

**REGULAR MEETING OF THE CARBON COUNTY PLANNING
BOARD**

MAY 16, 2023 TUESDAY 7:00 PM

**CARBON COUNTY PERSONAL SERVICE BUILDING
10 OAKES AVENUE SOUTH
RED LODGE, MT**

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. APPROVAL OF MINUTES OF PREVIOUS MEETING**
March 21, 2023
- D. PUBLIC HEARINGS**
Fallen Tree Subdivision
- E. REGULAR BUSINESS**
Fallen Tree Subdivision – Recommendation to Commission
- F. PETITIONS & COMMUNICATION FROM AUDIENCE**
- G. WRITTEN COMMUNICATIONS**
- H. REPORTS FROM PLANNING BOARD MEMBERS AND
COMMITTEES**
- I. STAFF REPORTS**
- J. ADJOURN**

Carbon County Planning Board
March Meeting
3-21-23

- A. Call Meeting to Order, 7:00 pm, Gordy Hill – Chairperson

- B. Roll Call
 - Present: Gordy Hill, Clinton Giesick, Dean Webb, Clint Peterson, Betsy Scanlin, Mike Hayes, Kim Ehrlich (by phone), Forrest Mandeville
 - Audience: see attached sign-in sheet

- C. Election of Officers
 - *Chairperson* – Gordy Hill. Nominated by Betsy. Clint second.
 - *Vice Chairperson* – Betsy Scanlin. Nominated by Dean. Clint second.
 - *Executive Secretary* – Clinton Giesick. Nominated by Clint. Betsy second.
 - All passed unanimously

- D. Approval of 12-15-22 Minutes
 - Dean moved. Mike second.
 - Motion passed unanimously

- E. Public Hearings
 - See Regular Business

- F. Regular Business
 - *Hurtt Variance Request*
 - 50 x 140 ft lot in Belfry
 - Construction of garage
 - Difficult to meet setback requirements
 - Rear and side setback of 5 ft being requested
 - Clint moved to recommend Commissioner’s approval. Dean second.
 - Motion passed unanimously
 - *Agri Organics Conditional Use Permit*
 - Compost facility 4.5 miles south of Laurel
 - Setback requirements met
 - Opposition from subdivisions in the vicinity
 - Concern about groundwater contamination

- Betsy Scanlin
 - Is fencing proposed in addition to the vegetated berm?
 - Will drainage swale and retention pond be lined?
 - A health issue could be present if groundwater is contaminated
- Mike Hayes
 - Fencing needs to be in place bordering residences
- Clint Peterson
 - Will there be ongoing well testing?
 - Are there height requirements for the vegetated berm?
 - Another piece of agricultural land is being lost
- Dean Webb
 - Developer should pay for 10 years of water testing
- Betsy moved to modify Condition #4 to replace vegetated berm with 8 ft tall privacy fence. Clint second. *Motion failed.*
- Clint moved to modify Condition #4 to include both vegetated berm and 8 ft privacy fence along residence borders. Mike second. *Motion passed.*
- Clint moved to modify Condition #7 to include the operation plan provided by the applicant. Also included will be the restriction of dead animal carcasses. Dean second. *Motion passed.*
- Clint moved to recommend Commissioner's approval subject to conditions and findings as modified. Betsy second. *Motion passed.* 4 yes. 3 no.

G. Audience Communication

- *Agri Organics Conditional Use Permit*
 - Tim Moseman
 - Dead cattle are piled at the proposed location
 - Unpleasant views
 - Dust, flies, noise
 - Gary Barnhart
 - Concerned about water quality
 - Will DEQ enforce water testing?
 - Sierra Canfield
 - Truck traffic concern
 - Compost piles are close to residential fence lines
 - Dust concern
 - Water contamination concern
 - Mary Hust
 - Suffers from asthma – dust makes it worse
 - Odor coming from dead animal carcasses on site
 - Dead carcasses attract coyotes
 - Stephanie Valentine
 - Horrible odor from dead animal carcasses
 - Dogs drag dead animal parts into yard
 - Wade Bennett
 - Water quality concern

- Shawna Klenk
 - Dead animal odor is affecting further away homes as well
- Ron Stricker
 - Compost site is solid gravel, allowing groundwater contaminants to permeate through
 - A vegetated berm will be useless

H. Written Communication

- Dan and Colleen Timmons opposition letter
- Opposition Portfolio

I. Committee Reports

- Carbon County Conservation District
 - A large amount of 310 Permits are still being received for rip-rap projects pertaining to 6-13-22 flooding

J. Staff Reports

- None

K. Adjourn Meeting

- 9:00 pm

CARBON COUNTY
Planning Office
P.O. Box 466, Red Lodge, MT 59068
Main: (406) 446-1694
Fax: (406) 446-2640

PROJECT MEMORANDUM

TO: Members of the Carbon County Planning Board
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: May 5, 2023
RE: Fallen Tree Subdivision Preliminary Plat Application–Staff Report and Findings

REQUIRED PLANNING BOARD ACTION: Review, receive public comment, and recommendation to approve, conditionally approve, or deny the proposed preliminary plat.

RECOMMENDATION: **Approval with Conditions**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments and all of the information presented, I hereby move to recommend approval of the Fallen Tree Subdivision with the findings and conditions included in the project memorandum.*

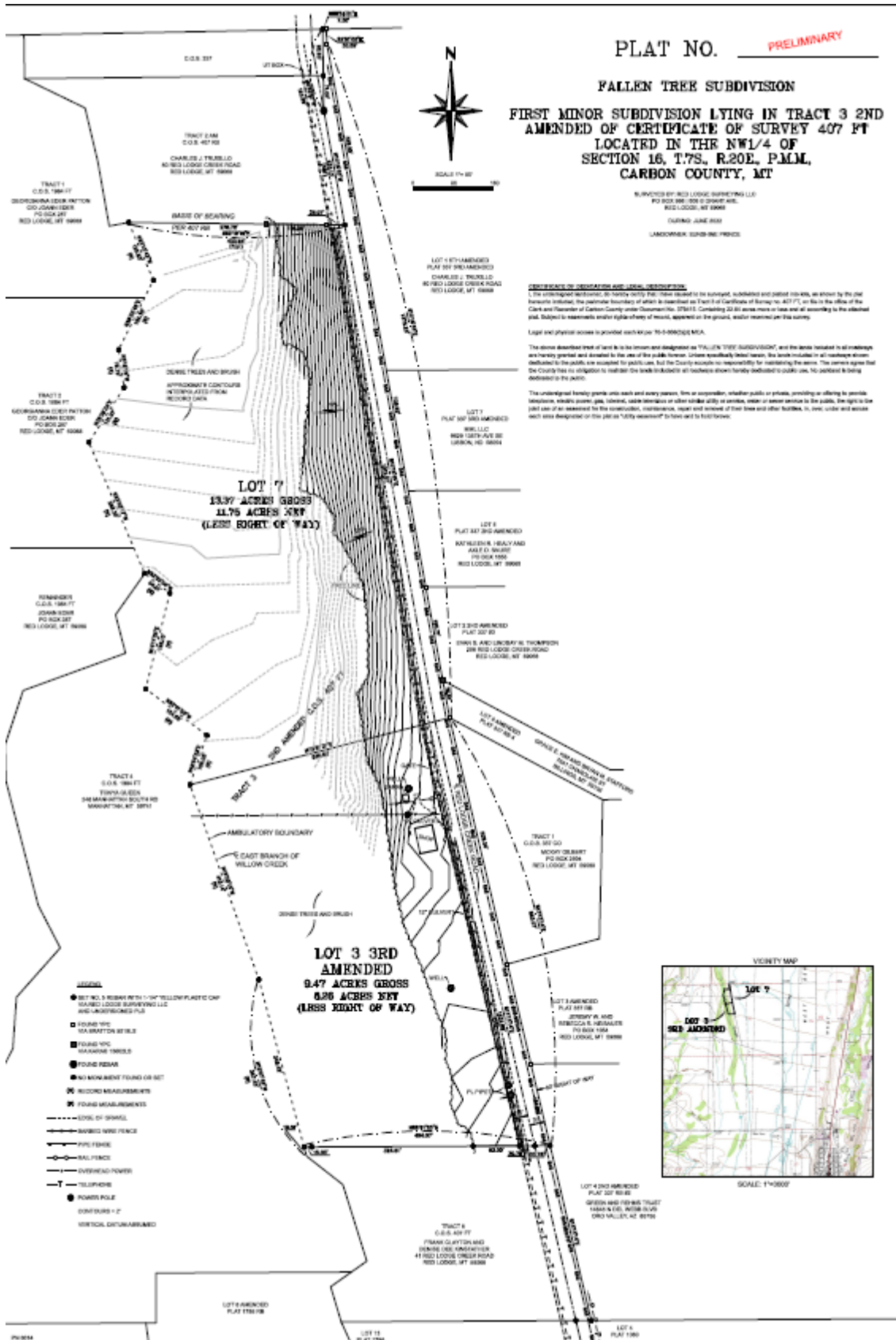
Project/Application Summary:

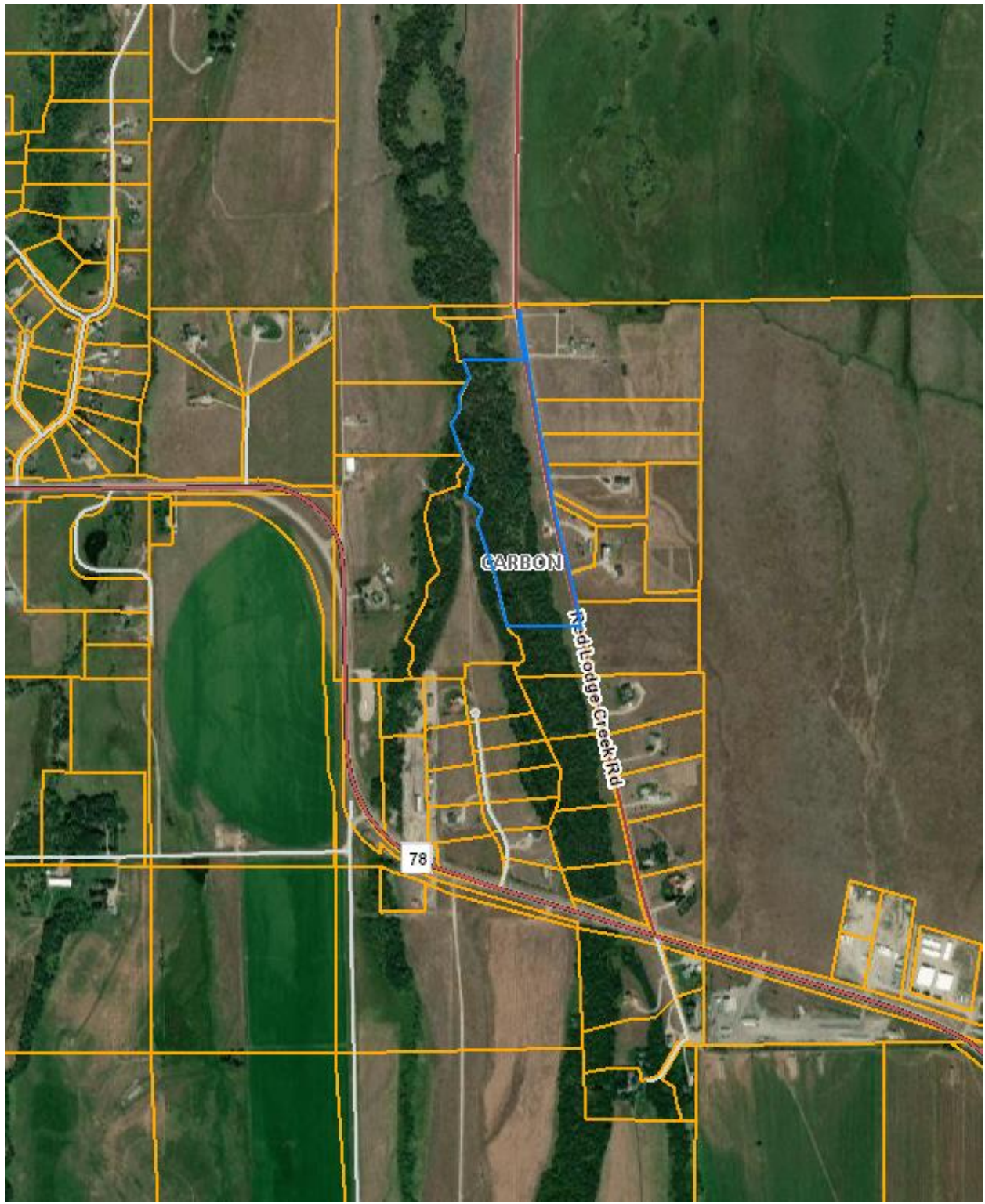
Red Lodge Surveying, on behalf of Sunshine Prince, has submitted a preliminary plat application for a two-lot subdivision. Beartooth Engineering is providing engineering services for the proposed subdivision. The subdivision area is approximately 22 acres with the new lots being 13.37 and 9.47 acres in size. The property is located on Red Lodge Creek Road, approximately .5 miles north of the intersection with Highway 78. The subject property has resulted from a tract that has had more than five exempt parcels created from it since 1973, so the subdivision does not qualify for review as a first minor subdivision and must be reviewed as a major subdivision.

The property is legally described as Tract 3 2nd Amended of Certificate of Survey 407 FT, located in the NW ¼ of Section 16, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

Required Planning Board Action:

Following a public hearing, the Planning Board shall make a recommendation to the County Commission to approve, conditionally approve, or deny the preliminary plat and variance request. The Planning Board may recommend conditions for approval intended to ensure compliance with the Subdivision Regulations and to mitigate any anticipated impacts of the subdivision.





Proposed Subdivision Location (Blue) and Vicinity

Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

a. Relevant evidence relating to the public health, safety, and welfare

Each lot will utilize individual well and drainfield systems. There is an existing well and septic on Lot 3 3rd amended. DEQ review and approval is required and appears to have been obtained (E.Q. # 23-1538).

Access is provided by Red Lodge Creek Road, which is a County road. There are many approaches from the road in the area which has seen a lot of small scale subdivision over the past few decades.

b. Summary of Probable Impacts

Except where exempt by state law, all subdivisions must be reviewed for the specific, documentable, and clearly defined impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

- Effect on agriculture: The area in which the subdivision is located consists of residential and agricultural lands. The property primarily consists of heavily vegetated slopes to Willow Creek and flat areas adjacent to the road. There is no prime farmland on the property and the site has not recently been utilized for grazing.

Finding: Because the subdivision is adjacent to similar uses and no prime agricultural land will be removed from production, there should be minimal adverse impacts on agriculture as a result of this subdivision.

- Effect on agricultural water user facilities: There are no irrigation ditches within the proposed subdivision. Water rights abstracts submitted with the subdivision application indicate there are two ground water rights associated with the property, one of which indicates it is for domestic use, and the other for “other purpose”.

Finding: Because there are no irrigation ditches on the property and no agricultural water rights associated with the subdivision, there should be minimal adverse impacts on agricultural water user facilities as a result of this subdivision.

- Effect on local services: The Carbon County Sherriff’s office will provide law enforcement services to the subdivision. According to documents provided in the subdivision application, Sheriff Josh McQuillan reports that adequate law enforcement can be provided to the subdivision with existing personnel and equipment. A response time would be 15-20 minutes in most circumstances.

Finding: This subdivision will have minimal adverse impacts on law enforcement, since services can be provided using existing personnel and equipment.

The Red Lodge Fire District provides fire protection in the area. Deputy Chief Tim Ryan indicated in an email included in the subdivision application that the Fire Control and

Prevention Plan submitted as part of the subdivision application is adequate. The Fire Control and Prevention Plan should be filed with the subdivision (Section V-A-21).

Finding: Filing and following the Fire Control and Prevention Plan should mitigate increased fire risk associated with this subdivision.

Additional use of the gravel County road may increase dust and maintenance complaints. This has been a growing area of concern for the County. Subsequent divisions of previously subdivided lots create additional impacts on the road system without being subject to the level of review of a larger subdivision. New residents should be aware that the County does not have plans to chance the maintenance or construction of the road.

Finding: Complaints about the road surfacing may increase as a result of this subdivision.

Beartooth Electric Cooperative provides power in the area and reports the ability to serve the site. Northwestern Energy reports the ability to provide the subdivision with natural gas via facilities along Red Lodge Creek Road. Utility easements should be shown on the final plat per section V-A-15.a., and the standard utility language should be placed on the final plat, per section V-A-15.h. of the Subdivision Regulations: “The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as “Utility Easement” to have and hold forever.”

Finding: There will be no significant adverse impacts on utility providers if utility easement are shown on the plat and the standard utility easement language is provided.

The Red Lodge School District provides busing to the area between Creek Hill Lane and Red Lodge Creek Road and can accommodate students in the subdivision. Due to the small scale of the subdivision, it is not anticipated that there will be a large adverse impact on school facilities.

Finding: There is not anticipated to be any adverse impacts on school facilities as a result of this subdivision.

- Effect on the natural environment: Septic/drainfield systems will be utilized for each lot. Individual wells will serve each lot. DEQ review is required and appears to have been obtained (E.Q. # 23-1538).

The water right review letter from DNRC submitted as part of the subdivision application indicates that Lot 3 3rd Amended will be assigned 5.5 acre feet and Lot 7 will be assigned 4.5 acre feet. Additional water rights will not be required.

Finding: New water, wastewater, stormwater drainage, and solid waste disposal will not have an adverse impact on the natural environment if DEQ and County Sanitarian review and approval is required to be obtained prior to final plat.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated September 13, 2018, though the year appears to be a misprint as emails submitted with the application indicate the inspection was done in 2022. The report indicates there are small amounts of noxious weeds in willows along Willow Creek. Specifically spotted knapweed, houndstongue, absinth wormwood, and Canada thistle were identified. No weed bond was required by the Weed District.

Finding: There should be minimal impacts on the natural environment due to the minimal proliferation of weeds on the site.

- Effect on wildlife: Wildlife does frequent the area. However, since the project is in close proximity to existing similar development, no significant adverse impacts on wildlife is anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife is anticipated due to the proximity of existing similar development.

- Effect on wildlife habitat: No critical wildlife habitat has been identified on the property. The site is not identified as sage grouse habitat by the Montana Sage Grouse Habitat Conservation Program.

Finding: There should be no significant impact on wildlife habitat since there is no identified critical wildlife habitat on the property.

- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area. See discussion and findings under Effect on Local Services.

The applicant submitted a Fire Control and Prevention Plan indicating recommendations and requirements relating to fire protection, which should be filed with the subdivision (Section V-A-21). Deputy Fire Chief Tim Ryan indicated the Plan was acceptable.

See also the discussion and findings under Effect on Local Services.

c. Whether the application and plat conform to the provisions of the following:

- i. The Montana Subdivision and Platting Act: The Plat has been prepared and processed in accordance with the Montana Subdivision and Platting Act (MSPA). The final plat should include a notation that each lot has legal and physical access (76-3-608(3)(d), MCA, and Section III-B-11.g.v of the Carbon County Subdivision Regulations).

Finding: Upon compliance with the recommended conditions of approval and adherence to the process outlined in statute, the subdivision will have complied with the MSPA.

- ii. Compliance with Survey Requirements: The final plat must be in compliance with the requirements of Title 76, Chapter 3, Part 4, MCA, as well as Uniform Standards for Final Subdivision Plats (24.183.1107, ARM). A requirement that, prior to filing, the plat be submitted to the County's Examining Land Surveyor (ELS), and that any comments of the ELS be addressed will ensure survey requirements are followed.

Finding: Upon review by the ELS and the addressing of any comments thereof, survey requirements will have been adhered to.

- iii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, will conform to the requirements of the adopted Subdivision Regulations.

The final plat must be substantially similar to the preliminary plat application, except as modified by conditions. If the final plat differs substantially from the preliminary plat, additional review may be required (Section III-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section III-B-12 states that a preliminary plat approval is in force for two years. If a final plat is not filed within that timeframe, an extension must be granted or a new application submitted. The County is under no obligation to grant such an extension.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, even if not specifically discussed in this memorandum.

Finding: To ensure compliance with the Subdivision Regulations, conditions should be required to ensure the final plat is substantially similar to the preliminary plat and plans, that the final plat is filed within two years of preliminary plat approval, and that the final plat be submitted in conformance with the Subdivision Regulations.

- iv. Applicable Zoning Regulations: The Carbon County Development Regulations require a Group 1 Development Permit for residential construction. A Development Permit is required to be obtained prior to development.

Finding: The application complies with the Development Regulations to the extent possible. Necessary permits will need to be obtained prior to development and will be evaluated at that time.

- v. Other regulations in effect in the area of the proposed subdivision: There are no other known regulations are in effect to which the subdivision would be subject.

Finding: There are no known other regulations with which the subdivision is required to comply.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: DEQ approval is required prior to final plat, as all

lots are under 20 acres. (Sections III-B-11.C.ii and V-A-11, 12,13, and 14 of the Carbon County Subdivision Regulations).

Finding: DEQ review and approval of the subdivision should be a condition of final plat approval.

- vii. Whether the subdivider has demonstrated that there is an adequate water source and at least one are for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more: No proposed lots are over 20 acres.

Finding: There are no lots over 20 acres in the proposed subdivision.

d. Compliance with Growth Policy:

State law, 76-1-605, MCA, requires that after the adoption of a growth policy, the governing body must be “guided by and give consideration to the general policy and pattern of development set out in the growth policy” in the “authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities; authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and adoption of zoning ordinances or resolutions.” However, statute also states that “A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law. A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy [...]” It is, though, beneficial to examine the proposed subdivision in consideration of the adopted growth policy.

Carbon County adopted the 2020 Growth Policy in March of 2020. Chapter 6 contains goals and objectives for the implementation of the Growth Policy. The following goals and objectives may be relevant to the proposed subdivision:

- Objective 1.4: Encourage development in areas that are not in agricultural production
 - 1.4.A. As authorized by the state legislature in 2003, in 76-3-509 MCA, formulate and adopt regulations to encourage cluster development for those developments that meet the definitions.
- Objective 1.7: Direct growth to existing communities, incorporated towns and cities, or platted unincorporated places.
 - 1.7.A. Explore the potential for future land use mapping in areas immediately adjacent to existing communities
 - 1.7.B. Discourage development within the wildland-urban interface.
- Objective 4.1: Direct development to existing communities.
 - 4.1.A. Coordinate the review of subdivision and development permit applications within one mile of incorporated community boundaries, or in any cases where municipal services are being requested.

e. Planning Staff Recommendation:

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision is in compliance with the Montana Subdivision and Platting Act and the adopted Subdivision Regulations.

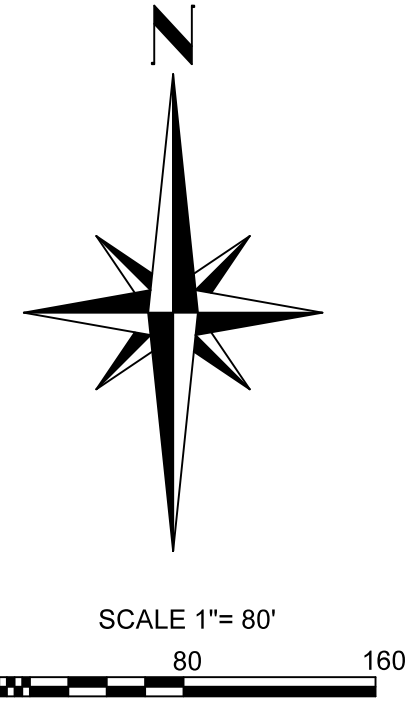
In consideration of the findings included in this Memorandum, Planning Staff recommends approval of the Fallen Tree Subdivision pursuant to the following conditions (Section references are to the Carbon County Subdivision Regulations unless otherwise noted):

1. Filing of the final plat shall be subject to the review and approval by the Montana Department of Environmental Quality and Carbon County Sanitarian, as appropriate, for water, wastewater, solid waste, and stormwater drainage provisions. (Sections III-B-11.C.ii and V-A-11, 12,13, and 14; Effect on the Natural Environment; Effect on Public Health and Safety)
2. The Fire Prevention and Control Plan shall be filed with the subdivision. This Plan should reference the hydrant, it's location, and design criteria. (Section V-A-21; Effect on Local Services; Effect on Public Health and Safety)
3. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
4. The final plat must include the following statement: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric, power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of the lines and other facilities, in, over, under and across each area designated on this plat as "Utility Easement" to have and hold forever." (Section V-A-15.h; Effect on Local Services)
5. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section III-B-11.g.v; Compliance with the Montana Subdivision and Platting Act)
6. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section III-C-3.b.vi; Compliance with Survey Requirements)
7. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section III-C-5.b; Compliance with the Subdivision Regulations)
8. The final plat shall be submitted within two years of the date of preliminary plat approval, or an extension(s) to the approval period obtained. (Section III-B-12; Compliance with the Subdivision Regulations)
9. The final plat shall be prepared and reviewed in accordance with Section III-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

PLAT NO. PRELIMINARY

FALLEN TREE SUBDIVISION

FIRST MINOR SUBDIVISION LYING IN TRACT 3 2ND AMENDED OF CERTIFICATE OF SURVEY 407 FT LOCATED IN THE NW1/4 OF SECTION 16, T.7S., R.20E., P.M.M., CARBON COUNTY, MT



SURVEYED BY: RED LODGE SURVEYING LLC
PO BOX 986 | 606 S GRANT AVE.
RED LODGE, MT 59068
DURING: JUNE 2022
LANDOWNER: SUNSHINE PRINCE

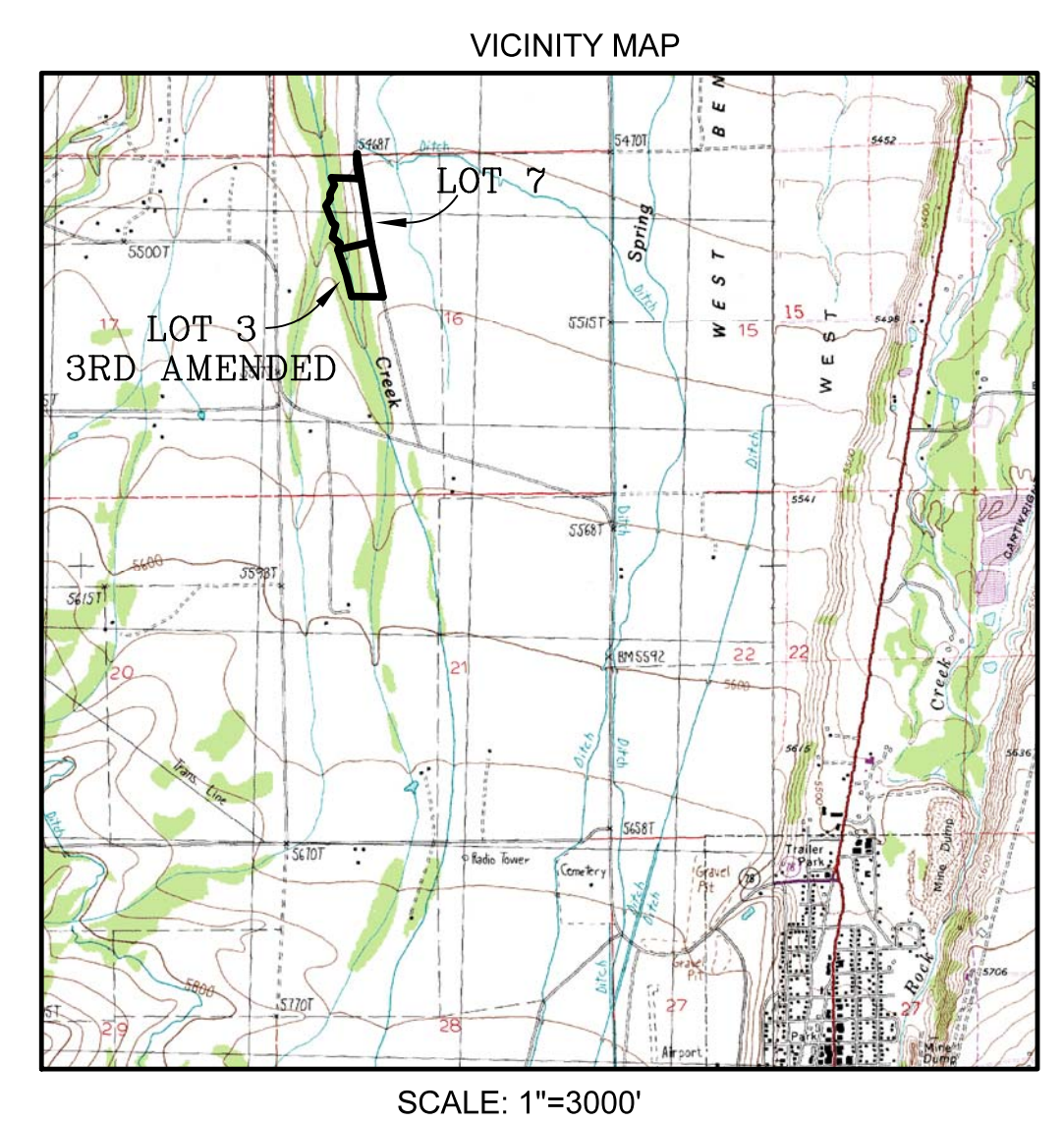
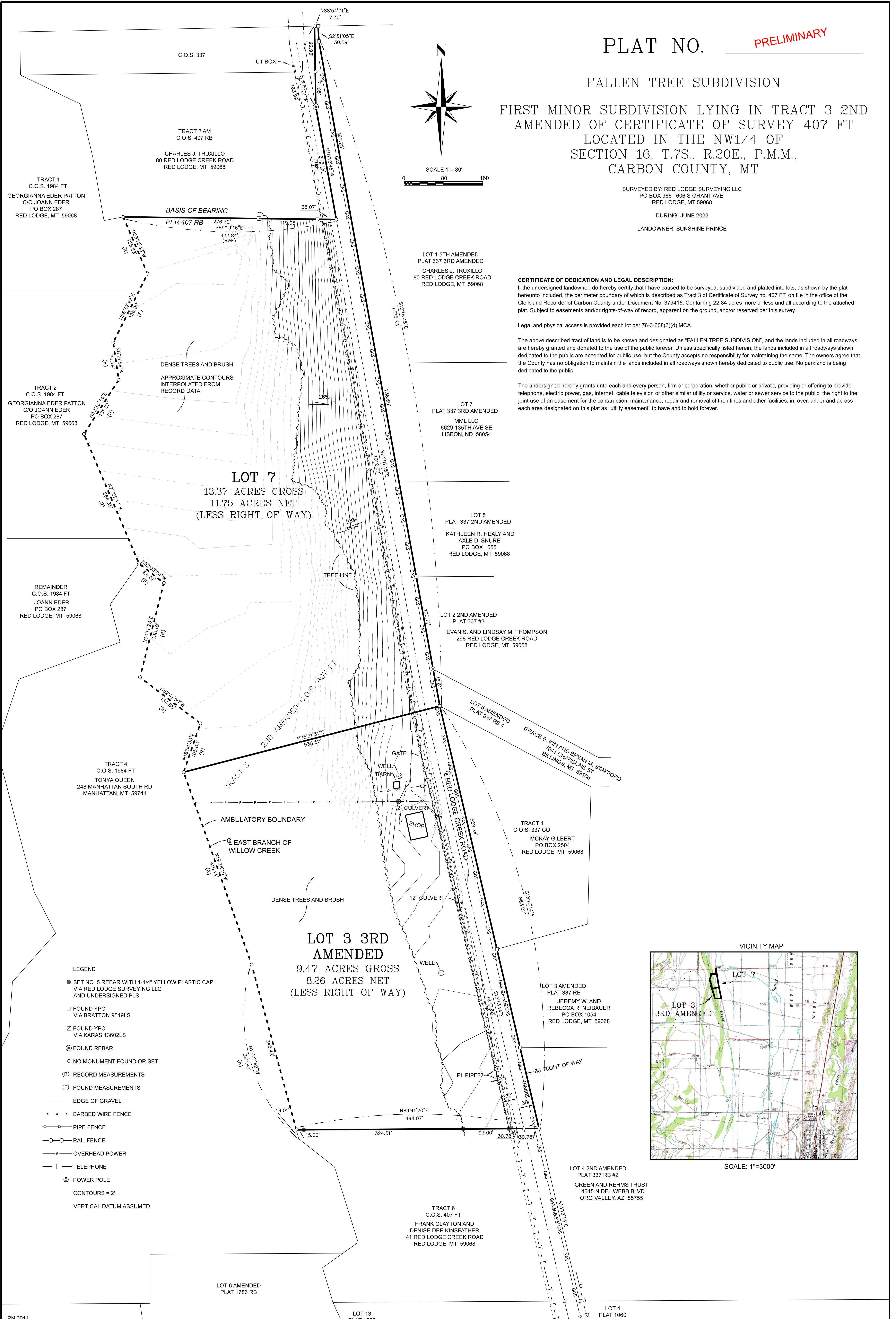
CERTIFICATE OF DEDICATION AND LEGAL DESCRIPTION:

I, the undersigned landowner, do hereby certify that I have caused to be surveyed, subdivided and platted into lots, as shown by the plat hereto included, the perimeter boundary of which is described as Tract 3 of Certificate of Survey no. 407 FT, on file in the office of the Clerk and Recorder of Carbon County under Document No. 379415. Containing 22.84 acres more or less and all according to the attached plat. Subject to easements and/or rights-of-way of record, apparent on the ground, and/or reserved per this survey.

Legal and physical access is provided each lot per 76-3-608(3)(d) MCA.

The above described tract of land is to be known and designated as "FALLEN TREE SUBDIVISION", and the lands included in all roadways are hereby granted and donated to the use of the public forever. Unless specifically listed herein, the lands included in all roadways shown dedicated to the public are accepted for public use, but the County accepts no responsibility for maintaining the same. The owners agree that the County has no obligation to maintain the lands included in all roadways shown hereby dedicated to public use. No parkland is being dedicated to the public.

The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, internet, cable television or other similar utility or service, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as "utility easement" to have and to hold forever.



- LEGEND**
- SET NO. 5 REBAR WITH 1-1/4" YELLOW PLASTIC CAP VIA RED LODGE SURVEYING LLC AND UNDERSIGNED PLS
 - FOUND YPC VIA BRATTON 9519LS
 - ▣ FOUND YPC VIA KARAS 13602LS
 - FOUND REBAR
 - NO MONUMENT FOUND OR SET
 - (R) RECORD MEASUREMENTS
 - (F) FOUND MEASUREMENTS
 - - - - - EDGE OF GRAVEL
 - x-x-x-x- BARBED WIRE FENCE
 - PIPE FENCE
 - RAIL FENCE
 - - - - - OVERHEAD POWER
 - T - TELEPHONE
 - ⊙ POWER POLE
 - CONTOURS = 2'
 - VERTICAL DATUM ASSUMED