivision for the location and installation of any planned utilities, as set forth in the Findings of Fact, will be addressed by the imposed Condition of Approval, based upon the record, when satisfactorily completed.

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

1. **FINDINGS:** Legal and physical access to the subdivision is provided via Wheatland Road, a county road. The road within the subdivision will have to be dedicated to the public and shown on the final plat as a public access easement.

A condition of approval will require the Subdivider to apply for an approach permit for the two access points on to the county road.

Conditions of Approval Numbers 7, 9 and 13 are required to address the provision of legal and physical access to each parcel within the proposed subdivision. (A full list of the Conditions of Approval is found starting on page number 11)

CONCLUSION: The provision of legal and physical access to each parcel within the proposed subdivision as set forth in the Findings of Fact, will be addressed by the imposed Conditions of Approval, based upon the record, when satisfactorily completed.

IX. RECOMMENDED CONDITIONS

The Three Rivers Major Subdivision is recommended for 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. **(Mitigates Findings of Fact under “Compliance with Subdivision Regulations”)** *(Section 76-3-608, MCA; Chapter I, County Subdivision Regulations.)*
2. Plans for sewage treatment and water supply shall be submitted to 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. **(Mitigates Findings of Fact under “Impacts on Water and Wastewater under Local Services”)** *(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; Chapter V-J, County Subdivision Regulations)*
3. The stormwater drainage plan shall be designed in such a way that the majority of stormwater runoff generated by this development will be diverted to flow into the main drainage channel North and East of the proposed subdivision. **(Mitigates Findings of Fact under “Stormwater under Impacts on Public Health and Safety”)** *(Chapter V-J, County Subdivision Regulations)*
4. The developer shall perform a hydrogeologic analysis to determine if the use of 10-acre feet/year on each lot will have an effect on the aquifer and adjacent surface water. If there are adverse effects, the developer shall limit the use of water on each lot so there is no impact to adjacent aquifer and adjacent surface water. The report shall not be more than one year old at the time final plat is granted. **(Mitigates Findings of Fact under “Water Supply under Impacts on Public Health and Safety”)** *(Based on public comments received at the September 27, 2023 Broadwater County Planning Board Public Hearing and Chapter V-C, County Subdivision Regulations)*
5. 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. **(Mitigates Findings of Fact under “Compliance with Survey Requirements”)** *(Chapter II and Appendix Q, County Subdivision Regulations)*

6. 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. **(Mitigates Findings of Fact under “Impacts on Mail Delivery under Local Services”)** (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.)

7. The internal subdivision road 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. **(Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services and the Provision of Legal and Physical Access to each parcel within the proposed subdivision”)** (Chapter IV-A-7 and Appendix N, County Subdivision Regulations.)

8. A Traffic Impact Study (TIS) on Wheatland Road, from the westernmost subdivision access road to US Highway 287, shall be submitted to the Broadwater County Community Development office prior to final plat approval. The TIS shall include recommendations for improvements as a result of traffic impacts to, Wheatland Road. **(Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services”)** (Chapter V-H-a-iii, County Subdivision Regulations)

9. Prior to any development, Approach Permits shall be requested from the Broadwater County Public Works Department for the two accesses on to Wheatland Road. All requirements of the approved permit shall be met. **(Mitigates Findings of Fact under “The Provision of Legal and Physical Access to each parcel within the proposed subdivision”)** (Sections 76-3-102(3)-(4), 76-3-501(1) and 76-3-608(3)(d), MCA; Appendix O County Subdivision Regulations)

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

11. Prior to submitting the final subdivision plat application, the applicant shall complete a Fire Protection Plan for the purpose of furthering fire protection. The Fire Protection Plan shall be created with concurrence by the Three Forks Fire District.

(Mitigates Findings of Fact under “Impacts on Emergency Services under Local Services and Impacts on Public Health and Safety”) (Sections 76-3-102, 501, 504 and 608(3), MCA; Chapter V-Q, Broadwater County Subdivision Regulations)

12. Prior to any development and/or soil disturbance, the applicant shall submit a Subdivision Noxious Weed Management and Revegetation Plan for the proposed subdivision to the Broadwater County Weed District for review and approval. All specifications and requirements of the approved plan shall be met at the cost of the applicant. The applicant shall submit documentation to the Broadwater County Community Development Department from the Weed District verifying their review and approval. **(Mitigates Findings of Fact under “Impacts on Agriculture and Impacts on Natural Environment”)** (Sections 76-3-102(5 and 6), and 608(3)(a), MCA; Chapters I-C-9 and V-R, Broadwater County Subdivision Regulations)

13. 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: **(Mitigates Findings of Fact under “Impacts on mail Delivery, Utilities, Roads and Traffic under Local Services”, “Compliance with Survey Requirements, the provision of Easements within and to the Proposed Subdivision for the Location and Installation of any Planned Utilities and Provision of Legal and Physical Access to each Parcel within the Proposed Subdivision”)** (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;
- b. A “no access” restriction along the southern subdivision boundary adjacent to Wheatland Road except for those approved by the Broadwater County Public Works Department specifically for this subdivision;
- c. No Build Zones shall be shown in areas greater than 25% slope and in all drainageways;
- d. All existing access and utility easements adjacent to the subject property; and
- e. Adjacent and proposed County Road and utility easements

14. 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. ~~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~~ **(Mitigates Findings of Fact under all Review Criteria listed in the Staff Report)** (Section 76-3-608(3)(a), MCA; Chapters I and IV, County Subdivision Regulations)

- a. Notice is hereby given that all lots shall be used for Residential purposes only per the subdivision application **(Mitigates Findings of Fact under “Compliance**

- with Subdivision Regulations”**) (Chapter I-C and III-A, Broadwater County Subdivision Regulations);
- b. Notice is hereby given that each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, waives the right to protest joining or the amendment of a Rural Improvements District for the installation, maintenance, preservation, and repair of the following: roads that provide access to the subdivision, stormwater improvements for the subdivision; fire protection improvements for the subdivision. **(Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services”)** (Section 76-3-102(4), MCA; Chapter V-H-b, Broadwater County Subdivision Regulations)
 - c. Notice is hereby given that each lot shall be maintained in a weed-free manner and a Noxious Weed and Revegetation Plan has been prepared for the subdivision and is on file with the Broadwater County Clerk & Recorder’s Office. **(Mitigates Findings of Fact under “Impacts on Agriculture, Impacts on Agricultural Water Users, Impacts on the Natural Environment, Impacts on Wildlife and Wildlife Habitat and Impacts on the Public Health and Safety”)** (Sections 76-3-102 and 608(3), MCA; Chapters I-C-9 and V-R, Broadwater County Subdivision Regulations)
 - d. Notice is hereby given of the potential health risk from radon concentrations and that such risk can be evaluated through soil tests and mitigated through radon abatement techniques incorporated into structures. **(Mitigates Findings of Fact under “Impacts on Public Health and Safety”)** (Section 76-3-608(3)(a), MCA; Chapter I-C-10 and V-C, Broadwater County Subdivision Regulations)
 - e. Notice is hereby given that all structures 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). **(Mitigates Findings of Fact under “Impacts on Public Health and Safety”)** (Section 76-3-608(3)(a), MCA; Chapters I-C-10 and V-B, Broadwater County Subdivision Regulations)
 - f. Notice is hereby given of a restrictive covenant, binding the landowner, any heirs, successors and assigns, and all future owners of property within the subdivision, agreeing therein to hold Broadwater County harmless and indemnify Broadwater County from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County’s costs and attorney’s fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair and/or maintenance of the following: **(Mitigates Findings of Fact under “Impacts on Public Health and Safety”)**(76-3-608(1) and (4), MCA; Chapter I-C-10, Broadwater County Subdivision Regulations)
 - i. Exposure to radon;
 - ii. Earthquake fault zone and any seismic activity; and
 - iii. Water availability
 - g. Notice is hereby given of the presence of agricultural operations in the vicinity and 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. **(Mitigates Findings of Fact under “Impacts**

on Agriculture and Impacts on Agricultural Water User Facilities”) (section 76-3-608-(3)(a), MCA; Chapter III-A-7-b, Broadwater County Subdivision Regulations)

- h. Notice is hereby given that domestic pets should be restrained on the property at all times (**Mitigates Findings of Fact under “Impacts on Agriculture, Impacts on Agricultural Water User Facilities, Impacts on Wildlife and Wildlife Habitat”**) (Section 76-3-608(3)(a), MCA; Chapter I-C and III-A-7, Broadwater County Subdivision Regulations)
15. 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.” (**Mitigates Findings of Fact under “Impacts on Agriculture, Impacts on Agricultural Water User Facilities**) (Section 27-30-101, MCA and Chapter IV-A 20, County Subdivision Regulations.)
16. Prior to submitting the final plat, the following improvements shall be installed or otherwise guaranteed. (**Mitigates Findings of Fact under “Impacts on Utilities, Roads and Traffic, Mail Delivery, the Natural Environment and Public Health and Safety**) (Sections 76-3-507 and 76-3-608(3)(a), MCA and Chapter IV-A, County Subdivision Regulations)
 - a. Any necessary improvements required by the stormwater drainage plan, weed management plan, fire protection plan, or approach permits;
 - b. Installation of mail delivery facilities; and
 - c. Utilities abutting and available to each lot.
17. The applicant shall submit a signage plan for traffic control and street identification signs for the internal access roads to the Community Development Department for review and approval. All specifications and requirements of the approved plan shall be met at the cost of the applicant. (**Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services”**) (Section 76-3-608, MCA; Chapters I-C and V-H-c-xi, Broadwater County Subdivision Regulations)
18. In cooperation with Broadwater County, the applicant shall create, or expand an existing Rural Improvement District for the maintenance, preservation and repair of the internal subdivision roads or establish a Property Owners’ Association or a Road User Agreement which provides for the maintenance of the internal subdivision road network. (**Mitigates Findings of Fact under “Impacts on Road and Traffic under**

Local Services”) (Sections 7-11-1003, 76-3-102, 501, 504 and 608(3), MCA; Chapter V-H-b, Broadwater County Subdivision Regulations)

19. Prior to final plat approval the applicant shall:
- a. Provide proof that all real property taxes and special assessments assessed and levied on the property are paid for the current tax year; including any past delinquencies (**Mitigates Findings of Fact under “Compliance with the Subdivision Regulations”**) (Section 76-3-611(1)(b), MCA; Chapter III, Broadwater County Subdivision Regulations)
 - b. Provide documentation showing that the applicant is the lawful owner of the property with the apparent authority to subdivide the same and showing the names of lien holders or claimants of record (**Mitigates Findings of Fact under “Compliance with the Subdivision Regulations”**) (Section 76-3-612, MCA; Chapter III, Broadwater County Subdivision Regulations)

DATED this _____ day of October, 2023

BROADWATER COUNTY COMMISSION

ATTEST:

Debi Randolph, Chairperson

Angie Paulsen, Clerk & Recorder

Darrel Folkvord

Lindsey Richtmyer

Exhibit A

Public Comments received from Planning Board Public Hearing on September 27, 2023:

Proponents: No Public Comments

Opponents:

Butch Barton discussed drainage problems during a rain event and the spring runoff. He would like to see a drainage plan put into place to divert the water from Wheatland Meadows. He would also like a woven fence between the subdivisions to prevent animals (pets) from roaming. Mr. Barton would also like to know the setbacks to the other subdivisions for wastewater (septics) and buildings. Mr. Barton also discussed a concern for the lack of water in the area.

Steve Kurk stated that this subdivision does not affect him personally but has friends who have shown concerns. He stated that he has knowledge that the Three Forks Fire District will not approve this subdivision. Mr. Kurk also stated that wells in the area are being drilled at 800-1,000 ft and many that are drilled at a lower level are going dry. He also commented that the government agencies are not held accountable for the decisions they make when it affects neighboring landowners.

Mike Neely stated he was concerned with surface water during the spring runoff and any minor rain event. He showed pictures (will be emailed to Nichole Brown, Community Development and Planning Director) of the low-lying areas that fill up with water up to 3ft deep.

Tim Benjamin is also concerned about surface water and the lack of water in the area. He also showed pictures (will be emailed to Nichole Brown, Community Development and Planning Director) of low-lying areas that have flooded with a current rain event. He also asked why he could not find any information on the public hearing until last minute. Nichole Brown told him that our paper of record currently is the Helena IR, but the notice is on the county website and posted as well.

Mike Miller stated that he was shocked that the covenants said nothing about subdividing the proposed twenty acres into smaller lots down the road. If all 17 lots were divided into the smallest lots currently approved by DEQ (Department of Environmental Equality) that could possibly be an extra 240 lots, all with individual wells and septic systems. Mr. Miller also commented that there is a lack of water in the area and this will be a concern.

Elizabeth Barton stated that many foundations are failing with the quality of the soil. Mrs. Barton Commented that the ground is very unstable and contractors are being sued because of this.