



**County Planning & Zoning Commission**  
**AGENDA-Tuesday, September 6, 2022, 1:30 PM**  
**YC BOCC Board Room**  
**316 N 26th Suite 3101, Billings, Montana**

**NOTICE TO THE PUBLIC**

Citizens are invited to:

- Review the Agenda Packet on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook: <https://tinyurl.com/yckr478k>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda. Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by:

- Mail: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101
  - Email: [deinest@billingsmt.gov](mailto:deinest@billingsmt.gov)
- Call in during the Public Comment periods as indicated on the agenda:
  - Citizens may call in during specific Public Comment periods at **406.237.6165**. All callers will be placed 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 limited to 3 minutes of testimony as is customary. Future delivery methods may be explored as best practice is learned.

Please direct questions to Planning Clerk Tammy Deines at [deinest@billingsmt.gov](mailto:deinest@billingsmt.gov) or 406-247-8610. Thank you!

**Call the meeting to order.**

**Introduction of the County Planning & Zoning Commission Members and Planning Department Staff.**

**Public Comment**

**Motion. Approval of Minutes: January 3, 2022**

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff**  
**a. The Ex parte Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.
- C. Reading of notices of the public hearings on the following items:

**Public Hearings:**

- a. Special Zoning District 12 - Variance 1 - Molt Road near Shorey Rd - Far and Away Estates This is a variance from the General Provisions (No. 7 subsection No. 8) of Special Zoning District 12 that currently reads "No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1.5) stories or twenty-five (25) feet in height" to allow all buildings on the subject parcels to be up to two (2) stories or thirty-five (35) feet in height; and a clarification and variance from Permitted Uses (No. 8 subsection No. 3) that currently reads: "Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage for not more than four cars." to allow the location of up to three (3) accessory buildings on each lot, that may be designed and used for horses, storage, an additional garage for not more than four vehicles, and one (1) such accessory building may have a one-bedroom guest suite. An accessory building may also be designed and used for athletic and recreational facilities. No other types of accessory buildings are permitted. An accessory building must not exceed 2,000 square feet of ground-floor area and two (2) stories in height. This variance would apply to all of the following lots: C.O.S. 781, PARCEL 5A, 2ND AMD, PARCEL 8A, 2ND AMD, PARCEL 10A2, 3RD AMD, PARCEL 11A1, 5TH AMD, PARCEL 12A1, 5TH AMD, PARCEL 15A1, 5TH AMD, PARCEL 16A, 5TH AMD, PARCEL 9A2, 3RD AMD, PARCEL 17A, 2ND AMD, PARCEL 1A, 2ND AMD, PARCEL 14A, 2ND AMD, PARCEL 6A, 2ND AMD, , PARCEL 13A1, 5TH AMD. The total area of these 13 parcels is 139.23 acres.

**Other Business/Announcements**

**Adjournment**

The Yellowstone County Planning & Zoning Commission will hear all persons wishing to speak relative to the proposed variance. Testimony regarding the above mentioned items may also be submitted in writing to the Planning Division, 4th Floor of the Miller Building, 2825 3rd Ave North, Billings, MT 59101 or phone 657-8246. Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the

hearing. Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at [deinest@billingsmt.gov](mailto:deinest@billingsmt.gov).

County Planning & Zoning Commission

Meeting Date: 09/06/2022

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**Subject**

Motion. Approval of Minutes: January 3, 2022

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**Attachments**

YCPZC\_Minutes\_2022\_01\_03\_DRAFT.pdf

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**Planning and Zoning Commission  
Minutes for the Meeting of January 3, 2022**

**The Planning and Zoning Commission met on January 3, 2022, at 3:00 pm in Room 3101, 3<sup>rd</sup> Floor of the Stillwater Building at 316 N 26<sup>th</sup> Street in Billings, MT**

		01/03/22			
Denis Pitman, BOCC	Commissioner	1			
Donald W. Jones, BOCC	Commissioner	1			
John Ostlund, BOCC	Commissioner	1			
Jeff Martin, Clerk & Recorder	Commissioner	1			
Tim Miller, Yellowstone County PW	Commissioner	1			
Doug Clark	Commissioner				
Robert Adler	Commissioner				
Nicole Cromwell	Planner II/Zoning Coordinator				
Wyeth Friday	Director, Planning and Community Services				
Monica Plecker	Planning Division Manager	1			
Tammy Deines	Planning Clerk	1			

**Citizens in Attendance:** Dave Wittorff, Lucy Adamski

**Call the Meeting to Order and Introduction of Planning and Zoning commission Members and Staff.**

Commissioner Jones convened the Planning and Zoning Commission meeting at 3:00 pm. and called for introduction of the Planning and Zoning Commission of the Commission members.

**Public Comment on Non-Agenda Items** There was no public comment.

**Disclosure of any Conflict of Interest** There were no disclosures of conflict of interest.

## **Public Hearings**

Chairman Kennedy asked Ms. Plecker to review the procedure, she stated the Board will open a public hearing and allow public comment... Ms. Plecker reviewed the hearing process and presentation process for the meeting for reviewing and acting on each variance. Division Manager Plecker reviewed the application for Variance request SZD #17 Variance #1 and presented the Board with the staff report for this request. She explained the purpose of this variance request is to bring the property into a legally non-conforming status to help with lender and refinancing requirements.

## **Item #1. SZD #17– Variance #1 – 11604 E. W. Tenney Road – Lot Size and Minimum**

**Dwelling Size** – A variance from Article IV B of Special Zoning District 17 regulations requiring a minimum of 20 acres for a 1,500 sq. ft. dwelling in an Agricultural-Residential zone, on Parcel 1 of Certificate of Survey 3710, a 10.454 acre parcel of land with a 1,188 sq. ft. dwelling. Tax ID: D08752A. Sally Taylor, Owner. Lucy Adamski, Agent.

## **BACKGROUND**

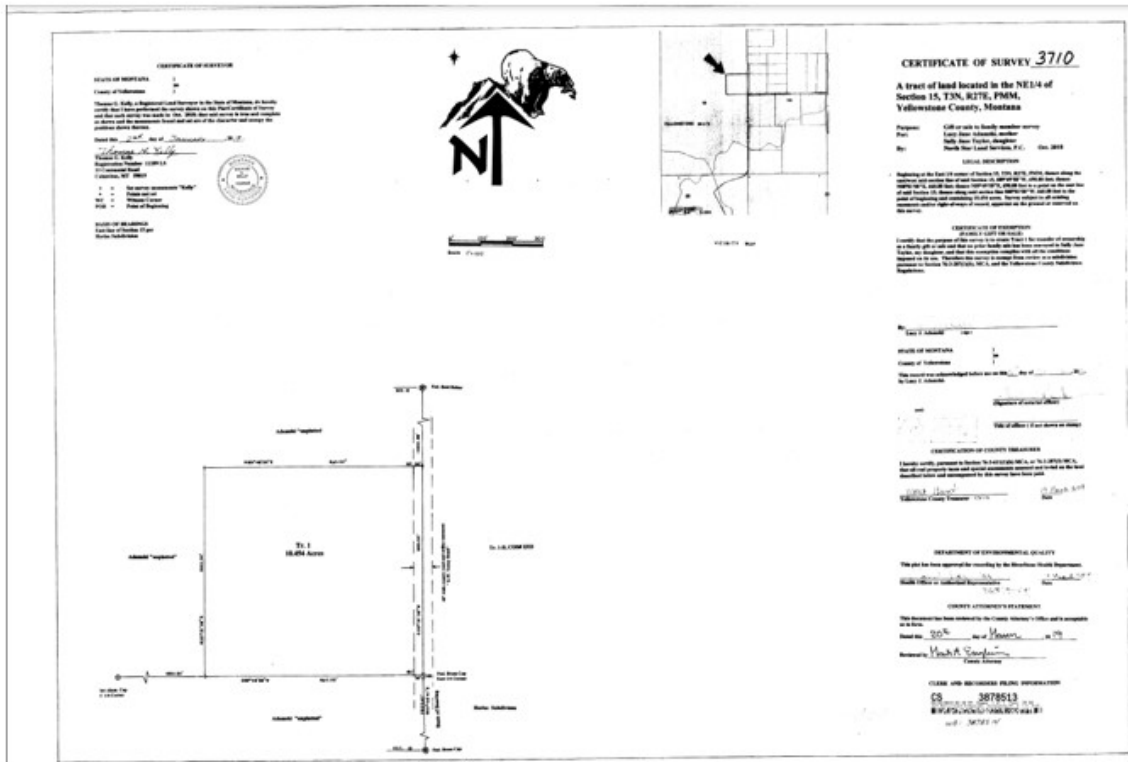
Subject Property: Certificate of Survey 3710 was filed with the Yellowstone County Clerk and Recorder in March of 2019. At the time, Lucy Adamski owned the now 470 acres of unplatted land that is adjacent to this parcel on the north and west. Certificate of Survey 3710 created a family transfer parcel of 10.454 acres which was transferred to her daughter Sally Taylor. Since the survey has been filed Ms. Adamski has sold the remaining unplatted land. A mobile home that is 1,188 square feet was placed on the property once the lot was created. In 2021, Sally Taylor wanted to refinance her property. Through the lender research a zoning compliance permit was applied for. It was during this time that planning staff identified the parcel was smaller than the minimum 20 acres required. Further research shows that during the 2019 Certificate of Survey review for the family transfer, staff did not identify the conflict with the special zoning district regulations. In order for the property to be legally nonconforming the landowner was advised to apply for a variance. Special Zoning District 17 is located approximately 4.5 miles north of Shepherd. The district consists of parcels that are as small as 5 acres and as large as 40 acres. Livestock, fowl and residential uses are the primary uses of land within the district. The area is served by graveled county road, E. W. Tenney Road. The subject property is located on that far eastern edge of the district. The parcel is surrounded on the north and west by a 470-acre parcel that has only a small portion in the zoning district. To the south is a 160-acre parcel. Immediately to the east and across E.W. Tenny Road are 10 and 5-acre parcels.

## **FINDINGS**

“The Board of Adjustment is authorized to grant variances from the strict application of this Resolution when by reason of exceptional narrowness, shallowness, or shape of specific parcels of the property, exceptional topographical conditions, or other extraordinary situations of specific parcels of property, the strict application of these regulations or amendments thereto would result in peculiar and unusual practical difficulties to or exceptional or unnecessary hardship upon the owner of such property, provided that such variance will not be contrary to the public interest.”

**FINDINGS**

- Staff has made findings provided in the staff report related to:
  - Public Interest
  - Special conditions creating a hardship
  - Spirit and intent of regulations



**RECOMMENDATION:**

The Planning Division is forwarding a recommendation of conditional approval based on the findings provided within this report. The Planning Division is recommending conditions of approval to ensure the construction is completed in a time and manner that will minimize any potential impact to the surrounding owners and the district. The following conditions are recommended:

1. This is a variance from Article IV. B requiring a minimum lot size of 20 acres and a minimum dwelling size of 1,500 square feet.
2. The variance is limited to Certificate of Survey 3710, Parcel 1
3. These conditions of variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.

### **Discussion**

Commissioner Ostlund asked for clarification on the eastern district boundaries in related to E.W. Tenny Road. Ms. Plecker responded the district goes the length of the parcel and presented photos of the property. Per request of the Commissioners, Ms. Plecker explained the notifications are given to adjacent property owners and the hearing was posted in three locations and in the Yellowstone County News.

### **Public Hearing:**

#### **Dave Wittorff, 6140 Pleasant Hollow Trail, [wittorff@midrivers.com](mailto:wittorff@midrivers.com)**

Mr. Wittorff stated in general he does not have any issues with this variance request. He stated this property has issues related to access and water. He would like to see limitations on future variances throughout this area.

There were no further public comments. The public comment period was closed.

### **Motion**

**A motion was made by Commissioner Ostlund and seconded by Jeff Martin to approve the regulations for Special Zoning District #17 Variance #1 with the Conditions of Approval recommended by staff.**

### **Discussion**

Commissioner Ostlund stated with the information provided it appears that there are no real objections to this variance request and it would cause a financial hardship for the applicant if they were unable to obtain financing. He is in favor of approving the variance.

**The motion carried, 5-0.**

**Other Business:** There was no other business.

### **Approval of Minutes:**

#### **Motion**

***On a motion by Commissioner Pitman, seconded by Jeff Martin, and approved with 5-0 voice vote, the minutes of July 7, 2015 were approved as submitted.***

**Announcements** There were no announcements.

Adjournment The meeting was adjourned at 3:40 p.m.

**DRAFT. To be approved during the next Planning and Zoning Commission meeting.**



**YELLOWSTONE COUNTY  
PLANNING & ZONING COMMISSION  
AGENDA**

**YELLOWSTONE COUNTY, MONTANA  
MONDAY, JANUARY 3, 2022  
3:00 PM**

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**Location: Room 3101, 3<sup>rd</sup> Floor of the Stillwater Building at 316 N 26<sup>th</sup> Street in Billings**

1. Call the Meeting to Order
2. Introduction of Planning and Zoning Commission Members and Staff
3. Public Comment on Non-Agenda Items
4. Disclosure of any Conflict of Interest
5. Regular Business
  - a. Public Hearing Variance 1 – 11604 EW Tenny Road, Shepherd, MT
6. Other Business/Announcements
7. Adjournment

Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> Ave North, Billings, MT 59101 or phone 247-8676. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony. Information on the preceding item(s) may be obtained at the Planning & Community Services Department, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> Ave North, Billings, MT 59101 or phone 247-8610. Anyone wishing to be heard on this matter may appear at this hearing or provide written testimony to Planning Division at the address above.



County Planning & Zoning Commission

a.

Meeting Date: 09/06/2022

SUBJECT: Special Zoning District 12 - Variance 1 - Molt Road near Shorey Rd - Far and Away Estates

THROUGH: Nicole Cromwell

PRESENTED BY: Nicole Cromwell

**REQUEST**

Special Zoning District 12 - Variance 1 - Molt Road near Shorey Rd - Far and Away Estates This is a variance from the General Provisions (No. 7 subsection No. 8) of Special Zoning District 12 that currently reads "No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1.5) stories or twenty-five (25) feet in height" to allow all buildings on the subject parcels to be up to two (2) stories or thirty-five (35) feet in height; and a clarification and variance from Permitted Uses (No.8 subsection No. 3) that currently reads: "Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage for not more than four cars." to allow the location of up to three (3) accessory buildings on each lot, that may be designed and used for horses, storage, an additional garage for not more than four vehicles, and one (1) such accessory building may have a one-bedroom guest suite. An accessory building may also be designed and used for athletic and recreational facilities. No other types of accessory buildings are permitted. An accessory building must not exceed 2,000 square feet of ground-floor area and two (2) stories in height. This variance would apply to all of the following lots: C.O.S. 781, PARCEL 5A, 2ND AMD, PARCEL 8A, 2ND AMD, PARCEL 10A2, 3RD AMD, PARCEL 11A1, 5TH AMD, PARCEL 12A1, 5TH AMD, PARCEL 15A1, 5TH AMD, PARCEL 16A, 5TH AMD, PARCEL 9A2, 3RD AMD, PARCEL 17A, 2ND AMD, PARCEL 1A, 2ND AMD, PARCEL 14A, 2ND AMD, PARCEL 6A, 2ND AMD, , PARCEL 13A1, 5TH AMD. The total area of these 13 parcels is 139.23 acres.

**RECOMMENDATION**

Planning staff is recommending approval of the requested variance based on the findings of the three criteria for variances in Special Zoning Districts.

**APPLICATION DATA**

OWNER: Yellowstone Farms, LLC - Jack Ramirez and James Hertz

AGENT: Kellie Saville

LEGAL DESCRIPTION: C.O.S. 781, PARCEL 5A, 2ND AMD, PARCEL 8A, 2ND AMD, PARCEL 10A2, 3RD AMD, PARCEL 11A1, 5TH AMD, PARCEL 12A1, 5TH AMD, PARCEL 15A1, 5TH AMD, PARCEL 16A, 5TH AMD, PARCEL 9A2, 3RD AMD, PARCEL 17A, 2ND AMD, PARCEL 1A, 2ND AMD, PARCEL 14A, 2ND AMD, PARCEL 6A, 2ND AMD, , PARCEL 13A1, 5TH AMD

ADDRESS: West side of Molt Road just south of intersection with Shorey Road

CURRENT ZONING: Special Zoning District 12 - Rural Residential Uses and Agriculture

EXISTING LAND USE: Vacant Rural Land

PROPOSED USE: 2.5-story single family homes with accessory buildings and uses

SIZE OF PARCEL: 139.23 acres total - Lots range in area from 8 acres to 13 acres

**CONCURRENT APPLICATIONS**

None.

**APPLICABLE ZONING HISTORY**

The property was mostly included within the boundary of Special Zoning District 12 - adopted on August 25, 1970. The original survey was one parcel of about 207 acres. In 1974 a subsequent amendment of the survey created 22 lots. The survey was amended several times over the past 48 years to adjust the boundaries of the 22 lots. Eventually through consolidation, the number of lots was reduced to 19 lots. Thirteen of those lots are either all within the SZD 12 boundary or partially within the boundary.

**SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: Un-zoned Land Use: Single family homes
SOUTH:	Zoning: SZD 12 Land Use: Grazing land
EAST:	Zoning: SZD 12 Land Use: Grazing land
WEST:	Zoning: Un-zoned Land Use: State Trust Land - grazing

**BACKGROUND**

This is a variance request to allow 2.5-story dwellings up to 35 feet in overall height on several parcels of land to be developed along the northern boundary of Special Zoning District (SZD) 12 in Echo Canyon. In addition, the applicant is asking for clarification of the accessory building requirements and to allow one of the accessory buildings to have guest quarters. None of the lots have started construction but several have been sold to builders and construction may start soon. The owners have filed covenants and restrictions for the parcels within this certificate of survey (781) that will further control land uses on the property.

The subdivision to the north (McFarland Subdivision) is outside the zoning district and has no limitations on building heights. The proposed land development will include new homes on sites from 8 acres up to 13 acres. Thirteen parcels in this development project of 19 home sites are effected by the zoning restrictions in SZD 12. The applicant's historical perspective for the height and story limitation for new construction is based on family history in Echo Canyon and their involvement with the creation of SZD 12. The canyon roughly follows the watershed of Cove Creek and Little Cove Creek and has rimrocks and plateaus that create vistas and viewsheds throughout the canyon. It was likely the original intent of the height limitation to protect these aesthetic qualities of the canyon and to limit the public safety concerns for structure fire response. This area is in the Molt Volunteer Fire Department district. This volunteer company is a wildland fire response crew. Any structure fire would call in mutual aid from the Billings Fire Department. The insurance rating for homes in the canyon reflects the long response times for structure fires.

New construction within the zone district is not common place. Most residential homes were built in the 3 decades between 1960 and 1990. There are only 84 separate parcels within this zoning district that covers over 2,480 acres of land. There are three public park parcels within the district - two owned by Yellowstone County and one owned by the City of Billings (part of Phipps Park). The County parks are within the two subdivisions in the zoning district - Echo Canyon

Subdivision and Cove Creek Subdivision. The majority of larger parcels are in certificates of survey or un-platted land. Most developed parcels in the district are owner occupied.

Special Zoning Districts or Part 1 zoning districts are a land use tool available for county residents and officials to protect property values and control land uses in rural areas. Yellowstone County has seven individual special zoning districts. Several districts have been subsumed into the County's "part 2" jurisdictional zoning boundary (4.5 miles outside the Billings city limits) or have been annexed to the city limits and have city zoning. Parts of SZD 12 have been annexed and zoned within the city limits. A chart of the County's special zoning districts is included as an attachment.

Each district has created areas for rural residential development and for the preservation of agricultural uses. Each district generally reflects the predominate style of residential construction available during the time the district was created. This district created in 1970, has a height limit of 1.5 stories or 25 feet, reflecting the ranch style home popular at the time. SZD 14 has no building height for the Agriculture zone (all land in the district) but included height limits for other zone districts that were then not applied to any land in the district. Those height limits are 25 feet. SZD 15 and 16 have no building height limitations. SZD 17 has a height limitation only for residential structures of 35 feet. SZD 18 has a building height limit of 30 to 35 feet. SZD 20 has a building height limit of 37 feet.

The number and types of uses allowed within an accessory structure also reflects the time period and the issues of concern for each special zoning district when it was created. Most districts encourage agricultural uses for property owners such as a few horses or cows. SZD 12 is the most specific on accessory structures and uses however the wording of the code can be confusing and vague. The definition in the special zoning district regulations is straight forward but the section on uses is more vague: Subsection 8.2 and 8.3:

- 2) Agricultural uses as defined in Section 4, and in connection therewith stables, barns and corrals may be maintained, altered or erected; provided, however, that such buildings and structures be designed for such uses, and not be used for any other purpose.
- 3) Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage for not more than four cars.

The plural is not used in the subsection 8.3 and it could be interpreted to mean that only one accessory building used for residential purposes but many structures may be constructed that are only used for agricultural uses. The applicant has requested a clarification and variance for accessory buildings on these lots.

Variances from the special zoning district regulations are allowed provided the County Planning and Zoning Commission finds the criteria for variances have been met:

- 1) The proposed variance will not be contrary to the public interest; and
- 2) The requested variance is based on special conditions; and
- 3) That a literal enforcement of the zoning regulation(s) will result in unnecessary hardship.

## SUMMARY

Before making a decision on the requested variance, the County Planning and Zoning Commission shall consider the findings of the three review criteria and whether to impose conditions on the approval of the variance (MCA 76-2-106).

- 1) The proposed variance will not be contrary to the public interest.

Planning staff finds the proposed variance from the maximum building height of 1.5 stories or 25 feet to allow up to 2.5 stories or 35 feet is not contrary to the public interest. The types of construction and development styles have changed in the past 50 years including the size of home furnishings, fire resistive construction methods and building technology improvements. The original intent of the special zoning district was to ensure rural residential development that did not intrude on the canyon's aesthetic qualities as well as ensure public safety for structure fire response. Taller structures would require larger fire fighting equipment to respond and could make escape from structures less likely. Current construction methods have significantly reduced these fire risks, and smoke and fire detectors are now required and commonplace in residential homes.

The property location has significant terrain and most of the new residential homes will not be visible from Molt Road. (see attachment of Application Materials Exhibits 1 - 13). The additional building story and height of 10 feet will not be exceptional or out of context on the parcels of land. The subdivision (McFarland) to the north is just outside the northern boundary of the zoning district. Many homes in this subdivision are at or above the proposed height limit for these parcels.

- 2) The requested variance is based on special conditions.

The proposed development is on parcels larger than average home site in the district. Of the 43 parcels within the district that are developed for residential uses, eight homes are on parcels larger than 6 acres. This development includes 19 parcels total and 13 of those are affected by the district height limitations and accessory building requirements. All parcels are greater than 8 acres and range to almost 13 acres in area. A 13 acre parcel with regular boundaries is about 9 football fields of land area or over 1/2-million square feet. These parcels are larger in comparison to other residential developments in the district. The regulations were written to also consider that lots could be as small as 20,000 square feet or about 1/2-acre in area. While no developed parcels in Echo Canyon are 20,000 square feet, the zoning regulations anticipated smaller lots for residential development. The special condition for these lots is the lots are relatively large in comparison to the allowed height of buildings. In addition, the size of the parcels can allow additional accessory buildings without crowding lot lines.

- 3) That a literal enforcement of the zoning regulation(s) will result in unnecessary hardship.

The zoning restriction for building height and the number of accessory structures and uses for those structures, creates an unnecessary hardship for the prospective owners and home designers. The parcel falls away from Molt Road to the west and has a lot of topographic relief. It is doubtful a taller home of 2.5 or more stories would be visible from Molt Road or from neighboring properties for lots down in the valleys between the rimrocks. There are no views from Molt Road to these new dwellings that would be impacted by a building height of 35 feet as opposed to 25 feet. It is also more expensive to build most of the interior space on the ground-floor with a smaller 1/2-story above. This is because the largest expense of home building is the foundation and roof system. A single story home requires both more foundation and roof per square foot than a 2-story home. This would be acceptable if the proposed lots were smaller, but the lots are intended for larger homes with more square footage for living space. Utilities, heating and cooling are also more costly per square foot in a single story home.

Limiting the number of accessory buildings and the uses for those accessory buildings on lots this large also creates an unnecessary hardship. Many rural residential owners desire the additional space to store all types of recreational and agricultural equipment as well as having space for outdoor living. Lots this large in the county generally have three or more accessory buildings for various uses. The code as written is open to interpretation. For example, someone could read the code narrowly and limit non-agricultural accessory buildings to one structure with parking for no more than four cars. Agricultural accessory buildings could be numerous but could never be re-purposed for other residential uses. The zoning code does not mention the storage of other types of vehicles such as boats, RVs, camper trailers, snowmobiles and other common personal property.

Planning staff recommends the variance be approved with the following conditions:

- 1) The variance is limited to the increase in building height from 1.5 stories or 25 feet to 2.5 stories and 35 feet; and 2 stories for accessory structures. Up to three accessory structures will be allowed per developed parcel and for any use incidental to rural residential living including the uses enumerated in the code as well as indoor recreational uses, for storage of personal property including recreational vehicles and equipment. One of the accessory structures may have a 1-bedroom guest quarters. No accessory structure would exceed 2,000 square feet on the ground-floor or 2 stories in height. No other variance from the zoning district regulations is intended or implied.

- 2) The variance is limited to the lots within Special Zoning District 12 specifically Parcels 5A, 8A, 10A2, 11A1, 12A1, 15A1, 16A, 9A2, 17A, 1A, 14A, 6A and 13A1 all in Certificate of Survey 781.
- 3) All lots shall begin development within 10 years of the date of the variance approval. Any lots where development has not yet begun at the lapsing date, shall be required to conform to the Special Zoning District regulations in place at the time or seek a separate variance. An owner or owners may request a modification of this time limit if an application is submitted within 60 days of the lapsing date of this approval.
- 4) All other zoning regulations, except for this specific variance, and any other applicable county regulations apply to the development of structures on each lot.
- 5) Development of structures on each lot will require the submittal and approval of a Zoning Compliance Permit through City/County Planning. The Zoning Compliance Permit is to ensure the compliance with the zoning regulations and the specific allowances in this variance.
- 6) Failure to begin or complete actions required by this approval within the time limits set forth shall void this variance.
- 7) This variance is approved, subject to the conditions set forth herein, shall become effective immediately upon the Commission's approval, shall run with the land described in this authorization, and shall apply to all current and subsequent owners, operators, managers, leaseholders and their heirs and assignees.

## **RECOMMENDATION**

Staff recommends conditional approval of the variances based on the findings of the three criteria for Variance 1, Special Zoning District 12.

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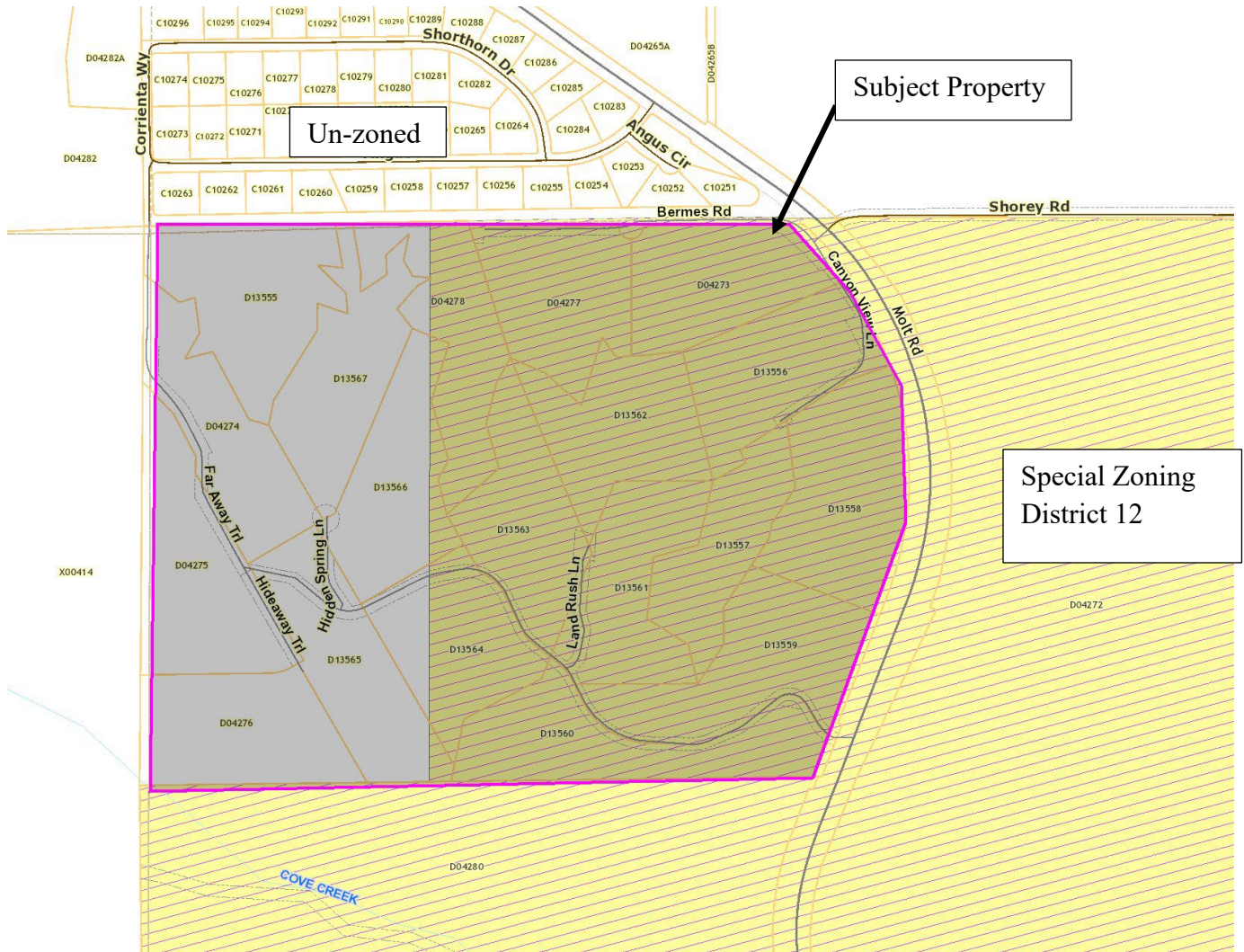
### **Attachments**

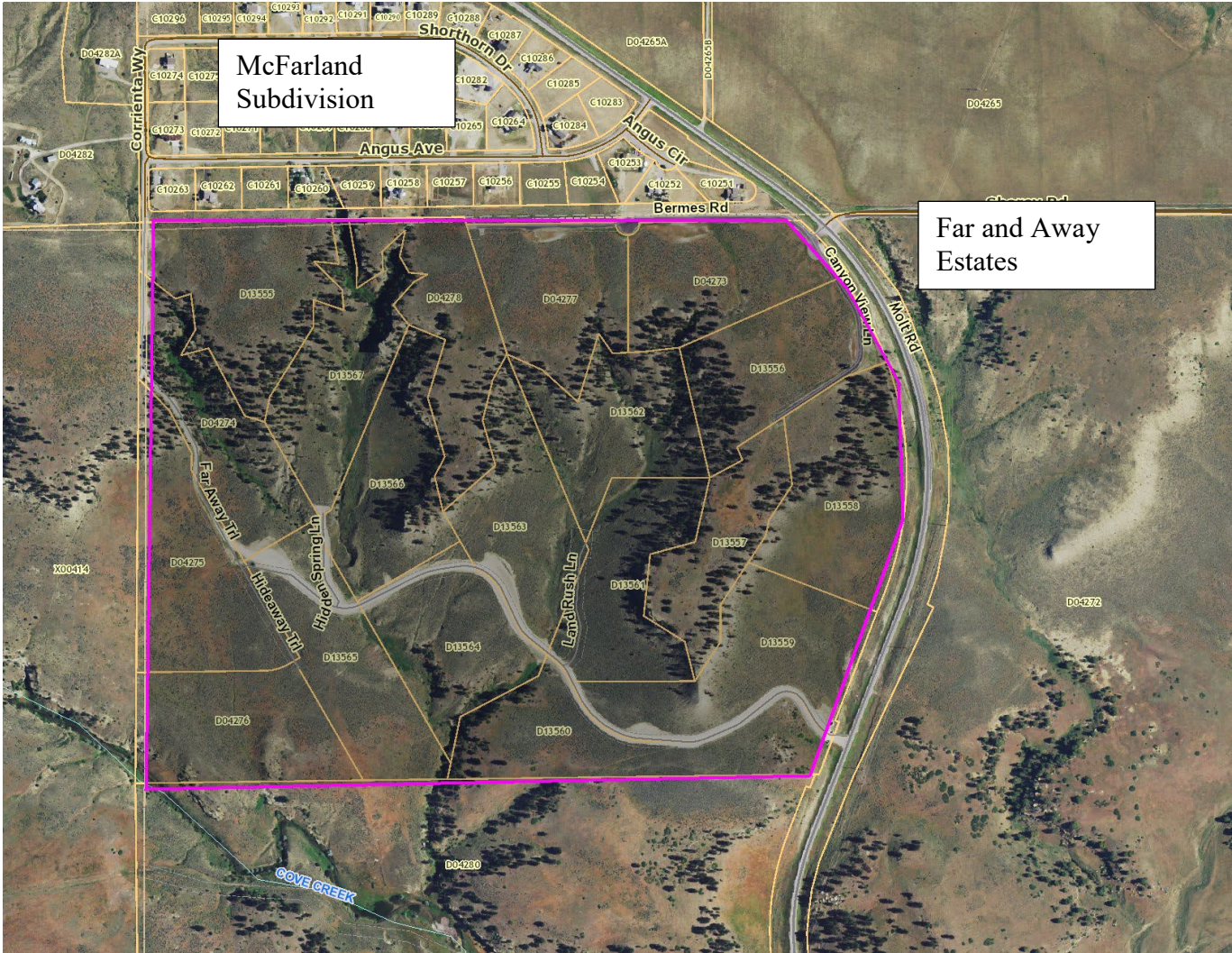
Zoning Map and Site Photos  
Special Zoning District Chart  
Application Letter and Exhibits

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# Zoning Map and Site Photos

## Variance 1 – SZD 12





McFarland  
Subdivision

Far and Away  
Estates



Subject Property – view from north entry drive off Molt Road



Subject Property – view from south entry drive off Molt Road



View north from entry road to McFarland Subdivision



View north on Molt Road from north entry drive



View north on Molt Rd from south entry drive



View east across Molt Rd to Shorey Rd intersection from north entry drive



View south and east across Molt Rd



View south and west from north entry drive



McFarland Subdivision view south and west from Molt Rd – north of subject property and SZD 12 boundary



District No.*	Year Established	Height Limits	Accessory Building Limits	Accessory Building Height	Min Lot Area	Misc
12	1970	1.5 stories 25 feet	For Ag uses 1 for residential uses	1.5 stories 25 feet	20,000 sf	
14	1977	None in A-O 25-30 ft in other zones	None	None in A-O 25-30 ft in other zones	20 acres	
15	1984	None	None	None	5 acres	
16	1986	None	None	None	40 acres	
17	1994***	35 ft for dwellings No height limit for non- residential structures	None	None	5-10-20 acres	Variance for dwelling unit min floor area granted in 2021
18	1997	35 ft	None**	35 ft	1-2-5 acres	**Accessory dwelling unit allowed within the primary residence only
20	2011	37 ft	None **	37 ft	20,000 sf	** Accessory Dwellings may be separate on property

\*Districts 1-11, 13 and 19 no longer exist. District 19 was dissolved at the request of the property owners and Districts 1-11 and 13 were subsumed into the County's jurisdictional zoning or were annexed to Billings and have city zoning.

\*\*\* Provision for all "on-site" construction was declared not constitutional by MT Supreme Court in Yurczky v Yellowstone County, Jan 14, 2004

APPLICATION FORM

COUNTY VARIANCE County Variance # 6ZD12- Var 1 - Project # PZX-22-00176

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the Yellowstone County Unified Zoning Regulations.

PROPERTY TAX ID # See attachment, page 1. COUNTY COMMISSIONER DISTRICT #           

Legal Description of Property: See attachment, page 1.

Address or General Location (If unknown, contact County Public Works): NW corner of Zoning District 12. See Exhibit 1.  
Molt Road borders the east side. The north entrance is directly across from Shorey Road. See Exhibit 3.

Zoning Classification: Single family residential, accessory buildings, agricultural uses, home occupations, public parks

Size of Parcel (Area & Dimensions): See page 1 & Exhibit 3. 1 tract of 8.1 acres - 12 tracts of 10+ acres. Irregular shapes.

Covenants or Deed Restrictions on Property: Yes  No

If yes, please attach to application

Variance Requested: .First Variance - see attachment, page 1. Second Variance - see attachment, page 8.

Facts of Hardshi .First Variance - see attachment, page 1. Second Variance - see attachment, page 8.

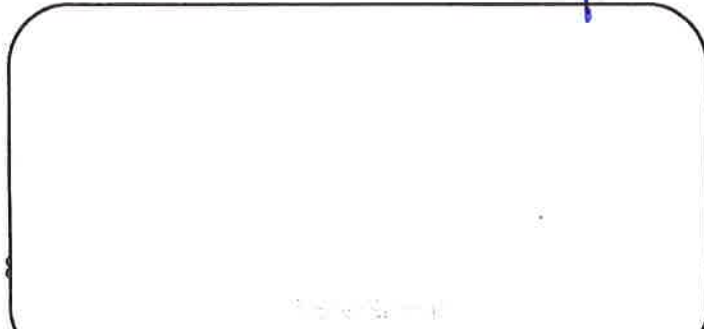
\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Yellowstone Farms, LLC by Jack S Ramirez, Manager (50%) . 360 East Loch Lloyd Pky, Loch Lloyd, MO 64012 Tel: 847-612-8416 email: <a href="mailto:jackramirez@kc.rr.com">jackramirez@kc.rr.com</a>	James Hertz, Individually and as Trustee of the Constance R. Hertz Bypass Trust (50%) 3680 Vickery Drive, Billings, MT 59102 Tel: 406-698-1714 email: <a href="mailto:eagle5cj@aol.com">eagle5cj@aol.com</a>
(Phone Number)	(email)

Agent(s): Kellie Saville - Meridian Real Estate 2116 Broadwater Avenue – Unit 205 Billings, MT 59102 406-671-6955	<a href="mailto:kellie.saville@gmail.com">kellie.saville@gmail.com</a>
(Phone Number)	(email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature: Yellowstone Farms, LLC  
By Jack Ramirez, manager James Hertz Date: 7-18-22  
(Recorded Owner)



July 19, 2022

Yellowstone County Board of Adjustment  
C/O Planning & Community Services Department  
2825 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, Montana 59101

We are submitting the enclosed Application and attached explanation, maps, photos, and other information in support of our request for two variances for 13 adjoining tracts located in Far And Away Estates Subdivision in Yellowstone County Special Zoning District 12. I am writing this letter on behalf of Yellowstone Farms, LLC, and James Hertz, Individually and as Trustee of the Constance R. Hertz Bypass Trust, who are the owners of the property in question.

Here are summaries of the two variance requests:

The first variance pertains to the height of the dwellings. Paragraph 7 of the GENERAL PROVISIONS (page 5 of the zoning restrictions) reads as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1½) stories or twenty-five (25) feet in height.

We request a variance that would read as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed two (2) stories or thirty-five feet in height.

The second variance pertains to the height and to the uses of the accessory buildings. The current zoning restrictions limit the use of barns, stables and garages to that single use, and permit "customarily incidental uses" for other accessory buildings.

We request a variance that permits accessory buildings to be 2 stories or thirty-five feet in height (just as with dwellings), and would also expressly add permitted uses of athletic and recreational facilities, as well as a one-bedroom guest suite (with a prohibition on renting out such a suite). Also, because our restrictions permit only 3 accessory buildings, whereas the zoning restrictions permit more than that, the variance would permit an accessory building to be designed and built for multiple permitted uses.

Our suggested language for the second variance is:

Subject to the provisions of paragraphs 5 and 12 of the Far And Away Estates Subdivision's Restrictions, an accessory building may also be used for athletic and recreational facilities, one accessory building may also contain a one-bedroom guest suite, and an accessory building may be 2 stories in height and may be designed and built for multiple permitted uses.

In the attachment to the Application we explain in detail why these two variances are reasonable and appropriate under the circumstances. And we respectfully request that the variances be granted.

Thank you for your consideration.

A handwritten signature in blue ink that reads "Jack Ramirez". The signature is written in a cursive, flowing style.

Jack Ramirez, Manager

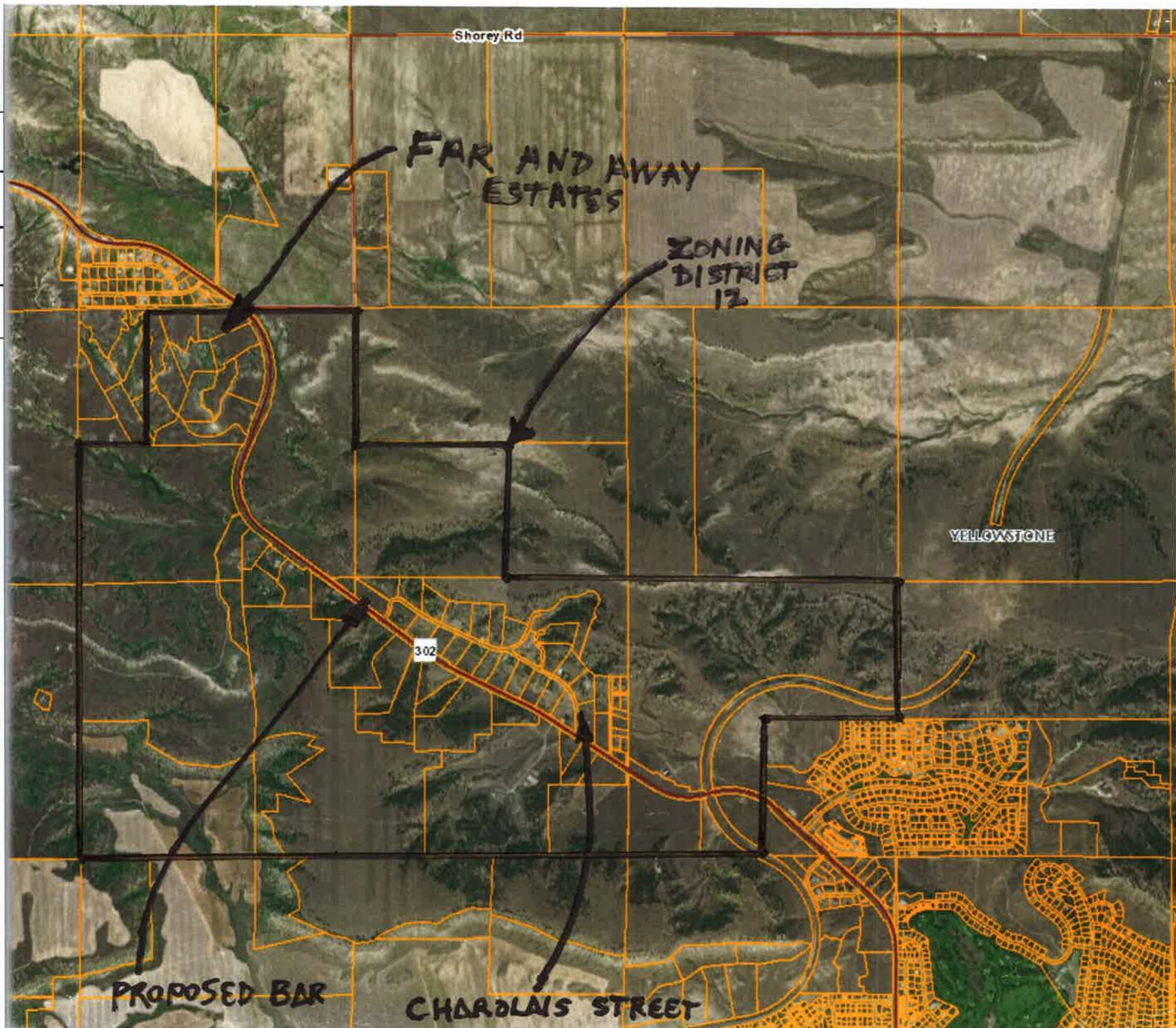
Yellowstone Farms, LLC

360 East Loch Lloyd Parkway

Loch Lloyd, MO 64012

Cell: 847-612-8416

jackramirez@kc.rr.com



Shorey Rd

FAR AND AWAY  
ESTATES

ZONING  
DISTRICT  
12

YELLOWSTONE

302

PROPOSED BAR

CHAROLAIS STREET

Try Cadastral Beta

Print Button  
workarounds

EXHIBIT  
1

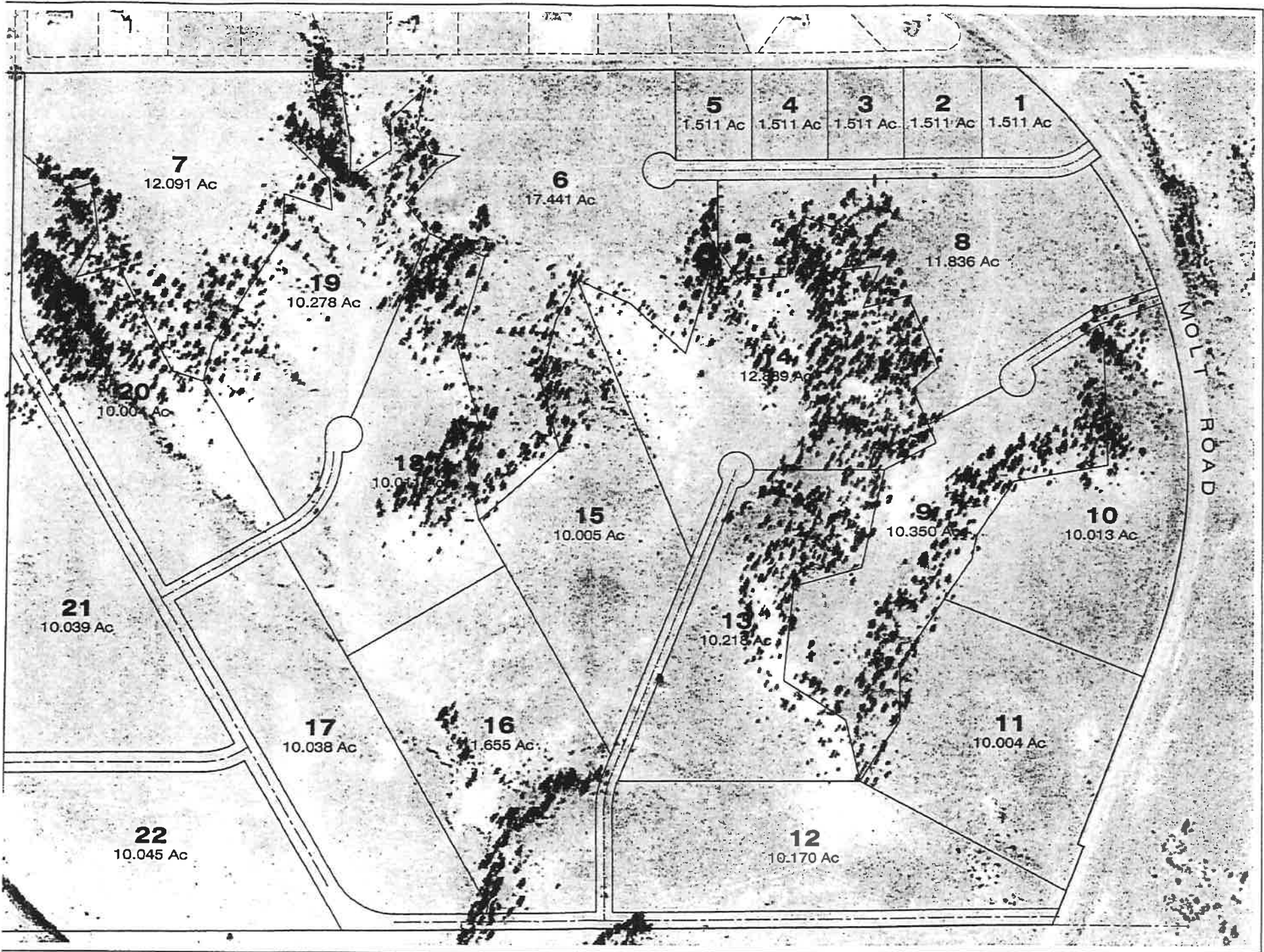


EXHIBIT 2

CERTIFICATE OF SURVEY 781  
2ND, 3RD, 4TH, & 5TH AMENDED

BEING ALL OF CERTIFICATE OF SURVEY 781  
AND BEING A PORTION OF THE N1/2 OF SECTION 15, T01N, R24E  
YELLOWSTONE COUNTY, MONTANA

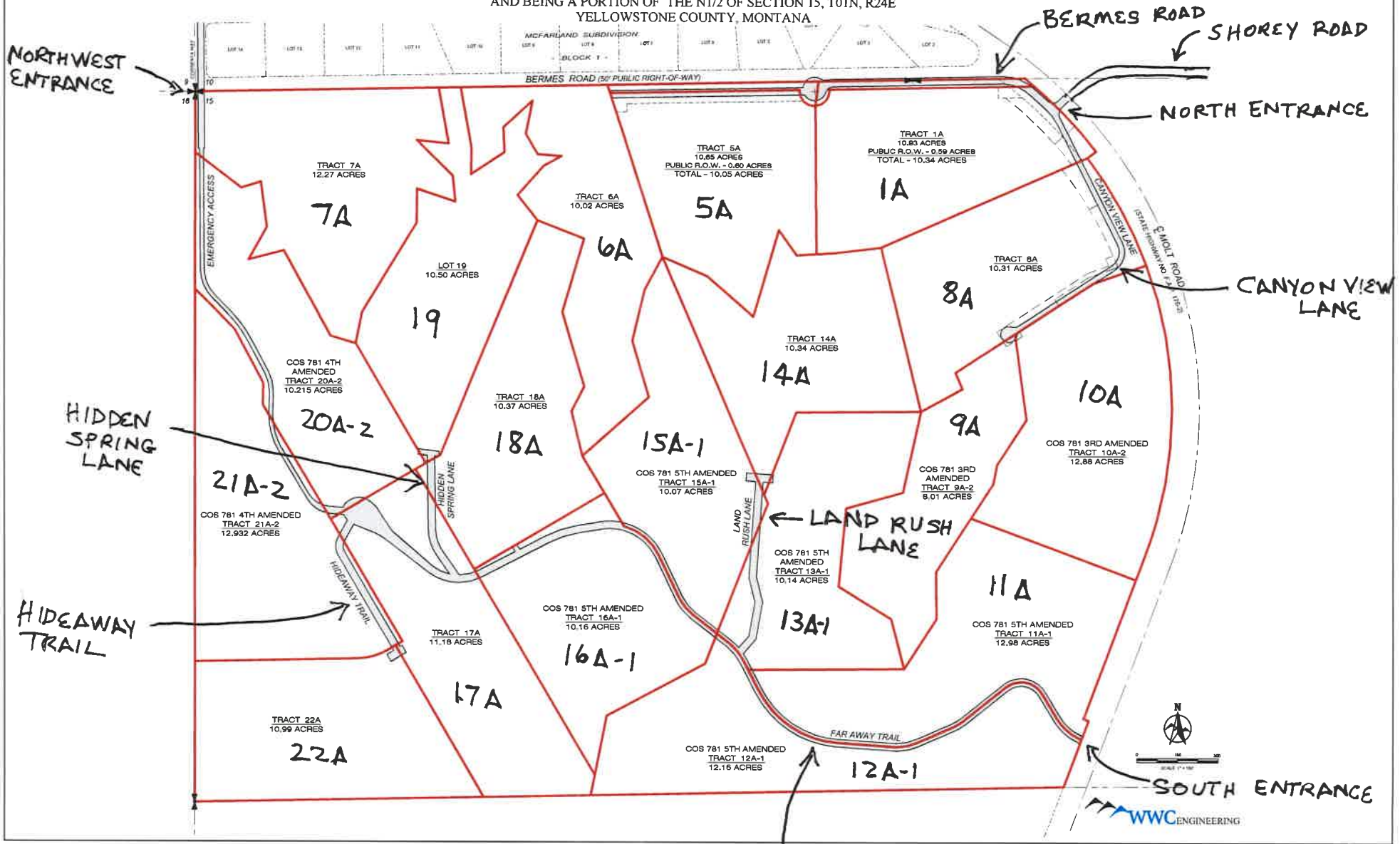
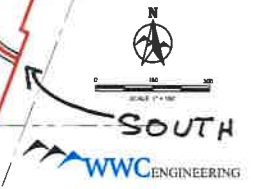


EXHIBIT 3

FAR AWAY TRAIL





CERTIFICATE OF SURVEY 781  
2ND, 3RD, 4TH & 5TH AMENDED

BEING ALL OF CERTIFICATE OF SURVEY 781  
AND BEING A PORTION OF THE N1/2 OF SECTION 15, T01N, R24E  
YELLOWSTONE COUNTY, MONTANA

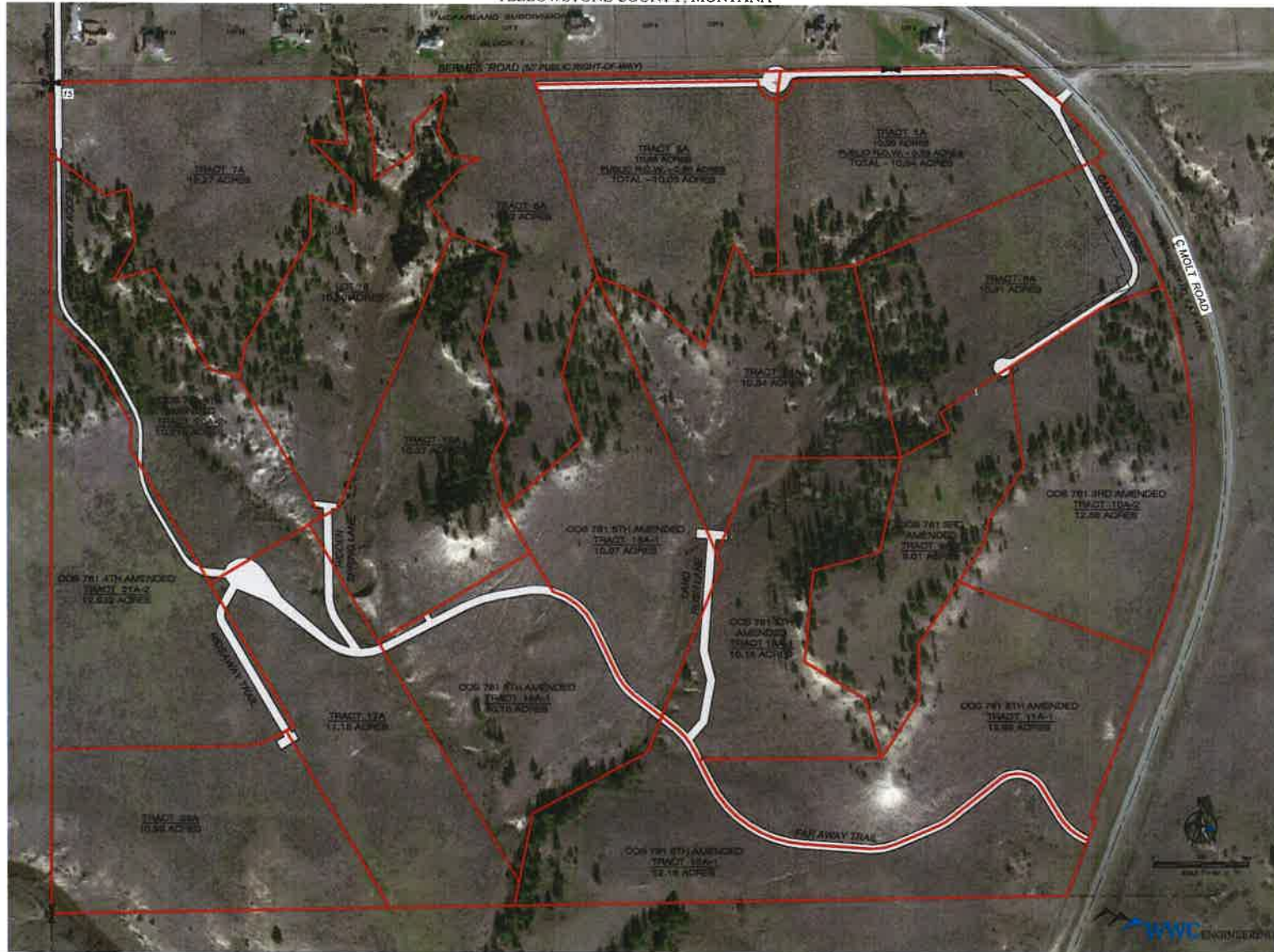


EXHIBIT 3B

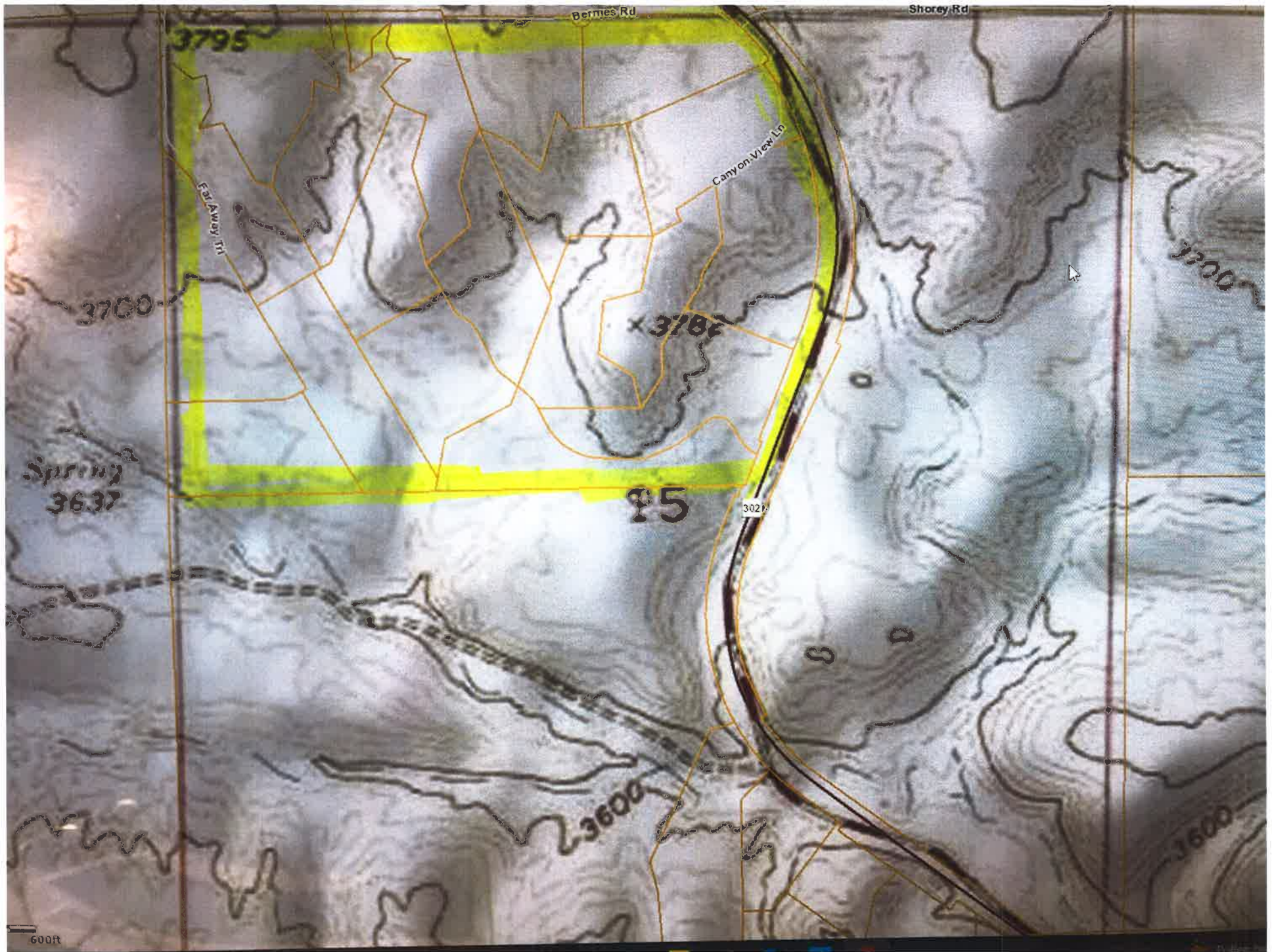


EXHIBIT 4



Exhibit 5

This photo shows the substantial difference in height between the tracts on the top of the rimrocks and those in the valley. The high ground in the left foreground is 6A – a very long tract that extends to the point in the distance overlooking Far Away Trail. A portion of Tract 19A is on the right. Tract 18A lies below 6A on the left. The dividing line between the two is located along the low ground between the two tracts.



Exhibit 6

This photo shows the high ground along the north side of Far And Away. Tract 1A is in the left foreground and extends just past the lone tree. Past the tree is Tract 8A and beyond that is 10A2. Tract 5A is to the far right. Tract 1A overlooks Tracts 13A1, 14A, and 15A1.



Exhibit 7

Tract 8A is shown in the center foreground and extends from Tract 1, on the right, to the road on the left. Tract 8A overlooks Tracts 13A1, 14A, and 15A1.



Exhibit 8

This is a drone view from the northeast corner of Tract 10-A2. This is on the highest level of the property. The building site for this tract is in the foreground but the tract slopes down to Molt Road. At the cul de sac, Tract 9-A2 begins and its building site is about halfway down the length of the tract. Obviously, the views from these two tracts are magnificent. Tract 11 is to the left of Tract 9A2 on the slope to Molt Road.



Exhibit 9

This is a view from above Tract 9A2. On the far left, the curved road rounding the wooded hill, is Molt Road. Molt Road is lower than the hill and trees to the west, so the large valley to the west is not visible from the road. The other road on the left is Far Away Trail. To the right, Land Rush Lane comes down the hill and meets Far Away Trail. Just below that junction, in the glen surrounded by trees, is the building site for Tract 12A1.



Exhibit 10

This is a view from Tract 8A looking over the tracts served by Land Rush Lane. Tract 8 is on the high ground. Tract 14A is immediately below and has a similar view directly into the valley. Tract 13A1 is further down the hill on the left slope below, and Tract 15A1 is on the right slope, both at elevations that are higher than the lower tracts on the south side of Far Away Trail.



Exhibit 11

This view is taken from the north side of Far And Away on the high ground overlooking Land Rush Lane. Trach 5A is not marked but it is approximately the middle third of the foreground of the photo. Tract 1A is on the left. Tract 6A is on the right and extends much further south. Tract 5A has beautiful views of the valley.



Exhibit 12

Tract 7A is in the left foreground. The north portion of Tract 20A2 is in the lower right corner. The house under construction is on the uppermost point of Tract 21A. It likewise has great views of the valley. To the right of 21A is a section of Montana State Land.



Exhibit 13

This photo shows Tract 7A in the left foreground. The south portion of Tract 20A2 is shown in the center foreground and extends from the rimrocks of 7A on the left to the upper portion of Far Away Trail on the right. Tract 20A2 continues to the north up a beautiful canyon.

**VARIANCE FOR FAR AND AWAY ESTATES**

We are requesting two variances for the tracts described below:

Tax IDs:	Legal Descriptions	Acres
D04277	S15, T01 N, R24 E, C.O.S. 781, PARCEL 5A, 2ND AMD (20)	10.05
D13556	S15, T01 N, R24 E, C.O.S. 781, PARCEL 8A, 2ND AMD (20)	10.31
D13558	S15, T01 N, R24 E, C.O.S. 781, PARCEL 10A2, 3RD AMD (20)	12.88
D13559	S15, T01 N, R24 E, C.O.S. 781, PARCEL 11A1, 5TH AMD (22)	12.98
D13560	S15, T01 N, R24 E, C.O.S. 781, PARCEL 12A1, 5TH AMD (22)	12.16
D13563	S15, T01 N, R24 E, C.O.S. 781, PARCEL 15A1, 5TH AMD (22)	10.07
D13564	S15, T01 N, R24 E, C.O.S. 781, PARCEL 16A, 5TH AMD (22)	10.16
D13557	S15, T01 N, R24 E, C.O.S. 781, PARCEL 9A2, 3RD AMD (20)	8.01
D13565	S15, T01 N, R24 E, C.O.S. 781, PARCEL 17A, 2ND AMD (20)	11.18
D04273	S15, T01 N, R24 E, C.O.S. 781, PARCEL 1A, 2ND AMD (20)	10.93
D13562	S15, T01 N, R24 E, C.O.S. 781, PARCEL 14A, 2ND AMD (20)	10.34
D04278	S15, T01 N, R24 E, C.O.S. 781, PARCEL 6A, 2ND AMD (20)	10.02
D13561	S15, T01 N, R24 E, C.O.S. 781, PARCEL 13A1, 5THAMD (22)	10.14

**First Variance:**

Paragraph 7 of the GENERAL PROVISIONS (page 5 of the zoning restrictions) reads as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one half (1½) stories or twenty-five (25) feet in height.

We request a variance that would read as follows:

No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed two (2) stories or thirty-five feet in height.

## HARDSHIP

In order to explain the hardship created by the foregoing restriction, we need to provide some historical context. We are seeking a variance for all the Tracts listed with respect to above provision in the District 12 Zoning Regulations that was adopted in 1970 to preserve the area for residential use and to stop the proposed establishment of a bar/nightclub in Echo Canyon.

My sister, Constance R. Hertz, (now deceased) and my brother-in-law, James Hertz, (hereafter referred to as Jim) lived in a home on the South side of Molt Road a short distance to the east of the proposed bar/nightclub. According to Jim, there were only about six residences in Echo Canyon at that time, but the owners were universally opposed to a bar/nightclub. Most of the owners had children, and they were worried about drunk drivers, noise, and other possible trouble. And they wanted to preserve the residential nature of the area.

When the local residents and landowners in the area learned of the possibility that a tract along Charolais Street was the likely site of the bar/nightclub, they decided to take action. They petitioned to create a residential zoning district.

On Exhibit 1, attached, you will see on the Montana Cadastral Map the area of Echo Canyon near Charolais Street. That area is adjacent to the State Highway 302 label on the map. In that area, there are a number of tracts along the north side of Molt Road. Charolais Street branches off of Molt Road and then runs parallel to Molt Road before turning back to the highway further to the west. There are 12 or 13 tracts on each side of Charolais Street. The tracts appear to be 5 to 7 acres or so in size and are located in the narrow area between Molt Road and the north side of Echo Canyon.

With this layout, terrain and projected density, there were apparently concerns about views from those homes being blocked by larger homes. And so the residents in that area proposed a restriction that no building or structure should be hereafter erected to exceed one and one half (1½) stories or twenty-five (25) feet in height.

Unfortunately, and probably unintentionally, that restriction applies to any house built on any tract, however large, anywhere in Zoning District 12, regardless of the density of homes, the size of the tracts, or the terrain.

In researching height restrictions, I found that height limits are typically justified for the following reasons:

1. Protection from fire hazards.
2. Protection against aviation accidents.
3. Protection of view.
4. Protection of the character of the neighborhood.
5. Protection of light and air

See <https://www.planetizen.com/definition/height-limits>

My brother-on-law believes the only reason at that time for the height limitation of 1½ one and a half stories and 27 feet in height was to protect the views of the owners along Charolais Street. And this protection may have appeared necessary taking into account the density, layout and terrain along that street, in the narrowest part of the canyon.

But this concern appears to have been unique to that particular area of Echo Canyon. The remainder of the properties in Zoning District 12 west of Echo Canyon are almost universally larger in size, are not laid out in tracts that are on both sides of a street that is next to a highway, and are not located within the confines of Echo Canyon. The west portion of Zoning District 12 does not have the same density nor the same likelihood of a larger house blocking the views from other homes.

This is definitely the case with respect to the property for which we are now seeking a variance. Of course, we acknowledge that at the time this restriction was adopted, people did not know, and the Zoning Board did not know, what future subdivisions might look like – what the density, the layout, and the terrain might be. But when it becomes apparent that a particular development or area is not going to have the same problem as Charolais Street, then we believe a

variance is warranted so that residents are not precluded from building a larger home if they wish to do so.

At the time that Zoning District 12 was created, my parents, Hiram M. and Velma S. Ramirez were the owners of COS 781 (Document #590412), which was a single tract of 206 acres they had purchased from Charles Zimmerman in 1957. The easterly two thirds or so of that single tract were included within the boundaries of Zoning District 12. I have no idea why part of it was included and part excluded.

In 1974, after Zoning District 12 was created, my parents platted COS 781 into tracts – see COS 781, Amended (Document #966310). A copy of that plat is attached as Exhibit 2. You will see that there were 22 tracts, including tracts 1 through 5 which were 1.511 acres each and were situated along the north boundary immediately adjacent to McFarland Subdivision. My parents had 5 grandchildren, and they gave one of those tracts to each of them.

My parents are deceased but the property remains in the family. We call it Far And Away Estates, and we have reduced the number of tracts and made some changes in the roads, the layout, boundaries, etc. One major change was to eliminate the five 1.511 acre tracts. We did that for a number of reasons, including deference to those in McFarland Subdivision who would have been most affected by homes built on those five tracts. The grandchildren received ownership interests in the current Tracts 1A and 5A in return for giving up the small individual tracts.

The property currently has 19 tracts averaging more than 10 acres per tract. [On Exhibit 1 you will see the location of Far And Away Estates at the northwest corner of Zoning District 12.] Tract 9A2 is 8.01 acres, but all other tracts are more than 10 acres in size. Any home is going to be at least 500 feet or more from a neighbor's residence.

There are two distinct elevations in the property. Eight tracts are on the high land above the small rimrocks that run through the property from east to west. The views from these tracts are down into a wide valley, looking through the trees along the top of the rimrocks. The other eleven tracts are spread below the rimrocks looking downhill to the valley below.

I have also attached four exhibits to provide some other information on the building sites for the homes.

Exhibit 3 shows the lot numbers and street names. The north entrance is across from Shorey Road. The road to the right of the north of the entrance is Bermes Road while Canyon View Lane is to the left of entrance.

Exhibit 3A is a topographical view of the tracts. You will see that the building sites marked with an X are on the high ground, on top of the rimrocks. On the lower tracts, you will see the contours of the area, which slopes downward to the south boundary of the property. The valley continues to slope downward for some distance to the south.

The dots are the building sites for the tracts below the rimrocks. The scale in the lower right hand corner of the exhibit shows a black line that represents 300' of distance. The building sites are roughly at least 500 feet, and in many cases much more, from each other and are at ever lower elevations. The four building sites on the four tracts south of Far Away Trail are lower than the building sites for the seven tracts that are on the slopes closer to the base of the rimrocks. All the homes will have beautiful views of the surrounding area.

Exhibit 3B is a satellite view that is less helpful in showing the elevations, but it does show where the trees are located.

Exhibit 4 is a copy of the Montana Cadastral Map showing the actual elevations of the property. You will see at the northwest corner of the property, the elevation is 3795 feet. On tract 9A2, the elevation is slightly lower at 3782. But all the tracts above the rimrocks are high ground. You will also see that just below the rimrocks, the elevation drops to 3700 feet. That is the approximate elevation of the building sites on Tracts 13A1, 14A, 15A1, 18A, 19 and 20A-2. The elevation drops another 63 feet to 3637 feet at the southwest corner of the property, and then drops to 3600 feet on the property to the south of us. The valley bottoms out at that elevation about a half a mile south of our property line, and then begins to climb upwards for the next half mile or so to the back of the rimrocks that overlook Yellowstone Valley.

In short, the Tracts in Far And Away Estates will have views of this secluded valley for one mile or more to the south of the property. This valley is somewhat hidden – it is not visible from Molt Road.

To give you an idea of the size of the valley, the height of the rimrocks, and the beauty of the area shown in Exhibit 4, please look at the photos attached as Exhibits 5 through 13. [Note: In the photos, the roads in the lower areas are paved but the ground adjacent to the roads is dirt. These roads were paved in April of this year and the drone photos were taken shortly thereafter. These areas have been seeded and mulched since that time. They will soon look as nice as the paved roads on the upper lots.]

Because of the distances between homesites and the elevation differences as well, there are no issues with the views from the various building sites on the 19 tracts. Some homes will be able to see another home in the distance – but the other home will not be blocking the view of the valley. Moreover, while there will be views from the houses to the valley below, there are also 360 degrees of views – views looking east, north and west toward the rimrocks and other formations and trees in the area.

If there is no justification or need for “protecting the view” with respect to a particular property such as Far And Away Estates, there should be no need to show a hardship since there is no basis for the height restriction in that situation. However, there are hardships for those owners to have an arbitrary limit to the size, type and height of the home they can build when there is no significant interference with a neighbor’s view.

First, this requirement dramatically limits the design of the tract-owner’s home. One and a half story homes are all very similar in nature and appearance because of the fact that the “half” floor, which is essentially the attic of the home, generally must have a peaked roof and dormer windows in the roof so that the attic can be finished as living space. The only other alternative is a one story house with a huge footprint, which is substantially more expensive and disturbs more of the land.

Second, it costs more for the owner to get the same square footage in a 1½ story home than the owner could have in two story home. Building a story and a half

home with a particular square footage is more expensive than building a two story home with the same square footage. Let me explain.

When preparing for this presentation, I found a book on the internet from Home Planners Inc., entitled 1½ Story Homes. It has some valuable information.

The restrictions we have on Far And Away Estates require a home with 1600 square feet of area on the main floor but permit a two story home. This means a 3200 foot home can be built on the 1600 foot foundation and can be under the same roof. This is the most efficient, least costly way to get more space.

But with a 1½ story home, the usable attic space is less than the first floor space. For example, there are 13 floor plans in the book of 1½ story homes with 1600 to 1690 square feet on the main floor. (Copies of these floor plans are shown in Appendix 1, attached.) The average area of the ½ floor in these 13 plans, however, is only 1,001.6 square feet – an average of 617 square feet less than the main floor. Using this average of 617 feet as a benchmark, in order to get 3200 feet of space (as would be possible with a two story house), the first floor of the 1½ story would have to be increased by 617 feet. That extra 617 square feet is more expensive than it would be in a 2 story home because it would require some additional wall construction, more foundation and more roof over the first floor.

Third, if the owner wants to install solar panels or solar shingles, a 1½ story roof is not likely to be as efficient because the dormer windows will interfere with the roof's surface and cast shadows as well.

I have discussed these three points with an architect, and he has confirmed that these concerns are valid.

The focus at the time Zoning District 12 was created was clearly Charolais Street. But since the district was created, some two story houses have been built along Charolais Street and in a few other areas to the west. All are very attractive homes and they do not appear to have any substantial impact on the views from other homes. We are simply asking for a variance to enable us to permit the same to be done on the above described tracts.

And we believe that this fact shows that the current restrictions in question are too restrictive for large acreage tracts where no neighboring property is likely to be adversely affected by the variances that we are requesting.

The 1½ story/25 feet in height restriction to which we seek a variance creates a hardship for both the sellers and the buyers. The buyers are not getting to build the home they want, and the sellers are going to be receiving less value than these tracts have if buyers aren't getting what they want. Moreover, this will have a negative impact on Yellowstone County as well because it will substantially reduce taxable valuation.

We are definitely not seeking a special privilege - we are seeking reasonable treatment under the circumstances. We are seeking a result that anyone building a home on a tracts of larger acreages, where there is no problem with protecting a view, should not be required to build a 1½ story home. In fairness, the one and a half story height limitation should only apply where there is a situation where house are on smaller lots that are close together and where taller houses would, in fact, materially block the views of a neighbor.

#### ACCESSORY BUILDINGS.

##### Second Variance:

The second variance pertains to the height, the number of accessory buildings permitted, and the uses of the accessory buildings. I will explain below the reasons for the variance, but here is suggested language

Subject to the provisions of paragraphs 5 and 12 of the Far And Away Subdivision's Restrictions, an accessory building may also be used for athletic and recreational facilities, one accessory building may also contain a one-bedroom guest suite, and an accessory building may be 2 stories in height and may be designed and built for multiple permitted uses.

First, as to height, the zoning restrictions, on page 5, under General Provisions, paragraph 8, provide that "No building or structure nor the enlargement of any building or structure shall be hereafter erected to exceed one and one-half (1½) stories or twenty-five (25) feet in height." In other words, accessory buildings are treated the same as homes with respect to height.

Our restrictions permit accessory buildings to be 2 stories in height. We have the same concerns here as we do with respect to the First Variance. The height of accessory buildings is apparently limited for the same reason as the height of homes – blocking views. But as we have discussed previously, our tracts are large,

and the terrain is such that views of neighboring owners are not going to be blocked or materially affected. Moreover, to get the most square-footage and the lowest cost comes from building a two story structure rather than a 1½ story structure. We are, therefore, asking for a variance that would include permitting two-story accessory buildings for the same reasons we are requesting the First Variance pertaining to dwellings.

In addition, there are some ambiguities in the language of Zoning District 12 as to how many accessory buildings are permitted and what they can be used for. Here are the pertinent provisions that relate either directly or indirectly to the number of accessory buildings.

Paragraph 8, page 6, PERMITTED USES, paragraph 3, reads in pertinent part as follows:

1. Single –family dwelling with not less than 1000 square feet of ground floor area exclusive of porches and attached garages, but not including mobile homes, or structures wherein the primary living area is located below ground level.
2. Agricultural uses as defined in Section 4, and in connection therewith stables, barns, and corrals may be maintained, altered or erected; provided, however, that such buildings and structures be designed for such uses, and not used for any other purpose.
3. Accessory building incidental to the above uses and located on the same lot (not involving the conduct of a business) including one private garage for not more than four cars.
4. Home occupations.
5. Parks dedicated to the public.

With respect to Agricultural Uses in paragraph 4. DEFINITIONS, there are 5 categories: Crops, Raising of horses, Raising of cattle, Raising of chickens (“provided that adequate coop facilities are provided”), and Raising of sheep.

In paragraph 4, DEFINITIONS, on page 2, “Building, Accessory” is defined as “A building subordinate or supplemental to the main building on a lot and used for

the purposes customarily incidental to that of a main or principal building and located on the same lot.”

And paragraph 7, GENERAL PROVISIONS, subparagraph 3, states that “The distance between the accessory building and a dwelling shall not be less than eight (8) feet and between two accessory buildings not less than six (6) feet. “

Consequently, taking all of these provisions together, it appears that in Zoning District 12 there could be five or more accessory buildings – for example, a storage building incidental to the single family dwelling; stable and barn, for horses and/or cattle or sheep; a chicken coop for chickens; and a detached garage for not more than 4 cars.

Our restrictions, on the other hand, limit the number of accessory buildings to three. We believe that three accessory buildings are a sufficient number and are more cost-effective for the owners if the buildings can be two stories, rather than just 1½ stories. As explained above regarding the First Variance, the same square-footage can be obtained for a lower price with a 2 story building than a 1½ story building.

And fewer buildings, at less cost, can provide more uses if an accessory building is not limited to a single use, as is the case with agricultural uses and the detached garage under the current zoning restrictions. Under the zoning restrictions, for example, a portion of a horse barn or stable could not be used for extra storage for the home or the storage of a boat, camper, or recreational motor home – a separate accessory building would have to be built for these purposes.

We believe that these height and use limitations impose a hardship on purchasers of our tracts.

Apart from the additional costs that the height limitation would cause, we believe that the language of the zoning restrictions could lead to disputes and litigation over what uses are permitted. “Building, Accessory” is defined in Section 4, DEFINITIONS of the zoning restrictions as a “building subordinate or supplemental to the main building on a lot and used for the purposes customarily incidental and subordinate to the principal use or building. . . .” And an “Accessory Use” is likewise defined in section 4, DEFINITIONS, as a “use customarily incidental and subordinate to the principal use or building . . . .” With respect to a dwelling’s

accessory building, these definitions are somewhat uncertain and might lead to unintended violations of the zoning regulations.

For example, more recently, many new homes in Billings and elsewhere have provided a one-bedroom guest suite above a detached garage or other accessory building for guests or for a family member such as a widowed mother of one of the owners. But is this trend “customarily incidental” so as to satisfy the zoning restrictions?

Likewise, a basketball hoop attached to the exterior of a home or detached garage is quite common, but if an owner wants to have an accessory garage or building with a space for an indoor basketball hoop to use in the winter, is that “customarily incidental” so as to satisfy the zoning restrictions? That likewise is not clear.

For these reasons, we have tried to put language in our restrictions for Far And Away Estates to make more clear and certain what uses are permissible so that people do not run the risk of violating our restrictions. And we are asking for a variance to make these uses clear and certain as well. The uncertainty and the cost of contesting these matters is a hardship on all involved.

Here is the pertinent language from our Amended Restrictions, Covenants and Conditions:

In addition to one single-family residence, a maximum of three (3) accessory buildings – two (2) accessory buildings and one (1) garage -- are permitted on each tract or lot. An accessory building may be designed and used for horses, storage, an additional garage for not more than four vehicles, and/or a one-bedroom guest suite. An accessory building may also be designed and used for athletic and recreational facilities approved by the Plan Review Committee. Only one of the accessory buildings may have a one-bedroom guest suite. No other types of accessory buildings are permitted. However, the Plan Review Committee can, in its discretion, allow an accessory building to be designed and used for more than one of the permitted uses. An accessory building must not exceed 2000 square feet of ground floor area and two (2) stories in height.

And Paragraph 12 of our Restrictions includes language that states “a guest, other than a member of the immediate family of the owner, may not occupy a one bedroom suite in an accessory building for more than 15 days per year, and in no case can rent be charged for the use of the guest suite.”

Our restrictions permit only two horses and no other livestock or chickens. We permit a stable or barn, plus a corral, for those residents with horses, a detached garage for more not more than 4 cars, and an accessory building for some other recreational or athletic uses – for example an indoor basketball hoop or racquetball court. One of the accessory buildings can also have a one bedroom guest suite, and we permit an accessory building to have multiple uses.

For example, on our Tract 22A, which is not within the boundaries of Zoning District 12, the purchasers are putting in a swimming pool and want an accessory building that would be a “pool house” with restrooms, areas to change clothes, etc., and with a one-bedroom guest suite upstairs. They also want the garage for 4 vehicles but want one large garage that can also serve as an indoor area with a basketball hoop – not a full size or half size gym, but a place for the kids to shoot baskets in the winter.

It appears that the uses we permit in our restrictions may be permitted under Zoning District 12’s language in paragraph 4 as “customarily incidental to that of the main or principal building,” which in this case would be the home. But to be certain that these uses are acceptable, we are asking for a variance based on the provisions of Paragraphs 5 and 12 of our restrictions. As mentioned previously, we are suggesting the following language:

Subject to the provisions of paragraphs 5 and 12 of the Far And Away Subdivision’s Restrictions, an accessory building may also be used for athletic and recreational facilities, one accessory building may also contain a one-bedroom guest suite, and an accessory building may be 2 stories in height and may be designed and built for multiple permitted uses.

These are all reasonable uses for a residential subdivision of this nature.

If our experience in our Lone Eagle Subdivision is correct, we are not likely to have a situation where every owner of a tract wants three accessory buildings. For example, in Lone Eagle Subdivision in Section 9, T1N, R25E, PMM, north of the

airport and just east of Highway 3, there are 20 residences. It appears that four homes have three accessory buildings, five homes have two, four homes have one, and seven have no accessory buildings.

Again, with the large tracts in Far And Away Estates, accessory buildings will not be a problem for adjacent owners – their views will not be significantly affected because of the distance between building sites and the difference in elevations among the tracts. Moreover, we have a plan review committee that reviews all requests to build accessory buildings, and that committee is going to take into account the location, the appearance, and the interests of neighboring tracts.

We believe a variance based on and referencing the provisions of our restrictions will reduce the potential for disputes and litigation over permitted uses, give the owners more certainty and peace of mind about what they can do with their property, allow them to make the most efficient and cost-saving investments in accessory buildings, and allow them to enjoy the best and most appropriate use of their property.

We respectfully request a variance that confirms the accessory building height and uses as described above.

### **Conclusion**

Property should be developed and sold for its highest and best use. In our instance – the development of Far And Away Estates – we are trying to create a high-quality subdivision – similar to our Lone Eagle Subdivision, which has large tracts with paved roads.

Billings is growing, especially as a regional medical center. Many people considering a move to Billings want to be close to the conveniences of the City but have the feeling of living in the country. We think our property and the surrounding properties in Zoning District 12 are important in helping attract these people to Billings. But the restrictions from which we are seeking a variance are unnecessarily too limiting – these people will not be able to build the size or designs of the homes they want, or the kind of accessory buildings they want or need on these larger acreages.

And these variances will be good for Yellowstone County – larger homes and nice accessory buildings will be a substantial addition to the tax base. This harms no one and benefits everyone.

Therefore, we respectfully request that the Board grant the two variances described above.

Thank you for your consideration.

  
Jack Ramirez, Manager  
Yellowstone Farms, LLC.