



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



**AGENDA**

September 22, 2020 MEETING TIME: 6:00 p.m.

Video Conference Format

(Amended Public Comment Phone#: at **406.237.6165**)

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. **DELAYED. MEETING MINUTES: SEPTEMBER 9, 2020**
4. **PUBLIC COMMENT PERIOD** –Due to the COVID-19 health concerns, the format of the Planning Board meeting will be held in a virtual videoconferencing environment. The Miller Building and the Planning & Community Services Department will be closed during the meeting. Public comment will be taken only during the Public Comment periods as indicated on the agenda, and during the Public Hearing under the Regular agenda. Comments may be sent to Planning via email before 3:00 PM on Tuesday, September 22, 2020. E-mails received before 3:00 P.M. will be read into the record, emails received between 3:00 PM and 5:00 PM, may be read during the meeting. The link to the video conference site is located:  
  
The Public may view the meeting via the Billings Planning & Community Services Facebook page:  
<https://www.facebook.com/Billings-Planning-Community-Services-Department-1738982159659260/?ref=bookmarks>
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** (Agenda items that were not discussed or not completed in a previous meeting or items requiring action).
  - a. **PUBLIC HEARINGS/PUBLIC HEARING PARTICIPATION GUIDELINES.**  
The County Planning Board welcomes public input on matters brought before the Board. The Public may call in during specific Public Comment periods at **406.237.6165**. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary. Public hearings will be held for the following item:
    - b. On August 3, 2020, Sanderson Stewart, agent for Western Sky Billings, LLC, applied for preliminary major plan approval for Western Sky Subdivision, Second Amended, Lot 5A, Subdivision for Rent or Lease. The proposed subdivision does not create any additional lots but does require review for creating 155 spaces for mobile homes to be placed on the existing lot. The subject property is generally located south of King Avenue West and east of South 48th Street West. The property is zoned Residential Manufactured Home (RMH). The proposed lot will be developed in compliance with the zoning. The Yellowstone County Board of Planning held a plan review of this application at its September 8 meeting and will conduct a public hearing at its meeting on September 22.
8. **NEW BUSINESS:** (Agenda items new to this meeting).
  - a. **Update. Discussion. MDT Project Landscaping.** Scott Walker, Transportation Coordinator.
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, OCTOBER 13, 2020**

### Public Hearing Participation Guidelines

The County Planning Board welcomes public input on matters brought before the Board. To ensure a fair and effective public comment process, we ask that you consider the following guidelines when presenting your comments: **Address the Planning Board directly. You must 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 consequence.

1. Be informed of the process and the requirements of the Board. If you are commenting about a subdivision, please limit your comments to the review criteria.  
**By state law, the Planning Board must consider only certain criteria when reviewing subdivisions (76-3-608(a), MCA). These criteria include:**
  - Effect on agriculture and agricultural water user facilities
  - Effect on local services
  - Effect on the natural environment
  - Effect on wildlife and wildlife habitat
  - Effect on public health and safety
2. Provide specific information about why you are concerned about the pending application, how the decision will impact the review criteria listed above, and provide suggestions on how to minimize or eliminate the impact.
3. Respect the right of others to participate. Wait until the previous speaker has completed their comments before making your own comments. Do not talk over the person commenting or with other people in attendance.
4. The public hearing is not an opportunity to question or accuse the applicant or their agent. If you have questions of the Board, the applicant or the agent, ask the question directly to the Board during the public hearing portion of the meeting. The Board will respond or request the applicant or agent to respond after the public comment portion of the hearing is closed.
5. After the public comment portion of the hearing is closed, no further comments are allowed unless you are addressed directly by a Board member.
6. You should expect the Board to make a balanced recommendation in accordance with its statutory responsibilities. The Board's ability to make reasonable and thoughtful recommendations is dependent on a fair consideration of everyone's interests.

*Thank you for participating.*



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



**Planning Board Meeting 2 (4th Tuesday)**

**Meeting Date:** 09/22/2020

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**Information**

**INTRODUCTION**

On August 3, 2020, Sanderson Stewart, agent for Western Sky Billings, LLC, applied for preliminary major plan approval for Western Sky Subdivision, Second Amended, Lot 5A, Subdivision for Rent or Lease. The proposed subdivision does not create any additional lots but does require review for creating 155 spaces for mobile homes to be placed on the existing lot. The subject property is generally located south of King Avenue West and east of South 48th Street West. The property is zoned Residential Manufactured Home (RMH). The proposed lot will be developed in compliance with the zoning. The Yellowstone County Board of Planning held a plan review of this application at its September 8 meeting and will conduct a public hearing at its meeting on September 22.

**RECOMMENDATION**

Staff recommends that the Planning Board recommend conditional approval of the preliminary plan of Western Sky Subdivision, Second Amended, Lot 5A, Subdivision for Rent or Lease, to the City Council, 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 ensure the ability to place private utilities within the development, prior to final plan approval, the applicant will coordinate with private utility companies for placement of easements and provide those easement locations on the final plan.
2. To minimize the effects on local service, prior to final plan 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.
3. 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.
4. The final plan 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.

**PLAN REVIEW/PLANNING BOARD DISCUSSION**

Staff gave a brief presentation about the proposed development to the Planning Board. There were no

questions of staff. Bill Morgan with Sanderson Stewart, representing the applicant, explained a proposed change in the proposal to have the development constructed in two phases. He referenced a phasing plan graphic (attached to this report) that was part of the power point presentation to explain the proposal. After the brief addition to the power point presentation, Planning Board President Woods asked if there were any questions for staff or for Mr. Morgan. There was one question about timelines for phasing, regarding whether there is any maximum time limit on how far out the date can be set. Staff responded that the statute does not show a maximum time frame to open a phase. There were no other questions about the proposed subdivision.

## **VARIANCES REQUESTED**

No variance is being requested for this subdivision.

## **PROCEDURAL HISTORY**

- Pre-application meeting April 30, 2020
- Preliminary plan application submitted to Planning Division on August 3, 2020
- Departmental review meeting August 20, 2020
- Preliminary plan re-submittal August 27, 2020
- Planning Board plan review September 9, 2020
- Planning Board public hearing September 22, 2020
- Preliminary plan to City Council October 26, 2020
- 60 working-day preliminary plan review period ends October 28, 2020

## **PLAT INFORMATION**

General location: South of King Avenue West and east of South 48th Street West

Legal Description: Western Sky Subdivision, Second Amended, Lot 5A

Owner/Subdivider: Western Sky Billings, LLC

Engineer and Surveyor: Sanderson Stewart

Existing Zoning: RMH

Existing land use: Vacant / Farmland

Proposed land use: Residential

Gross and Net area: 28.2 acres / 28.2 acres

Proposed number of lots: 155 Spaces

Lot size: Max: 28.2 Acres  
Min.: 28.2 Acres

Parkland requirements: Parkland dedication will be met with a combination of private park area, public pedestrian/bike trails along south 48th Street West and along Hogan's slough, and a cash in lieu contribution.

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## **Attachments**

Findings of Fact

Site Plans

SIA

Proposed Phasing Plan

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## **FINDINGS OF FACT**

The Planning staff has prepared the Findings of Fact for the preliminary plan of Western Sky Subdivision, Second Amended, Lot 5A, Subdivision for Rent or Lease. These findings are based on the preliminary plan application and supplemental documents; addressing 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 subject property is currently used for agricultural purposes. This proposed development will remove approximately 28.2 acres of agricultural land out of production. Perimeter ditches and drains shall remain in place and shall not be removed by the subdivider or subsequent owners. The subdivision should not affect agricultural water users' facilities but it will take land out of agricultural production.

This subdivision has a drainage ditch along the western edge, 48<sup>th</sup> Street Drain, it will be placed in an easement and will remain in use. Hogan's Slough is along the southern end of the proposed subdivision, it will also remain in use. Both waterways are used for drainage purposes for other developments farther north and west.

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

- a. **Utilities** – Public water services to the subject property will be provided by the City of Billings. The city has a water line in King Avenue West that is along part of the frontage of this entire subdivision, Western Sky. The developer has extended a water line into the subdivision from King Avenue West south and then west on Crescent Street. Lot 5A will have a private water line from the water line in Crescent Street south to this proposed development. This new private water line will be in an existing easement. From that private water line there will be water lines run throughout the development with water connections provided to each space that will have a manufactured home.

The developer shall make a cash contribution to the City of Billings for future water main improvement in South 48<sup>th</sup> Street West. This contribution will be made at the time of development of Lot 5A. All water line construction shall be installed in conformance with the design standards, specification, rules and regulations of the City of Billings, Engineering Department. This is all outlined in the SIA under the heading Utilities A, Water.

Fire hydrants will also be installed as required by the City Fire Department. The City Fire Department with review and approve all proposed hydrant locations prior to installation.

- b. **Sewer** - Sanitary sewer service will be provided by the City of Billings. The city has a sewer line in King Avenue West that is along part of the frontage of this entire subdivision, Western Sky. The developer has extended a sewer line into the subdivision from King Avenue West south and then west on Crescent Street. Lot 5A will have a private sewer line from the sewer line in Crescent Street south to this proposed development. This new private sewer line will be in an existing easement. From the private sewer line there will be sewer lines run throughout the development with sewer connections provided to each space that will have a manufactured home. All sewer line construction shall be installed in conformance with the design standards, specification, rules and regulations of the City of Billings Engineering Department. This is all outlined in the SIA under the heading Utilities B, Sanitary Sewer.

Coordination with private utility providers shall be done prior to construction of the development. Private utility companies will serve the development either in private utility easements at locations shown on the face of the plan, or in areas determined at the time of development. **(Condition #1)**

- c. **Storm water** – Stormwater management for the proposed subdivision will be provided by directing water through a network of curb and gutters, inlets and piping. Stormwater will be conveyed to either the South 48th Street West Drain or the Hogan’s Slough. Discharges to the two drains will have acceptable backflow prevention devices to prevent large storm events from back flowing into the storm drain lines that service the subdivision.

The developer shall reconstruct the portion of Hogan’s Slough that runs along the south lot line of Lot 5A, Block 1 to increase capacity in accordance with the recommendations of the West Billings Stormwater Management Plan.

The original SIA with Western Sky Subdivision, 2<sup>nd</sup> Amended, has an agreement with the City of Billings for the entire subdivision to be able to discharge stormwater into the South 48th Street West Drain or the Hogan’s Slough. (Recorded Document number 3902605) There will be on-site stormwater quality mitigation measures to control stormwater quality into those two drains. Each lot in Western Sky Subdivision 2<sup>nd</sup> Amended will make a cash contribution to the City of Billings for construction of facilities in service of the City of Billings Shiloh Conservation Area. Those facilities will be constructed by the City of Billings in a location and at a time found to be appropriate to the City. This dollar amount was calculated based on the overall subdivision stormwater detention required as determined by the Subdivision Stormwater Report prepared with the Western Sky Subdivision, 2<sup>nd</sup> Amended.

All proposed stormwater management will be reviewed and approved by City of Billings Engineering Department to ensure it meets the master planned stormwater plan for Western Sky Subdivision, Second Amended, Lot 5A. All

drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual*.

- 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** – Access to the lots in this proposed subdivision is from South 48<sup>th</sup> Street West. In the City of Billings Subdivision regulations Article 23-600. Developments Providing Multiple Spaces for Rent of Lease for Recreational Vehicles, Mobile Homes, and Manufactured Homes, Section 23-603 B. Streets. All streets within a Manufactured or Mobile Home Park or Recreational Vehicle Park shall be private. All streets within this proposed development shall be private. The streets shall be laid out to discourage through traffic and intersections with public streets. Streets will be constructed to a 34-foot wide, back of curb to back of curb, and 5-foot wide boulevard sidewalks.

A TIS update has been submitted to the Engineering Division for review and approval prior to final plan. This subdivision is subject to the terms and conditions of the SIA for the entire subdivision, Western Sky Subdivision, 2<sup>nd</sup> Amended, recorded under document number 3902605. No physical improvements are anticipated on South 48<sup>th</sup> Street West with this development but the developer will be making a cash contribution to the City of Billings for future improvements to South 48<sup>th</sup> Street West. This contribution shall be made prior to development of this lot. This is all defined in the SIA under the heading III Transportations A. Streets.

The TIS also identified the need to move the south access point to the north of where it was originally platted with the Western Sky, 2<sup>nd</sup> Filing. The south approach has been relocated to give better space between the existing approach at Diamond Falls Road and the future approach at the quarter section. It also provides an entirely better location with respect to the Hogan Slough/48<sup>th</sup> Drain confluence. Language regarding the southern access is found in the SIA on page SIA-5 under the heading E. Access 1.

Sidewalks with accessible ramps at the intersections will be completed with the street improvements within the development.

- f. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 1501 54<sup>th</sup> Street West (Station #7).

The subdivision is located within the ambulance service area of American Medical Response (AMR).

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

- g. Schools** – Elder Grove School provides K-8 to students within this subdivision, School District #2 provide service to students within this subdivision for high school, West High School. West High School is currently over capacity. School District #2 did not respond to request for comments at the time of the writing of this report.
- h. Parks and Recreation** – Parkland dedication will be met with some private park area, public pedestrian/bike trails along south 48<sup>th</sup> Street West and along Hogan’s Slough and a cash in lieu contribution.
- i. Mail Delivery** - The United States Postal Service will provide postal service to the subdivision. They have requested the installation of centralized mailbox unit (CBUs). The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. **(Condition #2)**
- j. Phasing** – The applicant is proposing to phase the development of the manufactured home park. Because there are no blocks or lots created with a manufactured home park, there is no way to define the phases using them. Attached to the end of the Finding of Fact is an exhibit showing the proposed phases of the development. The SIA defines what contributions will be taking place with the two phases and what improvement work will be done. It also outlines anticipated date the second phase will be open.

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

The subject property is relatively level farmland. It is adjacent to urban development on its east side with large lot single family to the southwest. A geotechnical study was performed for the subdivision. In the SIA it is stated that additional geologic study may be required at the time of development. The subdivision should have a minimal effect on the natural environment.

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

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading II. Property Conditions and Information for Lot Purchasers.

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

Fire hydrants will be installed to meet fire department requirements. Sidewalks will offer a safe place for pedestrians to walk. The effects on public health and safety should be minimal.

**B. Was an Environmental Assessment required? [(MCA 76-3-603 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 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]**

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

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

**Essential Investments:** Infill development and development near existing City infrastructure may be the most cost effective. (p.6)

**Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods):** Neighborhoods that are safe and attractive and provide essential services are much desired. (p.8)

**Home Base (healthy, safe and diverse housing options)** Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings. (p.9)

**3. 2018 Billings Urban Area Long Range Transportation Plan**

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

**4. Billings Area Bikeway and Trail Master Plan (BABTMP)**

The proposed subdivision lies within the jurisdiction of the BABTMP. The BABTMP does not show any trails within the proposed subdivision. There will be no trails built with this subdivision.

**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 the RMF zoning district. All development shall comply with current zoning.

**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 be providing private utility easements as required by private utility providers.

**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 lot from South 48<sup>th</sup> Street West, all internal streets will be built to city standards and will be private roads as required by City of Billings Subdivision Regulations.

**CONCLUSIONS OF FINDINGS OF FACT**

- The preliminary plan of Western Sky Subdivision, Second Amended, Lot 5A, Subdivision for Rent or Lease does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several 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 provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

**RECOMMENDATION**

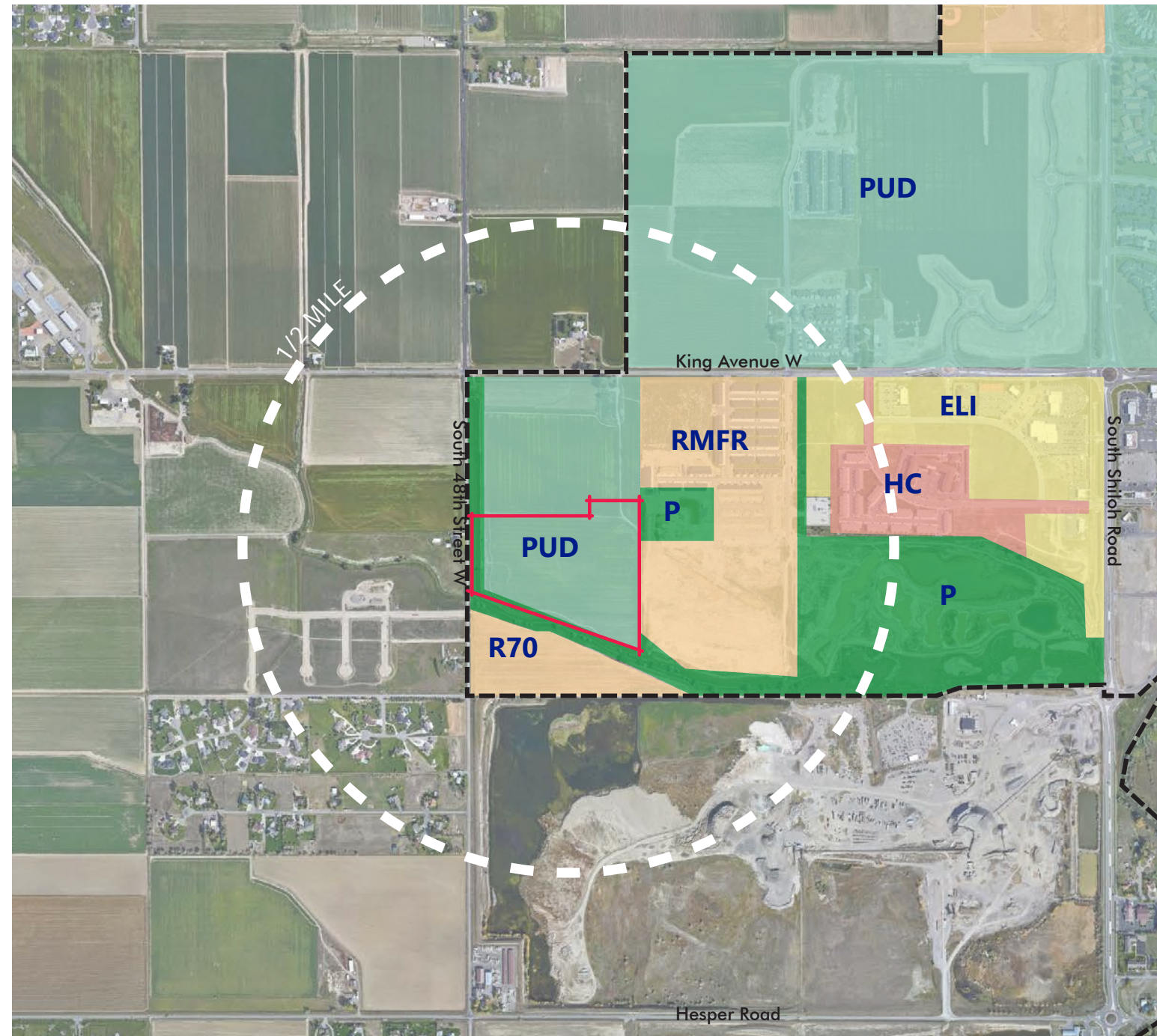
Staff recommends that the Planning Board recommend conditional approval of the preliminary plan of Western Sky Subdivision, Second Amended, Lot 5A, Subdivision for Rent or Lease, to the City Council, and adopt the Findings of Fact as presented in the staff report.

# Phasing Plan



**Preliminary Plat Submittal  
for Residential Manufactured Home (RMH) Development  
of Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended**

August 3, 2020



**adjacent use**

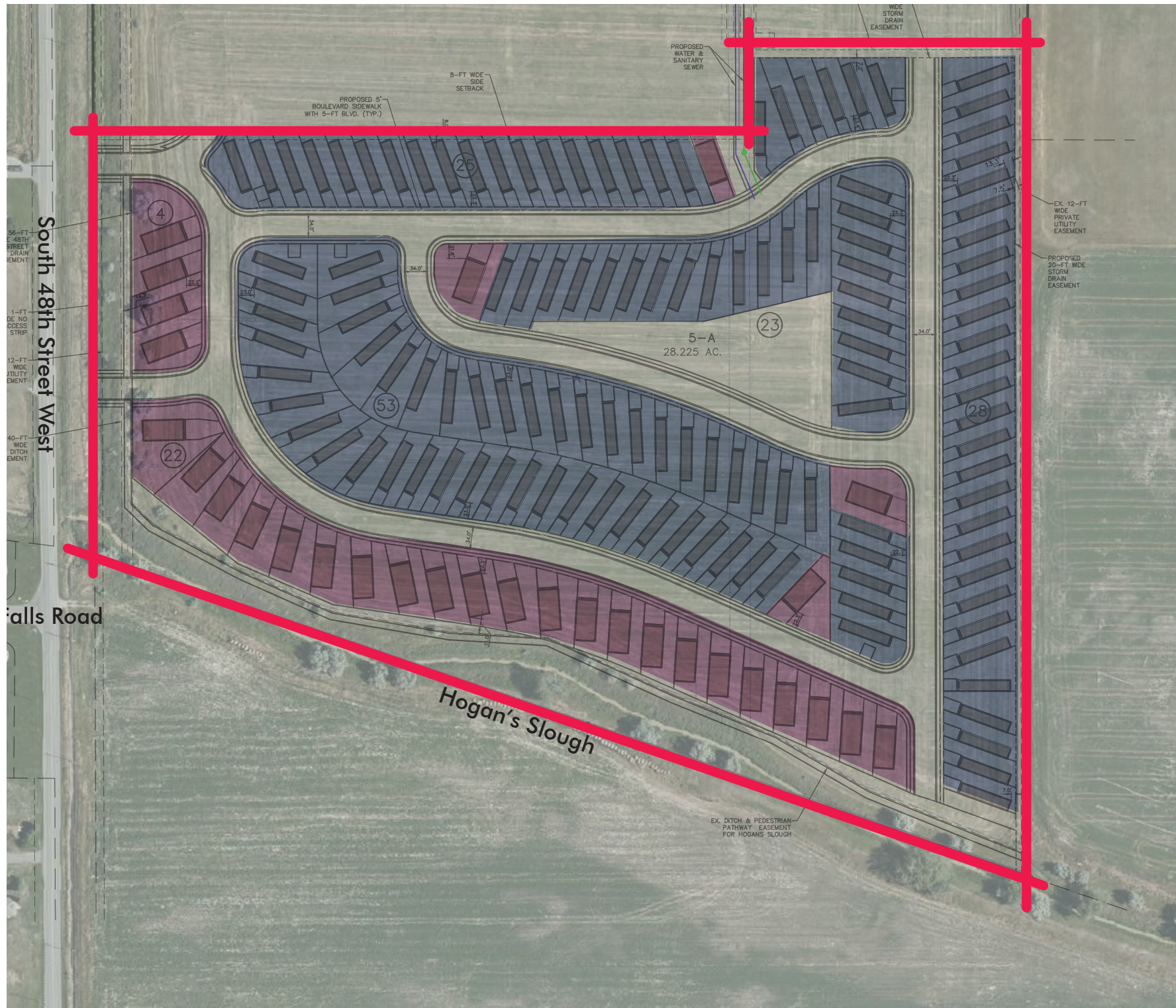
Adjacent land uses within a 1/2 mile radius include public lands (P), entryway light industrial (ELI), residential - including multi-family (R70 and RMFR), Highway Commercial (HC), and additional Planned Unit Development (PUD). Also within the 1/2 mile radius zone, but outside of the City limits, are agricultural and residential uses.

**PUD zoning**

The proposed development property is zoned Planned Unit Development.

“Western Sky Planned Development” or “Planned Development” or “development” consists of a portion of the land situated in the NW 1/4 of Section 15, Township 1 South, Range 25 East, P.M.M., Yellowstone County, Montana described as Lot 3 and 4 of Block 1 of Plat of Western Sky Subdivision, recorded in the office of the clerk and recorder, Yellowstone County, under Document No. 3374355 is planned to be in the Western Sky Subdivision plat including commercial and residential lots and space, streets, Open Space and Park Land within in the Western Sky Planned Development. Attached hereto and by reference incorporated herein is the attached Planned Development Exhibit illustrating the land and streets included in the Planned Development. The development will feature community, neighborhood commercial and mixed residential uses.

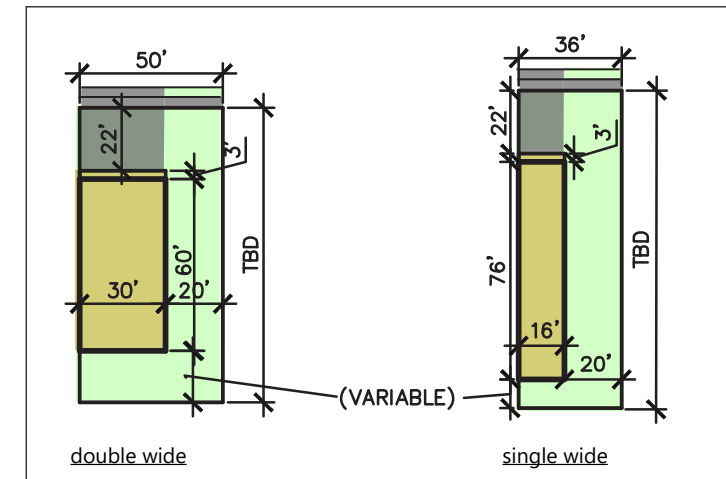
Lot 5A is intended for the development of a residential community of manufactured homes.



The Western Sky development proposes a mix of single and double wide units for a manufactured home community of up to 155 units.

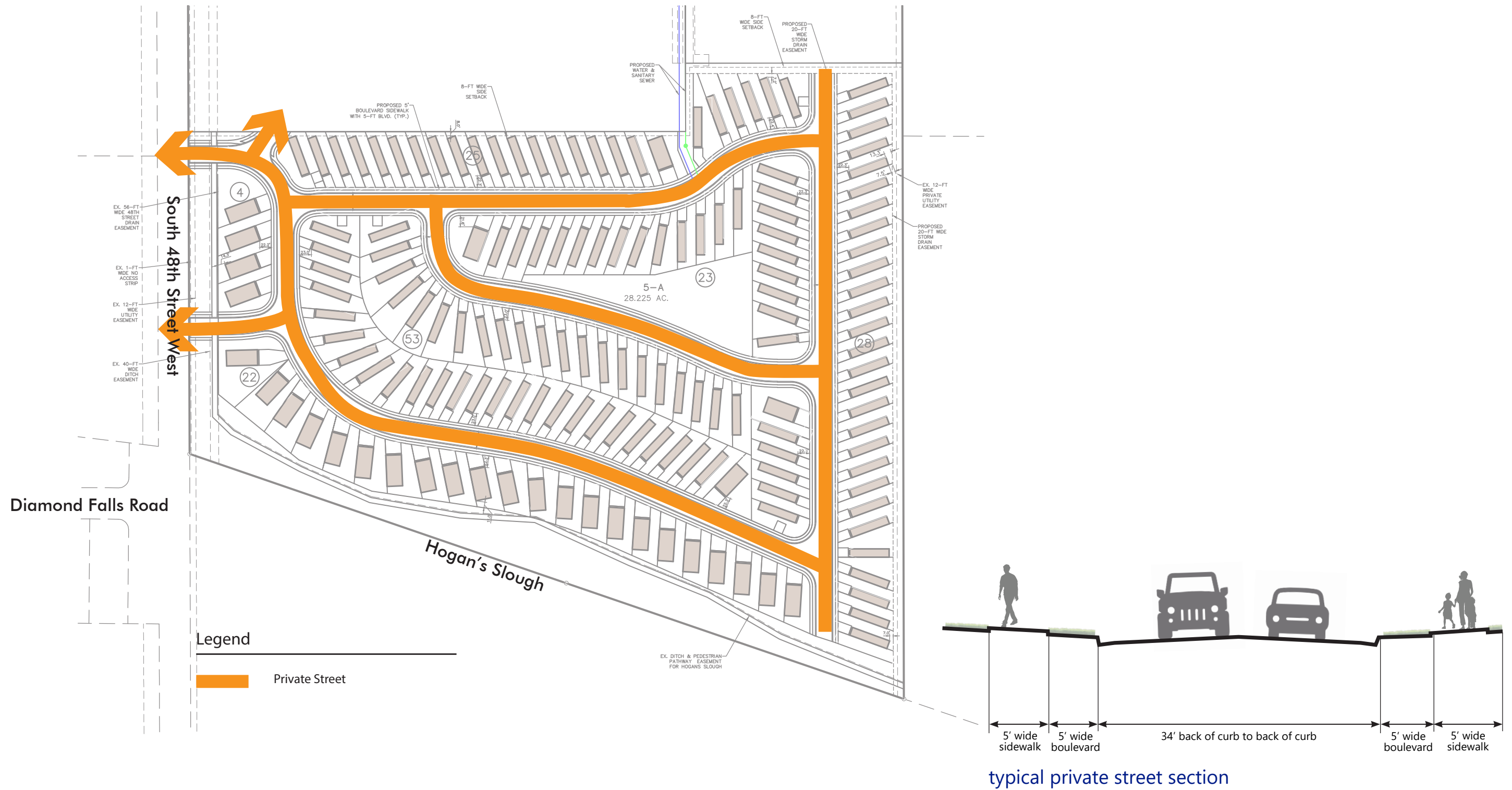
SETBACKS	
Side Yard	15'
Front Yard	20'
Rear Yard	8' min.

typical site layout - preliminary



Legend

- Double Wide
- Single Wide



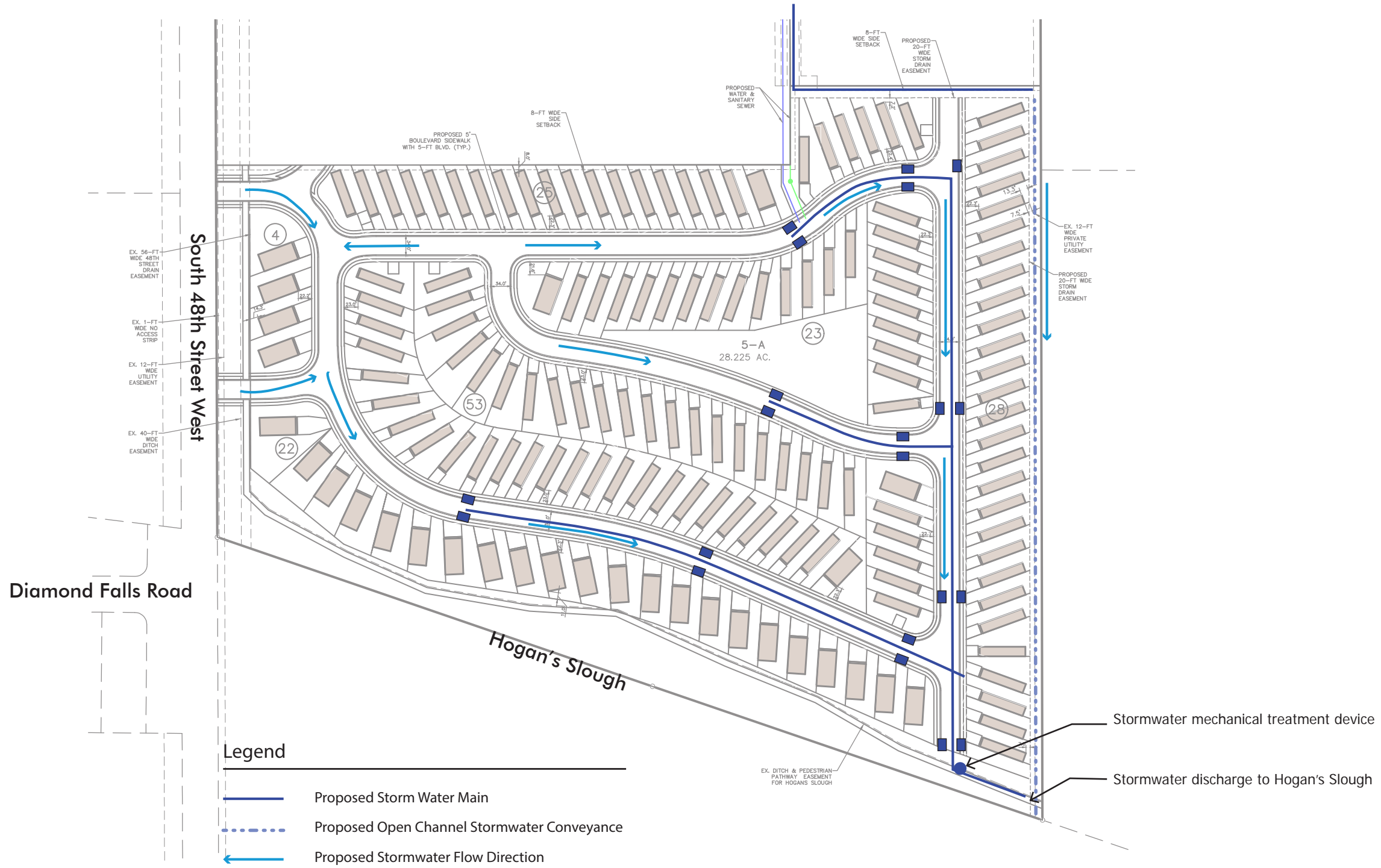
# Emergency and Fire Access

There will be two points of emergency access from South 48th Street West into the community. Fire hydrants are shown schematically. Spacing of hydrants will meet City requirements.

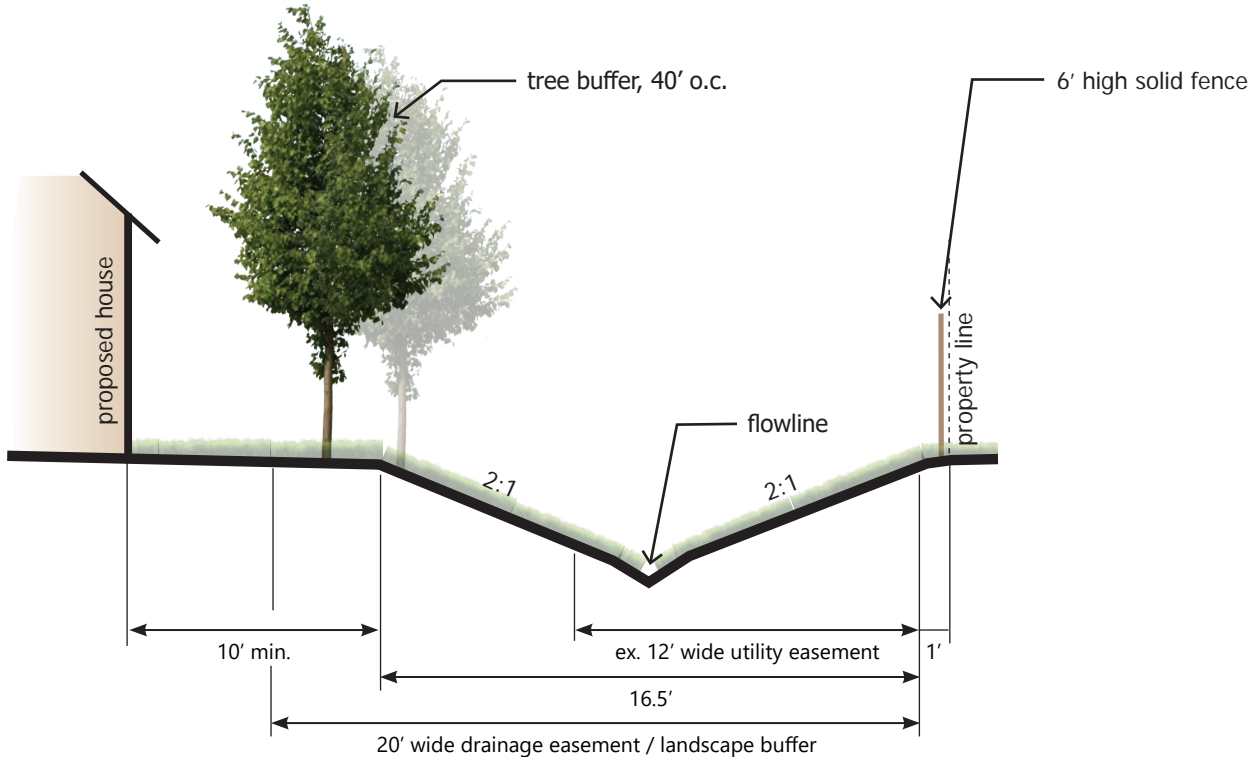


- Legend**
- Emergency and Fire Access
  - Proposed Fire Hydrant

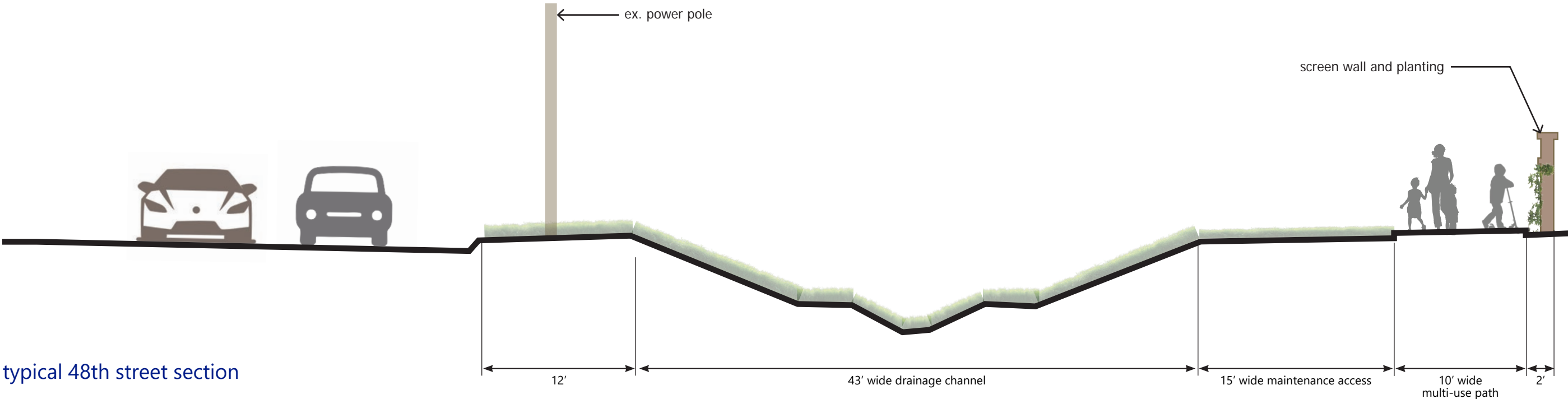








grass swale section - east property line



typical 48th street section

Return to:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59101

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
RESIDENTIAL MANUFACTURED HOME  
DEVELOPMENT LOT 5A, BLOCK 1 OF  
WESTERN SKY SUBDIVISION, 2ND AMENDED**

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Return to:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
RESIDENTIAL MANUFACTURED HOME DEVELOPMENT  
LOT 5A, BLOCK 1 OF WESTERN SKY SUBDIVISION, 2ND  
AMENDED**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **WESTERN SKY BILLINGS, LLC**, whose address for the purpose of this Agreement is P.O. Box 333, Reed Point, MT 59069, hereinafter referred to as “Subdivider” or “Developer,” and the **CITY OF BILLINGS**, Montana, a municipal corporation, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, at a regular meeting conducted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council conditionally approved a preliminary plan of Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended; and

**WHEREAS**, a Subdivision Improvements Agreement (SIA) is required by the City prior to the approval of the final plan; and

**WHEREAS**, the real property affected by the proposed plan is covered by and subject to the terms and conditions of that certain Subdivision Improvements Agreement and Waiver between Mont Vista, LLC as “Owners and Subdividers” and the City of Billings as “City,” dated the 23rd day of September, 2019 and recorded the 14th day of November, 2019, under Document No. 3902605 for Western Sky Subdivision, 2nd Amended, all in records of Yellowstone County; and;

**WHEREAS**, the provisions of this Agreement shall be effective and applicable to Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended, (the “Subdivision”) upon the filing of the final plan thereof in the office of the Clerk and Recorder of Yellowstone

County, Montana. The Subdivision shall comply with all requirements of Article 23-600 of the City of Billings Subdivision Regulations for Developments Providing Multiple Spaces for Rent or Lease for Manufactured Homes, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana; and

**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. The Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City of Billings Subdivision Regulations (Section 23.1101, BMCC):
1. None requested.

**II. PROPERTY CONDITIONS AND INFORMATION FOR UNIT RENTERS OR LEESEES**

- A. Unit renters or lessees should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and open agricultural areas and contains wildlife migratory routes. Consequently, they are advised that wildlife indigenous to the prairies is found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Unit renters or leases may also 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. Impacts associated with wildlife and any damage arising therefrom is the responsibility of the unit renters or lessees.
- B. There is attached hereto a Waiver, waiving the right to protest the creation of the special improvement district or districts that may be created by the City to finance the costs of the off-site public improvements pursuant to the terms of this Agreement. The Waiver will be filed with the plat, shall run with the land, and may be employed when public improvements that benefit this subdivision are required or requested. 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.

- 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 which are still in operation shall remain in place and shall not be altered by the Subdivider or subsequent owners.

### **III. TRANSPORTATION**

#### **A. Streets**

All internal access roads within the subdivision will be private and shall be designed to provide access to all sites. No site shall have vehicular access to a public street. The streets shall be laid out to discourage through traffic and intersections with public streets shall be kept at a minimum. Streets shall be designed and built to meet current City Standards.

Subdivider and City agree that the required street improvements are as follows:

1. An updated Traffic Impact Study has been submitted to the Engineering Division for review and approval prior to final plan approval. Construction and/or financial contribution for improvements along South 48th Street West is covered by and subject to the terms and conditions of the Subdivision Improvements Agreement and Waiver under Document No. 3902605 for Western Sky Subdivision, 2nd Amended.

No physical surface improvements to South 48th Street West are anticipated at this time. Instead, the Developer shall make a cash contribution to the City of Billings for future improvements in South 48th Street West. Said contribution shall be made at the time of development of Lot 5A, Block 1, Contribution shall be based on one-half (1/2) of the required surface improvements for a residential street section less a credit for existing surfacing plus the curb and gutter. Contribution shall be made prior to approval of site development for this lot. Any turn lane, street widening or intersection improvements necessary for individual lot development along South 48th Street West shall be at the expense of the developer.

Intersection contributions for this development were previously identified within the Subdivision Improvements Agreement and Waiver under Document No. 3902605 for Western Sky Subdivision,

2nd Amended. Based on the updated Traffic Impact Study which took into account this development and the recent Zone Change Map Amendment for Western Sky Subdivision, 2nd Amended, and as approved by City Ordinance 20-5737 under Document No. 3932747, the following intersection contributions shall be paid at the time of Lot 5A development:

- Central Ave. and South 48th St. West (4.50%) \$3,750.00

## **B. Sidewalks**

1. A ten-foot-wide multi-use trail shall be constructed along the east side and within the easement of the Shiloh Drain as it lies along South 48th Street West at time of Lot 5A development along South 48th Street West.
2. A ten-foot-wide multi-use trail shall be constructed along the north side of the Hogan's Slough and within the easement adjacent to the development at time of Lot 5A, Block 1 development. Construction may be proportional to the area being developed within Lot 5A, Block 1.
3. Sidewalks on the internal private streets shall be installed at the time of subdivision development and shall be borne by the Subdivider. The sidewalk shall consist of a 5-foot-wide boulevard type sidewalk on both sides of each private street and the Subdivider will install accessible ramps at intersections.

## **C. Street Lighting**

Construction or installation of street lights on South 48th Street West shall not be required at this time. If street lights are installed in the future, a street light maintenance district will be formed for the entire subdivision to accommodate maintenance of the street lights.

Street light installation within the internal private streets is at the discretion of the Subdivider. If constructed, street lights on private streets within Lot 5A shall be owned, operated and maintained through the mechanism of a Homeowners Association (HOA).

**D. Traffic Control Devices**

1. Traffic signals, signage, and striping shall be installed in accordance with the Traffic Impact Study. The timing, extent and level of participation in those improvements shall be in accordance with approval by the City of Billings.
2. Directional signage and traffic control devices required throughout the subdivision shall be installed by Subdivider at time of lot development. All traffic control devices will be designed in accordance with the Manual on Uniform Traffic Control Devices and shall be subject to review and approval by the City Traffic Engineer.

**E. Access**

1. Location of accesses shall be in accordance with the Traffic Impact Study. Access to Lot 5A shall include a new full access from South 48th Street West approximately 1,320 feet south of King Avenue West, and a right-in/right out access from South 48th Street West approximately 250 feet north of the south end of Lot 5A. This south access from South 48th Street West was previously located at the south end of the lot per the plat of Western Sky Subdivision, 2nd Filing (Document No. 3902604).

**F. Billings Area Bikeway and Trail Master Plan (BABTMP)**

The subdivision is included in the Billings Area Bikeway and Trail Master Plan. Improvements identified in that plan shall be made at time of lot development. The Subdivider shall construct a ten-foot wide multi-use trail along South 48th Street West and along Hogan's Slough at time of lot development. Construction shall be within the easements of those facilities.

**G. Public Transit**

Strong internal street circulation and interconnectivity is provided in the development plan for Western Sky Subdivision, 2nd Amended. This will, in turn, provide sidewalks for pedestrians to access public transit routes. No other specific public transit provisions are proposed at this time.

#### **IV. EMERGENCY SERVICES**

Two points of access are provided to this subdivision from South 48th Street West. In addition, private fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings Fire Department. This shall include fire hydrants spaced at a distance no greater than three hundred feet along private streets. At the time of development, a Site Development Plan shall be submitted to the City of Billings Fire Department in sufficient detail to verify compliance with all required emergency ingress, egress and circulation requirements. All of the private fire hydrants shall be owned, operated and maintained through the mechanism of a Homeowners Association (HOA).

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrants in place to allow for 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 20-foot-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 fire apparatus access and water supply.

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

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC and shall be in accordance with the stormwater management plan to be submitted to and accepted by the Engineering Division. All storm drainage improvements not located within a publicly dedicated right-of-way or easement shall be considered a private installation and shall be operated and maintained under a Homeowners Association (HOA) Stormwater Facility Maintenance Agreement between the Subdivider and the City.

That portion of storm drain system to be extended from the southerly end of South 46th Street West and Crescent Street along and within the storm drain easement along the northerly and easterly property lines of Lot 5A south to the Hogan's Slough shall be considered a private installation and shall be owned, operated and maintained through the mechanism of the Homeowners Association (HOA) Agreement.

Stormwater on site will be conveyed to the collection system via surface flows on the private streets and through a network of catch basins, inlets, and piping which will convey runoff to either the Shiloh Drain along South 48th Street West (the South 48th Street West Drain) and Hogan's Slough along the south boundary of the development. Discharges directly tied to these drains shall be terminated with an acceptable back flow prevention device to prevent large storm events flowing in the South 48th Street West Drain and Hogan's Slough Drain from back-flowing into the storm drain lines that service the subdivision.

The developer shall reconstruct the portion of Hogan's Slough that runs along the south lot line of Lot 5A, Block 1 to increase capacity to 450 cfs with 1.5 feet of freeboard in accordance with the recommendations of the West Billings Stormwater Management Plan.

In consideration of the capacity increase of the Hogan's Slough and as previously agreed upon and specified in the Subdivision Improvements Agreement and Waiver between Subdivider and City under Document No. 3902605 for Western Sky Subdivision, 2nd Amended, the City of Billings allowed developers to directly discharge the site's stormwater (with the use of on-site stormwater quality mitigation measures) to the South 48th Street West Drain and Hogan's Slough. In addition, the developers were to make a \$303,000.00 cash contribution proportioned and based upon individual lot sizes within Western Sky Subdivision, 2nd Amended to the City of Billings for construction of facilities in service of the City of Billings' Shiloh Conservation Area. Those facilities will then be constructed by the City of Billings in a location and at a time found to be appropriate to the City. Storm drainage contributions for this development were previously identified within the Subdivision Improvements Agreement and Waiver under Document No. 3902605 for Western Sky Subdivision, 2nd Amended.

## **VI. UTILITIES**

This 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/connection of/to water mains and sanitary sewers is subject to the approval of the applications.

Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Subdivider acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time a building permit is issued for new construction.

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.

Only water and sewer installations within dedicated public rights-of-way shall be considered public. All other extensions of water and sewer mains and services shall be considered private installations and shall be operated and maintained under separate private party agreements.

**A. Water**

The City of Billings has extended a water main in a portion of King Avenue West fronting the subdivision. The developer extended a water main from that public main at South 46th Street West to the south and to the west on Crescent Street that provided water services to each of the lots for Western Sky Subdivision, 2nd Amended. For this development, extension of a private water main from the public water main in Crescent Drive constructed under City Private Contract P-755 will occur and said private water mains will be constructed in private streets to serve each manufactured home unit in this subdivision.

The private water main serving Lot 5A shall be extended within an existing utility easement that extends from Crescent Street to Lot 5A. The private main shall have appropriate flow meter and backflow device near the point of connection to the public water main in Crescent Street.

The Developer shall make a cash contribution to the City of Billings for future water main improvements in South 48th Street West. Said contribution shall be made at the time of development of Lot 5A, Block 1. Contributions shall be based on one-half (1/2) of the cost of a 12-inch water main. Contribution shall be made prior to approval of site development for this development.

## **B. Sanitary Sewer**

The City of Billings has extended a sanitary sewer main in a portion of King Avenue West fronting the subdivision. The developer extended a sanitary sewer main from that public main at South 46th Street West to the south and to the west on Crescent Street that provided sanitary services to each of the subdivision lots for Western Sky Subdivision, 2nd Amended.

For this development, extension of a private sewer main from the public sewer main in Crescent Drive constructed under City Private Contract P-755 will occur and said private sewer mains will be constructed in utility easements from Crescent Street to Lot 5A and within internal private streets to serve each manufactured home unit in this subdivision.

No construction or contribution to a sanitary sewer main in South 48th Street West will be needed at this time. Developer acknowledges that a future sanitary sewer main may be installed in South 48th Street West. Each lot within Western Sky Subdivision, 2nd Amended shall be responsible for its pro rata share of the costs of that improvement at the time of construction of that improvement. It is anticipated that the City will create a Special Improvement District (SID) for the installation of that improvement that contemplates cost contributions from the other three development areas abutting this improvement being responsible for their share of the cost under the SID.

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

Private utilities shall be coordinated prior to construction to serve the development. Said utilities will serve the development in private utility easements at locations either shown on the face of the plat or in areas determined at the time of development.

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

Park dedication will be made through a combination of private park development for residents in the community, a 20-foot wide linear park dedication and development along the two public 10-wide multi-use paths along 48th Street West and the Hogan's Slough, and a cash-in-lieu of contribution. The total net area of residential development for this subdivision is 18.05 acres. The cash-in-lieu contribution is calculated on eleven percent of the net area of the residentially zoned Lot 5A minus the private park and linear park, with a cost per acre of \$40,000.00 applied. The required park dedication is 1.98 acres and the areas for the private park

and linear parks equal 1.74 acres, leaving a cash in lieu contribution of 0.24 acres, or \$9,600.00. Cash contribution is to be made at time of development of said lot.

**VIII. IRRIGATION**

Irrigation ditches that are still operational and servicing this property or downstream properties shall be maintained until no longer needed. Easements for their locations shall be provided.

**IX. POSTAL DELIVERY**

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service. Exact locations will be determined upon design development of Lot 5A.

**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed on the Subdivision. Additional soils/geotechnical investigation may be required at time of development requiring additional analysis.

**XI. TIMING OF IMPROVEMENTS**

The Developer shall make a cash contribution to the City of Billings for future improvements in South 48th Street West. Said contribution shall be made at the time of development of Lot 5A, Block 1, as further stipulated below, and contribution shall be based on one-half (1/2) of 12-inch water main and proportional right-of-way improvements. Contributions shall be made prior to approval of site development. No contribution shall be required for a sanitary sewer main at this time in South 48th Street West. If it is determined at some point in the future that sanitary sewer is required in South 48th Street West, the entirety of Western Sky Subdivision, 2nd Amended may be responsible for its proportional share of the costs of one-half of a 12-inch sanitary sewer at the time of construction of those improvements. It is anticipated that the City will create a Special Improvement District (SID) for the installation of that improvement.

Improvements and contributions for the subdivision are to be developed and made in two (2) phases. The phases are as generally depicted on the attached "Exhibit A" which is referenced and made a part of this Agreement. Improvements and contributions of each phase are defined as follows:

**A. Phase 1**

1. Streets, sidewalks, storm drainage and utilities within the Phase 1 area depicted on Exhibit A.
2. Construction of both access from S. 48th Street West.
3. All cash in lieu street contribution costs for S. 48th Street West.
4. Half cash in lieu contribution costs for future water main improvements in South 48th Street West.
4. The full intersection contribution cost of the Central Avenue and S. 48th Street West intersection.
5. Internal Private Park development of area as depicted on Exhibit A.
6. Full Parks/Open Space cash in lieu contribution for Lot 5A.
7. A pro-rata share of Lot 5A's share of the \$303,000 cash storm drainage contribution for Western Sky Subdivision.
8. Ten-foot Multi-use path construction the phase frontage.

**B. Phase 2 – Opened by June 30, 2025**

1. Streets, sidewalks, storm drainage and utilities within the Phase 2 area depicted on Exhibit A.
2. Half cash in lieu contribution costs for future water main improvements in South 48th Street West.
3. Improvements to Hogan Slough channel abutting the subdivision.
4. A pro-rata share of Lot 5A's share of the \$303,000 cash storm drainage contribution for Western Sky Subdivision.
5. Ten-foot Multi-use path construction the phase frontage.

**XII. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct all required on-site improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by bond, 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 private contract, and the improvements shall be installed as approved by the Montana Department of Environmental Quality (MDEQ), the City Engineer and the Utility Department Manager.

**XIII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER**

- 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. This guaranty shall not apply to any failure or defect caused by changes in design, construction or materials required by the City.

- 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, then the prevailing party 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.





**WAIVER OF RIGHT TO PROTEST  
FUTURE SPECIAL IMPROVEMENT DISTRICTS**

**FOR VALUABLE CONSIDERATION**, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Lot 5A, Block 1 of Western Sky Subdivision, 2nd Amended

Signed and dated this \_\_\_ day of \_\_\_\_\_, 20\_\_

**WESTERN SKY BILLINGS, LLC**

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

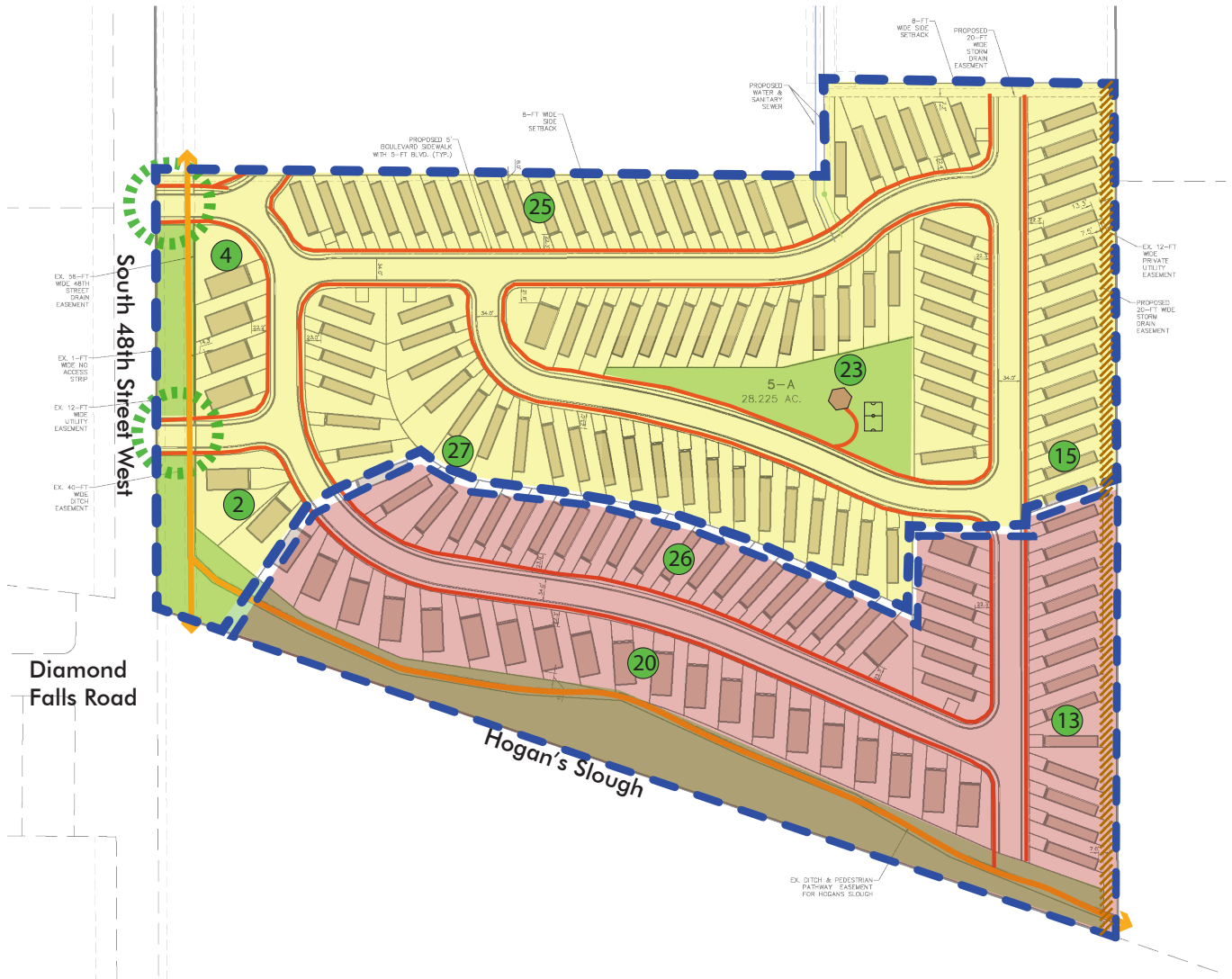
Its: \_\_\_\_\_

STATE OF MONTANA     )  
  : ss  
County of Yellowstone    )





On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of WESTERN SKY BILLINGS, LLC, and who acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

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



Legend

-  Phasing Line
-  Phase 1
-  Phase 2
-  Number of Units


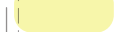


Number of Units

Phase	Double Wide	Single Wide	Total
1	8	88	97
2	22	37	58
TOTALS:	30	125	155



Number of Units

Phase	Double Wide	Single Wide	Total
1	8	88	97
2	22	37	58
TOTALS:	30	125	155

- Legend**
-  Phasing Line
  -  Phase 1
  -  Phase 2
  -  Number of Units