



**CITY COUNCIL WORK SESSION  
CITY COUNCIL CONFERENCE ROOM  
418 EAST SECOND STREET  
MONDAY, FEBRUARY 3, 2020  
5:30 TO 6:15 PM**

1. 5:30 - Call to Order
2. 5:30 p.m.-**CLOSED EXECUTIVE SESSION** – Pursuant to Section 2-3-203 (4) M.C.A.- Litigation update with City Attorney

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**CITY COUNCIL WORK SESSION  
CITY COUNCIL CONFERENCE ROOM  
MONDAY, FEBRUARY 3, 2020  
6:15 TO 7:00 PM**

3. 6:15 – Baker Avenue Underpass Update
4. Public Comment
5. Direction to City Manager
6. Adjourn

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## CITY COUNCIL REGULAR MEETING AGENDA

The following is a summary of the items to come before the City Council at its regular session to be held on Monday, January 3, 2020, at **7:10 p.m.** at City Hall, 418 E. 2<sup>nd</sup> Street, 2<sup>nd</sup> Floor.

Ordinance numbers start with 20-03. Resolution numbers start with 20-03.

- 1) CALL TO ORDER
- 2) PLEDGE OF ALLEGIANCE
- 3) COMMUNICATIONS FROM THE PUBLIC – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)
- 4) COMMUNICATIONS FROM VOLUNTEER BOARDS
- 5) CONSENT AGENDA
  - a) [Minutes](#) from January 21, 2020 Regular Session (p.13)
  - b) [Ordinance No. 20-02](#); An Ordinance amending Chapter 10, Architectural Review Committee, of Title 2 of the Whitefish City Code to change its membership qualifications (Second Reading) (p.23)
  - c) [Resolution No. 20-03](#); A Resolution denying a conditional use permit to develop two 18-unit apartment buildings at 1013 East 7<sup>th</sup> Street and 1022 East 8<sup>th</sup> Street (WCUP 19-24) (p.25)
- 6) PUBLIC HEARINGS (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)
- 7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR
  - a) [Consideration](#) of appointing a Rating and Selection Panel for the 2020 Transportation Plan Update (p.28)
- 8) COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR
  - a) [Consideration](#) of appointing a Rating Panel and a Selection Committee for the Irrigation and Landscape Design RFP Process (p.31)
- 9) COMMUNICATIONS FROM CITY CLERK
  - a) [Resolution No. 20-04](#); A Resolution establishing the Employee Parking Permit Implementation Committee (p.34)
- 10) COMMUNICATIONS FROM CITY ATTORNEY
  - a) [Resolution No. 20-05](#); A Resolution approving the terms of four Public Recreational Trail Easements over private land for the Whitefish Trail (p.39)
- 11) COMMUNICATIONS FROM CITY MANAGER
  - a) [Written report](#) enclosed with the packet. Questions from Mayor or Council? (p.71)
  - b) Other items arising between January 26<sup>th</sup> and February 3<sup>rd</sup>
- 12) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS
- 13) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)



The following Principles for Civil Dialogue are adopted on 2/20/2007 for use by the City Council and by all boards, committees and personnel of the City of Whitefish:

- We provide a safe environment where individual perspectives are respected, heard, and acknowledged.
- We are responsible for respectful and courteous dialogue and participation.
- We respect diverse opinions as a means to find solutions based on common ground.
- We encourage and value broad community participation.
- We encourage creative approaches to engage public participation.
- We value informed decision-making and take personal responsibility to educate and be educated.
- We believe that respectful public dialogue fosters healthy community relationships, understanding, and problem-solving.
- We acknowledge, consider and respect the natural tensions created by collaboration, change and transition.
- We follow the rules and guidelines established for each meeting.

Adopted by Resolution 07-09  
February 20, 2007

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January 29, 2020

The Honorable Mayor Muhlfeld and City Councilors  
City of Whitefish  
Whitefish, Montana



Mayor Muhlfeld and City Councilors:

### **Monday, February 3, 2020 City Council Agenda Report**

There will be a **CLOSED EXECUTIVE SESSION** at 5:30 p.m., pursuant to Section 2-3-203 (4) M.C.A. – litigation update with City Attorney Jacobs and at 6:15 a work session to review Baker Avenue Underpass updates. Food will be provided.

The regular Council meeting will begin at 7:10 p.m.

#### **CONSENT AGENDA**

- a) [Minutes](#) from January 21, 2020 Regular Session (p.13)
- b) [Ordinance No. 20-02](#); An Ordinance amending Chapter 10, Architectural Review Committee, of Title 2 of the Whitefish City Code to change its membership qualifications (Second Reading) (p.23)
- c) [Resolution No. 20-](#) ;A Resolution denying a conditional use permit to develop two 18-unit apartment buildings at 1013 East 7<sup>th</sup> Street and 1022 East 8<sup>th</sup> Street (WCUP 19-24) (p.25)

**RECOMMENDATION:** Staff respectfully recommends the City Council approve the Consent Agenda.

**Items ‘a &b’ are administrative matters; Item ‘c’ is a quasi-judicial matter.**

**PUBLIC HEARINGS** (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

None

#### **COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR**

- a) [Consideration](#) of appointing a Rating and Selection Panels for the 2020 Transportation Plan Update (p.28)

From Public Works Director Craig Workman’s staff report.

#### **Introduction/History**

The 2009 Whitefish Transportation Plan projected future transportation improvements out to the year 2030. It has become apparent that parts of the City’s transportation system are over capacity during the peak season and alternative routes of travel and modes of transportation are needed and an update to the 2009 Transportation Plan is needed to assist city staff in coordinating proposed projects with the planned future transportation grid. Thus, Council Goal PW 20-09 was created to update the City’s Transportation Plan.

#### **Current Report**

This planning process will engage the public in identifying and evaluating transportation conditions and alternative modes within Whitefish such as biking, walking and public transit. The plan will also evaluate projects to complete the network and fill the needs of various types of users. The ultimate outcome is the adoption of a Transportation Plan Update that will prioritize goals and objectives to

improve transportation into the future and provide a practical set of policies and ranked tasks to achieve those objectives.

An RFP was issued for the plan and proposals were due on January 10, 2020. The City received two proposals – one from Robert, Peccia, and Assoc. and the other from KLJ.

### **Financial**

The FY20 Budget includes \$50,000 for the update to the transportation plan. Since the City is currently engaged in several other planning efforts with significant transportation components, it is anticipated that this project may carry over into FY21. The FY20 budget will be used to engage a consultant, evaluate the level of effort necessary to update the plan, and determine if additional budget allocation is necessary.

**RECOMMENDATION:** Staff respectfully recommends the Council appoint Craig Workman and Karin Hilding to serve on the Rating Panel and appoint Craig Workman, Karin Hilding and one council member to serve on the Selection Panel for the 2020 Transportation Plan Update.

### COMMUNICATIONS FROM PARKS AND RECREATION DIRECTOR

- a) [Consideration](#) of appointing a Rating Panel and a Selection Committee for the Irrigation and Landscape Design RFP Process (p.31)

From Parks and Recreation Director Maria Butts staff report.

### **Introduction/History**

The Whitefish Parks and Recreation Department maintains and repairs publicly owned irrigation systems in parks, rights-of-way, and other public property, making the City the largest user of water within the city. The Parks and Recreation Department has worked to upgrade irrigation systems as opportunities arise.

Historically, potable water has been used to irrigate the City's rights-of-way and open spaces during the dry season; however, an annual increase of commercial and residential water use in the summer season combined with hotter and drier summers has prompted the Parks and Recreation Department to evaluate their irrigation efficiencies. As the City is the greatest user of water for irrigation in the city, it is our goal to lessen the amount of treated water used for irrigation. As well, many the City's irrigation systems are antiquated, thereby contributing to the waste of treated water.

Furthermore, many of the City's rights-of way and open spaces have been landscaped with non-native plants and grasses requiring continued irrigation. As it is the City's goal to lessen the use of treated water for irrigation of vegetation, the Parks and Recreation Department is seeking a plan to incorporate more native plants and grass into public landscapes.

### **Current Report**

In accordance with Title 18, Chapter 8 (MCA) and adopted City policy for consultant selection, The City of Whitefish, Montana (City) is seeking proposals from experienced, qualified firms to conduct a comprehensive irrigation system audit of the City's irrigation systems and provide a comprehensive irrigation and vegetation plan for the introduction and implementation of drought-tolerant, native landscaping in appropriate rights-of-way and open spaces. Proposals are due by Friday, February 21, 2020. The project will consist of two phases:

1. Phase I of the project will consist of a thorough analysis and assessment of existing conditions and preparation of a report detailing the findings and recommendations. This portion of the project shall take place in the Spring of 2020. A firm specializing in irrigation system efficiencies shall

conduct audits to identify needed irrigation system repairs, make recommendations for outdoor water use efficiency improvements (to include recommendations for irrigation timer adjustments).

2. Phase II will consist of designing an irrigation and planting plan with specifications based on the findings of Phase I and preparing a detailed cost estimate for future implementation. The design plan will identify options to correct irrigation inefficiencies by either elimination, adjustment, retrofitting, or upgrading of antiquated systems and landscapes through an approved irrigation and planting plan. The selected firm will be required to present findings to the City during public meetings.

In accordance with the adopted City of Whitefish Consultant Selection Policy and Procedures the initial review of the proposals must be reviewed by a Rating Panel made up of City staff and other individuals approved by the City Council. Upon final review a Selection Committee must be established, comprised of the Department Director, one other staff person, and one elected official. Given the requirements, I recommend that the Rating Panel and Selection Committee be made up of myself (Director of Parks and Recreation), Steve Bullemer (Parks Foreman), and a City Council Member.

### **Financial Requirement**

There is no financial requirement to appoint members to the rating panel and selection committee. However, TIF Funds have been allocated for negotiating a contract with the successful firm once the RFP process is complete, which will come back to Council at that time.

**RECOMMENDATION:** Staff respectfully recommends the City Council appoint Maria Butts, Steve Bullemer and a Councilor to the Rating Panel and Selection Committee for the Irrigation and Landscape Design RFP Process.

### COMMUNICATIONS FROM CITY CLERK

- a) [Resolution No. 20-\\_\\_](#); A Resolution establishing the Employee Parking Permit Implementation Committee (p.34)

From City Clerk Michelle Howke's staff report.

### **Introduction/History**

The City of Whitefish recognized the need to improve and add parking in the downtown area. In 2019 Dixon Resources Unlimited was retained to develop a parking management plan. After extensive community engagement, City Council adopted the Whitefish Parking Management Plan in October 2019.

### **Current Report**

As part of the Parking Demand Management, a Parking Permit Implementation Committee will provide suggestions and feedback with respect to a pilot employee parking permit program. The Committee will consider modifications and expansion to future versions of the program and evaluate potential residential parking permit programs. The Committee will consist of stakeholders in the retail establishment, bar, restaurant, professional office, or hotel/lodging establishments in the Parking Study Area; representative of the Whitefish School District; and members residing in the Parking Study Area and/or within the City Limits and two city staff members.

### **Financial Requirement**

No additional City costs at this time.

**RECOMMENDATION:** Staff respectfully recommends the Council approve Resolution No. 20-\_\_; A Resolution establishing the Employee Parking Permit Implementation Committee.

### COMMUNICATIONS FROM CITY ATTORNEY

- a) [Resolution No. 20-\\_\\_](#); A Resolution approving the terms of four Public Recreational Trail Easements over private land for the Whitefish Trail (p.39)

From City Attorney Angela Jacobs' staff report.

### **Introduction/History**

On July 5, 2005, the City adopted the Whitefish Area School Trust Lands Neighborhood Plan which seeks to plan, manage and conserve approximately 13,000 acres of state trust land while providing revenue for schools. In 2006, an 18-member citizen committee completed "A Trail Runs Through It" Master Plan for a trail system encircling the greater Whitefish area. Since then, the City and Whitefish Legacy Partners ("WLP") have cooperated to construct and manage the Whitefish Trail.

In March of 2017, WLP unveiled its "Close the Loop" campaign which called for approximately 20 miles of new trail to be constructed. Phase III of the Close the Loop campaign contemplated approximately four miles of trail easements located on private property to help connect the Big Mountain Trailhead with the existing Whitefish Trail at Smith Lake and Swift Creek.

### **Current Report**

Whitefish Legacy Partners has successfully negotiated easements with three private landowners: Elk Highlands Homeowners' Association, Winter Sports, Inc. and the Michelle K. Episcope 2011 Gift Trust. Whitefish Legacy Partners is also extremely close to reaching agreement with the final landowner, Thomas M. Armbruster. Pursuant to the City's Memorandum of Understanding with Whitefish Legacy Partners, the City will be the easement holder. WLP will construct the portions of the Whitefish Trail located on the easements and manage the trail.

### **Financial requirements/Impacts**

There are no immediate financial requirements or impacts of accepting the easements over private land for the Whitefish Trail.

**RECOMMENDATION:** Staff respectfully recommends the City Council approve Resolution No. 20-\_\_; A Resolution approving the terms of four Public Recreational Trail Easements over private land for the Whitefish Trail.

### COMMUNICATIONS FROM CITY MANAGER

- a) [Written report](#) enclosed with the packet. Questions from Mayor or Council? (p.71)  
b) Other items arising between January 26<sup>th</sup> and February 3<sup>rd</sup>

### COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

### ADJOURNMENT

Sincerely,



Dana Smith  
City Manager

Table 1: Common Motions Used in a Meeting.<sup>1</sup>

	Wording	Interrupt another speaker	Requires a second	Debatable	Amendable	Vote Required	Reconsider
<b>Privileged Motions</b>							
Fix time for next meeting (12)	"I move that we meet next at..."	No	Yes	No	Yes	Majority	Yes
Adjourn	"I move that we adjourn"	No	Yes	No	No	Majority	No
Take a recess (12)	"I move that we recess. . ."	No	Yes	No	Yes	Majority	No
Raise a question of privilege	"I rise to a question of privilege affecting the assembly"	Yes	No	No	No	(1)	No
Call for the orders of the day	"I call for the orders of the day"	Yes	No	No	No	(1) (15)*	No
<b>Subsidiary Motions</b>							
Lay on the table	"I move to lay the question on the table" or "I move that the motion be laid on the table"	No	Yes	No	No	Majority	(3)*
Previous question (to close debate)	"I move the previous question" or "I move we vote immediately on the motion"	No	Yes	No	No	2/3 of assembly	Yes
Limit-extend debate (12)	"I move the debate be limited to. . ." or "I move that the speaker's time be extended by. . ."	No	Yes	No	Yes	2/3 of assembly	Yes
Postpone to a definite time (12)	"I move that the question be postponed until. . ."	No	Yes	Yes	Yes	Majority	Yes
Refer to a committee (12)	"I move to refer the matter to the . . . committee"	No	Yes	Yes	Yes	Majority	Yes
Amendment to the main motion (12)	"I move to amend by adding/striking the words. . ."	No	Yes	(5)	Yes	Majority	Yes
Postpone indefinitely (12)	"I move that the motion be postponed"	No	Yes	Yes (16)	No	Majority	(4)
<b>Main Motions</b>							
Main Motion	"I move that we..."	No	Yes	Yes	Yes	Majority	Yes
<b>Incidental Motions (11)</b>							
Suspension of rules	"I move to suspend the rules so that. . ."	No	Yes	No	No	(9)*	No
Request to withdraw a motion (13)	"I move that I be allowed to withdraw the motion"	*	*	No	No	Majority*	(3)
Objection to the consideration of a question (10)	"I object to the consideration of the question"	Yes	No	No	No	2/3 of assembly (17)	(3)
Point of order	"I rise to a point of order" or "Point of order!"	Yes	No	No	No	(1)*	No
Parliamentary inquiry	"I rise to a parliamentary inquiry" or "A parliamentary inquiry, please"	Yes	No	No	No	(1)	No
Appeal to the chairperson	"I appeal from the decision of the chair"	Yes	Yes	Yes*	No	(7)	Yes

	Wording	Interrupt another speaker	Requires a second	Debatable	Amendable	Vote Required	Reconsider
Point of information	"I rise to a point of information" or "A point of information, please"	Yes	No	No	No	(1)	No
Division of assembly	"Division!" or "I call for a division"	Yes	No	No	No	(14)	No
Division of a question	"I move to divide the motion so that the question of purchasing ... can be considered separately."	No	Yes	No	Yes	Majority	No
<b>Renewal Motions (8)</b>							
Reconsider* (2)	"I move to reconsider the vote on the motion relating to. . ."	No*	Yes	(5) (16)	No	Majority	No
Take from table	"I move to take from the table the motion relating to. . ."	No	Yes	No	No	Majority	No
Rescind	"I move to rescind the motion passed at the last meeting relating to. . ."	No	Yes	Yes (16)	Yes	(6)	(3)
Discharge a committee	"I move that the committee considering . . . be discharged."	No	Yes	Yes (16)*	Yes	(6)	(3)

<sup>1</sup> Source: Robert, H. 2000. *Robert's Rules of Order* (Newly Revised, 10th Edition) New York: Perseus Books Group; Sturgis, A. 2000. *The Standard Code of Parliamentary Procedure* (4th Edition). New York: McGraw-Hill.

**\* Refer to Robert's Rules of Order Newly Revised**

- (1) The chair decides. Normally no vote is taken.
- (2) Only made by a member who voted on the prevailing side and is subject to times limits.
- (3) Only the negative vote may be reconsidered.
- (4) Only the affirmative vote may be reconsidered.
- (5) Debatable when applied to a debatable motion.
- (6) Majority with notice, or 2/3 without notice or majority of entire membership.
- (7) Majority or tie vote sustains the chair.
- (8) None of these motions (except Reconsider) are in order when business is pending.
- (9) Rules of order, 2/3 vote—Standing rules, majority vote.
- (10) Must be proposed before debate has begun or a subsidiary motion is stated by the chair (applied to original main motions).
- (11) The Incidental Motions have no precedence (rank). They are in order when the need arises.
- (12) A Main Motion if made when no business is pending.
- (13) The maker of a motion may withdraw it without permission of the assembly before the motion is stated by the chair.
- (14) The chair can complete a Division of the Assembly (standing vote) without permission of the assembly and any member can demand it.
- (15) Upon a call by a single member, the Orders of the Day must be enforced.
- (16) Has full debate. May go into the merits of the question which is the subject of the proposed action.
- (17) A 2/3 vote in negative needed to prevent consideration of main motion.

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**WHITEFISH CITY COUNCIL**  
**January 21, 2020**  
**7:10 P.M.**

**1) CALL TO ORDER**

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Hennen, Hartman, Sweeney, and Norton. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Dial, Fire Chief Page, Senior Planner Compton-Ring, Planner II Minnich. Approximately 80 people were in the audience.

**2) PLEDGE OF ALLEGIANCE**

Mayor Muhlfeld asked Lin Akey to lead the audience in the Pledge of Allegiance.

**3) COMMUNICATIONS FROM THE PUBLIC** – (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The Mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

None

**4) COMMUNICATIONS FROM VOLUNTEER BOARDS**

None

**5) CONSENT AGENDA**

- a) Minutes from January 6, 2020 Regular Session (p.17)
- b) Ordinance No. 20-01; An Ordinance rezoning approximately 4.47 acres of land located at 1515 Highway 93 West in Section 12, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana from County RR-1 (Low Density Resort Residential) to WRR-1 (Low Density Resort Residential District) and adopting findings with respect to such rezone (WZC 19-05) (Second Reading) (p.30)

Councilor Norton had a correction to page 2, second paragraph, of the minutes, change “Whitefish River and the riparian zone”.

**Councilor Sweeney made a motion, seconded by Councilor Hennen to approve the Consent Agenda as corrected. The motion passed unanimously.**

**6) PUBLIC HEARINGS** (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant’s land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))

- a) Consideration of a request from Central Ave WF for a Conditional Use Permit located at 1013 E 7th Street and 1022 East 8th Street, to develop two 18-unit apartment buildings, zoned WR-4 (High Density Multi-Family Residential District) (WCUP 19-24) **POSTPONED FROM JANUARY 6, 2020 – PUBLIC HEARING REMAINS OPEN** (p.34)  
Renderings page 43 to 50

Planner Compton-Ring reported the applicant submitted an updated revised site plan that is appended to the January 21<sup>st</sup> Council packet on the website. The applicant is going to address the different changes. Staff reviewed the site plan; it meets all the city standards. Staff received the packet late and were still visiting about access onto East 7<sup>th</sup> and East 8<sup>th</sup> Street. Staff is prepared to talk about some ideas with that.

Director Workman stated the figure Planner Compton-Ring has displayed is an updated site plan for the development that pushes the development further to the west. One of the things that they heard from previous comments is that turning the alley into a one-way northbound is not preferred. This concept would combine the alley and the ingress egress of the parking lot for the proposed development and combine those into one intersection at 7<sup>th</sup> & 8<sup>th</sup>. The Christian Academy has an approved Conditional Use Permit that requires them to improve the eastern portion of East 8<sup>th</sup> Street. This will provide an improved two-way street on East 8<sup>th</sup> Street all the way between Park Avenue and Ashar Avenue. Creating this grid with two-way traffic on 8<sup>th</sup> Street will help to improve traffic congestion.

Councilor Qunell asked and Director Workman said the city has sufficient right-of-way adjacent to the Christian Academy to make improvements. If the Christian Academy doesn't move forward with the approved CUP, they will likely have to come back for another. If it doesn't involve the same type of design and structural improvements that condition may disappear. There is currently sufficient right of way to improve that roadway.

Mayor Muhlfeld opened the Public Hearing.

Aaron Wallace, 265 Hawks Lake Lane, MT Creative, stated they made changes based on the comments they heard. They removed the clubhouse and the hot tub from the project; they adjusted the layout of the parking area, which allowed to put the bollard style lighting between the sidewalks and the building; adjusted the trash enclosure with a roof at 10 feet; adjusted the roof layouts, dimensions and sizing to drop down to maximum height of 31.4 feet; adjusted the internal layout so only one bedroom is on the west side on the second floor; added a berm between the alleyway and the drive aisle; increased the fence to six feet; and increases the number of Conifers and Douglas-firs. The applicant supports conjoining the two drive lanes. They support this project and want to do this project.

Councilor Norton asked and Director Workman stated with this Conditional Use Permit, the Council has the ability to place conditions on the project. One of those conditions is the 30 feet right of way to make E. 8<sup>th</sup> Street a two-way road. If the CUP is not approved, Council would not have the ability to condition the project.

Bruce Tate, 1800 West Lakeshore Drive, has two big concerns; this project is too big and too much. The traffic paralyzes him. The size of this complex will have a negative impact on the whole zone. He hopes the developer can reconsider.

Pete Seigmund, 735 Somers Avenue, reviewed the conditions of approval for a conditional use permit. What is currently allowed is seven units. That is the higher density which is about double the density of the neighborhood west of this project. The criteria required for consideration of a conditional use permit may be granted only if the proposal substantially conforms to all of the following criteria; #6 neighborhood community impact; #7 neighborhood community compatibility; #7(k) the burden of proof that it meets all the conditions is on the applicant. A denial is not denying him any right that exists. There is a huge difference between 36 units and 14 units.

Tony Veseth, 1014 8<sup>th</sup> Street, stated this project will drastically affect the neighborhood, quality of life and property values. The neighborhood is asking the developer to follow the zoning, 14 single-family homes with yards would be more appealing and not a strain on the surrounding property values. The community requests the City of Whitefish deny this CUP proposal.

Josh Smith, 1012 8<sup>th</sup> Street East, appreciates the changes that were made. The biggest change that was needed is the total density of the project. The kids that are walking these streets are the elementary kids, they are the most vulnerable of the kids walking to school.

Christina Larsen, 725 Somers Avenue, stated this plan is wrong for this neighborhood. It is wrong by the criteria set forth in the Growth Policy and in the code. She has concerns of the transportation problems. The project is incompatible with the neighborhood. The 14 units won't threaten the small town feel that we already have, the 36 units will. The current zoning is inconsistent with the existing neighborhood. The neighbors are asking not to increase to 36 units.

Holly Huntsberger, 574 Somers Avenue, reiterated the topics of concern. The immediate surroundings of the proposed project; there is a church, two preschools, the Whitefish Community School, the Whitefish Christian Academy, five single-family homes, residential housing, townhomes, and the Whitefish Alternative School turned apartments. Whitefish has a growth and infrastructure issue.

Brian Joos, 711 Park Avenue, read from the city code "A conditional use permit may be granted only if the proposal substantially conforms to all of the following criteria standards". His letter included in the packet goes through how this project does not comply with 14 of those 32 criteria. This project is too big, and too dense. It is in a traffic stressed and safety stressed corridor. The infrastructure is a burden beyond what it can handle. The affordable housing study states we need modest single-family homes with garage or storage. This project doesn't meet the requirements outlined by the city code, the community doesn't want it, and it doesn't provide what the community needs in affordable housing. The clear answer is no.

Gloria Nelson, 547 Blanchard Lake Rd, stated change is inevitable in the community. Fourteen units is a huge change already for this community. To grant a conditional use permit for 36 homes, as a Muldown parent is astronomical effect on the traffic situation. Typically, it takes 10 minutes from her home to Muldown. She has to allow 25 minutes in the morning if she leaves at 8:05. If she leaves after 8:05, it is 35 minutes. Kids are tardy for school because they can't get there. This is the impact when adding possible 70 extra cars to this congested area.

Greg Loberg, 707 Park Avenue, appreciates the developer's changes. He sympathizes with the parents dropping their kids off at school. He lives in a single-family dwelling on the west side of the alley between 7<sup>th</sup> St and 8<sup>th</sup> St. Even with 14 houses, that is triple the amount of living space on the east side as compared to the west side. That is quite a bit of leap even without the 36 units.

Darcy Davidson, 5<sup>th</sup> Street and Columbia Avenue, works at the Montessori School. Her main concern is the density as well as the traffic. It is already a high-density traffic situation; she feels like she can't let her twelve-year-old cross the street without standing on the porch and double checking. She chooses to go to work early so she doesn't have to deal with the traffic.

John Fleming, 622 Park Avenue, stated the traffic and the speed is bad. His suggestion would be to improve 6<sup>th</sup> Street with sidewalks. All the roads going to the schools should be a priority before adding more population to the area. The most important street going to the school doesn't have anything to slow the traffic. Take care of infrastructure before allowing more density.

Marie Fleming, 622 Park Avenue, stated it is not just the speeding or traffic during school, it's all the time. Seventh Street is the only way people go home to Cow Creek, Ashar Apartments, or anywhere behind the High School. There is not one stop sign on that street.

Leo Keane, 514 Pine Place, is concerned about the direction Whitefish is going. For those who live here the quality of life is rapidly eroding. We have reached the limits to growth. The town does have a carrying capacity. It is getting to be a big city with big city problems packed into a little community. Slow down the growth. Think of the longer term.

Steve Sullivan, 1637 2<sup>nd</sup> Street, a few years ago his neighborhood faced a similar situation about an apartment proposed complex on 2<sup>nd</sup> Street. As a neighborhood they spoke up against the proposed project. They were able to convince the developer it wasn't a good idea. The proposal was withdrawn and has been developed as it should have been. There should be some consistency of what is built in this town and following that model. They should stick with the existing zoning.

Camisha Sawtelle, 239 Somers Avenue, strongly encourages the Council deny this CUP. This is too much for this proposed space.

Christine Rossi, 1020 Creek View Drive, strongly echoes public concerns. The area is currently dangerously congested during school drop off, pickup and during special events. There is a lot of traffic and parking issues. She is worried about safety. When school is not in session there is a significant number of pedestrians, kids and families on bikes. Neighbors are worried with the addition of Trail View and this project. She encourages Council to look at the safety of the kids and families in those areas.

Susan Wheeler, 325 4<sup>th</sup> Street East, Columbia Falls, as a young professional and someone who originally moved to Whitefish and fell in love with the community and wanted to continue to live here, was eventually priced out. She now lives in Columbia Falls. She would love for this to be single-family affordable houses, but the truth is there is very little incentive for developers to do any affordable housing. Everyone wants to live here. This is a small step in the right direction.

Danielle Ruther, 447 Karrow Avenue, is afraid to allow her young children walk around that neighborhood because the traffic is so bad. Affordable housing would be great, she is a single parent with three kids. Who would want to live in that type of environment with children? We need to be careful what we bring into Whitefish, because it doesn't always end well.

Carrie Lamb, 415 Columbia Avenue, walks her children to school. She thinks about when they are old enough to go on their own, what route would they take? In the summertime they use this route for the Wave Summer Camp. They take up to 20 kids out on bikes and she is always thinking of the safest way through town. She would hate to see this change.

Sarah Thorman, 709 Park Avenue, addressed the affordable housing. There are only seven units that are affordable the other units are very much unaffordable housing. She doesn't know of anybody who can afford this complex. There is not going to be a lot of families moving into this. There will be roomies.

Which adds to the traffic. This is a hive where people will hide. There are six different institutions for our most vulnerable population in Whitefish; the children, the elderly and the disabled. This environment is not conducive to community activity. That scares her.

Rob Akey, 839 E 8<sup>th</sup> Street, stated the Legacy Homes Program is wrong. It has led a developer down a path that obviously the community doesn't want. He states they were kept out of the Legacy Homes Program development and this is the result. The developers are watching this project. The lack of public input that occurred in the drafting of that proposal is happening now. He hopes Council will vote to deny this project.

Bill Goldberg, 1240 Birchpoint Drive, he has been watching this project and looking at what other potential developments could come into the area with the affordable housing being the key line each time. If you go with all of the incentives this could be built with 64 units. The public doesn't understand all of the dialogue that happened and what was laid out as an incentive program for developers to acquire the additional density. More and more of these types of projects are going to come down the pike. To meet the inclusionary program and incentives it does target the higher density.

Cory Utterback, 802 Columbia Avenue, stated he just went through a similar process to build a garage apartment. They are zoned for a single unit dwelling and went through the steps. He is wondering if they had asked to have a couple of more units in their backyard, how that would have gone. It would have been no because of the impact of the neighborhood. It is a matter of what the area is zoned for at this point in time. The majority of the Whitefish community is against this because of the impact it is going to have.

Laurel Grady, 520 Columbia Avenue, echoes the objections, and the project density. Change may be inevitable but change for the sake of change or for the sake of profit does not have to be inevitable.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated she thinks it is important to the community that we grapple with the affordable housing issue. In the plan that is adopted there are over 30 tools to achieve that eventually. It is going to take a little bit of everything to get there. This project has been brought to the Council as the poster child for the whole program. This is a non-affordable housing project of 29 units, that is required by the new regulations to include seven affordable units. The neighborhood character which is required to be compatible by the Growth Policy is a super essential fact. We need smaller modest single-family for purchase homes. This property can accommodate 14. This does not meet many of the criteria for approval.

Amy Boring, 46 Hidden Cedar Loop, Columbia Falls, she would no want to live in the proposed project. She would like a house.

Dana, 440 Columbia Avenue, has three kids and her husband works hard to be able to afford to live in Whitefish. They cannot afford to live here and buy a home. Whitefish is a huge beautiful place to live and people want to live here. Prices are always going to go up as long as it stays beautiful. The proposed project does not make her want to live here.

Cheryl Wilder, 209 Colorado Avenue, is a recipient of the Whitefish Housing Authority and owns her house. It is affordable housing, there is nothing wrong with affordable housing. We need more people who are for affordable housing and be able to have people stay in Whitefish, work in Whitefish and be able to enjoy the community.

Dean LiHou, 845 Park Avenue, addressed turnover with these units. He works in real estate and typical homeownership is 5 to 7 years even on the low end. Apartment turnover is typically 1 to 2 years. Condos would allow for investing in the neighborhood. That is what Whitefish needs.

There being no further public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for their consideration.

Mayor Muhlfeld called a recess at 8:44 and reconvened at 8:53p.m.

Councilor Qunell asked and Director Workman stated the city doesn't use speedbumps for a variety of reasons; often time speed bumps create additional speed in between bumps; slow down emergency vehicles in their response; and they create detriment to underlying utilities. Seventh Street acts as an arterial or collector street. That is why it doesn't have four-way stops along 7<sup>th</sup> Street between Columbia Avenue and Pine Avenue. There could be a reduced speed limit with additional speed limit signs and heads-up displays. Councilor Qunell asked and Director Taylor stated if this is denied they would be required to have a building permit and they can build 7 units per lot. There would be no requirement for affordable housing. Councilor Qunell asked and Planner Compton-Ring stated according to the PUD (Planned Unit Development) Chapter, without any sort of density bonuses, they could do 38 dwelling units per acre which is 63 units on this lot. Director Taylor stated we reduced it down to 7 units as a use by right and then up to 18 units as an Administrative Conditional Use Permit.

**Councilor Norton made a motion, seconded by Councilor Qunell to deny WCUP 19-24.** Councilor Norton stated she called the principal of the High School to see if there were situations that could improve the traffic. She is not going to vote for this project with this much public opposition. The developer did listen to the problems and tried to mitigate the massing and the scale.

Councilor Qunell stated this is an important project. It is the first bite at inclusionary zoning. We want people to walk in Whitefish, that fits in with our sustainability plan. Having WR-4 near school and close to town is where we want big dense projects. Cost of an apartment at market rate is much more affordable than single-family homes at market rate. We will never get to our affordable housing goals by building a bunch of single-family homes. What we get by right here, we get no affordable housing. He lives in a neighborhood zoned WR-2, similar things could happen in his neighborhood. The developer mentioned there is no magic in the number 36. That is the magic number whereby the developer can get an Administrative CUP. In this place, 36 additional apartments are too dense. He will not vote to support this project.

Councilor Feury apologized for not being at the first Public Hearing and thanked Council for keeping the Public Hearing Open. He will support Councilor Norton's motion to deny. A comments was made "there should not be this much debate". It is the Legacy Homes Program that allowed this debate to happen. He has some concerns other developers are looking at this project and turn away from development. It is the tale of two neighborhoods there. What would have been better was something that transitioned into the neighborhood. He can't support it. He agrees with Councilor Qunell we can't do affordable housing without density.

Councilor Hartman stated this is a difficult decision to have to make. The growth has exploded in this town and it has caused traffic issues. Some good things have come with growth. People talked about single family homes; people do have a desire for apartment living. It is not realistic and wouldn't be

affordable to provide single family homes. This is how we chip away at the issue of affordable housing. She doesn't see a great discrepancy in the character. She enjoys that the neighborhood is diverse. It seems we have already maxed out what the neighborhood can handle for traffic. Would this project be the tipping point?

Councilor Sweeney stated he will support Councilor Norton's motion. There is going to be some increased density in this neighborhood. This is a development with some affordable housing. We all need to keep in mind, that was the whole design behind the inclusionary zoning. We did not want to have reservations of areas where it was only affordable housing. It would not be good for this community, and it is not what the community wanted. He thinks anything that goes in there is going to be a significant change from what is in the surrounding neighborhoods. We ought to thank the inclusionary zoning program for allowing this kind of a discussion. He hopes the community continues to support that.

Councilor Hennen agrees with his co-council. He finds it distracting when people in the crowd are making comments or snickering or vocally disagreeing. The Mayor shouldn't have to tell people to be kind to one another. He encourages everyone to listen to your neighbors, listen to what everyone else has to say, you may disagree but at the end of the day we all live in Whitefish. We are all apart of the same community, he guarantees we all have each other's best interest at heart.

**The motion passed unanimously to deny WCUP 19-24 on the grounds of Findings of Fact, Criteria #1, Growth Policy Compliance; #2, Transportation; #4, Quality and Functionality; #5, Adequacy of Public Services including neighborhood impact; and #7, Neighborhood and Community Compatibility. Attorney Jacobs will provide a Resolution for the Consent Agenda on February 3<sup>rd</sup> agenda.**

- b) **Consideration of a request from Eagle Enterprise LLC, for a Conditional Use Permit to expand Don K service center located at 6219 Highway 93 South, Zoned WB-2 (Secondary Business District (WCUP 19-22) (p.295)**

Planner II Bailey Minnich gave her staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing.

Greg Schafer, Don K, 6219 Hwy 93 South, stated the addition is to provide more available work stalls for their current employees, additional oil storage, and storage for special tools. The canopy expansion is to provide the current employees additional space to work outside if it is raining or snowing to pre-deliver cars. They have the ability to move inventory to the property across Hwy 93 S. to make room for employee parking and customer parking.

There being no further public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for their consideration.

**Councilor Feury made a motion, seconded by Councilor Sweeney to approve WCUP 19-22, the Findings of Fact in the staff report and the eleven conditions of approval, as recommended by the Whitefish Planning Board on December 19, 2019. The motion passed unanimously.**

- c) **Consideration of a request from Mark Fennessy for a Conditional Use Permit located at 1460 Barkley Lane, to convert the existing residential structure into a guesthouse to**

**facilitate the construction of a new single-family dwelling, Zoned WR-1 (One-Family Residential District) (WCUP 19-23) (p.327)**

Planner II Bailey Minnich gave her staff report that is provided in the packet on the website. One comment was received in support of the project.

Mayor Muhlfeld opened the Public Hearing, there being no public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for consideration.

**Councilor Hennen made a motion, seconded by Councilor Sweeney to approve WCUP 19-23, the Findings of Fact in the staff report and the seven conditions of approval as recommended by the Whitefish Planning Board on December 19, 2019. The motion passed unanimously.**

**Mayor Muhlfeld moved agenda item 8a)**

**8) COMMUNICATIONS FROM CITY ATTORNEY**

- a) **Resolution No. 20-01; A Resolution accepting fee ownership of the Whitefish Trail corridor in Haskill Basin and approving the Right-of-Way Deed (p.368)**

City Attorney Jacobs gave her staff report that is provide in the packet on the website.

**Councilor Sweeney made a motion, seconded by Councilor Hartman to approve Resolution No. 20-01; A Resolution accepting fee ownership of the Whitefish Trail corridor in Haskill Basin and approving the Right-of-Way Deed. The motion passed unanimously.**

**7) COMMUNICATIONS FROM PUBLIC WORKS DIRECTOR**

- a) **Consideration of State Park Road Approval of Design and Authorization to bid Phase II (p.355)**
  - i) **Resolution No. 20-02; A Resolution indicating its intent to abandon the intersection of Lake Park Lane and State Park Road, and rename the remnant State Park Road north of the intersection**

Public Works Director Craig Workman gave his staff report that is provided in the packet on the website.

**Councilor Qunell made a motion, seconded by Councilor Hennen to approve the design and authorize to solicit bids for Phase 2 of the State Park Road Reconstruction Project and approve Resolution No. 20-02; A Resolution indicating its intent to abandon the intersection of Lake Park Lane and State Park Road, and rename the remnant State Park Road north of the intersection to “Patton Lane”. The motion passed unanimously.**

**8) COMMUNICATIONS FROM CITY ATTORNEY**

- b) **Ordinance No. 20-02; An Ordinance amending Chapter 10, Architectural Review Committee, of Title 2 of the Whitefish City Code to change its membership qualifications (First Reading) (p.390)**

City Attorney Jacobs gave her staff report that is provided in the packet on the website.

**Councilor Sweeney made a motion, seconded by Councilor Hartman to approve [Ordinance No. 20-02](#); An Ordinance amending Chapter 10, Architectural Review Committee, of Title 2 of the Whitefish City Code to change its membership qualifications (First Reading). The motion passed unanimously.**

**9) COMMUNICATIONS FROM CITY MANAGER**

- a) [Written report](#) enclosed with the packet. Questions from Mayor or Council? (p.393)

None

- b) **Other items arising between January 15th through January 21st**

City Manager Smith reported there will be litigation update for the February 3<sup>rd</sup> work session. She also stated with the discussions earlier during the first Public Hearing regarding Muldown and in the area where the traffic is a concern, she wanted to let the Council know and the public know, that is our highest patrolled area in the city. While there are people that do speed and we cannot catch them all. Our Police Department does their best to enforce the laws there. She also, as Rebecca mentioned, thinks it would be a great idea to talk to the schools and see what type of plans they might have to further help with congestion there. We as a city are really landlocked in that area. It is the school that is driving that traffic congestion during those two times where cars become a standstill. She mentioned to Rebecca she would like to be involved with those discussions as well.

Finally, interviews will be held for the Finance Director on January 30th.

**10) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS**

- a) [Mayoral appointment](#) of Scott Freudenberger as Flathead County designee to Whitefish Planning Board (p.395)

**Mayor Muhlfeld with unanimous ratification from Council, confirmed the appointment of Scott Freudenberger to the Planning Board as a County appointed member.**

Council Comments

Councilor Qunell stated it is refreshing to see the public input tonight. The inclusionary zoning is something we will be constantly working on.

Councilor Feury welcomed Councilors Qunell and Norton. He mentioned Ed Leiser sent him a letter from DEQ, regarding septic leachate. Under state law as a community we have the right to file suit against Lion Mountain based on their non source point pollution into the lake from their septic tanks. He would like to put that as an agenda item in the future for consideration.

Councilor Norton reported she talked with the Principle and he gave her references to talk to. They also are looking at increasing busing within the city. She had an idea to include the High School AP Statistics class do a research study. She looked at the affordable housing projects and feels we do need to look at whether or not our projections are going to work or are actually realistic based on poverty levels and real-life people.

Mayor Muhlfeld replied the Strategic Housing Committee recognizes the housing needs assessment is four years old and will be talking about those same concerns more at their committee level. He will continue to keep the Council updated on that.

Chief Dial reported the 9-1-1 Administrative Board has forwarded a recommendation from the Funding Committee to the Commissioners to put the 9-1-1 Funding recommendation on the November 3, 2020 ballot. Manager Smith has been involved with the development of that plan and will forward the draft resolution to the Council.

11) **ADJOURNMENT** (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Mayor Muhlfeld adjourned the meeting at 10:16 p.m.

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Mayor Muhlfeld

Attest:

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Michelle Howke, Whitefish City Clerk

**ORDINANCE NO. 20-02**

**An Ordinance of the City Council of the City of Whitefish, Montana, amending Chapter 10, Architectural Review Committee, of Title 2 of the Whitefish City Code to change its membership qualifications.**

WHEREAS, the City established the Architectural Review Committee in 2003 through Ordinance No. 03-26; and

WHEREAS, Ordinance No. 03-26 is codified in Chapter 10, Title 2 of the Whitefish City Code; and

WHEREAS, § 2-10-3-A of the Whitefish City Code requires that all seven members of the Architectural Review Committee either reside within the corporate limits of the City, are employed or own a business in the City, or own property in the City; and

WHEREAS, § 2-10-3-A of the Whitefish City Code requires that two members of the Architectural Review Committee be licensed architects and one member be a licensed design professional; and

WHEREAS, the City has experienced considerable difficulty finding architects and design professionals to serve on the Architectural Review Committee because of the requirement that members must either reside within the corporate limits of the City, be employed or own a business in the City, or own property in the City; and

WHEREAS, it is in the best interests of the City and its inhabitants to amend § 2-10-3-A of the Whitefish City Code to allow licensed architects and design professionals who reside, are employed, or own a business or property in the 59937 zip code to be members of the Architectural Review Committee.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: All of the recitals set forth above are hereby adopted as Findings of Fact.

Section 2: Whitefish City Code Section 2-10-3-A is hereby amended in its entirety to provide as follows:

2-10-3-A: Appointment; Compensation: The committee shall have seven (7) members who either reside within the corporate limits of the city of Whitefish, are employed or own a business in the city of Whitefish, or own property in the city of Whitefish. Members shall be appointed by the city council. Two (2) of the committee members shall be Montana licensed architects and one of the members shall be a licensed design professional (i.e., either architect, engineer or landscape architect). If, within the discretion of the city council, less than two (2) licensed architects or one licensed design professional, as described above, is identified after publication of a notice of position vacancy, the city council may make an

appointment of an individual that is not a licensed architect or licensed design professional, or is a licensed architect or design professional who resides, is employed, or owns a business or property in the 59937 zip code. No member of the committee shall concurrently serve on the Whitefish city council, the Whitefish planning board or the Whitefish board of adjustment. No member of the committee with any interest in a project may sit in review of that project, or attempt to influence other members of the committee other than through the normal application and public meeting process. Committee members shall receive no compensation.

Section 3: All other provisions of Title 2, Chapter 10, shall remain unmodified.

Section 4: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

\_\_\_\_\_  
John M. Muhlfeld, Mayor

ATTEST:

\_\_\_\_\_  
Michelle Howke, City Clerk

**RESOLUTION NO. 20-\_\_\_**

**A Resolution of the City Council of the City of Whitefish, Montana, denying a conditional use permit to develop two 18-unit apartment buildings at 1013 East 7th Street and 1022 East 8th Street (WCUP 19-24).**

WHEREAS, Central Avenue WF applied for a Conditional Use Permit ("CUP") to develop two 18-unit apartment buildings at 1013 East 7th Street and 1022 East 8th Street; and

WHEREAS, §§ 11-2I-3 and 11-7-8M(2) of the City Code required the applicant obtain a CUP for the proposed project; and

WHEREAS, the Whitefish Planning and Building Department prepared Staff Report WCUP 19-24, dated December 12, 2019, which recommended approval of the CUP application subject to eight conditions; and

WHEREAS, at a lawfully noticed public hearing on December 19, 2019, the Whitefish Planning Board received an oral report from Planning staff, reviewed Staff Report WCUP 19-24, invited public comment, and thereafter forwarded the CUP application to the Whitefish City Council with no recommendation; and

WHEREAS, at a lawfully noticed public hearing on January 6, 2020, the Whitefish City Council received an oral report from Planning staff, reviewed Staff Report WCUP 19-24, and invited public comment; and

WHEREAS, the City Council voted (four to one) to postpone a decision on whether to approve the CUP until its January 21, 2020, meeting but left the public hearing open; and

WHEREAS, at a lawfully notice public hearing on January 21, 2020, the Whitefish City Council received an oral report from Planning staff regarding updates to the CUP application, reviewed such updates, and invited public comment; and

WHEREAS, § 11-7-8K of the City Code provides that "[t]he granting of a conditional use permit is a matter of grace, resting in the discretion of the City Council and a refusal is not a denial of a right, conditional or otherwise;" and

WHEREAS, § 11-7-8L of the City Code requires every decision of the City Council pertaining to the granting, denial, or amendment of an application for a CUP be based upon findings of fact.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: In further support of its denial of the WCUP 19-24, the City Council adopts the recitals set forth above, and the following Findings of Fact as set forth in Staff Report WCUP 19-24 and the City Council meeting held January 21, 2020:

- a) The proposed CUP complies with the Growth Policy because the property is zoned WR-4, it is an infill project, and it is providing affordable rental units.

- b) The proposed CUP complies with the City's zoning regulations because all the zoning standards are being met or will be met with the conditions of approval.
- c) The site is suitable for the proposed use because there is adequate usable land area, the existing access will meet emergency standards, and there are no significant environmental constraints.
- d) The site plan for the proposed development has not effectively dealt with relevant design issues. There is significant traffic near the project due to its proximity to Muldown Elementary School, Whitefish High School, Whitefish Christian Academy and two daycare facilities. The proposed 36 apartment units would contribute to the heavy traffic.
- e) Public services and facilities are available and adequate because municipal water and sewer serve the project, response times for police and fire are not anticipated to be affected due to the proposed development, the property will have adequate access off public streets, and East 8th Street will be upgraded to meet current standards.
- f) The proposed development may have a detrimental effect on the neighborhood and the community in general because of an increase in traffic in an already congested location near various schools and daycares, parking spillover into residential areas, and light/noise pollution.
- g) The proposed development is not compatible with the surrounding neighborhood because the structural bulk, mass, and scale of the apartment buildings are different than that of nearby homes and buildings, the development is directly adjacent to single-family homes, the development will increase the density of the neighborhood, and the development will alter the character of the neighborhood.

Section 2: The City Council hereby denies approval of the Application for Conditional Use Permit.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

\_\_\_\_\_  
John M. Muhlfeld, Mayor

ATTEST:

\_\_\_\_\_  
Michelle Howke, City Clerk

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**City of Whitefish**  
**Department of Public Works**  
418 E. 2<sup>nd</sup> St., PO Box 158  
Whitefish, MT 59937  
(406) 863-2460 Fax (406) 863-2419

January 28, 2020

Mayor Muhlfeld and City Councilors  
City of Whitefish  
Whitefish, Montana

**Approval of the Rating & Selection Panels for the  
2020 Transportation Plan Update**

**Introduction/History**

The 2009 Whitefish Transportation Plan projected future transportation improvements out to the year 2030. It has become apparent that parts of the City's transportation system are over capacity during the peak season and alternative routes of travel and modes of transportation are needed and an update to the 2009 Transportation Plan is needed to assist city staff in coordinating proposed projects with the planned future transportation grid. Thus, Council Goal PW 20-09 was created to update the City's Transportation Plan.

**Current Report**

This planning process will engage the public in identifying and evaluating transportation conditions and alternative modes within Whitefish such as biking, walking and public transit. The plan will also evaluate projects to complete the network and fill the needs of various types of users. The ultimate outcome is the adoption of a Transportation Plan Update that will prioritize goals and objectives to improve transportation into the future and provide a practical set of policies and ranked tasks to achieve those objectives.

An RFP was issued for the plan and proposals were due on January 10, 2020. The City received two proposals – one from Robert, Peccia, and Assoc. and the other from KLJ.

**Financial**

The FY20 Budget includes \$50,000 for the update to the transportation plan. Since the City is currently engaged in several other planning efforts with significant transportation components, it is anticipated that this project may carry over into FY21. The FY20 budget will be used to engage a consultant, evaluate the level of effort necessary to update the plan, and determine if additional budget allocation is necessary.



**Recommendation**

In 1990, the City Council adopted a policy for Selection of Consultants. This policy was amended and updated in 2016. In accordance with this policy, a consultant *Rating Panel* made up of City staff, and other individuals approved by the City Council, will review the consultant proposals. It is recommended that Council appoint Craig Workman and Karin Hilding to serve on the *Rating Panel* for the 2020 Transportation Plan Update RFP.

In addition, the policy requires that a *Selection Panel* be established to make the final selection in accord with the City's selection criteria. The *Selection Committee* must be comprised of the Department Director, one other staff person, and one elected official. It is recommended that Council appoint Craig Workman, Karin Hilding, and one council member to serve on the *Selection Panel* for the 2020 Transportation Plan Update

Sincerely,

A handwritten signature in black ink that reads "Craig Workman".

Craig Workman, P.E.  
Director of Public Works

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January 23, 2020

Mayor Muhlfeld and City Councilors  
City of Whitefish  
Whitefish, Montana

## **Recommendation to Appoint Members to the Rating Panel and Selection Committee for the Irrigation and Landscape Design RFP Process**

### **Introduction/History**

The Whitefish Parks and Recreation Department maintains and repairs publicly owned irrigation systems in parks, rights-of-way, and other public property, making the City the largest user of water within the city. The Parks and Recreation Department has worked to upgrade irrigation systems as opportunities arise.

Historically, potable water has been used to irrigate the City's rights-of-way and open spaces during the dry season; however, an annual increase of commercial and residential water use in the summer season combined with hotter and drier summers has prompted the Parks and Recreation Department to evaluate their irrigation efficiencies. As the City is the greatest user of water for irrigation in the city, it is our goal to lessen the amount of treated water used for irrigation. As well, many the City's irrigation systems are antiquated, thereby contributing to the waste of treated water.

Furthermore, many of the City's rights-of way and open spaces have been landscaped with non-native plants and grasses requiring continued irrigation. As it is the City's goal to lessen the use of treated water for irrigation of vegetation, the Parks and Recreation Department is seeking a plan to incorporate more native plants and grass into public landscapes.

### **Current Report**

In accordance with Title 18, Chapter 8 (MCA) and adopted City policy for consultant selection, The City of Whitefish, Montana (City) is seeking proposals from experienced, qualified firms to conduct a comprehensive irrigation system audit of the City's irrigation systems and provide a comprehensive irrigation and vegetation plan for the introduction and implementation of drought-tolerant, native landscaping in appropriate rights-of-way and open spaces. Proposals are due by Friday, February 21, 2020. The project will consist of two phases:

1. Phase I of the project will consist of a thorough analysis and assessment of existing conditions and preparation of a report detailing the findings and recommendations. This portion of the project shall take place in the Spring of 2020. A firm specializing in irrigation system efficiencies shall conduct audits to identify needed irrigation system repairs, make recommendations for outdoor water use efficiency improvements (to include recommendations for irrigation timer adjustments).

2. Phase II will consist of designing an irrigation and planting plan with specifications based on the findings of Phase I and preparing a detailed cost estimate for future implementation. The design plan will identify options to correct irrigation inefficiencies by either elimination, adjustment, retrofitting, or upgrading of antiquated systems and landscapes through an approved irrigation and planting plan. The selected firm will be required to present findings to the City during public meetings.

In accordance with the adopted City of Whitefish Consultant Selection Policy and Procedures the initial review of the proposals must be reviewed by a Rating Panel made up of City staff and other individuals approved by the City Council. Upon final review a Selection Committee must be established, comprised of the Department Director, one other staff person, and one elected official. Given the requirements, I recommend that the Rating Panel and Selection Committee be made up of myself (Director of Parks and Recreation), Steve Bullemer (Parks Foreman), and a City Council Member.

### **Financial Requirement**

There is no financial requirement to appoint members to the rating panel and selection committee. However, TIF Funds have been allocated for negotiating a contract with the successful firm once the RFP process is complete, which will come back to Council at that time.

### **Recommendation**

I respectfully recommend that the City Council appoint myself (Parks and Recreation Director), Steve Bullemer (Parks Foreman), and a Councilor of your choice to the Rating Panel and Selection Committee for the Irrigation and Landscape Design RFP process.

Sincerely,  
Maria Butts  
Parks, Recreation, and Community Services Director

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## RESOLUTION NO. 20-\_\_\_

### **A Resolution of the City Council of the City of Whitefish, Montana, establishing the Parking Permit Implementation Committee.**

BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: There is hereby established the Employee Parking Permit Implementation Committee (the "Committee").

Section 2: Members of the Committee shall be appointed by the Mayor with the consent of the City Council. Appointments shall be made by a simple majority of the City Council in attendance at a special or regular session. Committee members shall receive no compensation.

Section 3: The general purpose of the Committee will be to provide suggestions and feedback with respect to a pilot employee parking permit program proposed by City staff to debut in 2020, to consider modifications and expansions to future versions of the program, and to evaluate a potential residential parking permit program in light of the effects of the employee pilot program.

Section 4: The Committee will consist of eight (8) or nine (9) individuals with representation as follows: One (1) daytime (8:00 a.m. to 3:00 p.m.) employee of a retail establishment, bar, restaurant, professional office, or hotel/lodging establishment located in the Pilot Parking Permit Area identified in Exhibit A; One (1) nighttime (3:00 p.m. to 8:00 p.m.) employee of a retail establishment, bar, restaurant, professional office, or hotel/lodging establishment located in the Pilot Parking Permit Area; One (1) or Two (2) Owner(s) or Manager(s) of a retail establishment, bar, restaurant, professional office, or hotel/lodging establishment located in the Pilot Parking Permit Area; One (1) representative of the Whitefish School District; One (1) member residing in the Pilot Parking Permit Area; One (1) member-at-large residing within City limits; and Two (2) City staff members.

The Committee members shall select a Chairperson and a Vice-Chairperson from the members of the Committee. The Committee shall appoint one member as Secretary of the Committee, who shall keep minutes of all meetings and submit them to the City Clerk. A majority of the members shall constitute a quorum. The Committee shall meet as often as necessary to accomplish its general purpose, as described above. The Committee shall cease to exist as provided in Section 5.

Section 5: The Committee will begin its deliberations as soon as practical after its creation and shall meet as often as needed to accomplish its objectives. The Committee shall be disbanded within one (1) year of its creation, unless extended by Resolution of the City Council.

Section 6: A member of the Committee may be removed by the City Council, after a hearing for misconduct or nonperformance of duty. Absences from three (3) consecutive meetings, including regular and special work sessions, or absences from more than fifty percent (50%) of such meetings held during the calendar year shall constitute grounds for removal. The circumstances of the absences shall be considered by the City Council prior to removal. Any

person who knows in advance of his or her inability to attend a specific meeting shall notify the Chairperson of the Committee at least twenty-four (24) hours prior to any scheduled meeting.

Section 7: Any vacancy occurring on the Committee will be filled in the same manner that the initial position was filled.

Section 8: The Committee will not have authority to make any expenditure on behalf of the City or disburse any funds provided by the City or to obligate the City for any funds.

Section 9: The Committee will have no authority to direct City staff with respect to any matter, but may request information and assistance from City staff.

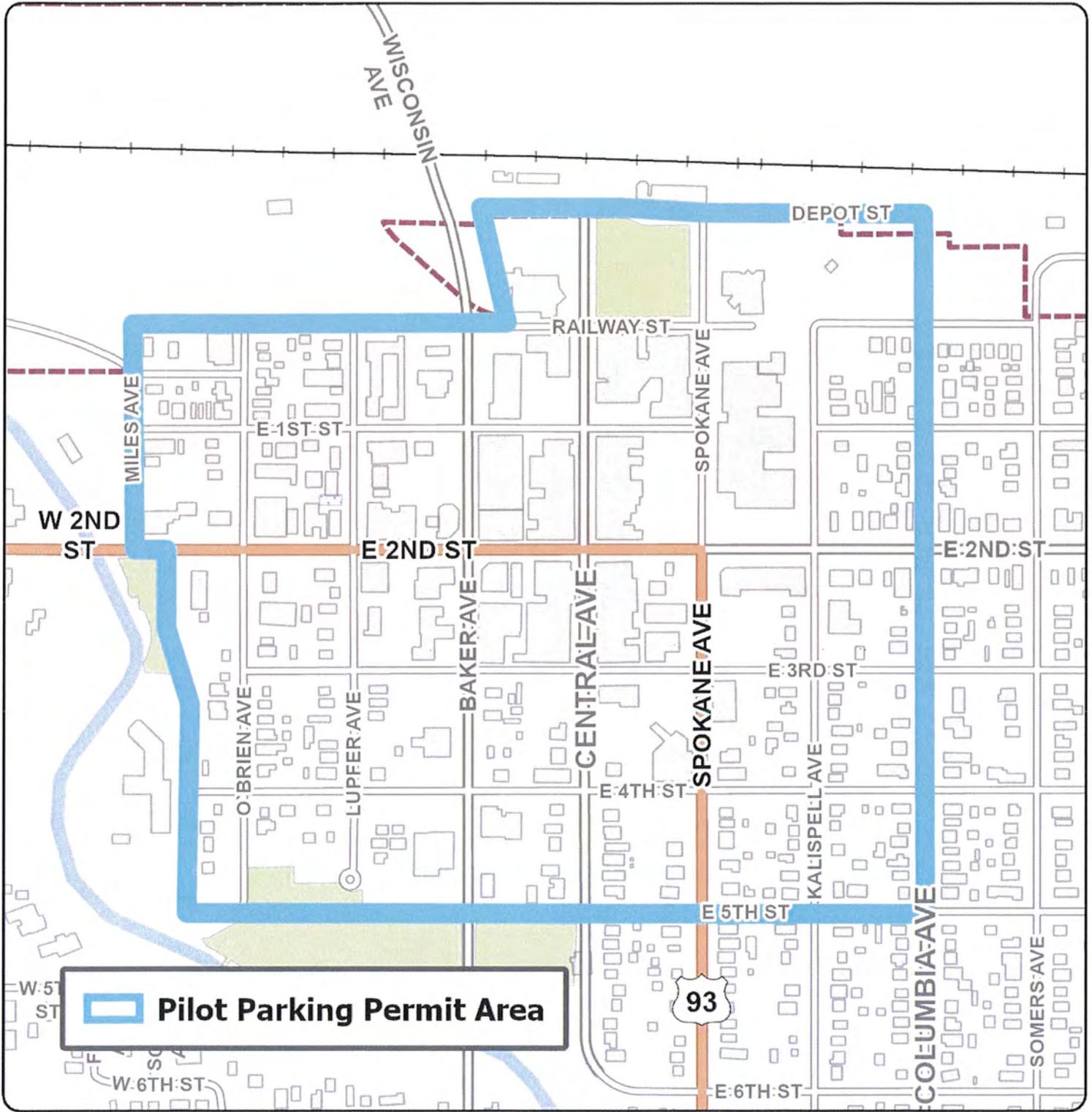
Section 10: This Resolution will take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

\_\_\_\_\_  
John M. Muhlfeld, Mayor

ATTEST:

\_\_\_\_\_  
Michelle Howke, City Clerk





January 27, 2020

Mayor Muhlfield and City Councilors  
City of Whitefish  
Whitefish, Montana

Mayor Muhlfield and City Councilors

**Recommendation to Approve Resolution establishing the Parking Permit Implementation Committee**

Introduction/History

The City of Whitefish recognized the need to improve and add parking in the downtown area. In 2019 Dixon Resources Unlimited was retained to develop a parking management plan. After extensive community engagement, City Council adopted the Whitefish Parking Management Plan in October 2019.

Current Report

As part of the Parking Demand Management, a Parking Permit Implementation Committee will provide suggestions and feedback with respect to a pilot employee parking permit program. The Committee will consider modifications and expansion to future versions of the program and evaluate potential residential parking permit programs. The Committee will consist of stakeholders in the retail establishment, bar, restaurant, professional office, or hotel/lodging establishments in the Parking Study Area; representative of the Whitefish School District; and members residing in the Parking Study Area and/or within the City Limits and two city staff members.

Financial Requirement

No additional City costs at this time.

Recommendation

City staff respectfully recommends the City Council, approve Resolution No. 20-\_\_\_; A Resolution establishing the Parking Permit Implementation Committee.

Sincerely,

Michelle Howke  
City Clerk

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**RESOLUTION NO. 20-\_\_\_**

**A Resolution of the City Council of the City of Whitefish, Montana, approving the terms of four Public Recreational Trail Easements over private land for the Whitefish Trail.**

WHEREAS, the Montana Board of State Land Commissioners, Montana Department of Natural Resources and Conservation ("DNRC"), the City of Whitefish, the Whitefish community, and a diverse group of stakeholders, through the Whitefish Trust Lands Advisory Committee, developed an unprecedented partnership to plan, manage, and conserve 13,000 acres of State Trust Land in the Whitefish area; and

WHEREAS, following two years of study and public input, on July 5, 2005, the City of Whitefish adopted the Whitefish Area Trust Lands Neighborhood Plan ("Neighborhood Plan") prepared by the Whitefish Trust Lands Advisory Committee; and

WHEREAS, in 2005, the City of Whitefish and Flathead Gateway Partners, now known as Whitefish Legacy Partners, initiated the Neighborhood Plan's recommendation to establish a recreational trail system to connect various State Trust Land parcels and adjacent public and private parcels to create a trail corridor encircling the greater Whitefish area; and

WHEREAS, in 2006, the DNRC, the City of Whitefish, and other partners developed the Trail Runs Through It Master Plan to guide the development and execution of the conservation, recreation and revenue-generating concepts of the Whitefish Trail; and

WHEREAS, the Whitefish Trail continues to be a community-driven project with the goal of planning, designing, constructing, and maintaining a public trail system encircling the greater Whitefish area; and

WHEREAS, in March of 2017, Whitefish Legacy Partners unveiled its "Close the Loop" campaign which called for approximately 20 miles of new trail to be constructed; and

WHEREAS, Phase III of the "Close the Loop" campaign contemplated approximately four miles of easements over privately-owned property to help connect the Big Mountain Trailhead with the existing Whitefish Trail at Smith Lake and Swift Creek; and

WHEREAS, Whitefish Legacy Partners negotiated three Public Recreational Trail Easements, attached as Exhibit A, with private landowners; and

WHEREAS, it is in the best interests of the City of Whitefish and its inhabitants for the City to approve the terms of the Public Recreational Trail Easements and to accept the easements granted therein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Whitefish, Montana, as follows:

Section 1: The City Council of the City of Whitefish, Montana, hereby approves the terms of the Public Recreational Trail Easements attached hereto as Exhibit A and accepts the easements granted therein.

Section 2: The City Manager is authorized and directed to execute the Public Recreational Trail Easements.

Section 3: This Resolution shall take effect immediately upon its adoption by the City Council and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

\_\_\_\_\_  
John M. Muhlfeld, Mayor

ATTEST:

\_\_\_\_\_  
Michelle Howke, City Clerk

**Return to:  
City of Whitefish  
P.O. Box 158  
Whitefish, MT 59937**

## **PUBLIC RECREATIONAL TRAIL EASEMENT**

The easement deed is hereby granted this \_\_\_ day of \_\_\_\_\_, 2019 by ELK HIGHLANDS HOMEOWNERS' ASSOCIATION, INC. whose mailing address is 857 Grand Avenue Bigfork, MT 59911 (hereinafter referred whether one or more as "Grantor") to the City of Whitefish, a municipal corporation, (hereinafter referred to as "City") whose address is P.O. Box 158, Whitefish, Montana, 59937.

WHEREAS, the Grantor owns, possesses and manages certain real estate in Flathead County, Montana which land is particularly described as follows:

Exhibit "A" (hereinafter "Property");

WHEREAS, Grantor's Property is subject to a Conservation Easement ("CE") held by the Montana Land Reliance dated December 23, 2003, and recorded December 30, 2003 in the Office of the Flathead County Clerk and Recorder as Document No. 200336412250;

WHEREAS, the terms of the Conservation Easement anticipate commercial and non-commercial timber harvest (CE, Exhibit B. 7.), and the construction, maintenance and repair of "ski/bike/hike trails" designed, constructed and conducted in a manner defined in the Easement to provide a "relatively undeveloped and natural setting for non-motorized recreational access." The Grantor retains the right to enter into access agreements with third parties for such uses of the trail system. (CE, Exhibit B. 4.)

WHEREAS, Grantor wishes to grant, and the City desires to obtain, a trail easement and right-of-way for non-motorized, public recreational purposes, limited to hiking, bicycling, cross-country skiing, wildlife viewing, over and across, and limited to that portion of the Property in the approximate location depicted on the map attached hereto as Exhibit "C" and incorporated herein ("Easement Area");

WHEREAS City agrees, by accepting this easement, to honor the intentions of the Grantor stated herein;

NOW THEREFORE, for value received, the sufficiency of which is hereby acknowledged, the Grantor hereby grants to the City, and to the City's successors and assigns, forever, a perpetual, non-exclusive easement over and across the above-described

real property, in the location, for the purposes and on the terms and conditions as set forth herein below:

1. **Purpose.** This easement is granted for the purpose of designing, constructing, using, maintaining, repairing, and improving a non-motorized public recreational trail.
2. **Description and Location of Easement.** The Easement Area is approximately twenty (20) feet wide, ten feet on each side of the centerline, with such additional width as is necessary to accommodate and protect cuts and fills, and crosses along the Property in approximately the location shown on the map which is attached hereto as Exhibit "C". The final trail as constructed shall not exceed six (6) feet in width.
  - a. Parties agree that the alignment depicted in Exhibit "C" is conceptual in nature. Prior to construction, the final alignment of the trail in the Easement Area will be approved by both parties, which approval shall not be unreasonably withheld. Significant relocation of the trail corridor and/or placement of the trail within the viewshed of any residence in Elk Highlands will be considered a reasonable basis for denial of approval by Grantor. Final location of the trail must also be approved by the Montana Land Reliance pursuant to the terms and conditions of the CE. Grantor authorizes City to record a map depicting the final location of the trail as an Exhibit to this Easement. The Grantor and the City agree to accept the centerline of the trail as constructed as the true centerline of this easement. The Easement Area shall include any and all improvements.
  - b. If the City has not secured a commitment for a connecting trail easement from adjacent landowners within three (3) years from the date of execution of this Easement, the parties agree to undertake a status review of the Easement to determine the likelihood that the Easement Area will connect to the larger trail system. After the status review, Grantor may, in its sole discretion, terminate this Easement.
3. **Limitation of Public Access.** Nothing herein shall be construed as a grant to the general public, or to a person or persons, of the right to enter upon any part of the Property other than as described in Paragraph 2 above.
4. **Use of Easement by the Grantor.** The Grantor reserves the right to use the area which is subject to the easement for any purposes which will not unreasonably interfere with the City's and the public's enjoyment of the rights granted by this Easement.
5. **Construction and Maintenance.** The City or its designee(s) will be responsible for the design, construction and maintenance of the trail easement, noxious weed control, litter control and maintenance of the trail bed, as long as the City, its successors or assigns, are the holders of the easement. The trail easement will be designed, constructed and maintained in accordance with the Whitefish Trail Operations and Management Plan, as

amended. The City or its designee(s) will provide reasonable notice to Grantor prior to major construction or maintenance activities.

6. **Prohibited Uses.** The following uses shall be prohibited upon the lands covered by this easement:
  - a. Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles, except as necessary for the construction and maintenance of the trail, with permission of the Grantor, or in case of emergency;
  - b. Smoking of tobacco or other substances, or lighting of fires of any kind;
  - c. Trapping or hunting with firearms, bow and arrows, or any other form of arms or weapons within the Easement Area;
  - d. Discharging of firearms;
  - e. Overnight camping or sleeping;
  - f. Horses, llamas and other livestock;
  - g. Unleashed dogs;
  - h. Charging a fee for the public's use of the easement;
  - i. Installation of benches and other similar fixtures;
  - j. Installation of rest areas and/or viewing/ lookout areas;
  - k. Unauthorized commercial activities
7. **Temporary Closure.** Grantor has the right to temporarily restrict public access on limited portions of the Easement Area in case of emergency, including extreme fire danger and for safety purposes during active timber harvesting or other permitted management activities that may pose a hazard to recreational users. In the case of a timber harvest, closure shall be for a reasonable period of time to conduct the operation as determined by a harvest plan. Prior to closure, Grantor must provide 30 days' advance notice to City, except in case of emergency, in which case notice shall be provided to City as soon thereafter as possible.
8. **Relocation by Grantor.** Upon prior notice to City, Grantor reserves unto itself, its successors and assigns, the right at its expense to relocate the easement and right-of-way granted herein subject to the conditions that any relocation is subject to the conditions and requirements of the CE and Grantor will allow City to design and

construct an alternate route that provides a similar type and quality of recreational experience as existed prior to such relocation and does not change the point of interconnection on the boundaries of the parties' respective properties.

9. **Right of Way Crossing.** Grantor reserves for itself and its successors and assigns, the right to use, cross and recross the easement and right of way for any and all purposes, in any manner that will provide for the safety of Trail System users and will not unreasonably interfere with the rights granted to City hereunder. Grantor agrees (a) to plan such crossings in a manner that have a minimal interference with trail use (b) to provide prior notice to City of its plan; and (c) to restore any damage to the Trail System promptly after each crossing at its own expense.
10. **Right-of-Way Timber.** Grantor reserves to itself all timber now on or hereafter growing within said easement and right-of-way. Forest management activities shall be conducted in accordance with the conditions and requirements of the CE, including a timber harvest plan. Grantor will provide 30 days' advance notice to City prior to implementation.

City shall have the right to cut timber growing within the easement and right of way herein granted to the extent necessary for constructing, reconstructing, and maintaining the right of ways. Timber so cut, unless otherwise agreed, shall be removed from the Property by City.

11. **Reservation of Additional Management Limitations.** The Grantor and the City shall have the right to impose additional limitations on uses within the Easement Area as is necessary in their discretion to preserve and protect the recreation values for which the easement is donated. City shall have no right to expand the scope or uses within the Easement Area.
12. **Failure to Enforce.** If the City, or its assign, fails to use the trail for its intended purpose, the Grantor, its heirs, successors or assigns, must notify the City of its failure. The City shall have thirty (30) days from receipt of such notice: (A) to respond to the Grantor, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date of completion. If the City fails to act in accordance with this provision and its responsibilities under this Easement, Grantor may terminate the Easement.
13. **Recreational Use.** This Agreement is intended to be interpreted so as to convey to Grantor and City and its assign(s) all of the protections from liability provided by the Montana Recreational Use Statute, §§ 70-16-301, -302, MCA, or any other applicable law that provides immunity or limitation of liability.

14. **Assumption of Liability.** In the exercise of rights granted hereunder to City, City shall make best efforts to avoid damage to Grantor's real or personal property with and adjacent to the easement area. City shall defend, indemnify and hold harmless Grantor and its affiliates and their respective directors, officers, employees, successors and assigns from and against any actual or potential claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs, and expenses, including but not limited to attorneys' fees and costs, which arise out of or relate to (i) any loss or damage to Grantor's real or personal property that is cause by or results from any act or omission to act, of City, its employees and its duly authorized agents or subcontractors while accessing and constructing the recreational trail that is the subject of this easement, whether negligent or otherwise, (ii) any personal injury or death or property damage suffered by City, its invitees, licensees, employees or agent's while within the recreational trail that is the subject of this easement, and (iii) any breach by City of its obligations under this easement.
15. **Termination.** Parties agree that if the City decides the Easement Area or a portion thereof is no longer needed as part of a public trail system, the City shall furnish a release in recordable form to the Grantor, its heirs, successors or assigns.
16. **Modification.** Any modification of this agreement or additional obligations assumed by either party shall be binding only if evidenced in writing signed by each party and recorded with the Flathead County Clerk and Recorder.
17. **Assignment.** This easement may not be assigned without the prior, written permission of the Grantor.
18. **Easement to Run with the Land.** This Public Recreational Trail Easement shall be recorded with the Flathead County Clerk and Recorder and the benefits and burdens of this easement will run with the title to the Property whether or not this easement is referred to in the conveyance of the Property.
19. **Waiver.** No waiver of any provision of this easement will be deemed to constitute a waiver of any other provision, nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this easement be deemed a waiver of any subsequent default or defaults of the same type. The failure to exercise any obligation under this easement will not constitute the approval or acceptance of that failure.
20. **Governing Law.** This Public Recreational Easement shall be interpreted, construed and enforced according to the laws of Montana. Venue for any proceeding shall be in Flathead County, Montana.
21. **Attorneys' Fees & Costs.** In the event of a dispute under this Easement, the prevailing party shall be entitled to its reasonable costs and attorneys' fees.

22. **Severability.** If any provision of this Public Recreational Trail Easement is determined to be invalid, illegal or unenforceable, the remaining provisions remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Public Recreational Trail Easement invalid, illegal, or unenforceable in any respect.

Dated this 16 day of SEPTEMBER, 2019.

**ELK HIGHLANDS HOMEOWNERS' ASSOCIATION, INC.**

By: *Noel Huettich*  
Noel Huettich, President

STATE OF OHIO )  
 ) : ss.  
County of Summit )

This instrument was signed and acknowledged before me on the 16<sup>th</sup> day of September 2019, by Noel Huettich as President of ELK HIGHLANDS HOMEOWNERS' ASSOCIATION, INC.

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



JEFFREY D. FEMIA  
Notary Public, State of Ohio  
My Commission Expires  
January 29, 2022  
(NOTARIAL SEAL)  
RE629217

Notary Signature: *Jeffrey D Femia*  
Printed Name: Jeffrey D Femia  
Notary Public for the State of Ohio  
Residing at: Hudson, OH 43030  
My Commission expires: Jan 29, 2022

Accepted by: **CITY OF WHITEFISH**

By: \_\_\_\_\_  
Adam Hammatt, City Manager

Approved by: **THE MONTANA LAND RELIANCE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

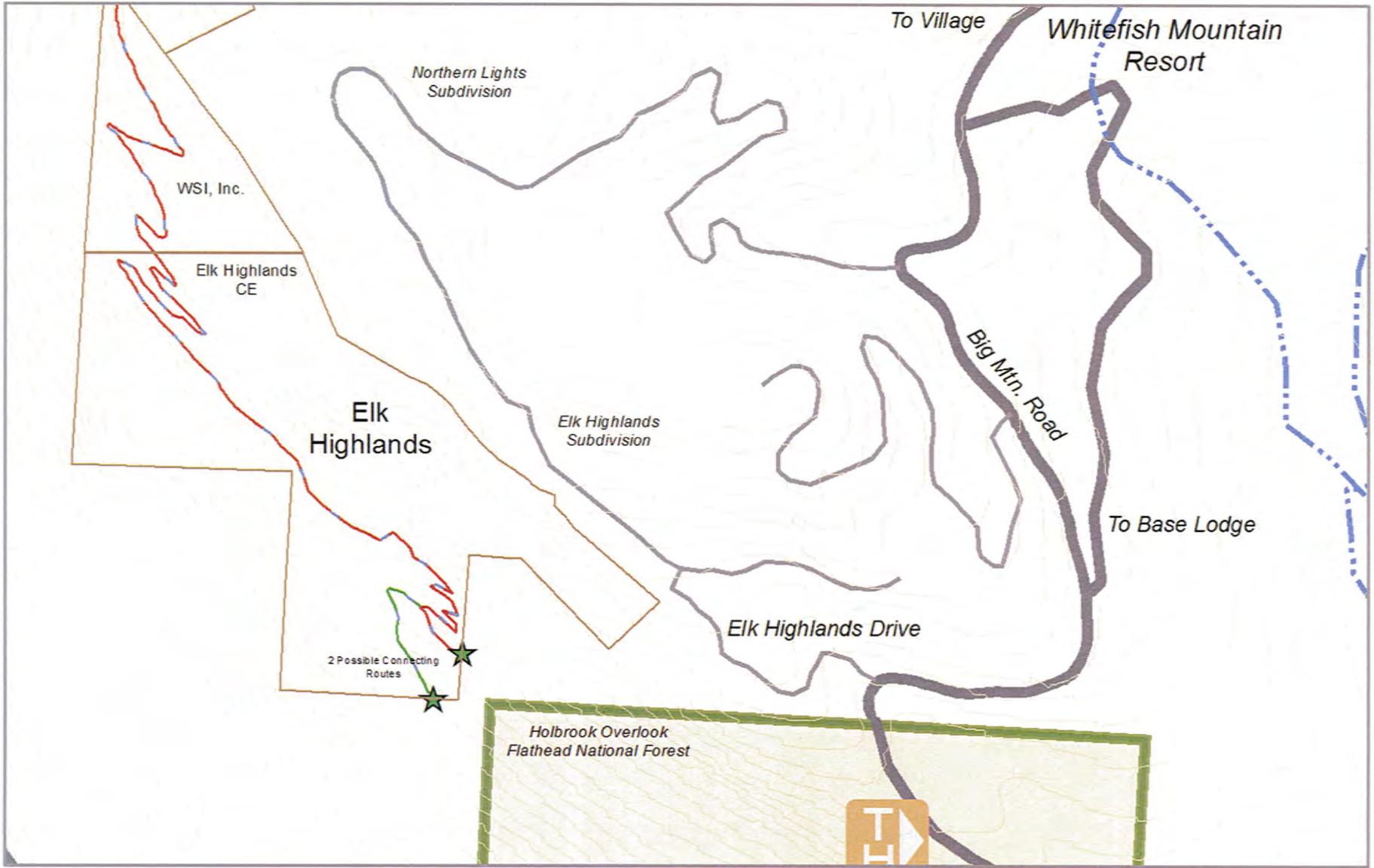
**Exhibit A**  
**Legal Description**

A tract of land, situated, lying and being in the SW<sup>1</sup>/<sub>4</sub> of Section 2 and in the NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 3, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, and more particularly described as follows to wit:

Beginning at the northeast corner of the NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 3, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana, which is a found aluminum cap; thence S. 22°45'33" E., 545.03 feet to the northerly right-of-way of a 60 foot road access and utility easement, which is on a 1,020.00 foot radius curve, concave southwesterly (radial bearing S. 27°09'57" W.); thence southeasterly along said curve and along said right-of-way through a central angle of 2°30'03" an arc length of 44.52 feet; thence S. 60°20'00" E., 235.37 feet to the P.C. of a 1,020.00 foot radius curve, concave southwesterly, having a central angle of 7°49'02"; thence along an arc length of 139.16 feet to the P.R.C. of a 80.00 foot radius reverse curve, concave northeasterly (radial bearing N. 37°29'02" E.); thence southeasterly along said curve through a central angle of 46°12'03" an arc length of 64.51 feet to the P.R.C. of a 120.00 foot radius reverse curve, concave southwesterly (radial bearing S. 08°43'01" E.); thence northeasterly and southeasterly along said curve through a central angle of 34°23'01" an arc length of 72.01 feet; thence S. 64°20'00" E., 48.49 feet to the P.C. of a 620.00 foot radius curve, concave southwesterly, having a central angle of 24°00'00"; thence along an arc length of 259.70 feet; thence S. 40°20'00" E., 166.97 feet to the P.C. of a 820.00 foot radius curve, concave northeasterly, having a central angle of 18°50'00"; thence along an arc length of 269.54 feet; thence S. 59°10'00" E., 112.74 feet to the P.C. of a 630.00 foot radius curve, concave southwesterly, having a central angle of 10°09'27"; thence along an arc length of 111.69 feet to the P.R.C. of a 170.00 foot radius reverse curve, concave northeasterly (radial bearing N. 40°59'27" E.); thence southeasterly along said curve through a central angle of 24°49'27" an arc length of 73.65 feet; thence S. 73°50'00" E. 90.11 feet; thence leaving said right-of-way S. 16°10'00" W., 60.00 feet; thence S. 48°50'38" E., 102.56 feet; thence S. 40°39'01" E., 229.37 feet; thence S. 47°06'46" E., 221.02 feet; thence S. 57°20'47" E., 320.49 feet; thence S. 41°23'24" W., 407.48 feet; thence N. 47°08'53" W., 288.36 feet to a found iron pin; thence N. 46°46'26" W., 489.31 feet to a found iron pin; thence N. 89°15'57" W., 317.63 feet to a found iron pin; thence S. 01°10'43" W., 873.96 feet to a found iron pin on the south boundary of the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 2, Township 31 North, Range 22 West, P.M.M., Flathead County, Montana; thence along said south boundary

N. 89°15'57" W., 1,123.96 feet to a found iron pin and the southwest corner thereof; thence along the west boundary of said SW $\frac{1}{4}$ SW $\frac{1}{4}$  N. 01°11'26" E., 1,329.25 feet to a found iron pin and the southeast corner of said NE $\frac{1}{4}$ SE $\frac{1}{4}$  of said Section 3; thence along the south boundary of said NE $\frac{1}{4}$ SE $\frac{1}{4}$  S. 88°57'11" W., 1,322.24 feet to a found iron pin and the southwest corner thereof; thence along the west boundary of said NE $\frac{1}{4}$ SE $\frac{1}{4}$  N. 01°13'40" E., 1,287.10 feet to a found iron pin and the northwest corner thereof; thence along the north boundary of said NE $\frac{1}{4}$ SE $\frac{1}{4}$  N. 87°07'41" E., 1,323.72 feet to the point of beginning and containing 103.787 acres; subject to and together with a 60 foot road and utility easement; subject to and together with ski/hike/bike trails; subject to and together with all appurtenant easements of record.

Exhibit C  
Map



**Return to:  
City of Whitefish  
P.O. Box 158  
Whitefish, MT 59937**

### **PUBLIC RECREATIONAL TRAIL EASEMENT**

The easement deed is hereby granted this 15<sup>th</sup> day of November 2019 by the MICHELLE K. EPISCOPE 2011 GIFT TRUST u/a/d November 18, 2011, MICHAEL D. EPISCOPE, Trustee (hereinafter referred to as "Grantor") whose address is 2416 N. Burling St. Chicago, Illinois 60614 to the City of Whitefish, a municipal corporation, (hereinafter referred to as "City") whose address is P.O. Box 158, Whitefish, Montana, 59937.

WHEREAS, the Grantor owns and possesses certain real estate in Flathead County, Montana which land is particularly described as follows:

Exhibit "A" (hereinafter "Property");

WHEREAS, on December 20, 2011, Grantor acquired the above-described Property from the State of Montana, as recorded on December 22, 2011 in the Office of the Flathead County Clerk and Recorder as Document No. 201100026725;

WHEREAS, Grantor wishes to grant, and the City desires to obtain, a trail easement and right-of-way for non-motorized, public recreational purposes, including but not limited to hiking, bicycling, cross-country skiing, wildlife viewing, over and across, and limited to that portion of the Property in the approximate location depicted on the map attached hereto as Exhibit "B" and incorporated herein ("Easement Area");

WHEREAS City agrees, by accepting this easement, to honor the intentions of the Grantor stated herein;

NOW THEREFORE, for value received, the sufficiency of which is hereby acknowledged, the Grantor hereby grants to the City, and to the City's successors and assigns, forever, a perpetual, non-exclusive easement over and across the above-described real property, in the location, for the purposes and on the terms and conditions as set forth herein below:

1. **Purpose.** This easement is granted for the purpose of designing, constructing, using, maintaining, repairing, and improving a non-motorized public recreational trail.

2. **Description and Location of Easement.** The Easement Area is approximately ten (10') feet wide from top of backslope cut to downslope edge of trail tread, with additional five foot (5') wide temporary construction easements on each side. The temporary construction easements shall be automatically extinguished upon complete installation of the trail. The easement crosses along the Property in approximately the location shown on the map which is attached hereto as Exhibit "B".

Parties agree that the alignment depicted in Exhibit B is conceptual in nature. Prior to construction, the final alignment of the trail in the Easement Area will be approved by both parties in a location that is no more than 50 feet from the western boundary, except in the southwest corner, which is no more than 105 feet from the western boundary, as shown conceptually on Exhibit B, which approval shall not be unreasonably withheld. Grantor authorizes City to record a map depicting the final location of the trail as an Exhibit to this Easement. The Grantor and the City agree to accept the trail tread, defined as top of backslope cut to downslope edge of trail tread, as constructed as the true easement. The Easement Area shall include any and all improvements.

3. **Limitation of Public Access.** Nothing herein shall be construed as a grant to the general public, or to a person or persons, of the right to enter upon any part of the Property other than as described in Paragraph 2 above.
4. **Use of Easement by the Grantor.** The Grantor reserves the right to use the area that is subject to the easement for purposes that will not unreasonably interfere with the City's and the public's enjoyment of the rights granted by this Easement.
5. **Construction and Maintenance.** The City or its designee(s) will be responsible for the design, construction and maintenance of the trail easement, noxious weed control, litter control and maintenance of the trail bed, as long as the City, its successors or assigns, are the holders of the easement. The trail easement will be designed, constructed and maintained in accordance with the Whitefish Trail Operations and Management Plan, as amended. The City or its designee(s) will provide reasonable notice to Grantor prior to major construction or maintenance activities.
6. **Prohibited Uses.** The following uses shall be prohibited upon the lands covered by this easement:
  - a. Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles, except as necessary for the construction and maintenance of the trail, with permission of the Grantor, or in case of emergency;
  - b. Smoking of tobacco or other substances, or lighting of fires of any kind;

- c. Trapping or hunting with firearms, bow and arrows, or any other form of arms or weapons within the Easement Area;
  - d. Discharging of firearms;
  - e. Overnight camping or sleeping;
  - f. Horses, llamas and other livestock;
  - g. Unleashed dogs;
  - h. Charging a fee for the public's use of the easement;
  - i. Unauthorized commercial activities.
  - j. Dumping or littering.
7. **Reservation of Additional Management Limitations.** The Grantor and the City shall have the right to impose additional limitations on uses within the Easement Area as is necessary in their discretion to preserve and protect the recreation values for which the easement is donated and the value of the Property.
8. **Failure to Enforce.** If the City, or its assign, invitees, or guests fail to use the trail for its intended purpose, the Grantor, its heirs, successors or assigns, must notify the City of its failure. Except in an emergency, the City shall have thirty (30) days from receipt of such notice: (A) to respond to the Grantor, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date of completion.
9. **Recreational Use.** This Agreement is intended to be interpreted so as to convey to Grantor and City and its assign(s) all of the protections from liability provided by the Montana Recreational Use Statute, §§ 70-16-301, -302, MCA, or any other applicable law that provides immunity or limitation of liability.
10. **Termination.** Parties agree that if the City decides the Easement Area or a portion thereof is no longer needed as part of a public trail system, the City shall furnish a release in recordable form to the Grantor, its heirs, successors or assigns.
11. **Modification.** Any modification of this agreement or additional obligations assumed by either party shall be binding only if evidenced in writing signed by each party and recorded with the Flathead County Clerk and Recorder.

12. **Assignment.** This easement may not be assigned without the prior, written permission of the Grantor.
13. **Easement to Run with the Land.** This Public Recreational Trail Easement shall be recorded with the Flathead County Clerk and Recorder and the benefits and burdens of this easement will run with the title to the Property whether or not this easement is referred to in the conveyance of the Property.
14. **Waiver.** No waiver of any provision of this easement will be deemed to constitute a waiver of any other provision, nor will it be deemed to constitute a continuing waiver unless expressly provided for; nor will the waiver of any default under this easement be deemed a waiver of any subsequent default or defaults of the same type. The failure to exercise any obligation under this easement will not constitute the approval or acceptance of that failure.
15. **Governing Law.** This Public Recreational Easement shall be interpreted, construed and enforced according to the laws of Montana. Venue for any proceeding shall be in Flathead County, Montana.
16. **Severability.** If any provision of this Public Recreational Trail Easement is determined to be invalid, illegal or unenforceable, the remaining provisions remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Public Recreational Trail Easement invalid, illegal, or unenforceable in any respect.
17. **Assumption of Liability.** In the exercise of rights granted hereunder to City, City shall make best efforts to avoid damage to Grantor's real or personal property with and adjacent to the easement area. City shall defend, indemnify and hold harmless Grantor and its affiliates and their respective directors, officers, employees, successors and assigns from and against any actual or potential claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs, and expenses, including but not limited to attorneys' fees and costs, which arise out of or relate to (i) any loss or damage to Grantor's real or personal property that is cause by or results from any act or omission to act, of City, its employees and its duly authorized agents or subcontractors while accessing and constructing the recreational trail that is the subject of this easement, whether negligent or otherwise, (ii) any personal injury or death or property damage suffered by City, its invitees, licensees, employees or agents while within the recreational trail that is the subject of this easement, and (iii) any breach by City of its obligations under this easement.
18. **Signage.** The City agrees to provide signage, in locations that are selected by Grantor, indicating to users and the public that the lands on both sides of the Easement Area are private property, and that entry upon the lands constitutes a trespass. At Grantor's

request, the City shall provide signage acknowledging that Grantor (or its beneficiaries) have allowed public use of the Property.

Dated this 15<sup>th</sup> day of November, 2019.

**GRANTOR**

**MICHELLE K. EPISCOPE 2011 GIFT TRUST U/A/D NOVEMBER 18, 2011**

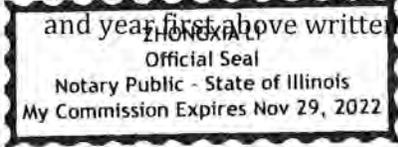
By: [Signature]  
MICHAEL D. EPISCOPE, TRUSTEE

**ACKNOWLEDGMENT**

STATE OF IL )  
 ) : ss.  
County of COOK )

This instrument was signed and acknowledged before me on the 15<sup>th</sup> day of November 2019, by MICHAEL D. EPISCOPE.

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



(NOTARIAL SEAL)

Notary Signature: Zhongxia Li  
Printed Name: Zhongxia Li  
Notary Public for the State of Montana Illinois  
Residing at: 1345 S. Wabash Ave. Chicago IL 60605  
My Commission expires: Nov. 29, 2022

**Accepted by: CITY OF WHITEFISH**

By: \_\_\_\_\_  
Dana Smith, Interim City Manager

**Exhibit A**  
**Legal Description**

THE NORTH HALF OF GOVERNMENT LOT 4 OF SECTION 2, TOWNSHIP 31 NORTH,  
RANGE 22 WEST, P.M. FLATHEAD COUNTY, MONTANA.

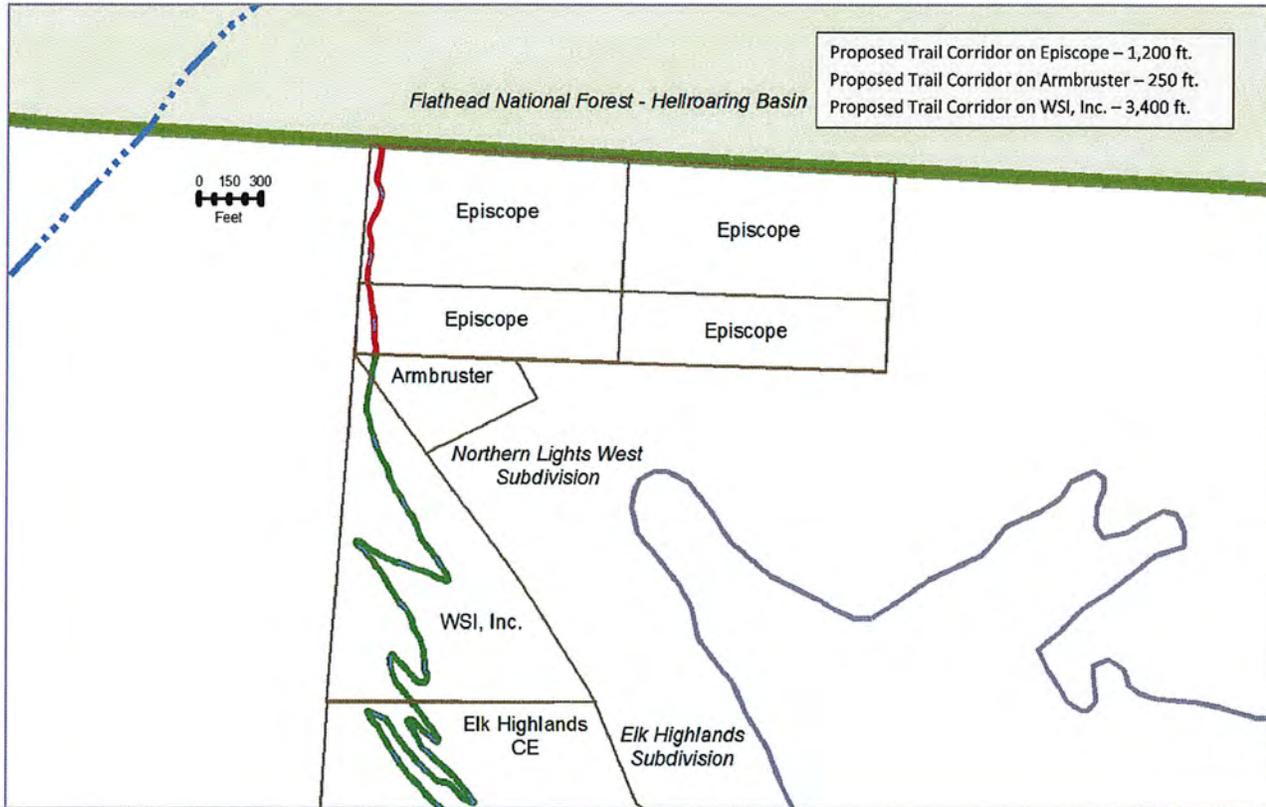
THE NORTH HALF OF THE SOUTH HALF OF GOVERNMENT LOT 4 OF SECTION 2,  
TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M. FLATHEAD COUNTY, MONTANA.

THE NORTH HALF OF GOVERNMENT LOT 1 OF SECTION 3, TOWNSHIP 31 NORTH,  
RANGE 22 WEST, P.M. FLATHEAD COUNTY, MONTANA.

THE NORTH HALF OF THE SOUTH HALF OF GOVERNMENT LOT 1 OF SECTION 3,  
TOWNSHIP 31 NORTH, RANGE 22 WEST, P.M. FLATHEAD COUNTY, MONTANA.

SHOWN AS TRACT 1 OF CERTIFICATE OF SURVEY NO. 14892.

# Exhibit B Map



Recording Requested By  
Winter Sports, Inc.  
And  
City of Whitefish  
When Recorded Mail To:  
City of Whitefish  
PO Box 158  
Whitefish, MT 59937

### **PUBLIC RECREATIONAL TRAIL EASEMENT**

THIS EASEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 2020, from Winter Sports, Inc., a Montana corporation, whose address is 3808 Big Mountain Road, Whitefish, MT 59937, (“WSI”) to City of Whitefish, whose address is P.O. Box 158, Whitefish, MT 59937 (“the City”).

#### **RECITALS**

WHEREAS, WSI is the sole owner in fee simple of certain real property in Flathead County, Montana, (the “Property”) more particularly described in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, WSI is willing to convey, and the City is willing to accept, an easement and right-of-way over the Property for a non-motorized trail system to enhance outdoor recreational opportunities for the general public; and

WHEREAS, the City desires and intends to provide for a right-of-way for the use by the public over and across the Property and to permit the maintenance and improvement of the non-motorized trail system by the City and/or its assigns.

NOW, THEREFORE, in consideration of the foregoing Recitals and for \$1.00 and other good and valuable consideration, receipt of which is hereby acknowledged by WSI, the parties agree as follows:

1. Definitions. As used in this Public Recreational Trail Easement:
  - a. “Trail System” is defined as the trail corridors, trailhead, and trail-related amenities such as steps, railings, bridges, culverts, benches, trail signs,

guard rails, kiosks, vault toilet, bear proof trash receptacle, mutt mitt dispenser, donation boxes, and donor recognition signs.

b. "Easement Area" is defined as the easement granted in Section 3 below.

2. Purpose. The purpose of the easement granted herein is for constructing, using, maintaining, repairing and improving a non-motorized recreational trail for the use and benefit of the general public. The easements and Easement Area shall be used for no other purpose without the prior written consent of WSI.

3. Grant of Easements. Subject to the terms, conditions and limitations of this Public Recreational Trail Easement and to all existing easements, rights of way and other matters recorded against the Property, WSI hereby grants to the City and its respective successors and assigns the following perpetual non-exclusive easements:

A twenty (20) foot wide strip of land with a length of approximately 3,400 feet and containing approximately 1.5 acres in the approximate location shown on the map attached hereto and incorporated herein as Exhibit B. The actual location of the easements with respect to the easements described herein shall be located ten (10) feet on each side of the centerline of the trail as built. The final trail as constructed shall not exceed six (6) feet in width.

4. Design, Construction, Maintenance and Management.

a. The City and/or its Assigns shall be solely responsible for the design, construction, maintenance, repair and management of the Trail System, including, without limitation, all costs and expenses thereof. Trail System design, construction, maintenance, repair and management activities will take place in accordance with the standards and guidelines outlined in the "Whitefish Trail Management and Operations Plan" dated 2016 ("Trail Plan").

b. Prior to any construction of the trail corridor within the Easement Area, the City must: (a) provide WSI with at least 30 days' written notice of its intent to begin construction of the trail corridor; (b) mark the approximate location of the trail corridor and consider any reasonable adjustment suggested by WSI or, in the event the proposed trail corridors fall outside the Easement Area identified in Exhibit B, shall not proceed unless and until WSI, in its sole and absolute discretion, has approved the new location of the Easement Area; (c) obtain and provide copies to WSI of all certificates evidencing liability insurance coverage as provided in Section 10, below; and (d) obtain all permits and approvals required for construction or installation activities and provide copies of such to WSI prior to beginning construction activities.

c. The City and/or its Assigns are responsible for controlling weeds within the Easement Area. The City is responsible for controlling any noxious weeds introduced by public recreation activity and City shall comply with Montana County Noxious Weed Management Act and the Whitefish Trail Noxious Weed Plan incorporated in the Whitefish Trail Operations Plan.

5. Prohibited Uses. The following shall be prohibited in the Easement Area:

- a. Blocking gates or roadways;
- b. Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, or other all-terrain vehicles, except as necessary for the construction and maintenance of the trail, or in case of emergency;
- c. Smoking of tobacco or other substances, or lighting of fires of any kind;
- d. Trapping or hunting with firearms, bows and arrows, or any other form of arms or weapons;
- e. Discharging of firearms, bows and arrows, or any other form of arms or weapons;
- f. Overnight camping or sleeping;
- g. Dumping or littering;
- h. Horses, llamas and other livestock;
- i. Unleashed dogs; and
- j. Charging a fee for the general public's use of the Easement Area.

6. Improvements. The parties acknowledge that WSI has no obligation to construct any improvements of any type or kind to or within the Easement Area.

7. Temporary Closure. WSI has the right to temporarily restrict public access on portions of the Easement Area in case of significant fire danger or emergency. Unless otherwise agreed by the parties, such period of closure shall not exceed 5 days, except for closures due to significant fire danger, which closures may remain in effect until the significant fire danger has subsided. Determinations of what constitutes "significant fire danger" shall be made by WSI, in its reasonable discretion. All other requests for longer-term closures shall be accompanied with alternative routes for the trail corridor during the closure.

8. Buildings and Non-recreational Uses. WSI shall not place structures, landscaping, or other improvements within Easement Area that prevent or interfere with the ability of the City and the public to use the Trail System for the purposes stated in this Public Recreational Trail Easement. Except for the foregoing restrictions, WSI shall have the right to use the Easement Area in any manner that does not unreasonably interfere with the easement rights granted herein.

9. Commercial Use. The City agrees to notify WSI 30 days prior to all commercial uses of the Easement Area. The City shall provide proof of adequate insurance coverage equal to,

but not limited to the insurance requirements described in Section 10, protecting WSI from liability that may arise from such uses. Notwithstanding the foregoing, the insurance requirements and coverage limits for commercial uses of the Easement Area may be modified from time to time by WSI, in its reasonable discretion, upon written notice to the City.

10. Indemnity. To the fullest extent permitted by law, City shall defend, indemnify and hold harmless Winter Sports, Inc. and their officers and employees and others as required by this Agreement from all claims for bodily injury and property damage (other than damage to the work itself), including the loss of use of property resulting therefrom, that may arise from the performance of the City's work but only to the extent caused by the negligence or intentional acts of the City, City's subcontractors or anyone employed directly or indirectly by any of them. Any obligations assumed pursuant to this Section shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which otherwise exist as to a party or person described in this Section

11. Insurance. The City shall purchase insurance or where it aligns with their business, liability coverage, from a company lawfully authorized to do business in the State of Montana and satisfactory to WSI. The provisions set forth below are minimum requirements. Such insurance will protect WSI from claims which may arise out of or result from the performance of the City's work and for which the City may be legally liable, whether such operations be by the City or by the City's subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. City, and any subcontractor engaged by the City, shall obtain the following insurance:

A. Commercial General Liability Insurance – written on an “occurrence” basis for damages because of bodily injury, property damage, personal and advertising injury arising out of the City's work and shall include coverage for:

- All operations and premises of the City;
- All products and completed operations of the City;
- All liability and/or responsibility assumed by the City in the

Indemnity section of this Agreement.

- WSI as an additional insured;
- Defense expenses paid in addition to the policy limits.

Additional insured coverage shall be provided to WSI and respective officers and employees, and shall be for both on-going operations, and products and completed operations. All additional insured endorsements and insurance policy shall be submitted for review and acceptance by WSI upon request.

Commercial General Liability insurance purchased by the City shall provide the following minimum limits of liability and shall at all times include coverage for WSI as additional insured as required above:

\$1,000,000 Each Occurrence Limit;  
\$1,000,000 Personal & Advertising Injury - Per Person or Organization Limit  
\$2,000,000 General Aggregate Limit

B. Workers Compensation Insurance – For performance of all of the City's,

City shall maintain Workers' Compensation Insurance, including coverage for all executive officers, sole proprietors, partners, and members of a limited liability company, in the amounts required by all applicable statutes, laws, regulations or acts.

C. Automobile Liability Insurance – for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of any motor vehicle and/or trailer that the City owns, hires, leases or borrows or any motor vehicle and/or trailer used on behalf of the City.

Commercial Auto Liability insurance purchased by the City shall provide the following minimum limits of liability and shall at all times include coverage for WSI as additional insured as required below:

\$1,000,000 Combined Single Limit

Automobile Liability Insurance shall also provide coverage for:

- Any equipment that is subject to a compulsory or financial responsibility law or motor vehicle insurance law in the state in which the equipment is principally garaged;

Additional insured coverage shall be provided to WSI and respective officers and employees. All additional insured endorsements and insurance policy shall be submitted for review and acceptance by WSI upon request.

D. Certificates of Insurance - Certificates of insurance and supporting additional insured endorsements acceptable to WSI, including any additional coverages and/or amounts of coverage specified in Agreement, shall be provided to WSI prior to commencement of the City's work. These certificates by this Section shall contain a provision that coverages afforded under the policies will not be canceled until **at least 30 days' prior written notice** has been given to the WSI. The additional insureds shall be designated on said certificate and shall include confirmation that the coverage for the additional insureds is on a primary and non-contributory basis as required.

E. Verification of Coverage - City shall furnish WSI with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause upon request. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the City's obligation to provide them. WSI reserves the right to require complete copies of all required insurance policies, including endorsements required by these specifications, at any time. If required paperwork is not complete and provided to WSI before time of work begins, WSI has the right to pull the City and/or subcontractor off the job until proper paperwork is acquired.

Receipt of copies of insurance policies or certificates of insurance does not waive WSI's right to enforce any terms of this Agreement.

The City shall require all its subcontractors to provide insurance exceeding or meeting the requirements of the City, including adding WSI as an additional insured where required. As to the insurance required of the City's subcontractor, the City agrees to obtain from their subcontractor's insurance company (or authorized agent) certificates of insurance as evidence of the required insurance.

12. Rights and Immunities; Recreational Use. In consideration of the terms and conditions of this Public Recreational Trail Easement, WSI and the City rely upon all of the rights and immunities against liability to the full extent of applicable state law, and any other applicable provisions of law, including but not limited to Montana Code Annotated Title 2, Chapter 9 and the Montana Recreational Use Statutes, §§ 70-16-301, 70-16-302, MCA.

13. Liens. The City shall keep WSI's property free from any and all liens arising out of the activities of the City or its agents, including, without limitation, the design, construction, maintenance, repair or management of the Trail System, and shall promptly discharge any such liens that are asserted.

14. Compliance with applicable laws and regulations: The City agrees to comply with all applicable laws, regulations, rules and secure such permits, license or authorizations which now exist or hereafter may be required as a result of exercise of any or all rights granted herein.

15. Termination. If the City decides this Public Recreational Trail Easement or a portion thereof, is no longer needed for public recreational purposes, the City shall furnish a release in recordable form to WSI evidencing termination of the City's rights under or to use this Public Recreational Trail Easement or any segments or portions of the Easement Area granted herein.

16. Default. If WSI determines the City has violated the terms of this Public Recreational Trail Easement, WSI shall give written notice to the City of the specific violation and demand corrective action sufficient to cure the violation. If the City fails to cure the violation within thirty (30) days after receipt of notice from WSI, or under circumstances where the violation cannot reasonably be cured within a thirty (30) period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, WSI may bring an action in a court of competent jurisdiction to enforce the terms of this Public Recreational Trail Easement, to enjoin the violation, by temporary or permanent injunction, and for any other relief to which WSI may be entitled, including monetary damages.

17. Rights and Obligations. This Public Recreational Trail Easement shall be recorded in the Flathead County Clerk and Recorder's office, is binding upon the heirs, executors, personal representatives, assigns and successors of the parties hereto and shall run with the land.

18. Governing Law. This Public Recreational Trail Easement shall be interpreted, construed and enforced according to the laws of the State of Montana. Venue for any proceeding arising from or out of this Public Recreational Trail Easement shall be in Flathead County, Montana.

19. Amendment. Any amendment of this Public Recreational Trail Easement must be

in writing, signed by WSI and the City, and recorded in the Flathead County Clerk and Recorder's Office.

20. Severability. If any provision of this Public Recreational Trail Easement is determined to be invalid, illegal or unenforceable, the remaining provisions remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Public Recreational Trail Easement invalid, illegal, or unenforceable in any respect.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, as of the day and year first above written.

GRANTOR:  
WINTER SPORTS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:  
CITY OF WHITEFISH

By: \_\_\_\_\_  
Name: Dana Smith  
Title: Interim City Manager

**ACKNOWLEDGMENT**

STATE OF MONTANA            )  
  ) ss  
COUNTY OF FLATHEAD        )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Dana Smith and to me known to be the Interim City Manager of the City of Whitefish that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of the limited partnership and that the seal affixed is the seal of said limited partnership.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name



**EXHIBIT A**  
**REMAINDER TRACT**

**LEGAL DESCRIPTION**

That portion the South ½ of the South ½ of Government Lot 1 and the Southeast ¼ of the Northeast ¼ of Section 3, Township 31 North Range 22 West, Principal Meridian, Montana, Flathead County, Montana described as follows:

**Beginning** at the Southwest Corner of the Southeast ¼ of the Northeast ¼ as shown on “**COS No. 16275**”;

Thence along the West line of the said Southeast ¼ of the Northeast ¼ and the West line of the said South ½ of the South ½ N01°17'58"E 1711.76 feet to the Northwest Corner of the said South ½ of the South ½ of said Government Lot 1 and the Northwest corner of “**Northern Lights West Phase 2**”;

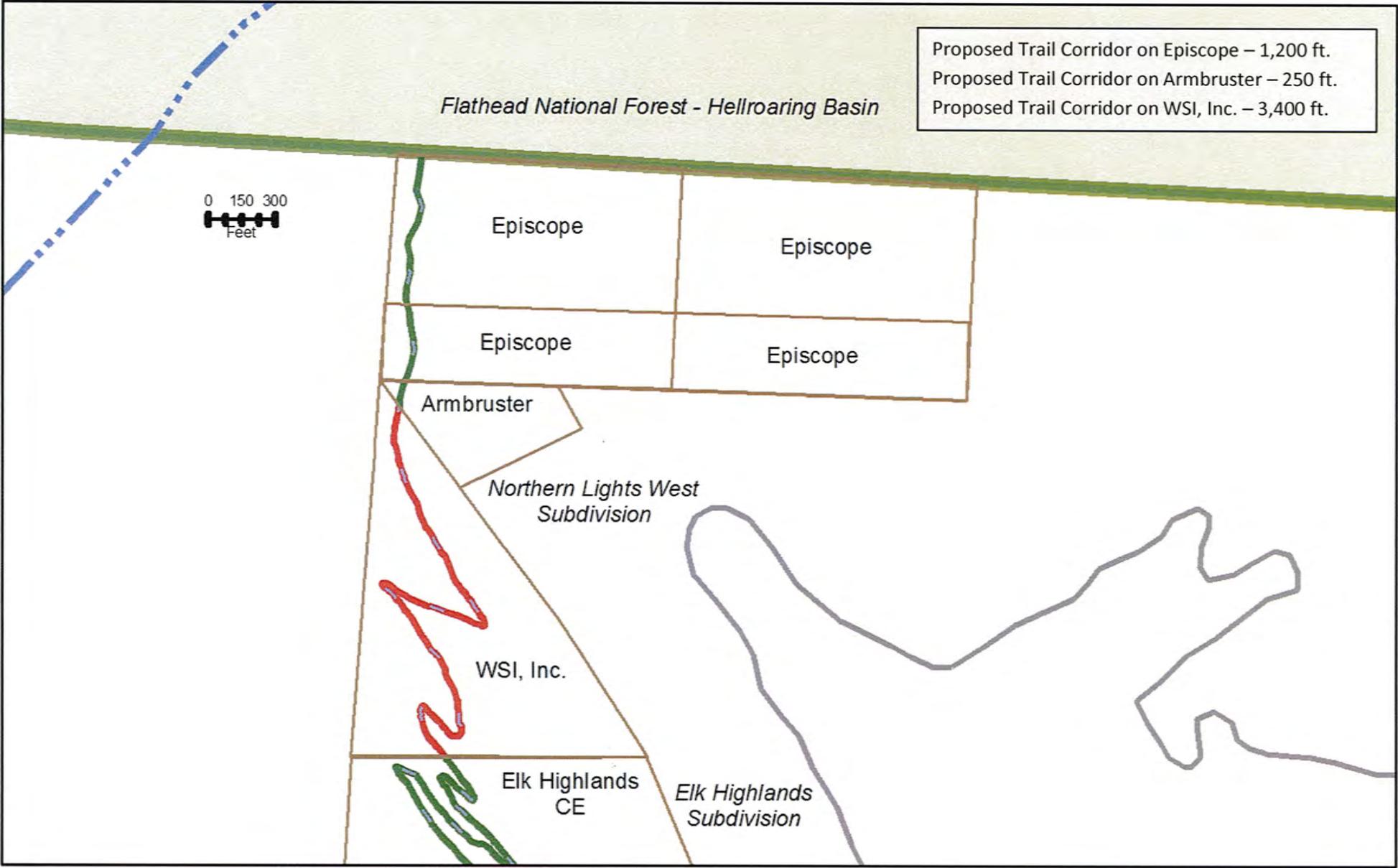
Thence along the Westerly line of said “**Northern Lights West Phase 2**” S37°57'26"E 1358.65 feet to the Southwest Corner of said “**Northern Lights West Phase 2**” and the Northwesterly Corner of “**Lots 14-18, Northern Lights West, Phase 1 ~ 2010**”;

Thence along the Westerly line of “**Lots 14-18, Northern Lights West, Phase 1 ~ 2010**” S37°57'26"E 727.66 feet to the ¼ Corner common to Sections 3 and 2;

Thence along the South line of the said Southeast ¼ of the Northeast ¼ S87°07'41"W 1323.72 feet to the **Point of Beginning**.

Containing 25.94 acres as shown on “Remainder Tract Map” attached hereon.

Exhibit B – Map



# Staff Report



To: Mayor John Muhlfeld and City Councilors

From: Angela Jacobs, City Attorney *WJG*

Date: January 27, 2020

Re: Whitefish Trail Private Landowner Easements-“Close the Loop”

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## **Introduction/History**

On July 5, 2005, the City adopted the Whitefish Area School Trust Lands Neighborhood Plan which seeks to plan, manage and conserve approximately 13,000 acres of state trust land while providing revenue for schools. In 2006, an 18-member citizen committee completed “A Trail Runs Through It” Master Plan for a trail system encircling the greater Whitefish area. Since then, the City and Whitefish Legacy Partners (“WLP”) have cooperated to construct and manage the Whitefish Trail.

In March of 2017, WLP unveiled its “Close the Loop” campaign which called for approximately 20 miles of new trail to be constructed. Phase III of the Close the Loop campaign contemplated approximately four miles of trail easements located on private property to help connect the Big Mountain Trailhead with the existing Whitefish Trail at Smith Lake and Swift Creek.

## **Current Report**

Whitefish Legacy Partners has successfully negotiated easements with three private landowners: Elk Highlands Homeowners’ Association, Winter Sports, Inc. and the Michelle K. Episcope 2011 Gift Trust. Whitefish Legacy Partners is also extremely close to reaching agreement with the final landowner, Thomas M. Armbruster. Pursuant to the City’s Memorandum of Understanding with Whitefish Legacy Partners, the City will be the easement holder. WLP will construct the portions of the Whitefish Trail located on the easements and manage the trail.

**Financial requirements/Impacts.**

There are no immediate financial requirements or impacts of accepting the easements over private land for the Whitefish Trail.

**Recommendation.**

Staff respectfully recommends the City Council adopt Resolution No. 20-\_\_\_\_.

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# CITY MANAGER'S REPORT

January 29, 2020



## CITY COUNCIL GOALS UPDATE

On April 15, 2019, the City Council adopted 29 goals for Fiscal Year 2020. Included with this report is a chart that shows the adopted goals by Department with a brief quarterly update and the estimated date of completion. While the chart identifies goals in progress, it is important to remember that there are other significant projects ongoing, such as the Baker Avenue Underpass, analysis of future tax increment districts, and the Highway 93 South Corridor Plan. City staff continues to do a fantastic job at maintaining ongoing operations while making great progress on these goals.

## WWTP UPGRADE PROJECT

The construction contract for the Wastewater Treatment Plant Upgrade Project was awarded to Swank Enterprises and the project is quickly moving forward. Utility relocation is underway and foundation work is expected in the next month. As we prepare to finalize the financing for the project, staff anticipates that a bond resolution will be presented to the City Council in early April.



*Photo by Randy Reynolds*

## REMINDERS AND SPECIAL EVENTS

Whitefish Winter Carnival has many activities starting February 6<sup>th</sup> with the Grand Parade. Visit <https://whitefishwintercarnival.com/> to learn more.

City Hall will be closed for President's Day on Monday, February 17<sup>th</sup>.

## NEXT COUNCIL MEETING

The next City Council meeting will be held **Tuesday, February 18<sup>th</sup>**, due to City Hall being closed for President's Day holiday. The work session will include a review of the Sustainable Tourism Master Plan Draft. There may also be a presentation by Homeward regarding the Snow Lot Project if deliverables are ready.

Respectfully submitted,



Dana M. Smith, CPA  
City Manager

**FY20 WHITEFISH CITY COUNCIL GOALS**

**3<sup>rd</sup> QUARTER UPDATE**

<b>Department/Goal</b>	<b>Update</b>	<b>Estimated Completion Date</b>
<b>Administration</b>		
1. Create a Finance Plan for Economic Downturn	Plan complete and reviewed by City Council. Final meetings to be scheduled with city employees to review plan. Staff will continue to update the financial figures annually.	March 2019
2. Create a Resort Tax Education and Reallocation Plan	Continue education through public outreach. A work session to discuss and plan for the reallocation and renewal is anticipated for March or April.	June 2020
3. Create a Cemetery Plan	Search for an appropriate site continues.	June 2020
<b>Fire Department</b>		
1. Implement Long-Range Master Plan for Fire Department	Staff continued preparations for plan creation through analyzing needs such as staffing, equipment, additional stations, and an equitable funding strategy. Meetings expected to resume in February.	June 2020
2. Provide City Council Emergency Management Training	Training will be scheduled for the newly elected City Councilors and those that could not attend in the past in the 3 <sup>rd</sup> quarter of FY20.	June 2020
<b>Parks &amp; Recreation</b>		
1. Depot Park Redevelopment Phase II and Phase III	Construction is expected to resume mid-April and the project will be completed prior to July 1, 2020.	June 2020
2. Bike/Ped Master Plan Wayfinding Sign Implementation	Signs have been installed. There will continue to be new signs and adjustments to existing signs as the path system develops, but this project is considered complete at this time.	October 2019
3. Explore Possible Funding Sources for Maintenance of Parks/Public Spaces	Staff has been tracking snow plowing and will be working on developing a dashboard for administrative monitoring of the data as it is collected.	Ongoing
4. Armory Park Redevelopment Phase III	Due to the delay in the LWCF grant funds, the City's application will be reviewed in spring of 2020. Construction will not begin until the grant is awarded. We are currently reapplying for the Burke Playground Grant for 2020 as matching funds for the LWCF Grant.	November 2020
5. Urban Forestry Management	Staff continues to manage the City's urban forest by zones. Zones 1 and 2 are nearing completion.	Ongoing
6. Long-range Operations and Maintenance Trail Strategy with WLP	Pending initial meeting to determine goal and process. Extended completion date from March 2020 to June 2020.	June 2020

<b>Planning Department</b>		
1. Affordable Housing Implementation	Committee worked through the Snow Lot financial feasibility report and has requested a new conceptual design (all townhomes) with an updated financial feasibility report from Homeward. Staff is working through the first projects of the Legacy Homes Program. Accessory Dwelling Unit's are expected to be discussed in February.	Ongoing
2. Parking Plan for Downtown Area	Parking Plan was adopted in October 2019. Staff continues to work on the implementation. Parking vehicle options have been reviewed and vetted. The parking vehicle will also be accompanied by a mobile LPR system to increase efficiency of enforcement. In February the City Council will consider creating a committee to assist in the development of pilot employee parking program for Summer 2020.	Ongoing
3. Update Architectural Review Standards	Discussions continue with plans to add graphics to the standards.	June 2020
4. Update Landscaping and Tree Retention Standards	Project pending available staff time. Date extended from March 2020 to June 2020.	June 2020
5. Update Zoning Ordinances for Downtown Area	Project pending available staff time.	December 2020
<b>Police Department</b>		
1. Increase Capabilities of Police Department	Interviews and testing of qualified candidates held in January for new police officer position Budgeted to start January 1, 2020. New officer is likely come on board in the third quarter.	June 2021
2. Analyze Policing Needs if Big Mountain is Annexed (in 2023)	Continue strategic planning and preparing a needs assessment to determine policing needs.	January 2022
<b>Public Works Department</b>		
1. Design and Construct Wastewater Treatment Plan Upgrades	Contract awarded to Swank Enterprises. Utility relocation underway and foundation work expected to begin in early February.	November 2021
2. Water Capacity Improvements and Reduce Unaccounted for Water Loss	Water plant design at 60% and final project design anticipated for 3rd Quarter. Cast Iron Watermain replacement program has been completed and first project anticipated for FY21.	Ongoing
3. Create Sidewalk Assistance Program	Program created with recently reviewed applications pending signed agreements with property owners.	June 2020
4. Reduce Number of Illegal Sump Pump Connections	Continuing outreach and education. Further follow-up expected in the third quarter.	Ongoing
5. Complete State Park Road Improvements	Phase I of the project is substantially complete. Design work for Phase II is complete and the project will be bid during the third quarter. Construction is expected to begin in the fourth quarter.	November 2020

6. Construct Viaduct Improvements	Pending outcome of Whitefish Urban project by MDT. Baker Underpass final design also underway.	November 2020
7. Construct Birch Point Quiet Zone Improvements	Updated Notice of Establishment for existing quiet zones with FRA. Continued discussion regarding Birch Point project.	June 2020
8. Construct Multi-modal Transportation Hub	Bus stop construction expected early summer 2020 with Phase III of the Depot Park Improvement Project.	June 2020
9. Update Transportation Plan	RFP issued for Transportation Plan Update with two responses. Interviews anticipated to take place in February.	October 2020
10. Continue Looking into Improving Recycling Efforts with CAP Steering Committee	New Energy Corps member began with the City in January. Working with standing committee to update signage at Central Recycling Site. Continued conversations with Republic Services.	Ongoing
11. Continue Working on Whitefish Lake Septic Leachate Concerns with WLI	Continue to work with WLI and review options the City has to address properties known to cause septic leachate in Whitefish Lake.	Ongoing

The following pages were handed out at the City Council meeting the night of the meeting. They are included here as an addendum to the packet.

## Michelle Howke

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**From:** Mayre Flowers [REDACTED]  
**Sent:** Monday, February 3, 2020 4:29 PM  
**To:** Michelle Howke; Craig Workman; John Muhlfeld; Frank Sweeney; Andy Feury; Rebecca Norton; squenell@cityofwhitefish.org; Ryan Hennen  
**Cc:** Mayre Flowers  
**Subject:** Comments for the 2-3-2020 WF City Council--Fwd: Kalispell Area Transportation Plan Upcoming Listening Sessions

TO: Whitefish City Council and Public Works Director for City Council Meeting 2/3/2020  
From: Mayre Flowers, Citizens for a Better Flathead

We are delighted to see the City of Whitefish move forward on a much needed Transportation Plan Update. Attached below is the link to the Transportation Update Plan that the City of Kalispell has begun. As you consider beginning your plan we would encourage you to develop a planning process that includes some of the features that the Kalispell Plan has including:

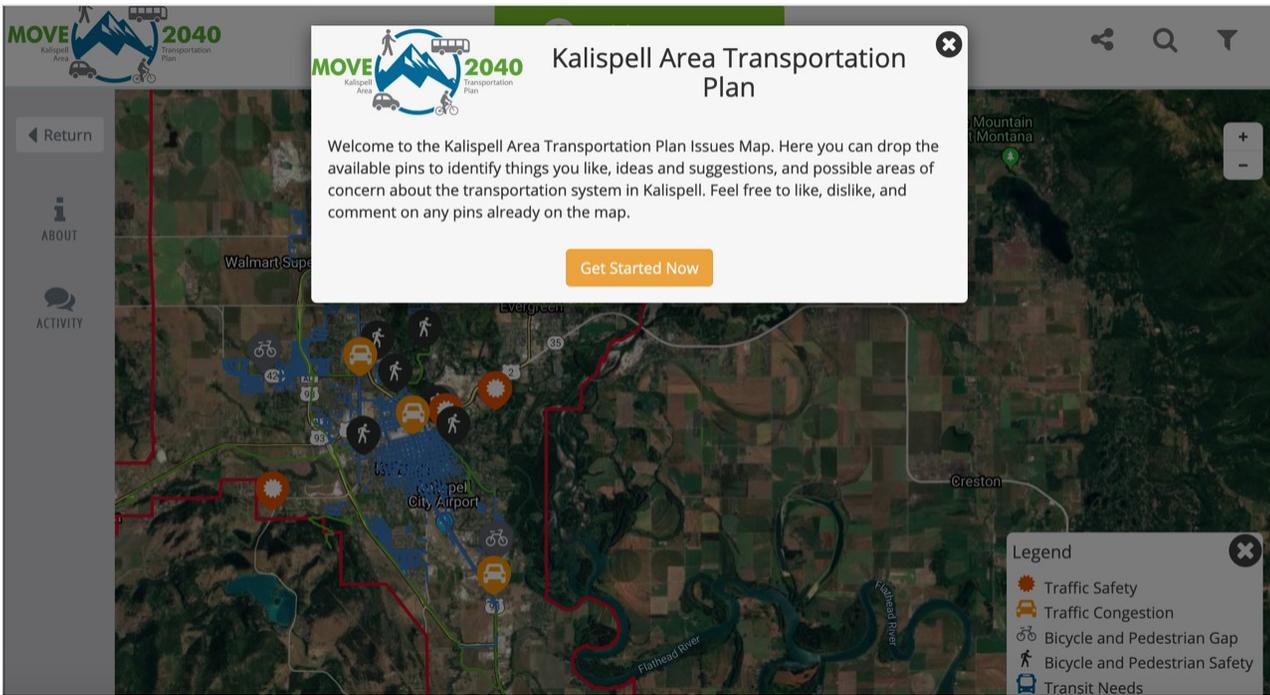
- A user friendly web site devoted to this project with links on the city web site—it is often difficult to find information on the city web site and a web site devoted to this project allows for interactive features, clear visual images, and links to resource information
- A map and survey tool for easy community input
- A phased process with generous public input options and consideration of alternatives

Additionally, we would encourage you to consider, as you may well already be doing, that the recommendations from this planning process should include a recommended set of funding strategies that are achievable and support meeting the plan goals within a clear timetable. This appears to be a weakness in prior plans.

Finally, we would once again encourage you to look at the notification and resource software system that Kalispell uses to inform and engage public participation through regular email updates and through a user-friendly website that puts a wide array of public documents within easy reach of city residents saving residents printing costs and saving staff time in having to locate and deliver documents.

Mayre Flowers  
[REDACTED]

This is a screen shot of the interactive map tool



Begin forwarded message:

**From:** "City Clerk" <[REDACTED]>  
**Subject:** Kalispell Area Transportation Plan Upcoming Listening Sessions  
**Date:** January 27, 2020 at 2:40:24 PM MST  
**To:** [REDACTED]  
**Reply-To:** [REDACTED]

[View this in your browser](#)

### LISTENING SESSIONS

The City of Kalispell in cooperation with the Montana Department of Transportation (MDT) is in the process of updating the Kalispell Area Transportation Plan, titled Move 2040.

Move 2040 will consider all modes of transportation, not just automobiles. Considerations will be given to improving a range of mobility options such as biking, walking, and public transportation. Move 2040 will outline a full range of needed improvements to meet projected transportation demands to the year 2040. This will include a recommended list of affordable transportation solutions to address needs for the Kalispell Area.

Move 2040 will be supported through a comprehensive public engagement process. Phase 1 of Move 2040 involves three listening sessions to gather input on Needs, Issues, Ideas and Strengths regarding transportation in the Kalispell area.

### LISTENING SESSIONS ARE SCHEDULED FOR THE FOLLOWING TIMES AND LOCATIONS:

- February 12th • 6:00 to 7:30 pm • Kalispell Chamber of Commerce
- February 13th • 9:00 to 10:30 am • Kalispell Chamber of Commerce
- February 13th • 5:30 to 7:00 pm • Kalispell Chamber of Commerce

Listening sessions are open to the public. All are encouraged to attend to share your thoughts and insights into the future of transportation in the Kalispell area through the development of Move 2040.

### ISSUES AND NEEDS SURVEY

Interested persons are encouraged to participate in the Issues and Needs survey which is available through the project website at [kalispellmove2040.com](http://kalispellmove2040.com). The survey provides the opportunity to provide interactive comments about transportation needs in the Kalispell area.

Those not able to participate in person are encouraged to send comments to the attention of the Project Manager Wade Kline at [wade.kline@kljeng.com](mailto:wade.kline@kljeng.com) or by mail at 1830 3rd Avenue E #202, Kalispell, MT, 59901. Written comments need to be received by February 27, 2020.

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