



Planning Advisory Board/Zoning Commission Agenda
2 Park Drive South, Great Falls, MT
City Commission Chambers
June 11, 2019
3:00 PM

OPENING MEETING

1. Call to Order 3:00 P.M.
2. Roll Call- Board Introductions
Peter Fontana- Chair
Michael Wedekind- Vice Chair
Dave Bertelsen
Kelly Buschmeyer
Anthony Houtz
Tory Mills
Charles Pankratz
Samantha Shinaberger
Patrick VanWorth
3. Recognition of Staff
4. Approval of Meeting Minutes- May 14, 2019

BOARD ACTIONS REQUIRING PUBLIC HEARING

5. Public Hearing – Rezone of a portion of Lots 4A, 5A 6-9 and 10A of Riverview Tracts Addition in conjunction with an amended plat to aggregate and boundary line adjust the various parcels.

COMMUNICATIONS

6. *Next Meeting Agenda- Tuesday, June 25, 2019*
-Ordinance 3205, “An Ordinance Establishing and Reserving Chapters 9 Through 11 of Title 17 of The Official Code of the City of Great Falls (OCCGF), and Repealing and Replacing OCCGF Title 17, Chapter 12, pertaining to Administrative and Enforcement Bodies.”

-LRTP and TIP Minor Amendments
7. *Petitions & Applications Received*
-Love's Travel Stop Annexation and Zoning Request

PUBLIC COMMENT

ADJOURNMENT

**MINUTES OF THE MEETING
OF THE
GREAT FALLS PLANNING ADVISORY BOARD/ZONING COMMISSION
May 14, 2019**

CALL TO ORDER

The regular meeting of the Great Falls Planning Advisory Board/Zoning Commission was called to order by Chair Pete Fontana at 3:00 p.m. in the Rainbow Room of the Civic Center.

ROLL CALL & ATTENDANCE

Planning Board Members present:

Pete Fontana, Chair
Michael Wedekind, Vice Chair
Kelly Buschmeyer
Tory Mills
Charles Pankratz
Samantha Shinaberger
Patrick VanWorth

Planning Board Members absent:

Dave Bertelsen
Anthony Houtz

Planning Staff Members present:

Craig Raymond, Director P&CD
Brad Eatherly, Planner I
Connie Tryon, Sr. Admin Assistant

Other Staff present:

Joseph Cik, Assistant City Attorney

Mr. Raymond affirmed a quorum of the Board was present.

MINUTES

Chair Pete Fontana asked if there were any comments or corrections to the minutes of the meeting held on March 26, 2019. Seeing none, Mr. Wedekind moved to approve the minutes. Mr. Pankratz seconded, and all being in favor, the minutes were approved.

BOARD ACTIONS NOT REQUIRING PUBLIC HEARING

Lot Aggregation for Longfellow Elementary School Building Project

Brad Eatherly, Planner I, explained the Longfellow Elementary building project, which is one of the cornerstone projects in the \$100 million bond approved by voters in 2017, was recently demolished. The property encompasses two city blocks and 28 individual lots. The applicant is proposing to construct a new elementary school on the same 28 lots, so the request is to aggregate the lots in order to comply with City setback requirements.

Mr. Eatherly said staff recommends approval of the aggregation, with the conditions as listed in the staff report.

PETITIONER'S PRESENTATION

There was no petitioner's presentation.

PUBLIC QUESTION AND ANSWER SESSION

Mr. Wedekind asked why the aggregation was not completed in 1950 when the original school was built. Mr. Eatherly and Mr. Raymond confirmed that it may not have been required when it was built, but when staff comes across projects such as these, they attempt to clean them up and ensure conformance with current City code.

There was discussion on where utility easements were previously, compared to what is proposed.

BOARD DISCUSSION AND ACTION

MOTION: That the Planning Advisory Board recommend the City Commission approve the proposed lot aggregation for the Longfellow Elementary building project and adopt the Findings of Fact attached to the agenda report.

Made by: Mr. Wedekind
Second: Mr. Mills

VOTE: All in favor, the motion carried.

COMMUNICATIONS

Next Meeting Agenda – Tuesday, May 28, 2019

- None

Petitions & Applications Received:

- Heisler/Calumet Non-administrative Plat and Rezone
- Love's Travel Stop Annexation and Zoning Request

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business, Chair Pete Fontana adjourned the meeting at 3:12 p.m.

CHAIRMAN

SECRETARY



Agenda #: _____
Commission Meeting Date: _____

**CITY OF GREAT FALLS
PLANNING ADVISORY BOARD / ZONING COMMISSION AGENDA REPORT**

Item: Public Hearing – Rezone of a portion of Lots 4A, 5A 6-9 and 10A of Riverview Tracts Addition in conjunction with an amended plat to aggregate and boundary line adjust the various parcels.

Initiated By: Montana Refining Company, Inc. and the Margaret E. Heisler Trust

Presented By: Erin Borland, Planner III, Planning and Community Development

Action Requested: Recommendation to the City Commission.

Public Hearing:

1. Chairman of the Board conducts public hearing, calling three times each for proponents and opponents.
2. Chairman of the Board closes public hearing and asks the will of the Board.

Suggested Motion:

Board Member moves:

I. “I move that the Zoning Commission recommend the City Commission (approve/deny) the rezoning request from C-2 General Commercial to PUD Planned Unit Development for the subject property as legally described in the Staff Report, and the accompanying Findings of Fact, subject to the Conditions of Approval being fulfilled by the applicants.”

And;

II. “I move that the Planning Advisory Board recommend the City Commission (approve/deny) the amended plat reconfiguring the subject properties as legally described in the Staff Report, and the accompanying Findings of Fact/Basis of Decision, subject to the Conditions of Approval being fulfilled by the applicant.”

Chairman calls for a second, discussion, and calls for the vote.

Background: The Margaret E. Heisler Trust is proposing to aggregate Lots 6-9 of the Riverview Tracts Addition, acquire and reconfigure adjacent property owned by Montana Refining Company, Inc., to eventually create a single lot that can be marketed for sale. Due to the number of lots that are proposed to be reconfigured, the Planning Advisory Board must review the amended plat. Because the Heisler Trust property is zoned C-2, General Commercial, and the Montana Refining Company property is zoned PUD Planned Unit Development, the proposed acquisition of property through a boundary

adjustment requires a change in zoning to make sure the zoning and property line boundaries match the new property configuration.

Non-Administrative Plat

Based on the proposal, seven parcels will be affected by the aggregation and boundary line adjustment. The existing amended plat and the draft proposed plat showing the reconfiguration have been attached for review. The proposed plat requires Planning Advisory Board and City Commission review due to Montana Code Annotated (MCA) §76-3-207 (2) (a) which states:

"within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder."

Staff has prepared Findings of Fact based on the criteria for a subdivision. The recommendation of the Planning Advisory Board and the decision of City Commission shall, at a minimum, consider the criteria which are attached as Findings of Fact/Basis of Decision – Subdivision.

Zoning Map Amendment Request:

A zoning map amendment requires a public hearing to be conducted by the Zoning Commission and surrounding property owners to be notified, as well as the posting of a sign on the property. Public notice for the Zoning Commission hearing was published in the Great Falls Tribune on May 26, 2019. To date, no contact or questions in regards to the proposal have come forward to the City.

At the time, Montana Refining Company Inc. received PUD zoning for its property adjoining the Heisler Trust site, a development agreement requiring future improvements to the property was required. The terms of this past agreement will still carry forward to the newly configured property zoned PUD. To this end, City staff has revised the existing agreement for the PUD to accommodate the minor addition of land. The requirements of the original agreement, which must be implemented during future building construction, have not changed in any way with this revision.

The basis for decision on zoning map amendments, i.e. rezoning or zone changes, is listed in OCCGF §17.16.40.030. The recommendation of the Zoning Commission and the decision of City Commission shall at a minimum consider the criteria which are attached as Findings of Fact – Zoning Map Amendment.

Neighborhood Council Input:

The subject property is located in Neighborhood Council #3. Due to the simple rezone request being proposed, information was sent to Neighborhood Council #3 for comment. To date, no comments from the Council District have been provided to staff.

Concurrences:

Because the proposal is simply a zoning change due to the minor lot reconfiguration, no review from other City departments is needed at this time. If construction comes forward for any of the parcels, a building permit will be required and require review from other City departments.

Fiscal Impact:

Public infrastructure is existing surrounding the various parcels. At the time of development, the cost of any internal private streets, utilities, and stormwater management will be borne by the applicant.

Staff Recommendation:

Staff recommends approval of the rezone and Amended Plat of the subject properties with the following conditions of approval:

Conditions of Approval:

1. General Code Compliance. The proposed project shall be developed consistent with the conditions in this report, and all codes and ordinances of the City of Great Falls, the State of Montana, and all other applicable regulatory agencies.

2. Development Agreement. The applicant shall abide by the terms and conditions specified in the attached Revised Development Agreement for the Subject Properties. The revised Development Agreement must be signed by the applicant and recorded for the Subject Properties.

3. Amended Plat. Provide a revised Amended Plat of the subject properties, showing the proposed aggregation and boundary line adjustments, containing all easements required by the City of Great Falls. The revised Plat shall incorporate corrections of any errors or omissions noted by Staff.

4. Land Use & Zoning. The development standards and land uses for the subject properties shall be consistent with the Official Code of the City of Great Falls (OCCGF).

5. Subsequent modifications and additions. If after establishment of the zoning, the owner proposes to expand or modify the use, buildings, and/or structures, the Director of the Planning and Community Development Department shall determine in writing if such proposed change would alter the finding for one or more review criteria. If such proposed changes would alter a finding, the proposal shall be submitted for review as a new development application. If such proposed change would not alter a finding, the owner shall obtain all other permits as may be required.

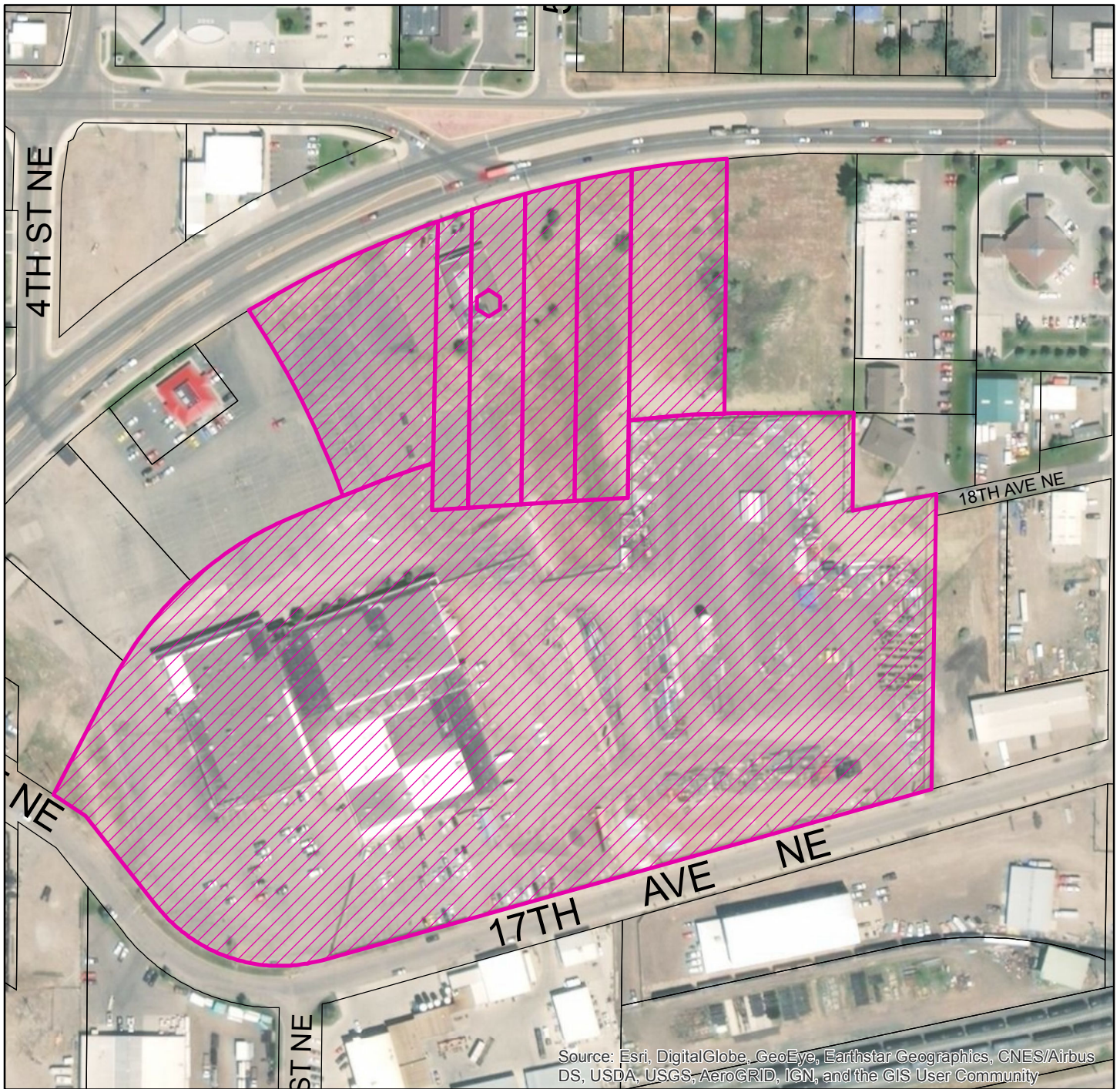
Alternatives:

The Planning Advisory Board/Zoning Commission could recommend denial of the rezone and amended plat request to the City Commission. For this action, the Planning Advisory Board/Zoning Commission must provide separate Findings of Fact to support an alternative decision.


Attachments/Exhibits:

- Aerial Map
- Zoning Map
- Findings of Fact/Basis of Decision – Zoning Map Amendment
- Findings of Fact/Basis of Decision - Subdivision
- Draft Amended Plat
- Draft Revised Development Agreement


AERIAL MAP



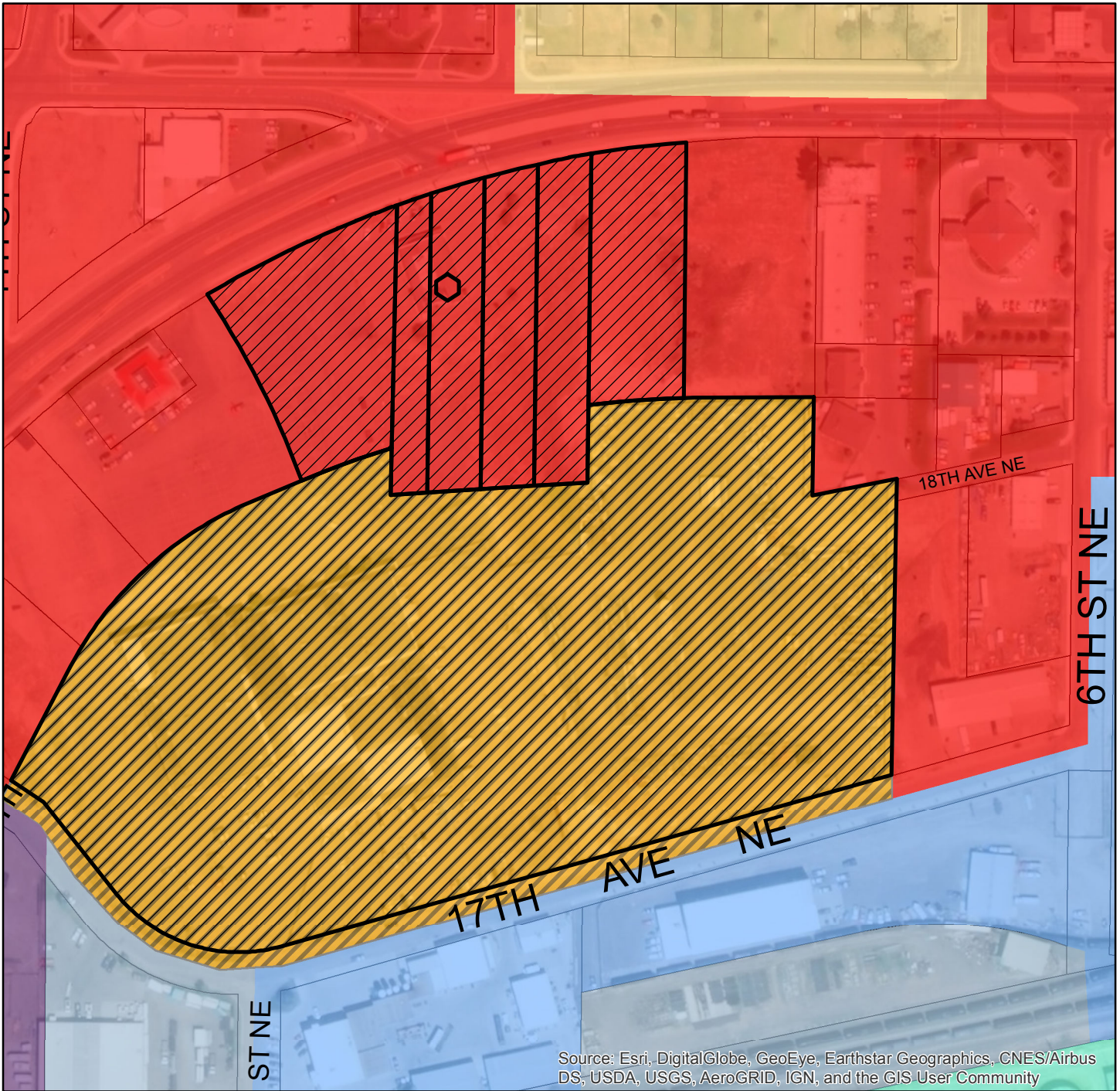
 Subject Properties

 Tracts of Land










230 115 0 230 Feet

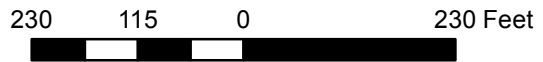


ZONING MAP



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

-  Subject Properties
-  R-5 Multi-family Medium Density
-  PUD Planned Unit Development
-  C-2 General Commercial
-  M-2 Mixed-use Transitional
-  I-1 Light Industrial
-  I-2 Heavy Industrial
-  PLI Public Lands and Institutional
-  Tracts of Land



FINDINGS OF FACT/BASIS OF DECISION – Zoning Map Amendment

Rezone of a portion of Lots 4A, 5A 6-9 and 10A of Riverview Tracts Addition located in Government Lot 4 of Section 1, and Government Lot 1 of Section 2, Township 20 North, Range 3 East, P.M.MT., Cascade County, Montana

PRIMARY REVIEW CRITERIA:

The basis for decision on zoning map amendments is listed in Official Code of the City of Great Falls §17.16.40.030 of the Land Development Code. The recommendation of the Zoning Commission and the decision of City Commission shall at a minimum consider the following criteria:

1. The amendment is consistent with and furthers the intent of the City's growth policy.

The proposed zoning map amendment is consistent with the overall intent and purpose of the 2013 City Growth Policy Update. This project is strongly supported by the Physical portions of the Growth Policy, specifically the goals and principles to encourage a balanced mix of land uses throughout the City.

Additionally, the zoning map amendment specifically supports the following goals and policies:

Environmental – Urban Form

Env2.3.1 In order to maximize existing infrastructure, identify underutilized parcels and areas with infill potential as candidates for redevelopment in the City.

Physical - Land Use

Phy4.1.5 Encourage and incentivize the redevelopment or adaptive reuse of vacant or underutilized properties so as to maximize the City's existing infrastructure.

2. The amendment is consistent with and furthers adopted neighborhood plans, if any.

Great Falls is separated into nine Neighborhood Councils. There are no adopted Neighborhood Plans for any of the Councils within the City. The subject properties are located in Neighborhood Council #3. Due to the scope of the proposal and the summer schedule of the Council, information has been sent out to the Council members via email for review and comment.

3. The amendment is consistent with other planning documents adopted by the City Commission, including a river corridor plan, transportation plan, and sub-area plans.

The subject property does not lie within any adopted plan or sub-area planning areas. Since there is no development proposed at this time, the review of the consistency with other planning documents is not applicable at this time.

4. The code with the amendment is internally consistent.

The proposed establishment of zoning is not in conflict with any portion of the existing City

Code and will be consistent with the adjacent PUD Planned Unit Development zoning. Additionally, the rezone will not affect any of the requirements established with the PUD Planned Unit Development. Conditions of approval are proposed so that any proposal on the subject property will not be injurious to the use of other properties in the immediate vicinity, nor substantially diminish and impair property values in the area as well.

5. The amendment is the least restrictive approach to address issues of public health, safety, and welfare.

There are no existing public health, safety or welfare issues that have been identified for this property. The proposed rezone will allow for the applicant to reconfigure the lots with the adjacent property owner to create a marketable lot.

6. The City has or will have the financial and staffing capability to administer and enforce the amendment.

The City has the financial and staffing capability to enforce the amendment if it is approved. The zoning map amendment will only affect a small area of property and the property will be developed in a manner consistent with the zoning for this area.

FINDINGS OF FACT/BASIS OF DECISION – MONTANA SUBDIVISION AND PLATTING ACT

Amended Plat Lots 4A, 5A 6-9 and 10A of Riverview Tracts Addition located in Government Lot 4 of Section 1, and Government Lot 1 of Section 2, Township 20 North, Range 3 East, P.M.MT., Cascade County, Montana

(PREPARED IN RESPONSE TO 76-3-608(3) MCA)

PRIMARY REVIEW CRITERIA:

Effect on Agriculture and Agricultural Water User Facilities: The owner of the subject properties has proposed to aggregate and reconfigure seven lots located in the subdivision. The existing lots consist of commercial and industrial properties, in an area that is predominantly built out. Thus, the proposal will not interfere with any agricultural irrigation system or present any interference with agricultural operations in the vicinity.

Effect on Local Services: The existing lots are surrounded by existing utilities and several of the lots are utilizing existing service lines. All of the properties are currently receiving law enforcement and fire protection service from the City of Great Falls. Providing these services to the subject properties is expected to be a manageable cost to the City, and increased tax revenues from future development of the properties may cover increased costs.

Effect on the Natural Environment: There is no development proposal currently for the properties, therefore it is not expected to adversely affect soils or the water quality or quantity of surface or ground waters.

Effect on Wildlife and Wildlife Habitat: The proposed lots to be aggregated and reconfigured are surrounded by the existing commercial and industrial properties to the east, existing commercial properties to the north and west, and the existing PUD Planned unit Development to the south. This is not in an area of significant wildlife habitat beyond occasional migrating fowl.

Effect on Public Health and Safety: Based on available information, the proposed lots to be aggregated and reconfigured are not subject to abnormal natural hazards nor potential man-made hazards. Any proposed development of the properties will not have a negative effect on Public Health and Safety. As noted above, the proposed site already receives City public safety services.

REQUIREMENTS OF MONTANA SUBDIVISION AND PLATTING ACT, UNIFORM STANDARDS FOR MONUMENTATION, AND LOCAL SUBDIVISION REGULATIONS

The lots in the proposed aggregation and reconfiguration meet the requirements of the Montana Subdivision and Platting Act and the surveying requirements specified in the Uniform Standards for Monumentation and conforms to the design standards specified in the local subdivision regulations. The local government has complied with the subdivision review and

approval procedures set forth in the local subdivision regulations.

EASEMENT FOR UTILITIES

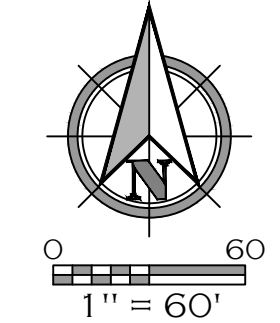
The developer shall provide necessary utility easements to accommodate water mains, sanitary sewer mains and private utilities to serve the lots.

LEGAL AND PHYSICAL ACCESS

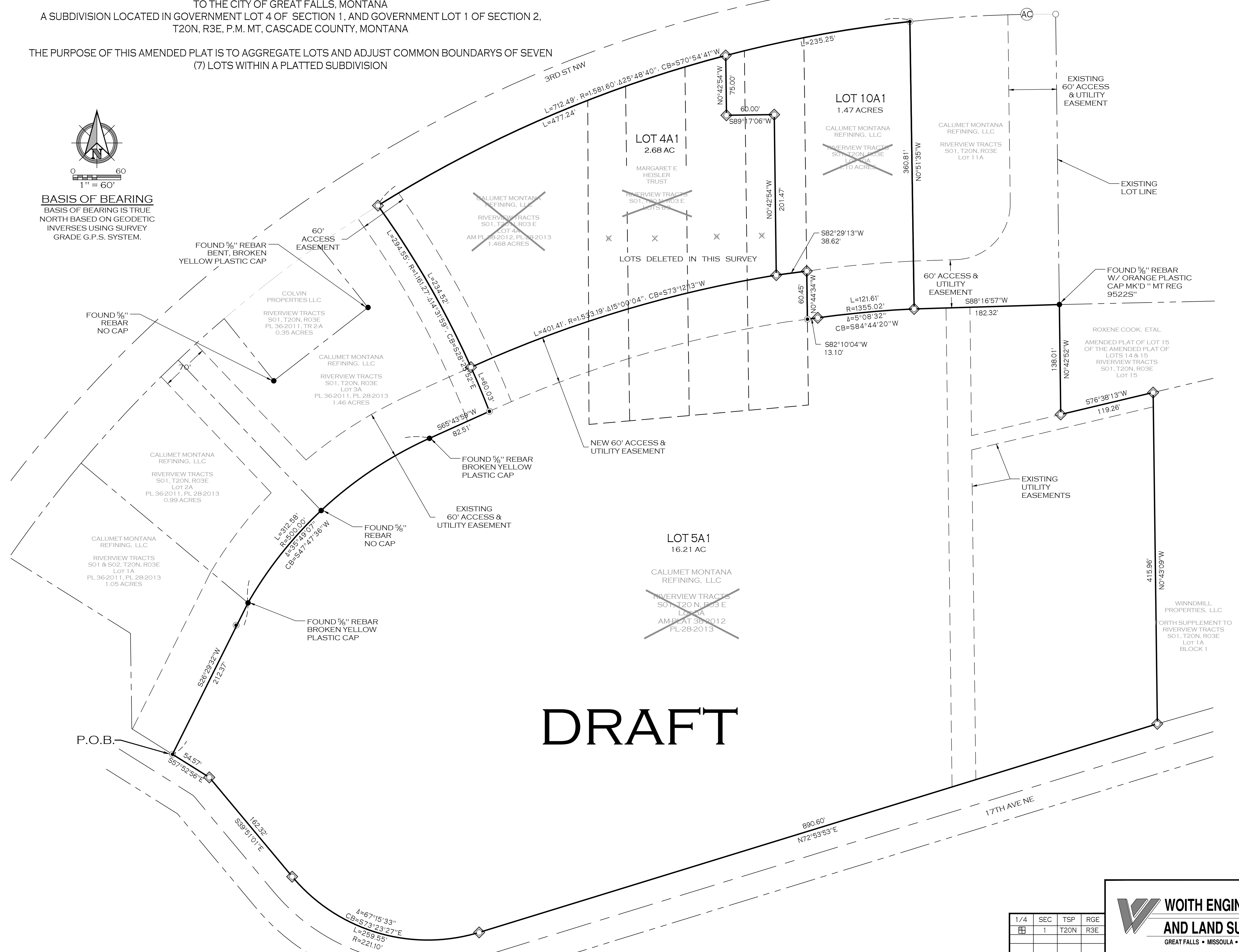
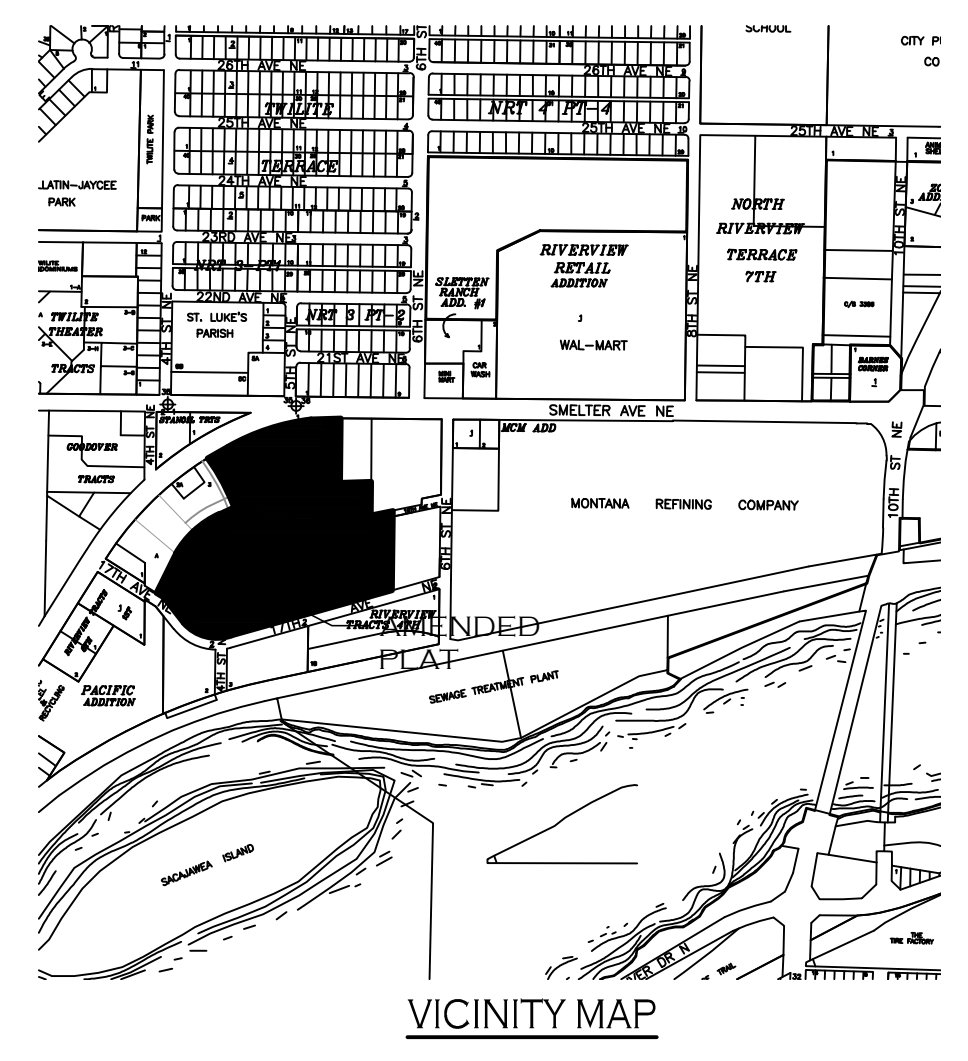
Legal and physical access to the proposed development will be from 3rd Street NW and 17th Avenue NE. These are all existing roads that are currently in City limits and are maintained by the City of Great Falls.

AMENDED PLAT OF
LOTS 4A, 5A, 6-9, AND 10A RIVERVIEW TRACTS ADDITION
 TO THE CITY OF GREAT FALLS, MONTANA
 A SUBDIVISION LOCATED IN GOVERNMENT LOT 4 OF SECTION 1, AND GOVERNMENT LOT 1 OF SECTION 2,
 T20N, R3E, P.M. MT. CASCADE COUNTY, MONTANA

THE PURPOSE OF THIS AMENDED PLAT IS TO AGGREGATE LOTS AND ADJUST COMMON BOUNDARYS OF SEVEN
 (7) LOTS WITHIN A PLATTED SUBDIVISION



BASIS OF BEARING
 BASIS OF BEARING IS TRUE
 NORTH BASED ON GEODETIC
 INVERSES USING SURVEY
 GRADE G.P.S. SYSTEM.



- LEGEND**
- ◆ SET 5/8"x 24" REBAR & YELLOW PLASTIC CAP MK'D "WEI 19110LS"
 - FOUND 5/8"x 24" REBAR & YELLOW PLASTIC CAP MK'D "KENCZKA 15625LS"
 - FOUND 5/8"x 24" REBAR & YELLOW PLASTIC CAP MK'D "M HENEN 9523LS"
 - ⊙ AC 2" ALUMINUM CAP MK'D "MDT 11702LS"
 - FOUND PROPERTY CORNER AS NOTED
 - PROPERTY BOUNDARY
 - - - ABANDONED PROPERTY LINE
 - - - ADJACENT PROPERTY LINE
 - - - CENTER LINE
 - - - ACCESS AND UTILITY EASEMENT
 - P.O.B. POINT OF BEGINNING

AREA

LOT 4A1 -	2.68 ACRES
LOT 5A1 -	16.21 ACRES
LOT 10A1 -	1.47 ACRES
TOTAL PLAT -	20.36 ACRES

DRAFT

IT IS NOT THE INTENT OF THIS AMENDED PLAT TO IDENTIFY ALL EASEMENTS OF RECORD. THERE MAY BE EXISTING EASEMENTS OF SITE AND RECORD WHICH ARE NOT SHOWN ON THIS AMENDED PLAT.

1/4	SEC	TSP	RGE
1	T20N	R3E	

<p>WOITH ENGINEERING, INC. AND LAND SURVEYING LLC GREAT FALLS • MISSOULA • WOITHENG.COM • 406-761-1955</p>	JOB #:	1734	<p>P1</p> <hr/> <p>P2</p>
	FB:	GPS	
	DRAWN:	RCB	
	DESIGN:	RCB	
QA:	MS		
DATE:	9/27/19		

(REVISED)
DEVELOPMENT AGREEMENT
FOR THE AMENDED PLAT OF LOTS 1-3 OF
THE AMENDED PLAT OF LOT 1, BLOCK 1,
THIRD SUPPLEMENT TO RIVERVIEW
TRACTS AND TRACTS 1-A AND 2 OF THE
AMENDED PLAT OF TRACTS 1-A, 2, 3 AND 4,
RIVERVIEW TRACTS AND TRACT 5-A OF
THE AMENDED PLAT OF TRACTS 5, 6, 7, 8,
AND 9, RIVERVIEW TRACTS, AND TRACT 3
OF THE AMENDED PLAT OF THE TRACTS
1-A, 2, 3 AND 4, RIVERVIEW TRACTS, AND
LOT 1 BLOCK 1, OF THE AMENDED PLAT
OF LOT 1, BLOCK 1, OF THE AMENDED
PLAT OF BLOCK 1, FOURTH SUPPLEMENT
TO RIVERVIEW TRACTS, TRACTS 10-13 OF
THE RIVERVIEW TRACTS ADDITION AND
THE AMENDED PLAT OF LOTS 4A, 5A, 6-9,
AND 10A RIVERVIEW TRACTS ADDITION.
A TRACT OF LAND LOCATED IN
GOVERNMENT LOTS 3 & 4 OF SECTION 1,
AND GOVERNMENT LOT 1 OF SECTION 2,
T20N, R3E, P.M.M., CITY OF GREAT FALLS,
CASCADE COUNTY, MONTANA.

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2019, between MONTANA REFINING COMPANY INC. hereinafter referred to as “Owner,” and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City,” regarding the requirements for filing the Amended Plat of Lots 1-3 of the Amended Plat of Lot 1, Block 1, Third Supplement to Riverview Tracts and Tracts 1-A and 2 of the Amended Plat of Tracts 1-A, 2, 3 and 4, Riverview Tracts and Tract 5-A of the Amended Plat of Tracts 5, 6, 7, 8, and 9,

Riverview Tracts, and Tract 3 of the Amended Plat of the Tracts 1-A, 2, 3 and 4, Riverview Tracts, and Lot 1 Block 1, of the Amended Plat of Lot 1, Block 1, of the Amended Plat of Block 1, Fourth Supplement to Riverview Tracts, Tracts 10-13 of the Riverview Tracts Addition, and the Amended Plat of Lots 4A, 5A, 6-9 and 10A Riverview Tracts Addition. A Tract of Land Located in Government Lots 3 & 4 of Section 1, and Government Lot 1 of Section 2, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana, hereinafter referred to as "Subject Property."

2. PRIOR AND CURRENT ACTIONS

- A. The Planning Advisory Board, on November 13, 2012, recommended the City Commission approve the Amended Plat of the Subject Property subject to ten (10) conditions of approval being met.
- B. City Commission approved the Amended Plat on January 15, 2013.
- C. The Planning Advisory Board, on June 11, 2019 recommended the City Commission (approve/deny) the Amended Plat of the Subject Property to aggregate and reconfigure seven (7) lots.
- D. City Commission approved the Amended Plat on July XX, 2019 and the revised Development Agreement.

3. SUPPORTING DOCUMENTS

- A. Lots 1-3 of the Amended Plat of Lot 1, Block 1, Third Supplement to Riverview Tracts and Tracts 1-A and 2 of the Amended Plat of Tracts 1-A, 2, 3 and 4, Riverview Tracts and Tract 5-A of the Amended Plat of Tracts 5, 6, 7, 8, and 9, Riverview Tracts, and Tract 3 of the Amended Plat of the Tracts 1-A, 2, 3 and 4, Riverview Tracts, and Lot 1 Block 1, of the Amended Plat of Lot 1, Block 1, of the Amended Plat of Block 1, Fourth Supplement to Riverview Tracts, and Tracts 10-13 of the Riverview Tracts Addition. A Tract of Land Located in Government Lots 3 & 4 of Section 1, and Government Lot 1 of Section 2, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana, prepared by Thomas Dean & Hoskins (TD&H), and filed of record in the Clerk and Recorder's Office of Cascade County, Montana on the 13th day of August, 2013. Document Number: P-2013-0000028.
- B. Amended Plat of Lots 4A, 5A, 6-9 and 10A Riverview Tracts Addition, a subdivision located in Government Lot 4 of Section 1, and Government Lot 1 of Section 2, T20N, R3E, P.M.M., City of Great Falls, Cascade County, Montana.

4. FEES AND CHARGES

- A. Owner has paid fees totaling \$1,366.00 for the processing the recording fees for the Development Agreement from 2013, rezoning and Amended Plat application for the Subject Property.
- B. Water tapping, water connection, sewer service tapping, and sewer connection fees will be assessed at the time of installation.
- C. The absence of any fee from this agreement lawfully charged by the City in connection with construction activity associated with Project shall not constitute a waiver by the City.

5. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Owner that subsequent to the time this agreement was entered into, events may occur and actions may be taken which were unforeseen by either party or both parties hereto. In this perspective, it is, therefore, agreed that the parties may by mutual subsequent agreement modify the terms, conditions and covenants of this Agreement.

6. CONDITIONS OF APPROVAL

Owner agrees to complete, the conditions of approval associated with the Amended Plat of the Subject Property as listed below and in accordance with standards of City. For the purposes of this agreement “development” will be considered any excavation, construction of new structures, expansion of existing structures, installation of utilities, stormwater management systems or placement of a structure upon a portion of or part of the parcel herein described.

- A. The Amended Plats referenced in item 3 above of the Subject Property shall incorporate corrections of any errors or omissions noted by staff.
- B. Owner shall provide a continuous decorative wall where an industrial use on Lot 5A1 of the Amended Plat abuts a non-industrial use, excluding necessary access points, to mitigate negative impacts to neighboring properties. The wall shall be 8-12 feet tall and be 100% opaque. The wall shall be installed at such time as any new development occurs within any area of the Amended Plats referenced in item 3 above.
- C. Lot 5A1 of the Subject Property shall conform to the Land Development Code 17.44.4 Design Standards for Industrial Buildings, including buffer and screening between uses. Where an industrial use abuts a non-industrial use, a minimum 15-foot landscape buffer shall be provided along the shared property line. In addition, to help mitigate the effects of the subdivision, Owner shall install and maintain at least one canopy or evergreen tree for each thirty-five (35) lineal feet of frontage in the 15-foot buffer adjacent to non-industrial uses. The landscaping/buffer shall be installed at such time as any new development occurs within any area of the Amended Plats as referenced in item 3 above.
- D. Owner shall submit all proposed development plans to the City for applicable code review (including, but not limited to zoning and landscaping) at such time as development occurs on the Subject Property.
- E. Owner shall provide a 15-foot wide bicycle and pedestrian easement from Smelter Ave NE to 4th St NE per conceptual drawings on file at the Planning and Community Development Office. Owner shall construct a 10-foot paved trail on this easement at such time that development occurs on the Subject Property.
- F. Owner shall conform to all EPA, federal, state and local codes related to owning and operating a refinery.
- G. Owner shall provide a storm drain easement across the Subject Property from Smelter Ave NE to 17th Ave NE. The size and location of said easement shall be approved by Public Works prior to final approval of the Amended Plat.
- H. At such time as development occurs on the site the Owner shall provide plans to the City’s Public Works department to determine if a stormwater management plan is necessary. If necessary, the Owner shall provide a plan in compliance with the City of

Great Falls Storm Design Manual and City standards. The plan will be reviewed and approved by the Public Works Department prior to development of the Subject Property.

- I. All roadways within the Subject Property shall be private roadways, maintained by the Owner. Internal, private roadways and associated sidewalks and traffic control shall be approved by the Public Works Department prior to installation and shall include sidewalks where appropriate. Owner shall create a property owners association, before any lot is sold within the Subject Property, which is responsible for installation and maintenance of all private roadways, sidewalks and traffic control devices within the Subject Property.
- J. Owner shall work with Montana Department of Transportation on the number and location of private access driveways from 3rd St NW and Smelter Ave.
- K. Owner shall be responsible for any damage caused to 6th St NE and 17th Ave NE due to the movement of heavy equipment or vehicles across these roadways at no cost to the City.

7. SOIL AND/OR GROUNDWATER CONDITIONS

The Owner of the Subject Property shall indemnify, hold harmless and defend the City of Great Falls, its officers, agents, servants and employees and assigns from and against all claims, debts, liabilities, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the Subject Property. This indemnity obligation runs with the land. Upon the transfer of ownership of the Subject Property, the prior Owner's (whether the Owner that made this development agreement or a subsequent owner) indemnity obligation for adverse soil or adverse groundwater conditions for the transferred property is released and the indemnity obligation runs to the new owner of the property. Only the owner of the parcel of property with the adverse conditions at the time the City incurs the claim, debt, liability, obligation or cost is obligated to indemnify and no owner of Subject Property is obligated to indemnify for adverse conditions on property owned by someone else.

This indemnification by the Owner of the Subject Property shall apply unless such damage or injury results from the negligence, gross negligence or willful misconduct of the City.

8. MAINTENANCE DISTRICTS

Owner waives its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant, street maintenance and street lighting and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to the Subject Property.

9. FUTURE STORM DRAINAGE FACILITIES

Owner hereby agrees to waive right to protest any future area wide special improvement district for storm drainage facilities and further agrees to pay for proportionate share of any future storm drainage improvements which service Subject Property that may be installed with or without an area wide special improvement district. The term "area wide" as used herein, means any area larger than that covered by Subject Property which is a contributor to the drainage sub-basin of which Subject Property is a part.

10. FUTURE ROADWAY IMPROVEMENTS

Owner, hereby agrees to waive right to protest creation of any future special improvement district for the Subject Property and further agrees to pay when deemed necessary by the City for proportionate share of said roadway improvements, including sidewalk, that may be installed with or without a special improvement district.

11. PUBLIC ROADWAY LIGHTING

Owner, hereby agrees to waive its right to protest any future special lighting district for public roadway lighting facilities that service Subject Property, and further agrees to pay for proportionate share of the costs associated with roadway lighting which service Subject Property that may be installed with or without a special lighting district.

12. CITY ACCEPTANCE AND ZONING

In consideration of the foregoing, City hereby accepts and approves the zoning of the Subject Property with an assigned zoning classification of C-2 General commercial to Lots 1-4, 6 and 7 and PUD Planned Unit Development to Lot 5A1 of the Amended Plat. It is hereby understood that the preceding language regarding zoning of lots in the Subject Property does not preclude City from reclassifying lots if an area wide reclassification is undertaken, in which event City agrees to reclassify said lots as a conforming use.

13. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month and year first hereinabove written.

CITY OF GREAT FALLS

Party of the First Part

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

Sara Sexe, City Attorney

DRAFT

OWNER

By: _____
(This will need to be updated)

State of Montana)
County of Cascade):ss.
City of Great Falls)

On this _____ day of _____, 2013, before me, a Notary Public in and for the State of Montana, personally appeared, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year certificate first above written.

(NOTARIAL SEAL)

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My commission Expires: _____, 20_____