

**BEFORE THE
BROADWATER COUNTY COMMISSION
BROADWATER COUNTY, MONTANA**

FINDINGS OF FACT AND ORDER

**IN THE MATTER OF THE APPLICATION Kevin, Ashley, Colin and Jennifer Duneman
FOR PRELIMINARY PLAT APPROVAL OF THE CACTUS FLATS SUBSEQUENT
MINOR SUBDIVISION:**

PURSUANT to the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-614, Montana Codes Annotated, and the Broadwater County Subdivision Regulations, the Broadwater County Planning Board reviewed the proposed preliminary plat for 2 residential lots as submitted by the applicants, together with the required supplementary plans and information, to determine if the information submitted meets the requirements of the Montana Subdivision and Platting Act and the Broadwater County Subdivision Regulations. The Planning Board considered all submitted reports, exhibits, etc., and listened to public testimony and considered written comments if submitted.

THEREFORE, with completion of the review and the receipt of all public input the Planning Board being fully advised of all matter presented to it regarding this application, the Planning Board makes the following Findings of Fact:

FINDINGS OF FACT AND ORDER REPORT

CACTUS FLATS SUBSEQUENT MINOR SUBDIVISION

Preliminary Plat Dated 2/10/2020

To: Broadwater County Commissioners
From: Broadwater County Planning Board
Subject: A proposed subdivision to be known as **Cactus Flats Subsequent Minor Subdivision**

GENERAL INFORMATION

Date of Application: February 10, 2020
Date of Sufficiency: February 14, 2020 (*Due to COVID-19 the developers granted an extension for the review timeline)
Public Hearing Date: June 2, 2020
Review Period Ends: June 30, 2020

APPLICANT: Kevin, Ashley, Colin and Jennifer Duneman
133 Arrowhead Trl
Bozeman, MT 59718

APPLICANTS' REPRESENTATIVE: Bernadette Swenson
Schauber Surveying, Inc
218 Broadway
Townsend, MT 59644

LEGAL DESCRIPTION: Situated in the NW ¼ of Section 27, Township 8 North, Range 1 East, Broadwater County, Montana

GENERAL LOCATION: The proposed subdivision is located off of AB Cook Road, approximately eight and a half (8.5) miles northwest of the city of Townsend, Montana.

DESCRIPTION

PROPOSAL:

This property was previously subdivided and is known as Amended Plat of the Third Addition Silos Acres Subdivision No. 2. Since this is a subsequent minor subdivision of record, the review process is similar to that of a major subdivision. The developers intend to create two (2) lots from an existing 9.43-acre parcel. The minimum lot size proposed is 4.71 acres and the maximum lot size is 4.72 acres. The required preliminary review fee of \$1,700.00, the weed inspection fee of \$140.00 have both been paid.

DISCUSSION:

Both lots proposed are subject to DEQ review. No Homeowners' Association is proposed at this time. Existing covenants exist for this property and are included in the preliminary plat application as Item #13.

Review is performed pursuant to the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-614, Montana Codes Annotated and the Broadwater County Subdivision Regulations. The proposed preliminary plat, Cactus Flats Subsequent Minor Subdivision, as submitted by the applicants, together with the required supplementary plans and information, appear to satisfy the requirements of these regulations and comply with the Broadwater County Growth Policy Plan dated July, 2003.

PHYSICAL CONDITIONS:

A vicinity map, as well as a preliminary plat, is provided in the preliminary plat application. No rock outcroppings or the presence of bedrock have been identified on the property. The nearest open water body is the Canyon Ferry Lake Reservoir which is approximately 0.5 miles to the east. The proposed development is not in an area subject to flood hazard.

WATER SUPPLY:

Each lot will be served by an individual well. Well logs in this area show an acceptable water source at a depth of 400-430 feet with flow rates of 20-30 gpm. DEQ will review the lots for well locations.

WASTEWATER TREATMENT:

Individual wastewater treatment systems are proposed for both lots. The typical soils in the proposed subdivision are identified as Radersburg very cobbly loam (2 to 5 percent slopes). The Radersburg series consist of deep, well-drained soils formed in gravelly and cobbly old alluvium. Permeability is moderate and the available moisture capacity is low. These soils are considered suitable for on-site wastewater treatment systems. The soils information and proposed wastewater treatment systems will be reviewed by the Montana Department of Environmental Quality (DEQ) for the adequacy and impact of the wastewater systems on groundwater quality. DEQ will issue a determination of non-significant impacts in a Certificate of Subdivision Approval, which must be presented to the County for recordation of the final plat.

SOLID WASTE:

Lot owners will be responsible for disposal of their own solid waste. Subdivision residents will have the option of hiring an independent contractor to pick up their solid waste or transport it themselves to the Broadwater County Transfer Station, Winston Canister Site or the Townsend Canister Site.

DRAINAGE:

There are no existing drainages on the proposed subdivision property, and since no new roads are proposed, no roadway drainages will be constructed.

EVALUATION CRITERIA

PRESENT LAND USE:

The current use of this parcel is vacant subdivision land.

EFFECTS ON AGRICULTURE:

This property is not considered prime farmland even if it were irrigated. Therefore, the proposed subdivision should not have an effect on agricultural productivity since it is not currently utilized for any agricultural purposes. The responsibility to maintain boundary fences will be the individual landowners. The developer will be required to control any noxious weeds until the property is turned over to the subsequent landowners.

ENVIRONMENTAL ASSESSMENT CRITERIA

Even though this subdivision is a subsequent minor subdivision, an Environmental Assessment is not required since it lies within an area covered by the Broadwater County Growth Policy Plan. Per the Broadwater County Subdivision Regulations, the requirement for preparing an EA does not apply when, "The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to Sections 76-1-601 through 76-1-606, MCA." Supporting documentation and maps are included in the preliminary plat application as Item # 22.

GEOLOGY:

No falls, slides or slumps or adverse soil, rock, mud or snow have been identified on the property. No rock outcroppings have been identified either. 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.

VEGETATION:

There are no marsh, shrub or forestlands located on the property. There are no trees or vegetation cover. Existing vegetation consists of light native grasses and some prickly pear cactus. No critical plant species have been identified. Existing vegetation will only be disturbed for necessary construction of driveways, utilities and structures. Any construction disturbance will be reseeded with an approved grass seed mix. A weed management plan is in the process of being developed with assistance by the Broadwater County Weed Coordinator to control and prevent the growth of noxious weeds.

EFFECTS ON WILDLIFE AND HABITAT:

Wildlife such as antelope, deer, upland game birds, other small birds, snakes rabbits, fox and coyote occasionally utilize the proposed subdivision. However, the use is infrequent due to the lack of cover and prime feeding areas as well as the close proximity to nearby residential development and a busy highway. Therefore, the impacts to wildlife should be minimal.

EFFECTS ON HISTORICAL FEATURES:

A letter was sent to the Montana Historical Society (MHS) on September 16, 2019 to determine if there are any known historical, cultural or archaeological sites which may be affected by the proposed development. A response letter enclosed in the preliminary plat application as Item #33, states that there has been one previously recorded site within the designated search locale, that being the historic AB Cook Silos. However, those silos are not located on this property. If cultural resource should be discovered, MHS will be notified.

EFFECTS ON ROADS:

Access to all lots will be off of AB Cook Road which is a county road traversing the south boundary of the proposed subdivision.

UTILITIES:

Utility service will be provided by NorthWestern Energy. Natural gas service is not currently available.

EFFECTS ON EMERGENCY SERVICES:

The proposed subdivision is in the Broadwater County Rural Fire District jurisdiction. The distance from the City of Townsend Fire Hall, to the subdivision is approximately eight and a half (8.5) miles. The distance from the Winston Fire Hall to this subdivision is approximately five and a half (5.5) miles. According to a letter addressed to the Broadwater County Rural Fire Department dated September 16, 2019, the developer is requesting to pay the per lot cash-in-lieu of water supply fee of \$1,000.00 per lot, payable at the time of sale and closing on each lot. This proposal has been agreed to by Fire Chief Ed Shindoll on September 26, 2019.

The Broadwater County Sheriff's Department will provide law enforcement services. The Sheriff's Department is located approximately eight and a half (8.5) miles from the proposed subdivision.

The Broadwater Health Center also located in Townsend, will provide both ambulance and emergency medical services to the subdivision residents.

EFFECTS ON SCHOOLS:

The proposed subdivision is served by the Townsend Schools. This subdivision could account for potentially 3 students according to figures obtained from the Broadwater County Growth Policy Plan. The potential for new students from this development will most likely not have an impact on existing bus routes.

EFFECTS ON LAND USE:

Lands in all directions of this property are residential subdivision.

EFFECTS ON PUBLIC HEALTH AND SAFETY:

Since the property is bordered on the south by the moderately traveled AB Cook Road and nearby to the east lies the Broadwater County-owned airway landing strip, these could potentially pose a serious risk to the safety of the subdivision residents; especially to children and domestic animals. These risks can be mitigated by proper fencing and homeowner awareness.

PARKS AND RECREATION FACILITIES:

Since this is a subsequent minor subdivision, no parkland dedication is required pursuant to 76-3-609(3), MCA.

ORDER

IT IS HEREBY ORDERED that the preliminary plat for Cactus Flats Subsequent Minor Subdivision is approved, subject to the conditions listed below. Final plat approval shall be contingent upon completion and compliance with these conditions:

1. Plans for sewage treatment and water supply shall be submitted to the Montana Department of Environmental Quality 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; Sections VI-J and VI-K., County Subdivision Regulations*)
2. A stormwater drainage plan shall be submitted to DEQ for review and recommendation. 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; Section VI-I, County Subdivision Regulations*)
3. Prior to any development, Driveway Application and Approach Permits shall be requested from the County Road Department. All requirements of an approved permit shall be met. (*Sections 76-3-102(3 and 4), 501(1), 504(1)(f)(i), and 608(3)(a), MCA*)
4. The Applicants shall contribute 2/50^{ths} of the cost to upgrade the existing road 'AB Cook Road' and 'Paydirt Lane' to Broadwater County Subdivision Road Standards for a #1 Local Road. It shall be required that they obtain a current estimate.
5. The applicant 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.
6. Plans for the location and installation of individual mailboxes shall be reviewed and approved by the United States Postal Service prior to installation.
7. The applicant and the Fire Protection Authority having Jurisdiction (FPAHJ) shall use their best efforts to draft a fire protection plan (the "Plan"), specifically for this Subdivision, in accordance with the Broadwater County Subdivision Regulations. The Plan shall be equally acceptable to the FPAHJ, the applicant and the County governing authority. The Plan shall adequately address the Fire Risk Analysis, all Findings of Fact and appropriate Mitigation Measures. In the event the parties are unable to come to agreement by the final plat submittal, the applicant shall become eligible to provide the per lot cash in lieu fee for water supply as may be defined in the Broadwater County Subdivision regulations, in effect at the time of submittal. (*Section 76-3-608(3)(a), MCA; Section IV-A-16., County Subdivision Regulations*)
8. 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; Section VI-S., County Subdivision Regulations*)

9. 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 (*Section 76-3-608(3)(a), MCA; County Subdivision Regulations*)
 - a. Per the subdivision application, all lots shall be used for residential purposes only;
 - b. Notification 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; (*Section 76-3-608(3)(a), MCA*)
 - c. A notification 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. Notification of the potential degradation of existing emergency services due to the potential for growth in a rural area.
 - e. Any additional, replacement, or relocated utility lines shall be installed underground, in accordance with the County Subdivision Regulations, unless otherwise determined by the utility provided; (*Section 76-3-608(3)(a), MCA; Section VI-M, County Subdivision Regulations*)
 - f. Any exterior lighting shall be directed downward to minimize visibility beyond the property lines; (*Section 76-3-608(3)(a), MCA*)
 - g. Notification of the presence of agricultural operations in the vicinity; (*Section 76-3-608(3)(a), MCA*)
 - h. A waiver of the right to protest to join a special district for the purpose of providing community water and/or wastewater treatment system improvements and/or maintenance; (*Section 76-3-608(3)(a), MCA*)
 - i. 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:
 - i. Earthquake fault zone and any seismic activity;
 - ii. Water availability;
 - j. 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; (*Sections 76-3-102(5 and 6), 501(1), and 608(3)(a), MCA; Section VI-S, County Subdivision Regulations*)
 - k. 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*)
 - l. Lots shall only allow for livestock if a small acreage livestock management plan is reviewed and approved by the County Extension Agent and submitted to the

- county. Each lot owner shall be required to create and adhere to their own livestock management plan.
- m. 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*)
 - n. Address numbers shall be clearly marked at the driveway entrance to each lot and be easily identified from the road.
10. Prior to filing the final plat, the following improvements shall be installed or otherwise guaranteed:
- a. Any necessary improvements required by the stormwater drainage plan, weed management plan, fire protection plan, or approach permits;
 - b. Utilities abutting and available to each lot (electrical and telephone shall be underground);

If said improvements are not installed prior to final plat, then the Applicant 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 E)

11. Prior to filing the final plat, the Applicant 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 Applicant is the lawful owner of the property with the apparent authority to subdivide the same, showing the names of lien holders or claimants of record and the written consent to the subdivision by the owners of the land, if other than the applicant, and any lien holders of claimants of record against the land. (*Section 76-3-612, MCA*)

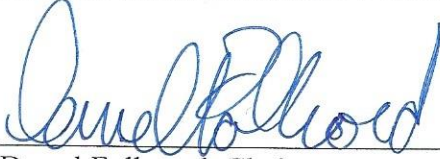
The Applicant is financially responsible for actual outside engineering, consulting, professional and/or contracted service fees, etc. at the sole discretion of the County for additional review and/or final plat approval of the proposed subdivision.

Preliminary plat approval of Cactus Flats Subsequent Minor Subdivision shall be in force for three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

A party, as defined by 76-3-625 M.C.A., who is aggrieved by a decision of the governing body may, within thirty (30) days after this decision, appeal to the Broadwater County district court.

DATED this 15 day of June, 2020

BROADWATER COUNTY COMMISSION

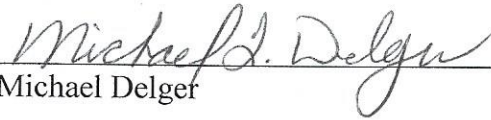


Darrel Folkvord, Chairperson

ATTEST:



Ann Rauser, Deputy Clerk &
Recorder



Michael Delger

Laura Obert