

Diamond Falls Subdivision
PROPOSED YELLOWSTONE COUNTY BOARD OF PLANNING
FINDINGS OF FACT

The City/County Planning Staff has prepared the Findings of Fact for the Diamond Falls Subdivision. These findings are based on the preliminary plat application and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Yellowstone County Subdivision Regulations (YCSR).

A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health and safety (76-3-608(3)(a), MCA) (Section 3.2(H)(2), YCSR)

1. Effect on agriculture and agricultural water users' facilities

The subject property has been historically used for irrigated crop land as have properties to the north, east and west. The properties to the south have been developed for residential uses since the late 1990's and early 2000's and property to the east is master planned for urban mixed-use development in the City limits. The subdivision will remove 65 acres of agricultural land. This area is generally transitioning out of agricultural use.

Hogan's Slough runs along the northern boundary of the subject property. One irrigation lateral exists in the proposed subdivision running north/south in the center of the property. It is proposed to be abandoned as it will no longer be needed for irrigation. Staff recommends as a condition of approval that evidence be provided that this lateral does not supply irrigation water to any downstream users. The evidence could be a letter from the applicable ditch company or from the surrounding property owners (**Condition #8**). There is also a lateral ditch located west of the subject property that will not be disturbed by the proposed development.

2. Effect on local services

- a. **Water and Sewer** –Domestic water is proposed to be supplied by using individual wells. Montana Department of Environmental Quality (MDEQ) will review placement of each proposed well to ensure appropriate separations from septic systems. In addition, prior to any use of water, the subdivider and/or subsequent lot owners will be required to obtain a water right permit from the Montana Department of Natural Resources and Conservation (DNRC). Under a recent Montana First Judicial District Court judgment dated November 6, 2014, applying for water rights for multiple wells within a single subdivision project must be looked at collectively. In the past, individual wells were considered on an individual basis, and therefore were exempt from applying for the "provision permit" for a water right. In accordance with a letter dated February 3, 2015, from Kimberly Overcast, Manager of the Billings Water Resources Office, DNRC, water usage from approximately 14 wells within this development can be issued a water right without going through the provision permit process. Phase I of Diamond Falls Subdivision proposes development of 13 wells. Therefore, prior to Phase II development, the developer shall apply for and receive the appropriate provisional permit for additional water rights from DNRC. It is recommended that a note be added to the final SIA under section VI.A. stating this requirement (**Condition #10**).

Sanitary sewer treatment is proposed using individual septic systems. A review of existing background nitrate levels in a nearby well has indicated that an advanced wastewater treatment system called “SepticNET” shall be used to provide the needed water protection envelope for each proposed septic system. MDEQ will review and approve design and location specifications for each proposed system and then require at the time of system installation that a Professional Engineer (PE) inspect and certify the systems are installed to approved plans. Additionally an operation and maintenance plan is required for advanced treatment systems such as the SepticNET. In order to inform future land owners of this requirement staff recommends that a note be added to Section II. of the Subdivision Improvements Agreement (SIA) stating that future landowners are responsible for having a Montana Registered Professional Engineer inspect and provide as-built certification that the improvements for the SepticNET (or approved equivalent) drainfield are constructed as shown on the Drainfield Plans as approved by Montana Department of Environmental Quality (MDEQ) at the time of septic permitting and that an operation and maintenance plan must followed in order to ensure proper functioning of the system (**Condition #3**). Staff also recommends that a note be added to the final SIA indicating that structures cannot be built over the area of the drain field and replacement drainfield as approved by MDEQ (**Condition #4**). Due to the relatively small size of the lots and required separations for wells and septic systems, it will be important for lot owners to preserve the areas approved and reserved for drain field needs.

Only Phase I lots are proposed to have sanitary restrictions lifted at the time of final plat approval. The remaining lots within the future phases will retain sanitary restrictions until future review and approval by MDEQ has been granted. It is recommended that a note be added to the face of the final plat and to Section VI.B. of the final SIA indicating which lots will retain sanitary restrictions until future approval is granted by MDEQ (**Condition #11**).

- b. **Streets and roads** – Current access to the subject property is from either S. 48th St. West on the east or Austrian Pine Rd. on the south. Additionally, S. 52nd St. West fronts the western boundary of the subdivision but is undeveloped at this location at this time. The appropriate additional right-of-way dedications are proposed on the subdivision plat for those three adjacent streets based on their street network classification. Austrian Pine Rd., though existing, does not meet current County paved road standards. Portions of it are not the required 24-foot width, while other portions are gravel-surfaced. The subdivider shall improve Austrian Pine Rd. to current County paved road standards in two phases (**Condition #9**).

Access (driveway approaches) to the new lots is proposed to be limited to a network of constructed internal streets. The local streets will be constructed to County paved road standards and are proposed to be installed in two or more phases. The preliminary plat indicates the darkened roadway that will be constructed with Phase I improvements. Culverts shall be provided to convey storm water under roads and driveways in the subdivision.

Maintenance for all public improvements will be through RSIDs which will be created or expanded prior to final plat approval (**Condition #7**).

- c. **Fire and Police services** – The property is within the Billings Urban Fire Service Area’s jurisdiction and the Billings Fire Department will provide fire service. It is the subdivider’s responsibility to ensure provisions of a water source and adequate access to the proposed lots for emergency service’s needs. A 30,000 gallon dry hydrant is proposed to be installed near the intersection of South 48th St. West and Diamond Falls Road. The 30,000 gallon tank is shown on the preliminary plat located in the Diamond Falls Road right-of-way. Maintenance of the 30,000 gallon dry hydrant will be done through an RSID-M to be created prior to the filing of the final plat as stated in the SIA Section IX. The Fire Department indicated that the proposed fire suppression facilities are sufficient but has requested that installation inspection and approval occur prior to final plat approval (**Condition #2**).

The Yellowstone County Sheriff’s Department will provide law enforcement services. The Department did not have any concerns with the proposal.

- d. **Solid Waste disposal** – The Billings Landfill has capacity for solid waste disposal. Solid waste will be collected and disposed of by a private garbage collection company. Each lot owner will be responsible for arranging for collection.
- e. **Storm water drainage** – Storm water drainage shall satisfy Yellowstone County Storm Water Management requirements and MDEQ. Storm water will be absorbed in retention areas within the parkland and in the ditches along the roads.
- f. **School facilities** – The proposed subdivision is located in School Districts #8 and #2 service areas. Elementary and Middle school students would attend Elder Grove, while High School students would be attend West High School. Elder Grove School has indicated that they have capacity for additional students at this time.
- g. **Parks and recreation** – The parkland dedication requirement for this subdivision is 7.5% of the net lot area. This amounts to 3.82 acres. The subdivider has proposed to provide 3.865 acres of parkland on the northern portion of the subdivision adjacent to Hogan’s Slough. Much of this park area is within the 100-year flood plain of Hogan’s Slough. County Parks has reviewed the park proposal and is recommending approval of it with the condition that a Park Maintenance District be established prior to final plat approval for its maintenance in the future (**Condition #12**).
- h. **Historic features** – No known historical or cultural assets exist on the site.

3. Effects on the natural environment

The subject property has Hogan’s Slough on its north border. Portions of the northeast edge of this plat are identified on the plat as in the 100 year mapped floodplain boundary, as identified by the West Billings Flood Study. Even though this flood study has not been officially adopted by FEMA, it is the best available data and must therefore be acknowledged at time of subdivision.

Even though most of the area is within the proposed park dedication, certain limitations exist for areas within the floodplain on individual lots, such as no drainfields can be constructed within it.

The subdividers will use noxious weed control measures to prevent the spread of noxious weeds to adjacent developed or agricultural land. They shall complete the property inspection and weed management plan for the property in coordination with the County Weed Department prior to final plat approval (**Condition #5**).

Aside from the floodplain, there are no other apparent or known natural hazards on the property.

4. Effects on wildlife and wildlife habitat

There are no known endangered or threatened species on the property although the area is good deer and antelope habitat. An advisory note to this effect is in the SIA, Conditions that Run with the Land Section. The proposed parkland area will remain in its natural state, allowing for the perpetuation of existing wildlife habitat.

5. Effects on public health and safety

Plans and designs for the individual wells and septic systems will be reviewed and approved by MDEQ prior to final plat approval to ensure public health and safety.

Fire and emergency services are provided for this proposed subdivision. A 30,000 gallon tank with a dry hydrant system will be constructed prior to final plat approval for water supply for firefighting needs.

Effects on public health and safety should be minimized through these measures.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603, MCA) (Chapter 9, YCSR)

An environmental assessment was not required for this subdivision, as it met the exemptions listed in Section 9.2.C.3.b. of the County Subdivision Regulations.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2008 Growth Policy Update, the Urban Area Transportation Plan--2009 Update, and the Billings Area Bikeway and Trail Master Plan? (Section 3.2(H)(4), YCSR)

1. Yellowstone County – City of Billings 2008 Growth Policy Update

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)
This subdivision will create 61 lots for single family residences. This land use is consistent with surrounding developed properties.

- Goal: More housing and business choices within each neighborhood. (p. 9)
The proposed subdivision will create 61 additional lots for homes in this area.

- Goal: Protection of groundwater, surface water, riparian areas, air quality and productive agricultural land. (p. 9)

The proposed subdivision will maintain the natural drainage area as parkland, although it is removing some agricultural land.

- Goal: Contiguous development focused in and around existing population centers separated by open space. (p. 6)

The proposed subdivision will increase the development density on the subject property therefore concentrating development and potentially preserving the agricultural land and open space in the surrounding area. Additionally the natural drainage area is preserved within Public zoning ensuring open space in the neighborhood.

2. 2014 Billings Urban Area Long Range Transportation Plan

The subject property is within the boundary of the Transportation Plan. The subject property has frontage on S. 48th Street West, which is a principal arterial road, and S. 52nd Street West and Austrian Pine Road, both which are collector roads. The appropriate amount of right-of-way is being preserved for these roads with this plat. Also, no-access strips are identified on the plat to prevent new drive approaches on to these existing roads. The internal streets in this subdivision are proposed to be public local residential streets.

3. Billings Area Bikeway and Trail Master Plan (BABTMP)

The subject property is also within the jurisdiction of the BABTMP. The plan identifies Austrian Pine Road and S. 52nd St. West as proposed long-range bike lane routes. This subdivision is providing sufficient right-of-way to allow for a future bike lane. The BABTMP also identifies a potential future trail alignment along Hogan's Slough. Parkland dedication adjacent to Hogan's Slough is proposed, and a future trail could be built within the park area. No bikeway or trail improvements are required or proposed for this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act (MSPA) and to local subdivision regulations? [76-3-608(3)(b), MCA and Section 3.2(3)(a), YCSR]

The proposed subdivision meets the requirements of the MSPA and the YCSR. The subdivider and the local government have complied with the subdivision review and approval procedures that are set forth by local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [Section 4.8(C) and 4.9(C), YCSR]

The subdivider must receive approval from the MDEQ for the individual wells and the proposed septic facilities within Phase I development prior to final plat approval. Phase II lots will retain sanitary restrictions until they are lifted at a future date.

F. Does the proposed subdivision meet any applicable Zoning Requirements? [Section 3.2(H)(3)(e), YCSR]

The subdivision is currently within the Agricultural Open Space zoning district but a zone change application has been submitted for consideration. The new proposed zoning (Residential-15,000) would allow the proposed lot sizes.

Other zoning requirements for the buildable lots shall be reviewed prior to construction on the individual lots. It is recommended as a condition of approval that a note be added to Section II of the final SIA indicating that Zoning Compliance Permits shall be submitted for review and approved by the City-County Planning Division prior to construction on the lots (**Condition #6**).

G. Does the subdivision provide for necessary planned utilities? [76-3-608(3)(c), MCA and Section 3.2(H)(3)(b), YCSR]

Utility easements are provided as requested by MDU and Northwest Energy adjacent to the public road dedication.

H. Does the proposed subdivision provide for Legal and Physical Access to all lots? [MCA 76-3-608 (3) (d) and Section 3.2 (H) (3) (c) (d), YCSR]

Legal and physical access will be provided for proposed lots off of the internal streets. Access off of South 48th St. West and Austrian Pine Road must be approved by the Yellowstone Public Works Department.

CONCLUSIONS OF FINDINGS OF FACT

- Diamond Falls Subdivision does not create adverse impacts that warrant denial of the subdivision.
- Impacts to agriculture, agriculture water user facilities, local services, public health and safety, the natural environment, and wildlife should be minimal. Impacts identified can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the 2008 Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.