



# Sanders County Land Service Department Subdivision Administration

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**STAFF REPORT  
BLUE CREEK MAJOR SUBDIVISION  
PRELIMINARY PLAT APPLICATION  
REPORT DATE: JUNE 26, 2024**

## GENERAL INFORMATION

REVIEWER/	
SUBDIVISION ADMINISTRATOR:	Chris McComas, County Planner
REVIEW DEADLINE:	August 1, 2024
PUBLIC HEARING:	Tuesday, July 23, 2024 at 2:30p.m. in the Commissioner's Conference Room at the Sanders County Courthouse
LANDOWNER:	Tungsten Holdings, Inc 809 Mineral Ave Libby, MT 59923
SUBDIVIDER:	Crawford Dinning of Tungsten Holdings, Inc. 809 Mineral Ave Libby, MT 59923
REPRESENTATIVE:	Tamara Ross and Dan Fultz IMEG Corp. 1817 South Ave West, Suite A Missoula, MT 59801
LOCATION OF SUBDIVISION:	±3.5 miles northwest of Heron, MT
LEGAL DESCRIPTION:	The Southwest Quarter of the Northwest Quarter of Section 20, Township 27 North, Range 34 West, P.M.M., Sanders County, Montana
ACREAGE:	25.94 acres
CURRENT LAND USE:	Vacant Land- Rural/Light Timber
LOTS UNDER REVIEW:	Nine lots, ranging in size from 0.90-acres to 6.48 acres proposed for single-family residential use
VARIANCES REQUESTED:	None

SURROUNDING USES:

North and West: Rural Vacant Land used for Agricultural and Timber Production

South and East: Residential

APPLICATION INFORMATION: The preliminary plat application for the subdivision was received February 27, 2024 and deemed sufficient for review on May 7, 2024 under the Sanders County Subdivision Regulations (SCSR) amended June 10, 2020. Legal notices have been provided as required by the SCSR and Montana law.

**Reviewer Recommendation:** Submitted to the Sanders County Board of Commissioners with a recommendation to adopt the findings of fact and conclusions and grant preliminary approval subject to 25 conditions.

Submitted by:



June 26, 2024

Chris McComas, County Planner  
Sanders County

Date

INTRODUCTION:

Crawford Dinning of Tungsten Holdings, Inc. has submitted a preliminary plat application for the proposed Blue Creek Subdivision, a 9-lot major subdivision located approximately 3.5 miles northwest of Heron along Montana Hwy 200 just east of Blue Creek Road. All lots of the proposed subdivision would range in size from 0.90-acres to 6.48 acres and are proposed for single-family residential use to be served by individual wells and wastewater treatment systems. All lots would have driveway access off of a proposed subdivision road connecting to Montana Hwy 200 to the South.

The subdivision proposal constitutes a major subdivision as defined by the Sanders County Subdivision Regulations (SCSR) and Montana law. The allotted time for the preliminary plat review of a major subdivision is 60 working days. The Board of County Commissioners is required to take final action on or before the review deadline of August 1, 2024.

This report presents proposed findings of fact and recommendations for the subdivision. It is organized in two main sections:

- I. Findings of Fact, which includes descriptions of various elements of the project and reviewer-recommended findings of fact based on the subdivision review criteria, and
- II. Reviewer Recommendation, which includes recommended conditions of approval, which have been made according to the findings of fact and the 2020 SCSR.

## **I. RECOMMENDED FINDINGS OF FACT**

The recommended findings and conclusions of the Reviewer are stated below and are based on the subdivision application materials and preliminary plat provided by the subdivider and in accordance with the 2020 SCSR.

### **A. Project Summary**

**Type of Project:** 9-lot major subdivision (preliminary plat)

**Proposed Lot Sizes:** Lot 1: 6.01 acres  
Lot 2: 6.48 acres  
Lot 3: 5.50 acres  
Lot 4: 1.88 acres  
Lot 5: 0.90 acres  
Lot 6: 0.90 acres  
Lot 7: 1.02 acres  
Lot 8: 1.40 acres  
Lot 9: 1.86 acres

**Zoning:** None

**Utilities & Services:** Water: Individual exempt wells  
Wastewater: Individual wastewater systems  
Solid Waste: Heron Transfer Site (Sanders County Solid Waste)  
Electricity: Northern Lights, INC  
Telephone: Blackfoot Telephone Coop.  
Fire District: Heron Rural Fire  
Law Enforcement: Sanders County Sheriff's Office  
Ambulance: Community Ambulance of Western Sanders County  
Medical: Plains Clinic, Clark Fork Valley Hospital

### **B. Comments Received:**

#### **1. Agency Comments:**

Community Ambulance Service of Western Sanders County requested adequate ingress/egress to each dwelling with at least 12-foot wide road, utility shutoffs located near the entrance of each driveway, year-round access

Heron Rural Fire District requested standard road design with turn arounds, non-flammable road signs installed, \$500 per lot in lieu of fire fighting water source and a fire prevention control plan/fuels treatment plan

Montana Historical Society stated there are no sites within the proposed project area of cultural or historical significance.

Montana Natural Heritage Program provided information related to the natural environment, animal habitat, and wildlife activity within the proposed subdivision and surrounding area

**2. Public Comments:** None received to date

**C. Findings based on the Prerequisites to Approval (Section IV-A-6(a) SCSR) in the Review and Approval Procedures for Major Subdivisions**

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

**1. Provides easements for the location and installation of any planned utilities.**

Electric utilities are currently available within the MT Hwy 200 right-of-way. The proposal will be to provide utilities to each lot using underground lines within the proposed private road and public utility easements provided by Blue Sky Court and Blue Sky Road. There are several proposed easements for well isolation zones, wastewater systems, and stormwater retention areas. Blue Creek Road, which is along the west edge of the property, currently has a 40-foot easement. The preliminary plat proposes granting an additional 20 feet to Sanders County to bring the Blue Creek Road easement width to the standard 60 feet. All easements, both existing and proposed, must be shown on the final plat. Any planned easements must identify the purpose, dimensions and recipients of the dedication in compliance with Section VII.L SCSR.

*Conclusion 1: The proposal will provide for the location of easements for the location and installation of utilities; all easements will need to be shown on the final plat and any new easements will identify the purpose, dimensions and recipients of the dedication.*

**2. Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.**

All nine lots will be provided legal and physical access via the proposed Blue Sky Court and Blue Sky Road easements and road construction, which will be accessed from Montana Highway 200, a state highway located in existing rights-of-way. Lots 1 and 4 propose driveways from Blue Sky Court, and the remaining lots propose driveways from Blue Sky Road.

An MDT Approach permit was applied for and received for the shared approach for all nine lots to access Montana Highway 200 via Blue Sky Road.

The recommended conditions of approval will ensure legal and physical access to each lot in the subdivision in compliance with the SCSR.

*Conclusion 2: The lots would have legal and physical access as proposed and per the recommended conditions of approval.*

**3. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations.**

Based on the recommended conditions of approval, the physical improvements that would be required to be installed prior to final plat approval include the completion of Blue Sky Road and Blue Sky Court. This would include paving the first 25 feet of Blue Sky Road, where it meets the edge of the pavement on Montana Highway 200, as well as the installation of non-flammable street signs that identify Blue Sky Road, and Blue Sky Court and provide traffic control as proposed in the road construction designs included in the application. The reviewer is recommending the private road construction permit be applied for to ensure Sanders County Subdivision road standards are met and that the Sanders County Road Foreman is notified to inspect the completed work before approving.

As the subdivision will have multiple locations for stormwater retention that benefit all lot owners, it can be assumed that the construction and installation of stormwater management infrastructure would be required. The application included location, easements, and engineering designs related to stormwater management. It further includes practices that these facilities will be managed by the future homeowners association. Based on the review,

a condition of approval would require this infrastructure to be installed as it is directly related to public health and safety regarding stormwater management.

According to Section II-B-4 SCSR, the County Commissioners may require up to 100% completion of improvements related to public health and safety to be installed prior to final plat approval before agreeing to the use of a subdivision improvements agreement. Because the improvements listed in the previous two paragraphs are directly related to public health and safety, it is recommended that these improvements be installed prior to final plat approval.

*Conclusion 3: The physical improvements that would be required to be installed prior to final plat approval include the completion of Blue Sky Road and Blue Sky Court, paving of the first 25ft of Blue Sky Road at the approach to Montana Highway 200, and the construction and installation of the stormwater management infrastructure. The recommended conditions of approval would require these improvements to be 100% completed prior to final plat approval.*

**4. Assures that the requirements of 76-3-504(1)(j) MCA, regarding the disclosure and disposition of water rights as set forth in Section VII-N have been considered and will be accomplished before the final plat is submitted.**

According to the research by the reviewer and query of DNRC Water Rights Query System, there appear to be no water rights associated with the subject property at this time. According to Section VII.N SCSR, certain requirements must be met prior to final plat approval if a subdivision will create lots averaging less than five acres in size; the average lot size proposed by the subdivision is  $\pm 2.8$ -acres, therefore the requirements of Section VII.N SCSR and 76-3-504(1)(j) MCA do apply to the subdivision. Based on the proposal, each new lot owner would need to apply for water rights at the time of a well development. Furthermore, the application included a predetermination letter from DNRC Water Resource Specialist that supports individual exempt wells for each lot. This letter further states that the wells are expected to use a volume total of 5.49 AF/year. This keeps the subdivision below the allowable 10 AF/year by 4.51 AF/year. The DNRC further states that applicants must state their intention to use the 0.28 AF/year/household domestic use volume on their Form 602 instead of the DNRC standard of 1.0 AF/year to meet the proposed volume allocation.

Item 7 of the proposed Conditions, Covenants, and Restrictions requires each lot owner to file a Notice of Completion of Ground Water Development. However, it does not restrict the volume allocation.

A condition of approval will be included to ensure that each lot owner is made aware of the requirement to apply for individual water rights using Form 602 and state their intention to meet the predetermination volume allocation information provided in this application.

*Conclusion 4: As proposed, disposition of water rights is required by the SCSR or 76-3-504 (1)(j), MCA. A condition of approval will ensure the actual use of water does not exceed the proposed volume allocation by use for the subdivision.*

- 5. Assures that the requirements of 76-3-504(1)(k) MCA regarding watercourse and irrigation easements as set forth in Section VII-M have been considered and will be accomplished before the final plat is submitted.**

The application submitted indicates that there are no watercourse or irrigation systems adjacent to the proposed subdivision property. The Reviewer has concluded through inquiry and research there does not appear to be irrigation infrastructure on the property or adjacent to the property, such as irrigation project canals, ditches, headgates, or turnouts. It does not appear there are water courses, project irrigation ditches, sprinkler systems, or other irrigation infrastructure that would necessitate irrigation easements for the delivery of irrigation water to other land. Section VII-M SCSR and 76-3-504(1)(k), MCA, therefore, do not appear to apply, so irrigation and water course easements are not necessary.

*Conclusion 5: Section VII-M SCSR and 76-3-504(1)(k), MCA regarding watercourse and irrigation easements do not apply to the subdivision due to the lack of watercourses and irrigation infrastructure on the subject property that would necessitate irrigation easements for delivery of irrigation water to other land.*

- 6. Provides for the appropriate park dedication or cash-in-lieu as set forth in Section VII-O.**

The preliminary plat does not provide for parkland dedication, and the application indicates cash-in-lieu of parkland is proposed. Lots 4-9, which range in size from 0.90 to 1.88 acres, are subject to the subdivision to parkland dedication or cash-in-lieu requirements. Section VII-O SCSR will require the final plat of this residential subdivision to show that the Subdivider has dedicated to the governing body a cash donation equal to 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre and 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres. Because cash-in-lieu of parkland is proposed, the recommended conditions of approval would require compliance with the appropriate cash-in-lieu of parkland dedication requirements found in Section VII-O SCSR.

*Conclusion 6: The recommended conditions of approval would require compliance with the appropriate cash-in-lieu of parkland dedication requirements found in Section VI-O SCSR.*

#### **D. Findings based on Consideration-Standards (Sections IV-A-6(b) SCSR)**

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection (a) above, and whether the proposed subdivision complies with:

##### **1. The subdivision regulations, including, but not limited to, the standards set forth in Section VII.**

The Reviewer has reviewed the subdivision for conformance with Section VII of the SCSR. The following are findings based on review of the subdivision in light of the applicable design and improvement standards of Section VII SCSR.

As discussed in Section I-C-2 of this report, Section VII-G SCSR will require all lots to have individual driveways that connect to the internal private road network as proposed. This road network will connect to Montana Highway 200. The application included correspondence between MDT and the Subdividers consultant regarding this permit. Sanders County denied access for the subdivision road to access Blue Creek Road as the topography along the edge of Blue Creek Road relative to this property did not support a safe approach. The application did not include an approved approach permit from MDT. Email correspondence from IMEG has produced an approved approach permit onto Montana Highway 200. The MDT approach permit was applied for and granted on June 3, 2024, for a shared access driveway (for the internal roads) serving all nine lots within the Blue Creek Subdivision. The MDT approach permit requires that this approach be installed by December 3, 2024. It can be assumed that with the approved permit and the subdivision road plans, this subdivision meets the requirements set forth in Section VII-G of SCSR. To ensure compliance with Sanders County Subdivision Road Standards, the reviewer recommends that a private road construction permit be applied for, be permitted, and improvements installed according to the approved permit, submitted road construction plans, and Sanders County Subdivision Road Standards. This will require inspection by the County ensuring construction meets standards.

As discussed in I-C-1 above, there are easements proposed for a drain field located on Lot 4 for the benefit of Lot 5. Based on the size and layout of Lot 5, the location of the drain field on Lot 4 appears to be the best option. With easements on the face of the plat dedicated for this purpose, future installation and maintenance will be ensured. All other lots proposed

contain the septic systems and their components within the proposed lot boundaries. Review and approval by the Montana Department of Environmental Quality (DEQ) will be required to ensure compliance prior to final plat.

See the following sections of this report for findings regarding compliance with other requirements of the subdivision regulations:

- Section I-C-3 of this report for findings regarding compliance with Section VII-H SCSR (Drainage Facilities);
- Section I-C-4 of this report for findings regarding compliance with Section VII-I SCSR (Water Supply Systems);
- Section I-C-4 of this report for findings regarding compliance with Section VII-N SCSR (Disposition of Water Rights);
- Section I-C-5 for findings regarding compliance with Section VII-M SCSR (Water Course and Irrigation Easements); and
- Section I-C-6 for findings regarding compliance with Section VII-O (Park Land Dedication – Cash in Lieu – Waivers – Administration) SCSR.

The final subdivision plat will be required to be reviewed by an examining land surveyor for errors and omissions in calculations or drafting and final plat review and approval by Sanders County will be required per Section II-B SCSR. The final plat review process and conditions of approval will ensure compliance with Section VII SCSR.

*Conclusion 7: As proposed and with the recommended conditions of approval, the subdivision complies with Section VII SCSR.*

## **2. Other applicable regulations.**

- Wastewater Treatment Regulations: Future wastewater treatment systems will require permitting and compliance with the Wastewater Treatment Regulations.

*Conclusion 8: As proposed and with the recommended conditions of approval, it is intended to ensure the subdivision complies with other applicable regulations.*

## **3. The MSPA, including but not limited to the following impacts:**

[Per 76-3-608(3), MCA, a subdivision proposal must undergo review for the following primary criteria (except when an exemption has been established): the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the

natural environment, wildlife, wildlife habitat, and public health and safety, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils.]

**a. Impact on Agriculture:**

The property is currently vacant and lightly timbered. It appears to have been used to harvest timber in the past. Larger properties that rely on Blue Creek Road adjacent to the subdivision may be used by logging trucks. The traffic adjacent to this subdivision could increase during those operations. With the subdivision not being accessed from Blue Creek Road, the impacts would likely be an increase in noise and dust during those operations. These impacts are a common occurrence in the existing residential properties adjacent to this subdivision. A vegetative barrier between Blue Creek Road and the proposed lots will reduce this impact. Also, Blue Creek Road, adjacent to this property, is county-maintained. Dust control measures can be requested and paid for by future lot owners when the dust becomes a nuisance.

The application includes a subdivision noxious weed management application. With the inspection, treatment, follow-up, and implementation of a subdivision noxious weed management plan, any agricultural operations in the area will likely see a reduced impact to the spread of noxious weeds. Furthermore, maintenance of residential lawns will likely further reduce the spread of noxious weeds.

Considering the above, the subdivision's impacts on agriculture are expected to be minimal.

***Conclusion 9:** The subdivision's impacts on agriculture are expected to be minimal considering the design of the subdivision, the requirement to implement a Sanders County Noxious Weed Management Plan, and mitigation proposed by the Covenants, Conditions, and Restrictions.*

**b. Impact on Agricultural Water User Facilities:**

As discussed in Section I-C-5 of this report, there appear to be no agricultural water user facilities on or adjacent to the subject property. Therefore, it can be assumed there will be little to no impact on agricultural water users and no mitigation is proposed.

***Conclusion 10:** As proposed, the subdivision complies with SCSR Section VII-M and MCA 76-3-608(3) regarding agricultural water user facilities.*

**c. Impact on Local Services:**

This subdivision is proposed to have nine residential lots. Future residents will be served by the Noxon School District. The school district was contacted for comment and did not respond. It is assumed that the increase in the tax base will likely offset impacts on the school district.

This location is not serviced by public water or sewer. Sewer service will be provided by individual, on-site wastewater treatment systems. Water will be provided via individual exempt wells. Lot owners are responsible for installing and maintaining water supplies and wastewater treatment systems, resulting in no impacts on local water and sewer service providers.

Medical services are available nearby at Bull River Medical Clinic or Clark Fork Valley Hospital in Plains as well as other area hospitals. The Community Ambulance of Western Sanders County is the ambulance service provider in this area. With the proposed lot layout and road design, the comments received by the ambulance service are addressed and will be met or exceeded. As the ambulance service is staffed and operated by volunteers, this service may not have the same availability and response time as a paid urban service.

This property is part of the Heron Rural Fire District. There may be limited structural fire protection available for dwelling units constructed in this area, as this is also a volunteer agency and response times vary. The Heron Rural Fire District provided comments, requesting the standard \$500 per lot fee to the Fire District. The recommended conditions of approval would require that prior to final plat approval, the Subdividers shall provide the County evidence of donating mitigation funds of \$500 per lot (\$4,500) to address the subdivision's impact on the local fire district. *Note: Policy dated 07-11-2006 gives developers the option of providing a water source or \$500/lot. Each rural fire district has an account for this specific money which can only be used for this purpose. All requested withdrawals by the fire district from this account must be approved by the Commissioners.*

The Heron Rural Fire District also requested a fire prevention and control plan/fuels treatment plan. In the districts form, it identifies this in areas of high wildfire risk. However, the fire risk rating that was reviewed and signed by the Heron Rural Fire District Assistant Chief indicates the subdivision has a moderate fire risk. The Rural Fire District is concerned with vegetation and defensible spaces within subdivisions as a whole. To mitigate this concern, a recommended condition of approval would require the

“Homeowners Code of Responsibility” or comparable Firewise standards to be filed with the final plat to educate new landowners so that they understand the risks and responsibilities of living in the Wildland Urban Interface.

The cumulative impact of these projects to volunteer services is the most critical aspect. The demand on these services is increasing with no adequate technique in Sanders County to provide direct expansion or funding. There currently is no established means to mitigate the personnel impacts to volunteer agencies, other than the typical per lot donation described above. Funding relies on annual tax assessments and having sufficient personnel relies on volunteers.

Additional tax dollars will be generated for fire and ambulance services, as the lots are developed for residential use, though this does not address the need for volunteers. This is an issue throughout Sanders County as all ambulance and fire are staffed with volunteers.

No extension of public roads will be needed. Access is off Montana Highway 200, a paved, State-maintained highway. An approach permit has been obtained from Montana Department of Transportation (MDT) and will require approval by Sanders County and MDT, and the approaches completed as required by MDT and Sanders County Subdivision Regulations. The internal road network will provide access to each individual lot with no lot being access from Highway 200 or Blue Creek Road directly through individual approaches. To ensure these shared roads are maintained and it is clear that maintenance is not the responsibility of Sanders County, a recommended condition of approval would require a road maintenance agreement to be filed with the final plat that address maintenance and repair of the shared facilities, including snow removal, grading, dust control and other surface maintenance, and maintenance and repair of culverts and stormwater drainage facilities. A draft copy of the road maintenance agreement was included in the application and appears to be adequate to meet this requirement.

To restrict approaches along Blue Creek Road, the Reviewer is recommending a condition that the final plat shall depict no-access easements to Sanders County along the Blue Creek Road frontages along the entirety of the County right-of-way. To further enforce the access restriction to Blue Creek Road, additional notes should be added to the face of the plat or the conditions of approval sheets filed with the final plat that state “No road or driveway will be permitted onto Blue Creek Road from the Blue Creek Subdivision without a request to and approval from the Board of Sanders County Commissioners to

amend the final approved plat for Blue Creek Subdivision." This will ensure that access remains prohibited to ensure public safety along Blue Creek Road.

Solid waste disposal service is provided by private contractors or the landowner can transport waste to the Sanders County collection site which is located at the Heron Roll-Off site. The solid waste service is paid for by the collection of a fee for each individual residential and commercial unit with the annual taxes. However, as with all public services, there is a concern for the cumulative impacts, the amount of land required and additional equipment needs to continue to meet increased demands. Currently, Sanders County transports all garbage to the regional landfill, located in Missoula County, which does have a limited lifespan.

The Sheriff's Office is currently staffed at the level supported for by the tax base of the existing population of the County. Sheriff's Office staffing is determined by taxes generated by all County landowners.

*Conclusion 11: The subdivision will have minimal impacts on local services if the recommended conditions of approval are adhered to, including donating mitigation funds to address the subdivision's impact on the local fire district, requiring "Homeowners Code of Responsibility" or other Firewise standard be filed with final plat documents, requiring approaches to Highway 200 to be permitted and installed in accordance with MDT and Sanders County requirements, prohibiting access to the County road, and language placed on the final plat or attachment informing prospective lot purchasers and owners of the prohibited access to Blue Creek Road from within the Blue Creek Subdivision.*

**d. Impact on the Natural Environment:**

The Summary of Probable Impacts states there are no known historical, paleontological, archaeological or cultural sites, structures, features or objects that will be affected by this proposed subdivision. The Summary goes on to state if historical, paleontological, archaeological or cultural sites are discovered during road or utility construction, all work will cease and the Developer will contact the Montana Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. The recommended conditions of approval address this statement, with a requirement that the statement be incorporated into the final subdivision documents so that prospective and future lot owners are aware of the requirements and it may be implemented.

No geologic hazards such as slumping, landslide, rockfall, shallow bedrock, etc. Northwestern Montana is subject to seismic activity. No special building requirements are required by the County and no mitigation for residential uses for seismic or geologic conditions is required.

The application describes no-build zones with slopes of 25% or greater within the subdivision. These areas have been identified on the preliminary plat map. They must continue to be identified as such on the final plat to reduce the need for extreme cuts and fills on steep slopes. These restrictions will preserve the natural environment by reducing erosion on unstable soils or steep slopes lacking vegetation from development in these areas.

No adverse direct impact on air quality is anticipated with this number of residential lots.

The plans for water supplies and sewage disposal on Lots 1 – 9 will need to be reviewed and approved by the Montana Department of Environmental Quality (DEQ). The water supplies and wastewater treatment systems will require permitting through the Sanders County Environmental Health Department. The proposed wastewater treatment systems will be required to meet local and state requirements, as applicable. The applicable requirements are in place to protect surface water and groundwater. With these standards in place, the addition of nine homes and wastewater treatment systems on 25.94 acres, all over 1,000 feet from surface waters, will have minimal impacts on surface water and groundwater.

The Summary of Probable Impacts summarizes that this appears to be an area of sufficient water to meet the needs of the subdivision, and the application includes information to support this statement. The impact on groundwater resources from the water use by nine homes on 25.94 acres will be minimal, but incremental. The predetermination letter related to individual exempt wells for this property accounted for 0.28 AF/year for each lot created in this subdivision.

The stormwater management plans for Lots 1 -9 will require DEQ review and containment of stormwater within the subdivision. The stormwater management plans for these lots appear to provide for this. Lots 4, 5 and 8 will contain communal stormwater retention ponds for the benefit of all lots within the subdivision that will require easements on the face of the final plat. These are currently shown on the preliminary plat. A condition of approval will be recommended to ensure that the beneficiaries of the easements are annotated.

*Conclusion 11: The subdivision's impacts on the natural environment will be minimal if the recommended conditions of approval are required and adhered to.*

**e. Impact on Wildlife:**

The Summary of Probable Impacts states that Elk, Mule Deer, and White-tailed Deer, and small birds and other mammals are within the area of the subdivision. While not always present, they do pass through this area. This development does not impact the wildlife any more than adjacent residential development. Montana Fish, Wildlife & Parks was contacted but has not provided a comment to date. The proposed Conditions, Covenants, and Restrictions (CC&Rs) address living with wildlife through containment and covering of garbage, pet food, and other solid waste that may create conflicts with wildlife. Additionally, the CC&Rs refer to Montana Fish, Wildlife and Parks (FWP) for particular tips to reduce these conflicts. Please refer to the included covenants.

Residential development inherently impacts wildlife through human/wildlife conflict, disruption of migration routes and habitat, pet activity, wildlife attractants, etc. The clustered design of this proposed subdivision should minimize disruption of migration routes and habitat. An additional condition of approval would require FWP information on ways to reduce human/wildlife conflicts be provided to future lot owners by including this information on the final plat or in the attached conditions of approval sheets. The proposed Covenants, Conditions, and Restrictions attempt to mitigate impacts from human/wildlife conflict, pet activity, and wildlife attractants. With these mitigation measures and the requirement of the mentioned condition of approval, the subdivision's impact on wildlife will be minimal.

*Conclusion 12: Considering the clustered design of this proposed subdivision, the recommended conditions of approval, and measures in the proposed Covenants, Conditions, and Restrictions, the subdivision's impact on wildlife will be minimal.*

**f. Impact on Wildlife Habitat:**

Wildlife habitat in this area has already been impacted by the Montana Highway 200 and residential development. Past guidance from Montana Fish, Wildlife, & Parks (FWP) includes encouraging clustering homes and roads in least sensitive areas of properties in order to leave open space for continued use by wildlife, and to minimize impacts on wildlife inhabiting the area. Considering the clustered design of this proposed subdivision,

a condition requiring FWP information on how to reduce human/wildlife conflicts, and measures in the proposed Covenants, Conditions, and Restrictions to minimize impacts on wildlife inhabiting the area, the subdivision's impact on wildlife habitat will be minimal.

*Conclusion 13: Considering previous impacts that have likely reduced the viability of wildlife habitat relative to past habitat viability, the clustered design of this proposed subdivision, the recommended conditions of approval, and measures in the proposed Covenants, Conditions, and Restrictions to minimize impacts on wildlife inhabiting the area, the subdivision's impact on wildlife habitat will be minimal.*

**g. Impact on Public Health and Safety:**

Compliance with applicable sanitation requirements should ensure no impacts on public health will be created by the subdivision.

Adjacent land use will not have any known impact on the subdivision. Furthermore, this subdivision is in line with the adjacent land's similar residential property development.

Access is off Montana Highway 200, which has no obvious deficiencies. Although the road appears to have no deficiencies at this time, increased traffic from this subdivision may contribute to future deficiencies and increased maintenance needs, and the highway may need improvements to maintain the level of service provided as the use of the highway increases. The tax base generated by the development of the nine lots will assist in maintaining the state highway.

As discussed previously, an MDT approach permit is required and has been obtained for a shared approach onto Montana Highway 200 for the nine residential lots. Signage identifying the internal private roads as well as traffic control devices will be required by conditions of approval. The road construction plans identify placement of a 'STOP' sign on Blue Sky Road at the intersection of Montana Highway 200. To reduce the impact on Blue Creek Road and mitigate the risk to public safety, the subdivision was not granted access to Blue Creek Road based on the difficult topography along Blue Creek Road and the property that abuts Blue Creek Road.

Wildfire is a threat throughout the County and the majority of private land in Sanders County is considered located in the Wildland Urban Interface. The Sanders County Community Wildfire Prevention Plan determined this general area to be at moderate risk. A Fire Risk Rating was required for the subdivision, and determined the risk rating to be moderate. This risk is mitigated through the cash-in-lieu of a firefighting water source and

the requiring the condition of approval that the Homeowners Code of Responsibility be provided to future lot owners as discussed in Section I-D-3(b) of this report.

*Conclusion 14: The subdivision's potential impacts on public health and safety appear minimal. If compliance with the MDT approach permit is met, the approach is paved for the first 25 feet off of Highway 200, the "Homeowners Code of Responsibility" or other Firewise standards is filed with final plat documents, and sanitation requirements are met as required by the recommended conditions of approval, the impacts on public health and safety can be mitigated to the extent possible.*

#### **4. Proposed mitigation:**

Mitigation measures that appear to be proposed in the application include the following:

- Proposed Covenants, Conditions, and Restrictions.
- Easements on the face of the plat for the stormwater retention ponds for the benefit of all lot owners within the subdivision.
- \$500/lot cash-in-lieu of a firefighting water source on site.
- The application material as a whole.

*Conclusion 15: The proposed mitigation measures in the application should be implemented as required by the recommended conditions of approval to mitigate impacts on the subdivision review criteria.*

#### **E. Findings based on Consideration-Evidence (Section IV-A-6(c) SCSR)**

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider and weigh the following, as applicable:

##### **1. The subdivision application and preliminary plat.**

The subdivision application and preliminary plat have been reviewed by the Subdivision Administrator and have been considered with the recommendation to grant preliminary conditional approval. The subdivision application and preliminary plat should be reviewed by the Commissioners and considered as evidence in the governing body decision.

*Conclusion 16: The subdivision application and preliminary plat shall be reviewed by the Commissioners and considered as evidence in the governing body decision.*

**2. The environmental assessment; not the equivalent of environmental assessments/impact under Montana Environmental Policy Act.**

An Environmental Assessment was required and submitted. No significant adverse impacts were identified. The Environmental Assessment has been reviewed by the Subdivision Administrator and considered with the recommendation to grant preliminary conditional approval. The Environmental Assessment should be reviewed by the Commissioners and considered as evidence in the governing body decision.

*Conclusion 17: The Environmental Assessment should be reviewed by the Commissioners and considered as evidence in the governing body decision.*

**3. The summary of probable impacts and mitigation.**

The summary of probable impacts and mitigation measures described above have been reviewed by the Subdivision Administrator and have been considered with the recommendation to grant preliminary conditional approval. The summary of probable impacts and mitigation measures should be reviewed by the Commissioners and considered as evidence in the governing body decision.

*Conclusion 18: The summary of probable impacts and mitigation measures should be reviewed by the Commissioners and considered as evidence in the governing body decision.*

**4. Comments, evidence and discussions at the public hearing(s).**

As of the date of this report, the public hearing is scheduled for July 23, 2024 at 2:30 p.m. No public comments have been received to date. Relevant comments, evidence and discussions at the public hearing will be addressed at the hearing and/or prior to the Commissioners' final action on the subdivision application.

*Conclusion 19: Relevant comments, evidence and discussions at the public hearing will be addressed at the hearing and/or prior to the Commissioners' final action on the subdivision application. The findings and this conclusion will be modified as appropriate based on any public comments received and what occurs at the public hearing.*

**5. Subdivision administrator's staff report and recommendations.**

This staff report and associated recommendations will be discussed at the hearing and/or prior to the Commissioners' final action on the subdivision application

*Conclusion 20: Relevant comments, evidence and discussions at the public hearing will be addressed at the hearing and/or prior to the Commissioners' final action on the subdivision application. The findings and this conclusion will be modified as appropriate based on what occurs at the public hearing.*

**6. Any additional information authorized by law.**

No additional information specifically needs to be discussed in these findings as of the date of this report. The Board of County Commissioners has the authority to consider and weigh any additional information authorized by law making its decision to approve, conditionally approve, or deny a proposed subdivision.

*Conclusion 21: The Board of County Commissioners has the authority to consider and weigh any additional information authorized by law making its decision to approve, conditionally approve, or deny a proposed subdivision. If additional information is found and considered, these findings and this conclusion will be modified as appropriate based on what occurs at the public hearing.*

**Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision. (Section IV-A-6(c) SCSR)**

## **II. REVIEWER RECOMMENDATION:**

Based on compliance with applicable laws, rules, and regulations, and the recommended conditions of approval to ensure compliance, the Reviewer recommends approval of the preliminary plat application for the Blue Creek Major Subdivision, subject to the imposition of the conditions stated below. After each condition in parentheses are the regulations and statutes that were used as a basis for the imposition of the conditions. All conditions are based on the findings and conclusions identified in this report and are recommended according to the Sanders County Subdivision Regulations and/or in order to reasonably minimize adverse impacts according to 76-3-608, MCA.

### **RECOMMENDED CONDITIONS OF APPROVAL:**

1. The approved plans shall be adhered to. Any modifications in design must be submitted for review to Sanders County. *(This condition will ensure that the adopted standards will be followed. Amendments may require review under Section II-B-5, SCSR, Amending Approved Preliminary Plats Before Final Plat Approval, and Section II-B-8, Amending Final Plats.)*
2. The Subdivider shall comply with all other standards and procedures of the Sanders County Subdivision Regulations, which are applicable to this subdivision prior to receiving final plat approval, as well as all conditions and mitigations offered through the application which were not altered or amended during the review process. The Subdividers are hereby informed that any unmet regulations, procedures, offered conditions and mitigations, or provisions that are not specifically listed as conditions of approval, do not, in any way, create a waiver, variance, or other relaxation of the lawful requirements of the Sanders County Subdivision Regulations or State law. *(This condition will ensure compliance with SCSR and MCA)*
3. The applicant shall submit an application for final plat review subject to review and approval by the governing body *(Staff Report Section I-D-1, Section II-B SCSR, and 76-3-611, MCA).*
4. The final plat application shall include a final plat subject to the survey and platting requirements for subdivided lands of the MSPA, 76-3-402, MCA, and the final plat must comply with the Uniform Standards for Final Subdivision Plats as outlined by ARM 24.183.1107. The final plat will require review by the Sanders County Examining Land Surveyor and recorded at the Sanders County Clerk & Recorder's Office. *(Staff Report Section I-D-1, Sections II-B-2(b)(iii) & II-B-7 SCSR, 76-3-611(2)(a) MCA, and ARM 24.183.1107)*
5. The final plat or supplemental map shall show any road easement the subdivision relies upon for access. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision. *(Section VII-G(b)(v) SCSR and ARM 24.183.1107)*
6. The governing body shall approve the final plat only if it conforms to the conditions of approval set forth on the preliminary plat application and to the terms of the MSPA and SCSR; and if the county

treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. (76-3-611(1), MCA)

7. The Subdivider shall submit with the final plat a subdivision guarantee issued by an authorized title insurer or its title insurance producer showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land. (76-3-612, MCA)
8. The Subdivider or designated agents shall obtain from the Land Services Department copies of all public comments regarding the proposed water supply, sewage disposal systems, and stormwater plans, and submit these comments to the Montana Department of Environmental Quality (DEQ). (76-3-604(7), MCA)
9. The plans for water supplies, wastewater treatment systems, stormwater drainage, and solid waste disposal systems shall be reviewed and approved by the Montana Department of Environmental Quality (DEQ). The DEQ Certificate of Subdivision Approval(s) shall be filed with the Sanders County Clerk & Recorder's Office with the final plat. (*Staff Report Sections I-D-3(d), Sections VII-H, VII-I, VII-J, & VII-k, and 76-4, MCA*)
10. Prior to final plat approval, the private road approach shall be completed, including paving of the approach for a minimum of 25 feet from the edge of the State Highway pavement. The approved MDT approach permit will be filed with the final plat. (*Staff Report Sections I-D-1, I-C-2, & I-C-3, Sections VI-G and II-B-4, SCSR, and ARM 24.183.1107(5)(g)*)
11. Prior to final plat approval, a private road construction permit for Blue Sky Court and Blue Sky Road shall be applied for, be permitted, and have improvements installed according to the approved permit, road construction plans, and Sanders County Subdivision Road Standards. The County will inspect all required improvements in order to assure conformance with the approved construction standards and specifications. (*Staff Report Sections I-C-2, I-C-3, I-D-1 and Sections VII-G and II-B-4, SCSR*)
12. A one-foot no-access easement shall be added along the frontage of Blue Creek Road for the benefit of Sanders County. In addition to the location of the easement being shown on the final plat, the following statement must appear on the face of the final plat or in the attached conditions of approval sheets (see ARM 24.183.1107 for 'Conditions of Approval sheet'):  
*"No road, driveway, or other vehicle access will be permitted onto Blue Creek Road from the Blue Creek Subdivision without a request to and approval from the Board of Sanders County Commissioners to amend the final approved plat for Blue Creek Subdivision."*  
(*Staff Report Sections I-C-3, I-D-3(c) and ARM 24.183.1107*)

13. The final plat application shall include a proposal to meet the cash-in-lieu parkland dedication provisions of Section VII-O SCSR and 76-3-621, MCA, which will be subject to approval by the governing body. Prior to final plat approval, the Subdivider shall dedicate to the governing body a cash donation equal to 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre and 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres. Based on the lot sizes depicted on the preliminary plat, the cash donation will be the value of 7.5% of 1.8 acres, being the area of Lots 5 and 6, and 5% of 6.16 acres, being the area of Lots 4, 7, 8, and 9, which will equate to the value of 0.45-acre. The certification of accepting cash-in-lieu of parkland dedication shall be added to the face of the plat. (*Staff Report Sections 1-D-1 & I-C-6, Section VII-O SCSR, and 76-3-621, MCA*)
14. The stormwater infrastructure easements shall be depicted on the face of the final plat. These easements will identify Lots 1-9 as the beneficiaries of these easements. (*Staff Report I-D3(d) and SCSR Section VII-H(g)*)
15. Prior to final plat, the proposed improvements of the communal stormwater retention ponds (drainage facilities) located on Lot 4, 5, and 8 shall be constructed and installed in accordance with grading and drainage plan and with DEQ approval. The County will inspect all required improvements in order to assure conformance with the proposed drainage plan. (*Staff Report I-C-3 and SCSR Section VII-H*)
16. Prior to final plat, the Subdivider shall update the proposed CC&Rs Item 7 to add the requirement in the DNRC predetermination letter related to Notice of Completion of Ground Water Development: "*Each applicant must state their intention to use the 0.28 AF/year/household domestic use volume on their Form 602 instead of the DNRC standard of 1.0 AF/year.*" (*Staff Report I-C-4, I-D-3(d), SCSR Section IV-A-6(a)(iv) and MCA 76-3-504(1)(j)*)
17. A Noxious Weed Management Plan for the subdivision shall be approved by Sanders County, implemented, and the weeds shall be treated prior to final approval; the approved Weed Plan shall be recorded with the final plat. (*Staff Report Section I-D-3(a) and Section VII-R SCSR*)
18. That a private road maintenance agreement shall be filed with the final plat that addresses maintenance and repair of the private roads, including snow removal, grading, dust control and other surface maintenance, and maintenance and repair of culverts and stormwater drainage facilities. (*Staff Report Section I-C-3 and I-D-3(e) and Section VII-G(b)(xii) SCSR*)
19. Prior to final plat approval, non-flammable signs shall be installed for identification of Blue Sky Road and Blue Sky Court, as well as a 'STOP' sign on Blue Sky Road at the approach onto Montana Highway 200 as described in the road construction plans. (*Staff Report I-D-3(g) and SCSR Section VII-G(b)(x)*)

20. Utilities must be placed underground, wherever practical. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities. If easements for utilities are shown on the final plat, they shall be shown with dashed lines, and in addition to showing the location of utility easements, the following statement must appear on the final plat:

*"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."*

*(Staff Report Section I-C-1 and Section VII-L SCSR)*

21. Prior to final plat approval, the Subdividers shall provide the County evidence of donating mitigation funds of \$500 per lot (\$4,500) as requested by the Heron Rural Fire District. *(Staff Report Section I-D-3(c))*

22. The "Homeowners Code of Responsibility" or comparable Firewise standards shall be filed with the final plat to educate new landowners so that they understand the risks and responsibilities of living in the Wildland Urban Interface. *(Staff Report I-D-3(g) and MCA 76-3-608(4) and Section VII-P, SCSR)*

23. FWP information on ways to reduce human/wildlife conflicts be listed on the final plat or in the attached conditions of approval sheets. (see ARM 24.183.1107 for 'Conditions of Approval sheet') *(Staff Report Sections I-D-3(e), I-D-3(f), and MCA 76-3-608(3)(a) and ARM 24.183.1107)*

24. The following statement shall be stated on the final plat or in the attached conditions of approval sheets (see ARM 24.183.1107 for 'Conditions of Approval sheet')

*"If any historical, paleontological, archaeological or cultural sites are discovered during construction or ground disturbance, all work will cease and the owner will contact the Montana Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate."*

*(Staff Report Sections I-D-3(d), I-D-4, and ARM 24.183.1107)*

25. The proposed Covenants, Conditions, and Restrictions shall be recorded with the final plat. The restrictive covenants shall contain the following language: *"These covenants may not be repealed or amended without the prior written consent of the Sanders County Commissioners".* *(Staff Report Sections I-D-3(a), I-D-3(e), I-D-3(f), & I-D-4, and Section II-B-3(a) SCSR)*

This recommendation for preliminary plat approval is for the creation of nine (9) lots. All lots are approved for single-family residential use contingent upon compliance with the conditions of approval. Any other uses require additional review and approval by Sanders County.

Preliminary, conditional approval will expire three (3) years from the date of preliminary approval unless the subdivider and Board of Sanders County Commissioners agree to an extension in accordance with Section IV-A-6(f) of the Sanders County Subdivision Regulations and 76-3-610, MCA.

*\*This preliminary plat application was reviewed under the regulations and statutes in effect on the date the application was determined to be sufficient on May 7, 2024.*

*\*\*The authorities for preliminary approval, denial, or conditional approval rest with the Sanders County Commissioners. This report and the conditions noted above are recommendations to the Sanders County Commissioners. The conditions are subject to modification or deletion by the Commission or additional conditions may be required by the Commission.*

*\*\*\*The Subdividers and agents are strongly encouraged to attend the public hearing to discuss the recommendations and mitigations.*

*\*\*\*\*The governing body decision may be appealed by following the process provided in the state statute, MCA 76-3-625, Violations—actions against governing body.*

*\*\*\*\*\*Preliminary approval is valid for three years and can be extended by request thirty days before expiring, per Section IV-A-6(f) SCSR*