



## **Middleton City Council**

### **Findings of Facts, Conclusions of Law & Order**

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**In the Matter of the applications by Adam Capell and Representative Nicolette Womack for annexation/rezone, preliminary plat, and development agreement with respect to the Mills Landing Subdivision located at 0 Purple Sage Road, Middleton, Idaho (Tax Parcel No. R3756100):**

#### **A. Findings of Fact:**

1. Hearing Facts: See Staff Report for the hearing date of December 6, 2023, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.
2. Process Facts: See Staff Report for the hearing date of December 6, 2023, Exhibit "A".
3. Application and Property Facts: See Staff Report for the hearing date of December 6, 2023, Exhibit "A".
4. Required Findings per Idaho State Statute Title 67, Chapter 65, Idaho Standards for Public Works Construction and Middleton Supplement thereto, Middleton City Code 1-14, 1-15, 5-1, 5-2, 5-3 & 5-4 and Title 50, Chapters 2 and 13: See Staff Report for the hearing date of December 6, 2023, Exhibit "A".

#### **B. Conclusions of Law:**

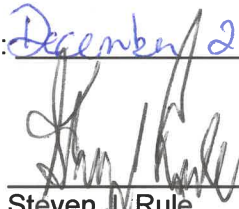
1. That the City of Middleton has exercised the powers conferred upon it by the "Local Land Use Planning Act of 1975," codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. That due consideration has been given to the comments received from the governmental subdivisions providing services in the City of Middleton planning jurisdiction, comments received from individuals of the public, and comments from City Planning Staff and City Engineer.
3. That notice of the application and public hearing was given according to law.
4. That the City Council's public hearing was conducted according to law, and the City has kept a record of the application and related documents.
5. That codes and standards pertinent to the application are the Idaho Standards for Public Works Construction, the Middleton Supplement to the Idaho Standards for Public Works Construction, Middleton City Code 1-14, 1-15, 5-1, 5-2, 5-3, and 5-4 and Idaho Code Title 67, Chapter 65 and Idaho Code Title 50, chapters 2 and 13.

**C. Decision & Order:**

Pursuant to the City Council's authority as provided in Middleton City Code 1-5-2, and based upon the above Findings of Facts and Conclusions of Law, it is hereby Ordered that:

1. The applications of Adam Capell and Nicolette Womack for annexation/rezone, preliminary plat, and development agreement are denied.
- D. City Council noted that approval may be obtained if Developer agrees to Section 3.5 of the proposed Development Agreement regarding the construction of a traffic signal at Cemetery Road and Hwy 44 and if Developer agrees to a Traffic Pro-Rata Fee of \$109,375.

WRITTEN ORDER APPROVED ON: December 21, 2023.

  
\_\_\_\_\_  
Steven J. Rule  
Middleton City Mayor

Attest:

  
\_\_\_\_\_  
Roberta Stewart  
Planning and Zoning Official

***Please take notice that pursuant to MCC 1-14-2(E)(10), applicant shall have 14 days after a signed final decision to request reconsideration by the final-decision maker. Such request must identify specific deficiencies in the final decision. Failure to request reconsideration may invalidate a subsequent judicial appeal. Additionally, pursuant to Idaho State Statute 67-6521, any affected person aggrieved by a final decision may, within 28 days after all remedies have been exhausted under local ordinances, seek judicial review as provided in chapter 52, Title 67.***

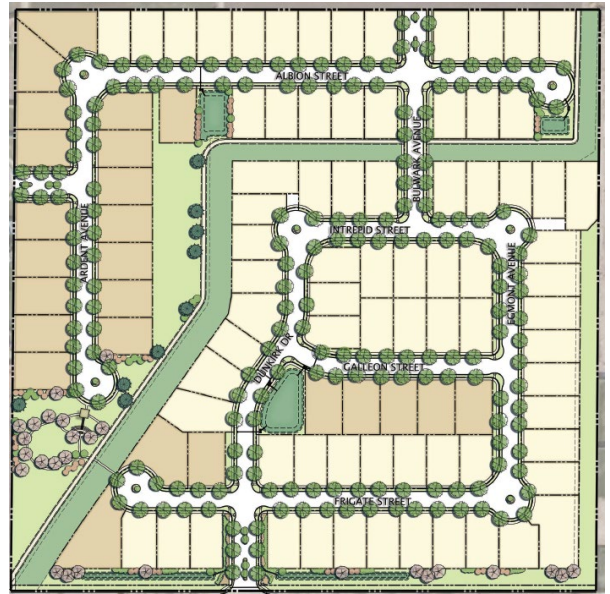
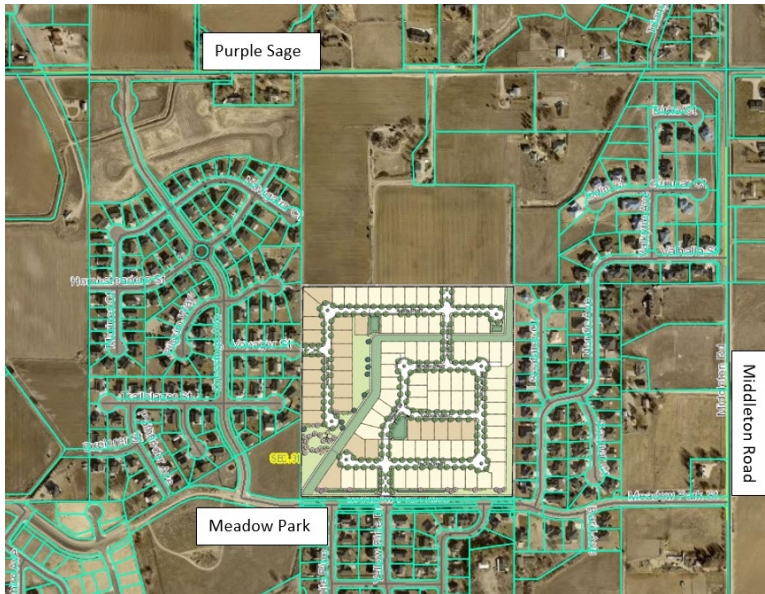
***Additionally, please take notice that Applicant has a right to request a regulatory taking analysis pursuant to Idaho State Statute section 67-8003.***

## EXHIBIT "A"



## STAFF REVIEW AND REPORT Middleton City Council

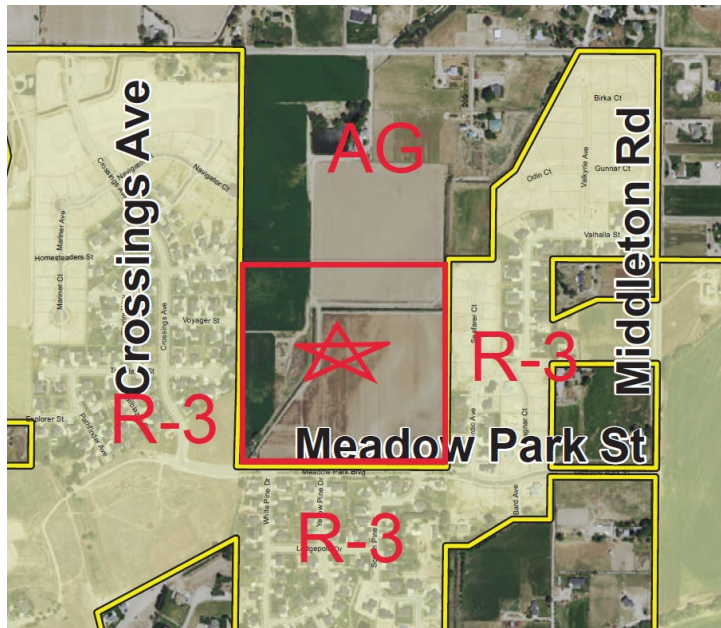
### MILLS LANDING SUBDIVISION



- A. City Council Public Hearing Date:** December 6, 2023
- B. Project Description:** Single Family residential subdivision located at 0 Purple Sage Road (tax parcel no., R375610). Project contains 100 single family home lots and 20 common lots on 40 acres of vacant land. Amenities include pickle ball court, regional concrete pathway, amphitheater style seat wall with shade structure, fire pit and extensive lawn.
- C. Application Requests:** Applications include (1) annexation and rezone to R-3 (Single Family Residential), (2) Preliminary Plat, (3) Development Agreement and (4) waiver requests under MCC 1-15-2.

The City Council and public can access a full copy of Applicants' application by accessing the City's website ([www.middleton.id.gov](http://www.middleton.id.gov)) and clicking on the "Public Hearing" tab.

- D. Current Zoning & Property Condition:** The property is currently vacant land in Canyon County zoned "Agricultural." It is contiguous to Middleton City limits and is surrounded on three sides by City property zoned R-3. To the north is County property zoned Agricultural.



- E. City Services:** Water and sewer are immediately adjacent to the project site and will connect to existing lines at Voyager Street in The Crossings Subdivision and existing connections in Meadow Park Street.



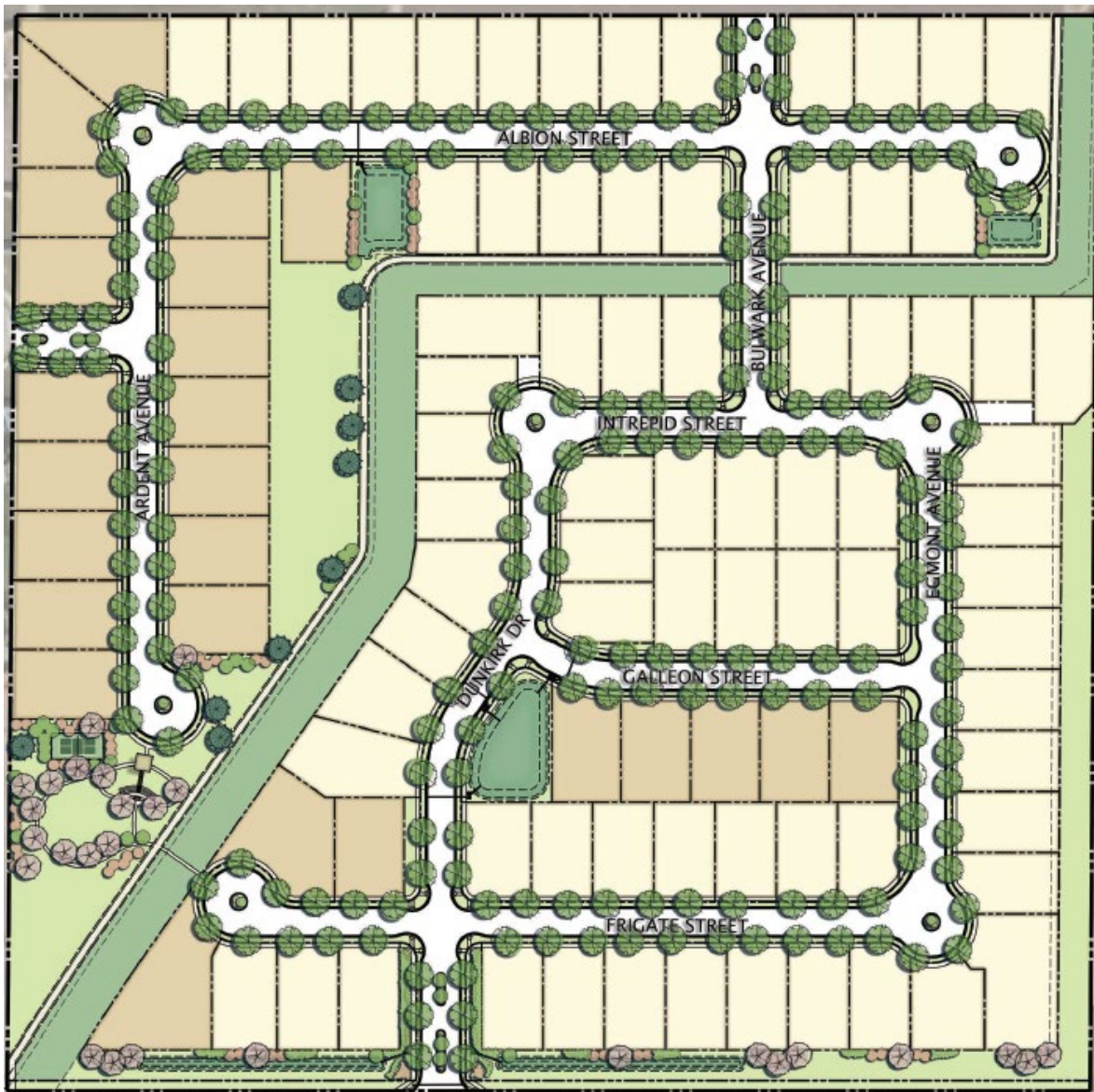
Sewer and water capacity are already included in the City's current capacity analyses. Capacity will not be formally reserved until the construction drawings are approved by City Engineer.

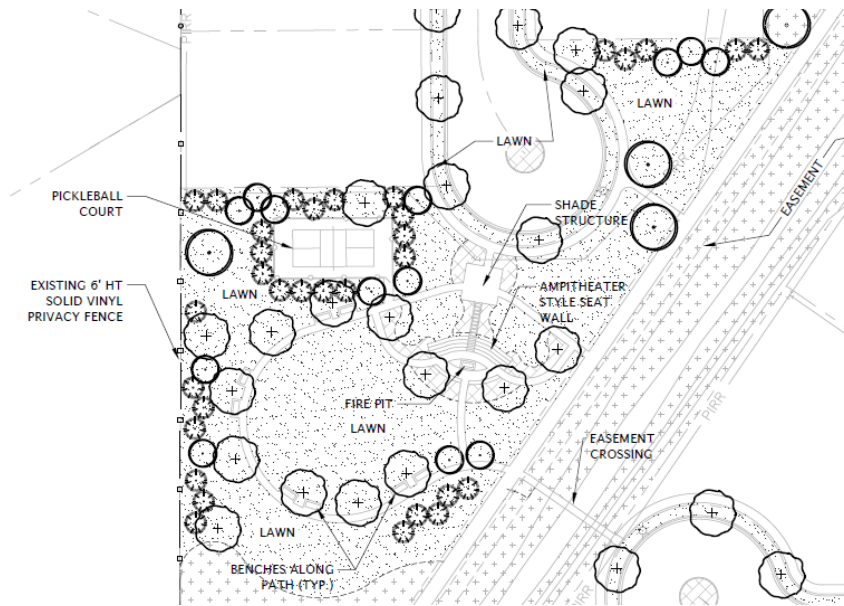


**F. Pathway, Open Space & Amenities:**

The Comprehensive Plan does not require a regional/public pathway across the project parcel, but Applicant has provided an 8' wide concrete pathway that spans the length of the canal. It will be encumbered by a 12' wide public access easement to help with pedestrian connectivity between subdivision projects. The pathway connects to a large lawn area with pickle ball court, amphitheater seat wall, shade structure, fire pit, benches and smaller connecting pathways.

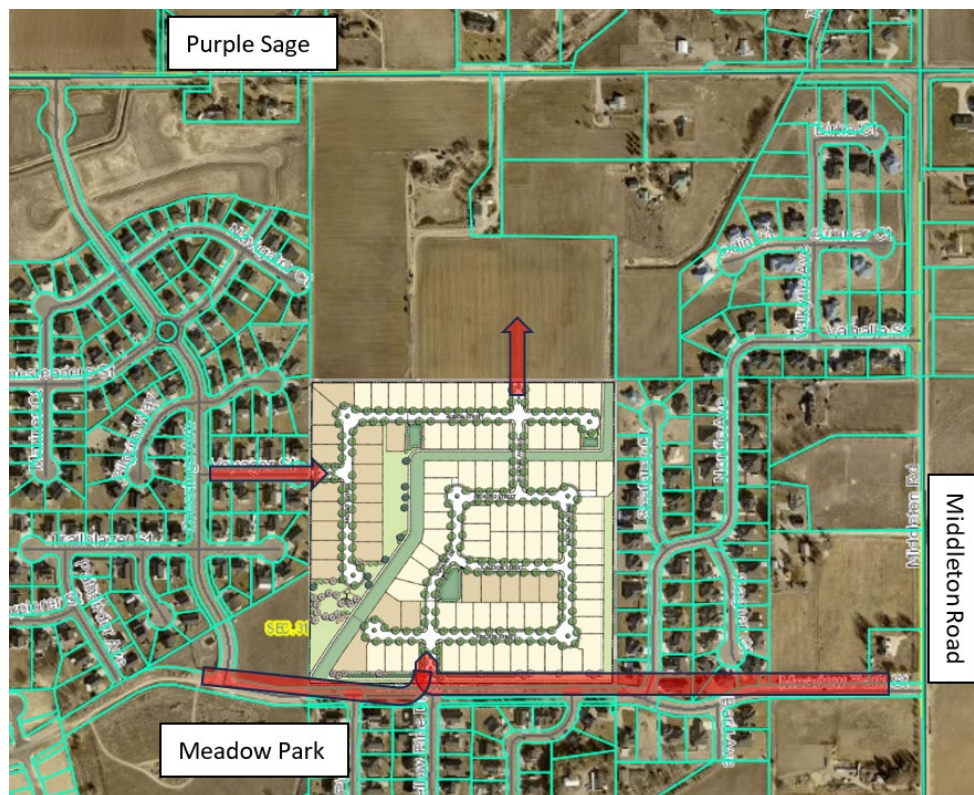
Open space totals 15%, well exceeding the 5% required by city code.





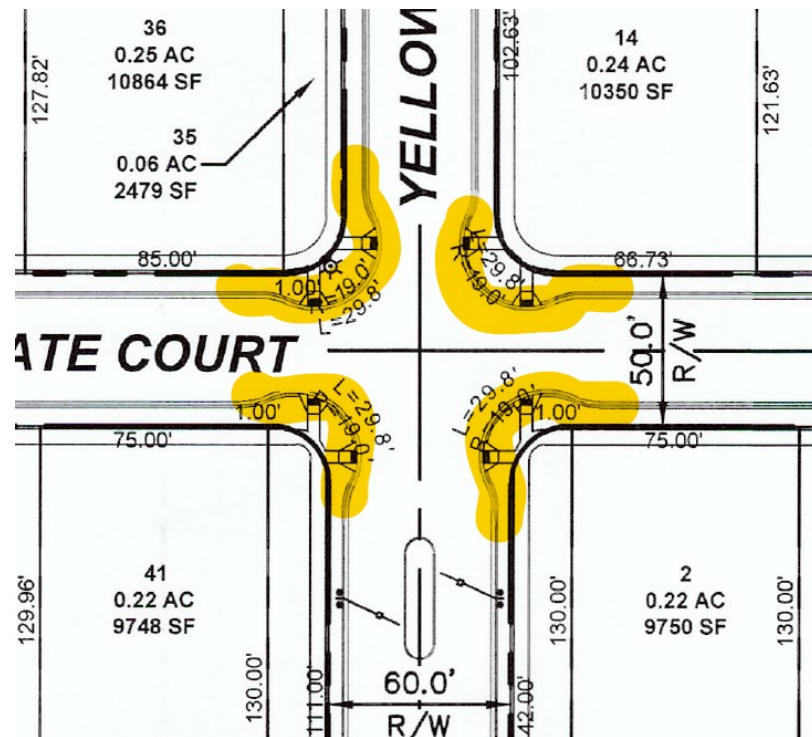
#### G. Traffic, Access & Streets:

The primary access for the subdivision will be off the Meadow Park Collector. Access will also be through Voyager Street in the adjacent Crossings Subdivision. A stub road is located to the north for future connectivity to Purple Sage Road.





1. **Frontage Improvements:** Road frontage improvements along Meadow Park Street are partially completed. Developer will be required to finish the missing frontage improvements, and a condition of approval should be a requirement that Developer use best efforts to coordinate with The Pines at Meadow Park Subdivision to construct the missing right of way improvements in a manner that adequately deals with the common area strips currently owned by The Pines' HOA.
2. **Detached Sidewalks & Mowstrip:** Planning Staff and Developer have agreed in the proposed Development Agreement to allow Developer to change the City's typical street section by detaching the sidewalk and adding a landscaped mow strip between the curb and sidewalk. This is an enhancement to the roadway that adds more width and it adds more texture and beauty to the streetscape. Developer is making a formal request for waiver under MCC 1-15-2 to detach the sidewalks. City Staff recommends approving the waiver request because it will result in an enhanced streetscape. Additionally, the Development Agreement contains a provision to measure the front setback from back of sidewalk and not the front property line, which will push the homes deeper into the lots. This will remedy any shortening of the front setback that would be a result of the detached sidewalk.
3. **Revised Street Section with Bulb-Outs:** Developer is requesting a waiver to City Code standards to add "bulb-outs" on interior street intersections.





The Planning & Zoning Commission recommended approval of the bulb-outs on the condition that Applicant's engineers work with the City Public Works Department to agree upon a bulb-out design that will accommodate City's current road equipment. Applicant did this, and the Public Works Department confirmed that City's street cleaning equipment can accommodate the bulb-out design.

4. **Traffic Pro-rata Fee:** Developer will be paying a \$5050 Mid-Star Transportation Impact Fee with each building permit for a total contribution of \$505,000 towards improvements of City intersections. Per MCC 5-4-3, Developer is also required to pay a Traffic Pro-Rata fee in the amount of \$109,375 for future improvements to the intersections of Cemetery Road and Purple Sage and Cemetery Road and Willis Road because these two intersections are not included in the Mid-Star program. This amount is based upon the percentage of impact set forth in Developer's Traffic Study for the project during the "Horizon Year 2025." Developer is not disputing that it should pay Traffic Pro-Rata Fees, but it is requesting that a Horizon Year of 2040 be applied, thereby lowering the Traffic Pro Rata Fee to \$43,000.

City Staff recommends that Council require payment of the \$109,375 amount that is based on the impacts in the year 2025 (not the \$43,000 amount based upon a 2040 horizon year). This is the same method of calculation City Staff has used for all other applications to date, and the Horizon year 2025 is more in line with the completion date of the project.

5. **Cemetery Rd & Hwy 44 Traffic Signal:**

The Developer's Traffic Study revealed that the traffic Signal at Cemetery Road will operate at a Level of Service D by the year 2025. City standards mandates a minimum LOS C for any City intersection. (Supplement to ISPWC, Pg. 32 Item F.) City had recently commissioned a Traffic Study for the entire Hwy 44 corridor. It revealed that the intersection of Cemetery Road & Hwy 44 would actually be LOS F by the year 2025, so there is some discrepancy between the two traffic studies. Nevertheless, both Studies have found that a traffic signal at Cemetery & Hwy 44 will mitigate the intersection and bring it up to the City's standard of LOS C.

As an aside, City has already commissioned Precision Engineering to design the traffic signal at Cemetery & Hwy 44.

City Staff has requested Developer to agree to a provision in the proposed Development Agreement ("DA") regarding the construction of a traffic signal at Hwy 44 and Cemetery Road. The provision states that City will not approve Developer's construction drawings for the subdivision infrastructure until Developer, or somebody else, designs the traffic signal at Cemetery Road and

Hwy 44. The DA further provides that City will not approve the final plat for phase 1 until Developer, or somebody else, actually builds the traffic signal at Cemetery Road and Hwy 44. If Developer chooses to construct the traffic signal, developer will be reimbursed to some degree via credits against Traffic Impact Fees charged for Mills Landing and developer's other approved subdivision known as Black Powder Subdivision.

The bottom line: the construction project cannot be finalized and no homes can be started until the traffic light at Cemetery Road and Hwy 44 is built by Developer or someone else. It is important to note that the provision is not mandating that Developer build the traffic light. It just mandates that the light be built some way, by someone, before the subdivision receives final plat approval.

Developer has refused to agree to this DA provision and maintains that this provision is beyond its proportional share of impact on the Cemetery & Hwy 44 intersection. However, Developer fails to realize that the provision is not mandating that it personally construct the traffic signal. The signal just needs to be built by someone before Developer can build any homes.

It is similar to a situation where a Developer has to wait to build a subdivision until sewer and water facilities are extended to Developer's parcel by others. In other words, the Developer has to wait until necessary infrastructure is built by others before Developer can begin improvements.

Developer is offering, instead, that it make a one-time "Voluntary Payment" in the amount of \$112,000 that City can apply to any intersection it chooses. Staff recommends that Council decline the \$112,000 "Voluntary Payment" and, instead, require that the Cemetery & Hwy 44 Traffic Signal be designed and constructed before approval of Phase 1 final plat.

- H. **Schools:** The Mills Landing Subdivision is in the Middleton School District #134. Elementary age children from this neighborhood will be attending Heights Elementary located at Cemetery Road and 9<sup>th</sup> Street. Superintendent Gee has submitted a comment noting that Heights Landing Elementary is at 134% capacity. The middle school and high school are nearing capacity but are not exceeding capacity. (See Exhibit D.) Updated Comments from MSD #134 and Sage International evidence a willingness of Developer to collaborate and assist the schools with over-crowding issues.
- I. **Police and Fire Departments:** Approving this new subdivision will not create an unreasonable burden on the Middleton Police Department. This project is flanked on three sides by City property, and City Police already patrol the area. Additionally, the Developer will pay a police impact fee with each building permit, thereby paying for any proportional impacts on the Police Department.

This property is already located in the Middleton Rural Fire Department service area, so there would be no change or impact whatsoever if the property is annexed into the City of Middleton. The Fire Department will serve the site regardless of whether it is in the County or in the City.

- J. Annexation and Rezone:** Applicants are requesting that the 40 acre project parcel be annexed into the City of Middleton with a zone change from County "Agricultural" to City R-3 (Single Family Residential).

There are three findings that must be made before Annexation can be approved: (1) the property must be contiguous to City limits (2) City services such as sewer, water, fire, police, schools and roadway system can be extended to serve the site, and (3) the annexation is deemed to be an orderly development of the City allowing efficient and economical extension of City services. (Idaho Code 50-222.)

An application for rezone requires two findings before the Council can recommend approval: (1) the rezone will not adversely affect the City's delivery of services and (2) the rezone will not be in conflict with the Comprehensive Plan. (Idaho Code 67-6511)

**FINDINGS:**

*With respect to annexation, Planning Staff finds that Applicant's project meets the criteria of contiguity. The project is directly adjacent to City limits on three sides.*

*Planning Staff finds that City sewer, water, police, and fire will not be adversely affected by the annexation of this project.*

*The school services are provided by another agency that is independent of the City. As stated above, Heights Elementary is over capacity.*

*Planning Staff is recommending a provision in the DA to require the Cemetery Road & Hwy 44 traffic signal be built prior to final plat approval for the Project's phase 1. Not one house will be built until a soon-to-be failing intersection is remedied. Additionally, Developer's Mid-Star Transportation Impact Fees in the amount of \$505,000 and Traffic Pro-Rata fee in the amount of \$109,375 will help mitigate any impacts posed by this development on the City's road system.*

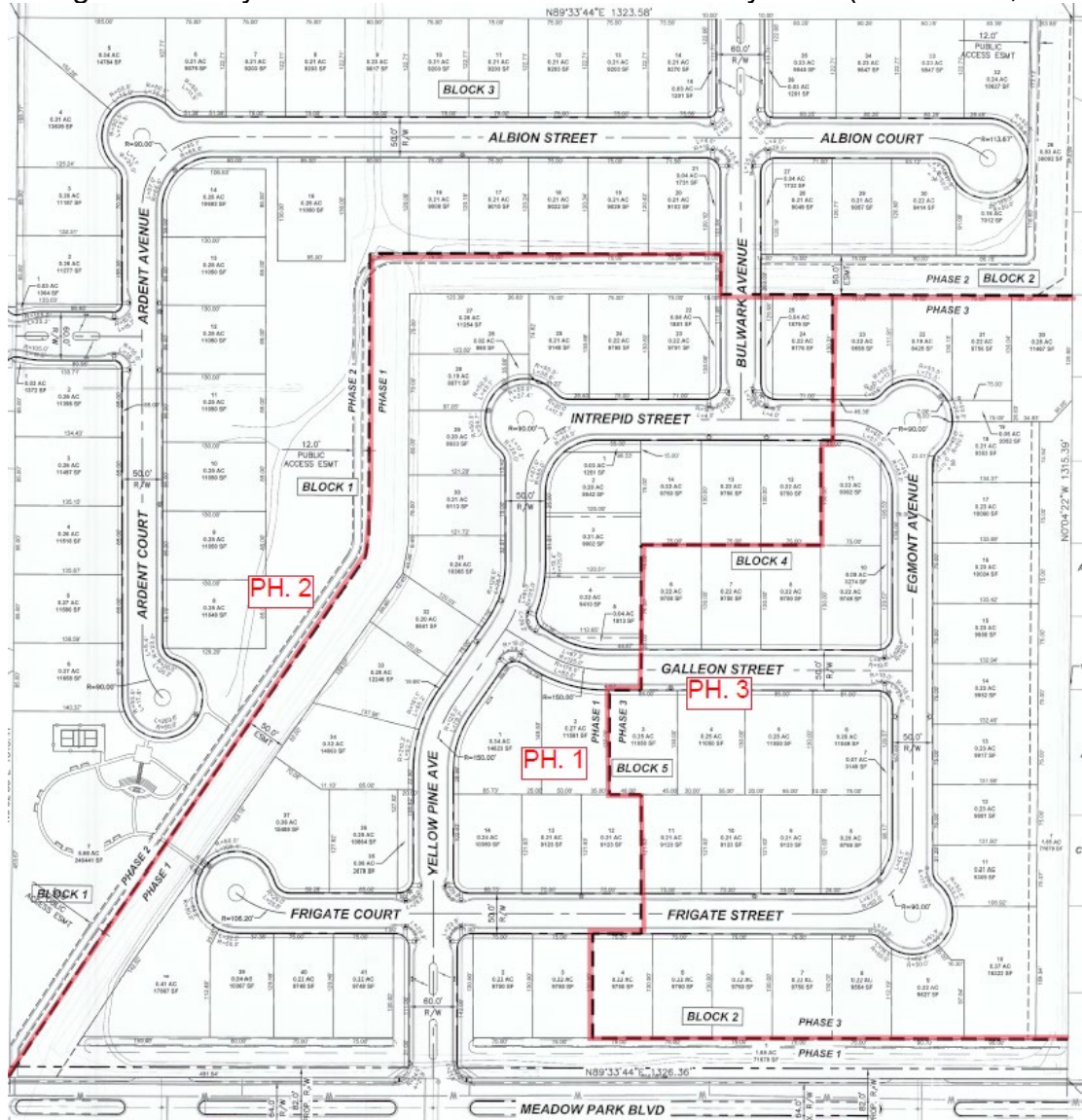
*However, if the construction of the Cemetery traffic signal and payment of the Pro-Rata fee of \$109,375 are not required, then annexation may not be appropriate because the roadway system will be too deficient and there will not be an economical extension of the City's roadway system or "service".*

*As to the rezone application, Planning Staff finds that the rezone will not adversely affect the City's ability to deliver services like sewer, water, police and fire. However, the subdivision may adversely affect the roadway system if the Cemetery Traffic*



Signal and \$109,375 pro rata payment are not required. Additionally, the fact that Heights Elementary is over capacity will affect any analysis regarding school services.

- K. Preliminary Plat Application:** The preliminary plat shows 100 home lots and 20 common lots to be built in three phases. Under the R-3 Zone, Developer is entitled to 120 home lots. Developer has designed a preliminary plat with only 100 home lots, resulting in a density of 2.5 rather than the 3.0 allowed by code (MCC 5-4-1, Table 2).



[11X17 copy of the Preliminary Plat is attached as Exhibit A]

The sole criterion for approving a preliminary plat is a finding that the preliminary plat complies with the standards and requirements of the City Code and State Code.

## **FINDINGS:**

*Staff finds that the Mills Landing preliminary plat does not comply with the standards of City Code because of the detached sidewalk and intersection bulb-outs. However, the Council can still approve the preliminary plat if it grants Developer's waivers to Code standards under MCC 1-15-2.*

**L. Development Agreement:** Applications for annexation/rezone are generally accompanied by an application for Development Agreement. Attached as Exhibit "B" is a draft Development Agreement that contains some disputed provisions. The DA utilizes the City's DA form, and only Article III regarding conditions of development has been altered to add the following proposed and disputed conditions:

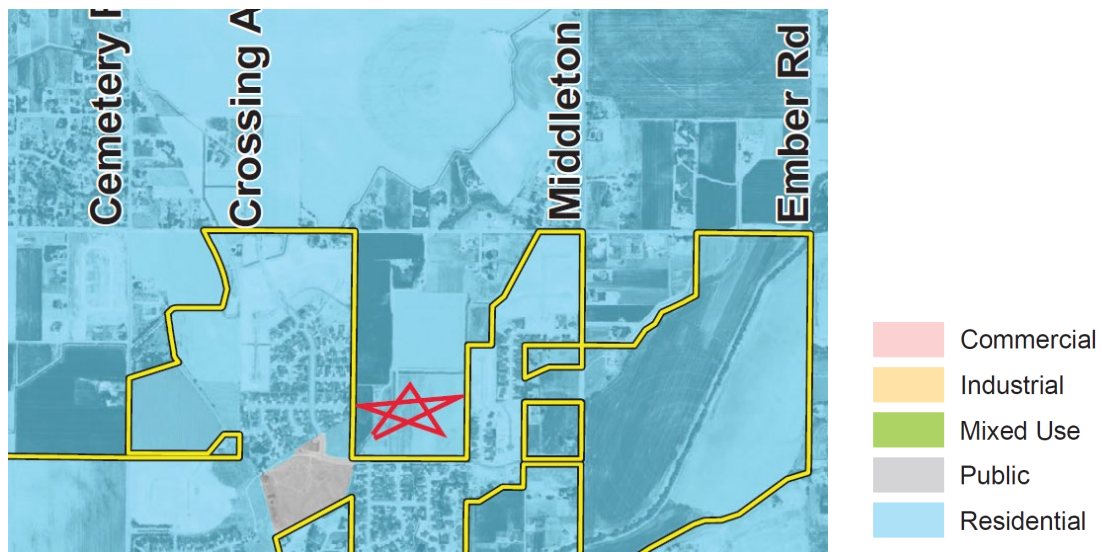
1. Developer will develop the community generally consistent with the concept plans attached to the DA. (Para., 3.1)
2. Developer to construct interior streets with a detached 5' concrete sidewalk and mow strip between back of curb and sidewalk. All entrances will be enhanced with boulevard entrances. City approved root barriers shall be used in the mow strip. Developer to execute a license to install landscaping in the City's right of way. Only specified trees may be planted in the mow strip. Developer, HOA and/or homeowners to hold City harmless from any claims for injury or damages that are caused by Developer, HOA, or homeowner while maintaining the mow strip and/or sidewalks. (Para., 3.2)
3. Front setbacks to be measured from the back of sidewalk. (Para., 3.3)
4. Developer to pay a \$109,375 Traffic Pro-Rata fee pursuant to MCC 5-4-3. (Para., 3.4) **(Developer is proposing a payment of only \$43,000.)**
5. City will not approve Developer's construction drawings for the subdivision infrastructure until Developer, or somebody else, designs the traffic signal at Cemetery Road and Hwy 44. Once that is done, City will not approve the final plat for phase 1 until Developer, or somebody else, actually builds the traffic signal at Cemetery Road and Hwy 44. Developer will be entitled to Mid-Star transportation impact credits to the extent of the costs included in the Mid-Star Transportation fee CIP. Developer will also be entitled to Traffic Pro-Rata Fees collected for the Cemetery Intersection up to 5 years after the intersection is constructed. (Para., 3.5) **(Developer has not agreed to this term and proposes a one-time payment of \$112,000 instead.)**
6. Developer to provide the following amenities: one pickle ball court, amphitheatre style seat wall, fire pit, lawn area, shade structure benches, and 8' wide concrete pathway along canal. (Para. 3.6)
7. Developers will have two years to obtain final plat approval for Phase 1. Developer may seek two 1-year extensions, thereby allowing a total of 4 years to bring Phase 1 to final plat approval. After Phase 1 final plat, Developer will be allowed 2 year intervals to obtain final plat approval for Phases 2 and 3. These time periods may also be extended with two 1-year extensions. Failure to

meet these time-lines may result in the City terminating the DA and nullifying the preliminary plat. (Para., 3.7)

[A full copy of the proposed Development Agreement is attached to this Staff Report as Exhibit "B".]

*FINDINGS: Neither the City Code nor the State Code require specific findings before approving an application for development agreement. Instead, the governing body just needs to determine if the contractual terms are agreeable terms.*

- M. Comprehensive Plan & Land Use Map:** *Staff finds that Applicant's project complies with the Comprehensive Plan's Future Land Use Map because the proposed R-3 zone correlates with the "Residential Use" shown on the Future Land Use Map.*



Additionally, Applicant's project complies with the following Goals, Objectives, and Strategies of the 2019 Middleton Comprehensive Plan as follows:

- a. Goal 4: Project will produce quality lots for residential use and also increase the quality of life and general welfare of the City as a whole.
- b. Goal 6: interior streets and improvements to Meadow Park will be developed in an orderly manner. Utilities will also be expanded in an orderly manner and in keeping with the projected growth of the City.
- c. Goal 10: Project provides pathways, gathering spaces, and outdoor recreational activities.
- d. Goal 11: The housing type matches the residents' lifestyle in the area the project is located.



*Applicant's project does not comply with the following Goals:*

- a. Goal 6 and Transportation Section, Objectives A and B: If Developer is not required to adhere to the proposed DA provision regarding the Cemetery Road & Hwy 44 traffic signal and pay the \$109,375 traffic pro-rata fee, then the development may not be deemed "orderly" because of the impact on the City's road system.*
- b. Goal 13 pertains to Schools, but the "Objectives" and "Strategies" for Goal 13 pertain to only vehicle and pedestrian activity. The Comprehensive Plan's Goals and Strategies do not address school over-crowding.*

- N. Comments Received from Surrounding Landowners:** See comments attached as Exhibit "C".
- O. Comments from Agencies:** See comments attached as Exhibit "D".
- P. Comments from City Engineer and Planning Staff:** See attached as Exhibit "E".
- Q. Application Information:** Applicants are Adam Capell/Toll Brothers and Nicolette Womack/Kimley-Horn Engineering (3103 W. Sheryl Dr. #100, Meridian 83642 / 950 W. Bannock Street, #1100, Boise, 83702). Application was accepted on 6/1/2023.
- |   |               |
|---|---------------|
| <b>R. Notices &amp; Neighborhood Meeting:</b> | <b>Dates:</b> |
| Newspaper Notification                        | 11/5/2023     |
| Radius notice to adjacent landowners          | 11/21/2023    |
| Circulation to Agencies                       | 11/2/2023     |
| Sign Posting property                         | 11/2/2023     |
| Neighborhood Meeting                          | 5/18/2023     |
- S. Applicable Codes and Standards:** Idaho Standards for Public Works Construction, the Middleton Supplement to the Idaho Standards for Public Works Construction, Middleton City Code 1-14, 1-16, 5-1, 5-2, 5-3, and 5-4, and Idaho Code Title 67, Chapter 65 & Title 50, Chapters 2 and 13.
- T. P&Z Recommendation:** The Planning & Zoning Commission considered the Mills Landing applications at a public hearing held on October 16, 2023. The Commission made the following recommendations:

1. City Council should approve the applications of Adam Capell and Nicolette Womack for annexation/rezone, preliminary plat, and development agreement subject to the conditions of approval set forth in the staff report for the October 16, 2023, hearing, except for the following terms and revisions:
  - i. The Development Agreement should be modified to remove the requirement that the traffic signal at Cemetery Road and Hwy 44 be constructed prior to approval of Applicant's phase 1 final plat.
  - ii. The Development Agreement should be revised to state that the Pro-Rata Fee to be paid at Phase 1 final Plat is \$43,000 instead of \$109,375.
  - iii. The Development Agreement to be revised to state that Developer shall pay a "Voluntary Roadway Payment" in the amount of \$112,000 to be used on road project(s) of City's choice.
2. City Council approve Applicant's request for waiver of the City's street standards regarding attached sidewalks and allow Applicant to construct interior roads with a detached 5' sidewalk with mow strip between back of curb and sidewalk.
3. City Council approve Applicant's waiver request to construct street "bulb-outs" but only on the condition that the design be refined to match the operation of City's current street maintenance equipment and the City Public Works Department confirms to City Staff that its equipment can accommodate the bulb-out design. (Applicant has subsequently worked with the City Public Works Department, and Public Works has confirmed that the bulb-out design will accommodate City cleaning equipment.)

(Copy of the P&Z Commission's Findings of Facts, Conclusions of Law and Recommendations is attached as Exhibit "F")

**U. Conclusions and Recommended Conditions of Approval:**

Per State law and the Middleton City Code, any final order on a land use application must be based upon findings of facts and conclusions of law.

**As to Findings of Facts**, Planning Staff has set forth findings of facts above in parentheses.

**As to Conclusions of Law**, Planning Staff finds that the City Council has the authority to hear these applications and to approve or deny the applications, with or without conditions. Additionally, Planning Staff notes that all public notice requirements were

met. Planning Staff further set forth the portions of the Idaho State Code and Middleton City Code to be considered in making a decision on the applications.

If the Council is inclined to approve the annexation/rezone, preliminary plat, and development agreement applications, then Planning Staff recommends that any approval be subject to the following conditions:

1. Paragraph 3.5 regarding the Cemetery & Hwy 44 traffic signal must remain in the approved Development Agreement as currently written, and Developer must agree to abide by Paragraph 3.5.
2. Owner/Developer to pay a Pro-Rata Traffic Fee in the amount of \$109,375 as required by MCC 5-4-3 prior to approval of final plat for Phase 1.
3. Developer's waiver request for detached sidewalks and mow strips and waiver request for street bulb-outs are approved.
4. Developer to obtain a license to install a pathway in the Black Canyon Irrigation District easement.
5. Applicant shall use best efforts, but is not required, to have the common lots immediately south of the property, which are owned by the Pines at Meadow Park HOA, improved with code-compliant landscaping.
6. City municipal domestic water, fire flow and sanitary sewer services are to be extended to serve the subdivision.
7. Developer to install landscaping and all amenities in compliance with the Landscape Plan approved with the preliminary plat.
8. Developer shall create a plan for operation, maintenance and repair of stormwater facilities (O&M Plan) contained on the project site. The O&M Plan shall be recorded with the CC&Rs. Developer and/or HOA must maintain and operate the subdivision stormwater facilities in compliance with the O&M Plan.
9. All City Engineer review comments are to be completed and approved.
10. All Planner comments are to be completed and approved.
11. All requirements of the Middleton Rural Fire District are to be completed and approved.
12. All requirements of the Black Canyon Irrigation District to be completed and approved.
13. Sewer and water capacity will be reserved no earlier than City Engineer's approval of the Construction Drawing for each phase.

Finally, if the Council denies the applications, then the Council should state what the applicant could do, if anything, to obtain approval. (Middleton City Code 1-14(E)(8)).

Prepared by Roberta Stewart  
Planning & Zoning Official

Dated: 12/1/2023



## EXHIBIT A

Preliminary Plat Proposed

A PORTION OF THE W  $\frac{1}{2}$  OF THE NE  $\frac{1}{4}$  OF  
SECTION 31, TOWNSHIP 5 NORTH, RANGE 2  
WEST OF THE BOISE MERIDIAN,  
CANYON COUNTY, IDAHO  
2023

KIMLEY-HORN AND ASSOCIATES, INC.  
1100 W. IDAHO STREET SUITE 210  
BOISE, IDAHO 83702  
PHONE: (208) 845-0089  
CONTACT: MICHAEL O'REILLY, PE

IDAHO SURVEY GROUP LLC  
9955 W. EMERALD ST.  
BOISE, ID 83704  
PHONE: (208) 481-0858  
CONTACT: CODY M. McCAMMON, PLS

TOLL BROTHERS  
3103 W. SHERYL DR., SUITE 100  
MERIDIAN, ID. 83642  
TELEPHONE: (208) 424-0020  
CONTACT: ADAM CAPELL

|  |                               |
|--|-------------------------------|
|  | PROPOSED CL/SECTION LINE      |
|  | PROPERTY BOUNDARY             |
|  | ROAD RIGHT OF WAY             |
|  | PROPOSED LOT LINES            |
|  | EASEMENT                      |
|  | PROPOSED SURVEY MARKER        |
|  | EXISTING CONTOURS             |
|  | PROPOSED 8" SEWER             |
|  | PROPOSED 8" WATER (4' COVER)  |
|  | PROPOSED 16" WATER (4' COVER) |
|  | PROPOSED CURB AND GUTTER      |
|  | PROPOSED STORM DRAIN MANHOLE  |
|  | PROPOSED CATCH BASIN          |
|  | PROPOSED SAND & GREASE TRAP   |
|  | PROPOSED SEWER MANHOLE        |
|  | PROPOSED FIRE HYDRANT         |
|  | PROPOSED GATE VALVE           |
|  | PROPOSED PEDESTRIAN RAMP      |
|  | PROP. STORM DRAIN             |
|  | EXISTING LOT LINE             |
|  | EXISTING IRRIGATION           |
|  | EXISTING WATER MAIN           |
|  | EXISTING EDGE OF PAVEMENT     |
|  | EXISTING GAS LINE             |
|  | EXISTING TELECOM              |
|  | EXISTING CURB AND GUTTER      |
|  | EXISTING STREET LIGHT         |
|  | EXISTING FIRE HYDRANT         |
|  | EXISTING CONCRETE DITCH       |

GROSS ACREAGE: 40.01 AC  
NET ACREAGE: 37.03 AC  
TOTAL NUMBER OF LOTS: 120  
RESIDENTIAL LOTS: 100  
COMMON AREA LOTS: 20  
PHASE 1 NUMBER OF LOTS: 39  
RESIDENTIAL LOTS: 30  
COMMON LOTS: 9  
PHASE 2 NUMBER OF LOTS: 46  
RESIDENTIAL LOTS: 38  
COMMON LOTS: 8  
PHASE 3 NUMBER OF LOTS: 35  
RESIDENTIAL LOTS: 32  
COMMON LOTS: 3  
MINIMUM LOT SIZE: 8,071 SF  
MAXIMUM LOT SIZE: 17,887 SF  
AVERAGE LOT SIZE: 10,212 SF  
RESIDENTIAL GROSS DENSITY (DU/AC): 2.50 DU/AC  
COMMON AREA: 9.39 AC (23.5%)

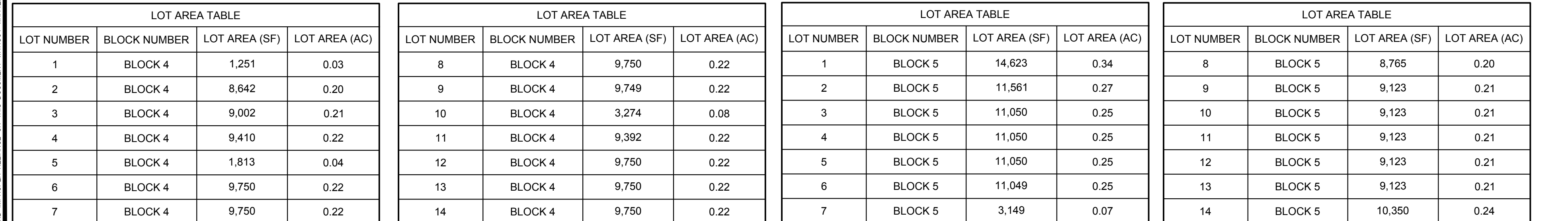
| SHEET INDEX  |                              |
|--------------|------------------------------|
| Sheet Number | Sheet Title                  |
| 01           | PRELIMINARY PLAT             |
| 02           | PRELIMINARY ENGINEERING PLAN |
| 03           | PROPOSED STREET SECTIONS     |

1. BUILDING SETBACKS AND DIMENSIONAL STANDARDS IN THIS SUBDIVISION SHALL BE IN COMPLIANCE WITH THE APPLICABLE ZONING REGULATIONS OF THE CITY OF MIDDLETON, EXCEPT FOR THE FRONT BUILDING SETBACK WHICH SHALL BE MEASURED FROM THE BACK OF SIDEWALK.
2. ALL LOT LINES COMMON TO PUBLIC STREETS ARE HEREBY DESIGNATED TO HAVE A TEN (10) FOOT PERMANENT EASEMENT FOR PUBLIC UTILITIES AND PRIVATE UTILITIES. PUBLIC UTILITIES MAY ONLY INFRINGE ON FRONT LOT EASEMENT.
3. UNLESS OTHERWISE SHOWN AND DIMENSIONED, ALL LOTS ARE HEREBY DESIGNATED AS HAVING A PERMANENT EASEMENT FOR PUBLIC/PRIVATE UTILITIES, DRAINAGE, AND IRRIGATION OVER THE 5-FEET ADJACENT TO ANY INTERIOR LOT LINE AND OVER 10-FEET ADJACENT TO ANY REAR LOT LINE OR SUBDIVISION BOUNDARY.
4. ANY RE-SUBDIVISION OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF THE RE-SUBDIVISION.
5. SANITARY SEWER & WATER SYSTEMS SHALL BE PROVIDED IN ACCORDANCE WITH THE CITY OF MIDDLETON STANDARDS.
6. STORMWATER INFRASTRUCTURE TO BE INSTALLED PER CITY OF MIDDLETON'S REQUIREMENTS.
7. STORMWATER INFRASTRUCTURE WILL BE CONSTRUCTED PER CITY OF MIDDLETON POLICY AND ALL STORMWATER IS MANAGED USING RETENTION FACILITIES WITH PRETREATMENT.
8. PROJECT DURATION - NAVD 88.
9. IRRIGATION IRRIGATION SYSTEM SHALL BE PROVIDED PER IDAHO CODE, SECTION 31-3805 AND THE OWNER SHALL COMPLY WITH THE IDAHO CODE 31-3805(B) AND ALL PROVISIONS REQUIRED TO APPLY TO IRRIGATION RIGHTS. PIPING SHALL BE PLACED ALONG REAR LOT LINES (TYPICAL) AND IRRIGATION SERVICES PROVIDED TO EACH LOT. THE PRESSURE IRRIGATION SYSTEM SHALL BE MAINTAINED AND OPERATED BY THE HOMEOWNERS ASSOCIATION. PUMP STATION CAPACITY CALCULATIONS WILL BE REQUIRED AS A CONDITION OF CONSTRUCTION PLAN SUBMITTAL. THIS PARCEL IS WITHIN THE BLACK CANYON IRRIGATION DISTRICT AND ALL LOTS WILL BE SUBJECT TO ASSESSMENT.
10. ALL COMMON LOTS ARE IDENTIFIED BY LOT NUMBER. LOTS 1, 7, 2, 26, 35, BLOCK 1, LOTS 1, 19, 25, 27, 35, BLOCK 2, LOTS 1, 15, BLOCK 3, LOTS 1, 5, 10, BLOCK 4, LOTS 1, 7, BLOCK 5. THESE LOTS SHALL BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION, LOT 7, BLOCK 1, LOT 31, BLOCK 2, LOT 1, BLOCK 5 ARE STORM WATER MANAGEMENT AREAS OWNED AND MAINTAINED BY MILLS LANDING HOA. LOT 26, BLOCK 1 AND LOT 19, BLOCK 2 ARE PRIVATE DRAINAGE LOTS. THE COMMON LOTS ARE IDENTIFIED BY LOT NUMBER AND PRIVATE LANDS. STORMWATER MANAGEMENT AND CITY UTILITY EASEMENT. THE COMMON LOTS WHICH ARE NOT EITHER STORMWATER MANAGEMENT OR PRIVATE LANDS ARE LANDSCAPED COMMON LOTS.
11. ALL EXISTING WELLS SHALL BE ABANDONED PER IDWR REGULATIONS. ALL SEPTIC SYSTEMS SHALL BE COMPLETELY REMOVED AND THE AREA RECOMPACTED PER GEOTECHNICAL REPORT.
12. THIS PROPERTY IS IN ZONE X OF THE FLOOD INSURANCE RATE MAP NO. 16027C0275F, COMMUNITY MAP NO. 0275 WHICH BEARS AN EFFECTIVE DATE OF MAY 24, 2011 AND IS NOT IN A SPECIAL FLOOD HAZARD AREA.
13. DOMESTIC AND FIRE PROTECTION WATER SHALL BE PROVIDED BY THE CITY OF MIDDLETON.
14. SANITARY SEWER COLLECTION SHALL BE PROVIDED BY THE CITY OF MIDDLETON.
15. IRRIGATION DITCHES THROUGH THE PROJECT SHALL BE PIPED WHERE THEY CROSS ROADWAYS WITH ALL STRUCTURES LOCATED BEYOND ANY PUBLIC RIGHT-OF-WAY. ALL IRRIGATION AND DRAINAGE FACILITIES SHALL BE LOCATED OUTSIDE OF THE RIGHT-OF-WAY.
16. PRIVATE UTILITIES SHALL BE RELOCATED OUT OF THE RIGHT-OF-WAY.
17. SEWER AND WATER CAPACITY SHALL BE RESERVED WHEN CITY APPROVES CONSTRUCTION DRAWINGS SUBJECT TO CAPACITY ANALYSIS.
18. PHASE 1 AND PHASE 2 SHALL BE DEVELOPED AND CONSTRUCTED CONCURRENTLY.
19. THIS SUBDIVISION IS SUBJECT TO THE PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED IN THE RECORDS OF CANYON COUNTY AS INSTRUMENT #.
20. SIDEWALKS PARCEL TO BE BUILT BORROWING THE MOW STRIP SHALL BE ENCUMBERED BY PUBLIC ACCESS EASEMENT.
21. ALL TREES PLANTED IN THE LANDSCAPE STRIP BETWEEN THE DETACHED SIDEWALK AND CURB SHALL HAVE A ROOT BARRIER. THE ROOT BARRIER SHALL BE A LINEAR ONLY, 24" DEEP ROOT BARRIER PANEL, MADE OF POLYETHYLENE PLASTIC W/ ULTRAVIOLET INHIBITORS, WHICH SHALL BE 0.085" THICK MIN, 24" DEEP MIN., AND EXTENDED 10' MIN. SIDE OF TREE.
22. THE CITY OF MIDDLETON IS IN THE PROCESS OF REVISING THEIR CODE REGARDING THE 24' WIDE TRAFFIC BUFFER MANDATED BY MCC 5-4-10-6. AT THE TIME OF THE CONSTRUCTION DOCUMENT SUBMITTAL, THE DEVELOPER MAY CHOOSE TO CONSTRUCT THE TRAFFIC BUFFER AS SET FORTH IN MCC 5-4-10-6 BASED ON THE DATE OF ENTITLEMENT OR CHOOSE TO UTILIZE THE UPDATED DESIGN IF AT SUCH TIME, SAID CODE SECTION HAS BEEN MODIFIED AND APPROVED BY THE CITY COUNCIL.
23. THE 24' BUFFER ARE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION.
24. FRONTAGE IMPROVEMENT MAY OCCUR PHASE BY PHASE BUT ALL FRONTAGE IMPROVEMENTS MUST BE COMPLETED BY PHASE 3 FINAL PLAT PURSUANT TO MCC 5-4-10-2(4).
25. THE HOMEOWNERS ASSOCIATION (HOA), WILL OWN AND MANAGE THE COMMON AREAS WHICH INCLUDE STORMWATER FACILITIES. A PLAN FOR OPERATION, MAINTENANCE, AND REPAIR OF STORMWATER FACILITIES, (O&M PLAN) WILL BE PREPARED FOR ALL STORMWATER FACILITIES MAINTAINED BY THE HOA. THE O&M PLAN SHALL BE RECORDED WITH THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (C&CRs). THE O&M PLAN SHALL BE USED FOR MAINTENANCE AND OPERATION OF THE STORMWATER FACILITY.
26. HYDRANT LOCATION AND CONFIGURATION TO BE REVIEWED AND APPROVED BY MIDDLETON RURAL FIRE PROTECTION DISTRICT.
27. ALL IRRIGATION AND/OR DRAINAGE FACILITIES TO BE LOCATED/RELOCATED OUT OF RIGHTS OF WAY. FACILITIES MAY CROSS RIGHT OF WAY AT 90°.
28. NO LOT ACCESS TO ADJACENT PARK BLVD.
29. A WAIVER FOR THE BULB-OUTS WAS APPROVED BY CITY COUNCIL ON DECEMBER 6TH, 2023.

TBM = X CHISELED IN BACK OF SIDEWALK ELEV=2450.87'  
HORIZONTAL DATUM: LOCAL SITE  
VERTICAL DATUM: NAVD'88/GEOID18

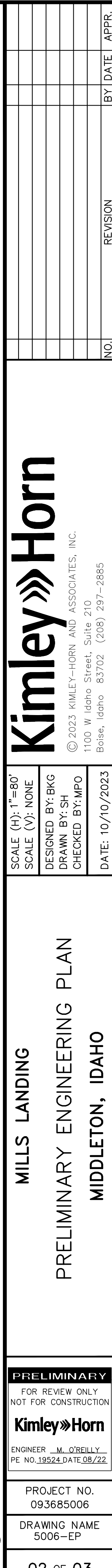
NOTE: THIS SEAL CERTIFIES  
THE PROJECT BOUNDARY AND  
BENCHMARK.

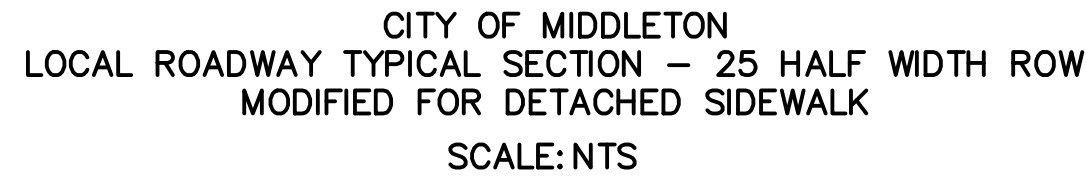




| LOT AREA TABLE |              |               |               |
|----------------|--------------|---------------|---------------|
| LOT NUMBER     | BLOCK NUMBER | LOT AREA (SF) | LOT AREA (AC) |
| 1              | BLOCK 3      | 1,364         | 0.03          |
| 2              | BLOCK 3      | 11,277        | 0.26          |
| 3              | BLOCK 3      | 11,187        | 0.26          |
| 4              | BLOCK 3      | 13,639        | 0.31          |
| 5              | BLOCK 3      | 14,784        | 0.34          |
| 6              | BLOCK 3      | 9,075         | 0.21          |
| 7              | BLOCK 3      | 9,203         | 0.21          |
| 8              | BLOCK 3      | 9,203         | 0.21          |
| 9              | BLOCK 3      | 9,817         | 0.23          |
| 10             | BLOCK 3      | 9,203         | 0.21          |
| 11             | BLOCK 3      | 9,203         | 0.21          |

| LOT AREA TABLE |              |               |               |
|----------------|--------------|---------------|---------------|
| LOT NUMBER     | BLOCK NUMBER | LOT AREA (SF) | LOT AREA (AC) |
| 12             | BLOCK 3      | 9,203         | 0.21          |
| 13             | BLOCK 3      | 9,203         | 0.21          |
| 14             | BLOCK 3      | 9,270         | 0.21          |





03 OF 03

## EXHIBIT B

Development Agreement Proposed/Disputed



**After Recording, Mail To**  
Middleton City Clerk  
1103 W. Main Street  
Middleton, ID 83644

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**DEVELOPMENT AGREEMENT  
(Mills Landing Subdivision)**

This Development Agreement ("**Agreement**") is entered into by and between the CITY OF MIDDLETON, a municipal corporation in the State of Idaho ("**City**"); and TOLL SOUTHWEST LLC, a Delaware limited liability company ("**Developer**").

**RECITALS**

WHEREAS, Developer owns approximately 40 acres of real property located at 0 Purple Sage, west of Middleton Road and south of Purple Sage, Middleton, Canyon County, Idaho, commonly referred to in Canyon County Assessor's records as Parcel No. R3756100 and legally described in Exhibit A attached hereto and incorporated herein ("**Property**"); and

WHEREAS, Developer intends to improve the Property with a multi-phase single-family residential development commonly known as Mills Landing Subdivision according to the Middleton City Code and the City's public works standards at the time(s) the Property is improved ("**Project**"); and

WHEREAS, the City, pursuant to Idaho Code §67-6511A, has the authority to annex and rezone the Property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which all allowed uses for the requested zoning may not be appropriate pursuant to the Idaho Code and Middleton City Code.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the recitals above, which are incorporated below, and the mutual covenants, representations, and performances herein bargained for, relied on, and expected, the parties agree as follows:

## **ARTICLE I LEGAL AUTHORITY**

This Agreement is made pursuant to and in accordance with the provisions of Idaho Code §67-6511A and Middleton City Code, Title 5, Chapter 2.

## **ARTICLE II ANNEXATION AND ZONING ORDINANCE**

The City will adopt an ordinance to annex and rezone the Property from Canyon County Agricultural to City of Middleton R-3 (Single Family Residential). The Ordinance will become effective after it is approved, signed, published and recorded according to law, all of which actions the City will perform at the city's expense and with the Developer's cooperation.

## **ARTICLE III CONDITIONS OF DEVELOPMENT**

3.1 **Concept Plan.** The conceptual site plan for the Project is attached hereto and incorporated herein by this reference as Exhibit B ("**Concept Plan**"). Developer shall develop the Property substantially consistent with the Concept Plan.

3.2 **Street Sections.** Developer shall construct the Project's interior local roads in compliance with the street section shown on the approved preliminary plat, which section includes detached five foot (5') sidewalks and landscaped mow strip. Developer shall also construct all entrance road sections with a boulevard design as shown on the approved preliminary plat for the Project.

3.2.1 Because the Project's sidewalks are located on individual subdivision lots, the Homeowner's Association ("HOA") and/or individual lot owners shall be the parties responsible for maintaining the sidewalks in good condition and repair. City will have no maintenance or repair duties in this regard. The HOA and/or individual lot owners shall indemnify and hold the City harmless from and against any and all claims or actions for loss, injury, death, and/or damages arising out of the failure or neglect of the HOA and/or lot owners to properly maintain and repair said sidewalks.

3.2.2 Prior to Phase 1 final plat, Developer and City shall execute a license agreement that will allow Developer to install landscaping in the mow strip and boulevard islands that are located in the City's right of way. The only species of tree to be planted in the mow strip are Pacific Sunset Maple, Autumn Purple Ash, Skyline Honey Locust, Greenspire Littleleaf Linden, and American Elm.

Said license agreement shall provide an indemnification clause wherein Developer, HOA and/or lot owners shall indemnify and hold City harmless from and against any and all claims or actions for loss, injury, or damages arising out of the failure or neglect of the Developer, HOA and/or lot owners to properly use and maintain said mow strips and boulevard islands.

**3.2.3. Tree Root Barriers.** All trees planted within the mow strip located between the detached sidewalk and curb shall contain a root barrier approved by the City.

**3.3 Setbacks.** Front setbacks shall be measured from the back of sidewalk.

**3.4 Pro-Rata Traffic Fee.** Developer shall pay a one hundred and nine thousand three hundred seventy five dollar (\$109,375.00) Pro-Rata Traffic Fee as required by MCC 5-4-3 prior to final plat approval of Phase 1. Payment of the fee shall be a condition of phase 1 final plat approval. (Amount at issue. Developer has agreed to pay only \$43,000 based on the 2040 Horizon Year.)

**3.5 Cemetery Road & SH44 Traffic Signal.** The intersection of Cemetery Road and Highway 44 (“**Cemetery Intersection**”) shall be designed (by Developer or others) and approved by Idaho Transportation Department (“**ITD**”) prior to City’s approval of Phase 1 construction drawings and shall be constructed (by Developer or others) and accepted by ITD prior to City’ approval of the final plat for Phase 1 of the Project. In the event Developer voluntarily chooses to design and/or construct the Cemetery Intersection, Developer shall be entitled to credits for transportation impact fees under the Mid-Star Traffic Impact Fee program as provided in the Idaho Development Impact Fee Act, specifically §67-8209 (“Mid-Star Credit”). The Mid-Star Credit shall also apply to any building permits submitted by Developer for the Black Powder Subdivision. The preceding sentence shall not be interpreted to permit the Developer to obtain duplicate credits, and the total value of credits applied at any given point shall not exceed the total value of Developer improvements, calculated and applied as provided in the Development Impact Fee Act, specifically §67-8209. The Mid-Star Credit for the Black Powder Subdivision applies to only Developer. It does not apply to building permits for Black Powder homes submitted by a builder other than Developer. Additionally, should the Developer voluntarily choose to design and/or construct the Cemetery Intersection, the City shall contribute to Developer all funds collected for development of the Cemetery Intersection pursuant to the “pro-rata traffic fee” provision found in MCC 5-4-3, or other non-impact fee contributions from Developers, for up to five (5) years after the Cemetery Intersection is constructed and accepted by ITD. However, the total amount reimbursed to the Developer pursuant to the preceding sentence, together with the total potential impact fee credits, shall not exceed the total actual cost of the construction of the Cemetery Intersection incurred by Developer.

Developer acknowledges that the funds released to Developer for reimbursement and any credits issued under the Mid-Star Transportation Impact Program may not cover the entire cost of the completed intersection improvements. In the event the Cemetery Intersection is constructed by others, the obligations set forth in this paragraph shall be deemed satisfied without further action of Developer.

(Developer has not agreed to this provision. Instead, Developer is offering to make a one-time "Voluntary Payment" of \$112,000 prior to final plat approval for Phase 1, which payment may be applied at City's discretion to any intersection construction project in the City.)

**3.6 Amenities.** Developer shall construct the following Project amenities: pickle ball court, amphitheater style seat wall, fire pit, lawn area, shade structure, benches, and eight foot (8') wide concrete pathway along drain.

**3.7 Final Plat Requirements & Termination:** Notwithstanding the provisions in Article IV of this Agreement, Developer shall obtain City Engineer's signature on the Phase 1 final plat within two (2) years of the preliminary plat approval for the Project. Said signature shall be processed expeditiously by City and in no event later than six (6) months from the time the Developer submits a "Completion Packet" with all items required by the Supplement to the ISPWC and final plat application. The six (6) month period will not be triggered if any information required by the Supplement is missing.

3.7.1 Developer may obtain two (2) one (1) year extensions to obtain the City Engineer's signature on Phase 1 final plat by submitting an administrative written request for extension to the Middleton Planning & Zoning Official before the expiration of the preceding time period, which approval shall not be withheld if Developer submits its request in a timely manner.

3.7.2 If Developer does not obtain City Engineer's signature on the final plat for Phase 1 within the time frame noted above, City may, at its sole discretion, terminate this Agreement after complying with the Middleton City Code provisions for legal notice and public hearing. The zoning for the Property shall remain R-3. Additionally, the preliminary plat will automatically become null and void. City may seek termination of the Agreement at any time after the noted time periods expire, and City's delay in terminating this Agreement shall not constitute a waiver of its right to terminate.

3.7.3 After final plat approval for the first phase of the Project, Developer shall obtain City Engineer's signature on the final plat for each subsequent phase in two (2) year intervals (subject to the requirement by the City to process such applications

expeditiously and in no event later than six (6) months from the time Developer submits a fully completed "Completion Packet" application and final plat application). Developer may obtain two (2) additional one-year extensions using the procedure as outlined above in paragraph 3.7.1. If Developer fails to comply with said timelines, City may seek termination of the Agreement with respect to the unplatted portions of the Property and the portions of the preliminary plat yet to be final platted will become null and void. The zoning for the unplatted area shall remain R-3 (single family residential) zoning.

#### **ARTICLE IV FAILURE TO COMPLY WITH AGREEMENT**

4.1 If the Developer fails to comply with any of the terms or conditions in this Agreement, then the portion(s) of this Agreement pertaining to the breach may be modified or terminated by the Middleton City Council, after complying with the notice and hearing requirement contained in Middleton City Code and Idaho Code.

4.1.1 If after a breach, the City Council determines that the terms of this Agreement applicable to the breach should be modified, the term(s) of this Agreement shall be amended and the Developer shall comply with the amended terms.

4.1.2 Any breach waived by the City shall apply solely to the breach waived and shall not bar any other rights or remedies of the City or apply to any subsequent breach of any such or other covenants and conditions.

4.2 Upon a breach of this Agreement, any of the parties in any court of competent jurisdiction, by action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance of both, or may obtain rescission, disconnection, and damages for repudiation or material failure of performance.

4.4 NOTICE OF FAILED PERFORMANCE. Upon any failure of any party to this Agreement to perform its obligations under this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party with thirty (30) days of the receipt of such notice.



**ARTICLE V  
GENERAL PROVISIONS**

5.1 This Agreement contains the entire agreement of the parties respecting the Property and supersedes all prior discussions and written and verbal agreements between the parties respecting the Property.

5.2 Any amendment or addendum to this Agreement shall be in writing and made only after the City has complied with the notice and hearing provisions of Idaho Code §67-6509 and Middleton City Code Title 5, Chapter 2.

5.3 Any notice that a party may desire or is required to give to another party must be in writing and shall be given by personal delivery, by mailing the same registered or certified mail with a return receipt requested, or by Federal Express or other reputable overnight delivery service. Notice shall be given to the parties at the following addresses or such other address and to such other persons as the parties may designate in writing after giving notice. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail if sent by mail pursuant to the forgoing:

Middleton: City Clerk  
City of Middleton  
P.O. Box 487  
Middleton, Idaho 83644

Developer: Toll Southwest LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.4 If either party shall fail to perform under this Agreement and said failure is cured with the assistance of an attorney for the other party, as a part of curing said failure, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event a suit or action is filed by either party against the other to interpret or enforce this Agreement, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein, including the same with respect to an appeal.

5.5 This Agreement shall be effective after being fully executed. This Agreement shall become valid and binding only upon its approval by the City Council and execution by the Mayor and City Clerk. After its execution, the Agreement shall be recorded in the office of the County Recorder at the expense of the City.

5.6 Each commitment and restriction described in this Agreement shall be a burden on the Property and run with the land and shall be appurtenant to and for the benefit of the Property.

5.6.1 This Agreement shall be binding on the City and Developer, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns. Provided, however, that if all or any portion of the Property is divided, then each owner of a legal lot shall only be responsible for duties and obligations or breaches as to their owners' parcels or lots.

5.6.2 The new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all commitments and other obligations arising under this Agreement with respect only to such owner's lot or parcel.

5.7 The Property that is the subject of this Agreement is located in Canyon County, Idaho and the terms of this Agreement shall be construed according to the laws of the State of Idaho in effect at the time this Agreement is executed. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Canyon County, Idaho.

5.8 If any term, provision, commitment or restriction of this Agreement or the application thereof to any party or circumstance shall to any extent be held invalid or unenforceable, the remainder of this instrument shall remain in full force and effect.

5.9 Time is of the essence for performance of each obligation in this Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ and effective upon annexation and rezoning of the Property.

[Signatures on following pages.]

**CITY OF MIDDLETON**

**ATTEST**

By: \_\_\_\_\_  
Steven J. Rule, Mayor

By: \_\_\_\_\_  
Becky Crofts, City Clerk

State of IDAHO )

ss.

County of Canyon )

I, a notary public, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared before me Steven J. Rule, who, being first duly sworn, declared that he is the Mayor of the City of Middleton, Idaho and signed it as Mayor of the City of Middleton.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**DEVELOPER:** TOLL SOUTHWEST LLC

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

State of Idaho            )  
  ss.  
County of \_\_\_\_\_)

I, a notary public, do hereby certify that on this \_\_ day of \_\_\_\_\_, 2023, personally appeared before me \_\_\_\_\_, who declared that he/she signed this Development Agreement in the capacity of \_\_\_\_\_ for Toll Southwest LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT C

### Public Comments Submitted



Ryan Bauman  
2203 Seafarer Ct.  
Middleton Idaho, 83644  
[Ryanbauman23@gmail.com](mailto:Ryanbauman23@gmail.com)

10/6/2023  
Middleton City Council/Planning Commission  
1103 W Main Street  
Middleton Idaho, 83644

**Subject: Mills Landing Subdivision/ Parcel R3756100**

Dear to whom it may concern,

I am writing to express my concerns regarding the proposed subdivision Mills Landing and to request the consideration to deny or table the project.

My concerns are regarding the continued development of Middleton without the proper infrastructure being in place to support the growth. Currently, our elementary schools are severely overcrowded with the need for multiple portable classrooms in order to have enough capacity for the students. As far as I am aware, there is no plans for a new elementary school. Even if a new school was approved today, the completion date would be years away. Approving a subdivision such as this, with 100 new homes will only strain our schools that much more.

Another concern of mine, which is personal in nature, is the design of the plat. If the subdivision is approved, I ask you please consider amending the plat. As the plans show, along the east side of the subdivision is a small strip of undeveloped land, essentially allowing a separation between the new development and the already established Valhalla subdivision to the east. Only in one spot, lot #20, is a proposed home, seemingly crammed in a corner, butting directly up to the property in the neighboring Valhalla subdivision to the East. This is my home in Valhalla and what I am asking is to remove or reconfigure this one home to allow the small strip of undeveloped land run the entire length (north and south) of the subdivision allowing a little space between the all the homes in Vallaha and the homes in the new Mills Landing Subdivision.

Thank you for your consideration.

Ryan Bauman

Theresa Denham  
Middleton Idaho 83644  
theresa@junipermeadow.com  
208-505-7675

10/5/2023  
Middleton City Council/Planning Commission  
1103 W Main Street  
Middleton Idaho, 83644

**Subject: Request for Tabling of Proposed Subdivision: Mills Landing Sub / Parcel R3756100**

Dear Middleton City Council and Planning and Zoning Commission,

I hope this letter finds you well. I am writing to express my concerns regarding the proposed subdivision Mills Landing Sub / Parcel R3756100 and to request a denial or tabling of the project until specific considerations are thoroughly validated and verified.

It is crucial that we take the time to ensure the sustainable development and well-being of our community. Firstly, I believe it is necessary to validate and verify the availability of the city sewer capacity *after the utilization of the other 2500+ permits that have already been granted*. It is essential to guarantee that the existing infrastructure can support the additional demand that this proposed subdivision would impose. Therefore, I request a comprehensive assessment by relevant authorities to confirm the adequacy of the sewer capacity.

Moreover, water capacity is a critical factor to consider. It is crucial to avoid any negative impacts on the water supply for our farmers. As their wells are typically shallower compared to those serving the city, there is a risk of depletion and reduced refill if the city's water needs are not well managed. Therefore, I urge a thorough evaluation of the potential consequences on water availability for both the proposed subdivision and the agricultural community.

In addition to infrastructure concerns, it is vital to thoroughly understand and address the impact on schools, fire services, police services, and road safety. Proper studies must be conducted to assess the potential strain on these essential services and ensure that sufficient measures are in place to support the proposed development.

The safety and well-being of our community members should always be our top priority. Given these critical considerations, I kindly request that the proposal for Mills Landing Sub / Parcel R3756100 be tabled until all the necessary studies and assessments have been completed.

It is essential to have a comprehensive understanding of the project's potential impacts and to ensure that the required infrastructure is in place to support sustainable growth. I encourage you to take the time to address these concerns adequately before proceeding any further. I kindly ask that you consider my request seriously and take the necessary steps to uphold the best interests of our community. As concerned citizens, it is vital for us to voice our opinions and concerns to ensure responsible and sustainable development. Thank you for your attention to this matter, and I trust that you will carefully consider the importance of addressing these concerns before moving forward with the proposed subdivision.

Sincerely,



Theresa Denham  
Middleton, Idaho

**From:** [Kim Holden](#)  
**To:** [Roberta Stewart](#)  
**Subject:** Mills Landing Subdivision  
**Date:** Wednesday, October 18, 2023 3:48:08 PM  
**Attachments:** [image001.png](#)  
**Importance:** High

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Roberta,

Hi there, I am curious I realize I missed the meeting this past Monday for this subdivision, and I have some questions. Would you be able to answer some questions, or point me to the right person.

1. In reading the plat plan, it appears that I am only seeing 2 entrance/exits for this development. Can you please give me some background on how a plat plan for 100 homes only allows for 2 entrances/exits?
2. I am also concerned with the amount of traffic that will hit Meadow Park – we are estimating approximately 200 more vehicles on this street. At the intersection of Meadow Park and Nordic Avenue, it has been a very bad intersection due to the median and line of sight. Meadow Park is not a very wide street and that goes along the concern of additional traffic.
3. In reviewing the plat plan, it appears that this development will be including an amphitheater with stadium seats, and firepits. Will we be able to inquire about what is planned for this area. I do not feel it is appropriate that we will be subject to music, celebrations, etc. billowing into our Valhalla subdivision. I am sure they will have a HOA, but is this really necessary in a development that has such close neighbors?
4. I wanted to confirm that I read this correctly, will this community be a gated community?
5. Irrigation water – I see proposed pumps, but will this development in any way affect our irrigation pressure? I know we have had concerns from the Pines neighborhood with our pump in Valhalla.

Thank you for your time and consideration.

Kim Holden  
Valhalla Country Estates



Kim Holden  
*Sr. Practice Manager, Pop  
Health 2 - Occupational  
Health*  
**St. Luke's Health System**  
Cell 208-936-0317  
Email: [holdenk@slhs.org](mailto:holdenk@slhs.org)

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## EXHIBIT D

### Agency Comments Submitted



**Your Safety • Your Mobility  
Your Economic Opportunity**

**IDAHO TRANSPORTATION DEPARTMENT**

P.O. Box 8028 • Boise, ID 83707-2028  
(208) 334-8300 • [itd.idaho.gov](http://itd.idaho.gov)

October 12, 2023

Lauren Nuxoll, PE, PTOE  
Kittelson & Associates, Inc.  
101 South Capitol Boulevard, Suite 600  
Boise, ID 83702

VIA EMAIL

RE Mills Landing Development – ITD Traffic Impact Study Acceptance Letter

Dear Ms. Nuxoll,

Thank you for providing the Idaho Transportation Department (ITD) the Mills Landing Traffic Impact Study (TIS) to review. The proposed development is located west of Middleton Road between Willis Road and Purple Sage Road approximately one mile north of SH-44 and within the Middleton city limits. This development is not proposing access on to the state highway system. We have completed our review and ITD does not have objection to the development.

The following mitigations are recommended prior to full buildout. In addition to the following mitigations, all striping shall extend an additional 300' past construction limits on either end of the roadway work.

**Intersection Mitigations**

- **SH-44 / Cemetery Rd**
  - Developer shall install a traffic signal.

Additionally, to complete the school ADA route along the south side of SH-44, ITD recommends the City of Middleton require the developer to construct sidewalk between Cemetery Rd and S Highland Dr. Design and constructions of all improvements with ITD Right Of Way meet ITD and the City of Middleton's acceptance.





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ITD Traffic Impact Study Acceptance letters are valid for a period of one (1) year after issuance. After which, ITD has the right to require new trip counts to be collected and an updated TIS be submitted to ITD if the project has not been completed.

Maintaining safety and mobility for Idaho's motorists is of utmost importance to ITD. We appreciate your improvements to the livability in Middleton as we want all residents to travel safely and efficiently around the Treasure Valley. If you have any questions, please contact Development Services Coordinator Niki Benyakhlef at [Niki.Benyakhlef@itd.idaho.gov](mailto:Niki.Benyakhlef@itd.idaho.gov) or (208)985-9780.

Sincerely,

*Brian Duran*

Brian Duran

Idaho Transportation Department | District 3

Development Services Planning Manager

cc:

Roberta Stewart – City of Middleton, Planning & Zoning Official

Chris Hopper – Canyon Highway District 4 – District Engineer



# Middleton School District #134

*Every Child Learning Every Day*

## Middleton School District #134--Public Hearing Notice Response

### General Response for New Development

Middleton School District is currently experiencing significant growth in its student population. **Currently Middleton School District has 2 of our 3 elementary schools over capacity. Heights Elementary is at 134% of capacity with five (5) portable units totaling 10 classrooms. Mill Creek Elementary is at 123% of capacity with six (6) portable classroom units totaling 12 classrooms.** We are nearing capacity, but have not superseded at this point, at our high school (91%) and middle school (85%). As it stands now there is an immediate need for additional facilities in our school district, primarily at the elementary grades. However, we have significant concerns of the continued growth and our ability to meet the future facility needs of our district at the secondary level (Middleton Middle School and Middleton High School).

We have completed demographic study performed for our school district boundaries and data suggests that for every new home we could expect between 0.5 and 0.7 (with an average of .569) students to come to our schools. That is the factor/rate we use to make our projection of student impact for each development.

### Mills Landing Subdivision, Middleton, ID

Elementary students living in the subdivision as planned would be in the attendance zone for Heights Elementary School, which, as stated above, is already well above capacity. With the 100 proposed lots we anticipate approximately 57 students will need educational services provided by our district, just over 2 classrooms of new students.

In addition to the increase in student population and its impact on facilities, bussing would be provided for all students. As such, it would be important that the developer include plans for appropriate spacing for bus stops. Typically busses do not enter subdivisions. As such, safe routes to planned stops would be an important consideration. Additionally, there is the possibility of a new school being built on land that is nearly adjacent to the proposed subdivision. If such a school were built, no bussing would be provided for those attending that school.

**Since our initial response the representatives from Toll Brothers have met with district leadership and have committed support to the district's growing construction program and provided a letter of support for the Idaho Career Ready Students Grant designed to provide a new construction facility for the district. This grant request was successful. Additionally, they have committed support for future school bond efforts.**

**The representatives have also addressed the safe routes to school and school bus stops and the district does not have significant concerns in this area.**

As a school district we would ask that the City Council of Middleton take all of these factors into consideration as you make your recommendations for city council. Any questions regarding this response should be directed to Marc Gee at the contact information shared below.

A handwritten signature in black ink, appearing to read 'Marc C. Gee'.

**Middleton School District Office: 5 S. Viking Ave, Middleton, ID 83644**

**Phone: 208-585-3027**

Marc C. Gee, Superintendent

Lisa Pennington, Asst. Superintendent

Alicia Krantz, Business Manager

[mgee@msd134.org](mailto:mgee@msd134.org)

[lpennington@msd134.org](mailto:lpennington@msd134.org)

[akrantz@msd134.org](mailto:akrantz@msd134.org)



# Middleton School District #134

*Every Child Learning Every Day*

## Middleton School District #134--Public Hearing Notice Response

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Middleton School District is currently experiencing significant growth in its student population. **Currently Middleton School District has 2 of our 3 elementary schools over capacity. Heights Elementary is at 134% of capacity with five (5) portable units totaling 10 classrooms. Mill Creek Elementary is at 123% of capacity with six (6) portable classroom units totaling 12 classrooms.** We are nearing capacity, but have not superseded at this point, at our high school (91%) and middle school (85%). As it stands now there is an immediate need for additional facilities in our school district, primarily at the elementary grades. However, we have significant concerns of the continued growth and our ability to meet the future facility needs of our district at the secondary level (Middleton Middle School and Middleton High School).

We have completed demographic study performed for our school district boundaries and data suggests that for every new home we could expect between 0.5 and 0.7 (with an average of .569) students to come to our schools. That is the factor/rate we use to make our projection of student impact for each development.

### Mills Landing Subdivision (name change imminent), Middleton, ID

Elementary students living in the subdivision as planned would be in the attendance zone for Heights Elementary School, which, as stated above, is already well above capacity. With the 100 proposed lots we anticipate approximately 57 students will need educational services provided by our district, just over 2 classrooms of new students.

In addition to the increase in student population and its impact on facilities, bussing would be provided for all students. As such, it would be important that the developer include plans for appropriate spacing for bus stops. Typically busses do not enter subdivisions. As such, safe routes to planned stops would be an important consideration. Additionally, there is the possibility of a new school being built on land that is nearly adjacent to the proposed subdivision. If such a school were built, no bussing would be provided for those attending that school.

As a school district we would ask that the Planning and Zoning Commission of Middleton take all of these factors into consideration as you make your recommendations for city council. Any questions regarding this response should be directed to Marc Gee at the contact information shared below.

A handwritten signature in dark ink, appearing to read 'Marc C. Gee', is written over a horizontal line.

Marc C. Gee, Superintendent

October 10, 2023

Date

**Middleton School District Office: 5 S. Viking Ave, Middleton, ID 83644**

**Phone: 208-585-3027**

Marc C. Gee, Superintendent

Lisa Pennington, Asst. Superintendent

Alicia Krantz, Business Manager

[mgee@msd134.org](mailto:mgee@msd134.org)

[lpennington@msd134.org](mailto:lpennington@msd134.org)

[akrantz@msd134.org](mailto:akrantz@msd134.org)

23 October 2023

via email [rstewart@middletoncity.com](mailto:rstewart@middletoncity.com)

City of Middleton  
c/o Roberta Stewart, Planning and Zoning Official  
1103 West Main Street  
Middleton, ID 83644

**RE: Mills Landing Subdivision**

Dear Mayor Rule and Councilmembers:

This comment letter is provided in connection with Toll Brothers' pending application for the Mills Landing residential community. Sage International (Middleton) is a public charter school of choice that provides free public education to students in K-10th grade - growing to K-12th. We prepare students to become true citizens of the world, equipped to participate and engage in local and global issues. Sage International school is located in the City of Middleton just south of State Highway 44 on Hartley Lane, a little over 3 miles from the proposed Mills Landing residential community.

Sage International currently has approximately 430 students in K-10th grade. We currently have some capacity in all grades and we are actively implementing a facility expansion that will increase our student capacity and offer 11th and 12th grades following the completion of the new high school facility. We expect to occupy our new high school space (on the current campus) by 1 August 2024.

On October 16, 2023, the Middleton Design Review Committee approved designs for the new high school facility, which will include a sports field, a track, and additional parking and drop-off cueing areas. Following completion of the new high school facility our on-campus capacity will increase from 400 students to 675 students. We welcome the Mills Landing project and its future students.

Please feel free to reach out to me with any questions.

Sincerely,



Andy Johnson  
Executive Director  
[andy.johnson@sageintl.org](mailto:andy.johnson@sageintl.org)

# BLACK CANYON IRRIGATION DISTRICT

NOTUS, IDAHO

October 3<sup>rd</sup>, 2023

City of Middleton  
Planning and Zoning Department  
1103 W Main St  
Middleton, ID 83644  
(208) 454-7458

RE: Conditional Rezone. Parcel R3756100 – Concurrence of Preliminary Plat  
Case No.: Subdivision – Mills Landing  
Applicant: Toll Southwest, LLC  
Planner: Roberta Stewart

The Black Canyon Irrigation District (District) met with the Developer on September 25, 2023, and informed the Developer of the District's development review process. The District is in concurrence with the Preliminary Plat for Mills Landing Subdivision. **Below is a list of items discussed with the Developer:**

1. According to existing records, the parcel receives irrigation water from the District. Thus, an irrigation system with an adequate overflow needs to be installed to ensure the delivery of irrigation water to each lot and/or parcel of land entitled to receive irrigation water.
2. Per correspondence with the Developer, turnout No. 17 provides irrigation to the parcel North of the proposed subdivision. A separate structure will need to be installed to split the flow between these parcels.
3. District mapping indicates that Lateral C.E. 18.1-2.0 used to cut through the southeast corner of the parcel. The Developer has been informed that verification of abandonment will be required. If not, the District will require Lateral C.E. 18.1-2.0 to be formally documented as abandoned for plat approval.
4. A dedicated easement will need to be provided from the weir to the pump station and from the pump station to the proposed subdivision. This easement will need to be in place to show that irrigation water will be provided to the property. This is assumed to be a private easement (will not involve BCID or BOR).
5. As of June 20, 2023 the District implemented a Parcel Division Fee. This fee covers the cost of creating separate irrigation accounts for each new parcel developed. Additionally, an accounting map of the irrigation water for each lot will be provided to the developer for review. The Developer will be required to provide linework of the proposed pre-plat (in CAD or GIS format).
6. The preliminary plat shows a 50-foot irrigation ditch easement between Phase 1 and Phase 2 cutting across the property. This ditch has historically been known to the District as a field drainage ditch. The proposed easement shown keeps the drainage open and meets the District's requirements to ensure drainage for upland properties.

General Comments:

- **All maintenance road right-of ways, lateral right-of ways and drainage right-of ways** will need to be protected (including the restriction of all encroachments). Also, any crossing agreement(s) and/or piping agreement(s) will need to be acquired from the Bureau of Reclamation (Reclamation), once approved by the District, to cross over or under any existing lateral, pipe any lateral or encroach in any way the right-of ways of the District or the Reclamation.
- Runoff and drainage from the proposed land splits should be addressed as well to ensure downstream users are not adversely affected by the proposed land use changes.

60,000 IRRIGABLE ACRES

ORGANIZED IN 1910

# BLACK CANYON IRRIGATION DISTRICT

NOTUS, IDAHO

All the discussed requirements shall be met, including any others that arise during future review.

Thank You,

*Donald Popoff*

Donald Popoff P.E.  
District Engineer  
Black Canyon Irrigation District



# BLACK CANYON IRRIGATION DISTRICT

NOTUS, IDAHO

July 28, 2023

City of Middleton  
Planning and Zoning Department  
1103 W Main St  
Middleton, ID 83644  
(208) 454-7458

RE: Conditional Rezone. Parcel R3756100000  
Case No.: TBD (Subdivision – Mills Landing)  
Applicant: Toll Southwest, LLC  
Planner: Roberta Stewart

The parcel is located between Purple Sage and Meadow Park Boulevard in Canyon County, Idaho.

The Black Canyon Irrigation District (District) has the following initial site-specific comments regarding this proposed land use change.

1. The proponent will be required to fill out and submit a Development Intake Sheet found on our website (<https://blackcanyonirrigation.com/development>) prior to receiving Black Canyon's approval of this pre-plat document.
2. According to existing records, the parcel receives irrigation water from the District. The turnout is located on the C.E.18.1 lateral. Since this property has irrigation water attached to it, an irrigation system with an adequate overflow needs to be installed to ensure the delivery of irrigation water to each lot and/or parcel of land entitled to receive irrigation water.
3. Per correspondence with the developer, turnout No. 17 provides irrigation water to the parcel located north of the proposed subdivision. A separate structure will need to be installed to split the flow for these two parcels.
4. A dedicated easement will need to be provided from the weir to the pump station and from the pump station to the proposed subdivision. This easement will need to be in place to show that irrigation water will be provided to the property. This is assumed to be a private easement (will not involve BCID or BOR, just verification that water can be delivered).
5. Separate irrigation accounts will be set-up for each new parcel developed. An accounting of the irrigation water for each lot will be provided to the developer for review. The Developer will be required to provide line-work of the proposed pre-plat for assisting in setting these accounts up with the District.
6. The preliminary plat shows a 50-foot irrigation ditch easement between Phase 1 and Phase 2 cutting across the property. This ditch has historically been known to the District as field drainage ditch. The District will further verify that no historic ownership is attached to the drainage ditch as assumed. The proposed easement shown keeps the drainage open and meets the District's requirements to ensure drainage to upland properties.

#### General Comments:

**All maintenance road right-of ways, lateral right-of ways and drainage right-of ways** will need to be protected (including the restriction of all encroachments). Also, any crossing agreement(s) and/or piping agreement(s) will need to be acquired from the Bureau of Reclamation (Reclamation), once approved by the District, to cross over or under any existing lateral, pipe any lateral or encroach in any way the right-of ways of the District or the Reclamation.



60,000 IRRIGABLE ACRES

ORGANIZED IN 1910

# BLACK CANYON IRRIGATION DISTRICT

NOTUS, IDAHO

Runoff and drainage from the proposed land splits should be addressed as well to ensure downstream users are not adversely affected by the proposed land use changes.

Thank You,

*Donald Popoff*

Donald Popoff P.E.  
District Engineer  
Black Canyon Irrigation District

**From:** [Chris Hopper](#)  
**To:** [Roberta Stewart](#)  
**Subject:** RE: Legal Notice - Mills Landing Subdivision Project - Middleton , ID  
**Date:** Monday, October 2, 2023 10:16:59 AM  
**Attachments:** [image002.png](#)

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Hi Roberta-

The proposed Mills Landing Subdivision shown below does not appear to front on any highway under the jurisdiction of or maintained by CHD4. CHD4 recommends the city address traffic impacts from the proposed development through collection of transportation impact fees, and apply these fees to projects on the Mid-Star CIP.

CHD4 has no additional comment on this project.

Respectfully,

**Chris Hopper, P.E.**

District Engineer

Canyon Highway District No. 4  
15435 Hwy 44  
Caldwell, Idaho 83607  
208-454-8135

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**From:** Roberta Stewart <rstewart@middletoncity.com>  
**Sent:** Wednesday, September 27, 2023 4:06 PM  
**To:** akrantz@msd134.org; MStowell@ccparamedics.com; gis@compassidaho.org; deann.gerthung@canyoncounty.id.gov; MYbarguen@idahopower.com; D3Development.services@ITD.idaho.gov; gmprdjulie@gmail.com; lgrooms@msd134.org; mgee@msd134.org; permits@starfirerescue.org; monica.taylor@intgas.com; Mitch.Kiester@phd3.idaho.gov; westerninfo@idwr.idaho.gov; zoninginfo@canyoncounty.id.gov; Lenny Riccio <LRiccio@canyonhd4.org>; Chris Hopper <CHopper@canyonhd4.org>; allenfun50@hotmail.com; Jamie.macleod@sparklight.biz; dpopoff@rh2.com; carl@blackcanyonirrigation.com; tyler@blackcanyonirrigation.com  
**Subject:** Legal Notice - Mills Landing Subdivision Project - Middleton , ID

Hello Agencies: Attached is the notice regarding the Mills Landing Subdivision Project in Middleton. Also attached for your convenience is a copy of the preliminary plat. Hearing before Planning & Zoning Commission is scheduled for October 16, 2023. Thanks,

*Roberta L. Stewart*

PLANNING & ZONING OFFICIAL  
City of Middleton, Planning & Zoning  
1103 W. Main St.  
P.O. Box 487

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From: Permits <permits@midstarfire.org>  
Sent: Monday, October 16, 2023 3:00 PM  
To: Roberta Stewart  
Subject: Re: Legal Notice - Mills Landing Subdivision Project - Middleton , ID

Roberta,

Fire District Comments:

1. No parking signs to be posted at the entrance of common driveways.
2. Fire Hydrants to meet City of Middleton Standards.
  - a. Hydrants to be placed on property line or public areas.
3. 2nd entrance to be constructed before permit 31 can be issued.
4. Will improvements be made to the intersection of Meadow Park Blvd & Meadow Park St?

If you have any questions, please let me know.

DC Islas

From: Roberta Stewart <rstewart@middletoncity.com>  
Date: Wednesday, September 27, 2023 at 16:05  
To: akrantz@msd134.org <akrantz@msd134.org>, MStowell@ccparamedics.com <MStowell@ccparamedics.com>, gis@compassidaho.org <gis@compassidaho.org>, deann.gerthung@canyoncounty.id.gov <deann.gerthung@canyoncounty.id.gov>, MYbarguen@idahopower.com <MYbarguen@idahopower.com>, D3Development.services@ITD.idaho.gov <D3Development.services@ITD.idaho.gov>, gmprdjulie@gmail.com <gmprdjulie@gmail.com>, lgrooms@msd134.org <lgrooms@msd134.org>, mgee@msd134.org <mgee@msd134.org>, Permits <permits@midstarfire.org>, monica.taylor@intgas.com <monica.taylor@intgas.com>, Mitch.Kiester@phd3.idaho.gov <Mitch.Kiester@phd3.idaho.gov>, westerninfo@idwr.idaho.gov <westerninfo@idwr.idaho.gov>, zoninginfo@canyoncounty.id.gov <zoninginfo@canyoncounty.id.gov>, lriccio@canyonhd4.org <lriccio@canyonhd4.org>, chopper@canyonhd4.org <chopper@canyonhd4.org>, allenfun50@hotmail.com <allenfun50@hotmail.com>, Jamie.macleod@sparklight.biz <Jamie.macleod@sparklight.biz>, dpopoff@rh2.com <dpopoff@rh2.com>, carl@blackcanyonirrigation.com <carl@blackcanyonirrigation.com>, tyler@blackcanyonirrigation.com <tyler@blackcanyonirrigation.com>  
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Roberta L. Stewart

PLANNING & ZONING OFFICIAL  
City of Middleton, Planning & Zoning  
1103 W. Main St.  
P.O. Box 487

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## EXHIBIT E

### City Engineer and City Planner Comments



August 7, 2023

TO: Roberta Stewart, Planner

FROM: Civil Dynamics PC, City Engineer *Amy J Woodruff*  
Amy Woodruff, PE

RE: Mills Landing Preliminary Plat

Thank you for the opportunity to review the above referenced preliminary plat submittal. Every effort was made to identify all the review comments, some comments may overlap with planning comments, and additional comments may come up as the application goes forward.

1. MCC 5-4.h. Dimension Meadow Park right of way – including dedicated area.
2. MCC 5-4-4.2. i. Add name, book, page of recorded adjacent subdivisions.
3. MCC 5-4-4.2 a and I. The boundary is required to be surveyed and stamped by PLS including ties to corners. Add date to situate.
4. Note 6: Delete *SUPPLEMENT TO ISPWC*.
5. Note 10. Expand to address Idaho Code 31-3805(b). Identify whether lots are subject to assessment. Show point of diversion/pump station location and pipe alignment to Mills Landing. Can be separate exhibit.
6. Note 11: Identify specific use of common lots and easement needs – stormwater management, access/utility, drainage, etc.
7. Note 18: add *SUBJECT TO CAPACITY ANALYSIS*.
8. Add note: Hydrant location and configuration to be reviewed and approved by Middleton Rural Fire Protection District.
9. Add note detailing all irrigation and/or drainage to be located/relocated out of rights of way. Facilities may cross right of way at 90d.
10. Add note: No lot access to Meadow Park.
11. Add mailbox cluster location.
12. Add a note: exterior boundary is required to be fenced in accordance with approved fencing plan.
13. Add typical section for Meadow Park Boulevard. Identify right of way to be dedicated. Show typical section for traffic buffer.
14. Delete bulbs at local road intersections.
15. Dunkirk Drive will be Yellow Pine extended.
16. Public roads cannot be gated. Please remove.
17. 20ft minimum is needed from back of sidewalk to the building setback line.
18. Water corridor is north and east. Add 12" water main backbone in Dunkirk/Bullwark to north boundary.
19. Sewer corridor is south and west.
20. Stormwater. Develop the stormwater management lot/areas with a flat area, 10ft, around perimeter so pond may be maintained and mowed.
21. Add note: The Home Owner's Association (HOA), will own and manage the common areas which include stormwater facilities. A plan for operation, maintenance, and repair of stormwater facilities (O&M plan) will be prepared for all stormwater facilities maintained by the HOA. The O&M Plan shall be recorded with the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). The O&M plans shall be used for maintenance and operation of the stormwater facility.
22. Number common lot along east boundary.



5605 South 10th Ave. · Caldwell, Idaho 83607 208.453.2028

October 2, 2023

TO: Roberta Stewart, Planner

FROM: Civil Dynamics PC, City Engineer  
Amy Woodruff, PE *Amy J Woodruff*

RE: Mills Landing Preliminary Plat

Thank you for the opportunity to review the preliminary plat resubmittal. Review comments are summarized below:

1. MCC 5-4.h. Dimension Meadow Park right of way – including dedicated area.  
There are a series of common lots immediately north of Meadow Park right of way that will prevent the frontage improvements from being developed as shown. The City can't approve the Meadow Park cross section as presented.
3. MCC 5-4-4.2 a and I. The boundary is required to be surveyed and stamped by PLS including ties to corners. Add date to situate.  
It is not possible to retrace the boundary using the description provided. The property boundary linetype and proposed lot line linetype are the same in the legend. Also, please add date to the situate.
5. Note 9 (formerly 10). Expand to address Idaho Code 31-3805(b). **Identify whether lots are subject to assessment.**
6. Note 10: Identify specific use of common lots and easement needs – stormwater management, access/utility, drainage, etc.  
Please identify the two private lane lots as such, not landscaped common lots.
14. Delete bulbs at local road intersections.  
The bulbs are not consistent with the City's adopted roadway section and cannot be approved as presented. In addition, City public works does not want the bulbs installed. Please reconfigure the intersections and use the City's typical roadway section with 38ft tbc to tbc.
15. Public roads cannot be gated. Please remove.  
If private roads are proposed, the application to P/Z should clearly state the roads are proposed to be private and gated.
16. 20ft minimum is needed from back of sidewalk to the building setback line.  
Note 1 and Note 29 and page 6 Additional DA Provision are not consistent. If the R3 setback is 25ft and measured from property line – the area needed for parking (assumed 20ft) will encroach into the 5ft sidewalk by approximately 2ft, leaving 3ft of sidewalk for use.



# CITY OF MIDDLETON

P.O. Box 487, 1103 W. Main St., Middleton, ID 83644  
208-585-3133 Fax (208) 585-9601  
citmid@middletoncity.com  
www.middleton.id.gov

September 29, 2023

## Planner Comments – Mills Landing Subdivision (Revised Preliminary Plat dated 9/27/2023)

1. City will approve Mills Landing Subdivision name.
2. Reserve new road name “Galleon Street” with Tony Almeida at Canyon County
3. Street “Yellow Pine” is already used in Caldwell. Choose another name and reserve with Tony.
4. Change Note 21 so it states ONLY: *“All trees planted in the landscape strip between the detached sidewalk and curb shall have a root barrier approved by the City Public Works Department.”* (Kimley-Horn, please know that City public works looked at the proposed root barrier and already stated that they will not approve it. Leave this note generic. Root barrier SPECIFIC design will be discussed and approved at the CD stage.
5. Remove word “Gated” from “Gated Entrance Typical Section”. City Staff will inform the governing bodies that a gated community was requested, but City Engineer/Planner have not approved gates on public roads and will strongly recommend against them.
6. DA to be changed to allow front setback to be measured from back of sidewalk.
7. Change note 1 about setbacks. It is inconsistent with note 29 making setback measurement from back of sidewalk. Maybe add to end of Note 1, “...except front setback shall be measured from back of sidewalk.
8. Remove the 2 references to “gate” on page 2 of 3.

*Roberta Stewart*

Planning & Zoning Official  
City of Middleton





# CITY OF MIDDLETON

P.O. Box 487, 1103 W. Main St., Middleton, ID 83644  
208-585-3133 Fax (208) 585-9601  
citmid@middletoncity.com  
www.middleton.id.gov

October 2, 2023

## Planner Comments – Mills Landing Subdivision (Revised Preliminary Plat dated 9/27/2023)

1. City will approve Mills Landing Subdivision name.
2. Reserve new road name “Galleon Street” with Tony Almeida at Canyon County
3. Street “Yellow Pine” is already used in Caldwell. Choose another name and reserve with Tony.
4. Change Note 21 so it states ONLY: *“All trees planted in the landscape strip between the detached sidewalk and curb shall have a root barrier approved by the City Public Works Department.”* (Kimley-Horn, please know that City public works looked at the proposed root barrier and already stated that they will not approve it. Leave this note generic. Root barrier SPECIFIC design will be discussed and approved at the CD stage.
5. Remove word “Gated” from “Gated Entrance Typical Section”. City Staff will inform the governing bodies that a gated community was requested, but City Engineer/Planner have not approved gates on public roads and will strongly recommend against them.
6. DA to be changed to allow front setback to be measured from back of sidewalk.
7. Change note 1 about setbacks. It is inconsistent with note 29 making setback measurement from back of sidewalk. Maybe add to end of Note 1, “...except front setback shall be measured from back of sidewalk.
8. Remove the 2 references to “gate” on page 2 of 3.

### Additional comments added 10/2/2023:

1. Staff Report will state as a condition of approval that no streets will be private and no entrance gates shall be allowed. You are always entitled to request a variance to City Code, but City Planner, City Engineer, and the Public Works Department will strongly oppose your variance and recommend that the private streets & gate be prohibited.
2. City Engineer and Public Works had requested that the bulb outs be removed from your pplat so that it would comply with City Code. They are still in your revised preliminary plat. Again, you can request a variance, but City Engineer and the Public Works Department will oppose your request because they make street maintenance difficult.
3. There is a strange 5' wide common lot on the north side of Meadow Park owned by The Pines Subdivision. It will adversely affect your ability to install the sidewalk and traffic buffer appropriately along Meadow Park. Please know that City Engineer and Staff will be considering the situation to determine the best solution to solve the issue. We will probably need to add something to the DA about the issue.
4. Pro-Rata traffic fee is required by MCC 5-4-3. City Staff cannot, and will not, relent on complying with the code. City Staff will argue that the pro-rata must be collected to comply with City Code, and Staff will want that provision reiterated in the DA. The Pro-Rata analysis clearly shows that the fee collected is not redundant of any fees collected under Mid-Star. You can fight about it with P&Z and City Council, but please know that

this City Council is the actual Council that updated MCC 5-4-3. Staff will strongly oppose any argument to waive or relent on Pro-Rata.

5. City Staff will not relent on the DA provision that requires someone/anyone to design and build the Cemetery/Hwy 44 traffic light before your phase 1 final plat. The exact same provision has been included in a recent pre-annexation agreement approved by Council, and the exact same provision will be in all DAs for annexation projects in the foreseeable future. The intersections at issue in the various DAs may be different depending on the location of the annexation projects, but the terms of the DA will remain the same for all annexation projects.

Again, I hope we can be united when we approach P&Z and City Council with a request for project approval. That is always my goal. I don't like to take disputes and open-ended issues before the governing boards to figure out during a late night public hearing. I fear that if you move forward with the issues raised, forcing City Engineer and Staff to oppose you, your chances of success will be greatly diminished.

Please let me know by this Friday, the 6<sup>th</sup>, if you intend to still pursue the private streets, gate, bulb outs, pro-rata dispute, and cemetery road dispute. I will need time to address each issue in my staff report, so I need to firmly know where you stand by this Friday.

*Roberta Stewart*

Planning & Zoning Official  
City of Middleton



# CITY OF MIDDLETON

P.O. Box 487, 1103 W. Main St., Middleton, ID 83644  
208-585-3133 Fax (208) 585-9601  
citmid@middletoncity.com  
www.middleton.id.gov

July 25, 2023

## Planner Comments – Mills Landing Subdivision (Preliminary Plat dated 5/31/2023)

1. Please choose a new name for the subdivision. Do not use Sawtooth, Willow, River, Highland, Middleton or Mills in the new name.
2. Reserve new subdivision name with Tony Almeida at Canyon County
3. Change Dunkirk Drive to Dunkirk "Avenue". We only use Avenue, Street, and Court in Middleton. Avenues run N/S and Streets run E/W. Court is for cul de sac.
4. Name the cul de sac street in northeast corner "Albion Court".
5. Name cul de sac in southwest corner "Frigate Court."
6. Turn the cul de sac portion of "Ardent Ave" into "Ardent Court."
7. The portion of Ardent Avenue north of Voyager should remain "Ardent Avenue".
8. Reserve all street names with Tony Almeida at Canyon County.
9. Please update your Kittelson traffic study with a study of N. Middleton Road and SH44 intersection. I don't recall scoping this TIS with your consultant. If I did, I missed the intersection of N. Middleton Road & SH44. Please add because it will be an important arterial access to SH44 for your subdivision.
10. Add note: *"All sidewalks parallel to the right of way and bordering the mow strip shall be encumbered by a public access easement."*
11. Add note: *"All trees planted in the landscape strip between the detached sidewalk and curb shall have a root barrier approved by the City Public Works Department."*
12. Show the frontage dimensions on Lots 2, 3 & 4, Block 1 to prove the 75' frontage.
13. Lot 34, Block 1 does not meet the minimum 75' frontage. Please fix.
14. Call out dimension and note the 24' wide traffic buffer along Meadow Park Street as required by MCC 5-4-10-6 and 5-4-10-2.
15. Insert typical section for Meadow Park but for the purposes of showing the sidewalk and 24' wide berm & fence.
16. Insert road section diagram to show boulevard entrance at the three entrances.
17. Add note: *"The City of Middleton is in the process of revising their code regarding the 24' wide traffic buffer mandated by MCC 5-4-10-6. Developer shall be required to construct the traffic buffer as set forth in MCC 5-4-10-6 at the time of construction drawing submittal."*
18. Show perimeter fence on either the pplat or the landscape plan.
19. Show proposed mailbox location(s).
20. Current code for open space requires a major amenity if there are more than 75 units. Major amenity is clubhouse, pool, extensive play areas, pickle ball court...etc. (MCC 5-4-10-10). The amphitheatre and small shade structure may be insufficient. You should very seriously consider adding more benches and picnic areas to that large 250,000 s.f. Lot 7, Block 1. Because this is a higher end gated community, it will probably have a lot of retirees. A playground may not make sense, but meandering paths, benches, bocci

ball court, corn hole area, picnic areas, outdoor exercise/training area...etc., will go a long way.

21. Change note 1 to state: *"Building setbacks and dimensional standards shall be in compliance with the applicable zoning regulations in effect at the time of building permit issuance."*
22. Delete Note 2. *It's a little redundant.*
23. Add Note: *"There will be a public access and utility easement on all private lanes, and all private lanes are owned and maintained by the HOA."*
24. Add Note: *"Frontage improvements may occur phase by phase but all frontage improvements must be completed by Phase 3 final plat pursuant to MCC 5-4-10-2(4)."*
25. Submit planting schedule with landscape plan and put a date on the plan. After construction, City Engineer will require you to produce a letter from the landscape architect confirming that you installed the landscaping per the approved landscape plan.
26. If any part of your pathway intersects the BCID irrigation easement, we will need to see a recorded license agreement between Toll Bros., and BCID.

*Roberta Stewart*

Planning & Zoning Official  
City of Middleton



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October 2, 2023

## Planner Comments – Mills Landing Subdivision (Revised Preliminary Plat dated 10/11/2023)

1. Revise Note number one to state: *“Building setbacks and dimensional standards in the subdivision shall be in compliance with the applicable zoning regulations of the City of Middleton **at the time of building permit issuance**, except for the front building setback which shall be measured from the back of sidewalk.”*
2. Potentially redesign the bulb-outs in keeping with P&Z Commissions recommendation to work with City Public Works to find a design that will accommodate City’s front steering sweeping machinery.
3. Pay City’s Waiver request fee of \$650 to cover the two waiver requests involving the City’s street standards.

*Roberta Stewart*

Planning & Zoning Official  
City of Middleton

## EXHIBIT "F"

### P&Z Recommendation



## **Middleton Planning & Zoning Commission**

### **Findings of Facts, Conclusions of Law & Recommendation**

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**In the Matter of the applications by Adam Capell and Representative Nicolette Womack for annexation/rezone, preliminary plat, and development agreement with respect to the Mills Landing Subdivision located at 0 Purple Sage Road, Middleton, Idaho (Tax Parcel No. R3756100):**

#### **A. Findings of Fact:**

##### **1. Hearing Facts:**

- i. Applicants' Traffic Study determined that, in the year 2025, the intersection of Cemetery Road and Hwy 44 will be rated at a Level of Service "D" at peak hours, which is below the City's minimum standard of LOS "C".
- ii. Middleton's April 2023 Traffic Study determined that the intersection of Cemetery Road and Hwy 44 will operate at a LOS F by the year 2025.
- iii. Additional hearing facts: See Staff Report for the hearing date of October 16, 2023, which Report is attached hereto as Exhibit "A" and incorporated herein by this reference.

2. Process Facts: See Staff Report for the hearing date of October 16, 2023, Exhibit "A".

3. Application and Property Facts: See Staff Report for the hearing date of October 16, 2023, Exhibit "A".

4. Required Findings per Idaho State Statue Title 67, Chapter 65, Idaho Standards for Public Works Construction and Middleton Supplement thereto, Middleton City Code 1-14, 1-15, 5-1, 5-2, 5-3 & 5-4 and Title 50, Chapters 2 and 13: See Staff Report for the hearing date of October 16, 2023, Exhibit "A".

#### **B. Conclusions of Law:**

1. That the City of Middleton has exercised the powers conferred upon it by the "Local Land Use Planning Act of 1975," codified at Chapter 65, Title 67, Idaho Code (I.C. §67-6503).
2. That due consideration has been given to the comments received from the governmental subdivisions providing services in the City of Middleton planning jurisdiction, comments received from individuals of the public, and comments from City Planning Staff and City Engineer.



3. That notice of the application and public hearing was given according to law.
4. That the Planning and Zoning Commission's public hearing was conducted according to law, and the City has kept a record of the application and related documents.
5. That codes and standards pertinent to the application are the Idaho Standards for Public Works Construction, the Middleton Supplement to the Idaho Standards for Public Works Construction, Middleton City Code 1-14, 1-15, 5-1, 5-2, 5-3, and 5-4 and Idaho Code Title 67, Chapter 65 and Idaho Code Title 50, chapters 2 and 13.


**C. Decision & Recommendation:**

Pursuant to the Planning & Zoning Commission's authority as provided in Middleton City Code 1-5-5, and based upon the above Findings of Facts and Conclusions of Law, it is hereby recommended that:

1. City Council approve the applications of Adam Capell and Nicolette Womack for annexation/rezone, preliminary plat, and development agreement subject to the conditions of approval set forth in the staff report for the October 16, 2023, hearing, except for the following terms and revisions:
  - i. The Development Agreement should be modified to remove the requirement that the traffic signal at Cemetery Road and Hwy 44 be constructed prior to approval of Applicant's phase 1 final plat.
  - ii. The Development Agreement should be revised to state that the Pro-Rata Fee to be paid at Phase 1 final Plat is \$43,000 instead of \$109,375.
  - iii. The Development Agreement to be revised to state that Developer shall pay a "Voluntary Roadway Payment" in the amount of \$112,000 to be used on road project(s) of City's choice.
2. City Council approve Applicant's request for waiver of the City's street standards regarding attached sidewalks and allow Applicant to construct interior roads with a detached 5' sidewalk with mow strip between back of curb and sidewalk.
3. City Council approve Applicant's request for waiver to the City's street standard, which waiver would allow Applicant to build corner "bulb-outs" but only on the condition that the design be refined to match the operation of City's current street maintenance equipment and the City Public Works Department confirms to City Staff that its equipment can accommodate the bulb-out design.

*[Signatures on following page.]*

WRITTEN RECOMMENDATION APPROVED ON: 11/13, 2023.

  
Heidi Summer, Chairwoman  
Planning and Zoning Commission

Attest:

  
Roberta Stewart  
Planning and Zoning Official

***Please take notice that pursuant to MCC 1-14-2(E)(10), applicant shall have 14 days after a signed final decision to request reconsideration by the final-decision maker. Such request must identify specific deficiencies in the final decision. Failure to request reconsideration may invalidate a subsequent judicial appeal. Additionally, pursuant to Idaho State Statute 67-6521, any affected person aggrieved by a final decision may, within 28 days after all remedies have been exhausted under local ordinances, seek judicial review as provided in chapter 52, Title 67.***

***Additionally, please take notice that Applicant has a right to request a regulatory taking analysis pursuant to Idaho State Statute section 67-8003.***