

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
REVISED SUBDIVISION REPORT #FPP-16-04
FOX HILLS ESTATES PHASE 3
JULY 15, 2016

A report to the Flathead County Planning Board and Board of Commissioners regarding a request for preliminary plat approval of Fox Hills Estates Phase 3, a major subdivision that would create eight residential lots within the Fox Hills Estates development located in Creston, Montana.

The Planning Board will hold a public hearing in the Earl Bennett Building conference room at 1035 First Avenue West, Kalispell on August 10, 2016 to review the proposal and make a recommendation to the Flathead County Commission. Final action on this proposal by the governing body must be taken prior to the review deadline of September 20, 2016. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, located in the Earl Bennett Building at 1035 First Avenue West, Kalispell, Montana.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposal is not located within the advisory area of a Land Use Advisory Council.

B. Planning Board

The Flathead County Planning Board will hold a public hearing on the proposed subdivision on August 10, 2016 and make a recommendation to the Flathead County Board of Commissioners. This space is reserved for a summary of the Planning Board's discussion and recommendation.

C. Commission

The Flathead County Board of Commissioners will review this proposal after the public hearing conducted by the Planning Board and prior to September 20, 2016 which is the end of the 60 working day statutory review period. This space will contain an update regarding the Flathead County Commission review of the proposal.

II. GENERAL INFORMATION

A. Project Personnel

i. Applicant/Owner

Terry and Mark Leighty
491 Creston Road
Kalispell, MT 59901

ii. Technical Assistance

Sands Surveying
2 Village Loop
Kalispell, MT 59901

B. Project Description

The proposal would create eight single family residential lots ranging from 1.08 acres to 1.92 acres in size on the 12.56 acre subject property. The lots were preliminarily approved within the original review of Fox Hills Estates, and the preliminary plat approval expired prior to final plat. Subdivision improvements associated with the original review of Fox Hills Estates, including water and sewer infrastructure, fire suppression infrastructure, and roads have been completed. All lots would connect to the existing Public Water Supply and Wastewater Collection and Treatment Systems owned by the Fox Hills Estates Water and Sewer District. Access to all lots would be from existing internal subdivision roads which approach onto Mennonite Church Road.

C. Location and Legal Description of Subject Property

Located approximately 8 miles east of Kalispell along Mennonite Church Road, the subject property can be legally described as Tract 4 in Section 10, Township 28 North, Range 20 West, P.M.M., Flathead County, Montana.

Figure 1- Subject Property



D. Subdivision Layout Detail

- i. Total Subdivision Acreage** 12.56 acres
- ii. Acreage in Lots** 11.59 acres
- iii. Acreage in Roads** 0.97 acres
- iv. Total Park/Common Area/Open Space Acreage** 0 acres*

*Homeowners' Association Parkland of 10.3 acres was established through original review

- v. **Minimum Lot Size** 1.08 acres
- vi. **Maximum Lot Size** 1.92 acres
- vii. **Overall Gross Lot Density** 1 unit per 1.57 acres
- viii. **Easements**

The preliminary plat indicates the following easements:

- 60 foot wide road and utility easement that contains Mennonite Church Road;
- 60 foot wide road and utility easement(s) containing internal subdivision roads Foxtail Drive and Fox Den Trail; and
- 30 foot utility easements for public water and sewer system infrastructure.
- 15 foot bike and pedestrian path easement along Mennonite Church Road

E. Administrative Characteristics

i. Current Land Use

The generally flat and open property is currently undeveloped pastureland however previous adjacent phases of the Fox Hill Estates subdivision has resulted in the development of the internal subdivision roads and stormwater and public water and sewer system infrastructure to be used for this phase.

ii. Current Zoning

The site is located in an area that is unzoned.

iii. Proposed Land Use

The proposal would create eight single family residential lots from an existing lot comprising Phase 3 of Fox Hill Estates. The residences within Phase 3 would connect to the public water supply and public sewer connection systems established through the approval and development of Phases 1, 2, and 4 which have previously attained final plat approval.

F. Area Characteristics

i. Description of Area Surrounding Proposed Subdivision

The area surrounding the proposed subdivision may be characterized as gently rolling agricultural lands. Low density rural residential and agricultural land uses appear to be converting to higher density suburban residential uses, as evidenced by relatively new platted subdivisions in the area.

ii. Zoning

The site is located in an area that is unzoned.

iii. Land Uses

Surrounding lands include original tracts of record used for agriculture, rural residential tract lands, and those occurring in subdivisions which have been reviewed and approved for residential use.

G. Utilities and Services

i. Water

All lots are proposed to be connected to a public water system

ii. Wastewater

All lots are proposed to be connected to a public wastewater collection and treatment system

iii. Electricity

Flathead Electric Cooperative

- iv. Solid Waste**
Contract Haul (Evergreen Disposal)
- v. Telephone Service**
Century Tel
- vi. School District(s)**
Creston School District (Elementary), Flathead District (High School)
- vii. Fire District(s)**
Creston Fire Department
- viii. Police**
Flathead County Sheriff

III. COMMENTS RECEIVED

A. Agency Comments

As of the date of this report, six comments have been received in response to the agency comment request. Pertinent comments received during the originally submitted review and current agency comments will be discussed as applicable in specific sections of the following local government review. Comments received subsequent to the date of this report will be verbally summarized at the August 10, 2016 Planning Board hearing on this proposal.

- Wendee Jacobs, Flathead City-County Environmental Health Department
 - A Certificate of Subdivision Approval was issued for Fox Hill Estates Phase 3 on May 29th, 2008, approving 8 lots utilizing a previously approved public water supply and public wastewater collection and treatment system owned and maintained by Fox Hill Estates Water and Sewer District.
 - Fox Hills Estates Water/Sewer District was approved by the Flathead County Commissioners on April 16, 2007, with Resolution 2032.
 - A septic permit application was not received nor the system permitted. This is a violation of Flathead County Regulations for Onsite Sewage Treatment Systems, Section 4.1,
 - “A permit issued by the department is required for any person to construct, alter, repair and/or operate any sewage treatment system within Flathead County unless the system is either a municipal or publicly owned sewage treatment system.”
 - The septic system utilizes level 2 treatment which requires an Operation & Maintenance (O&M) agreement in perpetuity of the life of the system. Yearly maintenance and testing is required. The system has never had an O&M agreement with a licensed maintenance contractor. This is a violation of operating Level 2 Treatment (Flathead County Construction Standards for Onsite Sewage Treatment System, 7.6.4) on the unpermitted septic system.
 - The discharge from the septic system exceeds 5000gpd therefore a groundwater discharge permit is required from MT DEQ. An application was submitted in 2010 but never completed. A Notice of Application Withdrawal and application were formally withdrawn March 20, 2013 due to noncontact by the applicant to address deficiencies within the application. Therefore a permit was never issued.

- As-built drawings for the septic system were never received by Environmental Health (FCROSTS, Section 9.6 and FCCSSWTS Appendix D) or MTDEQ as required (EQ # 08-2829, 08-1799).
- The subdivision is out of compliance with the existing Certificate of Subdivision Approval (EQ# 08-2829).
- The approved individual lot component of the sewage treatment system consists of a 1500/500 gallon tank at each individual residence. Each tank requires a septic permit issued by Environmental Health. Some septic tanks were installed without a permit.
- Construction was required to be completed within three years of the date of the approval (May 29, 2008). If more than three years pass, it shall be necessary to resubmit plans, specifications and fees as required by ARM 17.38.101(4).
- Prior to operation of the public wastewater system or storm drainage system, or extensions of or additions to systems, a professional engineer shall certify to the Department that the construction, alteration or extension of the system was completed in accordance with the plans and specifications approved by MTDEQ. These certifications were not received.
- The existing approval for Fox Hills Estates Ph. 3 (EQ# 08-2829) is an expansion to previously-approved facilities approved for Fox Hills Estates Phase 4 (EQ# 08-1799). Therefore, many of the afore-noted deficiencies and violations are pertinent to Phase 4 but affect Phase 3.
- Julie Weber, BPA
 - “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within this area.”
- David Prunty, Flathead County Road and Bridge Department
 - “At this point the County Road Department does not have any comments on this request.”
- Kathy Olsen, MT DNRC
 - “The department has no record of a water right for Fox Hill Estates Phases 1 and 2. If the developer does require a review by DEQ then they must request a DNRC Water Right Review to determine the type of water right needed for this subdivision. At this time, Fox Hills Estates is in violation of the Montana Water Use Act.”
- Marc Pitman, MT DNRC
 - “ The applicant states that there is “a small ribbon of floodplain located along the Blaine Creek channel.” This is a Zone A floodplain with only approximate boundaries and no established BFE. The county is required under 44CFR 60.3 (b)(3) that all new subdivision proposals and other proposed developments greater than 50 lots or 5 acres, whichever is lesser, include within such proposals base flood elevation data required to establish the BFE for this floodplain.”
- Jessy Coltrane and Kenneth Breidinger, MT Fish, Wildlife and Parks
 - “The creek and adjacent wetlands provide habitat for fish and wildlife species, including nesting shorebirds and waterfowl. Development of this area will

directly impact this habitat. In addition, associated human and domestic pet activity will further disturb wildlife use of the area, regardless of proposed building setbacks.”

- “The proposed subdivision abuts the riparian zoned of Blaine Creek. In order to protect water quality, stream stability, aquatic habitat, and the associated riparian areas, while minimizing fragmentation and degradation of these sites, we recommend the following design standards:
 - a. Maintain a minimum of 150 feet of vegetated buffer from the creek edge, plus an additional 50 foot building setback
 - b. Within this setback, avoid construction of home sites and other subdivision improvements
 - c. Avoid disturbing native vegetation, except as needed to control noxious weeds.

IV. LOCAL GOVERNMENT REVIEW

A. Review Criteria

Findings in this portion of the report are applicable to the impacts of the proposed subdivision on the review criteria listed.

i. Impact on Agriculture and Agricultural Water User Facilities

According to the Environmental Assessment, the subject property was utilized for hay and alfalfa production prior to 2003. While the lot has been used for agricultural production in the past, the surrounding property to the east and south has been developed with previous phases of the Fox Hills Estates subdivision. The property to the west was dedicated as parkland for the development and will not be utilized for farming in the future. Soils on the subject property primarily consist of Class II soils which are high quality agricultural soils, however the size of the property and the surrounding land use indicate that the impact of loss of agricultural land will be minimal. The evaluation of the submitted Preliminary Plat and submitted Environmental Assessment has identified no adverse impacts to area agriculture or silviculture which would necessitate special mitigation.

The subject property is not developed with irrigation infrastructure, is not in an irrigation district or party to any irrigation agreements, and serves no irrigation water to adjacent or neighboring properties.

Finding #1 -Effects of the proposed subdivision on agriculture and agricultural water user facilities would be minimal because the property is not farmed or irrigated for agricultural purposes and surrounding land uses preclude the lot from being used for large scale, economically viable farmland.

ii. Impact on Local Services

1. Water and Wastewater

As proposed, all lots would connect to the on-site public water supply and sewer services that were established in the development of Phases 1, 2, and 4. While the facilities appear to exist and are utilized for water and wastewater treatment of the previous phases there are a number of issues pertaining to the Fox Hill Estates

Water and Sewer District. Per the letter from Wendee Jacobs, Flathead County Environmental Health Department, the Certificate of Subdivision Approval (COSA) was issued in 2008 with the requirement that the components be constructed and permits obtained as required by the Fox Hill Estates Water and Sewer District. To date, the level 2 septic treatment system has not obtained a septic permit or been reviewed/tested yearly per an Operations and Maintenance agreement as required by the *Flathead County Construction Standards for Onsite Sewage Treatment System*. Additionally, the discharge from the currently utilized septic system was never granted a groundwater discharge permit as required by MT DEQ and engineer certifications of the wastewater and stormwater drainage system were not received as required by the COSA. Because these requirements have extended past the 3 year timeframe provided for a developer to construct water, wastewater, and stormwater treatment facilities per the COSA, a re-review of the facilities will be required prior to connection of the 8 lots within this phase.

Comment from DNRC indicates that a water right has not been secured for the existing phases of the Fox Hill Estates development. The Fox Hill Estates Water and Sewer District is currently out of compliance with the Montana Water Use Act due to the use of water for previous phases. In order to come into compliance, appropriate water rights should be obtained for the previous phases and the additional 8 lots of this phase before final plat approval.

2. **Schools**

This development is within the boundaries of Creston School District and the Flathead High School District with bus services provided for students of existing phases of the Fox Hills Estates development. The Environmental Assessment assumes 3 students will be added to the school system according to population statistics of Flathead County in 2015. While the Creston and Flathead School Districts were contacted regarding this proposed subdivision, it does not appear that the school system will be overwhelmed by the 3 additional pupils as the Creston School District has been declining in size in recent years. It is anticipated that additional students may be served without introducing significant impacts to the school district.

3. **Mail Delivery**

The application indicates the developers' intent to use the centralized mailbox facility located near the entrance to the subdivision. The proposal for mail delivery appears reasonable and adequate and a letter from the USPS indicates approval of the location for the centralized facility.

4. **Recreation**

The subdivision occurs in an area with abundant recreational opportunities available. Nearby public lands, rivers, and lakes offer opportunities for activities such as lake related water sports, hiking, bicycling, and hunting and fishing. The Flathead County Trails Plan designates Mennonite Church road as a proposed collector therefore a bicycle and pedestrian easement is required along the northern side of the subject property running parallel to Mennonite Church Road in compliance with Section 4.7.19 FCSR.

The preliminary plat identifies the previously established parkland area for Fox Hills Estates. Managed by the Fox Hills Estates Homeowners' Association, the parkland area is currently undeveloped and appears to have ample potential to be developed in the best interest of homeowners. A total of 10.064 acres of parkland within Parks A and B was established with the first phase of the development. The previous phases required 2.97 acres of parkland and this phase will require .57 acres which combined is much less than the existing dedicated parkland. The proposed subdivision would introduce no adverse impact to recreation.

5. **Roads**

Primary access to the site is from Mennonite Church Road via Montana Highway 35. All lots will be accessed from Foxtail Drive and Fox Den Trail, existing paved internal subdivision (local) roads with 22-foot wide driving surfaces within a 60-foot right of way. A secondary emergency access called West Fox Den Trail accesses Creston Road to the west of the subdivision across privately owned land. Available to the residents of Phase 3, this previously established emergency access is equipped with a 'crash-gate' located on the western edge of Phase 1 adjacent to Fox Hills Estates Park Area B.

6. **Fire/Emergency Medical Services**

The site is in the Creston Fire District and the Kalispell Regional Medical Center is approximately 10 miles from the proposed subdivision. Submitted comment from the Creston Fire Chief addresses requests specified for Phase 4, including water system minimum standards. According to the submitted Environmental Assessment the District requests of a 10,000 gallon recharge tank with 300 gpm recharge capacity have been satisfied resulting in adequate fire suppression capability for the Fox Hill Estates development, including the current Phase 3. The CC&Rs also include provisions for long term maintenance of the fire suppression equipment. The impact to fire and emergency services is anticipated to be minimal and the addition of the proposed eight lots is not likely to alter the existing level of service and requested mitigation has been provided.

7. **Police Services**

The property is located in an unincorporated area of Flathead County and is therefore served by the Flathead County Sheriff. Although solicited, the Sheriff's Department has provided no comment. Given existing staffing levels, the size of the County and the dispersed nature of the population, service to this subdivision is anticipated to be consistent with other unincorporated rural areas of Flathead County and delayed response times may be experienced.

8. **Solid Waste Disposal**

Solid waste disposal is proposed to be provided via contract hauler, and comment from the Flathead County Solid Waste District states that Evergreen Disposal is the PSC licensed hauler for the area.

9. **Other Utilities**

Existing utilities are available for the subdivision within the internal subdivision road and utility easements. Existing underground utilities include electricity from

Flathead Electric Cooperative and telephone from Century Tel. Extension of the utilities must be installed underground to each lot as required by the Flathead County Subdivision Regulations.

Finding #2- The impacts of the proposed water and wastewater treatment system will be acceptable with the imposition of conditions because the public water and sewer infrastructure has been established but is not currently in compliance with state and local regulations which should be satisfied before the proposed eight lots are granted final plat approval.

Finding #3- Impacts on local recreational and educational facilities appear to be acceptable as a bike and pedestrian easement of compliant width along Mennonite Church Road has been shown on the face of the final plat and the 3 additional students should be able to be accommodated by the Creston and Flathead school districts.

Finding #4- Effects of the proposed subdivision on local emergency services appear to be minimal and acceptable because the lots will be served by the Flathead County Sheriff's Department, the Fox Hill Estates development is served by the Creston Fire District and a 10,000 gallon recharge tank has been installed in a previous phase of the development which may be used by the 8 new lots.

Finding #5- Impacts on other local services appear to be minimal and acceptable with conditions of approval as a paved pullout for mail facilities already exists, Foxtail Drive and Fox Den Trail are compliant with Flathead County Road and Bridge Department standards, and electrical and phone utilities are in place underground within the existing road and utility easement.

iii. Impact on the Natural Environment

1. Water Quality

The western boundaries of Lots 1-6 are located on the center-line of Blaine Creek, an ephemeral stream. Submitted ground water monitoring results indicate the area is prone to shallow ground water (8.5 feet), particularly at lower elevations within the Blaine Creek Drainage.

Wastewater from all proposed lots would be managed through a connection to the existing public sewer system located within Phase 4 of Fox Hills Estates and owned by the Fox Hills Estates Water and Sewer District. Once the system is re-reviewed and all appropriate permits are obtained, the connection to the public water system would minimize the potential for contamination of groundwater by minimizing the number of well heads that are potential entry points for contaminants, and by minimizing additional depletion of the underlying aquifer. Because the COSA permitting the existing water and sewer facilities is out of compliance with requirements outlined in the previously issued COSA, the proposed water supply, sanitation, and stormwater drainage for all lots will need to be re-reviewed and approved by the Flathead County Environmental Health Department and the Montana Department of Environmental Quality as applicable prior to final plat approval.

2. **Air Quality**

Primary access to the subdivision occurs via Mennonite Church Road which is a County maintained, paved roadway and all internal lots are accessed via existing paved subdivision roads. The applicant has submitted a “Dust and Air Pollution Control and Mitigation Plan” compliant with Section 4.7.14 of the Flathead County Subdivision Regulations. A note should be required to be placed on the face of the final plat that requires the owners of all lots abide by the guidelines set forth in the plan during and after site construction and development activities. Lasting impacts to air quality are not anticipated as a result of the subdivision because the lots will be accessed by a paved roads and only short term impacts of dust are expected with construction related activities.

3. **Impact of Noise**

It is estimated that the development of residences on all lots would generate noise during construction. The proposed residential use on all lots is not anticipated to generate impacting noise to area residents or wildlife.

4. **Impact to Flora**

The area encompassed by all proposed lots has been utilized for hay and alfalfa production in the past but currently contains a mix of native and non-native vegetation including canary reed grass and sedges. Additionally, the property contains wetlands with wetland vegetation that were delineated by Calypso Ecological Consulting. The wetland boundaries have been illustrated on the preliminary plat and each building site appears to be located outside of these wetland areas.

Because Blaine Creek is located along the western boundary of the proposed subdivision phase, a Riparian Resource Management Plan was provided with the application. According to the plan, the vegetative buffer has been delineated as the BFE of the 100-year floodplain. All wetland vegetation is within this vegetative buffer which is intended to be maintained in its natural state per the Riparian Resource Management Plan.

Pursuant to Section 4.7.26 of the Flathead County Subdivision Regulations the applicant is required to establish and follow an approved Soil Disturbance and Weed Management Plan.

5. **Impact to Floodplain**

According to FIRM Panel 30029C1835G Lots 1-6 contain areas identified as Special Flood Hazard Area (areas within the 100 year floodplain), and the boundary is indicated on the preliminary plat with the Base Flood Elevation (BFE) The current proposal also indicates 40x40 ft building sites on each lot. Each building site is between 60 and 220 feet from the centerline of the stream. However, the topography of the subject property is relatively flat and some building sites are less than 5 feet from the BFE. It would appear that flooding would be an issue if buildings with finished basements are developed as the bottom floor would be below the BFE and prone to flooding. However, each building site is at least 2 ft

above BFE if no underground floors are built. Therefore flooding may be an issue if basements are constructed.

6. **Impact to Riparian/Wetland Areas**

Lots 1-6 encompass portions of ephemeral Blaine Creek which contains wetland and riparian areas. A wetland delineation was completed by Calypso Ecological Consulting and boundaries are illustrated on the face of the preliminary plat. Based on the boundaries of the wetlands and 100 year floodplain, physical impacts due to construction and development activities on riparian and wetlands will be minimal because building envelopes are listed with no portion of any envelope encroaching within wetland or floodplain. A 'No Build Zone' may not be required in this instance because a formal wetland study was conducted and building envelopes are deemed to be sufficient mitigation per Section 4.7.10.

Montana Fish, Wildlife and Parks issued a comment recommending that a minimum 150 ft vegetative buffer from the creek edge plus an additional 50 ft. building setback be established for all lots located along Blaine Creek. This 200 feet buffer would significantly limit development on Lots 1-6, but especially Lots 2-4. Because the proposed building envelopes area are at least 50 feet from Blaine Creek and vegetation and all important wetland vegetation is within this buffer it would appear that the proposed setback is sufficient mitigation to protect the ephemeral stream and wetland vegetation.

7. **Impact to Historical Features**

There are no apparent historical structures located on the subject property, and the proposal would not impact historical features.

Finding #6- Impacts on water quality appear to be acceptable with imposition of conditions because the proposed lots will be connected to a public water and sewer system that will not be within proximity to Blaine Creek or adjacent shallow ground water, stormwater does not appear to flow into Blaine Creek, and all water, wastewater and stormwater infrastructure will be re-reviewed and approved by the Flathead County Environmental Health Department and the Montana Department of Environmental Quality as applicable prior to final plat approval.

Finding #7- The proposed development will have minimal impacts on air quality and noise because the primary impact roads are paved and the proposed residential use is not anticipated to create unacceptable long-term noise.

Finding #8- Impacts to the riparian, wetland, and general flora appears to be acceptable because a Riparian Resource Management Plan has been developed to maintain Blaine Creek in its natural state, all wetlands have been professionally mapped and illustrated on the plat, and flora of importance will be protected from development as the building envelopes and sites do not encroach upon riparian and wetland boundaries.

Finding #9- Impacts on floodplain may be a potential issue because Lots 1-6 have areas delineated as 100-year floodplain and some building sites are less than 5 feet

in elevation from the BFE as illustrated on the plat which would limit basement development as the lowest floor must be at least 2 feet above the BFE.

iv. Impact on Wildlife and Wildlife Habitat

Blaine Creek which traverses the western boundary of the proposed subdivision provides habitat to area wildlife and may serve as a corridor for passing wildlife. Mapping provided by the Montana Natural Heritage Program indicate that the 20 sq. mile area is home to 13 Species of Concern (per staff research) including the wolverine, Hoary bat, Canada lynx, fisher, grizzly bear, great blue heron, long-billed curlew, great gray owl, Westslope cutthroat trout, pygmy whitefish, bull trout, hooked snowfly, and alberta snowfly. As indicated on the preliminary plat, homesites on Lots 1-6 are proposed to occur within approximately 60 and 220 feet of Blaine Creek. The creek in the area of these lots generally has very low-lying vegetation which would not provide significant cover for larger animals. However, the Montana Fish, Wildlife and Parks issued a comment indicating the area provides habitat for fish and wildlife species and human and domestic pet activity could disturb wildlife use of the area, specifically black and grizzly bears which frequent the area. Because of the potential interaction between residents and dangerous wildlife, it is suggested that the CC&Rs be amended to incorporate MT Fish, Wildlife and Parks *Wildlife Recommendations for Subdivision Development*.

Finding #10- The proposed subdivision may impact local wildlife and wildlife habitat as 13 Species of Concern are associated with the area, including grizzly and black bears, however the amount of surrounding residential development and protection of the riparian area should provide appropriate protection for wildlife dependent on Blaine Creek.

v. Impact on Public Health and Safety

1. Flood Risk

FEMA FIRM Panel 30029C1835G indicates Lots 1-6 contain areas identified as Special Flood Hazard Area (areas within the 100 year floodplain), and proposed building sites on those lots occur within approximately 2-10 feet elevation above the Base Flood Elevation. Submitted groundwater monitoring data indicates the presence of saturated soils (~8.5 feet) in the vicinity of the Blaine Creek drainage. During spring and early summer when seasonal high groundwater is at its peak there is likelihood that subsurface flooding may occur on the subject property. Considering the evidence of shallow groundwater and the close proximity of proposed building sites to the floodplain boundary, it would be appropriate to require a statement be placed on the face of the final plat alerting potential homebuyers of the high water table and prohibit the construction of basements in the proposed subdivision.

2. Water and Wastewater Treatment

As proposed, all lots would connect to the on-site public water supply and sewer services that were established in the development of Phases 1, 2, and 4. While the facilities appear to exist and are utilized for water and wastewater treatment of the previous phases there are a number of issues pertaining to the Fox Hill Estates

Water and Sewer District. Per the letter from Wendee Jacobs, Flathead County Environmental Health Department, the Certificate of Subdivision Approval (COSA) was issued in 2008 with the requirement that the components be constructed and permits obtained as required by the Fox Hill Estates Water and Sewer District. To date, the level 2 septic treatment system has not obtained a septic permit or been reviewed/tested yearly per an Operations and Maintenance agreement as required by the Flathead County Construction Standards for Onsite Sewage Treatment System. Additionally, the discharge from the currently utilized septic system was never granted a groundwater discharge permit as required by MT DEQ and engineer certifications of the wastewater and stormwater drainage system were not received as required by the COSA. Because these requirements have extended past the 3 year timeframe provided for a developer to construct water, wastewater, and stormwater treatment facilities per the COSA, a re-review of the facilities will be required prior to connection of the 8 lots within this phase.

3. **Stormwater**

A plan for the management of stormwater was submitted in the original application for DEQ approval. The plan explains that the roadways were constructed in previous phases to accommodate any additional runoff via culverts and roadside detention and development of the 8 lots would actually reduce the amount of runoff onsite from pre-development levels. Because the lots slope westward toward Blaine Creek, it is important that runoff not be diverted to the creek and all calculations supporting the stormwater plan will be re-reviewed to ensure compliance with the Montana Department of Environmental Quality.

4. **Road Network**

All lots will be accessed from Foxtail Drive and Fox Den Trail, which are existing paved internal subdivision (local) roads with 22-foot wide paved driving surfaces within 60-foot wide easements. Addressed in the submitted environmental assessment and CC&R's that were established through the original review and approval process of Fox Hills Estates, maintenance of the roads is the responsibility of the Homeowners' Association. A road approach permit for access from Mennonite Church Road has been completed and issued by the Flathead County Road and Bridge Department. The approach permit includes the emergency egress route which approaches onto Creston Road.

5. **High Voltage Electric Lines/High Pressure Gas Lines**

There are no exposed high voltage electric lines or high pressure gas lines on the subject property.

6. **Fire and Emergency Services**

The site is in the Creston Fire District and the Kalispell Regional Hospital is approximately 10 miles from the proposed subdivision. The vicinity of the subject property can be described as relatively flat pasture lands with few trees. According to the Environmental Assessment, the Fox Hills Estates development has established a 10,000 gallon storage tank with a 300 gpm recharge capacity in a previous phase. All proposed lots appear to have adequate accessibility to provide

safe ingress/egress for emergency vehicles. As a standard condition of approval, the applicant should be required to comply with Section 4.7.27 FCSR and satisfy reasonable requests pertaining to access and fire suppression by emergency service providers prior to final plat approval.

7. Geologic Hazards

The proposal complies with the Flathead County Subdivision Regulations in regard to slope and driveway access. There are no apparent geological hazards on the property.

8. Avalanche Hazards

The subdivision is not located in an area of the County considered to be prone to avalanche hazards.

9. Airport Influence Areas

The subject property is not within an airport influence area.

10. Soils

As indicated in submitted application materials, soils on the subject property are generally comprised of Corvallis silty clay loam (Cd), Flathead fine sandy loam (Fb), Halfmoon silt loam (HA), and Yoeman gravely loam (Ye). According to the NRCS Web Soil Survey, Corvallis (Cd) soils are somewhat poorly drained and have occasional flooding potential due to the associated floodplain, however the remaining soils are well drained and appear to be appropriate for residential development. While soil mapping indicates Lot 1 is completely covered by Corvallis (Cd) soils, the associated floodplain does not encompass the entire lot and appropriate building techniques can mitigate issues resulting from poor soil quality, as illustrated by adjacent development.

Finding #11- The effects of this proposed subdivision on public health and safety in regard to flood risk appear to potentially be an issue as 100-year floodplain exists on Lots 1-6 and buildings with basements built within the proposed building sites may be inundated with flood water if built at an elevation below the BFE.

Finding #12- Minimal risks to public health and safety are anticipated with the imposition of conditions because adequate physical and legal access to the subdivision is currently provided and adequate emergency services are available for the subdivision; there are no high voltage electric or high pressure gas lines on or around the subject property; and, there are no apparent hazards associated with geology, avalanche, or airport influence areas.

Finding #13- The effects of this subdivision on public health and safety with regards to water, wastewater, and stormwater management appear to be a potential issue that may be overcome with conditions of approval because the existing Fox Hill Water and Sewer infrastructure is out of compliance with MT DEQ and Flathead County Environmental Health Department and applicable review, approval, and permitting should be obtained prior to final plat approval.

B. Compliance with Survey Requirements of 76-3-401 through 76-3-406 M.C.A.

Finding # 14-The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contained all elements required to meet state survey requirements, which will be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval.

C. Compliance with the Flathead County Subdivision Regulations

Finding #15- No variances are requested or required. The proposed subdivision is in general compliance with the Flathead County Subdivision Regulations, effective December 1, 2014 as compliant legal and physical access would be provided and potential impacts to the primary review criteria appear able to be adequately addressed by conditions.

D. Compliance with the Flathead County Subdivision Review Procedure

- i. Pre-application Conference Date** – May 11, 2016
- ii. Application Deadline Date** - November 11, 2016
- iii. Completeness Date** – June 7, 2016
- iv. Sufficiency Date** – June 22, 2016
- v. Agency Referral Requests Mailing Date** – June 24, 2016
- vi. Adjacent Property Notification Mailing Date** - July 20, 2016
- vii. Legal Notice Publication Date** – July 24, 2016
- viii. On-site Posting of Public Hearing Date** – July 21, 2016

Finding #16- The proposal is reviewed as a major subdivision in accordance with statutory criteria and the standards outlined in Section 4.4 of the Flathead County Subdivision Regulations effective December 1, 2014.

E. Provision of Easements for the Location and Installation of Planned Utilities

Finding #17- The preliminary plat identifies adequate easements for utilities to serve the subdivision. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations.

F. Provision of Legal and Physical Access to Each Parcel

Finding #18- Privately maintained local internal subdivision roads Foxtail Drive and Fox Den Trail would provide legal and physical access to all lots. The preliminary plat includes adequate provisions for legal and physical access to all lots because the primary access and developed local roads occur within 60 foot wide access and utility easements and the Flathead County Road and Bridge Department has issued an approved approach permit for the subdivision.

G. Review of Applicable Plans

76-1-605(2)(b) M.C.A states that “A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on

compliance with a growth policy adopted pursuant to this chapter.” Furthermore, 76-3-608(3) M.C.A. does not contain compliance with the growth policy as a primary criteria by which an individual subdivision proposal must undergo local government review or on which findings of fact are to be based. Review of general conformance with applicable plans is provided as an acknowledgement and consideration of the guidance offered by the information contained in the document(s).

i. Neighborhood Plan

The proposed Fox Hills Estates Phase 3 is not located within a neighborhood plan area.

ii. Flathead County Growth Policy

The Flathead County Growth Policy is a general policy document that meets the requirements of 76-1-601, M.C.A. and was updated on October 12, 2012. While the location is in an area of the county that is un-designated in terms of land-use on the Flathead County Designated Land Use Map, it occurs in a rural agricultural area and the proposal appears to substantially meet the general goals and policies applicable to agricultural and residential uses and appears to meet relevant goals and policies applicable to sanitation and access to available services, as defined in Chapters 2-8 of the Flathead County Growth Policy. Regulations adopted by Flathead County used in the review of subdivisions are an implementation of the goals and policies established in the Growth Policy. This proposal conforms to the regulations used in the review of subdivision in Flathead County and is therefore in general compliance with the Flathead County Growth Policy.

H. Compliance with Local Zoning

The proposed subdivision is located in an area of Flathead County that is presently unzoned. Therefore compliance with local zoning is not applicable nor required as part of this subdivision application and review.

Finding #19- The proposed subdivision is located in an unzoned area of Flathead County is not required to comply with local zoning regulations because no such zoning exists that is applicable to the subject property.

V. SUMMARY OF FINDINGS

Finding #1 -Effects of the proposed subdivision on agriculture and agricultural water user facilities would be minimal because the property is not farmed or irrigated for agricultural purposes and surrounding land uses preclude the lot from being used for large scale, economically viable farmland.

Finding #2- The impacts of the proposed water and wastewater treatment system will be acceptable with the imposition of conditions because the public water and sewer infrastructure has been established but is not currently in compliance with state and local regulations which should be satisfied before the proposed eight lots are granted final plat approval.

Finding #3- Impacts on local recreational and educational facilities appear to be acceptable as a bike and pedestrian easement of compliant width along Mennonite Church Road has been

shown on the face of the final plat and the 3 additional students should be able to be accommodated by the Creston and Flathead school districts.

Finding #4- Effects of the proposed subdivision on local emergency services appear to be minimal and acceptable because the lots will be served by the Flathead County Sheriff's Department, the Fox Hill Estates development is served by the Creston Fire District and a 10,000 gallon recharge tank has been installed in a previous phase of the development which may be used by the 8 new lots.

Finding #5- Impacts on other local services appear to be minimal and acceptable with conditions of approval as a paved pullout for mail facilities already exists, Foxtail Drive and Fox Den Trail are compliant with Flathead County Road and Bridge Department standards, and electrical and phone utilities are in place underground within the existing road and utility easement.

Finding #6- Impacts on water quality appear to be acceptable with imposition of conditions because the proposed lots will be connected to a public water and sewer system that will not be within proximity to Blaine Creek or adjacent shallow ground water, stormwater does not appear to flow into Blaine Creek, and all water, wastewater and stormwater infrastructure will be re-reviewed approved by the Flathead County Environmental Health Department and the Montana Department of Environmental Quality as applicable prior to final plat approval.

Finding #7- The proposed development will have minimal impacts on air quality and noise because the primary impact roads are paved and the proposed residential use is not anticipated to create unacceptable long-term noise.

Finding #8- Impacts to the riparian, wetland, and general flora appears to be acceptable because a Riparian Resource Management Plan has been developed to maintain Blaine Creek in its natural state, all wetlands have been professionally mapped and illustrated on the plat, and flora of importance will be protected from development as the building envelopes and sites do not encroach upon riparian and wetland boundaries.

Finding #9- Impacts on floodplain may be a potential issue because Lots 1-6 have areas delineated as 100-year floodplain and some building sites are less than 5 feet in elevation from the BFE as illustrated on the plat which would limit basement development as the lowest floor must be at least 2 feet above the BFE.

Finding #10- The proposed subdivision may impact local wildlife and wildlife habitat as 13 Species of Concern are associated with the area, including grizzly and black bears, however the amount of surrounding residential development and protection of the riparian area should provide appropriate protection for wildlife dependent on Blaine Creek.

Finding #11- The effects of this proposed subdivision on public health and safety in regard to flood risk appear to potentially be an issue as 100-year floodplain exists on Lots 1-6 and buildings with basements built within the proposed building sites may be inundated with flood water if built at an elevation below the BFE.

Finding #12- Minimal risks to public health and safety are anticipated with the imposition of conditions because adequate physical and legal access to the subdivision is currently provided and adequate emergency services are available for the subdivision; there are no high voltage

electric or high pressure gas lines on or around the subject property; and, there are no apparent hazards associated with geology, avalanche, or airport influence areas.

Finding #13- The effects of this subdivision on public health and safety with regards to water, wastewater, and stormwater management appear to be a potential issue that may be overcome with conditions of approval because the existing Fox Hill Water and Sewer infrastructure is out of compliance with MT DEQ and Flathead County Environmental Health Department and applicable review, approval, and permitting should be obtained prior to final plat approval.

Finding #14- The preliminary plat would conform to all provisions of the Montana Subdivision and Platting Act if it contained all elements required to meet state survey requirements, which will be determined when it is reviewed by the Flathead County Examining Land Surveyor prior to final plat approval.

Finding #15- No variances are requested or required. The proposed subdivision is in general compliance with the Flathead County Subdivision Regulations, effective December 1, 2014 as compliant legal and physical access would be provided and potential impacts to the primary review criteria appear able to be adequately addressed by conditions.

Finding #16- The proposal is reviewed as a major subdivision in accordance with statutory criteria and the standards outlined in Section 4.4 of the Flathead County Subdivision Regulations effective December 1, 2014.

Finding #17- The preliminary plat identifies adequate easements for utilities to serve the subdivision. All other easements associated with this subdivision and the subdivided property shall be clearly located on the Final Plat to satisfy applicable requirements of the Montana Subdivision and Platting Act and the Flathead County Subdivision Regulations.

Finding #18- Privately maintained local internal subdivision roads Foxtail Drive and Fox Den Trail would provide legal and physical access to all lots. The preliminary plat includes adequate provisions for legal and physical access to all lots because the primary access and developed local roads occur within 60 foot wide access and utility easements and the Flathead County Road and Bridge Department has issued an approved approach permit for the subdivision.

Finding #19- The proposed subdivision is located in an unzoned area of Flathead County is not required to comply with local zoning regulations because no such zoning exists that is applicable to the subject property.

VII. CONDITIONS

* Although the preliminary plat application includes documentation regarding the satisfaction of several standard conditions, those conditions are included below in order to provide clarity and reference in regard to requirements for final plat approval.

A. Standard Conditions

1. The applicant shall receive physical addresses in accordance with Flathead County Resolution #1626. All road names shall appear on the final plat. Street addressing shall be assigned by the Address Coordinator. [Section 4.7.17(iv), Flathead County Subdivision Regulations (FCSR)]

2. The applicant shall show proof of a completed approach permits from the Flathead County Road and Bridge Department indicating the approaches have been built and received final inspection and final approval prior to final plat. [Section 4.7.17, FCSR]
3. A dust control plan shall be submitted that addresses measures to minimize construction dust and includes post-construction dust mitigation measures. [Section 4.7.14, FCSR]
4. The applicant shall comply with reasonable fire suppression and access requirements of the applicable fire district. A letter from the fire chief stating that the plat meets the requirements of the fire district shall be submitted with the application for Final Plat. [Section 4.7.27, FCSR]
5. All areas disturbed during development of the subdivision shall be re-vegetated in accordance with an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved shall be submitted with the final plat. [Section 4.7.26, FCSR]
6. All internal subdivision roads shall be certified by a licensed engineer and constructed in accordance with the Flathead County Minimum Standards for Design and Construction. [Section 4.7.17, FCSR]
7. With the application for final plat, the applicant shall provide a Road Users' Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision and for any integral access roads lying outside the subdivision. [Section 4.7.16(e), FCSR]
8. New electrical and telephone utilities shall be extended underground to abut and be available to each lot, in accordance with a plan approved by the applicable utility providers. [Section 4.7.24, FCSR]
9. The proposed water, wastewater treatment, and stormwater drainage systems for the subdivision shall be reviewed and approved as applicable by the Flathead City-County Health Department and the Montana Department of Environmental Quality. [Section 4.7.13, FCSR]
10. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the applicant has met their requirements shall be included with the application for final plat. [Section 4.7.29, FCSR]
11. The following statements shall be placed on the face of the final plat applicable to all lots:

- a. Address numbers shall be posted at the commencement of construction and be clearly visible at all times thereafter. Numbers shall be placed in the driveway entrance and at any subsequent divergent points of access for shared driveways. All address numbers shall be displayed on a contrasting background using a minimum four-inch numeral height. [Section 4.7.27.c, FCSR]
 - b. All utilities shall be placed underground. [Section 4.7.24, FCSR]
 - c. Solid Waste removal for all lots shall be provided by a contracted solid waste hauler. [Section 4.7.23, FCSR]
 - d. Lot owners are bound by the Weed Control Plan to which the developer and the Flathead County Weed Department agreed. [4.7.26, FCSR]
 - e. The owners shall abide by the guidelines set forth in the approved Dust and Air Pollution Control and Mitigation Plan during and after site construction and development activities. [Section 4.7.14, FCSR]
12. The final plat shall comply with state surveying requirements. [Section 76-3-608(b)(i), M.C.A.]
13. Where the aggregate total disturbed area of any infrastructure construction in the proposed subdivision as defined in A.R.M. 17.30.1102(28) is equal to, or greater than one acre; or where when combined with subsequent construction of structures such disturbed area will be equal to, or greater than one acre, a Montana State Department of Environmental Quality General Permit for Stormwater Discharges Associated with Construction Activity (General Permit) shall be obtained and provided to the Flathead County Planning & Zoning office prior to any site disturbance or construction. [17.30.1115 Administrative Rules of Montana (A.R.M.)]
14. All required improvements shall be completed in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.4.27, FCSR]
15. The final plat shall be in substantial compliance with the plat and plans submitted for preliminary plat review, except as modified by these conditions. [Section 4.4.22, FCSR]
16. Preliminary plat approval is valid for three years. The final plat shall be filed prior to the expiration of the three years. [Section 4.4.20, FCSR]

B. Project Specific Conditions

- 17. All lots in Fox Hills Estates Phase 3 (Lots 1-6, 43 and 44) shall connect to public water and sewer services.
- 18. The applicant shall provide evidence that the Fox Hills Estate Water and Sewer District is in compliance with all Flathead City-County Health Department and the

Montana Department of Environmental Quality standards and provide a letter from the Flathead City-County Health Department indicating compliance.

19. The applicant shall provide evidence of annexation into the Fox Hills Estates Water and Sewer District prior to final plat approval.
20. Prior to final plat approval, the developer shall provide evidence that all applicable water right requirements of the Department of Natural Resources Water Resources Division have been met. [Section 4.7.20(d) FCSR]
21. The location and Base Flood Elevation of the 100 year floodplain as delineated on FIRM Panel 30029C1835G shall be shown on the face of the final plat.
22. The following statement(s) shall be placed on the face of the final plat applicable to all lots:

In areas prone to flooding and where a high water table is present, landowners shall be advised the construction of basements is prohibited.

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