

BROADWATER COUNTY COMMISSIONERS

515 Broadway, Townsend

Meetings are held at the Flynn Building (old Opportunity Bank) 416 Broadway
Agenda, documents, Official Meetings Minutes and videos of Commission meetings are
available and at <https://www.broadwatercountymt.com>

OFFICIAL agendas are posted in the Courthouse (1st Floor Bulletin Board),
Broadwatercountymt.com, and in the window of the Flynn Building on the Thursday
before the Commission Meetings. Working Meetings are not live streamed.

NOTICE: The following agenda is posted in anticipation that the July 5, 2022 Agenda for the Horse Creek Hills subdivision will not be completed that day and the original Agenda will continue at the July 11, 2022 Commission Meeting. If all Public Attending the July 5, 2022 public comment portion of the agenda have been heard, the public comment portion of the agenda will be closed and no further public comment will be taken at the July 11, 2022 meeting. If you wish to make public comment, please attend the July 5, 2022 meeting.

There is not a meeting on Monday July 4th

July 5th Tuesday

- | | |
|----------|---|
| 10:00 AM | Discussion and Decision: Montana Distributors and Janssen Opioids Settlement Memorandum of Understanding |
| 10:05 AM | Discussion and Decision: Josh Obert County Public Works Director Solid Waste Past Due Fee Policy |
| 10:15 AM | Discussion: Horse Creek Hills Subdivision <ul style="list-style-type: none">• Disclosure of Conflicts of Interest by the Commission• Reports from Planner and Staff• Subdivider/Representative Presentation• Public Comment on the Subdivision<ul style="list-style-type: none">○ General Public Comment○ Public Comment Specific to Water• Subdivider Response• Close Public Comment• Board Discussion/Decision |
| 11:00 AM | Opportunity for Public Comment on Items Not on the Agenda |

July 6th Wednesday

10:00 AM

Discussion and Decision: Nichole Brown Broadwater County
Development Director, Revise County Subdivision Fees

Mail & Items for Discussion and/or signature may occur as time allows during the meeting. Issues and times are subject to change.

Items for Discussion / Action / Review / Signature – Consent Agenda

- ✓ Certificate of Survey review
- ✓ Management – on-going advisory board appointments
- ✓ Claims/Payroll/minutes
- ✓ County Audit / Budget
- ✓ Mail – ongoing grants
- ✓ Correspondence – support letters

Darrel Folkvord	Chairperson	406-266-9272 and 406-980-1213
Debi Randolph		406-266-9270 and 406-980-2050
Mike Delger		406-266-9271 and 406-521-0834
E-mail	commissioners@co.broadwater.mt.us	

Second Amendment to the November 2021 Memorandum of Understanding

The Following paragraphs from the original November 2021 Memorandum of Understanding are hereby amended as follows:

Section C, Paragraph 13:

The Committee shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute resolution provisions, in accordance with the terms of this MOU and Montana law. It shall not have rulemaking authority under Montana law. The Committee shall draft and finalize necessary bylaws, procedures, and other governing documents with the goal of minimizing red tape and maximizing the efficient flow of funds to abate the opioid problem.

Section D, Paragraph 16: (Delete)

~~The Trust's financial resources shall be invested through the Montana Board of Investments to assure the Trust's investments are appropriate, prudent, and consistent with best practices for investments of public funds. The investment policy shall be designed to meet the Trust's long term and short term goals.~~

This Second Amendment replaces the April 19, 2022, Second Amendment, in its entirety.

SIGNATURE PAGE

Governmental Entity: _____

Authorized Official: _____

Address 1: _____

Address 2: _____

City, State, Zip: _____

Phone: _____

Email: _____

The Governmental Entity identified above, in order to obtain an in consideration for the benefits provided to the Governmental Entity pursuant to the Distributors' and Janssen Settlements dated July 21, 2021, acting through its Authorized Official, hereby agrees to the Second Amendment to the Memorandum of Understanding.

Signed this __ day of _____, 2022

Signature: _____

Title: _____

Second Amendment to the November 2021 Memorandum of Understanding

The Following paragraphs from the original November 2021 Memorandum of Understanding are hereby amended as follows:

Section C, Paragraph 13:

The Committee shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute resolution provisions, in accordance with the terms of this MOU and Montana law. It shall not have rulemaking authority under Montana law. The Committee shall draft and finalize necessary bylaws, procedures, and other governing documents with the goal of minimizing red tape and maximizing the efficient flow of funds to abate the opioid problem.

Section D, Paragraph 16: (Delete)

~~The Trust's financial resources shall be invested through the Montana Board of Investments to assure the Trust's investments are appropriate, prudent, and consistent with best practices for investments of public funds. The investment policy shall be designed to meet the Trust's long term and short term goals.~~

This Second Amendment replaces the April 19, 2022, Second Amendment, in its entirety.

AUSTIN KNUDSEN



STATE OF MONTANA

June 20, 2022

To: Commissioners, Council Persons, and local government attorneys:

Please find the enclosed Second Amendment to the November 2021 Memorandum of Understanding. Please direct any questions regarding the proposed amendment to Special Assistant Attorney General, Bill Rossbach.

Thank you for your prompt and favorable consideration.

A handwritten signature in blue ink, appearing to read "D. Oestreicher", is centered on the page.

Derek J. Oestreicher
Chief Deputy Attorney General
Montana Department of Justice

DEPARTMENT OF JUSTICE

215 North Sanders
PO Box 201401
Helena, MT 59620-1401

(406) 444-2026
Contactdoj@mt.gov
mtdoj.gov

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

June 27, 2022

MEMO

TO: Broadwater County Commission

FROM: Jania Hatfield, Acting County Attorney

RE: Horse Creek Hills Major Subdivision – Information Regarding Proportionate Impact

Mont. Code Ann. § 76-3-608(4) states that “The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) ... Pursuant to 76-3-620, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).”

The governing body may require the subdivider to pay a proportionate share of the cost of improving capital facilities, including roads. “The costs must reasonably reflect the expected impacts directly attributable to the subdivision...All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.” Mont. Code Ann § 76-3-510. As a result, the county can impose a requirement that the subdivider pay a proportionate share of the cost of improving roads, but the subdivider cannot be required to pay more than their proportionate share to improve the road.

A good example to look at is the case of *Christison v. Lewis & Clark County*. That case involved the validity of the county conditioning approval of a subdivision upon the subdivider paving a county road. In this case, the subdivider sought approval of Fox Trot Estates Subdivision II, a 12-lot subdivision that would impact Lake Helena Drive. At the time of development, Lake Helena Drive was considered a deficient county road that was carrying 879 vehicles per day. The subdivision would add about 12 percent more vehicular traffic to the existing total. The cost to pave the road was estimated at \$2 million, and the conditions of approval required the subdivider to pay the entire cost of improving the road.

The district court found the county acted in a manner that was arbitrary, capricious, and unlawful, when it required the subdivider to pay the full amount to pave Lake Helena Drive. The district court reasoned that it would be reasonable for the county to impose 12% of the costs to improve Lake Helena Drive to the subdivider, as that correlated to the increase that the subdivision would have on the traffic on Lake Helena Drive.

Imposition of the proportionate share is reviewed under the *Nollan/Dolan* analysis. That analysis requires both a nexus to the imposed condition as well as a rough proportionality to the projected impact. That is to say, the county must not only qualify its condition to mitigate a

condition, it must also quantify that condition, and offset the anticipated burden based on information in the record before the county.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Hatfield". The signature is written in a cursive, somewhat stylized font.

Janja Hatfield
Acting County Attorney

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

June 27, 2022

MEMO

TO: Broadwater County Commission

FROM: Jania Hatfield, Acting County Attorney

RE: Horse Creek Hills Major Subdivision – Information Regarding Water Usage and Exempt Wells

Mont. Code Ann. § 76-3-622 requires the governing body to determine “evidence of adequate water availability” for new water supply systems. Evidence can be presented through well logs or testing of onsite or nearby wells; published hydrogeological reports; or as otherwise specified by MDEQ rules.

Exempt wells, or more precisely exceptions to permit requirements, are a ground water appropriation recognized by Montana law. Pursuant to Mont. Code Ann. § 85-2-306, an exception for a permit for appropriating ground water by means of a well is allowed when the flow rate is 35 gallons a minute or less and does not exceed 10 acre-feet per year. Further, exempt wells are allowed to be used in both open and closed basins in Montana.

Consideration of exempt wells also includes “combined appropriations.” For purposes of review of this subdivision, which is a phased subdivision, each phase is allowed one exempt well. Any lots over 20 acres are also allowed to have their own exempt well. A combined appropriation is defined as “an appropriation of water from the same source aquifer by means of two or more groundwater developments, the purpose of which, in the department judgment, could have been accomplished in one appropriation.” Two wells can be used in one development, so long as the wells are under the 10 acre-feet per year threshold.

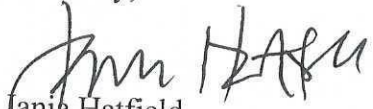
The DNRC requires that any subdivision with lots under 20 acres, created after October 17, 2014, have a pre-determination letter, determining that all exempt wells proposed for the subdivision will stay at/under a combined appropriation of 10 acre-feet.

Because exempt wells are exceptions from the DNRC permitting process, no Groundwater Application for Beneficial Use Permit is required. This means that a subdivider using exempt wells do not necessarily have to provide the aquifer test and hydrogeologic assessment that traditionally accompany a permit. Within 60 days of completion of the well and appropriation of ground water for beneficial use, the subdivider files a notice of completion with the DNRC.

A county could condition approval of the subdivision on completion of a hydrogeological study, *if there is sufficient evidence in the record that the proposed subdivision may have an adverse impact on the aquifer*. Examples may include, but are not limited to, evidence presented

of a well in the immediate vicinity of the proposed subdivision that has gone dry or a hydrogeological study provided that the sufficiency of the aquifer is questionable.

Sincerely,

A handwritten signature in black ink, appearing to read "Jania Hatfield". The signature is written in a cursive, somewhat stylized font.

Jania Hatfield
Acting County Attorney

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

June 27, 2022

MEMO

To: Broadwater County Commissioners

From: Jania Hatfield, Acting County Attorney

Subject: Horse Creek Hills Major Subdivision – Mitigation measures offered by Subdivider

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.

MITIGATION ANALYSIS:

Section 76-3-608(4)-(5), MCA governs mitigation within a proposed subdivision. A governing body (county commissioners) may require a subdivider to design their land to minimize significant adverse impacts. A governing body (county commissioners) cannot unreasonably restrict the ability to develop land and that in requiring mitigation, a governing body should consult with and give due weight to the subdivider's expressed preference.

A. IMPACTS ON AGRICULTURE

1. In the *Environmental Assessment* June 2021, the subdivider offers the following measures to mitigate impacts on agriculture:
 - a. Future Lot Owners will be required to maintain noxious weeds on their property. Lot owners will be also responsible for maintaining their road ditches fronting and adjacent to the internal subdivision roads within the public access and utility easement.
 - i. This mitigation is included as Condition 12 and 15 k in the Updated Staff Report.

B. IMPACTS ON AGRICULTURAL WATER USER FACILITIES

1. No mitigating conditions were offered by the subdivider and no conditions were recommended in the Updated Staff Report.

C. IMPACTS ON LOCAL SERVICES

1. In the *Environmental Assessment* dated June 2021, the subdivider offered the following measures to mitigate impacts on local services.
 - a. The developer is proposing impact fees to Broadwater County, for impact to county roads. . . . In lieu of the cost for a full road section for a #1 Local Road, we would offer that the cost of improvements be represented by a 3-inch thickness of Crushed Top Surfacing (24 ft wide) for the entire 49,070 LF (9.29 miles) of off-site County Roads, on a proportionate share, per the Vehicle Distribution Analysis outlines above.
 - i. This mitigation is included as Conditions 6 and 18 c.
 - b. Signage to warn subdivision traffic of ATV/UTV traffic can be added to the local subdivision roads as to minimize conflict with campground traffic. There will not be any direct access to the waterbody of Canyon Ferry Reservoir, as the development is landlocked. The addition of signage to the trail system (within the development) that addresses the lake danger may be pursued if Broadwater County deems it necessary.
 - i. This mitigation is included as Condition 17; however, signage related to lake danger is not included in Condition 17 at this time.
 - c. The subdivision has proposed to provide \$1,000 per lot in lieu of a fire protection system; however the developer may opt to install a fire protection system as approved by the Fire District Having Jurisdiction.
 - i. This mitigation is included as Condition 11, to the extent that it contemplates installation of an approved fire protection system. The in-lieu payment does not conform with the 2003 Growth Policy.
2. At the November 30, 2021, Planning Board Meeting, the Subdivider's Representative offered a mitigating measure restricting the speed on Lower Confederate and Lower Duck Creeks Road to 25 miles per hour.
 - a. This mitigation is not included in the Conditions as the subdivider does not have authority to restrict the speed limit on County Roads.

D. IMPACTS ON THE NATURAL ENVIRONMENT

1. In the *Environmental Assessment* dated June 2021, the subdivider offered the following measures to mitigate impacts on the natural environment.
 - a. Individual geotechnical reports for each homesite prior to development consistent with industry practice.
 - i. This mitigation is included in Condition 15 c.
 - b. All structures should be designed for seismic considerations consistent with the latest edition of the International Residential Code (IRC).

- i. This mitigation is included in Condition 15 c.
 - c. Horse Creek Hills 1 Subdivision and Horse Creek Hills 3 Subdivision each provide for a 20-foot-wide trail easement to the west, to BOR property. Also, there is a public road easement in Horse Creek Hills 3 Subdivision and Horse Creek Hills 4 Subdivision, adjacent to State Lands to the north.
 - i. This mitigation is included in Condition 14 d.

E. IMPACTS ON WILDLIFE AND WILDLIFE HABITAT

- 1. In the *Environmental Assessment* dated June 2021, the subdivider offered the following measures to mitigate impacts on the wildlife and wildlife habitat.
 - a. Covenants will include provisions to fence gardens, bear-proofing any bear attractants (garbage, outdoor pet food, and bird feeders, fruit trees, barbeque grills, etc.) The subdivision will also provide wildlife proof storage facilities for trash.
 - i. This mitigation is included in Conditions 15 l, 15 o and 15 p.

F. IMPACTS ON PUBLIC HEALTH AND SAFETY

- 1. In the *Water Usage Summary* dated November 2021, the subdivider offered the following measures to mitigate impacts on public health and safety.
 - a. Covenants imposed on the subdivision that each lot install a water meter within the plumbing of individual water supply wells (typically in the utility room), and each lot shall keep track of total annual usage and report that information to the Homeowners Association for the subdivision. The Homeowners Association would tabulate usage, which can be made available if requested by DNRC. The letter further states that the subdivider is willing to put the corresponding maximum irrigated areas for each lot in the final covenants.
 - i. This mitigation is included in Suggested Conditions in the Addendum to Horse Creek Hills Staff Report: New Information before the Planning Board, Dated April 5, 2022.

STAFF REPORT

HORSE CREEK HILLS MAJOR SUBDIVISION Preliminary Plat Dated 3/29/2020

To: Broadwater County Planning Board
From: Nichole Brown, Broadwater County Community Development Director
Subject: A proposed subdivision to be known as **Horse Creek Hills Major Subdivision**

GENERAL INFORMATION

Date of Application: August 12, 2020
Date of Sufficiency: August 17, 2021
Public Hearing Date: September 29, 2021
Review Period Ends: November 12, 2021

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

APPLICANTS' 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 of Lower Confederate
Road, approximately eighteen and one half (18.5) miles northeast
of the city of Townsend, Montana.

DESCRIPTION

PROPOSAL:

The developer intends to create forty-one (41) lots from an existing 319.82-acre parcel. Lots range in size from 5.35 to 31.77 acres. Parkland is proposed and shown on the preliminary plat as consisting of 14.18 acres. Thirty-nine (39) lots are being submitted for review as residential lots and two (2) lots are proposed for commercial or industrial use. The required preliminary review fee of \$8,560.00 has been paid.

DISCUSSION:

Forty (40) of the lots proposed are subject to DEQ review. The one parcel greater than twenty (20) acres, Lot 41, will be reviewed by the Environmental Health Office for water and sanitation systems. Draft proposed covenants are included in the preliminary plat application.

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, Horse Creek Hills 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 Plan dated February, 2020.

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 260 yards to the west, at the nearest location. The proposed development is not in an area subject to flood hazard.

WATER SUPPLY:

Each lot will be served by an individual well. DEQ will review forty (40) of the lots for septic and well locations. The Broadwater County Sanitarian will review one (1) lot for septic and well location. Well log data for ten (10) wells in the vicinity are located 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.

WASTEWATER TREATMENT:

Individual wastewater treatment systems are proposed for all forty-one (41) lots. Forty (40) of these lots will be reviewed by the Montana Department of Environmental Quality (DEQ) for the adequacy and impact of the wastewater systems on groundwater quality. One (1) lot will be reviewed by the Broadwater County Sanitarian. 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. The Broadwater County Sanitarian will issue an approval for one (1) lot.

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 or the Dry Gulch Canister Site.

DRAINAGE:

There is a natural drainage traversing the western portion of the property. The lot lines of proposed parcels fall along these drainages to minimize potential negative impacts and to maximize buildable property on each parcel. There are no known natural water systems, such as rivers or intermittent streams located on the subject property. There are remnants of an old irrigation ditch traversing the south portion of the property, but according to the developer they are no longer used for irrigation purposes. All roadway drainage structures will be designed in accordance with regulations as required by Broadwater County and DEQ.

EVALUATION CRITERIA

PRESENT LAND USE:

The current use of this parcel is vacant land.

EFFECTS ON AGRICULTURE:

According to the preliminary plat application, 88% of this property would not be considered prime farmland even if it were irrigated. The proposed subdivision property is not part of an economically viable farm unit nor has it been irrigated in the recent past. This subdivision should not have an effect on agricultural productivity since it is not currently utilized for any agricultural purposes. However, adjacent property to the east is utilized for 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

An Environmental Assessment (EA) is included in the preliminary plat application and addresses Surface Water, Groundwater, Topography, Geology, Soils, Vegetation, Wildlife and Wildlife Habitat.

GEOLOGY:

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 developer's representative. Weathered bedrock was discovered, and removed with a backhoe. 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 developer'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.

VEGETATION:

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. 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 is in the process of being developed with assistance by the Broadwater County Weed Coordinator to control and prevent the growth of noxious weeds. The developer 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.

EFFECTS ON WILDLIFE AND HABITAT:

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. 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 know 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.

EFFECTS ON HISTORICAL FEATURES:

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.

EFFECTS ON ROADS:

Access to the subdivision will be via the existing county roads, Lower Confederate Road and Lower Duck Creek Road. Lots will not have direct access on to the county road, but rather via the internal subdivision roads. The internal subdivision roads will consist of one-hundred one (101) acres of the subject property. Current proposed internal subdivision road names are 'Strawberry Roan Trail', 'Buckskin Trail' and 'Appaloosa Trail'. 'Strawberry Roan Trail' is a loop road which intersects with Lower Confederate Road at two (2) points. The approximate length of 'Strawberry Roan Trail' is 1.77 miles. 'Appaloosa Trail' is a cul-de-sac road which is approximately .28 miles in length and 'Buckskin Trail' is also a cul-de-sac road which is approximately .28 miles in length as well. 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 developer will also be required to make the proportionate share of improvements to the county roads leading to this development. According to a Traffic Impact Study (TIS) performed by Abelin Traffic Services, Inc. and included in the preliminary plat application, it is estimated that 84% of traffic from this proposed development will use Lower Confederate Road and 16% will use Lower Duck Creek Road. The total length of county road surface to be improved is approximately 9.29 miles. Of that, Lower Confederate Road is 3.96 miles in length from the point of beginning at Highway 284 to the furthest south entrance to the proposed development.

Since it is estimated that 84% of the traffic generated from this proposed subdivision will travel north along Lower Confederate Road to Highway 284, and given that the entire development would consist of 352/400ths of the cost to upgrade the road to a #1 Local Road (maximum of 400 ADT), the developer should be required to pay 74% of the cost to upgrade Lower Confederate Road. The developer has included a preliminary cost estimate in the Traffic Impact Study included in the preliminary plat application. The developer's cost to upgrade Lower Confederate Road is estimated to be \$222,059.20.

Since it is estimated that 16% of the traffic generated from this proposed subdivision will travel south along Lower Duck Creek Road to Highway 284, and given that the entire development

would consist of 352/400ths of the cost to upgrade the road to a #1 Local Road (maximum of 400 ADT), the developer should be required to pay 14% of the cost to upgrade Lower Duck Creek Road. According to the preliminary cost estimate in the Traffic Impact Study included in the preliminary plat application, the developer's estimated cost to upgrade Lower Duck Creek Road is \$75,796.00. The total estimated contribution, by the developer, to the county road improvements to Lower Confederate Road and Lower Duck Creek Road total \$297,855.20.

UTILITIES:

Utility service will be provided by Vigilante Electric. 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 nearest fire station, the Duck Creek Fire Hall, to the subdivision is approximately six (6) miles. A letter was mailed to Ed Shindoll, Broadwater County Rural Fire Department Chief on November 5, 2019. As part of the Summary of Probable Impacts narrative, the developer is requesting to pay the per lot cash-in-lieu of water supply fee of \$1,000.00 per lot. To date, a final fire plan has not been received.

The Broadwater County Sheriff's Department will provide law enforcement services. A letter from Broadwater County Sheriff Wynn Meehan is included in the preliminary plat application Appendix H. Sheriff Meehan stated although he is not against the proposed subdivision, he has some concerns. Since the Sheriff's Department is located approximately twenty-five (25) miles from the proposed subdivision, response times could be significantly delayed. Also, lands to the north are controlled by the State of Montana and are frequently utilized for UTV/ATV use as well as hunting of big game and game birds alike. This could be an impetus for landowner/hunter conflicts. Sheriff Meehan also stated his concerns with the snowy and icy conditions of Highway 284 during the winter months. Traffic accidents are more likely with the increased traffic volume on this highway as it is typically not plowed until after Highway 287 and Highway 12 East have been cleared of snow.

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 potentially produce 60 students according to figures obtained from the Broadwater County Growth Policy Plan. 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.

EFFECTS ON LAND USE:

Lands to the north are State of Montana lands. Lands to the east are agricultural. Lands to the south and west are Federal lands controlled by the United States Bureau of Reclamation.

EFFECTS ON PUBLIC HEALTH AND SAFETY:

The property is bordered on the west by Canyon Ferry Reservoir which allows for lake shore camping and ATV/UTV usage. This proposed development was designed with only two access points to minimize traffic conflicts between subdivision resident vehicles and ATV/UTV recreational traffic. Additionally, there will not be any direct access from this subdivision to Canyon Ferry Reservoir. Also, hunter/huntress 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.

PARKS AND RECREATION FACILITIES:

Parkland or Open Space is proposed for this subdivision. It is shown on the preliminary plat as a 14.18-acre parcel near the eastern portion of this property.

RECOMMENDATIONS

The Horse Creek Hills Major Subdivision is recommended for approval with the following conditions:

1. 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; 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. 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.
4. Plans for the location and installation of individual mailboxes shall be reviewed and approved by the United States Postal Service prior to installation.
5. Prior to filing the final plat, the Applicant shall adequately fund or improve a proportionate share of Lower Confederate Road from its intersection with Highway 284 to the furthest point where Lower Confederate Road intersects with the southernmost subdivision entrance into the property. The road improvements would have to be constructed to a minimum of the County road design standards and must be certified as meeting County Road Standards by a registered 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 for approval prior to construction. *(County Subdivision Regulations)*.
6. Prior to filing the final plat, the Applicant shall adequately fund or improve a proportionate share of Lower Duck Creek Road from its intersection with Highway

- 284 to a point where Lower Duck Creek Road meets Lower Confederate Road. The road improvements would have to be constructed to a minimum of the County road design standards and must be certified as meeting County Road Standards by a registered 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 for approval prior to construction. (*County Subdivision Regulations*).
7. 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 he/she has completed an inspection of the road and any improvements.
 8. Prior to any development, an Approach Permit shall be requested from the County Road Department for the access point off of Lower Confederate Road. All requirements of the approved permit shall be met. (*Sections 76-3-102(3 and 4), 501(1), 504(1)(f)(i), and 608(3)(a), MCA; County Regulations*)
 9. The internal access roads shall be given unique road name that is reviewed and approved by the County Planning 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; Section 8.94.3003, ARM; County Subdivision Regulations*)
 10. 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*)
 11. 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*)
 12. 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. (*Section 76-3-102, 402, 501, 504, and 608(3), MCA; Section 8.94.3003, ARM; County Regulations*)
 13. 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, thirty-nine (39) lots shall be used for residential purposes and two (2) lots shall be used for commercial 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. 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; (*Section 76-3-608(3)(a), MCA*)
- g. Any exterior lighting shall be directed downward to minimize visibility beyond the property lines; (*Section 76-3-608(3)(a), MCA*)
- h. Notification of the presence of agricultural operations in the vicinity; (*Section 76-3-608(3)(a), MCA*)
- i. 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*)
- j. 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;
- k. 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*)
- l. 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*)
- m. 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.

- n. 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*)
14. Prior to filing the final plat, the following improvements shall be installed or otherwise guaranteed:
- a. Roads
 - b. Any necessary improvements required by the stormwater drainage plan, weed management plan, fire protection plan, or approach permits;
 - c. 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)

15. 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*)

UPDATED
STAFF
REPORT

Updated:
2/17/2022

HORSE CREEK HILLS MAJOR
SUBDIVISION Preliminary Plat

To: Broadwater County Commissioners
From: Nichole Brown, Broadwater County Community Development Director
Subject: A proposed subdivision to be known as **Horse Creek Hills Major Subdivision**

GENERAL INFORMATION

Pre-Application Meeting: August 6, 2020
Date of Application: August 12, 2020
Element Review: August 19, 2020 (Elements missing)
Date of Sufficiency: August 17, 2021
Public Hearing Date: September 29, 2021
Second Public Hearing: October 27, 2021 (Planning Board vote to deny)
First Commission Reading: November 1, 2021
Review Extension Granted: November 6, 2021
Remand to Planning Board: November 15, 2021
Planning Board Meeting: November 30, 2021 (Planning Board made no recommendation)
Second Extension Granted: December 17, 2021
New Information: January 19, 2022 – Review period suspended (MCA 76-3-615(4))
(Determination made by County Commission)
Planning Board Hearing: April 5, 2022 (Public Hearing: New Information)
June 21, 2022 (Public Hearing: New Information)
Review Period Ends: **March 16, 2022**

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.

I. SUMMARY

The Subdivider intends to create forty-one (41) lots from an existing 442-acre parcel. Lots range in size from 5.35 to 31.77 acres. Open space is proposed and shown on the preliminary plat as consisting of 14.18 acres. Thirty-nine (39) lots are being submitted for review as residential lots and two (2) lots are proposed for commercial or industrial use. Wastewater 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 required preliminary review fee of \$8,560.00 has been paid.

II. REQUEST

Approval of the 41-lot Major Subdivision for 39 single-family homes and 2 commercial lots.

III. EXISTING DEVELOPMENT AND USES

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

IV. ADJACENT LAND USES

North: State owned—agricultural land
South: U.S. Board of Reclamation Land – recreational use
East: Agricultural
West: State Owned and/or U.S. Board of Reclamation Land

V. PUBLIC COMMENT

Public Comment has been received and is analyzed in the Addendum to this Updated Staff Report.

VI. ADDENDUM

There is an Addendum to this Staff Report that that includes New Information received, pursuant to Section 76-3-615(2)(b), MCA and documents the public had not previously had the opportunity to comment on at a public hearing. This new information/documents include:

- A. Cultural Resource Investigation Study
- B. Amended Subdivision Application
- C. Phasing Plan
- D. Weed Plan

- E. Water Usage Summary
- F. DEQ Applications

An additional Addendum has been prepared setting forth public comment received to-date as well as a preliminary analysis of said public comment.

The final Addendum is a list of mitigating conditions offered by the Subdivider throughout this process.

VII. 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.

VIII. ANALYSIS

Review is 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, appear to satisfy the requirements of these regulations and comply with the Broadwater County Growth Policy, with the suggested mitigating conditions.

IX. 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: 12, 15 h, 15 i, 15 k, 15 l, 15 m, 15 n, and 16.

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: No impacts on agricultural water user facilities are anticipated, therefore, no conditions need be imposed

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 roads leading to this development. According to a Traffic Impact Study (TIS) performed by Abelin Traffic Services, Inc. and included in the preliminary plat application, it is estimated that 84% of traffic from this proposed development will use Lower Confederate Road and 16% will use Lower Duck Creek Road. The total length of county road surface to be improved is approximately 9.29 miles. Of that, Lower Confederate Road is 3.96 miles in length from the point of beginning at Highway 284 to the furthest south entrance to the proposed development. Lower Duck Creek Road is 5.35 miles from Highway 284 to its intersection with Lower Confederate Road. The TIS did not establish a baseline level of use for either Lower Confederate Road or Lower Duck Creek 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: 4, 5, 6, 7, 8, 9, 10, 11, 15 d, 15 e, 15 f, 17, 18.

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: 12, 14 d, 14 e, 15 c including geotechnical investigations, 15 g, 15 j, 15 k and 15 l.

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 barbecue 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: 15 l, 15 o, 15 p and 15 q.

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: 2, and 15 b.

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 15 a.

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: 3, 14, and 19.

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: 14 a, 14 b, and 14 c.
- 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: 10, 15 f

X. RECOMMENDED CONDITIONS

The Horse Creek Hills 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. (*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*)

For all lots less than twenty (20) acres, a 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*)

3. 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*)

4. 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.*)

5. Prior to filing the Phase 1 application for final plat, the Subdivider shall submit an updated Traffic Impact Study (TIS). This TIS shall establish a baseline for existing trips per day on both Lower Confederate Roads and Lower Duck Creek Road. The updated TIS shall be conducted during summer months (June-August) 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.

6. Prior to filing the application for final plat for each phase, the Subdivider shall adequately fund or improve a proportionate share of Lower Confederate and Lower Duck Creek Roads. 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 a 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 associated 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 Subdivider, its successors and assigns, will be required to pay a proportionate share of the costs associated with improving 5.33 miles of Lower Duck Creek Road, from its intersection with Hwy 284 and its intersection with Lower Confederate Road, to the specifications required by the County Subdivision Regulations and the County Public Works Manual.
- c. The proportionate share shall be calculated based upon an updated Traffic Impact Study (see Condition 5 above).

All funds collected for the proportionate share of road improvements not required to improve Lower Confederate and Lower Duck Creek Roads 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.

7. 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.*)

8. 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*)

9. 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*)

10. 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*)

11. 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.

12. Prior to any development and/or soil disturbance, a Weed Management Plan for the proposed development shall be reviewed and approved by the County Weed District. All specifications and requirements of the approved plan shall be met. The Subdivider will be responsible for adhering to the Weed Management Plan until all lots or sold or the responsibility is turn over to a property owner's association. (*Sections 7-22-2121, 76-3-102(5)-(6), 76-3-501(1), and 76-3-608(3)(a), MCA*)

13. 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*)

14. 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.

15. 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. *(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*)

16. 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.*)

17. 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*)

18. 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*)

19. 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*)

SECOND ADDENDUM TO HORSE CREEK HILLS MAJOR SUBDIVISION
STAFF REPORT

NEW INFORMATION BEFORE THE PLANNING BOARD

DATE: April 15, 2022

To: Broadwater County Planning Board
From: Nichole Brown, Broadwater County Community Development Director
Subject: New Information for Public Hearing Before Planning Board to be Held on
June 21, 2022.

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 of Lower Confederate Road, approximately eighteen and one half (18.5) miles northeast of Townsend, Montana.

NEW INFORMATION ANALYSIS BY THE BROADWATER COUNTY
COMMISSION:

Section 76-3-615, MCA governs the consideration of new information presented during the review of a subdivision application. On January 19, 2022, the Broadwater County Commission during a duly noticed public meeting was informed of documents presented as a part of this subdivision after the last public hearing before the Broadwater County Planning Board. The Broadwater County Commission determined that these documents constitute new information regarding this subdivision application that had not been considered at a public hearing before the Broadwater County Planning Board. Pursuant to the 2012 Broadwater County Subdivision Regulations, Section II-D.1.f., the Broadwater County Planning Board holds the only public hearings on subdivisions. The developer's representative presented the Traffic Volume Update and indicated it is to be considered new information. Therefore, the Broadwater County Planning Board has scheduled a subsequent public hearing for consideration of **only the new** information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

Pursuant to Section 76-3-615(4), if a public hearing is directed to be held, the 60-working-day review period required is suspended and the new hearing must be noticed and held within 45

days of the governing body's determination to schedule a new hearing. After the new public hearing, the working-day time limit resumes for the Broadwater County Commission to review the subdivision application and make a determination. The Broadwater County Commission must make a determination on this subdivision application by **May 17, 2022**.

ATTACHMENTS: A. Traffic Volume Update Dated February 7, 2022

NEW INFORMATION:

The new information/documents submitted as part of this subdivision application process since the last Broadwater County Planning Board public hearing on April 5, 2022, are discussed in this Addendum to the Staff Report. Recommended findings of fact as they related to the primary review criteria and conditions to mitigate the impacts of the findings of fact are set forth in each section for the Broadwater County Planning Board's consideration, as well as an analysis of the 2003 Broadwater County Growth Policy. The Broadwater County Planning Board will also have to **analyze** public comment received during the public hearing to determine if the public comment is relevant, and if so, whether the public comment requires new/additional findings of fact and conditions to mitigate the impacts of those findings of fact. **Only public comment on the new information can be heard by the Broadwater County Planning Board during the public hearing.** (*Section 76-3-615(2)(b), MCA*). **The Broadwater Planning Board is required to submit public comments on water and sanitation in its recommendations to the Broadwater County Commission.** (*2012 Broadwater County Subdivision Regulations II-D-1.h.5*).

A. NEW INFORMATION – Traffic Volume Update

1. SUMMARY: Traffic volumes were discussed in the Staff Report originally submitted to the Planning Board under EFFECTS ON ROADS. The Staff Report stated:

Access to the subdivision will be via the existing county roads, Lower Confederate Road and Lower Duck Creek Road. Lots will not have direct access on to the county road, but rather via the internal subdivision roads. The internal subdivision roads will consist of one-hundred one (101) acres of the subject property. Current proposed internal subdivision road names are 'Strawberry Roan Trail', 'Buckskin Trail' and 'Appaloosa Trail'. 'Strawberry Roan Trail' is a loop road which intersects with Lower Confederate Road at two (2) points. The approximate length of 'Strawberry Roan Trail' is 1.77 miles. 'Appaloosa Trail' is a cul-de-sac road which is approximately .28 miles in length and 'Buckskin Trail' is also a cul-de-sac road which is approximately .28 miles in length as well. 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 developer will also be required to make the proportionate share of improvements to the county roads leading to this development. According to a Traffic Impact Study (TIS) performed by Abelin Traffic Services, Inc. and included in the preliminary plat application, it is estimated that 84% of traffic from this proposed development will use Lower Confederate Road and 16% will use Lower Duck Creek Road. The

total length of county road surface to be improved is approximately 9.29 miles. Of that, Lower Confederate Road is 3.96 miles in length from the point of beginning at Highway 284 to the furthest south entrance to the proposed development.

Since it is estimated that 84% of the traffic generated from this proposed subdivision will travel north along Lower Confederate Road to Highway 284, and given that the entire development would consist of 352/400ths of the cost to upgrade the road to a #1 Local Road (maximum of 400 ADT), the developer should be required to pay 74% of the cost to upgrade Lower Confederate Road. The developer has included a preliminary cost estimate in the Traffic Impact Study included in the preliminary plat application. The developer's cost to upgrade Lower Confederate Road is estimated to be \$222,059.20.

Since it is estimated that 16% of the traffic generated from this proposed subdivision will travel south along Lower Duck Creek Road to Highway 284, and given that the entire development would consist of 352/400ths of the cost to upgrade the road to a #1 Local Road (maximum of 400 ADT), the developer should be required to pay 14% of the cost to upgrade Lower Duck Creek Road. According to the preliminary cost estimate in the Traffic Impact Study included in the preliminary plat application, the developer's estimated cost to upgrade Lower Duck Creek Road is \$75,796.00. The total estimated contribution, by the developer, to the county road improvements to Lower Confederate Road and Lower Duck Creek Road total \$297,855.20.

Based on the above, the following conditions of approval were suggested:

1. Prior to filing the final plat, the Applicant shall adequately fund or improve a proportionate share of Lower Confederate Road from its intersection with Highway 284 to the furthest point where Lower Confederate Road intersects with the southernmost subdivision entrance into the property. The road improvements would have to be constructed to a minimum of the County road design standards and must be certified as meeting County Road Standards by a registered 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 for approval prior to construction. (*County Subdivision Regulations*).
 2. Prior to filing the final plat, the Applicant shall adequately fund or improve a proportionate share of Lower Duck Creek Road from its intersection with Highway 284 to a point where Lower Duck Creek Road meets Lower Confederate Road. The road improvements would have to be constructed to a minimum of the County road design standards and must be certified as meeting County Road Standards by a registered 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 for approval prior to construction. (*County Subdivision Regulations*).
2. DEFINITION OF LOCAL SERVICES: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the

benefit of their citizens. *2012 Broadwater County Subdivision Regulations Appendix A, Definition 66.*

3. **COMPLIANCE WITH 2003 GROWTH POLICY:** The 2003 Growth Policy identifies the need for essential infrastructure in order to promote public health and safety. Roads are considered critical infrastructure. Under Goal 2, new development must be designed to minimize the public costs of providing services, and minimize or prevent public health or safety concerns. All roads providing access to lots or to subdivisions from improved county roads must provide legal, all-weather access and be constructed in accordance with county road standards. Maintaining infrastructure in an effective manner is a primary function of Broadwater.

4. **ANALYSIS:** The February 7, 2022 Traffic Volume Update (TVU) supplies traffic data collected on Highway 284 from 1991 to 2020. According to the analysis performed by Bob Abelin of Abelin Traffic Services the original traffic analysis performed used an averaged daily traffic generation rate of eight vehicle trips per day for a single-family home, which is the factor Broadwater County uses to assess traffic values for all new subdivisions. However, Mr. Abelin contends that the use of eight trips per home is not appropriate because of the distance from this subdivision to a more urbanized area. Therefore, the TVU utilizes a factor of 3.2 vehicle trips per day per residential dwelling lot and maintains the use of 20 vehicle trips per day for each commercial lot. The total projected traffic generated from this subdivision now total 165 vehicle trips per day with 132 vehicle trips per day utilizing Lower Confederate Road and 33 vehicle trips per day utilizing Lower Duck Creek Road per the TVU.

5. **SUGGESTED FINDING:** The 2003 Broadwater County Growth Policy Plan identifies an average of 8 vehicle trips per day per lot. Therefore, that factor should be utilized in predicting traffic generation for this subdivision. (*Source 2003 Broadwater County Growth Policy Plan*).

6. **SUGGESTED CONDITIONS:**

1. Prior to filing the Phase 1 application for final plat, the Subdivider shall submit an updated Traffic Impact Study (TIS). This TIS shall establish a baseline for existing trips per day on both Lower Confederate Roads and Lower Duck Creek 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.

2. Prior to filing the application for final plat for each phase, the Subdivider shall adequately fund or improve a proportionate share of Lower Confederate and Lower Duck Creek Roads. 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 a 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 Subdivider, its successors and assigns, will be required to pay a proportionate of the costs associated with improving 5.33 miles of Lower Duck Creek Road, from its intersection with Hwy 284 and its intersection with Lower Confederate Road, to the specifications required by the County Subdivision Regulations and the County Public Works Manual.
- c. 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 (see Condition 1 above).

All funds collected for the proportionate share of road improvements not required to improve Lower Confederate and Lower Duck Creek Roads 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.

7. CONCLUSION: The Traffic Volume Update does not identify an appropriate number of existing vehicle trips per day on Lower Confederate Road or Lower Duck Creek Road. The Traffic Volume Update also does not give an appropriate number of vehicle trips per day predicted to be generated by this proposed subdivision.

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

June 27, 2022

MEMO

TO: Broadwater County Commission

FROM: Jania Hatfield, Acting County Attorney

RE: Horse Creek Hills Major Subdivision – Information Regarding Proportionate Impact

Mont. Code Ann. § 76-3-608(4) states that “The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3) ... Pursuant to 76-3-620, the governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).”

The governing body may require the subdivider to pay a proportionate share of the cost of improving capital facilities, including roads. “The costs must reasonably reflect the expected impacts directly attributable to the subdivision...All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.” Mont. Code Ann § 76-3-510. As a result, the county can impose a requirement that the subdivider pay a proportionate share of the cost of improving roads, but the subdivider cannot be required to pay more than their proportionate share to improve the road.

A good example to look at is the case of *Christison v. Lewis & Clark County*. That case involved the validity of the county conditioning approval of a subdivision upon the subdivider paving a county road. In this case, the subdivider sought approval of Fox Trot Estates Subdivision II, a 12-lot subdivision that would impact Lake Helena Drive. At the time of development, Lake Helena Drive was considered a deficient county road that was carrying 879 vehicles per day. The subdivision would add about 12 percent more vehicular traffic to the existing total. The cost to pave the road was estimated at \$2 million, and the conditions of approval required the subdivider to pay the entire cost of improving the road.

The district court found the county acted in a manner that was arbitrary, capricious, and unlawful, when it required the subdivider to pay the full amount to pave Lake Helena Drive. The district court reasoned that it would be reasonable for the county to impose 12% of the costs to improve Lake Helena Drive to the subdivider, as that correlated to the increase that the subdivision would have on the traffic on Lake Helena Drive.

Imposition of the proportionate share is reviewed under the *Nollan/Dolan* analysis. That analysis requires both a nexus to the imposed condition as well as a rough proportionality to the projected impact. That is to say, the county must not only qualify its condition to mitigate a

condition, it must also quantify that condition, and offset the anticipated burden based on information in the record before the county.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Hatfield". The signature is written in a cursive, somewhat stylized font.

Janja Hatfield
Acting County Attorney

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

June 27, 2022

MEMO

TO: Broadwater County Commission

FROM: Jania Hatfield, Acting County Attorney

RE: Horse Creek Hills Major Subdivision – Information Regarding Water Usage and Exempt Wells

Mont. Code Ann. § 76-3-622 requires the governing body to determine “evidence of adequate water availability” for new water supply systems. Evidence can be presented through well logs or testing of onsite or nearby wells; published hydrogeological reports; or as otherwise specified by MDEQ rules.

Exempt wells, or more precisely exceptions to permit requirements, are a ground water appropriation recognized by Montana law. Pursuant to Mont. Code Ann. § 85-2-306, an exception for a permit for appropriating ground water by means of a well is allowed when the flow rate is 35 gallons a minute or less and does not exceed 10 acre-feet per year. Further, exempt wells are allowed to be used in both open and closed basins in Montana.

Consideration of exempt wells also includes “combined appropriations.” For purposes of review of this subdivision, which is a phased subdivision, each phase is allowed one exempt well. Any lots over 20 acres are also allowed to have their own exempt well. A combined appropriation is defined as “an appropriation of water from the same source aquifer by means of two or more groundwater developments, the purpose of which, in the department judgment, could have been accomplished in one appropriation.” Two wells can be used in one development, so long as the wells are under the 10 acre-feet per year threshold.

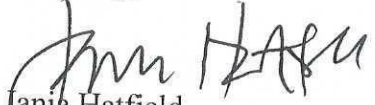
The DNRC requires that any subdivision with lots under 20 acres, created after October 17, 2014, have a pre-determination letter, determining that all exempt wells proposed for the subdivision will stay at/under a combined appropriation of 10 acre-feet.

Because exempt wells are exceptions from the DNRC permitting process, no Groundwater Application for Beneficial Use Permit is required. This means that a subdivider using exempt wells do not necessarily have to provide the aquifer test and hydrogeologic assessment that traditionally accompany a permit. Within 60 days of completion of the well and appropriation of ground water for beneficial use, the subdivider files a notice of completion with the DNRC.

A county could condition approval of the subdivision on completion of a hydrogeological study, *if there is sufficient evidence in the record that the proposed subdivision may have an adverse impact on the aquifer*. Examples may include, but are not limited to, evidence presented

of a well in the immediate vicinity of the proposed subdivision that has gone dry or a hydrogeological study provided that the sufficiency of the aquifer is questionable.

Sincerely,

A handwritten signature in black ink, appearing to read "Jania Hatfield". The signature is written in a cursive, somewhat stylized font.

Jania Hatfield
Acting County Attorney

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

June 27, 2022

MEMO

To: Broadwater County Commissioners

From: Jania Hatfield, Acting County Attorney

Subject: Horse Creek Hills Major Subdivision – Mitigation measures offered by Subdivider

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.

MITIGATION ANALYSIS:

Section 76-3-608(4)-(5), MCA governs mitigation within a proposed subdivision. A governing body (county commissioners) may require a subdivider to design their land to minimize significant adverse impacts. A governing body (county commissioners) cannot unreasonably restrict the ability to develop land and that in requiring mitigation, a governing body should consult with and give due weight to the subdivider's expressed preference.

A. IMPACTS ON AGRICULTURE

1. In the *Environmental Assessment* June 2021, the subdivider offers the following measures to mitigate impacts on agriculture:
 - a. Future Lot Owners will be required to maintain noxious weeds on their property. Lot owners will be also responsible for maintaining their road ditches fronting and adjacent to the internal subdivision roads within the public access and utility easement.
 - i. This mitigation is included as Condition 12 and 15 k in the Updated Staff Report.

B. IMPACTS ON AGRICULTURAL WATER USER FACILITIES

1. No mitigating conditions were offered by the subdivider and no conditions were recommended in the Updated Staff Report.

C. IMPACTS ON LOCAL SERVICES

1. In the *Environmental Assessment* dated June 2021, the subdivider offered the following measures to mitigate impacts on local services.
 - a. The developer is proposing impact fees to Broadwater County, for impact to county roads. . . . In lieu of the cost for a full road section for a #1 Local Road, we would offer that the cost of improvements be represented by a 3-inch thickness of Crushed Top Surfacing (24 ft wide) for the entire 49,070 LF (9.29 miles) of off-site County Roads, on a proportionate share, per the Vehicle Distribution Analysis outlines above.
 - i. This mitigation is included as Conditions 6 and 18 c.
 - b. Signage to warn subdivision traffic of ATV/UTV traffic can be added to the local subdivision roads as to minimize conflict with campground traffic. There will not be any direct access to the waterbody of Canyon Ferry Reservoir, as the development is landlocked. The addition of signage to the trail system (within the development) that addresses the lake danger may be pursued if Broadwater County deems it necessary.
 - i. This mitigation is included as Condition 17; however, signage related to lake danger is not included in Condition 17 at this time.
 - c. The subdivision has proposed to provide \$1,000 per lot in lieu of a fire protection system; however the developer may opt to install a fire protection system as approved by the Fire District Having Jurisdiction.
 - i. This mitigation is included as Condition 11, to the extent that it contemplates installation of an approved fire protection system. The in-lieu payment does not conform with the 2003 Growth Policy.
2. At the November 30, 2021, Planning Board Meeting, the Subdivider's Representative offered a mitigating measure restricting the speed on Lower Confederate and Lower Duck Creeks Road to 25 miles per hour.
 - a. This mitigation is not included in the Conditions as the subdivider does not have authority to restrict the speed limit on County Roads.

D. IMPACTS ON THE NATURAL ENVIRONMENT

1. In the *Environmental Assessment* dated June 2021, the subdivider offered the following measures to mitigate impacts on the natural environment.
 - a. Individual geotechnical reports for each homesite prior to development consistent with industry practice.
 - i. This mitigation is included in Condition 15 c.
 - b. All structures should be designed for seismic considerations consistent with the latest edition of the International Residential Code (IRC).

- i. This mitigation is included in Condition 15 c.
 - c. Horse Creek Hills 1 Subdivision and Horse Creek Hills 3 Subdivision each provide for a 20-foot-wide trail easement to the west, to BOR property. Also, there is a public road easement in Horse Creek Hills 3 Subdivision and Horse Creek Hills 4 Subdivision, adjacent to State Lands to the north.
 - i. This mitigation is included in Condition 14 d.

E. IMPACTS ON WILDLIFE AND WILDLIFE HABITAT

- 1. In the *Environmental Assessment* dated June 2021, the subdivider offered the following measures to mitigate impacts on the wildlife and wildlife habitat.
 - a. Covenants will include provisions to fence gardens, bear-proofing any bear attractants (garbage, outdoor pet food, and bird feeders, fruit trees, barbeque grills, etc.) The subdivision will also provide wildlife proof storage facilities for trash.
 - i. This mitigation is included in Conditions 15 l, 15 o and 15 p.

F. IMPACTS ON PUBLIC HEALTH AND SAFETY

- 1. In the *Water Usage Summary* dated November 2021, the subdivider offered the following measures to mitigate impacts on public health and safety.
 - a. Covenants imposed on the subdivision that each lot install a water meter within the plumbing of individual water supply wells (typically in the utility room), and each lot shall keep track of total annual usage and report that information to the Homeowners Association for the subdivision. The Homeowners Association would tabulate usage, which can be made available if requested by DNRC. The letter further states that the subdivider is willing to put the corresponding maximum irrigated areas for each lot in the final covenants.
 - i. This mitigation is included in Suggested Conditions in the Addendum to Horse Creek Hills Staff Report: New Information before the Planning Board, Dated April 5, 2022.

ADDENDUM TO HORSE CREEK HILLS MAJOR SUBDIVISION STAFF REPORT
NEW INFORMATION BEFORE THE PLANNING BOARD

DATE: February 17, 2022

To: Broadwater County Planning Board
From: Nichole Brown, Broadwater County Community Development Director
Subject: New Information for Public Hearing Before Planning Board to be Held on
April 5, 2022.

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 of Lower Confederate Road, approximately eighteen and one half (18.5) miles northeast of Townsend, Montana.

NEW INFORMATION ANALYSIS BY THE BROADWATER COUNTY
COMMISSION:

Section 76-3-615, MCA governs the consideration of new information presented during the review of a subdivision application. On January 19, 2022, the Broadwater County Commission during a duly noticed public meeting was informed of documents presented as a part of this subdivision after the last public hearing before the Broadwater County Planning Board. The Broadwater County Commission determined that these documents constitute new information regarding this subdivision application that had not been considered at a public hearing before the Broadwater County Planning Board. Pursuant to the 2012 Broadwater County Subdivision Regulations, Section II-D.1.f., the Broadwater County Planning Board holds the only public hearings on subdivisions. The Broadwater County Commission then passed a motion that directed the Broadwater County Planning Board to schedule a subsequent public hearing for consideration of **only the new** information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

Pursuant to Section 76-3-615(4), if a public hearing is directed to be held, the 60-working-day review period required is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new public

hearing, the working-day time limit resumes for the Broadwater County Commission to review the subdivision application and make a determination. The Broadwater County Commission must make a determination on this subdivision application by May 17, 2022.

- ATTACHMENTS:
- A. Cultural Resource Study Dated November 7, 2021
 - B. Amended Subdivision Application Submitted November 29, 2021
 - C. Phasing Plan Dated November 29, 2021
 - D. Weed Plan Dated January 26, 2022
 - E. Water Usage Summary Dated November 29, 2021
 - F. DEQ Applications Dated June of 2020

NEW INFORMATION:

The new information/documents submitted as part of this subdivision application process since the last Broadwater County Planning Board public hearing on October 27, 2021, are discussed in this Addendum to the Staff Report. Recommended findings of fact as they related to the primary review criteria and conditions to mitigate the impacts of the findings of fact are set forth in each section for the Broadwater County Planning Board’s consideration, as well as an analysis of the 2003 Broadwater County Growth Policy. The Broadwater County Planning Board will also have to **analyze** public comment received during the public hearing to determine if the public comment is relevant, and if so, whether the public comment requires new/additional findings of fact and conditions to mitigate the impacts of those findings of fact. **Only public comment on the new information can be heard by the Broadwater County Planning Board during the public hearing.** (*Section 76-3-615(2)(b), MCA*). **The Broadwater Planning Board is required to submit public comments on water and sanitation in its recommendations to the Broadwater County Commission.** (*2012 Broadwater County Subdivision Regulations II-D-1.h.5*).

A. NEW INFORMATION – CULTURAL RESOURCE INVESTIGATION STUDY

1. SUMMARY: Cultural Resources were discussed in the Staff Report originally submitted to the Planning Board under IMPACTS ON NATURAL ENVIRONMENT. The Staff Report stated:

A letter was received from the Montana Historical Society (MHS) on November 5, 2019, and updated on November 7, 2021, 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.

Based on the above and a finding that there were no impacts, no condition of approval was suggested. However, during public comment at the public hearings before the Broadwater County Planning Board on September 29, 2021 and October 27, 2021, the public commented that a full Cultural Resource Investigation Study was warranted on the subdivision property. On November 7, 2021, Allied Engineering submitted the attached Cultural Resource Investigation Study prepared by GCM Services, Inc. of Butte Montana.

2. DEFINITION OF NATURAL ENVIRONMENT: Consider 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. *2012 Broadwater County Subdivision Regulations Appendix A, Definition 81.*

3. COMPLIANCE WITH 2003 GROWTH POLICY: The only applicable language in the 2003 Growth Policy regarding cultural sites is under Goal 5 for recreation which relates to encouraging quality commercial recreational developments, but also promotes protection of natural resources and the rights of individuals. Under that goal, the policy is to retain or promote public access to cultural areas including geologic, scenic and historical sites. This goal is not applicable to this subdivision application as the subdivision is not for recreational purposes.

4. ANALYSIS: The November 7, 2021 Cultural Resource Investigation Study found the remains of a ditch possibly 24BW1074, a homestead/farmstead and a broken projectile point.

The homestead consists of foundations made of concrete and local aggregate cobbles, scattered lumber and a few farm implements. It appears to be a 1920s-1930s occupation. No standing structures remain and the county road bisects the site. The homestead location is on a 164-acre parcel patented by John Thomas in 1876, Bureau of Land Management serial number MTMTAA 001114 (GLO), but the farmstead remains clearly postdate that filing by about 50 years. Additional research would be required to assign a name to the homestead remains.

The ditch, possibly 24BW1074, is no longer in use. It was a private, local system that diverted water from Horse Creek through the homestead site to irrigate a few acres before returning to the Missouri River. The ditch disappears into Canyon Ferry Reservoir a few hundred yards from the homestead. The length of the ditch from point of diversion to the reservoir is about 3200 feet (1066 yards).

One broken projectile point of probable Late Archaic affiliation (3,500 years before present (BP) to 1,800 years BP) was observed but not collected. It is a side notched style, made of mottled pink quartzite.

The Report concludes that none of the cultural resources located meet the criteria required for eligibility to the National Register of Historic Places. None of the cultural resources located possess unique or exceptional cultural or intrinsic values, and none of the sites possess potential for further scientific research. The Report further concludes that the proposed Horse Creek Hills subdivision would not impact any important or significant cultural (archaeological, historical or paleontological) resources.

5. SUGGESTED FINDING: While the remains of an old ditch, an old homestead/ farmstead and a broken projectile were found on the property, no important or significant cultural resources were identified on the subdivision property. (Source Cultural Resource Study).

6. SUGGESTED CONDITIONS: None.

7. CONCLUSION: There are no cultural resources impacts from the proposed subdivision and no new conditions for preliminary plat approval are required.

B. NEW INFORMATION – AMENDED SUBDIVISION APPLICATION

1. SUMMARY: On November 29, 2021 Allied Engineering submitted an Amended Subdivision Application. The changes on the Amended Application are depicted as follows:

PART 1. GENERAL DESCRIPTION AND INFORMATION

1. Name of the proposed subdivision Horse Creek Hills Subdivision
2. Location (City and/or County) Broadwater County
Legal description: 1/4 1/4 of Section 31 Township 9N Range 2E
3. Type of water supply system:
 - a. Individual surface water supply from spring 442
 - b. Multiple-family water supply system (3-14 connections and fewer than 25 people) _____
 - c. Service connection to multiple-family system _____
 - d. Service connection to public system _____
 - e. Extension of public main _____
 - f. New public system _____
 - g. Individual well X
4. Type of wastewater treatment system:
 - a. Individual or shared on-site septic system X
 - b. Multiple-family on-site system (3-14 connections and fewer than 25 people) _____
 - c. Service connection to multiple-family system _____
 - d. Service connection to public system _____
 - e. Extension of public main _____
 - f. New public system _____
5. Name of solid waste garbage disposal site and hauler: Broadwater County Solid Waste
6. Is information included which substantiates that there will be no degradation of state waters or that degradation will be non-significant? Included in MDEQ Submittal Package - Available Upon Request
8. Descriptive Data:
 - a. Number of lots or rental spaces 41
 - b. Total acreage in lots being reviewed 319.82 442
 - c. Total acreage in streets or roads 101 ~ 23 acres (public easement)
 - d. Total acreage in parks, open space, and/or common facilities 14.18
 - e. TOTAL gross acreage of subdivision 435 442
 - f. Minimum size of lots or spaces 5.35 acres
 - g. Maximum size of lots or spaces 31.77 acres

The Environmental Assessment dated August 2020, the DEQ applications attached to this Addendum and other information submitted with the Horse Creek Hills Subdivision stated that

the water source for the subdivision would be by individual exempt water wells. The change to individual wells appears to be a correction of an error in the original application. The Staff Report submitted to the Planning Board stated:

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.

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.

While the total acreage of the subdivision has been increased to 442 acres from 435 acres, no changes in the acreage of the lots in the proposed subdivision, including all four phases, have changed. This correction appears to be a correction to a mathematical error in the original application. Further, the total acreage in streets or roads has decreased from 101 acres to 23 acres and the Amended Application notes that only 23 acres of roads are public easements. As the subdivision lots are encumbered by the public easements and the public easements are not separate lots within the subdivision, again there has been no change to the acreage of the lots in the subdivision. This correction also appears to be a correction to a mathematical error in the original application. The Staff Report submitted to the Planning Board stated:

DESCRIPTION

PROPOSAL:

The developer intends to create forty-one (41) lots from an existing 319.82-acre parcel. Lots range in size from 5.35 to 31.77 acres. Parkland is proposed and shown on the preliminary plat as consisting of 14.18 acres. Thirty-nine (39) lots are being submitted for review as residential lots and two (2) lots are proposed for commercial or industrial use. The required preliminary review fee of \$8,560.00 has been paid.

2. **ANALYSIS:** The corrections in the Amended Application appear to be corrections of mathematical and other inaccuracies in the original Application. Thus, none of the primary review criteria in the 2012 Broadwater County Subdivision Regulations are impacted and neither are the provisions of the 2003 Broadwater County Growth Policy. However, the Staff Report will need to be amended under DESCRIPTION, PROPOSAL to reflect that the subdivision is a 442 acre parcel.

3. **SUGGESTED FINDING:** The corrections in the Amended Application correct mathematical and other inaccuracies in the original Application but do not affect the original

analysis of the primary review criteria in the 2012 Broadwater County Subdivision Regulations or the analysis under the 2003 Growth Policy. The DESCRIPTION in the Staff Report should be amended to correct the total acreage for the subdivision. (*Source Amended Application*).

4. SUGGESTED CONDITIONS: None.

5. CONCLUSION: There are no impacts from the corrections in the Amended Application and no new conditions for preliminary plat approval are required.

C. NEW INFORMATION – PHASING PLAN

1. SUMMARY: In 2017 the Montana State Legislature enacted a phased development statute. Section 76-3-618, MCA states, in part, as follows:

- (1) A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to parts 5 and 6 of this chapter for all phases of a development and a **schedule for when the subdivider plans to submit for review each phase of the development**. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided in subsection (4) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare. (emphasis added).
- (2) Except as otherwise provided by this section, the phased development application must be reviewed in conformity with parts 5 and 6 of this chapter. In addition, each phase of the phased development must be reviewed as provided in subsection (4).
- (3) The governing body may approve phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.
- (4) Prior to the commencement of each phase, the subdivider shall provide written notice to the governing body. The governing body shall hold a public hearing pursuant to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider. After the hearing, the governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases. Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information. Any additional conditions must be met before final plat approval for each particular phase and the approval in accordance with 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum

- timeframe provided in subsection (3).
- (5) The governing body may impose a reasonable periodic fee for the review under subsection (4) of the phases in the phased development.

While the application contained an overall phased development preliminary plat and individual plats for each phase, there was not a schedule for when the subdivider plans to submit for review each phase of the development. As it was not clear in the original Staff Report provided to the Planning Board and to the public that this subdivision was a phased subdivision, with four distinct phases, Broadwater County asked the subdivider to submit the schedule for the phased plan.

2. **PRIMARY REVIEW CRITERIA:** As phased subdivisions are reviewed as any other subdivision for the primary review criteria, no changes to the primary review criteria analysis for the subdivision is required.
3. **COMPLIANCE WITH 2003 GROWTH POLICY:** The 2003 Broadwater County Growth Policy does not address phased subdivisions.
4. **ANALYSIS:** As Horse Creek Hills is a phased subdivision, additional conditions will need to be imposed in accordance with Section 76-3-618, MCA.
5. **SUGGESTED ADDITIONAL LANGUAGE UNDER DESCRIPTION IN STAFF REPORT:** Horse Creek Hills is a four phase subdivision. The phases are as follows:
 - a. Horse Creek Hills Subdivision 1, consisting of twelve (12) lots on approximately 117.98 acres. This includes Lots 1-12, including one (1) commercial lot, and eleven (11) residential lots. Anticipated Final Plat Application ~June 2022. Proposed Final Plat Recording is ~August 2021 . (Anticipated Phase 1 build-out is approximately 2 years).
 - b. Horse Creek Hills Subdivision 2, consisting of eleven (11) lots on approximately 92.05 acres. This includes Lots 13-16 and Lots 20-26, including eleven (11) residential lots. Anticipate Final Plat Application - June 2024. Proposed Final Plat Recording is - August 2024. (Anticipated Phase 2 build-out is approximately 2 years).
 - c. Horse Creek Hills Subdivision 3, consisting of eleven (11) lots on approximately 119.59 acres. This includes Lots 17-19 and Lots 27-34, including eleven (11) residential lots. Anticipate Final Plat Application -June 2026. Proposed Final Plat Recording is ~August 2026. (Anticipated Phase 2 build-out is approximately 2 years).
 - d. Horse Creek Hills Subdivision 4, consisting of seven (7) lots, plus Open Space, on approximately 112.38 acres. This includes Lots 35-41, including one (1) commercial lot, and six (6) residential lots. Anticipate Final Plat Application ~June 2022. Proposed Final Plat Recording is - August 2021. (Anticipated Phase 1 build-out is approximately 2 years). (*Source for a.-d. Phasing Plan*).

6. SUGGESTED CONDITIONS: None.

7. CONCLUSION: The suggested additional language in the Staff Report and 76-3-617, MCA addresses the Phasing Plan new information.

D. NEW INFORMATION – WEED MANAGEMENT PLAN

1. SUMMARY: The Staff Report provided to the Broadwater County Planning Board made the following statement:

A Weed Management Plan will need to be 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.

On December 3, 2021, the Weed District Board voted to reject the Subdivision Noxious Weed Management and Revegetation Plan submitted by Horse Creek Hills. The reasons for the rejection were as follows:

- The sensitive species section of the Plan needs to be completed before the plan is submitted to the Board for approval.
 - A new assessment and map need to be completed so as to accurately reflect the current size of the noxious weed infestations. (The plan called for immediate treatment of noxious weeds- no work was completed in 2020 or 2021)
 - The prevention methods need to be outlined before for the plan is submitted.
 - The plan calls for an on-site gravel pit. The Board needs a map showing its locations and what noxious weed species are in the area. The gravel pit also needs a weed management and revegetation plan.
 - A plat map with the Weed Certificate language and a project map of the overall noxious weed sizes and locations.

The Weed District Board met on January 26, 2022 and reviewed the new Weed Management Plan submitted by the subdivider. The Weed District Board recommended approval of the revised Weed Management Plan with conditions and with the understanding that the Weed Management Plan must be renegotiated every three (3) years. The new Weed Management Plan states that no gravel will be sourced on the property.

2. DEFINITION OF NATURAL ENVIRONMENT: Consider 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. *2012 Broadwater County Subdivision Regulations Appendix A, Definition 81.*

3. COMPLIANCE WITH 2003 GROWTH POLICY: Goal 3 under Growth and Land Use contains a policy statement that new developments must establish a weed management plan in

coordination with the county weed board. The definitions for Subdivision Review Criteria in the Growth Policy under Natural Environment includes that weed control measure must be proposed to prevent the proliferation of weed growth within the subdivision and on areas disturbed by construction. The Weed Plan was prepared in coordination with the Broadwater County Weed Board and includes weed control measure to prevent the proliferation of weeds within the subdivision and on areas disturbed by construction and is in compliance with the goals and definitions of the 2003 Broadwater County Growth Policy.

4. ANALYSIS: As the subdivision property has existing weeds and development of the property may result in additional weeds, weed control measures are needed to prevent the proliferation of weed growth within the subdivision and on area disturbed by construction.

5. SUGGESTED FINDING: Noxious weeds currently exist on approximately 54 acres (as of 2020) on the subdivision which require treatment. Construction activities may increase noxious weed infestations which will require appropriate treatment and reseeded. Noxious weed infestation, roads and other disturbed areas will require annual monitoring for noxious weeds. (*Source Weed Plan*).

6. SUGGESTED CONDITIONS: The Staff Report provided to the Planning Board contains this recommend condition:

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*)

Additional Recommended Conditions:

- According to Page 11 of the Noxious Weed Management Plan, the developer must comply with the Weed Management Plan prior to construction.

7. CONCLUSION: With the addition of the recommended conditions, the impacts on the Natural Environment as to noxious weeds are mitigated.

E. NEW INFORMATION – WATER USAGE SUMMARY AND OFFERED MITIGATION

1. SUMMARY: A Water Usage Summary was submitted to Broadwater County on November 29, 2021 based on request from the public during the Public Hearings before the Broadwater County Planning Board. While the summary may have based on previous documents submitted with the subdivision application, in the summary mitigations were offered by the subdivider which the public had not previously had an opportunity to comment on during a public hearing. The summary states that Horse Creek Hills Subdivision may utilize up to 50 acre-feet of water in total and that DNRC has provided preliminary letters of concurrence for the water usage through the use of exempt wells for the four phases. Lot 41, a commercial lot, is

over 20 acres and will be entitled to its own exempt well not exceeding 10 acre-feet of water per year.

The letter further states that the subdivider is willing to require through covenants imposed on the subdivision that each lot install a water meter within the plumbing of individual water supply wells (typically in the utility room), and each lot shall keep track of total annual usage and report that information to the Homeowners Association for the subdivision. The Homeowners Association would tabulate usage, which can be made available if requested by DNRC. The letter further states that the subdivider is willing to put the corresponding maximum irrigated areas for each lot in the final covenants.

The water usage per phase is as follows:

Horse Creek Hills Subdivision 1, consisting of twelve (12) lots on approximately 117.98 acres. This includes Lots 1-12, including one (1) commercial lot, (not to exceed 24 employees), and eleven (11) residential lots. We would anticipate the domestic water usage for the sum of the residential lots to be the following:

Domestic Use for Residential:

$$= 250 \text{ gal/day/home} \times 1 \text{ home/lot} \times 11 \text{ lots} \times 365 \text{ days/year} = 1,003,750 \text{ gal/year}$$

$$= 1,003,750 \text{ gal/year} \div (7.48 \text{ gal/ft}^3 \times 43,560 \text{ ft}^2/\text{acre}) = \mathbf{3.08 \text{ AF}}$$

Domestic Use for Commercial:

$$= 24 \text{ employees} \times 13 \text{ gal/day} \times 1 \text{ lot} \times 365 \text{ days/year} = 113,880 \text{ gal/year}$$

$$= 113,880 \text{ gal/year} \div (7.48 \text{ gal/ft}^3 \times 43,560 \text{ ft}^2/\text{acre}) = \mathbf{0.350 \text{ AF}}$$

Total Domestic Use for Project #1 is **3.43 AF**

The remaining appropriations for irrigation use would be **6.57 AF** (10.0 AF – 3.43 AF = 6.57 AF). If each of the lots were assumed to consist of the same amount of irrigated landscaped area, the area of lawn for each lot would be as follows:

Irrigation Use = 6.57 AF = (1 inch/week ÷ 12 inches/ft) × 30 weeks/year × X acres/lot × 12 lots

$$= 30 \text{ ft} \times X \text{ acres} = 6.57 \text{ AF}$$

$$X = 0.219 \text{ acres}$$

$$X = \mathbf{9,539.64 \text{ ft}^2}$$
 of irrigated landscaped area per lot

This is for Phase 1 allocations. The other phases will have different water use values as they vary in the number of lots and proposed use. Each proposed project/phase will not utilize more than 10-acre feet of water – per the current DNRC standards.

Horse Creek Hills Subdivision 2, consisting of eleven (11) lots on approximately 92.05 acres. This includes Lots 13-16 and Lots 20-26, including eleven (11) residential lots. We would anticipate the domestic water usage for the sum of the residential lots to be the following:

Domestic Use for Residential:

$$= 250 \text{ gal/day/home} \times 1 \text{ home/lot} \times 11 \text{ lots} \times 365 \text{ days/year} = 1,003,750 \text{ gal/year}$$

$$= 1,003,750 \text{ gal/year} \div (7.48 \text{ gal/ft}^3 \times 43,560 \text{ ft}^2/\text{acre}) = \mathbf{3.08 \text{ AF}}$$

The remaining appropriations for irrigation use would be **6.92 AF** (10.0 AF – 3.08 AF = 6.92 AF). If each of the lots were assumed to consist of the same amount of irrigated landscaped area, the area of lawn for each lot would be as follows:

Irrigation Use = 6.92 AF = (1 inch/week ÷ 12 inches/ft) × 30 weeks/year × X acres/lot × 11 lots

$$= 27.5 \text{ ft} \times X \text{ acres} = 6.92 \text{ AF}$$

$$X = 0.252 \text{ acres}$$

$$X = \mathbf{10,961.28 \text{ ft}^2}$$
 of irrigated landscaped area per lot

The proposed Phase 2 will not utilize more than 10-acre feet of water – per the current DNRC standards.

Horse Creek Hills Subdivision 3, consisting of eleven (11) lots on approximately 119.59 acres. This includes Lots 17-19 and Lots 27-34, including eleven (11) residential lots. We would anticipate the domestic water usage for the sum of the residential lots to be the following:

Domestic Use for Residential:

$$\begin{aligned} &= 250 \text{ gal/day/home} \times 1 \text{ home/lot} \times 11 \text{ lots} \times 365 \text{ days/year} &&= 1,003,750 \text{ gal/year} \\ &= 1,003,750 \text{ gal/year} \div (7.48 \text{ gal/ft}^3 \times 43,560 \text{ ft}^2/\text{acre}) &&= \mathbf{3.08 \text{ AF}} \end{aligned}$$

The remaining appropriations for irrigation use would be **6.92 AF** (10.0 AF – 3.08 AF = 6.92 AF). If each of the lots were assumed to consist of the same amount of irrigated landscaped area, the area of lawn for each lot would be as follows:

$$\begin{aligned} \text{Irrigation Use} &= 6.92 \text{ AF} = (1 \text{ inch/week} \div 12 \text{ inches/ft}) \times 30 \text{ weeks/year} \times X \text{ acres/lot} \times 11 \text{ lots} \\ &= 27.5 \text{ ft} \times X \text{ acres} = 8.04 \text{ AF} \\ X &= 0.252 \text{ acres} \\ X &= \mathbf{10,961.28 \text{ ft}^2} \text{ of irrigated landscaped area per lot} \end{aligned}$$

The proposed Phase 3 will not utilize more than 10-acre feet of water – per the current DNRC standards.

Horse Creek Hills Subdivision 4, consisting of seven (7) lots, plus Open Space, on approximately 112.38 acres. This includes Lots 35-41, including one (1) commercial lot, and six (6) residential lots.

The commercial lot (Lot 41) is proposed to be 32.04 acres will not be evaluated under this appropriations letter. Lot 41C will instead have a separate exempt water right – utilizing but not exceeding up to 10-acre feet of water. The lots are anticipated to be serviced via on-site individual water supply wells and on-site individual subsurface wastewater treatment systems, with the exception of the open space lot.

Assuming that each of the 6 residential lots would consist of one (1) single family dwelling we would anticipate the domestic water usage for the sum of the residential lots to be the following:

Domestic Use for Residential:

$$\begin{aligned} &= 250 \text{ gal/day/home} \times 1 \text{ home/lot} \times 6 \text{ lots} \times 365 \text{ days/year} &&= 547,500 \text{ gal/year} \\ &= 547,500 \text{ gal/year} \div (7.48 \text{ gal/ft}^3 \times 43,560 \text{ ft}^2/\text{acre}) &&= \mathbf{1.68 \text{ AF}} \end{aligned}$$

Total Domestic Use for Project #4 is **1.68 AF**

The remaining appropriations for irrigation use would be **8.32 AF** (10.0 AF – 1.68 AF = 8.32 AF). If each of the lots were assumed to consist of the same amount of irrigated landscaped area, the area of lawn for each lot would be as follows:

$$\begin{aligned} \text{Irrigation Use} &= 8.32 \text{ AF} = (1 \text{ inch/week} \div 12 \text{ inches/ft}) \times 30 \text{ weeks/year} \times X \text{ acres/lot} \times 6 \text{ lots} \\ &= 15 \text{ ft} \times X \text{ acres} = 8.32 \text{ AF} \\ X &= 0.554 \text{ acres} \\ X &= \mathbf{24,161.28 \text{ ft}^2} \text{ of irrigated landscaped area per lot} \end{aligned}$$

The proposed residential Lots in Phase 4 will not utilize more than 10-acre feet of water – per the current DNRC standards. Lot 41 could use up to 10 acre-ft of water.

2. 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*,

Appendix A, Definition 95.

3. COMPLIANCE WITH 2003 GROWTH POLICY: The definitions for Subdivision Review Criteria in the 2003 Growth Policy under Public Health and Safety are not compatible with water usage. In the 2003 Growth Policy the definitions under Local Services are more appropriate to water usage and ask whether the subdivision will connect to a central water and sewer system, which is not applicable for this subdivision. A further question is if the subdivision will use on-site water supply and sewage disposal, has Broadwater County and DEQ approved the sanitation plans. The conditions of approval will require that DEQ approve water, wastewater, stormwater and solid waste for all lots under 20 acres. The conditions of approval will require the Broadwater County Sanitarian will review water and wastewater for Lot 41 which is over 20 acres. With these conditions, the subdivision will be in conformance with the 2003 Broadwater County Growth Policy.

4. ANALYSIS: The Water Usage Table sets forth the use of water for each phase and notes that Lot 41, a commercial lot which is over 20 acres, is entitled to its own exempt well not to exceed 10 acre-feet of water. The four phases using 10 acre-feet of water and Lot 41 with its own usage of 10 acre-feet of water equals the 50 acre-feet of water the subdivision plans to use. The Montana Department of Natural Resources has issued letters of preliminary approval of the of the water usage for each phase by exempt wells. Lot 41 would apply for its own exempt well.

5. SUGGESTED FINDING: Each phase of the subdivision shall not exceed total usage of 10 acre-feet of water by exempt wells, with the addition of Lot 41, the commercial lot over 20 acres, being entitled to its own exempt well limited to 10 acre-feet of water. (*Source Water Usage Summary*).

6. SUGGESTED CONDITIONS:

- A hydrogeological survey shall be completed prior to final plat approval. (*Based on public comments received from Philip Fingar, Charles Plymale and the Missouri Water Keepers*)
- A covenant shall be imposed on the final plat that each lot install a water meter within the plumbing of individual water supply wells/systems and each lot shall keep track of total annual usage and report that information to the Homeowners Association for the subdivision. (*Subdivider Offered Mitigation, Water Usage Summary*)
- A covenant shall be imposed on the final plat that the Homeowners Association shall tabulate usage by each phase of the subdivision on an annual basis and said information will be made available if requested by DNRC or Broadwater County. (*Subdivider Offered Mitigation, Water Usage Summary*)
- 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*)

7. CONCLUSION: With the addition of the recommended conditions, the impacts on Local Services as to water availability are mitigated.

F. ADDITIONAL INFORMATION FOR PUBLIC COMMENT– MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY APPLICATIONS

8. SUMMARY: The applications to the Montana Department of Environmental Quality (DEQ) for the review of water, wastewater, stormwater and solid waste for each phase were submitted but were not available to the public. Those applications are attached. DEQ does not review lots over 20 acres so the Broadwater County Sanitarian will review water and wastewater for Lot 41 and issue approval for wastewater on Lot 41. The County should also impose conditions for storm water review and approval as well as for solid waste for Lot 41.

Section 76-3-604(7)(a), MCA requires the governing body (county commission) to collect public comment submitted at a hearing or hearings regarding water and sanitation information and to make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval of the subdivision application and preliminary plat.

Section 76-3-622, MCA sets forth what water and sanitation information is to accompany the preliminary plat.

76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

- (a) a vicinity map or plan that shows:
 - (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
 - (A) flood plains;
 - (B) surface water features;
 - (C) springs;
 - (D) irrigation ditches;
 - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
 - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:
 - (i) whether the water supply and wastewater treatment systems are individual, shared,

multiple user, or public as those systems are defined in rules published by the department of environmental quality; and

(ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in 69-3-101 and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or

(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104;

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to 76-4-104;

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

The County will need to make the following determinations independently of the analysis DEQ will perform during their review process:

- 622(1)(d) requires a determination if there is evidence of “suitability” for new wastewater treatment systems and then lists the information needed to determine “suitability”.
- 622(2)(e) requires evidence of adequate water availability and lists what information is used to make that determination
- 622(2)(f) requires evidence of sufficient water quality in accordance with DEQ rules.

2. **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, Appendix A, Definition 95.*

3. **COMPLIANCE WITH 2003 GROWTH POLICY:** The definitions for Subdivision Review Criteria in the 2003 Growth Policy under Public Health and Safety are not compatible with water usage. In the 2003 Growth Policy the definitions under Local Services are more appropriate to water usage and sanitation and ask whether the subdivision will connect to a central water and sewer system, which is not applicable for this subdivision. A further question is if the subdivision will use on-site water supply and sewage disposal, has Broadwater County and DEQ approved the sanitation plans. The conditions of approval will require that DEQ approve water, wastewater, stormwater and solid waste for all lots under 20 acres. The conditions of approval will require the Broadwater County Sanitarian will review water and wastewater for Lot 41 which is over 20 acres. With these conditions, the subdivision will be in conformance with the 2003 Broadwater County Growth Policy.

9. **ANALYSIS:** The required information under 76-3-622, MCA is contained within the DEQ Applications for the four phases and within the Wastewater, Water Wells and Stormwater Plans. The DEQ Applications and the Wastewater, Water Wells and Stormwater Plans provide evidence of suitability for new wastewater treatment systems, adequate water availability and sufficient water quality based on a preliminary analysis by the Broadwater County Sanitarian, understanding that DEQ will approve wastewater treatment systems and water for all lots within the subdivision except for Lot 41. Public comments should be analyzed by the Broadwater County Planning Board in relationship to wastewater treatment systems, water availability and water quality to determine if new findings and conditions to mitigate the impact of those findings should be made. Public comments on water and sanitation must also be included in the Broadwater County Planning Board Recommendations.

10. **SUGGESTED FINDINGS:**

- Wastewater treatment for the proposed subdivision will be provided by the use of individual on-site wastewater treatment systems (septics/drainfields). The plans for the system are subject to review and approval by DEQ and/or the Broadwater County Sanitarian.
- The proposed lots will be served by individual on-site water wells. The plans for the use of individual water wells are subject to review and approval by the DEQ and/or the Broadwater County Sanitarian. According to nitrate and water analysis data provided in the application, there are no known water quality issues surrounding the groundwater wells. If the combined annual use for the proposed wells is less than 35 gallons per minute and/or 10 acre feet per year, the wells will be exempt from obtaining a beneficial water use permit from the Montana Department of Natural Resources and Conservation. The proposed lots will be served by individual 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. Lot 41 will be entitled to its own exempt well for use of 10 acre feet/year.

- The Department of Natural Resources and Conservation has issued preliminary letters approving the water right permit exceptions for the use of exempt wells for each phase.
- DEQ will review stormwater, unless exempt for lots greater than 5 acres in size, and solid waste plans for all lots within the subdivision that are less than 20 acres.
- The county will review stormwater and solid waste plans for Lot 41 which is greater than 20 acres. (*Source DEQ Applications and Wastewater, Water Wells and Stormwater Plans; DNRC preliminary approval letters*)

11. SUGGESTED CONDITIONS: The Staff Report provided to the Broadwater County Planning Board contained the two following recommended conditions:

- 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; Sections VI-J. and VI-K., County Subdivision Regulations*)
- 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*)

Recommended Conditions in Lieu of Conditions in Staff Report:

- 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*)
- 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*)
- 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*)

- 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*)
 - 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*)
 - 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.*)
 - 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*)
 - 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.*)

12. CONCLUSION: With the addition of the recommended conditions, the impacts on Local Services as to water, wastewater, stormwater and solid waste are mitigated.