



Board of County Commissioners  
Mailing Address: 200 West Broadway  
Physical Address: 199 West Pine  
Missoula, MT 59802-4292

BCC 2017-161  
May 8, 2017

(406) 258-4877  
bcc@missoulacounty.us

Tollefson Properties, LLC  
Nate Tollefson  
17731 Wild Goose Lane  
Frenchtown, MT 59834

**COUNTRY CREST NO. 12 SUBDIVISION**

Dear Mr. Tollefson:

This letter is to confirm that at the public meeting on April 27, 2017, the Board of County Commissioners approved **Country Crest No. 12 Subdivision**, subject to the conditions attached to this letter. The reasons for the decision, including the imposition of any condition of approval, may also be found in the attached document entitled "Findings of Fact and Conclusions of Law."

As part of this action, the Board of County Commissioners approved the following variance request from the Missoula County Subdivision Regulations, based on the findings of fact attached to this letter:

A variance from Subdivision Regulations Section 3.7.8.1 to reduce the stormwater easement to 15 feet in width from the required 20 feet in width.

Please be advised that the plat approval expiration date is **April 27, 2020**. The final plat must be submitted for approval or an extension must be requested and approved by the Board of County Commissioners by that date.

If you wish to appeal this decision or the imposition of any condition, you must follow the procedure established by M.C.A. §76-3-625(2) which states as follows:

**"A party . . . who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made."**

The statute includes the applicant within the definition of an aggrieved party. If you have any questions or concerns with regard to this matter, please contact us at (406) 258-4877.

Sincerely,  
BOARD OF COUNTY COMMISSIONERS

  
\_\_\_\_\_  
Jean Curtiss, Chair

**NOT AVAILABLE FOR SIGNATURE**

Nicole Rowley, Commissioner

  
\_\_\_\_\_  
David Strohmaier, Commissioner

BCC/sb

cc: Ken Jenkins, Montana Northwest Company  
Casey Drayton, Community & Planning Services  
Tim Worley, Community & Planning Services  
Andrew Stickney, Community & Planning Services  
John Hart, Deputy County Attorney  
Chris Newman, Missoula Rural Fire

Environmental Health Department  
Greg Robertson, Public Works  
Brent O'Connor, Public Works  
Deborah Bell, Public Works  
Surveyors Office  
Clerk and Recorder

**CONDITIONS OF APPROVAL**  
**COUNTRY CREST NO. 12 SUBDIVISION**  
**April 27, 2017**

**Roads, Transportation**

1. The developer shall contribute \$230 per new lot to the Mullan Road transportation system fund for signaling the Flynn/Mullan Road intersection and \$815 per new lot to the fund for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. The Subdivision Regulations reference in the covenants ("Section 4-1(12)") shall be deleted.
2. The owner of each lot shall petition for inclusion into the Missoula Urban Transportation District prior to final plat approval.

**Plat Notes:**

3. The following statement shall be shown on the face of the plat, subject to CAPS review and approval prior to final plat approval:  
"Acceptance of a deed for a lot within the subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for future construction of sidewalks, bicycle lanes or trails and may be used in lieu of their signatures on an SID/RSID petition."
4. The following statement shall be shown on the face of the plat, subject to CAPS review and approval prior to final plat approval:  
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a community or municipal water system for fire protection purposes."
5. The following disclaimer shall be shown on the face of the plat, subject to CAPS review and approval prior to final plat approval:  
"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

**Fire Prevention:**

6. Fire sprinklers shall be provided for each new residential structure that comply with NFPA 1142, 13, or 13D, as applicable, to be reviewed and approved by the Missoula Rural Fire District.

**Weeds:**

7. A Revegetation Plan for the subdivision shall be signed and approved by the Missoula County Weed District prior to final plat approval.

**Development Covenants:**

8. Section 6 of the covenants shall be amended to acknowledge County Public Works as the agency issuing permits for pellet stoves or natural gas/propane stoves, subject to review and approval by CAPS prior to final plat approval.
9. Installation of interior residential fire sprinklers that meet International Fire Code, NFPA 1, and NFPA 13D standards is required in each new home for the purpose of fire protection. References to residential fire sprinklers may be included in a revised Section 5, Fire Protection, or in a new "Building Permit Requirements" section of the Declaration of Covenants, subject to CAPS review and approval prior to final plat approval:  
"Installation of interior residential fire sprinklers that meet International Fire Code, NFPA 1, and NFPA 13D standards is required in each new home for the purpose of fire protection. Plans for installation of interior fire sprinklers shall be approved by the Missoula Rural Fire District prior to Building Permit approval. Fire sprinkler installations shall be inspected and approved by the Missoula Rural Fire District. Failure to install

interior fire sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for firefighting purposes. All lot owners shall provide a written, signed statement to Community and Planning Services (CAPS) acknowledging and agreeing to the interior fire sprinkler system requirements of the conditions of subdivision approval prior to building permit approval. This requirement shall not be changed or deleted without governing body approval.”

10. The Development Covenants shall be submitted and recorded with the final plat, subject to review and approval by Missoula County Community and Planning Services. The following sections shall be included and cannot be altered or eliminated without governing body approval:
  - a. Fire Prevention
  - b. Building Permit Requirements (as applicable)
  - c. Wildlife

**Plat:**

11. Should well isolation zone easements be needed to accommodate well arcs within or adjacent to this subdivision, reasonable changes to the final plat shall be permitted, subject to CAPS review and approval prior to final plat approval. Arcs shall be shown with bearings and distances as appropriate. All off-property encroachments shall be verified by written approval of the appropriate landowners.
12. The 10' wide Private Utility Easement for the existing sewer line near the western property boundary shall be labeled as either a Public Utility Easement or Public Sewer-Line Easement, subject to review and approval of CAPS and the County Surveyor's Office, prior to final plat approval.

**Drainage**

13. Plans for and installation of grading, drainage, and erosion control, including drainage improvements within the 15' wide drainage easement, shall be reviewed and approved by County Public Works prior to final plat approval. Improvements may be allowed after final plat, subject to an improvements guarantee.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**COUNTRY CREST NO. 12 SUBDIVISION**  
**APRIL 27, 2017**

**SUBDIVISION FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A.) ZONING AND GROWTH POLICY COMPLIANCE**

**Findings of Fact:**

1. The subdivision is two-lots on 1.02 acres. Lot sizes are 0.34 and 0.68 acres, respectively. (*Project Summary, Page 3*)
2. A single family dwelling is currently located on the property. (*Project Summary, Page 1*)
3. The property is in the C-RR2 Residential Zoning District. Permitted uses include single family dwellings, and accessory buildings and uses. (*Zoning District Standards*)
4. The two lot subdivision places the existing single family dwelling on Lot 37A and creates a vacant Lot 37B. (*Project Application, Page 2*)
5. The minimum required yard (in the C-RR2 district) shall not be less than twenty-five (25) feet at the front, fifteen (15) feet at the sides and twenty-five (25) feet at the rear. (*Zoning District Standards*)
6. The minimum lot width (in the C-RR2 district) is one hundred (100) feet. (*Zoning District Standards*)
7. The lot width measured at the building setback line parallel to the front lot line is one hundred (100) feet for Lot 37A and in excess of one hundred (100) feet for Lot 37B.
8. The maximum building height (in the C-RR2 district) is thirty (30) feet. (*Zoning District Standards*)
9. Any new development proposed on Lot 37B will be reviewed for zoning compliance at time of building permit review.
10. The applicable amendment to the Missoula County Growth Policy (2016) is the 2005 Wye Mullan West Comprehensive Area Plan ("Wye Mullan Plan"). The land use designation is Suburban Residential 2 Dwelling Units per Acre. (*Project Application, Page 3; Property Information System*)
11. The Missoula County Growth Policy outlines a series of objectives. Objective 8.3 looks to guide new subdivisions and development to areas that have the least impact on natural resources and are most suited for development. (*Growth Policy*)
12. Objective 11.1 discourages development in hazardous areas and areas where public and emergency responder safety is compromised. (*Growth Policy*)
13. The Wye Mullan Plan Suburban Residential land use recognizes land where the residential pattern is one of uniform lot sizes with urban services. (*Wye Mullan Plan, Page 7-5*)
14. The Wye Mullan Plan development guidelines for Suburban Residential areas makes a recommendation to locate building footprints to one side of a lot in anticipation of potential future lot splits for lots one acre or greater. (*Wye Mullan Plan, Page 7-6*)
15. FEMA-designated floodplain is absent from the property. The subject property was not part of a parcel containing Zone A floodplain as of the adoption of FEMA floodplain maps in August 1983. (*Property Information System; COS 261*)
16. The goal of the subdivider is to create one new lot (Lot 37B) with access to existing sewer infrastructure. A new well will be drilled for this lot. (*Project Summary, Page 1*)
17. Both lots within the subdivision will be consistent with the size of other lots in the area. The land is primarily developed with existing infrastructure and well suited for the additional density. (*Property Information System*)

**Conclusions of Law:**

1. The subdivision complies with the C-RR2 Residential Zoning District.
2. The subdivision is in substantial compliance with the Missoula County Growth Policy (2016).
3. The subdivision is in substantial compliance with the Wye Mullan Plan (2005).

**B.) PRIMARY CRITERIA COMPLIANCE**

## **CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES -**

### **Findings of Fact:**

1. Agriculture is absent from the site. The parent parcel is occupied by a single family dwelling and the majority of the remainder of the site is occupied by irrigated lawn. (*Project Summary, Page 1*)
2. Soils on the property are the Grassvalley Silty Clay Loam, 4-8% slopes, which is considered farmland of local importance. (*Project Summary, Page 1*)
3. Land uses adjacent to the parent parcel are vacant and residential. The property cannot be farmed as part of a larger agricultural enterprise. (*Property Information System*)
4. The property is not located on land with agricultural water user facilities and is not adjoining an agricultural water user facility. (*Project Summary, Page 2*)
5. Water for Lot 37A and 37B will be provided by individual wells suitable for residential use only. (*Project Summary, Page 1*)

### **Conclusions of Law:**

1. Impacts to agriculture or agricultural water user facilities as a result of the subdivision are null.

## **CRITERION 2: EFFECTS ON LOCAL SERVICES --**

### **Roads**

#### **Findings of Fact**

1. The subdivision is served by Peregrine Loop and Peregrine Court, both 24' wide offsite roads within 60' wide public access easements. (*Project Application, Page 15*)
2. Missoula County Subdivision Regulations require public roads within the urban area serving 2 – 5 lots or dwelling units to be paved, 24 feet in width and located within a 60 foot right-of-way. (*Missoula County Subdivision Regulations Table 3.4.7*)
3. No onsite roads are located in the subdivision. (*Preliminary Plat*)
4. Off-street parking for Lot 37A is provided in the private driveway and garage. Parking for Lot 37B will be evaluated at the time of zoning compliance permit review, based on use, in accordance with the zoning regulations. (*Preliminary Plat*)
5. This subdivision will have an impact on the Mullan/Flynn and Mullan/Reserve intersections. Fees addressing subdivision impacts to these intersections have been established, and are charged to new subdivision lots that are not annexing into the City of Missoula. (*Public Works, 5/4/16; Missoula County Subdivision Regulations Section 3.6*)
6. A condition of approval requires payment of the fees for mitigating the impact of the additional residential lot within this subdivision on the road intersections in question. (*Subdivision Regulations Section 1.8.3.2*)
7. The subdivision is located within the Air Stagnation Zone requiring the access to be paved as a mitigation effort. (*City-County Health Department Air Quality, 2/8/17; Property Information System*)
8. The Wye Mullan Plan recommends that transit should be a major consideration in proposals for new development and the Missoula Urban Transportation District (MUTD) should review new development for inclusion in the district. (*Wye Mullan Plan, Pages 6A-11 & 12*)
9. The majority of parcels in Country Crest have been included in the Missoula Urban Transportation District, many by recommended petition. (*Property Information System*)
10. Mountain Line has requested that property owners petition to have the parcels included in the Missoula Urban Transportation District. Submittal of the petition is a required condition of approval. (*Mountain Line, 2/22/17; Missoula County Subdivision Regulations Section 3.4.1 and Appendix E*)

#### **Conclusions of Law**

1. The subdivision will meet the road standards in the Missoula County Subdivision Regulations with the required conditions of approval.

## **Pedestrian Facilities**

### **Findings of Fact:**

1. Pedestrian facilities are not available along Peregrine Loop and Peregrine Court. (*Project Application, Page 16*)
2. Minor subdivisions in the Urban Area are not required to have pedestrian facilities per Missoula County Subdivision Regulations Section 3.4.9.1.A. However, they are required to include a waiver of the right to protest creation of an SID/RSID for future construction of sidewalks, bicycle lanes or trails. This language is not on the preliminary plat. (*Preliminary Plat*)
3. A condition of approval requires the inclusion of SID/RSID language on the final plat, subject to CAPS review and approval. (*Missoula County Subdivision Regulations Section 3.4.9.1.A*)

### **Conclusions of Law:**

1. The proposal complies with the Missoula County Subdivision Regulations with the required condition of approval.

## **Water & Sanitation Systems**

### **Findings of Fact:**

1. Lot 37A is served by an existing well that shows favorable water quality. A new well is proposed for Lot 37B. (*Water & Sanitation Report*)
2. Lot 37A will continue to be served by the existing connection to City Sewer. Lot 37B is proposed to connect to City Sewer. (*Water & Sanitation Report*)
3. A letter from the City Engineer confirms that a sewer extension is available to Lot 37B by contract. (*Development Services, 8/15/16*)

### **Conclusions of Law:**

1. The water and sanitation information complies with Subdivision Regulations.
2. Review of water and sanitation systems is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

## **Solid Waste**

### **Findings of Fact:**

1. Republic Services was contacted regarding solid waste disposal for the subdivision; they foresee no issues. (*Republic Services, 2/21/2017*)

### **Conclusion of Law:**

1. Review of solid waste disposal is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

## **Parks and Recreation**

### **Findings of Fact:**

1. No parkland dedication is proposed for the subdivision. (*Project Application, Page 2*)
2. Missoula County Subdivision Regulations Section 3.10.3.1 exempts minor subdivisions from parkland dedication requirements.
3. Missoula County Parks, Trails and Open Lands has no comments or concerns with the request. (*Missoula County Parks, Trail and Open Lands, 2/8/17*)

### **Conclusions of Law:**

1. This subdivision is exempt from parkland dedication or cash-in-lieu of park dedication since it is a minor subdivision.

## **Schools**

### **Findings of Fact:**

1. The Subdivision Application indicates that the subdivision is within the Hellgate Elementary School District and the Big Sky High School District. (*Project Application, Page 23*)
2. No residential impact is expected to the established districts from one additional residence. (*Project Application, Page 23*)

Conclusion of Law:

1. There are no identified adverse impacts to schools requiring mitigation.

**Fire Department**

Findings of Fact:

1. A Fire Hazard Assessment completed for the subdivision returned a Moderate Hazard rating. (*Fire Hazard Assessment; Missoula County Subdivision Regulations Appendix C*)
2. The Fire Hazard Assessment scored moderate primarily resulting from no restrictions imposed on the exterior building construction and roofing materials. The subdivision scored very low for wildfire risk in the categories of subdivision design, vegetation, topography, and utilities. (*Fire Hazard Assessment*)
3. The subdivision is located in a developed area with a mix of irrigated lawns, grassland open space, and ornamental vegetation. (*Property Information System*)
4. The subject property is located in the Missoula Rural Fire District and is within two miles of the nearest fire station. (*Project Application, Page 24*).
5. Missoula County Subdivision Regulations Section 3.5.3 requires water supply for fire protection that includes a municipal system, storage and hydrants, or fire sprinklers.
6. Residential fire sprinklers are the chosen water supply for fire suppression. (*Project Application, Page 24*)
7. The Covenants include language about the requirement for fire sprinklers. A condition of approval requires language more typical of the fire sprinkler requirement, as a notification of the new homeowner, permit reviewers, and the Missoula Rural Fire District. (*Covenants; Missoula County Subdivision Regulations Section 3.5.3*)
8. Since no community or municipal water system with the required minimum fire flow is provided to this subdivision, an RSID/SID waiver statement shall be required stating that at such time a community or municipal water system is available the property owner shall be required to participate in the RSID/SID. This is a required condition of approval. (*Missoula County Subdivision Regulations Section 3.5.11*)
9. The covenants include language regarding the minimum height of address numbers based on the recommendation of the Missoula Rural Fire District. (*Covenants; MRFD 2/10/17*)

Road & Driveway Access

10. The covenants include language regarding turn around requirements for driveways over 150' in length. The covenants state the proposed driveway will not exceed 150' in length. (*Covenants*)

Conclusions of Law:

1. The subdivision is a low wildfire hazard risk.
2. This subdivision meets the fire protection requirements of the Subdivision Regulations with the required conditions of approval.

**Sheriff Department**

Findings of Fact:

1. The subject property is less than 6 miles away from the Missoula County Sheriff's office. (*Project Application, Page 24*)
2. No comments indicating issues with the subdivision were received from the Sheriff's Department.

Conclusion of Law:

1. This subdivision has been reviewed for adequate police protection per Missoula County Subdivision Regulations. Missoula County law enforcement services will be available to the subdivision in a manner consistent with its distance from services and ease of access.

**CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT--**

Findings of Fact:

### Natural Environment

1. The site is located within a developed area planned for additional subdivision of lots. (*Wye Mullan Plan, Page 7-6*)
2. The development observed in the area is primarily residential with supporting infrastructure. (*Property Information System*)

### Wildlife & Wildlife Habitat

3. The subdivision is in a moderately-developed area south of the former Milwaukee Road. (*Property Information System*)
4. The site is developed with an existing residence and irrigated lawn which appears to offer no wildlife habitat. Habitat species that can be confirmed for the general area include black bear, white tail deer, birds, and small rodents. (*Project Application, Page 14*)
5. Covenant language referred to as "Living With Wildlife" has been included that addresses the issue of wildlife attractants. A condition of approval requires that the language may not be changed or deleted without prior approval of the governing body. (*Covenants*)

### Weed Management

6. The subdivision site appears developed and maintained. Disturbance can be expected following development of Lot 37B. (*Vegetation Map*)
7. Subdivisions typically have weed problems that come from previous ground disturbances, subdivision development-related disturbance, and long-term proliferation over the lifetime of a development project.
8. The site is currently developed with an irrigated lawn. Previous ground disturbances are not evident, and general weed proliferation is not expected due to the roughly one-acre scale of the subdivision. Disturbance would occur with home construction and related access. (*Project Summary, Pages 1-2*)
9. The Covenants make reference to the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Ground disturbances caused by construction or maintenance shall be re-vegetated with beneficial species at the first appropriate opportunity. (*Covenants*)
10. Missoula County Subdivision Regulations Section 3.7.11 requires a revegetation plan for disturbed sites. Section 3.7.12.3 requires the replanting of disturbed areas no later than the first growing season after the ground disturbance to prevent erosion and weed invasion. Approval of the revegetation plan by the Missoula County Weed District is a recommended condition of approval.
11. The weed management language in the covenants confirms that the property owner is responsible for removal and control of noxious weeds. (*Covenants*)
12. Ongoing weed management plans typically address weed infestations that happen over long buildout horizons and large areas of development. In this case, the entire property is small and actively managed. This management is expected to continue up to the point of building the second home, when revegetation must occur to areas of disturbance. (*Missoula County Subdivision Regulations Sections 3.7.11 and 3.7.12.3*)

### Conclusion of Law:

1. With the required conditions of approval, the subdivision complies with the Missoula County Subdivision Regulations and mitigates for the subdivision's impacts to the natural environment, wildlife and wildlife habitat, and weed management.

## **CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY--**

### Findings of Fact:

#### Floodplain/Steep Slopes

1. The subdivision does not contain any FEMA designated floodplain. (*Property Information System*)
2. Subdivisions within one mile of a Zone A floodplain (having undetermined flood elevations) are required to evaluate whether the subject property was part of a tract that included the mapped floodplain upon the date of floodplain adoption in 1983. The nearest Zone A



floodplain is approximately 1.3 miles from the subdivision. (*Missoula County Subdivision Regulations Section 3.1.3.6.A.2; Property Information System*)

3. No areas of the subdivision will be classified as steep slopes. (*Preliminary Plat*)

#### Airport

4. The proposed subdivision is outside of the Airport Influence Zone. (*Property Information System*)

#### Radon

5. The covenants contain a section on Radon that confirms Missoula County as having high radon potential. In accordance with recommendations from the City-County Health Department, all new construction is recommended to incorporate radon resistant construction features. (*Covenants*)

#### Air Quality

6. Since this subdivision is inside the Missoula Air Stagnation Zone, only approved pellet stoves may be installed at this location. The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces inside the Missoula Air Stagnation Zone. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed upon receipt of a permit from the County Public Works Department. (*City-County Health Department, 2/8/17*)
7. The covenants include language about stove installation based on the comments provided by the Missoula City-County Health Department. A condition of approval requires language in the covenants to be corrected confirming Public Works as the permitting agency for stove installations. (*Covenants; City-County Health Department, 2/8/17*)

#### Conclusions of Law:

1. The subdivision will comply with public health and safety standards in the Missoula County Subdivision Regulations with the required condition of approval.
2. Hazards relating to radon and air quality will be mitigated if the owners enforce the Development Covenants as amended.

**C) COMPLIANCE:** This subdivision complies with:

#### 1) SURVEY REQUIREMENTS

##### Findings of Fact:

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

##### Conclusion of Law:

1. This proposal meets the survey requirements.

#### 2) SUBDIVISION REGULATIONS

##### Findings of Fact:

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

##### Conclusion of Law:

1. The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plat into compliance.

#### 3) REVIEW PROCEDURE AND NOTICE OF APPEAL PROCESS

##### Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Section 5 of the Missoula County Subdivision Regulations.
2. The public meeting notification for this subdivision was mailed to notice recipients on April 7, 2017 per Missoula County Subdivision Regulations Section 5.7.11.
3. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The application shall

specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within Missoula County who can establish a likelihood of material injury to property or its material value, or the Missoula County Board of County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

1. This subdivision proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Missoula County Subdivision Regulations.

**D) PROVISION OF EASEMENTS FOR UTILITIES:**

Findings of Fact:

1. Missoula County Subdivision Regulations Section 3.8.7 requires easements for utilities. The plat shows the sewer line for the use and benefit of Lot 37A on Lot 37B. (*Preliminary Plat*)
2. The plat shows the sewer line to be contained fully within a 10' wide private utility easement, running the length of the west property line. This utility easement is parallel and contiguous to the existing 15' Public Utility Easement. (*Preliminary Plat*)
3. Easements are required to be a minimum of 20' wide. Side-by-side easements, less than 20' wide, can be added together to meet the requirement, if the easement categories are comparable (i.e. public utilities). (*Missoula County Subdivision Regulations Section 3.8.3*)
4. The sewer is a public utility, owned by the City of Missoula. In order to meet the width requirement and accommodate this public utility, a condition of approval requires the 10' Private Utility Easement to be labeled as a Public Sewer Line Easement or a generic Public Utility Easement. (*Missoula County Subdivision Regulations Section 3.8.3*)
5. A new well will be required for Lot 37B. The plat shows the approximate location of a proposed well isolation zone for the benefit of Lot 37B. (*Preliminary Plat*)
6. A well isolation zone for Lot 37B will encroach on Lot 37A and the Peregrine Court right-of-way. Missoula County Public Works has approved the encroachment of the well isolation zone in the right-of-way. (*Preliminary Plat; Public Works 1/3/17*)
7. A condition of approval allows the final plat to show well isolation zone easements on the final plat as appropriate. (*Missoula County Subdivision Regulations Section 3.8.3*)
8. The 15' wide storm easement and drainage swale within the easement have been relocated south of the existing 15' wide storm easement. (*Preliminary Plat*)
9. The relocated 15' wide storm easement has been acknowledged by the City of Missoula Engineer. (*City Engineer, 3/7/2017*)
10. Adjacent property owner Dave Scott reaffirmed the written comment he submitted during the public hearing. He acknowledged the importance of maintaining a drainage facility on the property for seasonal surface water containment which acts as part of a larger drainage system in the area.
11. Missoula County Public Works commented that the easement area is supportable and that the swale shown on the preliminary plat needs to be considered a subdivision improvement and constructed prior to recording the final plat. (*Public Works 4/24/17*)
12. Construction of the drainage swale will need to be completed to facilitate stormwater surface flow. A condition of approval requires this improvement to be constructed prior to final plat. The improvement may be allowed after final plat subject to an improvements guarantee. (*Public Works, 4/24/17; Missoula County Subdivision Regulations Section 6.3.4*)
13. Storm easements are required to be at least 20' wide, requiring a variance for the proposed easement. The Board of County Commissioners approved the variance. (*Missoula County Subdivision Regulations Section 3.7.1*)

Conclusion of Law:

1. The variance to reduce the stormwater easement to 15 feet in width from the required 20 feet in width will have no adverse impact on the management of stormwater runoff.

2. Utility services will be available to this subdivision and are in compliance with the subdivision regulations with approval of the variance and the required conditions of approval.

#### **E) PROVISION OF LEGAL AND PHYSICAL ACCESS:**

##### **Findings of Fact:**

1. Peregrine Court and Peregrine Loop serve the subdivision. Both roads are found within a 60' wide county right-of-way.
2. Lot 37A has an existing driveway off Peregrine Loop. A second driveway will be required with the platting of Lot 37B.

##### **Conclusion of Law:**

1. The proposal meets physical and legal access requirements for subdivision.

#### **VARIANCE**

**A variance from Subdivision Regulations Section 3.7.8.1, to reduce the stormwater easement to 15 feet in width from the required 20 feet in width.**

The Board of County Commissioners **approved** the variance request, based on the following findings of fact.

#### **FINDINGS**

1. **Strict compliance with these regulations will cause undue hardship for the applicant:**

Country Crest 3A was developed with a 15 foot wide stormwater easement bisecting Lot 37. Due to topography, the easement cannot be located along the proposed property line between the two lots. Increasing the easement to 20 feet in width would remove additional buildable area from the property causing an undue hardship.

2. **The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to persons or property:**

The existing 15 foot drainage easement is sufficient to accommodate stormwater drainage for the location. The construction of a swale within the easement will assist in the containment of stormwater from posing any danger to public safety, health, or welfare. Additionally, the swale will keep stormwater from becoming injurious to any persons or property outside of the easement.

3. **The conditions upon which a variance is based are unique to the property and are not applicable generally to other property:**

The topography across the other lots in the Country Crest 3A subdivision generally facilitates stormwater easements and containment in setback and right-of-way areas. Lot 37 provides a location for stormwater to exit the subdivision and continue on through adjacent land to the northwest. The approval relocates an existing stormwater easement of the same width.

4. **The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution or conflict with the Missoula County Growth Policy:**

Approval of the variance will not violate the provisions of the Missoula County Zoning Resolution or the Growth Policy for the area.