

STAFF REPORT

SIX RANGES RANCH MAJOR SUBDIVISION

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

GENERAL INFORMATION

Date of Application: April 24, 2023
Date of Sufficiency: December 4, 2023
Public Hearing Date: January 31, 2024
Review Period Ends: March 1, 2024

APPLICANT: Valley View Acres, LLC
280 W Kagy Blvd, Ste D238
Bozeman, MT 59715

APPLICANTS' REPRESENTATIVE: Alpine Surveying and Engineering
714 Stoneridge Drive, Ste 3
Bozeman, MT 59718

LEGAL DESCRIPTION: Situated in Section 31, Township 3 North, Range 1 East,
Broadwater County, Montana

GENERAL LOCATION: The proposed subdivision is directly west of the Rolling Glen
Ranch Major Subdivision, approximately thirty (30) miles south of
the city of Townsend, Montana and approximately 4 miles
northwest of the US Highway 287/I-90 Interchange.

I. EXECUTIVE SUMMARY:

The developers intend to create eleven (11) lots from an existing 227.14 acre parcel. The minimum lot size proposed is 20.004 acres and the maximum lot size proposed is 31.749 acres. Water and wastewater services will be provided via individual wastewater treatment systems and individual wells. The lots will be required to undergo review and approval by the Broadwater County Environmental Health Department. Fire protection will be provided by the Three Forks Fire District. Access will be provided onto Snowberry and Bitterroot, which are public roads within the Rolling Glen Ranch Major Subdivision. The Rolling Glen Ranch Major Subdivision road network connects to Price Road and Wheatland Road, both being county roads.

II. REQUEST:

Approval of an 11-lot Major Subdivision for Residential purposes.

III. STAFF RECOMMENDATION:

Staff recommends APPROVAL of the proposed Six Ranges Ranch Major Subdivision Preliminary Plat subject to the conditions of approval based on the recommended findings of fact included in the Staff Report.

IV. LOCATION:

The proposed subdivision is located north of Wheatland Road, south of Price Road and west of Rolling Glen Ranch Major Subdivision in Section 31, T3N, R1E, P.M.M., Broadwater County, Montana.

V. EXISTING DEVELOPMENT AND USES:

The property is generally flat unirrigated land and is currently unused and vacant.

VI. ADJACENT LAND USES:

North: Residential /Agricultural

South: Agricultural

East: Residential Subdivision

West: Agricultural

VII. PUBLIC COMMENT:

Public comment will be taken at the January 31, 2024 public hearing and subsequent Planning Board Regular Business meeting and Commissioner Meeting(s).

VIII. PROJECT BACKGROUND

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

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

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

Access will be off of Rolling Glen Ranch Road and Price Road, both county roads, connecting to the proposed internal loop road system in the Rolling Glen Ranch Major Subdivision before entering into this proposed subdivision with one loop road. The internal loop road will be built to Broadwater County Subdivision Road Standards.

IX. STAFF ANALYSIS

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

X. CRITERIA FOR REVIEW

In accordance with 76-3-608(3), MCA a subdivision proposal must undergo review for impacts on the following primary criteria; 1. Agriculture; 2. Agricultural water user facilities; 3. Local services (water, wastewater, solid waste, utilities, roads, traffic, schools, emergency services and parkland); 4. The natural environment; 5. Wildlife; 6. Wildlife habitat; 7. Public health and safety; 8. Compliance with the County's Subdivision Regulations; 9. Compliance with survey requirements; 10. The provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and 11. The provision of legal and physical access to each parcel within the proposed subdivision. Listed below are the Findings of Fact and Conclusions regarding each primary criterion.

FINDINGS OF FACT AND CONCLUSIONS:

A. IMPACTS ON AGRICULTURE

1. DEFINITION OF AGRICULTURE: Farming or ranching include the cultivation or tilling of the soil, the production, cultivation growing, harvesting of agricultural or horticultural commodities that are on site, such as food, feed, and fiber, the raising of livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops, and including timberlands and forest lands. *Broadwater County Subdivision Regulations, Definition 3.*
2. NARRATIVE: According to the preliminary plat application, this subdivision should not have a substantial impact on agriculture. The property had been used for limited agricultural use in the past. Due to the limited availability of water in this area of Broadwater County, a viable farming operation is not economically feasible. According to the Natural Resources and Conservation Service (NRCS), this property has been described as "Farmland of Statewide Importance" to "Not Prime Farmland".
3. FINDING: This proposed subdivision could have an effect on agricultural productivity since the land is being submitted for residential use. However, the subdivision should not have impacts on neighboring agricultural properties due to the proximity to adjacent subdivided lands and the relatively large size of the parcels being proposed.

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

The proposed subdivision property has slopes ranging from 1-25% with available building sites that will minimize the flow of stormwater and therefore minimize soil erosion that might occur due to the construction of buildings and associated infrastructure, which could negatively affect adjacent agricultural operations.

Conditions of approval for the proposed subdivision will require a Noxious Weed Management Plan be on file and recorded with the final plat; Restrictive covenants providing

notice of agricultural operations in the vicinity; That the property shall be maintained in a weed-free manner; and restraining domestic pets on the property. Other conditions of approval will provide the opportunity to financially guarantee any improvements required by the Weed Management Plan.

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

B. IMPACTS ON AGRICULTURAL WATER USER FACILITIES:

1. DEFINITION OF AGRICULTURAL WATER USER FACILITIES: Those facilities which provide water for irrigation or stock watering to agricultural lands to produce agricultural products. Any part of an irrigation system historically used to produce an agricultural product on property used for agricultural purposes. These facilities include, but are not limited to, ditches, head gates, pipes and other water conveying facilities. *Broadwater County Subdivision Regulations, Definition 5.*
2. NARRATIVE: The proposed subdivision will create eleven residential lots between 20.004 and 31.749 acres.
3. FINDINGS: The proposed subdivision property does not contain any irrigation water easements, and therefore should not have an effect on agricultural water user facilities.

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

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

C. IMPACTS ON LOCAL SERVICES:

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

offered by the Three Forks Fire District.

3. FINDINGS:

a. SOLID WASTE:

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

b. MAIL DELIVERY:

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

c. UTILITIES:

It is anticipated that Vigilante Electric provide electrical service to the proposed subdivision. Future dry utilities are anticipated to be installed underground. (*Source: Environment Assessment*)

d. ROADS AND TRAFFIC:

No transportation plan has been officially adopted for this area. One loop road within the proposed subdivision intersects with Rolling Glen Ranch Major Subdivision roads, Bitterroot and Snowberry. The Rolling Glen Ranch Major Subdivision roads then intersect with Price Road, a county road, to the north and Rolling Glen Ranch Road, also a county road, to the south. A legal memo from Broadwater County Attorney Cory Swanson states, "The roads and easements dedicated to the public and depicted on the RGR (Rolling Glen Ranch) plat are established by acceptance of the subdivision plat" and "The subdivision plat (Rolling Glen Ranch) dedicated easements and roads to the public". The legal memo from Mr. Swanson is attached as Exhibit A to this Staff Report.

The estimated Average Daily Trips (ADT) for eleven (11) residential lots is eighty-eight (88) ADT. The internal subdivision road will be required to be built to a #1 Local Road Standard. This standard requires a minimum road width of twenty-four (24) feet and the road must consist of 6" of base material covered with 3" of crushed top surface. The internal road shall be dedicated to public use and must be maintained by a property owners' association or a road maintenance agreement, binding on each lot owner in perpetuity.

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

A Rural Improvement District or Special District or Property Owners Association or a Road User Agreement should be set up to assist in funding on-going road maintenance within the proposed subdivision, and for the use of the Rolling Glen Ranch Major Subdivision roads by this development.

A Traffic Impact Study (TIS) to determine the Level of Service (LOS) of 'Rolling Glen Ranch Road', from the intersection with 'Rolling Glen Ranch Loop' south to the intersection with 'Wheatland Road', shall be submitted to the Broadwater County Community Development office prior to final plat approval. The TIS shall include recommendations for improvements as a result of traffic impacts to, 'Rolling Glen Ranch Road'. Should improvements be necessary, the subdivider's proportionate share of improvements to 'Rolling Glen Ranch Road' shall be completed prior to final plat approval.

e. SCHOOLS:

The proposed subdivision is served by the Three Forks Schools and the subdivision could potentially produce seventeen (17) students. The potential for new students from this development could have an impact on existing bus routes which may need to be altered once the subdivision is at full build-out

f. EMERGENCY SERVICES:

The proposed subdivision is within the Broadwater Sheriff Department's jurisdiction. Due the rural nature of this subdivision, response times for emergency services could be longer than expected.

g. FIRE SERVICES

The proposed subdivision is located within the Three Forks Fire District. The nearest firehouse is the Three Forks Fire Hall, an unmanned, volunteer fire house. The Subdivider will need to propose a fire protection plan for review and approval by the Three Forks Fire District. The subdivider has installed a well for fire protection purposes, but it is unclear what additional infrastructure the Three Forks Fire District may request.

Conditions of Approval Numbers 2, 5, 6, 7, 8, 9, 10, 11, 12-b, 15, 16 and 17 are required to mitigate impacts on local services. (A full list of the Conditions of Approval is found starting on page number 12)

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

D. IMPACTS ON THE NATURAL ENVIRONMENT

1. DEFINITION OF NATURAL ENVIRONMENT: The natural environment is defined as the physical conditions which exist within a given area, including

land, air, water, mineral, flora, fauna, sound, light, and objects of historic and aesthetic significance. *Broadwater County Subdivision Regulations, Definition 47.*

2. NARRATIVE: According to the preliminary plat application some of the property consists of slopes in excess of 15% grade. However, each lot will have buildable areas with slopes less than 15%. No rock outcroppings were identified by the Subdivider's representative. There are no marsh, shrub or forestlands located on the property. There are sparse trees and vegetation cover. The proposed subdivision is outside of the FEMA mapped 100-year floodplain.
3. FINDINGS: The property is located within the Intermountain Seismic Belt that extends through western Montana and frequently produces small earthquakes and has previously developed some major earthquakes. Property damage and risk can be minimized with construction techniques and earthquake planning.

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

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

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

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

Per Montana Code Annotated (MCA), parkland dedication is not required due to the size of the parcels. The developer has also indicated in the preliminary plat application that no street lighting is proposed for this subdivision.

A Noxious Weed Management Plan has been completed by the developer, submitted, and approved by the Broadwater County Weed Coordinator and the Broadwater County Weed Board. No critical plant species have been identified. Existing vegetation will only be disturbed for necessary construction of roads, driveways, utilities and structures. Any construction disturbance will be reseeded with an approved grass seed mix. A Weed Management Plan has been approved by the Broadwater County Noxious Weed District to control and prevent the growth of noxious weeds. The Subdivider will be responsible for adhering to the

Weed Management Plan until all lots are sold or the responsibility is turned over to a homeowners' association. (*Source: Environmental Assessment; Application for Preliminary Plat: Item 28—Weed Management Plan*).

A letter was received from the Montana Historical Society (MHS) on February 16, 2023 for the Six Ranges Ranch Major Subdivision, to determine if there are any known historical, cultural or archaeological sites which may be affected by the proposed development. According to Damon Murdo, MHS Cultural Records Manager, there have not been any previously recorded sites within the designated area. (*Source: Environmental Assessment; Application for Preliminary Plat: Item - 31, Letter from Damon Murdo dated February 16, 2023*)

Conditions of Approval Numbers 10, 11, 12-c and 14 are required to mitigate impacts on the natural environment. (A full list of the Conditions of Approval is found starting on page number 12)

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

E. IMPACT ON WILDLIFE AND WILDLIFE HABITAT

1. **DEFINITION OF WILDLIFE AND WILDLIFE HABITAT:** Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy; and the place or area where wildlife naturally lives or travels through. *Broadwater County Subdivision Regulations, Definitions 84 and 85.*
2. **NARRATIVE:** According to the preliminary plat application, roadways and other development on the project site are designed to minimize impacts to wildlife habitat. The proposed subdivision lands are not part of any identified critical wildlife habitat area. Given the proximity to adjacent subdivided land, it is anticipated that the general use of this property will have a similar impact to wildlife and wildlife habitat as surrounding properties. Since the property is not adjacent to any public lands, trails, hunting areas or fishing areas this proposed development is not anticipated to affect public access to public lands for these purposes. (*Source: Environmental Assessment, Item #24*)
3. **FINDINGS:** The impacts on wildlife habitat will be negligible based upon the surrounding uses. Landowners are encouraged to install wildlife friendly fencing, contain domestic animals, and secure solid waste to reduce wildlife incidents whenever possible. (*Source: Environmental Assessment*)

Conditions of Approval Number 12-c and 12-h are required to mitigate impacts on wildlife

habitat. (A full list of the Conditions of Approval is found starting on page number 12)

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

F. IMPACT ON PUBLIC HEALTH AND SAFETY:

1. **DEFINITION OF PUBLIC HEALTH AND SAFETY:** The prevailing healthful, sanitary condition of well-being for the community at large. Conditions that relate to public health and safety include but are not limited to disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high-pressure gas lines; and air or vehicular traffic safety hazards. *Broadwater County Subdivision Regulations, Definition 59.*
2. **NARRATIVE:** Law enforcement will be provided by the Broadwater County Sheriff's Department. Fire protection services will be offered by the Three Forks Rural Fire Department, and according to the preliminary plat application ambulance services can be offered by American Medical Response. The nearest medical services are Billings Clinic Broadwater located in Townsend, St. Peter's Clinic located in Townsend Billing Clinic-Bozeman located in Bozeman and Bozeman Deaconess Hospital located in Bozeman. The proposed subdivision will be served by on-site wells. Each lot will have its own wastewater system as well as stormwater pond.
3. **FINDINGS:**

a. **WATER SUPPLY:**

The proposed subdivision is not within the service area of a public water system. The proposed lots will be served by individual on-site water wells, drilled into each lot, according to the Preliminary Plat Application. Each lot will have an estimated total domestic volume of use of 10-acre feet/year. The use of these exempt wells is subject to review and approval by the DNRC and DEQ. Based on previous public comments received regarding water availability in this area of Broadwater County, the Planning Board may deem it necessary to require the developer to perform a hydrogeologic survey to determine the availability of water in this area.

According to the preliminary plat application, there is one well on the subject property. This well is intended to be used for fire protection services. The depth of the well is 202 feet, with static water level at 49 feet. The flow rate is 60 gallons per minute. Well log data for 5 permitted domestic wells approximate to this development are also included in the preliminary plat application. Average depth of the 5 wells is 87.6 feet deep, static water level averages 47.72 feet deep and average yield is 44 gallons per minutes. (*Source: Application for Preliminary Plat: Item – 29, Sanitation Requirements*)

b. WASTEWATER

Wastewater for the proposed subdivision will be provided by the use of individual on-site wastewater treatment systems (septic/drain fields). The Environmental Health Office will review and issue approval for the lots for adequacy and impact of the wastewater systems on groundwater quality and will issue a determination of non-significant impacts in a Certificate of Subdivision Approval. (Source: Application for Preliminary Plat: Item – 29, Sanitation Requirements)

c. STORMWATER

A stormwater retention plan will be created by the subdivider's engineer prior to final plat approval.

Conditions of Approval Numbers 3, 9, 12-c, 12-d, 12-e and 12-f are required to mitigate impacts on public health and safety. (A full list of the Conditions of Approval is found starting on page number 12)

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

G. COMPLIANCE WITH SUBDIVISION REGULATIONS

1. FINDINGS: The proposed subdivision meets all Subdivision Regulations, and it will remain in compliance with these regulations if all conditions of approval are satisfied. No variances have been requested.

All conditions of approval are required to address compliance with the Subdivision Regulations. (A full list of the Conditions of Approval is found starting on page number 12)

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

H. COMPLIANCE WITH SURVEY REQUIREMENTS

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

Condition of Approval number 4 and 11 are required to address compliance with survey requirements. (A full list of the Conditions of Approval is found starting on page number 12)

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

completed.

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

1. FINDINGS: Utility easements will have to be shown and described on the plat, in accordance with the Subdivision Regulations and in consultation with the utility providers, where utilities are or will be installed, and where necessary for the future extension of services. The internal subdivision loop road will be identified as a 60' Public Access Easement on the final plat. The two public access easements in the Rolling Glen Ranch Major Subdivision that connect to this proposed development should also be identified on the final plat.

Conditions of Approval number 11 is required to address the provision of easements within and to the proposed subdivision for the location and installation of planned utilities. (A full list of the Conditions of Approval is found starting on page number 12)

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

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

1. FINDINGS: Legal and physical access to the subdivision is provided via Snowberry and Bitterroot, dedicated public access easements within the Rolling Glen Ranch Major Subdivision. The Rolling Glen Ranch Major Subdivision road system has access via Wheatland Road, a county road to the north and Rolling Glen Ranch Road, a county road to the south. The road within the subdivision will have to be dedicated to the public and shown on the final plat as a public access easement.

Conditions of Approval Numbers 6 and 11 are required to address the provision of legal and physical access to each parcel within the proposed subdivision. (A full list of the Conditions of Approval is found starting on page number 12)

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

IX. RECOMMENDED CONDITIONS

The Six Ranges Ranch Major Subdivision is recommended for approval with the following conditions:

1. Any and all adopted State and County requirements and standards which apply to this proposed subdivision must be met unless otherwise waived for cause by the governing body. **(Mitigates Findings of Fact under “Compliance with Subdivision Regulations”)** *(Section 76-3-608, MCA; Chapter I, County Subdivision Regulations.)*
2. Plans for sewage treatment and water supply shall be submitted to the Broadwater County Environmental Health Department for review and approval. The Certificate of Subdivision Approval shall be filed with the final plat. All specifications in the approved plans shall be met. **(Mitigates Findings of Fact under “Impacts on Water and Wastewater under Local Services”)** *(Sections 76-4-101, et. Seq., MCA; Sections 17.36.101, et. seq., ARM; Sections 76-3-102(4), 501(1)(f)(iii), and 608(3)(a), MCA; Chapter V-J, County Subdivision Regulations)*
3. The developer shall perform a hydrogeologic analysis to determine if the use of 10-acre feet/year on each lot will have an effect on the aquifer and adjacent surface water. If there are adverse effects based on DNRC rules and regulations, the developer shall limit the use of water on each lot so there is no impact to adjacent aquifer and adjacent surface water. The report shall not be more than one year old at the time final plat is granted. **(Mitigates Findings of Fact under “Water Supply under Impacts on Public Health and Safety”)** *(Chapter V-C, County Subdivision Regulations)*
4. The Subdivider will be required to submit the preliminary and final plat drawings in electronic format to Broadwater County in ARCGIS, AutoCAD or Microstation format. Additional materials may be requested by the County in electronic format to facilitate review of application materials. **(Mitigates Findings of Fact under “Compliance with Survey Requirements”)** *(Chapter II and Appendix Q, County Subdivision Regulations)*
5. Plans for the location and installation of individual mailboxes shall be reviewed and approved by the United States Postal Service prior to installation. The Subdivider shall submit documentation from the United States Postal Service verifying their review and approval. When required, Subdivider shall provide an off-street area for mail delivery. The Subdivider, its successors and assigns shall be responsible for all costs associated with meeting this condition of approval. **(Mitigates Findings of Fact under “Impacts on Mail Delivery under Local Services”)** *(Sections 76-3-102(4), 76-3-501(1), and 76-3-608(3)(a) -(b); Chapter IV-A-7 b. 8, County Subdivision Regulations.)*
6. The internal subdivision road must be designed in accordance with the Broadwater County Subdivision Road Standards, stamped by a Professional Engineer, and submitted to the County Planning Department for review and approval. A letter

from the P.E. shall be provided to the County stating that the road and any improvements have been constructed in accordance with the approved plans and specifications and that they have completed an inspection of the road and any improvements. (**Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services and the Provision of Legal and Physical Access to each parcel within the proposed subdivision”**) (*Chapter IV-A-7 and Appendix N, County Subdivision Regulations.*)

7. A Traffic Impact Study (TIS) on ‘Rolling Glen Ranch Road’, from the intersection with ‘Rolling Glen Ranch Loop’ south to the intersection with ‘Wheatland Road’, shall be submitted to the Broadwater County Community Development office prior to final plat approval. The TIS shall include recommendations for improvements as a result of traffic impacts to, Rolling Glen Ranch Road. (**Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services”**) (*Chapter V-H-a-iii, County Subdivision Regulations*)

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

9. Prior to submitting the final subdivision plat application, the applicant shall complete a Fire Protection Plan for the purpose of furthering fire protection. The Fire Protection Plan shall be created with concurrence by the Three Forks Fire District. (**Mitigates Findings of Fact under “Impacts on Emergency Services under Local Services and Impacts on Public Health and Safety”**) (*Sections 76-3-102, 501, 504 and 608(3), MCA; Chapter V-Q, Broadwater County Subdivision Regulations*)

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

11. The final plat shall be prepared in accordance with the applicable State survey requirements, Montana Subdivision and Platting Act survey requirements and the County Subdivision Regulations. The final plat shall be in substantial compliance with the plat and plans submitted for preliminary plat review, except as modified by these conditions. The final plat shall provide for the following:

(Mitigates Findings of Fact under “Impacts on mail Delivery, Utilities, Roads and Traffic under Local Services”, “Impacts on the Natural Environment” and “Compliance with Survey Requirements, the provision of Easements within and to the Proposed Subdivision for the Location and Installation of any Planned Utilities and Provision of Legal and Physical Access to each Parcel within the Proposed Subdivision”) (Section 76-3-102, 76-3-402, 76-3-501, 76-3-504, and 76-3-608(3), MCA; Rule 24.183.1107, ARM; Chapter II-F, County Subdivision Regulations)

- a. All existing and proposed utility easements on the subject property;
- b. No Build Zones shall be shown in areas greater than 25% slope;
- c. All existing access and utility easements adjacent to the subject property; and

12. 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, the following restrictive covenants shall be placed upon the property **(Mitigates Findings of Fact under all Review Criteria listed in the Staff Report)** (Section 76-3-608(3)(a), MCA; Chapters I and IV, County Subdivision Regulations)

- a. Notice is hereby given that all lots shall be used for Residential purposes only per the subdivision application **(Mitigates Findings of Fact under “Compliance with Subdivision Regulations”)** (Chapter I-C and III-A, Broadwater County Subdivision Regulations);
- b. Notice is hereby given that each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, waives the right to protest joining or the amendment of a Rural Improvements District for the installation, maintenance, preservation, and repair of the following: roads that provide access to the subdivision, stormwater improvements for the subdivision; fire protection improvements for the subdivision. **(Mitigates Findings of Fact under “Impacts on Roads and Traffic under Local Services”)** (Section 76-3-102(4), MCA; Chapter V-H-b, Broadwater County Subdivision Regulations)
- c. Notice is hereby given that each lot shall be maintained in a weed-free manner and a Noxious Weed and Revegetation Plan has been prepared for the subdivision and is on file with the Broadwater County Clerk & Recorder’s Office. **(Mitigates Findings of Fact under “Impacts on Agriculture, Impacts on Agricultural Water Users, Impacts on the Natural Environment, Impacts on Wildlife and Wildlife Habitat and Impacts on the Public Health and Safety”)** (Sections 76-3-102 and 608(3), MCA; Chapters I-C-9 and V-R, Broadwater County Subdivision Regulations)
- d. Notice is hereby given of the potential health risk from radon concentrations and that such risk can be evaluated through soil tests and mitigated through radon abatement techniques incorporated into structures. **(Mitigates Findings of Fact under “Impacts on Public Health and Safety”)** (Section 76-3-608(3)(a), MCA; Chapter I-C-10 and V-C, Broadwater County Subdivision Regulations)
- e. Notice is hereby given that all structures within the subdivision should be constructed to specifications which meet or exceed equivalent provisions in the applicable State building code for this seismic zone (Zone 3). **(Mitigates**

Findings of Fact under “Impacts on Public Health and Safety”) (Section 76-3-608(3)(a), MCA; Chapters I-C-10 and V-B, Broadwater County Subdivision Regulations)

- f. Notice is hereby given of a restrictive covenant, binding the landowner, any heirs, successors and assigns, and all future owners of property within the subdivision, agreeing therein to hold Broadwater County harmless and indemnify Broadwater County from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County’s costs and attorney’s fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair and/or maintenance of the following: **(Mitigates Findings of Fact under “Impacts on Public Health and Safety”)**(76-3-608(1) and (4), MCA; Chapter I-C-10, Broadwater County Subdivision Regulations)
 - i. Exposure to radon;
 - ii. Earthquake fault zone and any seismic activity; and
 - iii. Water availability
- g. Notice is hereby given of the presence of agricultural operations in the vicinity and such operations may occur at varying times and seasons and include, but are not limited to, the noises and odors due to the operation of machinery, the pasturing and feeding of livestock, irrigation, and the application of fertilizers, herbicides, and pesticides to fields. **(Mitigates Findings of Fact under “Impacts on Agriculture and Impacts on Agricultural Water User Facilities”)** (section 76-3-608-(3)(a), MCA; Chapter III-A-7-b, Broadwater County Subdivision Regulations)
- h. Notice is hereby given that domestic pets should be restrained on the property at all times **(Mitigates Findings of Fact under “Impacts on Agriculture, Impacts on Agricultural Water User Facilities, Impacts on Wildlife and Wildlife Habitat”)** (Section 76-3-608(3)(a), MCA; Chapter I-C and III-A-7, Broadwater County Subdivision Regulations)

13. 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 its locality of the agricultural or farming operation, place, establishment or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.” **(Mitigates Findings of Fact under “Impacts on Agriculture, Impacts on Agricultural Water User Facilities)** (Section 27-30-101, MCA and Chapter IV-A 20, County Subdivision Regulations.)

14. Prior to submitting the final plat, the following improvements shall be installed or otherwise guaranteed. **(Mitigates Findings of Fact under “Impacts on Utilities, Roads and Traffic, Mail Delivery, the Natural Environment and Public Health and Safety)** (Sections 76-3-507 and 76-3-608(3)(a), MCA and Chapter IV-A, County Subdivision Regulations)

- a. Any necessary improvements required by the stormwater drainage plan, weed management plan or fire protection plan,
- b. Any improvements required for 'Rolling Glen Ranch Road' or the internal subdivision road;
- b. Installation of mail delivery facilities; and
- c. Utilities abutting and available to each lot.

15. The applicant shall submit a signage plan for traffic control and street identification signs for the internal access roads to the Community Development Department for review and approval. All specifications and requirements of the approved plan shall be met at the cost of the applicant. **(Mitigates Findings of Fact under "Impacts on Roads and Traffic under Local Services")** (Section 76-3-608, MCA; Chapters I-C and V-H-c-xi, Broadwater County Subdivision Regulations)

16. In cooperation with Broadwater County, the applicant shall create, or expand an existing Rural Improvement District for the maintenance, preservation and repair of the internal subdivision roads or establish a Property Owners' Association or a Road User Agreement which provides for the maintenance of the internal subdivision road network. **(Mitigates Findings of Fact under "Impacts on Road and Traffic under Local Services")** (Sections 7-11-1003, 76-3-102, 501, 504 and 608(3), MCA; Chapter V-H-b, Broadwater County Subdivision Regulations)

17. In cooperation with Broadwater County, the applicant shall create, or expand an existing Rural Improvement District for the maintenance, preservation and repair of the internal subdivision roads or establish a Property Owners' Association or a Road User Agreement which provides for the maintenance of the internal subdivision road network for the Rolling Glen Ranch Major Subdivision roads. **(Mitigates Findings of Fact under "Impacts on Road and Traffic under Local Services")** (Sections 7-11-1003, 76-3-102, 501, 504 and 608(3), MCA; Chapter V-H-b, Broadwater County Subdivision Regulations)

18. Prior to final plat approval the applicant shall:

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

Exhibit A

Broadwater County Attorney

515 Broadway, Townsend, Montana 59644

ph: (406) 266-9226

fax: (406) 266-5354

October 3, 2023

To: Broadwater Community Development and Planning Office

CC: Kellie Morton, Counsel for Valley View Acres, LLC; Sara Michaels, RGR HOA

RE: Public Road Easements Accessing Proposed Six Ranges Ranch Major Subdivision

The below is offered as a legal opinion to resolve the issue of whether Valley View Acres, LLC, has demonstrated it has legal access to the land in Broadwater County included in the Six Ranges Ranch Major Subdivision. For the reasons stated herein, I believe a Court would rule that the public road easements accessing and within the Rolling Glen Ranch (RGR) Subdivision provide the applicant legal access to the proposed subdivision for its development purposes.

This opinion does not address the issue of whether the applicant would have an obligation to contribute to the improvement and maintenance of the RGR roads. That issue will be addressed through the planning process as necessary.

Background

On April 24, 2023, Valley View Acres, LLC submitted a subdivision application for Six Ranges Ranch, a proposed major subdivision in Broadwater County. The subdivision administrator conducted an initial review of the application for sufficiency, and was unable to determine whether the applicant had legal access to the proposed subdivision. She therefore referred it to the County Attorney's Office for review.

Deputy County Attorney Jania Hatfield provided a Memorandum dated May 15, 2023 to the subdivision administrator, requesting additional information and analysis from the applicant. The applicant, through legal counsel Kellie Morton, submitted a Memorandum to the County Attorney's Office on August 17, 2023. The Memorandum provided additional legal analysis on the issue of whether the roads and easements dedicated in the RGR Subdivision were dedicated to the public, and whether an adjacent landowner not included in the RGR plat could access the easements within RGR and connecting RGR land to the adjacent land.

I reviewed Ms. Morton's Memorandum and conducted additional research on the nature and method of these easement dedications. For the reasons summarized below, I agree with Ms. Morton that the RGR roads and easements were dedicated to the public via the subdivision plat, and the adjoining landowner may utilize them to demonstrate access to its proposed subdivision.

Brief Factual Situation

RGR is a subdivision in Southern Broadwater County, developed by Steve Cavanaugh in the early 2000's. In 2004, Cavanaugh recorded the final plat, Articles of Incorporation, By-Laws, and Protective Covenants of the subdivision and Home Owners Association. The final plat

depicts the internal roads and easements through the subdivision, by which each lot owner accesses his or her property, and which provide access from a County Road. The plat states:

the above described tract of land is to be known and designated as the ROLLING GLEN RANCH SUBDIVISION of Broadwater County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are her[e]by granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use, but the County accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to public use.

On the West side of the RGR Subdivision, the plat depicts a 50' wide "Emergency Access and Utility Easement" which is designated a "No Build Zone." This easement runs north to south along the entire Western edge of the subdivision. Separately, the plat depicts two other locations with 20' wide "Emergency Access" and "No Build Zone," but without the word "easement" used in their labels.

There are two main roads running from the internal loop, Rolling Glen Ranch Road, to the Western boundary of RGR. The northern road is called Snowberry and the southern is called Bitterroot. The roads are each 60' wide. The roads extend all the way to the Western boundary, crossing the 50' wide Emergency Access and Utility Easement. The end of each of these roads has a label and arrow pointing to the center of the road at the boundary marker. The label states, "60' Wide Future Road Easement."

In contrast, there are two roads running from the central loop Rolling Glen Ranch Road to lots on the West side of RGR, but they stop short of the Western boundary. The northern road is called Glacier Lily, and the southern is Evening Star. Neither of these roads would physically or legally provide pass-through access from RGR to the adjoining land to the West.

On the plat map there is also a county road easement that runs along the northern boundary of Rolling Glen. The plat states, "50' Easement. 30' wide County Road Easement & 20' wide Emergency Access & Utility Easement. No Build Zone."

The RGR Protective Covenants were recorded with the Broadwater County Clerk and Recorder on October 20, 2004. The Covenants state on page 3, "Buyer agrees to be bound by each and all easements shown on plat map and right-of-ways [sic] of record that are in existence or are recorded with final plat map." The RGR HOA By-Laws were recorded the same day. They state on page 9, "The Developers have filed along with these By-Laws, Covenants for the ROLLING GLEN RANCH SUBDIVISION. The Covenants shall govern the acts, powers, duties and responsibilities of the Association and in the event these By-Laws and Covenants are in conflict, the Covenants shall prevail."

Legal Analysis of RGR Road Easements

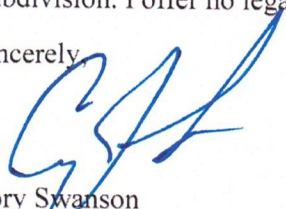
1. The roads and easements dedicated to the public and depicted on the RGR plat are established by acceptance of the subdivision plat. "Every donation or grant to the public

- or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.” Mont. Code Ann. § 76-3-307.
2. “The plat itself, with all its notes, lines, descriptions and landmarks becomes as much a part of the grant or deed by which they are conveyed, and controls as far as limits are concerned as if such descriptive features were written out on the face of the deed or the grant itself.” *Callsen v. Missoula County*, 2020 MT 176, ¶15, 400 Mont. 383, 467 P.3d 580 (quoting *Billings v. Pierce Packing Co.*, 117 Mont. 255, 261-62, 161 P.2d 636, 638 (1945)).
 3. The subdivision plat dedicated easements and roads to the public. When the Commission accepted the final plat, the final plat constitutes an instrument of conveyance of the roads to the public. *Callsen*, 2020 MT 176, ¶17. Creation and dedication of the public easement was a condition of final plat approval. *Broadwater Development, LLC v. Nelson*, 2009 MT 317, ¶42, 352 Mont. 401, 219 P.3d 492. The existence of public roads or easements does not operate to create a County road unless the County adopts it or them pursuant to Mont. Code Ann. § 7-14-2101. *Id.* at ¶¶ 42-43.
 4. The granted easements are likely an easement in gross, in favor of the public and not requiring an interest in the land. *Id.* at ¶¶ 33, 37. They do not require a dominant and servient estate. *Blazer v. Wall*, 2008 MT 145, ¶24, 343 Mont. 173, 183 P.3d 8.
 5. The 60’ Future Road Easements on the West end of the RGR plat must be evaluated based upon their intended purpose or use, and “the permissible scope of use must be determined from the specified terms without resort to extrinsic evidence.” *O’Keefe v. Mustang Ranches HOA*, 2019 MT 179, ¶29, 396 Mont. 454, 446 P.3d 509. The *prima facie* intended purpose and scope of use from the final plat’s language is to dedicate a 60’ wide easement to the public, for development of a future road extending West of the RGR subdivision. The Six Ranges Ranch Subdivision would therefore seek to utilize the road easement for its intended purpose.
 6. The RGR HOA and all of its members received actual notice upon purchase of their lots that the roads and easements in the RGR Subdivision were dedicated to the public. They similarly received actual notice upon purchase of their lots that a public easement permitted construction of a road extending West from the RGR Subdivision.

Conclusion

For the foregoing reasons, the applicant has established legal access for the Six Ranges Ranch Subdivision. I offer no legal opinion on any other part of the application.

Sincerely,



Cory Swanson
Broadwater County Attorney