



**YELLOWSTONE COUNTY BOARD OF PLANNING**  
**CITY OF BILLINGS AND**  
**YELLOWSTONE COUNTY, MONTANA**



**AGENDA**

May 8, 2018 MEETING TIME: 6:00 p.m.  
1st Floor Large Conference Room, Miller Building  
2825 3rd Avenue North, Billings, Montana 59101

1. **CALL TO ORDER - Planning Board President:** Welcome and Introduction of new and returning Board Members.
2. **APPROVAL OF AGENDA\*** - including any additions or deletions to agenda. The agenda for a regular meeting will be closed at 5:00 p.m. three (3) working days prior to the date of the meeting.
3. **MOTION. MEETING MINUTES:** April 24, 2018. (The April 10, 2018 Planning Board meeting was canceled due to a lack of agenda items).

**Attachments**

PlnBMinutes\_2018\_04\_24\_DRAFT

4. **PUBLIC COMMENT PERIOD** – As required (3 minute maximum per person). *Any member of the public may be heard on any subject that is not on the agenda. The Planning Board will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.*
  - 4a) **Comments on items not on agenda and requests to add items to future agendas**
  - 4b) **Comments on items on the non-public hearing agenda items**
5. **DISCLOSURE OF CONFLICT OF INTEREST:**
6. **DISCLOSURE OF EX PARTE COMMUNICATION:** Ex Parte Communication Binder is available at the Sign-In and Agenda station.
7. **OLD BUSINESS** There is no Old Business.
8. **NEW BUSINESS:** (Agenda items new to this meeting).

- a. **Plat Review. Discussion.** Coal Creek Subd Lts 7-17, City Major Subdivision. Magnus Land Development, Owner. CTA, agent. Dave Green Planner II, presenting.

**Attachments**

Findings of Fact  
SIA  
Proposed Plat

- b. **Plat Review. Discussion.** Mackenzie Meadow Subdivision, David E Wagner, owner. Blueline Engineering, agent. Dave Green, Planner II, presenting.

**Attachments**

Findings of Fact  
SIA draft  
Proposed Plat

9. **OTHER BUSINESS:**

- a. (Standing Item) Long Range Strategic Issues and an overview of future City and County issues and projects.

10. **ADJOURNMENT**

**FUTURE AGENDA ITEMS FOR TUESDAY, MAY 22, 2018**

- a. **Presentation. Discussion. Bicycle and Pedestrian Advisory Committee, (BPAC), Annual Presentation.** BPAC members.
- b. **Public Hearing. Motion/Recommendation.** Coal Creek Subd Lts 7-17, City Major Subdivision. Magnus Land Development, Owner. CTA, agent. Dave Green Planner II, presenting.
- c. **Public Hearing. Motion/Recommendation.** Mackenzie Meadow Subdivision, David E Wagner, owner. Blueline Engineering, agent. Dave Green, Planner II, presenting.

**Planning Board Meeting I (2nd Tuesday)**

**3.**

**Meeting Date:** 05/08/2018

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**Information**

**Subject**

**MOTION. MEETING MINUTES:** April 24, 2018. (The April 10, 2018 Planning Board meeting was canceled due to a lack of agenda items).

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**Attachments**

PlnBMinutes\_2018\_04\_24\_DRAFT

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# CITY/COUNTY PLANNING BOARD

*“Serving Billings, Broadview and Yellowstone County”*

**APRIL 24, 2018**

*DRAFT-To be approved by a motion on May 8, 2018*

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## **1. Call the Meeting to Order**

President Tunnickliff called the meeting to order at 6:00 p.m. on Tuesday, April 24, 2018, in the Miller Building 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Avenue North, Billings, Montana.

### **Introduction of Planning Board Members and Planning Department Staff**

President Tunnickliff called for introductions of the members of the Planning Board and staff. He welcomed Jon Thompson, Planning Board Representative Ward V. A brief orientation session was held prior to this meeting.

**Attending Planning staff members:** Wyeth Friday, Director, Planning & Community Services; Monica Plecker, Planning Division Manager; Scott Walker, Transportation Coordinator; Darin Swenson, YC Public Works Department; Tammy Deines, Planning Clerk

**Others in Attendance:** City Councilperson Denise Joy, Ward 5

### **Approval of the April 24, 2018 Agenda**

#### **Motion:**

**Board member Woods made a motion and it was seconded by Board member Cook to approve the April 24, 2018 meeting agenda as submitted. The agenda was approved with a unanimous voice vote.**

**Approval of Minutes: March 27, 2018. (The April 10, 2018 meeting was canceled due to a lack of agenda items).**

#### **Motion**

**Board member Cook made a motion and Board member Woods seconded the motion to approve the March 27, 2018 meeting minutes as corrected with an updated to the attendance to include Wyeth Friday.. The motion carried with a unanimous voice vote.**

- 3. Public Comment:** President Tunnickliff asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public may be heard on any subject that is not on the agenda; the Planning Board will not take any action on these items at this time, but could choose to add an item to the next meeting agenda for discussion. There were no public comments.

### **5-6. Disclosure of Outside (Ex Parte) Communication– Board Members and Planning Staff.**

The Ex Parte Communication Binder is available at the Sign-In and Agenda station. There were no Conflicts of Interest and no Ex Parte Communications reported by the Board.

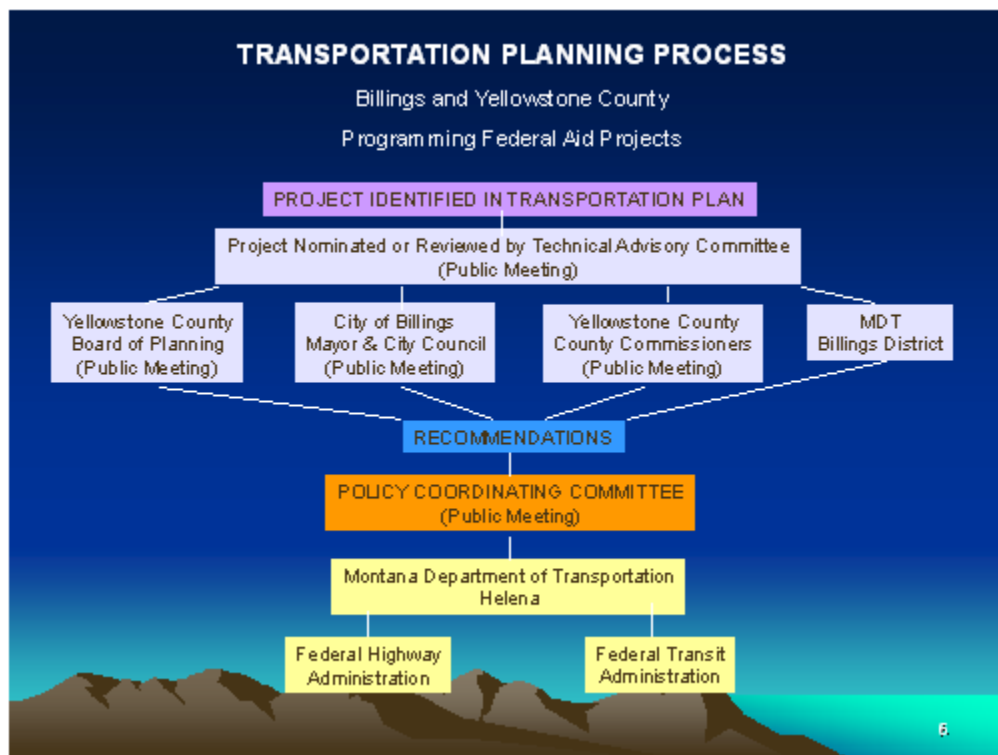
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## 7. OLD BUSINESS

**8a. Motion/Recommendation to PCC. Memorandum of Agreement-Billings Metropolitan Transportation Planning Process.** Scott Walker, Transportation Coordinator, presenting.

Scott Walker stated this item will be heard by the Policy Coordinating Committee,(PCC), on May 22, 2018. The agreement sets the stage for the MPO, (Metropolitan Planning Organization), which is established in order for the community to expend Federal funds for projects. The Planning Board is the MPO for the Billings Urban Area. He reviewed the graphic below and explained that this is a federal document designating the MPO and PCC as the governing body of the MPO. It also designates transit operations; the makeup of the Transportation Advisory Committee, (TAC); and establishes the Billings Urban Area Unified Work Program, (UPWP). The MOU ensures all corresponding documents and budgets are current. This agreement was first executed on March 25, 1954. This is the 10th version of this document which was last updated in 2009. The updates include job titles and references to current highway bills.



### Discussion

President Tunnicliff called for discussion and questions from the members of the Board. Board member Woods asked regarding the agreement timeframe, and Scott Walker stated major changes trigger an update of the document. In response to question by Board

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member Thompson, Scott Walker gave the membership composition of TAC and PCC. Board member Williams asked how projects are identified. Scott Walker said projects are generally identified from the Long Range Transportation Plan, which overreaches throughout the organized area. He used the Shiloh Road project and the identification of funding sources as an example.

### **Motion**

**Board member Woods made a motion and Board member Cook seconded the motion to forward a recommendation to PCC of approval of the 2018 Memorandum of Agreement for the Billings Metropolitan Planning Process.**

**The motion carried with a unanimous voice vote.**

**8b. Motion/Recommendation to PCC. Memorandum of Agreement for Cooperative Performance Based Planning.** Scott Walker, Transportation Coordinator, presenting.

Scott Walker stated this item will be heard by the Policy Coordinating Committee on May 22, 2018. This is a new agreement required by FWHA between MDT, the Billings Urban Area MPO; and the City of Billings Aviation and Transit Departments. The Federal highway bill requires adherence to all Federal regulations to provide quantification of safety measures. Signatories include the City/County Planning Board as the MPO, the State of Montana, and the City Administrator.

### **Discussion**

President Tunnicliff called for discussion and questions from the members of the Board. Scott Walker responded to question by Board member Thompson and stated Thompson this is an agreement between the MPO and the Department of Transportation to ensure the goals in the Transportation Plan are reasonable

### **Motion**

**Board member Cook made a motion and Board member Thompson seconded the motion to forward a recommendation to PCC of approval of the Memorandum of Agreement for Cooperative Performance Based Planning.**

**The motion carried with a unanimous voice vote.**

## **9. OTHER BUSINESS/ANNOUNCEMENTS**

**9a. Presentation/Discussion. Subdivision 101-Review Process and Procedures.**

Monica Plecker, Planning Division Manager, presenting. Ms. Plecker stated this presentation is in response to a request by a Planning Board member. She followed with a review and explanation of the outline below. This presentation will be e-mailed to the Board members after this meeting.

**SUBDIVISION REVIEW & PROCESS**

Yellowstone County Board of Planning

April 24, 2018

**Overview**

**SUBDIVISION 101-WHAT IS A SUBDIVISION?**

**Subdivision – a land division that:**

- Creates one or more parcels for conveyance
- Parcels are less than 160 acres
- Parcels cannot be described as a ¼ aliquot part of a US government section

**Certificate of survey**

- drawing of a field survey that discloses facts about property boundary locations (done when a survey is exempt from subdivision review)

**SUBDIVISION 101-THE LINGO**

**Subdivision: First Minor, Major, Subsequent Minor, Expedited, Amended**

**STATUTORY AUTHORITY**

**State: MCA 76-3-101 through 76-3-625**

- Requires local governments to adopt subdivision regulations
- Sets procedures and content of regulations
- Establishes local review criteria
- Presumes land may be divided unless negative impacts cannot be mitigated

**City Regulations**

**County Regulations**

**SUBDIVISION 101-PURPOSE**

- Promote public health, safety and welfare
- Promote orderly growth and development
- Prevent overcrowding and street congestion
- Provide public improvements
- Promote preservation of open space

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- Protect private property interests
- Establish uniform monumentation and land transfers

## SUBDIVISION 101-REVIEW CRITERIA

### Effects on:

- Agriculture and Ag. water user facilities
- the natural environment
- wildlife and wildlife habitat
- public health and safety
- local services

### Compliance with:

- Survey requirements outlined in MCA 76-3-401 et seq.
- Local subdivision regulations and local review process
- Local zoning regulations

### Provision of easements for utilities

### Provision of legal and physical access to each parcel

### Consistency with adopted plans and policies

## PROCESS-PRELIMINARY PLAT PROCESS

<b>PROCESS PRELIMINARY PLAT</b>				
	FIRST MINOR AMENDED	MAJOR	SUBSEQUENT MINOR	EXPEDITED
LOTS	Up to 5	6 +	Up to 5*	1-2
ACCEPTANCE	1st and 15th	1st	1st and 15th	Any day
PreApplication Meeting	Yes	Yes	Yes	Yes
COMPLETENESS & SUFFICIENCY	Yes	Yes	Yes	CHECKPRINT REVIEW
DEPARTMENTAL REVIEW MEETING	No	Yes	Yes	N/A
APPLICANT RESUBMITTAL	If Required	If Required	If Required	If Required
PLANNING BOARD PLAT REVIEW	No	Yes	County Yes, City No	No
PLANNING BOARD PUBLIC HEARING	No	Yes	County Yes, City No	No
GOVERNING BODY ACTION	35 WORKING DAYS	60-80 WORKING DAYS		

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### **PRELIMINARY PLAT PROCESS: PRE APPLICATION**

**WHO:** City or County Departments, Applicant and Applicant’s Agent

Planning, Engineering, Public Works, Legal, RiverStone Health, Fire, Other

**WHEN:** Thursday afternoons

**WHERE:** Miller Building, 1st Floor Conference Room

**WHY:** Applicants and their agents present concept to staff to determine project feasibility, opportunities, constraints and process to proceed.

### **PROCESS: COMPLETENESS/SUFFICIENCY**

**Also known as a “Pre Submittal”**

- More information than Pre Application
- Includes draft supplemental documents: Traffic Improvement Study ,(TIS), Environmental Assessment, (EA); Sanitation Information

**Typically submitted 3 weeks prior to “formal submittal”**

- Documents provided to staff for initial review and comments. Staff works with Agent to identify issues or required changes prior to Formal submittal.

### **PROCESS: FORMAL SUBMITTAL**

- Major & County Subsequent Minor applications accepted 1st day of each month
- Minor and Amended applications accepted 1st and 15th day of each month
- Expedited plats accepted at any time
- Submittal includes any remaining documents and includes changes required during completeness and sufficiency

### **PROCESS: DEPARTMENTAL REVIEW MEETING**

**WHO:** City or County Departments, Applicant and Applicant’s Agent  
Planning, Engineering, Public Works, Legal, RiverStone Health, Fire

- WHEN:** Thursday afternoons
- WHERE:** Miller Building, 1st Floor Conference Room
- WHY:** Opportunity for staff and agent to work out any remaining items that have remained unresolved through previous review cycles.

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## PROCESS: APPLICANT RESUBMITTAL

- Applicants can resubmit, if required, 1 week following Departmental Review Meeting.
- Upon resubmittal, plat is scheduled for governing body review.
  - Majors/County Subsequent Minor: Planning Board Plat Review > Planning Board Public Hearing;>Governing Body Approval
- Minors: Staff Memo/Recommendation > Governing Body Approval

## PUBLIC NOTIFICATION: SURROUNDING PROPERTY OWNER NOTICE

- Major/County Subsequent Minor Surrounding property owners noticed by mail
- Legal ad in newspaper of general circulation

## PROCESS: NOTICE CONTENTS

- Purpose of notice
- Time, location & date of Public Hearing
- How to obtain more information
- Public hearing procedure
- Criteria for determination
- Property/Subdivision Information
- Location
- Proposed lots
- Owner
- Proposed land use
- Lot size
- Zoning

### Discussion

President Tunncliff called for discussion and questions from the members of the Board. Board member Woods asked about the notification area and Ms. Plecker stated all Districts, entities, and parties applicable to the subdivision are notified. Board member Williams complemented staff for the practice of communication throughout the review process. Ms. Plecker said communication is a huge factor to the success of subdivision development to provide

**Planning & Community Services Department**  
"Serving Billings, Broadview and Yellowstone County"  
2025 3<sup>rd</sup> Ave. North, 4<sup>th</sup> Floor, Miller Building  
Billings, Montana 59101  
Phone: (406) 687-6244 Fax: (406) 687-6327

**NOTICE OF PUBLIC HEARING**  
Northfield Warehouses - Preliminary Major Plat

September 1, 2017 Project #: PZ-17-00128

Dear Property Owner:

This notice is to inform you that the Yellowstone County Board of Planning will hold a public hearing to receive public comments on the proposed subdivision. The hearing will be held at 6:00 p.m. on Tuesday, Sept 5, 2017, at the Miller Building, located at 2825 3<sup>rd</sup> Ave. North, down the street from the Planning Board.

Proposed Subdivisions	
General location:	North of King Ave West
Legal Description:	Lots 20, 21, 22 & 23, W
Subdivider/Owner:	West King Commercial
Engineer and Surveyor:	EEC, Inc.
Existing zoning:	Unzoned
Existing land use:	Vacant, Commercial
Proposed land use:	Commercial
Overall area:	2.018 acres
Net area:	2.018 acres
Proposed number of lots:	24 Units
Lot size:	Min. 1,071 sq ft. Min.
Purchased requirements:	No parkland dedication

After receiving comment, the Planning Board will recommend to the Yellowstone County Commissioners for approval, conditional approval, or denial.

You may obtain additional information by contacting the Planning Board at (406) 687-6244 or at the Planning office located at 2825 3<sup>rd</sup> Ave. North.

Sincerely,  
The City-County Planning Division Staff

**Public Hearing Participation Guidelines**

The County Planning Board will receive public input on matters brought before the Board. To ensure a fair and effective public hearing process, we ask that you consider the following guidelines when presenting your comments:

1. Address the Planning Board directly. Do not state your name and address before commenting. This is an opportunity to explain how you will be affected by the decision and why that is an important consideration.
2. Do not read the minutes and the recommendations of the Board. If you are commenting about a subdivision, please limit your comments to the review criteria.
3. Do not bring the Planning Board member's name into the hearing unless you are speaking in support of the subdivision. Do not bring the name of the Planning Board member into the hearing unless you are speaking in support of the subdivision.
4. Do not bring the name of the Planning Board member into the hearing unless you are speaking in support of the subdivision.
5. Do not bring the name of the Planning Board member into the hearing unless you are speaking in support of the subdivision.
6. Do not bring the name of the Planning Board member into the hearing unless you are speaking in support of the subdivision.
7. Do not bring the name of the Planning Board member into the hearing unless you are speaking in support of the subdivision.

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more predictability and mitigation of issues. President Tunncliff said this presentation is a good use of the Board’s time as it helps the Board to gain an understanding of the preliminary work conducted by Staff prior to reaching the Planning Board. He stated the Board is blessed to have a staff who works diligently behind the scenes to give the Board confidence in decision making. Board member Cook agreed and said this information is especially helpful for new applicants. Ms. Plecker said it is available as a handout. It is also posted on the City of Billings website: <http://ci.billings.mt.us/2428/Submittal-Requirements>

Board member Cook asked what is done to notify and include the necessary citizens of an application. Ms. Plecker said surrounding property owners are notified of preliminary plat applications. She explained that zoning applications use a radius and the subdivision regulations require notification of adjacent property owners. She pointed out that in the case of a zoning application, the Zoning Coordinator may identify a larger notification area if warranted. Director Friday said a wider notification radius can be challenging as it consumes additional mailing, and printing costs and staff time resources. He said staff is exploring using other means of noticing including social media. Ms. Plecker commented the recent citizen complaints related to notification were more related to zoning applications than subdivision applications. In response to question by Board member Thompson, Ms. Plecker stated minor subdivision review, exempt plat review, and expedited subdivision review does not require public notice. She stated that public interest is often based on the scale of impact.

### **b. Standing Item. Long Range Strategic Issues and an overview of future City and County issues and projects.**

**1. Project ReCode** Director Friday said City Council approved the consultant contract with “Safe Built Studios” for Project ReCode. A kick-off meeting will be held in May and the consultant will begin with an audit of the existing zoning code and the guiding principles developed by the steering committee.

**ADJOURNMENT:** 7:30 p.m.

DRAFT-To be approved by a motion on May 8, 2018



**YELLOWSTONE COUNTY BOARD OF PLANNING**  
CITY OF BILLINGS AND  
YELLOWSTONE COUNTY, MONTANA



**Planning Board Meeting I (2nd Tuesday)**

**8. a.**

**Meeting Date:** 05/08/2018

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## **Information**

### **INTRODUCTION**

On April 2, 2018, CTA, agent for Magnus Land Development, LLC, owner, applied for preliminary major plat approval for Amended Lots 7-17, Coal Creek Subdivision. The proposed subdivision creates 6 new lots for commercial development. The subject property is generally located on the northwest corner of the intersection of Rimrock Road and 62nd Street West. The property is zoned Community Commercial (CC).

The Yellowstone County Board of Planning will review the plat at this meeting and conduct a public hearing on May 22, 2018.

### **RECOMMENDATION**

Staff recommends the Planning Board recommend conditional approval of the preliminary plat of Amended Lots 7-17, Coal Creek Subdivision to the City Council, and adopt the Findings of Fact as presented in the staff report.

### **PROPOSED CONDITIONS OF APPROVAL**

Planning staff recommends the following conditions of approval:

1. To ensure the stormwater system is properly maintained, prior to final plat approval the applicant will add the following to the storm drain section of the SIA:
  - 'The stormwater retention areas and associated improvements will be privately owned and maintained by the HOA. O&M requirements and HOA responsibilities shall be as outlined within the City of Billing Stormwater Management Manual (SWMM), appendices E and F. Retention areas shall be covered with a blanket easement, allowing access by the City. If the HOA fails to maintain the stormwater retention facilities, the City reserves the right to create a maintenance district in the subdivision to maintain the stormwater retention facilities.'
2. To bring the infrastructure section of the SIA into conformance with the subdivision regulations, prior to final plat approval the applicant will work with City Planning and Engineering to either write this section and include documentation to meet the requirements of phasing; or rewrite the portion of the SIA to define what improvements will be constructed initially and what remaining items will be bonded or have an irrevocable letter of credit to guarantee infrastructure installation at a later time.
3. To minimize the effects on local services and to have minimum road width requirements met, prior to final approval the applicant shall change the beginning of the sentence in the SIA under III Transportation

A. Streets, at the last bullet point that states, 'The southern half of Signal Peak Avenue' to read, 'The southern half, a minimum of 30 foot asphalt width, of Signal Peak Avenue will be constructed from the western boundary of the subdivision east to 62nd Street West.'

4. To eliminate confusion and ensure the correct access is constructed as allowed, prior to final plat approval the applicant will change a sentence in the SIA under the heading E. Access, 62nd Street West sentence b., which says 'The Second full movement access', to read 'The second proposed access will be a 3/4 access and is approximately 650 ft north of the 62nd Street West and Rimrock Road intersection'. The applicant will also change the sentence directly under the heading '62nd Street West' that states 'Two full movements' to read 'One full movement and one 3/4 movement'

5. To minimize the effects on local services and enable more useable roadways, prior to final plat approval the applicants TIS shall be reviewed and approved by the City of Billings Engineering Division. The approval shall outline any additional requirements that developer will be responsible to construct. This review will also confirm or correct the contributions for street improvement from the developer listed in the SIA.

6. To minimize the effects on local services, prior to final plat approval the subdivider will provide a letter from the United States Postal Service acknowledging its agreement with the placement of mail delivery facilities in the subdivision.

7. To ensure the provision of easements for utilities, prior to final plat approval the subdivider shall provide utility easements on the final plat as requested by the private utility companies.

8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

9. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

## **VARIANCES REQUESTED**

No variances from the City Subdivision Regulations have been requested as part of this application.

## **PROCEDURAL HISTORY**

- A pre-application meeting was held on March 1, 2018 to discuss the proposal.
- The preliminary plat application was submitted to the Planning Division on April 2, 2018.
- A departmental review meeting was conducted on April 19, 2018.
- The preliminary plat was resubmitted with revisions based on department reviews on April 26, 2018.
- The Planning Board will review the plat on May 8, 2018.
- The Planning Board will conduct a public hearing on May 22, 2018, and forward a recommendation to the City Council.
- The City Council will consider the preliminary plat on June 25, 2018.
- The 60 working-day preliminary plat review period ends June 26, 2018.

## **PLAT INFORMATION**

General location: Northwest corner of the intersection of Rimrock Road and 62nd Street West

Legal Description: Lots 7-17, Coal Creek Subdivision

Owner/Subdivider: Magnus Land Development, LLC

Engineer and Surveyor: CTA

Existing Zoning: Community Commercial

Existing land use: Vacant

Proposed land use: Commercial development

Gross: 14.01 acres

Proposed number of lots: 6

Lot size: Max: 4.8 acres  
Min.: 0.85 acres

Parkland requirements: There are no parkland requirements for this proposed subdivision because it is a commercial subdivision.

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## **Attachments**

Findings of Fact  
SIA  
Proposed Plat

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## FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Amended Lots 7-17, Coal Creek Subdivision. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

### **A. What are the effects on agriculture, local services, the natural environment, wildlife, wildlife habitat, and public health, safety and welfare? [MCA 76-3-608 (3) (a) and BMCC 23-302.H.2.]**

#### **1. Effect on agriculture and agricultural water user facilities**

The land to be subdivided was historically used for pasture land and dryland crops. The 14-acre parcel lies south of the Cove Ditch, at the northwest corner of 62<sup>nd</sup> St. West and Rimrock Road. The property was annexed into the City limits in 2002 along with approximately 200 adjacent acres. The agricultural lands north of Rimrock Road in this area have become more valuable as residential and commercial properties, and their development may have possibly alleviated some development pressure on irrigated agricultural lands to the south. The Cove Ditch is preserved in an easement to the north of this proposed subdivision. For these reasons, the development of the subject property should have minimal effects on agriculture and agricultural water user facilities in the area.

#### **2. Effect on local services**

- a. **Utilities** – All lots will be served by city water lines in the area. Lots 5-A and 6-A, will be served by the 12-inch water main in Signal Peak Avenue tying into the existing 20-inch water main in 62<sup>nd</sup> Street. This water line will be placed in a public utility easement. The lot owners will be responsible to connect to the water lines at the time of lot development.

Lot 2-A and 4-A will be served by the existing 20-inch water main in 62<sup>nd</sup> Street West with private service connections. Lots 1-A and 3-A will be served by an existing 12-inch water main in Rimrock Road with private service connections.

All water line installation shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations. This requirement is called out in the SIA under the heading VI. Utilities.

- b. **Sanitary Sewer** – All lots will be served by city sewer lines in the area. Lots 5-A and 6-A, will be served by an 8-inch public sewer main within the public water and sewer main utility easement. The 8-inch sewer line will be placed along Signal Peak Avenue tying into an existing 18-inch sewer main in 62<sup>nd</sup> Street West. The lot owners will be responsible to connect to the water lines at the time of lot development.

Lot 2-A and 4-A will be served by the existing 18-inch sewer main in 62<sup>nd</sup> Street West with private service connections. Lots 1-A and 3-A will be served by an existing 18-inch sewer main in Rimrock Road with private service connections.

The services shall meet City of Billings Public Works Department and Montana DEQ Standards, rules, and regulations.

Collection system grades and placement will meet City of Billings Public Works Department and Montana DEQ Standards, rules, and regulations. This requirement is called out in the SIA under the heading VI. Utilities.

Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

- c. **Storm water** – Storm drainage shall be provided by a combination of surface drainage, curb and gutters, and storm drain piping and detention ponds. All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the *Stormwater Management Manual* in place at the time of development. A complete stormwater management plan shall be submitted to the City Engineering Division and Montana Department of Environmental Quality for review and approval at the time of development. This requirement is called out in the SIA under the heading V. Storm Drainage.

This proposed subdivision will use a series of small detentions areas in addition to the community stormwater detention area located on Lot 2 of Coal Creek Subdivision. The community detention facility will collect runoff from the Coal Creek Subdivision and the Amended Lots 7-17 Coal Creek Subdivision. It will be conveyed to the Birely Drain. With the original filing the previous applicant provided documentation to the City of Billings Engineering Department from the Birely Drain Association stating they are allowed to use the drain as historically done and at historic rates of flow. This development will be part of the original agreement for stormwater discharge into the Birely Drain.

This subdivision may be required to participate in the costs of area-wide storm water detention facility, this is acknowledged and included in SIA under the heading of V. Storm Drainage B, a.

The storm water detention network is to be maintained by the HOA that will be created to maintain the streets within the subdivision as well. **(Condition #1)**

The SIA states under the heading IX. Infrastructure Improvements that they will be installing the infrastructure not all at once but as the land develops and there is a demand for the infrastructure. There is a mix of language that refers to what will be built initially and what will be built at a later time using phasing and restricting lot sales. There are also contributions outlined in this section that the developer will be required to contribute to offset impacts to existing roadways.

This does not follow the subdivision regulations for infrastructure installation. It needs to be either phasing of development which requires more documentation, certificates and releases, with dates the phases will be released or install the infrastructure entirely or install what is needed first and bond or provide an irrevocable letter of credit for the remaining infrastructure. The applicant, with input from City Planning and Engineering, will reformat this section of the SIA to meet the requirements of subdivision regulations. **(Condition #2)**

- d. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- e. **Streets** –All roads within the subdivision shall be privately owned. All streets shall be built in accordance with the City of Billings Engineering site development standards. The private road within the commercial portion of the Subdivision, Signal Peak Avenue, shall be built to commercial road standards having a minimum width of 44 feet back-of-curb to back-of-curb within an 80 foot right of way. The applicant in the SIA under III Transportation A. Streets, at the last bullet point states they will be building the southern half of that street. They will be required to build a minimum of 30-foot asphalt width of that street as required by Engineering regulations. **(Condition #3)**

The applicant is proposing two accesses off of Rimrock Road into the proposed subdivision. One is proposed to be 370 feet north of the intersection of 62<sup>nd</sup> Street West and Rimrock Road and the second one is proposed to be 650 north of the same intersection. They are also proposing two accesses from 62<sup>nd</sup> Street West into the proposed subdivision. One is proposed to be 650 feet west of the intersection of 62<sup>nd</sup> Street West and Rimrock Road and the second one is proposed to be 1,020 feet west of the intersection of the same intersection. In the SIA under the heading E. Access, 62<sup>nd</sup> Street West it says ‘Two full movements’ and sentence b, it says ‘The Second full movement access is approximately 650 ft north of the 62<sup>nd</sup> Street West and Rimrock Road intersection.’ That access will only be a ¾ access as stated earlier in the SIA in the Streets Section. **(Condition #4)**

A Traffic Impact Study (TIS) was submitted for this subdivision and will be reviewed and approved by the City of Billings Engineering Division to determine if all the accesses are acceptable and what type of accesses they will be. **(Condition #5)**

The TIS also identified impacts to surrounding roads and intersections. The intersections and roads that will be impacted with each additional phase are addressed in the SIA. Required contributions for impacted roads and intersections have been outlined in paragraph III Transportation D. Those contributions will be reviewed and approved by the City of Billings Engineering Division to determine if they are correct. **(Condition #5)**

The applicant will be constructing the north half of Rimrock Road to a collector standard that will include asphalt, curb, gutter, sidewalks and storm drainage improvements. A cash contribution will be given for improvements on 62<sup>nd</sup> Street west. The contribution will be for the same improvements as along Rimrock Road but the improvements will take place at a later date. Internal circulation roads will be constructed as required by development. All internal roads will be private.

- f. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1501 54<sup>th</sup> St. West, Station #7. The subdivision is located within the ambulance service area of American Medical Response (AMR).
- g. **Schools** –School District #2 provides educational services to elementary through high school students. Because this is a commercial subdivision there will be no students added to the schools in the area.
- h. **Parks and Recreation** – Commercial subdivisions are not required to provide parkland.
- i. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has indicated that centralized mailbox units will be required. The USPS has asked for centralized mailbox units located on Rimrock Road west of 62<sup>nd</sup> Street West with a safe pull off area for the postal vehicle and worker. **(Condition #6)**

### **3. Effect on the natural environment**

The subject property consists of approximately 14 acres of non-irrigated grassland gently sloping to the southeast. A preliminary Geotechnical Investigation Report was performed, by Rimrock Engineering, and submitted for review. While this report acknowledged the need for additional site-specific reports prior to construction, it provided some general information about the site limitations. A paragraph in the SIA under the heading Conditions that Run with the Land notify future lot owners of the need for future geotechnical studies based on proposed specific site development.

### **4. Effect on wildlife and wildlife habitat**

There are no known endangered or threatened species on the property. There is a paragraph in the SIA that warns future lot owners of the presence of deer in the area, which may cause damage to their landscaping. This subdivision should have a minimal effect on wildlife and wildlife habitat.

### **5. Effect on the public health, safety and welfare**

The subdivision is located in an area with no known natural hazards.

## **B. Was an Environmental Assessment required? [(MCA 76-3-616 and BMCC 23-302.H.1.)]**

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-616, MCA.

**C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2014 Billings Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]**

**1. City of Billings 2016 Growth Policy**

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. **Essential Investments (relating public and private expenditures to public values):** Neighborhoods that are safe and attractive and provide essential services are much desired (p. 7).
- b. **Prosperity (promoting equal opportunity and economic advancement)**  
A diversity of available jobs can ensure a strong Billings' economy. Successful businesses that provide local jobs benefit the community. (p.9)

**2. 2014 Urban Area 2014 Transportation Plan**

The proposed subdivision adheres to the goals and objectives of the 2014 Functional Class Map and preserves the street network and street hierarchy specified in the plan. It also meets some of the goals of the 2016 City of Billings Growth Policy. In the West Billings Plan this area is identified and an Urban Expansion Area identified as Residential. The western part of the original subdivision is all residential.

**3. Billings Area Bikeways and Trail Master Plan (BABTMP)**

The proposed subdivision lies within the jurisdiction of the Billings Area Bikeways and Trail Master Plan. A 20-foot wide trail dedication along the north side of the Cove Ditch was previously provided by other subdivisions north of this property. It is encouraged that the applicant provides pedestrian/bike routes out of the commercial areas of this proposed development.

**D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and BMCC 23-302.H.3.a.]**

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and to the design standards specified in the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

**E. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-302.H.3.e.]**

The subject property is located within CC zoning. The lot sizes conform to the requirements of this zone. Other building setbacks and structure specific requirements will be reviewed for compliance at the time of building permit review.

**F. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-302.H.3.b.]**

The subdivider will coordinate and provided utility easements as requested by MDU and YVEC on the face of the plat. (**Condition #7**)

**G. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-302.H.3.c.]**

Legal and physical access is provided to the proposed lots from Rimrock Road, 62<sup>nd</sup> Street West.

**CONCLUSIONS OF FINDINGS OF FACT**

- The preliminary plat of Amended Lots 7-17, Coal Creek Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several of the goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

**RECOMMENDATION**

Staff recommends that the Planning Board recommend conditional approval of the preliminary plat of Amended Lots 7-17, Coal Creek Subdivision to the City Council, and adopt the Findings of Fact as presented in the staff report.

**SUBDIVISION IMPROVEMENTS AGREEMENT**

**Coal Creek Subdivision Amended Plat Lots 7-17**

**April 24, 2018**

**SUBDIVISION IMPROVEMENTS AGREEMENT**  
**Coal Creek Subdivision Amended Plat Lots 7-17**  
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**City of Billings**

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## SUBDIVISION IMPROVEMENTS AGREEMENT

### Coal Creek Subdivision Amended Plat Lots 7-17

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between *Magnus Land Development, LLC*, whose address for the purpose of this agreement is 745 South 56<sup>th</sup> Street West, Billings, MT 59106, is hereinafter referred to as "Subdivider," and the CITY OF BILLINGS, Billings, Montana, hereinafter referred to as "City."

#### WITNESSETH:

WHEREAS, at a regular meeting conducted on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Board of Planning recommended conditional approval of a preliminary plat of the Coal Creek Subdivision Amended Plat of Lots 7-17 and;

WHEREAS, at a regular meeting conducted on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council conditionally approved a preliminary plat of Coal Creek Subdivision Amended Plat of lots 7-17; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Coal Creek Subdivision Amended Plat Lots 7-17* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

#### I. VARIANCES

A. No variance request is being made as part of this development.

#### II. CONDITIONS THAT RUN WITH THE LAND

A. Lot owners will be required to construct the segment of the required sidewalk that fronts their property at the time of development.

B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is possible that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish,

Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

- C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- D. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts (SID) for only those items specifically identified within this document which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and Owner specifically agree that they are waiving valuable rights and do so voluntarily.
- F. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- G. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

### **III. TRANSPORTATION**

#### **A. Streets**

- All roads within the subdivision shall be privately owned and built to the City of Billings subdivision regulation standards. These roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance,

and City subdivision regulations.

- The north half of Rimrock Road shall be built to collector standards including asphalt, curb and gutter, and sidewalk. A right turn lane for west bound traffic off of Rimrock Road will be constructed at the intersection of first private approach and Rimrock Road. Storm collection shall be included along the north half of the road with a discharge to the Birely Drain. Water quality standards for Rimrock Road runoff shall be met in accordance with the Billings Stormwater Management Manual (BSMM).
- Cash contribution shall be made for improvements to 62<sup>nd</sup> Street West. Contributions shall be made for the widening of the west half of 62<sup>nd</sup> Street West to commercial standards including asphalt, curb and gutter, and sidewalk. Subdivider shall be given credit for materials already in place. Subdivider shall construct, or contribute to the construction, of a median to control turning movements for the ¾ shared access located between Lots 1-A and 2-A.
- The southern half of Signal Peak Avenue will be constructed from the western boundary of the subdivision east to 62<sup>nd</sup> Street West. This will include the installation of the private storm sewer and public water and sewer.

#### **B. Sidewalks**

- The Subdivider will install, corner intersection handicap ramps and aprons and will grade all street frontages for sidewalk finished grades.
- The Subdivider shall be responsible for the installation of a 10 foot asphalt trail along the Rimrock Road frontage.
- The Subdivider shall make a cash contribution for sidewalks along 62<sup>nd</sup> Street West.
- Individual lot owners within the commercial portion of the Subdivision will be responsible for the construction of the sidewalks adjacent to their lot and Signal Peak Avenue at the time of lot construction and shall be included in each building permit. Sidewalks shall be 5-foot boulevard walk style with a boulevard width of 5 feet.

#### **C. Street Lighting**

- The Subdivider will be responsible for extending street lighting north along 62<sup>nd</sup> Street West to the first subdivision approach. Maintenance of the street lights shall be the responsibility of the HOA or through the creation of a street light district.

#### **D. Traffic Control Devices**

- Subdivider shall furnish the necessary traffic control devices within and adjacent to the subdivision as required by City Engineering. Traffic control devices shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and City of Billings Standards.
- Subdivider shall pay intersection impact contributions totaling **\$107,600**.
  - Rimrock Road and 62<sup>nd</sup> St W: **\$64,375 (25.75% x \$250k)**
  - Rimrock Road and 54<sup>th</sup> St W: **\$28,750 (11.50% x \$250k)**
  - Grand Avenue and 62<sup>nd</sup> St W: **\$14,475 (5.79% x \$250k)**

Scheduling for intersection impact contributions is provided in the Phasing

section of this SIA.

- Subdivider shall furnish and install street name signs for streets within the subdivision, or located immediately adjacent thereto, in accordance with the specifications of the City of Billings Publics Works and Fire Departments.

#### E. Access

##### Rimrock Road

- Two full movement private road access points will be located along Rimrock Road:
  - a. First subdivision approach is approximately 370 feet west of the 62nd Street West and Rimrock Road intersection.
  - b. Lot 3-A access is approximately 650' west of the 62nd Street West and Rimrock Intersection.
- All access approaches will meet design standards outlined in the City of Billings Standard Modification Drawings.
- A 1-foot no access strip shall run along the boundary of lots fronting Rimrock Road as indicated on the Plat.
- The developer will be required to construct the necessary turn lanes as outlined in the traffic study.

##### 62<sup>nd</sup> Street West

- Two full movement private road accesses will be located along 62nd Street West:
  - a. The Signal Peak Avenue access is approximately 1,020 ft north of the 62<sup>nd</sup> Street West and Rimrock Road intersection;
  - b. The second full movement access is approximately 650 ft north of the 62<sup>nd</sup> Street West and Rimrock Road intersection.
- All access approaches will meet design standards outlined in the City of Billings Standard Modification Drawings.
- A 1-foot no access strip shall run along the boundary of lots fronting 62<sup>nd</sup> Street West as indicated on the Plat.

##### Emergency Access

- In the event that Signal Peak is not fully constructed at one time, at minimum, a temporary emergency turnaround shall be constructed for road lengths less than 1,000 feet.

#### **IV. EMERGENCY SERVICE**

The Billings Fire Department currently provides fire protection for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads, and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along an approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for apparatus access and watersupply.

Emergency access to the subdivision will occur at the locations described in Section III. TRANSPORTATION, Subsection E, Access. Approaches and internal roads are designed to accommodate emergency vehicles described previously.

#### **V. STORM DRAINAGE**

- A. Storm drainage shall be provided by a combination of surface drainage, curb and gutters, and storm drain piping. All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the *Stormwater Management Manual* in place at the time of development. A complete stormwater management plan shall be

Submitted to the City Engineering Division and Montana Department of Environmental Quality (as required) for review and approval at the time of development.

- B. Amended Plat of Lots 7-17 Coal Creek Subdivision shall utilize a series of small detention areas in addition to the community stormwater detention area located on Lot 2 of the Coal Creek Subdivision for stormwater management. The community drainage and detention facilities shall be operated and maintained by the Subdivision's Home Owner's Association. The community detention area will collect runoff from the Coal Creek Subdivision and the Amended Plat of Lots 7-17 Coal Creek Subdivision and convey it to the Birely Drain. Private storm facilities located on lots in the Amended Plat of Lots 7-17 Coal Creek Subdivision shall be operated and maintained by the respective lot owners.
- a. If the City constructs a storm water management facility on the land south of RimRock Road and adjacent to the Birley Drain, the Subdivider may direct runoff from the subdivision to the City's storm water management area. If the City does not proceed with construction of a storm water management facility prior to the development of subdivision, subdivider must construct detention on site. The water quality storm must be mitigated for each parcel on site.
- i. If storm water detention is directed to City's storm water facility, parcels shall make a cash contribution for stormwater improvements at a rate of \$0.24/sf of gross area of the parcels. Contributions shall be made to the City prior to the issuances of the parcels first building permit.
- C. Storm drainage for the north half of Rimrock Road adjacent to the Coal Creek Subdivision shall be conveyed thru a series of catch basins which will route runoff through a drainage main and discharge to the Birely Drain. Runoff from the south half of Rimrock Road is currently managed by the borrow ditch which ultimately drains to the Birely Drain. Improvements to the south half of Rimrock Road shall occur upon annexation of parcels adjacent to the roadway.

## **VI. UTILITIES**

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension of/connection to water mains and sanitary sewers is subject to the approval conditions of the applications. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any plans and specifications. The appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

The Subdivider/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made or when a building permit is issued for new construction.

It is acknowledged that all fees stated above are subject to the Franchise Fee in effect at the time of payment.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality. Signal Peak Avenue will be privately owned with public water and sanitary sewer mains located within them, a standard Perpetual Right of Way Easement between the City and the property owner shall be completed and recorded with the Yellowstone County Clerk and Recorders office.

### **A. Water**

Lots 5-A and 6-A will be serviced by a 12-inch public water main placed within the public water and sewer utility easement. The 12-inch main will run along Signal Peak Avenue tying into the existing 20-inch water main in 62nd Street. Valve and hydrant placement shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations. Installation of main will be by private contract.

Lots 2-A will be served by the existing 20-inch water main in 62nd Street with private service connections installed at the time of site development. Valve and hydrant placement shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

Lots 1-A, 3-A, and 4-A will be served by the existing 12-inch water main in Rimrock Road with private service connections. Valve and hydrant placement shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

**B. Sanitary Sewer**

Lots 5-A and 6-A will be serviced by an 8-inch public sewer main placed within the public water and sewer utility easement. The 8-inch sewer main will run along Signal Peak Avenue tying into the existing 18-inch sewer main in 62nd Street. The services shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations. Installation of main will be by private contract.

Lots 2-A and 4-A will be served by the existing 18-inch sewer main in 62nd Street with private service connections installed at the time of site development. The services shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

Lots 1-A and 3-A will be served by the existing 18-inch sewer main in Rimrock Road with private service connections. The services shall meet City of Billings Public Works Department and Montana DEQ standards, rules, and regulations.

**C. Power, Telephone, Gas, and Cable Television**

Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

**VII. IRRIGATION**

There are no irrigation rights for this property.

**VIII. SOILS/GEOTECHNICAL STUDY**

- A. A geotechnical analysis was performed for this property on August 12, 2016 by Rimrock Engineering, Inc. Sub-surface conditions vary across the site. Since specific structure types and locations have not been identified, performing site specific geotechnical investigations should be considered and is recommended.
- B. Construction restrictions due to the results of the study may include over excavation and controlled re-compaction, placement of granular backfill, or specific structural considerations, depending upon the actual structural loads to be built in a particular location.

- C. Assessment of a specific lot and mitigation efforts, if any, of these conditions shall be the responsibility of the lot owner. The City may require the owner of a lot to include a lot specific geotechnical investigation report with the building permit submittal.

## **IX. INFRASTRUCTURE IMPROVEMENTS**

Subdivider is responsible for the construction of the north half of Rimrock Road along the frontage of the subdivision. Road improvements shall include widening of the asphalt to a collector road width as well as installation of curb and gutter, storm drain, and completion of the trail and/or sidewalk from Phase 1 of the Coal Creek subdivision. A right turn lane will be installed for west bound traffic at the intersection of the first approach into Phase 2 and Rimrock Road. Stormwater collected in RimRock Road storm drain will be discharged to the Birely Drain.

Contributions for intersection impacts shall be for the Lots being developed in Amended Plat of Lots 7-17 Coal Creek Subdivision. Intersection impact contributions are as follows:

- Rimrock Road and 62<sup>nd</sup> St W: **\$64,375**
- Rimrock Road and 54<sup>th</sup> St W: **\$28,750**
- Grand Avenue and 62<sup>nd</sup> St W: **\$14,475**

The Subdivider agrees not to sell or convey any lots in the subdivision to be served by the Amended Plat of Lots 7-17 Coal Creek Subdivision improvements, and the Subdivider further acknowledges that no building permits for lots within the subdivision shall be issued until a private contract has been executed for the construction and installation of the public improvements to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said subdivision are particularly described as follows:

Lots 1-A through 6-A, inclusive, located in Amended Plat Lots 7-17 Coal Creek Subdivision, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (6 lots total).

**X. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be installed as approved by the city engineers and the City of Billings Public Works.

**XI. LEGAL PROVISIONS**

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- C. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
- E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.
- F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

*Magnus Land Development, LLC*

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

Title: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of *Magnus Land Development, LLC*, who executed the foregoing instrument and acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Montana

Printed Name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

This agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

“CITY”  
CITY OF BILLINGS  
MONTANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
  : ss  
County of Yellowstone    )

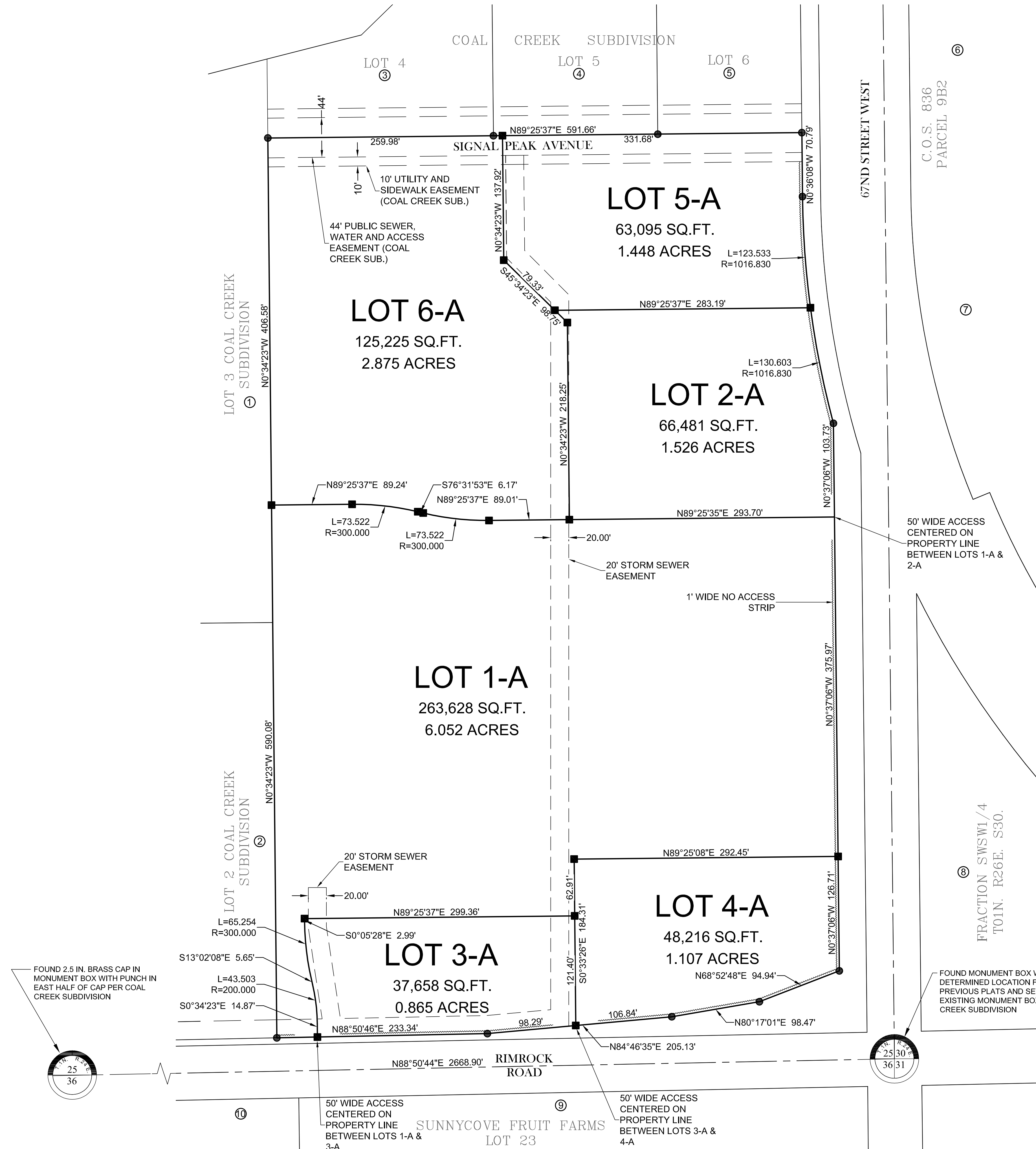
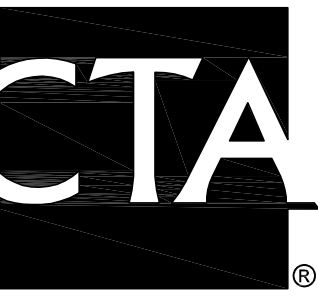
On this \_\_\_\_\_ day of \_\_\_\_\_, 20 , before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



PRELIMINARY PLAT OF  
 AMENDED PLAT OF LOTS 7 - 17  
**COAL CREEK SUBDIVISION**

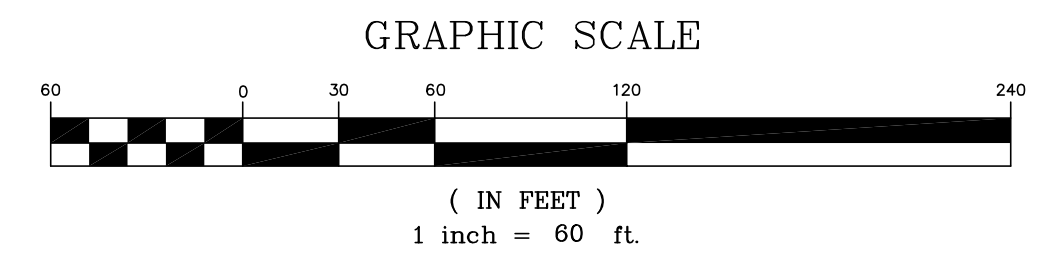
BEING A SUBDIVISION OF LOTS 7 - 17 OF COAL CREEK SUBDIVISION IN THE SOUTHEAST ONE-QUARTER  
 OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 24 EAST, P.M.,M.,  
 CITY OF BILLINGS, COUNTY OF YELLOWSTONE, STATE OF MONTANA.



- LEGEND**
- PROPERTY BOUNDARY - SUBJECT
  - - - PROPERTY BOUNDARY - ADJACENT
  - 1 FOOT NO ACCESS STRIP
  - - - SECTION LINE
  - 1 FOOT NO ACCESS STRIP

OWNER/SUBDIVIDER  
 MAGNUS LAND DEVELOPMENT LLC.  
 ENGINEER/SURVEYOR  
 CTA ARCHITECTS ENGINEERS  
 PLAT PREPARED  
 FEBRUARY 2018

**BASIS OF BEARINGS**  
 COAL CREEK SUBDIVISION PLAT



**SITE DATA**  
 NUMBER OF LOTS: 6  
 MAXIMUM LOT AREA: 6.052 ACRES  
 MINIMUM LOT AREA: 0.865 ACRES  
 AREA OF PARKLAND: 0 SQ.FT.  
 LINEAR FEET OF STREETS: 0 FT.  
 NET ACREAGE OF LAND TO BE SUBDIVIDED: 13.873 ACRES  
 GROSS ACREAGE OF LAND TO BE SUBDIVIDED: 13.873 ACRES  
 EXISTING ZONING: CC - COMMUNITY COMMERCIAL  
 PROPOSED ZONING: CC - COMMUNITY COMMERCIAL  
 EXISTING LAND USE: AGRICULTURAL  
 PROPOSED LAND USE: SHOPPING CENTER

**ADJOINING PROPERTY OWNERS**

- ① MAGNUS LAND DEVELOPMENT LLC, 745 S 56TH STREET W., BILLINGS, MT 59106
- ② MAGNUS LAND DEVELOPMENT LLC, 745 S 56TH STREET W., BILLINGS, MT 59106
- ③ MAGNUS LAND DEVELOPMENT LLC, 745 S 56TH STREET W., BILLINGS, MT 59106
- ④ MAGNUS LAND DEVELOPMENT LLC, 745 S 56TH STREET W., BILLINGS, MT 59106
- ⑤ MAGNUS LAND DEVELOPMENT LLC, 745 S 56TH STREET W., BILLINGS, MT 59106
- ⑥ YELLOWSTONE COUNTRY CLUB, 5707 BOBBY JONES BLVD., BILLINGS, MT 59106
- ⑦ JOHN AND CATHERINE MICHUNOVICH, 4305 HUCKLEBERRY LANE S., BILLINGS, MT 59106
- ⑧ YELLOWSTONE COUNTRY CLUB, 5707 BOBBY JONES BLVD., BILLINGS, MT 59106
- ⑨ GRANATA ROCCO, HOOGBOOMSTEENWEG # 25
- ⑩ GRANATA ROCCO, HOOGBOOMSTEENWEG # 25

AMENDED PLAT OF LOTS 7 - 17  
 COAL CREEK SUBDIVISION  
 CITY OF BILLINGS, STATE OF MONTANA

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PRINCIPAL MERIDIAN  
 MONTANA  
 YELLOWSTONE COUNTY

T	Sec.	T.	R.
25	36	1N	24E

FOR: MAGNUS LAND DEVELOPMENT LLC.

02.28.2018  
 DRAWN BY: EJV  
 REVISIONS

PRELIMINARY PLAT OF  
 AMENDED PLAT OF  
 LOTS 7 - 17  
 COAL CREEK SUBDIVISION



THIS SURVEY VICINITY MAP



**YELLOWSTONE COUNTY BOARD OF PLANNING**  
CITY OF BILLINGS AND  
YELLOWSTONE COUNTY, MONTANA



**Planning Board Meeting I (2nd Tuesday)**

**8. b.**

**Meeting Date:** 05/08/2018

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**Information**

**INTRODUCTION**

On April 2, 2018, the Planning Division received an application for major plat approval for the proposed Mackenzie Meadows Subdivision, 2nd Filing. The property is generally located on the south side of Neibauer Road between South 48th Street West and South 56th Street West. This subdivision would create 183 lots from a 167.9-acre parcel for residential and commercial use. The land is currently used for farming. The majority of the land is outside of zoning with a smaller portion of the parcel being developed inside of zoning.

**RECOMMENDATION**

Staff recommends that the Yellowstone County Board of Planning recommend that the Board of County Commissioners conditionally approve the preliminary plat of Mackenzie Meadows Subdivision, 2nd Filing and adopt the Findings of Fact as presented in the staff report.

**PROPOSED CONDITIONS OF APPROVAL**

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To provide for needed maintenance of internal ditches for downstream water users, prior to final plat approval, the applicant will add language in the SIA under IX Irrigation that states the ditches will be accessible for future maintenance until a time in the future when there are no longer downstream users.
2. To protect public health and safety, prior to final plat approval the applicant will receive approval from the MDEQ for the proposed water wells, community septic system and the proposed storm water management.
3. To protect public health and safety and provide efficient traffic movement, prior to final plat approval the applicant will submit a TIS to County Public Works for review and approval. Should the TIS identify any road widening or turn lanes required on Neibauer Road or South 56th Street West the applicant will install those required improvements with oversight from County Public Works.
4. To provide for future maintenance of all public roads, parkland and trail easements within Mackenzie Subdivision, prior to final plat approval the applicant will create an RSID-M for the public roads and an RSID-M for the parkland.
5. To protect public health and safety and to ensure a usable dry hydrant system, prior to final plat approval the applicant will provide construction drawings to the BUFSA for the dry hydrant system and receive approval before construction begins within a public easement. The system must be tested and approved by the BUFSA after installation and an RSID created for the maintenance of the dry hydrant system.
6. To protect the surrounding lands and not introduce noxious weeds into the subdivision, prior to final

plat approval the applicant will add language to the SIA describing the re-vegetation plan for the public parks and what type of seed will be used.

7. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.

8. To minimize effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be completed by the County Weed Department.

9. To ensure correct zoning for the proposed lots in the zoned area of the subdivision, prior to final plat approval the applicant will go through the zone change process to have correct zoning for proposed lot sizes.

10. To ensure the placement of easements for private utility providers, prior to final plat approval the applicant will coordinate with private utility companies to provide needed easements within the proposed subdivision.

11. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

12. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, including laws regarding moving houses onto or off the property, and the laws and Administrative Rules of the State of Montana.

## **VARIANCES REQUESTED**

No variances are requested for this subdivision.

## **PROCEDURAL HISTORY**

- A pre-application meeting was held on March 8, 2018.
- The preliminary plat application was submitted to the Planning Division on April 2, 2018.
- A departmental review meeting was conducted on April 19, 2018.
- The preliminary plat was resubmitted with revisions based on department reviews on April 26, 2018.
- The Planning Board will review the plat on May 8, 2018.
- The Planning Board will conduct a public hearing on May 22, 2018, and forward a recommendation to the Board of County Commissioners.
- The Yellowstone County Board of County Commissioners will be considering the application at its regular meeting on June 19, 2018.
- The 60 working-day preliminary plat review period ends June 26, 2018

## **PLAT INFORMATION**

General location: South side of Neibauer Road between South 48th Street West and South 56th Street West

Legal Description: Parcel 2 of COS 3185 and S28, T01S, R25E, S2NW

Owner/Subdivider: SAMM LLC and David E. Wagner

Engineer/Surveyor: Blueline Engineering

Existing Zoning: Outside of zoning and Agriculture Open Space Zoning

Existing land use: Farming

Proposed land use: Residential and Commercial

Gross and Net area:	167.9 acres / 125.9 acres
Proposed number of lots:	183
Max. lot size:	11.5 acres
Min. lot size:	0.46 acres
Parkland requirements: The applicant is	The applicant is required to provide 7.1 acres for parkland. proposing to provide 11.5 acres

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### **Attachments**

Findings of Fact  
SIA draft  
Proposed Plat

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**PROPOSED YELLOWSTONE BOARD OF COUNTY COMMISSIONERS**  
**FINDINGS OF FACT**

The City-County Planning Division Staff has prepared the Findings of Fact for Mackenzie Meadows Subdivision, 2nd Filing. These findings are based on the preliminary plat application and supplemental documents addressing 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 and 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 is currently used for agricultural purposes. The BBWA provides water to the existing parcels of land for farming purposes. Irrigation ditches that exist will not be disturbed by development. Any lateral ditches that no longer provide water services to downstream users will be abandoned with development of the land. No water rights will be transferred to the lot owners within the subdivision but water will still be used for farming activities. Culverts and associated drainage swales shall not be filled in or altered. The applicant will provide access to any internal ditches on the property that will remain in use and allow access to them for maintenance until such time as they are no longer needed by downstream users. **(Condition #1)**

**2. Effect on local services**

a. **Water and Sewer** –The subdivision is not served by any water or sewer district. The applicant is proposing to have shared water wells and a several community septic system for the lots of this filing. It is proposed that the new lots will have community wells drilled for the proposed subdivision. They are proposing a total of 13 community septic systems throughout the subdivision. These systems will be located within the public parks that are throughout the proposed subdivision. All water and sewer lines will be run in the public right of way, but not under the paved road surface. There will be hookup fees and monthly maintenance fees for the community water and sewer lines. The water and septic systems will be controlled and maintained by a business set up for this purposed, it will be called Mackenzie Meadows Water Works. Both the wells and the septic system will need to have MDEQ approval. **(Condition #2)**

b. **Streets and roads** – The subdivision has Neibauer Road along the northern edge, Neibauer is a principal arterial road in the county. There is currently a 30-foot road easement for Neibauer Road from the subject property. The applicant will be dedicating 60 feet of right of way for the required half width for a principal arterial road width for Neibauer Road. No improvements have been identified at this time. The applicant will be required to submit a TIS before final plat that may indicate the need for road widening or possibly turn lanes into the subdivision. Should those needs be identified with the TIS the applicant will be required to install what is identified in coordination with County Public Works review and approval. **(Condition #3)**

Access to the proposed subdivision will be from a proposed new road into the parcel, Abby Drive. It will be built to county paved road standards within an 80 foot right of way. It is identified on the 2014 Functional Class Map as a collector road. Abby Drive will be paved in the first phase from Neibauer Road to South 56<sup>th</sup> Street West. All other roads within this subdivision will be within a 60 foot right of way and be paved to county road standards. All roads to the east of Abbey Drive and south of Neibauer Road are within county zoning and will have sidewalks installed on both sides of the road. All other roads are outside of zoning and will not have sidewalks along the road sides. All roads within the subdivision will be public roads with the exception of roads within the proposed commercial development east of South 56<sup>th</sup> Street West. Those proposed commercial roads are labeled on the face of the plat as Private Access Easements. The applicant will create an RSID for the public road within the subdivision. **(Condition #4)** The applicant will also be creating an HOA that will include maintenance of the roads within the commercial areas.

c. **Fire and Police services** – The property is within the BUFSA. The subdivision will provide a 30,000-gallon water storage/dry hydrant for fire suppression on Abbey Drive. The applicant will install the dry hydrant system to the BUFSA standards and have it tested and approved before final plat. **(Condition #5)** The applicant will create a public easement for the dry hydrant system and will also create an RSID-M for the maintenance of the system. Two of the proposed lots will be served by the dry hydrant system within Conrad subdivision. These two lots will be added to the RSID-M for the dry hydrant system in Conrad subdivision. This is called out in the SIA under IV. Emergency Service the last bullet point of the section.

The Yellowstone County Sheriff's Department will provide law enforcement services. The Department stated that with this number of lots being created that the sheriff's office may need to add a deputy to augment current patrols.

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 DEQ. **(Condition #2)** Storm water will be collected on site using a combination of swales and the natural slope of the land. Each phase will have a storm water system that is independent of each other. The applicant, through initial studies, has determined that the stormwater can be handled effectively with the swales alongside the subdivision streets and natural percolation on site. This will have to be reviewed and approved by the DEQ to ensure the proposed stormwater management is feasible and will work satisfactorily. Stormwater swales alongside the roads will be part of the RSID for maintenance. **(Condition #4)**

f. **School facilities** – The proposed subdivision is located in the Canyon Creek School District for Elementary and Middle School age students. Canyon Creek School District stated they currently have capacity for additional students. The proposed subdivision is

also along an existing bus route but as it builds out there may be a need for additional routes or changes to existing ones. High School Students would go to West High School. West High School is currently over capacity and they did not indicate there was an existing bus route in the area.

g. **Parks and recreation** – This proposed subdivision is required to provide parkland. They are required to provide 7.1 acres of parkland for this development. At this time, they are proposing to provide 11.5 acres of parkland. They are proposing to dedicate areas in the subdivision that are also being used as community septic systems. They proposed that the parkland be undeveloped natural parkland. Because these parkland areas will be disturbed from construction of the underground septic systems within them the applicant will be required to revegetate them with native grass seed after construction activity is completed. The applicant will add language in the SIA under the heading Park/Open Space that describes the revegetation plan and what type of seed mix is proposed. **(Condition #6)**

h. **Postal Service** – The USPS has requested a Centralized Delivery box to be located off of 56<sup>th</sup> Street West and Abby Road for the entire subdivision. The applicant will be required to coordinate the location of the Centralized Delivery box and provide enough space for the delivery vehicle to pull out of traffic for safety. **(Condition #7)**

i. **Historic features** – No known historical or cultural assets exist on the site.

j. **Phasing of Development** - The applicant is proposing to develop this subdivision in phases.

Phase I includes Lots 5 through 29 in Block 1; Lots 1 through 19 in Block 6; Lots 1 through 16 in Block 7; and Lots 1 through 16 in Block 8; Lots 1 through 16 in Block 9; Lots 1 through 8 in Block 10 for a total of 100 Lots.

Phase II includes Lots 1 through 5 and Lots 36 through 51 in Block 2; Lots 6 through 9, Block 4, Lots 1 through 9 in Block 5, 34 lots in total.

Phase III includes Lots 6 through 19, Lots 20 through 35 in Block 2; Lots 1 through 13 in Block 3; Lots 1 through 5 and Lot10, in Block 4, 49 lots in total.

Recent legislation in the state of Montana requires that developers proposing to do phasing in the subdivision are required to set a date when they plan to proceed with each phase. This developer has provided proposed dates for phase 2 and 3. Phase 2 is proposed to begin in April 2020, and Phase 3 is proposed to begin in April 2022.

At these two dates the applicant is required to go through a public hearing to open the phases. At that public hearing there is the possibility of additional conditions of approval being added to the original conditions of approval. Should the applicant not meet these dates they must propose new dates, at a public hearing, for the phases to begin.

Specifics of the proposed phasing and what improvements and contributions will be installed with each phase is identified in the SIA under the heading XI. Phasing Improvements.

Each phase will need to also have a Certificate and Release for the phases to be submitted with the final plat, those have been included at the end of the SIA.

### **3. Effects on the natural environment**

The development will use noxious weed control measures to prevent the spread of noxious weeds to adjacent developed or agricultural land. According to SIA Section IX., Weed Management, the developer will submit a weed management plan prior to final plat approval. (**Condition #8**)

There are no 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. A paragraph in the 'Conditions that Run with the Land' section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential landscaping.

### **5. Effects on public health and safety**

Plans and designs for the water and septic system 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 from BUFSA and the Yellowstone County Sheriff's department.

## **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 required for this subdivision. This property has historically been used as farm land and pasture land. Some areas are native grasslands that are east of South 56<sup>th</sup> Street West. Land south of Neibauer Road have been used most recently as farm land. Because of the disturbance of the native land from use as farmland there was no identified wild life habitat on the land. There are some birds and the possibility of some small animals near the ditches but there was no known large animal habitat on the land.

## **C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2014 Billings Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]**

### **1. Yellowstone County – City of Billings 2008 Growth Policy**

The subdivision is consistent with the following goals of the Growth Policy:

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)

*The subdivision is consistent with the low density residential development surrounding it.*

- Goal: New developments that are sensitive and compatible with the character of adjacent County town sites. (p. 6)

*There is residential development directly adjacent to the subject property.*

- Goal: Controlled weed populations. (p. 9)

*The developer shall complete a weed management plan, and shall provide a re-vegetation plan for any ground disturbed by development.*

## **2. 2014 Billings Urban Area Long Range Transportation Plan**

The subject property is within the study area of the Transportation Plan and as proposed is conforming to the plan. Abby Drive is identified as a collector and the subdivision will be providing the required 80 foot right of way for the collector road width.

## **3. Billings Area Bikeway and Trail Master Plan (BBTMP)**

The proposed subdivision is within the study area of the BBTMP. Neibauer Road and the proposed Abby Drive are both shown on the map as having a Proposed Long-range Bike Lane on them. The subdivider will not be required to build additional road width for the bike lane.

### **D. Does the subdivision conform to the Montana Subdivision and Platting Act (MSPA) and to local subdivision regulations? [MCA 76-3-608 (3) (b) 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 prior to final approval. New parcels are subject to DEQ review.

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

The proposed Phase I of this subdivision is outside of zoning. Before phase II can take place the applicant will have to go through the process of a zone change. Portions of phase II are within the zoned area of the county and the current zoning requires a 10-acre parcel for each dwelling unit. The applicant will have to change the zoning to accommodate what is proposed with this subdivision. **(Condition #9)**

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

Utility easements are provided alongside the road right-of-way as requested by Yellowstone Valley Electric Cooperative, MDU and Century Link. The applicant will be required to coordinate the easements needed for the private utility companies. (**Condition #10**)

**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 the new proposed lots from Abby Drive and other internal roads within the subdivision. All driveway approaches to the lots must be approved by the Yellowstone County Public Works Department prior to installation.

**CONCLUSIONS OF FINDINGS OF FACT**

- This 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, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

**SUBDIVISION IMPROVEMENTS AGREEMENT**  
***Mackenzie Meadows Subdivision, 2nd Filing***  
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**(Yellowstone County)**

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# SUBDIVISION IMPROVEMENTS AGREEMENT

*(Mackenzie Meadows Subdivision, 2nd Filing)*

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between (*SAMM LLC.*), whose address for the purpose of this agreement is **225 S 54TH ST W, BILLINGS, MT 59106**, hereinafter referred to as “Subdivider,” and **YELLOWSTONE COUNTY, Montana**, hereinafter referred to as “County.”

## WITNESSETH:

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the Board of Planning recommended conditional approval of a preliminary plat of (*Mackenzie Meadows Subdivision, 2nd Filing*); and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of (*Mackenzie Meadows Subdivision, 2nd Filing*); and

**WHEREAS**, a Subdivision Improvements Agreement is required by the County prior to the approval of the final plat.

**WHEREAS**, the provisions of this agreement shall be effective and applicable to (*Mackenzie Meadows Subdivision, 2nd Filing*) upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, and the laws and administrative rules of the State of Montana.

**THEREFORE, THE PARTIES TO THIS AGREEMENT**, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

### **I. VARIANCES**

- Subdivider has requested no variances.

### **II. CONDITIONS THAT RUN WITH THE LAND**

- A. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide

damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

- B. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- C. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- D. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.
- E. Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.
- F. When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- G. Future maintenance of all public (or common) improvements shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.
- H. A pipeline easement crosses through Lots 19 through 50 inclusive, Block 2; Lots 2 through 9 inclusive, Block 9. No fences, buildings, sheds, or other permanent structures can be built within this easement.

### **III. TRANSPORTATION**

The subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

#### **A. Streets**

- Abby Road will have an 80' roadway dedication all other internal roads will have 60' roadway dedications.
- All roads will be built to meet current Yellowstone County regulations at time of construction.
- The roadway will be 3" of pavement over 3" of 1 ½ in minus crushed gravel over 12" of 3 in minus pitrun over a compacted subgrade.
- Sidewalks will be on the eastside of Abby Road on Block 2, Lots 1 through 5 inclusive; and Block 4, Lots 6, 7, 8, 9.
- Sidewalks will be included on both sides of Callies Street, Callies Circle, Isabella Street, Isabella Circle, and the part of Bunter Street east of Abby Road.
- A RSID will be created for the maintenance of the road and sidewalks.
- The HOA will function as the Ad Hoc Committee for the RSID's.

#### **B. Traffic Control Devices**

- A traffic impact study was performed for the subdivision. The study intersections are expected to operate at an acceptable level of service with and without site generated traffic during existing and future conditions. No intersections or roadway improvements are required to accommodate traffic generated by the subdivision.
- Street name and stop signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the Yellowstone County Public Works Departments and MUTCD.
- Stop signs will be included at the access intersection of Abby Road and Neibauer Road, and at the access intersection of Abby Road and South 56<sup>th</sup> Street West.
- Stop signs will be included at the intersection of Abby Road and Callies Street, Bunter Street, Hunter Hall Street, and Costello Street.
- No traffic signals are anticipated within this subdivision.
- The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the Yellowstone County Public Works Department.

#### **C. Access**

- Access to the subdivision is provided from Neibauer Road and South 56<sup>th</sup> Street West, both 60' arterial streets. All new lots will be accessed from the internal streets. No improvements are planned for these roads.
- Abby Road is a Collector street all other internal roads are Local streets. All subdivision roads shall be 24' paved top.
- Lot 3, Block 10 shall have a 60' access easement off Abby Road.
- Lot 2, Block 10, and Lot 1, Block 10 shall have a 44' access easement extended from the 60' easement off Abby Road.
- Lots 6-8, inclusive, Block 10 shall have a 60' access easement off Abby Road.

#### **D. Heritage Trail Plan**

- Neibauer Road and South 56<sup>th</sup> Street West are identified Arterial Bike Routes.
- Abby Road is identified as a primary bikeway. No improvements are planned.
- Along the BBWA is an identified Proposed Multi-Use Trail. This will be a natural trail with a 10' trail easement.
- A trailway is planned along the length of the BBWA through the subdivision. This will be a natural trail with a 10' trail easement.

#### **IV. EMERGENCY SERVICE**

- Abby Road will serve as main access to the subdivision with connections to both 56<sup>th</sup> Street West and Neibauer Road. Both these roads are 60' arterial roads. No improvements are planned at this time.
- Both accesses will be built to Yellowstone County Paved Road specifications. It will include 24' of 3" pavement over 3" of 1 ½ in minus crushed gravel over 12" of 3 in minus pitrun over a compacted subgrade. The roadway will also include 2' graveled shoulders with barrow ditches.
- A 30,000-gallon water storage tank/dry hydrant has been shown on parkland of Block 6 on the north side of Abby Road. It will service the entire subdivision minus Lot 9, Block 9, and Lot 8 Block 10. The Subdivider shall submit the dry hydrant system plans and specifications to the Billings Fire Department for review and approval prior to construction. The dry hydrant system shall be installed by the Subdivider and inspected and approved by the Billings Fire Department. An RSID will be responsible for future maintenance of all public (or common) constructed improvements.
- Lot 9, Block 9, and Lot, 8 Block 10 will be serviced from the dry-hydrant tank located in Conrad Park Subdivision to the north.
- All lots in the subdivision that benefit from the dryhydrant located on the parkland of Block 6 will participate in the maintenance RSID.
- The HOA will function as the Ad Hoc Committee for the RSID.
- All lots in the subdivision that benefit from the Conrad Park Subdivision dry-hydrant will participate in the Conrad Park Subdivision maintenance RSID.

#### **V. STORM DRAINAGE**

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by MDEQ, or its designee.

- Intersections shall have storm manholes with infiltration facilities.
- Barrow ditches on all the roads shall convey stormwater to the manholes.

- An RSID shall be created for care and maintenance of the storm facilities.
- The HOA will function as the Ad-Hoc Committee for the RSID.
- The first, second, and third phase stormwater improvements of the Subdivision shall consist of any conveyance, storage, or discharge facility which is an integral part of each phase's drainage system as describe in the Stromwater Management Plan approved by the Montana Department of Environmental Quality. Said improvements shall hereinafter be referred to as the Phase I, II, and III stormwater improvements respectively.
- Maintenance of the stormwater facility shall include the maintenance of all stormwater conveyance, storage, and discharge facilities located within the dedicated rights-of-way, dedicated easements, and parks as indicated on the plat.

## **VI. UTILITIES**

### **A. Water**

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by they MDEQ, or its designee.

- The subdivision will be serviced by shared water wells.
- Department of Environmental Quality approval letter to be submitted with final plat.
- The water system including the well, pump, valve and all water line leading to the valve will be maintained and controlled by Mackenzie Meadows Water Works.
- All line leading from the valve to the home will be maintained and controlled by the homeowner.
- At time of construction a connection fee will be collected by Mackenzie Meadows Water Works.
- A monthly fee will be collected by Mackenzie Meadows Water Works.

### **B. Septic System**

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, all proposed sanitary sewer systems must obtain approval by the MDEQ, or its designee.

- The subdivision will be serviced by 13 multi-user drainfields, and a number of individual drainfields.
- The drainfields and their replacement areas will be located on the northern Parkland areas, and the Parkland areas in Blocks 1, 2, 6.
- Lots 31 through 43 inclusive, Block 2, shall have individual drainfields.
- Sewer lines running through the subdivision shall be in the right-of-way but not beneath the asphalt.
- State Department of Environmental Quality approval letter to be submitted with final plat

- The septic system including the septic tank, valves, sewer mains, drainfields and all associated lines will be maintained and controlled by Mackenzie Meadows Water Works.
- The lines leading from the homes to the septic tanks will be owned and controlled by the homeowners.
- At time of construction a connection fee will be collected by Mackenzie Meadows Water Works.
- A monthly fee will be collected by Mackenzie Meadows Water Works.

### **C. Power, Telephone, Gas, and Cable Television**

- The private utilities shall be installed within the provided easements. 8-foot wide utility easements have been shown on the plat adjacent to all streets within the subdivision per the request of the utility companies

## **VII. PARKS/OPEN SPACE**

- A total of 7.0934 acres is required for parkland in this subdivision 11.500 acres will be provided by park and trail dedications on the subdivision.
- The northern border lots and all other lots housing the multi-user drainfields will be designated parkland. These will be undeveloped natural parklands.
- A trail along the BBWA will also be designated parkland. This will be an undeveloped natural parkland.
- A trail along the western border of Block 1 and Block 2 to connect the BBWA trail to the northern parkland will also be designated parkland. This will be an undeveloped natural parkland.
- Parks and trails improvements will be completed on or before the completion of phase II.
- All parkland will be seeded.
- An RSID will be created for the maintenance of the parkland.
- The HOA will function as the Ad Hoc Committee for the RSID.

## **VIII. IRRIGATION**

- All internal irrigation facilities will be removed during construction. All perimeter irrigation facilities will remain. No water rights will be transferred to the lot owners.

## **IX. WEED MANAGEMENT**

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan

shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.

- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

**X. SOILS/GEOTECHNICAL STUDY**

- A geotechnical study is not required for the subdivision.

**XI. PHASING OF IMPROVEMENTS**

The Subdivider did not desire to commence development of all lots within the subdivision, but does desire to file the approved final plat of Mackenzie Meadows Subdivision, 2nd Filing and to sell and convey lots in said subdivision in phases. In accordance with the foregoing, the Subdivider and County agree as follows:

**• PHASE I**

The Phase I improvements will be constructed utilizing a private contract prior to final plat approval. The Phase I improvements include the excavation and paving of Abby Road within Mackenzie Meadows Subdivision. All of the portion of Hunter Hall Street within the boundary of Phase 1 shall be paved. The portion of Jessica Street within the boundary of Phase 1 shall be paved. The portion of Micks Street within the boundary of Phase 1 shall be paved. The portion of Bunter Street within the boundary of Phase 1 shall be paved. The portion of Colter Street within the boundary of Phase 1 shall be paved. All construction activities for the roads in Phase I will be restricted to using Abby Road as their access to the subdivision

The Subdivider and County agreed that the final plat may be filed, but the Subdivider will construct and/or provide monetary guarantee as outlined herein for Phase I improvements. The Phase I improvements referred to herein will be installed using a private contract, secured by an irrevocable letter of credit. The letter of credit will be in place prior to recording the final plat or commencement of the private contract. As used herein, the lots to be served by Phase I are more particularly described as follows:

Lots 5 through 29, inclusive, Block 1; Lots 1 through 19, inclusive, Block 6; Lots 1 through 16 inclusive, Block 7; Lots 1 through 16 inclusive, Block 8; Lots 1 through 16 Block 9; Lots 1 through 8, inclusive, Block 10, all in Mackenzie Meadows Subdivision in

Yellowstone County, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (100 lots total).

• **PHASE II**

Phase II will begin at or before April 1, 2020. The Phase II improvements include the paving of the portions of Bunter Street, Callies Street, and Costello Street that fall within the boundaries of Phase II. All construction activities for the roads in Phase II will be restricted to using Abby Road as their access to the subdivision. This will be stated in the construction documents and approved by the Yellowstone County Public Works Department. This restriction will be enforced by the engineer.

The Subdivider has not yet installed the Phase II improvements. The Subdivider agreed not to sell or convey any lots in the subdivision to be served by the Phase II improvements, and the Subdivider further acknowledges that no construction on lots within Phase II will begin until the private contract is executed for the construction and installation of the public improvements to serve said lots, and to provide necessary access and traffic circulation for the traffic generated by those lots. As used herein, the lots to be served by the said Phase II are more particularly described as follows:

Lots 1 through 5 inclusive, Lots 36 through 51 inclusive, Block 2; Lots 6 through 9, inclusive, Block 4; Lots 1 through 9, inclusive, Block 5, all in Mackenzie Meadows Subdivision, 2nd Filing in Yellowstone County, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (34 lots total).

• **PHASE III**

Phase III shall begin at or before April 1, 2022. The Phase III improvements include the paving of the portions of Callies Street, Callies Circle, Bunter Street, Isabella Street, and Isabella Circle that fall within the boundaries of Phase III. All construction activities for the roads in Phase III will be restricted to using Abby Road as their access to the subdivision. This will be stated in the construction documents and approved by the Yellowstone County Public Works Department. This restriction will be enforced by the engineer.

The Subdivider has not yet installed the Phase III improvements. The Subdivider agreed not to sell or convey any lots in the subdivision to be served by the Phase III improvements, and the Subdivider further acknowledges that no construction on lots within Phase III will begin until the private contract is executed for the construction and installation of the public improvements to serve said lots, and to provide necessary access and traffic

circulation for the traffic generated by those lots. As used herein, the lots to be served by the said Phase III are more particularly described as follows:

Lots 6 through 19 inclusive, Lots 20 through 35 inclusive, Block 2; Lots 1 through 13, inclusive, Block 3; Lots 1 through 5, inclusive, Lot 10, Block 4, all in Mackenzie Meadows Subdivision, 2nd Filing in Yellowstone County, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (49 lots total).

Pursuant to the foregoing agreement, the Subdivider has executed and recorded a Declaration of Restriction on Transfers and Conveyances for said Phase II, and III lots (attached hereto) to be recorded concurrently with the recording of this agreement. Said Declaration notifies all third parties that said lots may not be legally sold, conveyed, or transferred until a release executed by Yellowstone County and substantially in the form of Exhibit A attached hereto has been recorded in the office of the Clerk and Recorder of Yellowstone County, Montana. No lots shall be released until a certificate substantially in the form of Exhibit B attached hereto has been executed by the Department of Public Works stating that the above conditions have been met, which certificate must accompany any request for a release. By the acceptance and recording of the agreement, the County does hereby authorize the Department of Public Works, County Commissioners, and Clerk and Recorder to review any request for release and to execute such certificates and releases as may be necessary to evidence a release from the restriction against sale, conveyance, and transfer of lots in the subdivision. The release of each phase will go through a public hearing before release can be completed.

## **XII. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the state of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

(In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee



**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

*Samm LLC*

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

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

STATE OF MONTANA     )

: ss

County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of *Samm LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_





**DECLARATION OF RESTRICTION ON TRANSFERS AND  
CONVEYANCES**

**MACKENZIE MEADOWS SUBDIVISION, 2<sup>ND</sup> FILING**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
\_\_\_\_\_ hereinafter referred to as "Declarant,"

**WITNESSETH**

WHEREAS, the Declarant is the owner of all of the lots in Mackenzie Meadows Subdivision, 2nd Filing situated in Section 28, Township 1N, Range 25E, PMM., Yellowstone County Montana, hereinafter referred to as the "Subdivision"; and

WHEREAS, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvements Agreement dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ to Yellowstone County, which Agreement contains restrictions against the sale, conveyance or transfer of certain lots in the Subdivision until such time as the private contract has been executed providing for the installation and construction of required public improvements; and

WHEREAS, in order to move fully evidence the restriction against sale, conveyance, or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restrictions.

NOW, THEREFORE, in consideration of these premises, the Declarant, for itself and its successors and assigns, does hereby declare:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred, or conveyed to any third party unless and until a release has been executed and recorded in accordance with the provision hereinafter appearing:

Phase II:

Lots 1 through 5 inclusive, Lots 36 through 51 inclusive, Block 2; Lots 6 through 9, inclusive, Block 4; Lots 1 through 9, inclusive, Block 5, all in Mackenzie Meadows Subdivision, 2nd Filing in Yellowstone County, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (34 lots total).

Phase III:

Lots 6 through 19 inclusive, Lots 20 through 35 inclusive, Block 2; Lots 1 through 13, inclusive, Block 3; Lots 1 through 5, inclusive, Lot 10,

Block 4, all in Mackenzie Meadows Subdivision, 2nd Filing in Yellowstone County, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (49 lots total).

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer, or conveyance of the above-described lots until such time as the private contract has been executed and necessary funding guarantees provided, as the case may be, providing for the construction and installation of those public improvements required under the above Subdivision Improvements Agreement which by reference thereto is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop Mackenzie Meadows 2nd Subdivision, in distinct phases, upon providing for the installation and construction of the public improvement necessary to serve the particular phase. In that regard a release of some but not all of the above described lots may be executed and recorded from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said release, the covenants and restrictions contained herein with respect to the lots described in said release shall be deemed canceled and terminated, and of no further force and effect.
3. Upon compliance with the requirements for a private contract specified above, a release for the lot or lots affected thereby shall be executed and recorded by Yellowstone County, pursuant to the provisions contained in the said Subdivision Improvements Agreement. The execution and recording of said release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance, or transfer of said lot has been removed.
4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE OR TRANSFER, AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT YELLOWSTONE COUNTY MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.
5. The terms, conditions, and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey, and transfer all of the above-described lots, all of the lots in one phase, or those lots remaining subject to the terms of this Declaration, as one unit or group,



Return to:  
BlueLine Engineering  
2110 Overland Avenue, Suite 119B  
Billings, MT 59102

## **EXHIBIT B**

### **RELEASE**

#### **Mackenzie Meadows Subdivision, 2<sup>nd</sup> Filing**

**THIS RELEASE** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the undersigned, **SAMM, LLC**, and **YELLOWSTONE COUNTY**, a municipal corporation.

**WHEREAS**, the hereinafter described real property is subject to that certain Declaration of Restriction on Transfers and Conveyances (the "Declaration") dated, \_\_\_\_\_, 20\_\_\_\_, and recorded \_\_\_\_\_, 20\_\_\_\_, under Document No. \_\_\_\_\_, in the office of the Yellowstone County Clerk and Recorder; and

**WHEREAS**, said real property is also subject to the terms of that certain Subdivision Improvements Agreement by and between the undersigned dated \_\_\_\_\_, 20\_\_\_\_, and recorded \_\_\_\_\_, 20\_\_\_\_, under Document No. \_\_\_\_\_, in the office of the Yellowstone County Clerk and Recorder; and

**WHEREAS**, in accordance with the provisions of said Subdivision Improvements Agreement and the Declaration, a private contract has been executed and necessary funding guarantees have been provided, as the case may be, providing for the installation and construction of all required public improvements to serve the hereinafter described real property.

**NOW, THEREFORE**, in consideration of these premises, the undersigned do hereby declare and agree that all restrictions and conditions contained in said Declaration are hereby released and discharged, and shall be of no further force and effect, as the same relate to the following real property situated in Yellowstone County, Montana:



“COUNTY”  
COUNTY OF YELLOWSTONE  
MONTANA

County of Yellowstone  
Board of County Commissioners

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Attest: \_\_\_\_\_  
County Clerk and Recorder

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Return to:  
BlueLine Engineering  
2110 Overland Avenue, Suite 119B  
Billings, MT 59102

## CERTIFICATE

### Mackenzie Meadows Subdivision, 2ND FILING

The undersigned, the duly authorized representative of the Department of Public Works, Yellowstone County, Montana, does hereby certify that a private contract has been executed and necessary funding guarantees have been provided to construct and install the public improvements required to serve the following described property in Yellowstone County, Montana:

Lot(s) \_\_\_\_\_

\_\_\_\_\_  
, all in Mackenzie Meadows Subdivision 2nd Filing in Yellowstone County, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana, under Document No. \_\_\_\_\_ (\_\_\_\_ lots total).

This certificate is being executed to show compliance with the terms of that certain Subdivision Improvements Agreement dated this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Samm, LLC and Yellowstone County, and that certain Declaration of Restriction on Transfers and Conveyances, dated this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, covering Mackenzie Meadows Subdivision, 2nd Filing, and to provide the basis for the execution and recording of a release from the terms of said Declaration pursuant to the terms of said Agreements.

Dated this \_\_\_ day of \_\_\_\_\_, 2018.

DEPARTMENT OF PUBLIC WORKS  
YELLOWSTONE COUNTY, MONTANA

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

Title: \_\_\_\_\_

# PRELIMINARY PLAT OF MACKENZIE MEADOWS SUBDIVISION, 2ND FILING

BEING LOT 5, BLOCK 1, MACKENZIE MEADOWS SUBDIVISION, 1ST FILING  
AND THE S 1/2, NW OF SECTION 28, T. 1 N., R. 25 E., P.M.M.  
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: SAMM, LLC  
SURVEYOR: NORTH STAR LAND SERVICES, P.C.  
ENGINEER: BLUELINE ENGINEERING LLC  
MARCH, 2018  
BILLINGS, MONTANA

## SUBDIVISION DETAILS:

GROSS AREA	=	167.891 ACRES
NET AREA	=	127.092 ACRES
ROAD AREA	=	29.299 ACRES
PARK AREA	=	11,500 ACRES
NUMBER OF LOTS	=	183
MINIMUM LOT SIZE	=	0.459 ACRES
MAXIMUM LOT SIZE	=	7.023 ACRES
ROAD LENGTH	=	16,404.00 LF
EXISTING ZONING	=	NONE/AG
SURROUNDING ZONING	=	
NORTH	=	AG/AS
SOUTH	=	AG
EAST	=	AG
WEST	=	NONE
EXISTING LAND USE	=	AG
PROPOSED LAND USE	=	RESIDENTIAL

