

EXECUTIVE SUMMARY

CASE PLANNER: Christine Dascenzo

REVIEWED AND APPROVED BY: Tim Worley

PUBLIC METING DATE: BCC: June 22, 2017

35-DAY LIMIT: July 6, 2017

AGENDA ITEM: **Windemere Place Subdivision**

**APPLICANT/
FEE OWNER:** John (Jack) E. DeMarois
PO Box 18003
Missoula, MT 59808

REPRESENTATIVE: WGM Group, Inc.
c/o Jeff R. Smith, P.E.
1111 E Broadway
Missoula, MT 59802

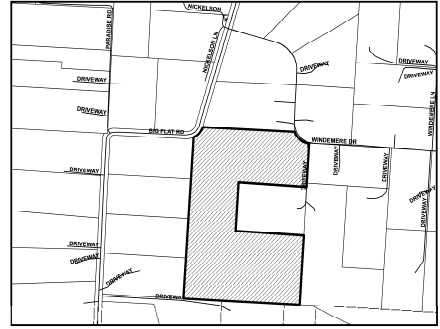
LOCATION: Off Big Flat Road and Windemere Drive, in Big Flat.

LEGAL DESCRIPTION: Lot 15A of C.O.S. 6517, located in SW1/4 of Section 8 and the NW1/4 of Section 17, T13N, R20W, P.M.M.

LEGAL NOTICE: Adjacent property owners were notified by mail on June 1, 2017.

ZONING DESIGNATION: C-A3, Agricultural/Residential

GROWTH POLICY: The Urban Comprehensive Plan (1998) as an amendment of the Missoula County Growth Policy (2016). The land use designation at this location is Residential - 1 Dwelling Unit per 5-10 Acres.



SURROUNDING LAND USES	SURROUNDING ZONING
North: Residential/Vacant South: Residential/Vacant East: Residential West: Residential/Vacant	C-A3 Agricultural/Residential C-A3 Agricultural/Residential C-A3 Agricultural/Residential C-A3 Agricultural/Residential
PROPOSAL Windemere Place Subdivision	STAFF RECOMMENDATION Approval of the subdivision, subject to conditions.

MISSOULA BOARD OF COUNTY COMMISSIONERS

June 22, 2017

WINDEMERE PLACE SUBDIVISION

I. BACKGROUND

The Windemere Place Subdivision is a proposal by John (Jack) E. DeMarois, represented by WGM Group, Inc., for five lots on 25.24 acres. The existing lot was created through a boundary line relocation filed on April 21, 2016. The area is primarily large lot residential and agriculture. The site is currently vacant and the proposal will result in five lots. Lot sizes range from 2.82 acres to 7.29 acres. The subdivision is zoned for agricultural and residential uses (C-A3). The density proposed for the subdivision is 1 dwelling unit per 5.05 acres. This density complies with the maximum residential density of one dwelling per five acres regulated by the zoning district and recommended in the comprehensive plan for the area.

The subject site is located more than 500 feet from public water supply and public sewer. Individual wells and septic systems are proposed on each lot for water supply and waste water treatment.

Access to Lots 1-4 is proposed to be provided by Luna Lane, an 18' wide private gravel road, within a 40' easement. Access to Lot 5 is proposed off Windemere Drive. Non-motorized transportation facilities are not proposed with this subdivision. Missoula Rural Fire District will provide fire protection to the lots. Driveways longer than 150' will need to conform to emergency vehicle turn around requirements. Residential fire sprinklers are the chosen water supply for firefighting.

II. SUBDIVISION FINDINGS OF FACT AND CONCLUSIONS OF LAW

A.) ZONING AND GROWTH POLICY COMPLIANCE

Findings of Fact:

1. The proposal is for a five-lot subdivision on 25.24 acres. Proposed lot sizes range from 2.82 acres to 7.29 acres. (*Project Summary, Page 1*)
2. The subject site is currently vacant. (*Existing Conditions Exhibit*)
3. The property proposed for subdivision is in the C-A3 Agricultural/Residential Zoning District. Permitted uses include single family dwellings, day care homes, agriculture, open space, and accessory buildings and uses. (*Zoning District Standards*)
4. The maximum residential density in the C-A3 district is one dwelling per five acres. (*Zoning District Standards*)
5. The proposed density for the subdivision is 1 dwelling per 5.05 acres. (*Project Summary, Page 2*)
6. The minimum required yard setback in the C-A3 district shall not be less than fifty (50) feet at the front, rear, and sides. (*Zoning District Standards*)
7. Existing covenants require structures be located no more than 100 feet from any street, roadway easement, or property line. (*Subdivision Application, Page 8; Covenants, Section 4, Book 201 Page 1330*)
8. Building envelopes are proposed at least 100 feet from the property lines for each proposed lot. (*Preliminary Plat*)
9. Any new development proposed on Lots 1-5 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 1998 Urban Comprehensive Plan (“Urban Plan”). The land use designation is Residential 1 Dwelling Unit per 5-10 Acres. *(Project Summary, Page 2; 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 Urban Plan acknowledges the demand for low density residential lots along the urban fringe with land available for accessory agricultural activity where sewer and other services are not available. *(Urban Plan, Page 80)*
14. The goal of the subdivider is to create five new residential lots on a site located more than 500 feet from public water and public sewer. Each large lot will have individual wells and individual drainfields on site. *(Project Summary, Page 16)*
15. Shaded X (100/500 Year) FEMA-designated floodplain is located in the northwest portion of the property. *(Floodplain Tool; COS 1131)*
16. The proposed lots will be largely consistent with the size of other lots in the area although, Lots 2 and 3 are less than 5 acres. The surrounding area consists of lots that are 5 acres or larger. *(Subdivision Application, Page 11; Property Information System)*

Conclusions of Law:

1. The subdivision complies with the C-A3 Agricultural/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 Urban Plan (1998).

B.) PRIMARY CRITERIA COMPLIANCE

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

Findings of Fact:

Agriculture

1. The subdivision is located on soils of Grantsdale loam, 0-2% slopes, and Alberton very fine sandy loam, 0-2% slopes, both of which are designated as Prime Farmland if Irrigated. *(Subdivision Application, Page 7, Property Information System)*
2. The amount of land historically used for the production of grass and hay production and as cattle pasture is 24.3 acres. *(Subdivision Application, Page 10)*
3. The applicant proposes building envelopes to establish the location on each lot where non-agricultural structures and improvements may be built. *(Subdivision Application, Page 8)*
4. Areas outside the building envelopes will be restricted to agricultural use. This area amounts to 77% of the subdivision area, or 19.3 acres, and was determined in accordance with the 100 foot setbacks from streets, roadway easements established in the covenants. *(Subdivision Application, Page 8)*
5. In 2007, the average conservation easement was 1,271 acres in Montana, and 253 acres in Missoula County. A land trust or similar entity is unlikely to pursue a conservation easement on this 25.24 acre parcel or a smaller portion of the parcel. *(Conservation Easement Audit)*

6. Land uses adjacent to the parent parcel are vacant and residential with some production of grass for pasture or hay. (*Subdivision Application, Page 11; Property Information System*)
7. The applicant has submitted a Weed Management Plan which includes hand pulling, mowing, biological controls, grazing, and herbicides as weed control measures. Active management and revegetation throughout development will mitigate impact to onsite and adjacent agricultural soils that may be susceptible to noxious weed infestation. (*Weed Plan, page 2*)
8. An early site design placed Luna Lane down the middle of the subdivision, east of Lots 1-3. CFAC did not support this design because it negated the potential for a contiguous agricultural operation. In response, the applicant redesigned the subdivision to locate the road along the western property line and worked with CFAC to develop a Collaborative Agriculture Guide. (*CFAC, 9/2/16; WGM-CFAC 6/7/2017*)
9. A Collaborative Agriculture Guide explains to future landowners that there are Prime Farmland if Irrigated soils on site, details the building envelopes and areas set aside for agricultural use, and provides available resources, including a draft version of the brochure for the Missoula County Right to Farm, Ranch, and Practice Forestry provisions and a Farm Site Evaluation tool. A condition of approval requires the draft brochure to be removed and replaced with the adopted Resolution 2016-117. (*Covenants*)
10. The section entitled “Collaborative Agriculture Opportunities” includes a potential on-site scenario of a 12 acre contiguous shared area available for farming that is guided by limited fencing and crop locations that bear in mind the drainfield placement. (*Covenants*)
11. The Right to Farm, Ranch and Practice Forestry provisions included in the Covenants provide notification of the County’s commitment to these operations and the acceptance of the all-day hours and ordinary activities, sights, sounds, and odors associated with, and potential hazards made possible by living in rural areas. (*Covenants*)
12. The Farm Site Evaluation outlines researching regulations and land history, soil assessments, water access and quality issues, rules and guidelines for fences and structure, and community involvement. (*Covenants*)
13. The covenants include language allowing family pets, cattle, horses and sheep, and speak to their proper confinement to the property. Pigs and goats are not permitted. In addition. (*Subdivision Application, page 11; Covenants*)
14. The Covenants notify residents about the responsibilities related to living adjacent to agricultural operations. (*Covenants; Missoula County Subdivision Regulations 3.1.4.2.B.2*)
15. Luna Lane is located relatively close to the irrigation ditch on Lots 1 and 2, and parallels the ditch on a portion of Lot 3. The planned drainage design includes a series of sumps to retain subdivision runoff adjacent to the road. (*Missoula County Subdivision Regulations Section 3.1.4.2.B.1*)

Agricultural Water User Facilities

16. An irrigation canal of the Big Flat Irrigation District is situated on the southwest portion of the property. (*Subdivision Application, Page 12; Preliminary Plat*)
17. Proposed Lots 3 and 4 are adjacent to the Big Flat Irrigation Ditch canal and will be allotted shares for 11.4 acres of lawn and garden/irrigation, down from 20 acres on the western portion of the property. (*Subdivision Application, Page 13*)
18. A 20’ wide Irrigation easement exists on Lots 3 and 4, per C.O.S. 3021. A 24’ irrigation ditch easement is proposed to encompass the Big Flat Irrigation Ditch canal on Lot 3. (*Preliminary Plat; Missoula County Subdivision Regulations 3.1.5.2*)

19. The applicant proposes using groundwater for domestic use on Lots 1-5 and for lawn & garden, pasture, irrigation and stock on Lots 1, 2, and 5. (*Subdivision Application, Page 13*)
20. Tract 15 has Ground Water Certificate 76M 78430 00, for irrigation and stock use with a flow rate of 95 gallons per minute and volume of 44.92 AF. The applicant intends to withdraw this certificate and obtain new groundwater certificates upon development. The applicant stated that the DNRC approved the applicant's proposed water use plan to alter the existing water rights. (*WGM Group Memo, 10/31/16; Subdivision Application, Page 12; Missoula County Subdivision Regulations 3.1.5.3.B*)
21. Tract 14A-1 has Ground Water Certificate 76M 64628 00, for domestic and stock use with a flow rate of 25 gpm and a volume of 1.55 AF. Shares in the district will be maintained. (*WGM Group Memo, 10/31/16; Subdivision Application, Page 12*)

Conclusions of Law:

1. The proposed development will preclude future agricultural use on the developed portions, and there will be some loss of high quality agricultural soils as a result of this subdivision.
2. Preserving 19.3 acres for agricultural use reasonably mitigates the subdivision's potential adverse impacts to agriculture.
3. Agricultural water user facilities will not be adversely impacted as a result of the subdivision.

CRITERION 2: EFFECTS ON LOCAL SERVICES --

Roads

Findings of Fact

1. The subdivision is served by Big Flat Road, an existing 24' wide offsite paved road within a 60' wide public road right-of-way, and Windemere Drive, an existing 19' wide on-site paved road within a 60' wide private access easement. (*Subdivision Application, Pages 22-24*)
2. The applicant proposes construction of Luna Lane, an 18' wide gravel road within a 40' private access easement, to be located along the western boundary of the subdivision and provide access to Lots 1-4. The road is proposed to be 1,291 feet long and terminate in a cul-de-sac on Lot 3. (*Subdivision Application, Pages 22-24*)
3. The applicant indicates that site triangles for vehicles exiting Luna Lane onto Big Flat Road exceed the requirements of 390 feet for a left turn and 335 feet for a right turn and adequate spacing is provided. (*Preliminary Plat; WGM Group Memo 11/28/16*)
4. Public Works commented that the 90 degree turn off of Big Flat Road requires a designed approach and an engineered intersection design. This is a condition of approval. (*Public Works 3/24/2017; Missoula County Subdivision Regulations Section 3.4.1.2*)
5. Six sumps are shown on the preliminary plat within the Luna Lane easement. (*Preliminary Plat*)
6. Public Works commented that the sumps require review and approval of the construction and engineering design details. This is a condition of approval. (*Public Works 3/24/2017; Missoula County Subdivision Regulations Section 3.4.8.1 and 3.7*)
7. An individual approach will extend to Lot 4 within a 20' wide private access easement. (*Subdivision Application, Pages 22-24*)
8. The placement of Luna Lane to mitigate agricultural impacts creates through lots out of the parcels west of the subdivision. An Access Control Line is proposed along the west side of Luna Lane to minimize the impact of through lots. (*Preliminary Plat; Subdivision Regulations, 3.3.2.4*)

9. Given the off-site nature of the through-lot impact, screening mitigation is required as a condition of approval and may include landscaping, buffers, grading, or berms. (*Subdivision Regulations, 3.3.2.4*)
10. Lot 5 will be accessed by a paved approach off Windemere Drive. (*Subdivision Application, Pages 22-24*)
11. Lot 5 is contained within a tract created by C.O.S. 3021 and is located along the private access easement shown on that C.O.S. (*C.O.S. 3021*)
12. Missoula County Subdivision Regulations do not require local private roads in rural areas to be paved. They do require an 18' width of gravel or pavement within a 40 foot right-of-way. (*Missoula County Subdivision Regulations Table 3.4.7*)
13. The subdivision is not located within the Air Stagnation Zone and driving surfaces are not required to be paved. (*Property Information System*)
14. The subdivision is expected to create 9.52 trips per dwelling unit, or 47.6 additional trips per day. (*Subdivision Application, Page 26*)

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 Big Flat Road or Windemere Drive. (*Project Application, Page 23*)
2. Minor subdivisions in rural areas are not required to have pedestrian facilities per Missoula County Subdivision Regulations Section 3.4.9.2.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. Such a note is on the preliminary plat. (*Preliminary Plat*)

Conclusions of Law:

1. The proposal complies with the Missoula County Subdivision Regulations.

Water & Sanitation Systems

Findings of Fact:

1. The subdivision is not located within 500 feet of a public water system or a public sewer system. (*Subdivision Application, Page 28 and 30*)
2. New individual wells are proposed for each lot. (*Subdivision Application, Page 28; Sanitary Summary*)
3. Each lot's well isolation zone is wholly located within that lot's property lines. (*Preliminary Plat*)
4. Static water levels in the well logs range from 12-18 feet beneath the surface.
5. Individual drainfields are proposed for each lot. (*Subdivision Application, Page 30; Sanitary Summary*)

Conclusions of Law:

1. The water and sanitation information complies with the 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 would be able to provide garbage and recycling services. (*Republic Services, 3/15/2017*)

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. (*Subdivision 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. (*County Parks, 3/23/17*)

Conclusions of Law:

1. As a minor subdivision, this proposal is exempt from parkland dedication or cash-in-lieu of park dedication.

Schools

Findings of Fact:

1. The application indicates that the subdivision is within the Target Range Elementary School District and the Missoula County Public Schools District for secondary education. (*Subdivision Application, Page 30*)
2. The application indicates 0-3 school aged children per lot will be added to these districts, ranging from 0-15 children. (*Subdivision Application, Page 30*)
3. No adverse impacts are expected to the established districts from five additional residences. (*Subdivision Application, Page 23*)

Conclusion of Law:

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

Fire Department

Findings of Fact:

1. According to the applicant's representative the property is not located within the Wildland Urban Interface. (*Subdivision Application, Page 31; WUI Map; Subdivision Regulations 3.1.3.2.A*)
2. The subdivision is located in a developed area with a mix of irrigated lawns, grassland open space, and ornamental vegetation. (*Property Information System*)
3. The subject property is located in the Missoula Rural Fire District and is within 3.1 miles of the nearest fire station. (*Subdivision Application, Page 31*).
4. Missoula County Subdivision Regulations Section 3.5.3 requires water supply for fire protection be specified from one of the following: a municipal system, storage and hydrants, or fire sprinklers.
5. Residential fire sprinklers are the chosen water supply for fire suppression. (*Subdivision Application, Page 31*)
6. The Covenants include language about the requirement for fire sprinklers. A condition of approval clarifies the fire sprinkler requirement as a notification of the new homeowner, permit reviewers, and the Missoula Rural Fire District and shall appear on the final plat or conditions of approval sheet. (*Covenants; Missoula County Subdivision Regulations Section 3.5.3*)
7. 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*)

Road & Driveway Access

8. The covenants include language regarding turn around requirements for driveways over 150' in length and their review by the County Fire Inspector. A condition of approval requires this be changed to Missoula Rural Fire. (*Covenants; Preliminary Plat*)

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 9.1 miles from the Missoula County Sheriff's office. (*Subdivision Application, Page 31*)
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 rural residential, large tract development. (*Urban Plan, Page 81*)
2. The development observed in the area is primarily rural residential with supporting infrastructure. (*Property Information System*)

Areas of Riparian Resource

3. The on-site irrigation ditch qualifies as an area of riparian resource since it is more than 3 feet wide. (*Preliminary Plat; Missoula County Subdivision Regulations 2.2.85*)
4. The management of this resource is outlined in the Vegetation Management Plan and located outside of the building envelope. (*Missoula County Subdivision Regulations 3.2.3 and 3.2.4.2*)

Wildlife & Wildlife Habitat

5. The subdivision is in a low density area south of Kona Ranch Road. (*Property Information System*)
6. The site is vacant of any structures and ornamental trees line the northeast property line along a private access easement. The irrigation ditch is not significantly vegetative and the site as a whole appears to offer no wildlife habitat. Habitat species that can be confirmed for the general area include black bear, elk, Hungarian partridge, moose, pheasant, and white tail deer. (*Subdivision Application, Page 20*)
7. There is a discrepancy in whether the site is within elk habitat. According to the Montana Natural Resources Information System the site is not; however, data from Montana Fish, Wildlife and Parks shows that it is within Elk Winter Habitat. The 100' setbacks, building

envelopes, and Living with Wildlife section of the Covenants mitigate a potential impact to elk winter habitat. (*Preliminary Plat; Elk Habitat Exhibit; Property Information System*)

8. The site is located within Bald Eagle habitat. According to the National Eagle Center, bald eagles nest in tall trees near water. This subdivision is not expected to negatively impact the nesting habits or habitat of bald eagles due to the subdivision's location and the proposed building envelopes. (*National Eagle Center*)
9. Covenant language referred to as "Living with Wildlife" has been included and addresses the issue of wildlife attractants. (*Covenants*)

Weed Management

10. The subdivision site appears undeveloped and maintained as pasture grasses without any known invasive vegetation on-site. Disturbance can be expected as the five lots are developed. (*Vegetation Management Plan, Page 1; Vegetation Map*)
11. 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.
12. The site is currently undeveloped and grows irrigated pasture grasses. Previous ground disturbances are not evident although disturbance would occur with home construction and related access. (*Subdivision Application, Page 18*)
13. The Covenants make reference to the Montana County Weed Control Act, the Missoula County Noxious Weed Management Plan, and includes Exhibit A, "Vegetation Management Plan for Windemere Place". Ground disturbances caused by construction or maintenance shall be re-vegetated with desired species at the first appropriate opportunity. (*Covenants*)
14. 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.
15. The weed management language in the covenants confirms that the property owner is responsible for removal and control of noxious weeds. (*Covenants*)

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 contains a small area of Shaded-X FEMA designated floodplain in the northwest corner. (*Floodplain Tool*)
2. The County Floodplain Administrator commented that there is potential for high ground water at the site. The applicant stated they anticipate a condition of approval that will require pre- and post- construction elevation certificates, prohibit basements, and restrict crawlspaces and utility elevations. (*Floodplain, 10/28/16; 2nd Sufficiency Cover Letter, 3/3/17; Missoula County Subdivision Regulations Sections 3.1.2.4 and 3.1.3.2.B*)
3. Areas along the ditch and through the middle of the property have been identified as steep slopes but are designated outside the building envelope. (*Preliminary Plat*)

Airport

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

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 outside the Missoula Air Stagnation Zone, EPA approved woodstoves or Outdoor Wood Boilers that have passed EPA Phase 2 program or better may be installed at this location. (*City-County Health Department, 10/21/2016*)
7. The covenants include language about stove installation based on the comments provided by the Missoula City-County Health Department. (*Covenants*)

Utilities

8. Utility easements are shown on the preliminary plat. In addition, the Subdivision Regulations require a statement on the final plat pertaining to the right of the joint use of such easements and is a condition of approval. (*Missoula County Subdivision Regulations Section 7.7.1*)
9. The covenants include language notifying lot owners of a waiver of the right to protest the RSID/SID for a public or community water system for fire protection. A condition of approval requires this language appear on the final plat. (*Missoula County Subdivision Regulations Section 3.5.11*)

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 June 1, 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 individual septic drainfields and replacement drainfields for Lots 1-5. (*Preliminary Plat*)
2. New individual wells will be required for Lots 1-5. The plat shows the approximate location of a proposed well isolation zone contained within each lot. (*Preliminary Plat*)

Conclusion of Law:

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

E) PROVISION OF LEGAL AND PHYSICAL ACCESS:

Findings of Fact:

1. Luna Lane is proposed to serve Lots 1-4, within a 40' wide private right-of-way.
2. Lot 5 will be accessed by an approach off Windemere Drive, a private road, as provided on COS 3021. The applicant asserts that Lot 5 will be the only lot within this subdivision to be subject to the Windemere Homeowners Association assessments related to the road.

Conclusion of Law:

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

MOTIONS AND CONDITIONS

IV. RECOMMENDED MOTION FOR SUBDIVISION

1. **THAT the Windemere Place Subdivision be approved** based on the findings of fact in the staff report and public testimony, and subject to the recommended conditions of approval in the staff report.

V. RECOMMENDED CONDITIONS OF SUBDIVISION APPROVAL

Plat Notes

1. 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 assent of the lot owner to waive the right to protest a future RSID/SID for a public or community water system for fire protection purposes.” (*Missoula County Subdivision Regulations Section 3.5.11*)
2. 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.”
(*Missoula County Subdivision Regulations Section 7.7.1*)

Roads

3. Plans for and installation of a 90 degree turn off of Big Flat Road onto Luna Lane, including a designed approach and an engineered intersection design, shall be reviewed and approved by Public Works prior to final plat approval. (*Public Works 3/24/2017; Missoula County Subdivision Regulations Section 3.4.1.2*)
4. Plans for and installation of the Luna Lane drainage shall be reviewed and approved by Public Works prior to final plat approval. (*Public Works 3/24/2017; Missoula County Subdivision Regulations Section 3.4.8.1; 3.7*)
5. Plans to screen the road from the lots west of Luna Lane may include landscaping buffers, berms, grading, or other methods of effective screening, and shall be reviewed and approved prior to final plat approval. (*Subdivision Regulations, 3.3.2.4*)

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 Fire sprinkler language contained in the covenants shall be included on the final plat or on a conditions of approval sheet, subject to CAPS review and approval prior to final plat approval. (*Missoula County Subdivision Regulations Section 3.5.3.4*)

Weeds

7. A Revegetation Plan for the subdivision shall be signed and approved by the Missoula County Weed District prior to final plat approval. (*Missoula County Subdivision Regulations Article 3.7.11*)

Development Covenants

8. All references to the County Fire Inspector shall be changed to Missoula Rural Fire District. *(Covenants)*
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. The “Building Permit Requirements” section of the Declaration of Covenants, Section 6.u.iii, shall be amended with the following language and be subject to CAPS review and approval prior to final plat approval:

“Installation of interior residential fire sprinklers that meet ~~Uniform~~ 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 ~~County Fire Inspector~~ Missoula Rural Fire District prior to Building Permit approval. Fire sprinkler installations shall be inspected and approved by the ~~County Fire Inspector~~ Missoula Rural Fire District. Failure to install ~~residential 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.”

(Missoula County Subdivision Regulations Section 3.5.3.4)
10. The Building Permit Requirements section of the Covenants shall be amended to include the following language:

“Lowest floors and all mechanical equipment including ductwork shall be a minimum of 2’ above the base flood elevation. Crawlspace may be constructed at the base flood elevation provided all mechanical equipment, including ductwork, is a minimum of 2 feet above the base flood elevation. Pre-construction elevation certificates shall be submitted with the building permit application with post-construction elevation certificates submitted prior to certificate of occupancy.”

(Missoula County Subdivision Regulations Sections 3.1.2.4 and 3.1.3.2.B)
11. The Development Covenants shall be submitted and recorded with the final plat, subject to review and approval by Community and Planning Services. The Residential Fire Sprinklers section shall be included in the Amendment section of the General Provisions of the Covenants and cannot be altered or eliminated without governing body approval.

(Missoula County Subdivision Regulations Section 7.6.6)
12. In the Development Covenants, the draft brochure for the Right to Farm, Ranch, and Practice Forestry policy shall be replaced with the official policy, Resolution 2016-117, Book 967 Page 1064.

REFERENCES CITED

The following materials are referenced throughout this document. For ease of reading, short versions of the citations (shown in bold) are used in-text, and full citations are included here.

Rules, Plans & Regulations

Missoula County Growth Policy (Growth Policy): Adopted by the Board of County Commissioners in 2016.

<http://www.missoulacounty.us/home/showdocument?id=15085>

Missoula County Subdivision Regulations: Adopted by the Board of County Commissioners of Missoula County and amended November 4, 2016.

<http://www.missoulacounty.us/Home/ShowDocument?id=23722>

Missoula Urban Comprehensive Plan (Urban Plan): Adopted by Missoula City Council and the Board of County Commissioners in 1998.

<https://shared.missoulacounty.us/index.php/s/sbGEeGp6PHMleTv>

Missoula County Zoning Regulations (Zoning District Standards): Adopted by the Board of County Commissioners in 2017.

<https://www.missoulacounty.us/home/showdocument?id=25491>

Information Queries:

Floodplain Tool: <https://gis.missoulacounty.us/CAPS/Floodplain/>

Missoula County Property Information System:

<http://gis.missoulacounty.us/propertyinformation/>

Elements of the Windemere Place Subdivision application packet:

Airport Influence Area Exhibit: *Airport Influence Area Exhibit*, Section 2

C.O.S. 1131: *Certificate of Survey 1131*, Section 3.

C.O.S. 3021: *C.O.S. 3021*, Section 3

Covenants: *Additional Declaration of Covenants, Conditions and Restrictions for Windemere Place*, Section 6.

Existing Conditions Exhibit: *Existing Conditions Exhibit*, Section 2.

Floodplain Exhibit: *Floodplain Exhibit*, Section 2.

Preliminary Plat: *Preliminary Subdivision Plat*, Section 2.

Project Summary: *Project Summary*, Section 1.

Sanitary Summary: *Sanitary Summary*, Section 7.

Subdivision Application: *Missoula County Minor Subdivision Application*, Section 5.

Vegetation Management Plan: *Vegetation Management Plan*, Section 6

Vegetation Map: *Vegetation Map*, Section 6.

Correspondence (hard copy documents are included in the application packet Section 9):

2nd Sufficiency Cover Letter, 3/3/17: *Second Agency Sufficiency Review Submittal*, dated March 3, 2017

City-County Health, 10/21/16: *City County Health Department*, dated October 21, 2016

CFAC, 9/2/16: *Community Farm and Agriculture Coalition*, dated November 2, 2016

County Parks, 3/23/17: *County Parks, Trails, and Open Lands*, dated March 23, 2017

Republic Services, 3/15/17: *Republic Services*, dated March 15, 2017

WGM Group Memo, 10/31/16: *DNRC Water Rights Inquiry – DEQ Sanitation Review*, dated October 31, 2016

WGM Group Memo, 11/28/16: *WGM Group Memo*, dated 11/28/16

Other Cited References

Conservation Easement Audit: *Conservation Easement Legislative Audit*, January 2007.

National Eagle Center: *Eagle Nesting and Young*,

<https://www.nationaleaglecenter.org/eagle-nesting-young/>, visited May 31, 2017

WUI Map: Wildland Urban Interface Map, http://dnrc.mt.gov/divisions/forestry/docs/fire-and-aviation/wui/wui_parcel_entirestate_map.pdf

V. ATTACHMENTS

- A. Final Plat Requirements
- B. Project History Form
- C. WGM-CFAC 6/7/2017
- D. Floodplain, 10/28/16

ATTACHMENT A FINAL PLAT REQUIREMENTS

If the Commissioners preliminarily approve the proposed subdivision, the preliminary approval applies to the subdivision as proposed on the preliminary plat and in the submittal packet, as amended by any conditions of approval. The Planning Office and other applicable agencies will review the following items, in addition to conditions of approval, Subdivision Regulations Section/Table 7.5, and the final plat checklist, prior to final plat approval in order to ensure compliance with the subdivision regulations, other applicable regulations, and the proposed preliminary plat and submittal packet:

Plat

1. FEMA Floodplain Shaded Zone X shall be shown on the final plat. (*Missoula County Subdivision Regulation 3.1.2.4*)
2. Luna Lane shall be shown as a 40' wide private access easement and located along the western boundary of the subdivision, providing access to Lots 1-4, terminating in a cul-de-sac on Lot 3. (*Missoula County Subdivision Regulation 3.4.7 and 3.5.7.3; Table 3.4.7*)
3. Plans for and construction of Luna Lane as an 18' wide gravel road with 2' gravel shoulders shall be reviewed and approved by County Public Works prior to final plat approval. (*Missoula County Subdivision Regulation 3.4.7; Table 3.4.7*)
4. An Access Control Line shall be shown on the plat along the west of Luna Lane as partial mitigation of the off-site through lots. (*Missoula County Subdivision Regulation 3.3.2.4*)
5. An individual approach extending to Lot 4 shall be shown as a 20' wide private access easement. (*Missoula County Subdivision Regulation 3.5.7.2*)

Covenants

1. All document attachments in the Collaborative Agriculture Guide, Exhibit B of the Covenants, shall be recorded in color.

**ATTACHMENT B
SUBDIVISION PROJECT FORM**

Project: Windemere Place Subdivision

Applicant: John (Jack) E. DeMarois

Representative: WGM Group, Inc.

<u>Scoping/Preapplication Meeting</u>	Preapplication: May 11, 2016		
<u>Element</u>	<u>Submitted</u> September 23, 2016 October 7, 2016	<u>Certified?</u> No Yes	
<u>Sufficiency/Agency</u>	<u>Submitted</u> October 17, 2016 March 9, 2017 April 25, 2017	<u>Certified?</u> No No Yes	
<u>Submitted</u>	<u>Received</u> June 2, 2017	<u>Accepted</u>	<u>35-Day Deadline</u> July 6, 2017
<u>Extension Granted</u>	NA		
<u>Planning Board</u>	NA		
<u>CAPS Update</u>	June 19		
<u>BCC</u>	June 22		
<u>Public Notice</u>	<u>APOs Sent</u> July 1, 2017	<u>Newspaper</u> NA	<u>Posted</u>
<u>Plat Approval Expiration Date</u>	June 22, 2020		

From: [Jeff Smith](#)
To: [Christine Dascenzo](#)
Subject: FW: Farmland Lease Resources
Date: Wednesday, June 07, 2017 10:58:43 AM

Hi Christine,

Below is email correspondence for our work with the CFAC group.

Best,
Jeff

Jeff R. Smith, P.E., LEED AP
Senior Project Engineer

From: H.James Cusker [mailto:hjcusker@aol.com]
Sent: Tuesday, April 25, 2017 6:19 PM
To: Jeff Smith <JSmith@wgmgroup.com>; ahayes@blackfoot.net; bonnie@missoulacfac.org
Subject: Re: Farmland Lease Resources

Thanks, Jeff. I like it.

Jim

-----Original Message-----

From: Jeff Smith <JSmith@wgmgroup.com>
To: H.James Cusker <hjcusker@aol.com>; ahayes <ahayes@blackfoot.net>; bonnie <bonnie@missoulacfac.org>
Sent: Tue, Apr 25, 2017 8:22 am
Subject: RE: Farmland Lease Resources

Excellent suggestion – Thanks Jim!

The attached PDF is updated per your and Andy's suggestions.

Best,
Jeff

Jeff Smith, P.E.
WGM Group
1111 E. Broadway
Missoula • MT • 59802
E-mail: JSmith@wgmgroup.com
406-728-4611

From: H.James Cusker [mailto:hjcusker@aol.com]
Sent: Sunday, April 23, 2017 4:57 PM
To: Jeff Smith <JSmith@wgmgroup.com>; ahayes@blackfoot.net; bonnie@missoulacfac.org

Subject: Re: Farmland Lease Resources

Nice job, Jeff! I agree with Andy to include his suggestions.

In addition, to illustrate the potential for the formation of a large area for agricultural use, it would be helpful to provide an illustration outlining a proposed boundary for this collaborative endeavor. A clarification of how this option would work could be inserted by modifying the statement addressing this possibility on page 3 with suggested language such as :

At Windemere Place, the opportunity exists for production for hay, forage production or other crops over a large shared area with your neighbors. The opportunity also exists for you and your neighbors to lease this large shared area to a farmer for agricultural production. An example showing a possible boundary for this collaborative effort is illustrated on the map which follows. (This map would be identical to the one presented on page 1 but would have a dotted line collaborative boundary across all lots showing the entirety of the agricultural land involved. An estimate of the acreage included within this boundary might be helpful as well.)

An addition such as this would clarify the unique design of the proposed subdivision by illustrating it's potential to preserve a large parcel of contiguous important farmland for future forage or food production.

Your hard work in getting this right to maximize the conservation of this most important resource, important farmland, is much appreciated and should be used as a model for future planning of development on productive agricultural land.

Much appreciated!

Jim

-----Original Message-----

From: Jeff Smith <JSmith@wmggroup.com>

To: Andy Hayes <ahayes@blackfoot.net>; Bonnie Buckingham <bonnie@missoulacfac.org>

Cc: Jim Cusker <hjcusker@aol.com>

Sent: Sat, Apr 22, 2017 11:27 am

Subject: RE: Farmland Lease Resources

Thanks Andy,

The language suggestions are much appreciated. I will add a reference to the Right to Farm ordinance in the introduction and tools section and will attach.

Have a good weekend,

Jeff

Jeff Smith, P.E.

WGM Group

1111 E. Broadway

Missoula • MT • 59802

E-mail: JSmith@wmggroup.com

406-728-4611

From: Andy Hayes [<mailto:ahayes@blackfoot.net>]

Sent: Saturday, April 22, 2017 9:38 AM

To: Jeff Smith <JSmith@wgmgroupp.com>; Bonnie Buckingham <bonnie@missoulacfac.org>
Cc: Jim Cusker <hjcusker@aol.com>
Subject: RE: Farmland Lease Resources

This is looking really good Jeff.

A couple of comments; one it would sound Better to me if it said set aside for hay or forage production instead of grass production.

Also it seems to me that also attaching the new Right to Farm ordinance from the county would be very appropriate.

I attached the January draft version. I think they have a final version just getting approved.

Andy Hayes
Cell 406-239-9458

----- Original message -----

From: Jeff Smith
Date: 04/21/2017 2:08 PM (GMT-07:00)
To: Bonnie Buckingham
Cc: Jim Cusker ,Andy Hayes
Subject: RE: Farmland Lease Resources

Good afternoon all,

At long last... attached is a first stab at a Collaborative Agriculture Guide for Windemere Place. I would greatly appreciate your input.

Thanks for your time and expertise,

Jeff

Jeff Smith, P.E.

WGM Group

1111 E. Broadway
Missoula • MT • 59802
E-mail: JSmith@wgmgroupp.com
406-728-4611

From: Bonnie Buckingham [<mailto:bonnie@missoulacfac.org>]
Sent: Thursday, March 30, 2017 2:56 PM
To: Jeff Smith <JSmith@wgmgroupp.com>
Cc: Jim Cusker <hjcusker@aol.com>; Andy Hayes <ahayes@blackfoot.net>
Subject: Farmland Lease Resources

Hi Jeff,

It was good to meet with you earlier this week. I appreciate your efforts in

attempting to integrate mitigation and agland conservation within the lots of the Windemere subdivision.

As you requested, here are some resources you could point future landowners toward, when there is interest in a potential lease agreement on the land.

Please feel free to contact us for clarification or with any questions as you develop your covenants.

Best,
Bonnie

Bonnie Buckingham | Executive Director
Community Food & Agriculture Coalition
Office 117 W. Broadway, Missoula, MT
Mail P.O.Box 7025, Missoula, MT 59807
Phone 406-880-0543
Web www.MissoulaCFAC.org

Farm Link
sample lease
templates:

<https://www.farmlinkmontana.org/resources/land-access-and-evaluation/sample-leases-rates/>

Farm Commons also has some resources around lease writing
:

[https://farmcommons.org/resources-search?
field_farm_operation_tid=All&field_legal_subject_tid=23&field_resource_type_tid=All](https://farmcommons.org/resources-search?field_farm_operation_tid=All&field_legal_subject_tid=23&field_resource_type_tid=All)

They might also find it useful to consider the liability concerns and insurance options when someone is farming on their land. There are Farm Link resources here:

<https://www.farmlinkmontana.org/resources/risk-management/insurance/>

Farm Commons on insurance:

[https://farmcommons.org/resources-search?
field_farm_operation_tid=All&field_legal_subject_tid=22&field_resource_type_tid=All](https://farmcommons.org/resources-search?field_farm_operation_tid=All&field_legal_subject_tid=22&field_resource_type_tid=All)

Lastly I attached our Site Assessment handout from the workshop this month. It's written for Land Seekers, but it gives a good overview of the things a prospective farmer will want to know about the property.

One of the biggest challenges for this idea of farming on two people's property is going to be the need for fencing to keep wildlife out and livestock in. The fence is not going to follow anyone's property line and if it's possible to include allowances for this in the covenants, that could be really helpful.

A n

o

-

fence

option

a deal-breaker

for many types of agriculture

.

NOTE: Here is a red-flag that has come up with a bit of research:

based on my reading of the [GAP rules](#) (page 36) this [EPA rule](#) (page 38) farming on the septic drain fields would be impossible.

So, if the drainfields are under the set-aside ag land, there will be rules that prohibit some types of production.

Christine Dascenzo - Re: Windemere First Agency Subdivision Review

From: Todd Kliez
To: Christine Dascenzo
Date: 10/28/2016 8:49 AM
Subject: Re: Windemere First Agency Subdivision Review
Attachments: IMAGE.jpeg

Just an fyi - I asked Jeff what their plan was to mitigate potential high groundwater during flood as I couldn't find anything in their application. Eric Anderson called me back and indicated that I had mentioned this to them in an email back in May but he didn't discuss any mitigation options.. Tim suggested I let you know as this may be a sufficiency item.

>>> Todd Kliez 10/24/2016 1:53 PM >>>
do we have a complete copy you could just email me?

>>> Christine Dascenzo 10/24/2016 1:36 PM >>>
Hey Todd,

I looked into it originally, but the document would be too large to host it online. You might look through the application link to find more information on floodplain, pages 15-16.

Thanks,
Christine

Christine Dascenzo
Planner
Community and Planning Services
Missoula County

Physical Address: 323 West Alder, Missoula, MT, 59802
Mailing Address: 200 West Broadway, Missoula MT, 59802
Phone: [406-258-3869](tel:406-258-3869)
Fax: [406-258-3920](tel:406-258-3920)

>>> Todd Kliez 10/24/2016 1:20 PM >>>
Hi all - I click on one link, that takes me to 10 links, and some of those have an additional 10+ links. I can find the floodplain map under the 16 different maps in link #3 but where/if there's anything in a narrative form regarding floodplain is unknown. Is it possible to also have a single link to download the entire application rather than having to click through all these in hopes of finding what I'm looking for?

>>> Erica Laferriere <elaferriere@wgmgroup.com> 10/20/2016 3:31 PM >>>
Dear Agency Representative,

A subdivision application for the Windemere Subdivision has been reviewed by Missoula County Community and Planning Services (CAPS). The proposed Windemere Subdivision is a 5 lot residential