

CARBON COUNTY
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PROJECT MEMORANDUM

TO: Carbon County Board of County Commissioners
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: April 20, 2022
RE: Amended Plat of Lot 26, Canyon Ranches Estates Subdivision Preliminary Plat Application–Staff Report and Findings

COMMISSION ACTION: Review, receive public comment, and action to approve, conditionally approve, or deny the proposed preliminary plat.

RECOMMENDATION: **Approval with Conditions (Planning Board changes in red strikethrough/underline)**

RECOMMENDED MOTION: *Having reviewed and considered the application materials, project memorandum, public comments, Planning Board Recommendation, and all of the information presented, I hereby move to **approve** of the Amended Plat of Lot 26, Canyon Ranches Estates Subdivision, with the findings and conditions included in the project memorandum.*

Project/Application Summary:

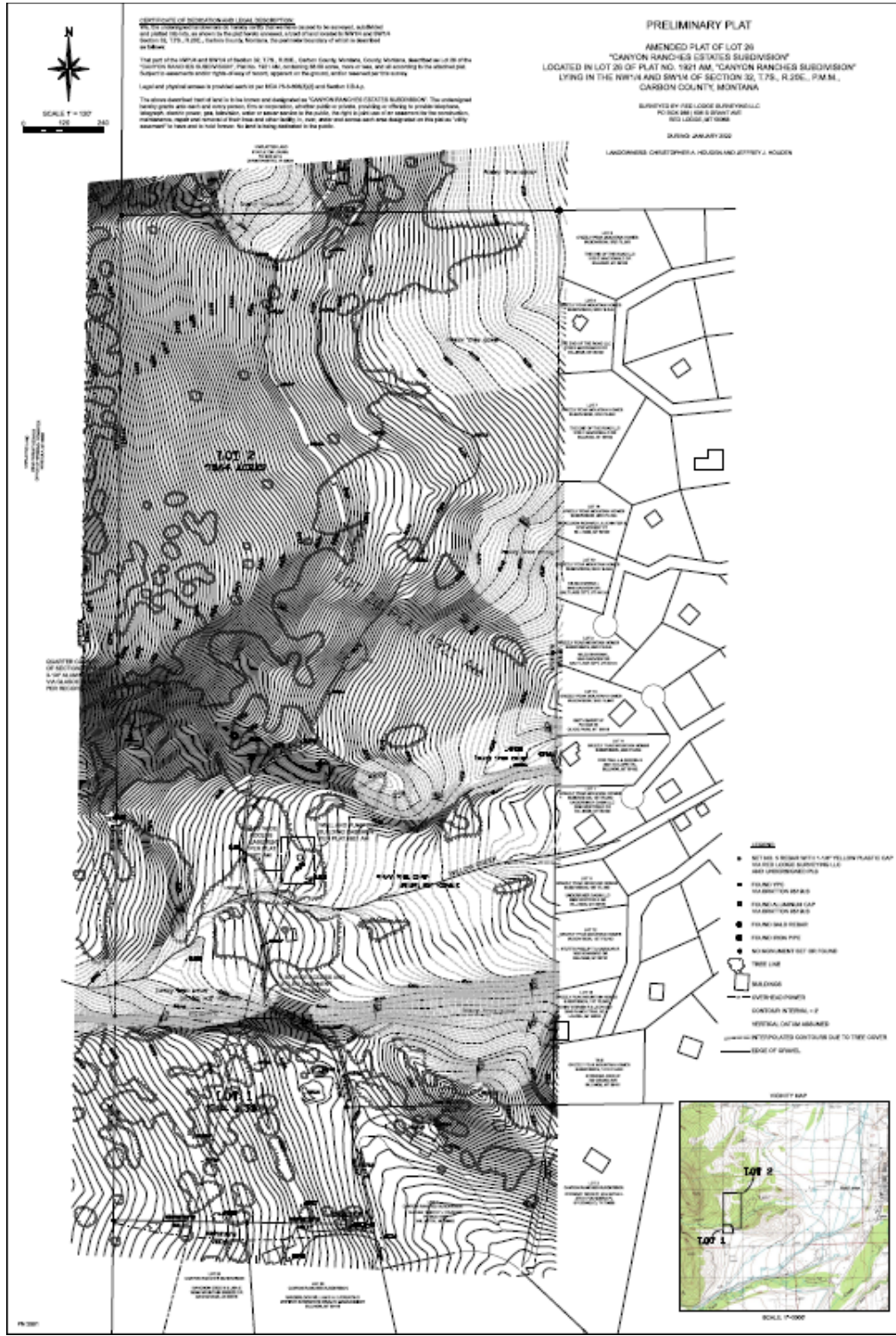
Interstate Engineering, on behalf of Christopher and Jeffrey Houden, has submitted a preliminary plat application for a two-lot subsequent minor subdivision. The subdivision area is approximately 88.58 acres; proposed new lots will be approximately 10.04 and 78.54 acres in size. The subdivision is Lot 26 of a previously platted subdivision, Canyon Ranches Estates Subdivision. Therefore, this subdivision is a subsequent minor subdivision, which is reviewed as a major subdivision.

The subject property is located on Madison Lane, a private road, which accesses on to Palisade Campground Rd approximately 1,500 feet south of this subdivision and one mile west of the intersection of Palisade Campground Rd and Ski Run Rd. The property is legally described as Lot 26, Canyon Ranch Estates Subdivision, Plat 1921 AM, located in Section 32, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

Required County Commission Action:

Under the adopted Carbon County Subdivision Regulations, following a public meeting, the Commission shall approve, conditionally approve, or deny the preliminary plat within 60 working days of a determination of sufficiency. The application was determined to be sufficient on March 9, 2022, so a decision must be reached by June 2, 2022.

The basis for the Commissioners’ decision is whether the proposed subdivision application, the preliminary plat, the Planning Board’s comments and recommendation, and any additional information authorized by law demonstrates that the proposed subdivision would meet the requirements of the Montana Subdivision and Platting Act and the Carbon County Subdivision regulations.



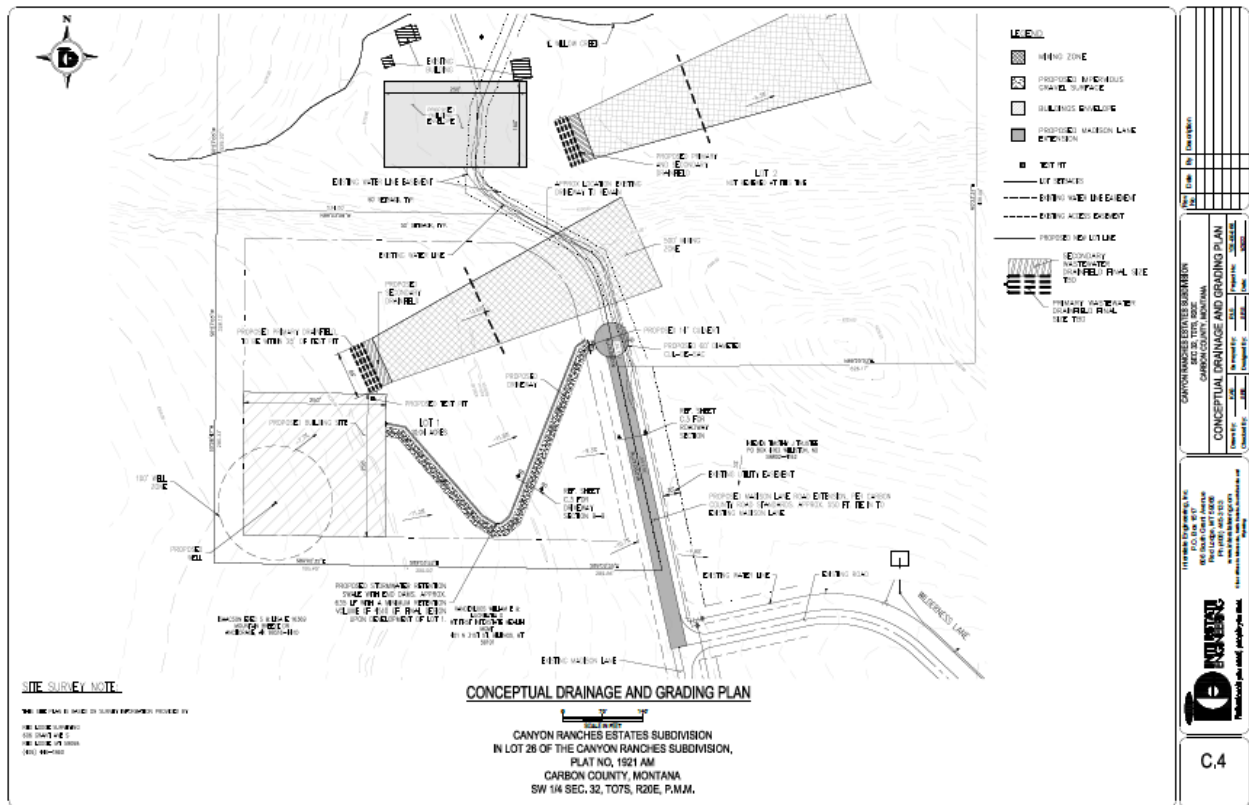
Subdivision Regulations – Compliance Review/Findings Summary: (Section references are to the Carbon County Subdivision Regulations unless otherwise noted)

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

The subdivision is located in a high fire hazard area. Concerns exist about ingress and egress to the site, as well as the high amount of fuels present. Conditions, pursuant to the requirements in the Subdivision Regulations, are recommended to help mitigate this concern.

Septic and drainfield systems are proposed for each lot. Lot 1, being less than 20 acres in size, is subject to DEQ review and approval while Lot 2 is subject to County Sanitarian review and approval. A new well will be utilized for Lot 1. Lot 2 proposes to an existing public water system that serves Canyon Ranches Estates Subdivision.

Access is provided by Madison Lane, a private road maintained by the Canyon Ranches Subdivision Homeowners’ Association. The road is gravel surface and provides access to Palisade Campground Road.



Proposed Site Plan

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 site (approximately 88.58 acres) is not currently in agricultural production, and is not classified as prime farmland according to the USDA. Surrounding property to the south and east has already been subdivided. There is US Forest Service land to the west and large tract grazing/forest land to the north. Lot 2 will be of sufficient size (78.54 acres) to allow some agricultural practices to continue. There should therefore be minimal adverse impact on agriculture as a result of this subdivision.
- Effect on agricultural water user facilities: The applicant reports that there are no known agricultural water rights associated with the subject property. Willow Creek does run the property and provides downstream irrigation water.
- Effect on local services: The Carbon County Sheriff's office will provide law enforcement services to the subdivision. Sheriff McQuillan has indicated that adequate law enforcement can be provided with existing personnel and equipment. The anticipated response time is 15-20 minutes.

The Red Lodge Fire District provides fire protection in the area. Chief Tom Kuntz notes that's this is a subsequent minor subdivision in a high fire hazard area, and as such the subdivision is required to comply with the mitigation requirements for major subdivision in high fire risk areas as required in the Subdivision Regulations Section V-A-21. There is an existing 30,000 dry hydrant serving Canyon Ranches Estates Subdivision located on Wilderness Lane, within .3 miles any proposed structure within this subdivision. The Subdivision Regulations require a 30,000 gallon water source to be located not more than one half road mile from a proposed structure. This hydrant should be tested to ensure proper operation. The cul-de-sac and turnaround size should be approved by the fire department prior to final plat. Covenants should be prepared ~~the-that~~ detail building restrictions per fire department requirements and recommendations and filed with the final plat.

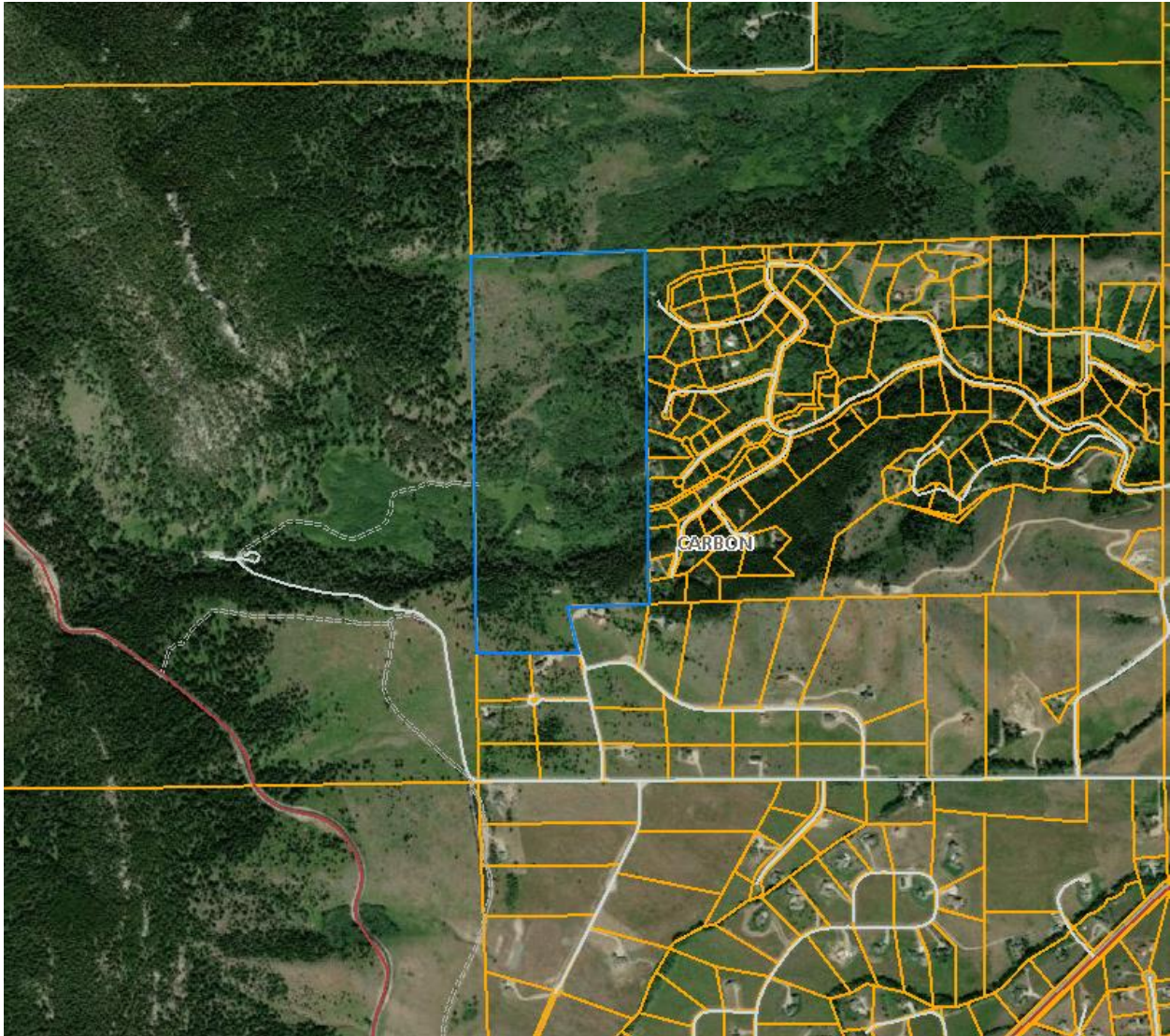
Deputy Disaster and Emergency Services Coordinator, Fire Warden, and GIS Coordinator Tom Kohley noted concerns with ingress and egress and fire suppression efforts. Mr. Kohley notes that this area would be a "critical location to stop the progression of fire into the Grizzly Peak Subdivision" were there to be a fire in the Forest Service lands to the west. See discussion under "Effect on public health and safety".

Beartooth Electric Cooperative provides power in the area and reports the ability to serve lots 1 and 2. However, extra easements may be needed depending on the location of existing underground power. 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."

- Effect on the natural environment: New septic/drainfield systems are proposed for each lot. Lot 1 will utilize a new well, while Lot 2 will tie into an existing public water system. Review and approval of new septic, well, solid waste, and stormwater drainage is required by the Montana Department of Environmental Quality (DEQ) for Lot 1, and by the Carbon County Sanitarian for Lot 2. (See Sections III-B-11.c, V-A-11 through 14, and MCA 76-3-622).

The applicant submitted a preliminary Carbon County Weed Management Plan, which indicates there are 50 acres infested with noxious weeds, 20 of which have been sprayed. Weeds identified on the property are spotted knapweed, hoary alyssum, absinth wormwood, and Canada thistle. The Carbon County Weed District Coordinator Brian Ostwald inspected the property in September of 2021 and required a Weed Bond of \$9,000. In addition to the listed weeds, the inspection report noted that timbered areas have colonies of houndstongue. The bond shall be paid to the satisfaction of the Weed District prior to final plat approval. (See Section V-A-17).

Willow Creek runs through the proposed Lot 2. The applicant submitted a professional paper dated January 9, 2012 authored by Montana Fish, Wildlife and Parks (FWP) Biologists Chris G. Clancy, Mark A Deleray, and Scott T. Opitz which recommends a total building setback of 200 feet from a perennial stream (150 foot vegetated buffer and 50 foot building setback). The basis for the setback was that scientific studies suggest 50 feet will protect the vegetated buffer, it is a reasonable distance for a backyard, and it provides defensible space from wildfires. The applicant has indicated that FWP guidance was taken into account for setbacks and the building envelopes shown on the submitted site plan indicate buildings will be setback from Willow Creek. Section V-A-5 of the Carbon County Subdivision Regulations states that construction setbacks from perennial streams and water bodies may be established, but that mitigation measures proposed by the subdivider shall be considered prior to the establishment of such a setback. Due to potential impacts on the natural environment, and based on Section V-A-5 of the Subdivision Regulations and the opinion of the aforementioned FWP biologists, and in consideration of the applicant's indicated building envelopes on the site plan, the building envelopes should be shown on the final plat.



Subdivision (blue) and Vicinity

- Effect on wildlife: Moose, elk, bear, mountain lion, etc. exist in the vicinity of the proposed subdivision. There are also smaller animals such as rabbits, porcupines, skunks, foxes, coyotes, squirrels, etc., and a variety of birds. This subdivision will increase the human presence in the area only slightly. The applicant indicates that designating building pads will minimize areas of disturbance. See above for a discussion of building envelopes in relation to stream setbacks.
- Effect on wildlife habitat: No critical wildlife habitat has been identified on the property. There is some riparian habitat, but this does not provide a habitat for rare or endangered species. The site has not been identified as sage grouse habitat.
- Effect on public health and safety: The Carbon County Sheriff's office provides law enforcement service in the area and reports no concerns with the subdivision.

The subdivision is located within the Red Lodge Fire District, which has indicated the subdivision is a high fire hazard area. Of special concern is the access to and from the site. Palisades Campground Road is a dead end road and provides access to several existing subdivisions. This subdivision will add to an already worrisome situation. Deputy DES Coordinator, Fire Warden, and GIS Coordinator Tom Kohley also notes ingress and egress concerns, while also indicating the importance of the site in stopping a would-be fire originating to the west, in Forest Service lands.

While major subdivisions (generally, subdivisions with six or more lots) are required to provide two means of access, minor subdivision typically are not. This subdivision, though only two lots, is a subdivision of a subdivided lot and as a subsequent minor subdivision is reviewed as a major subdivision. Section V-A-10.a.vii of the Carbon County Subdivision Regulations provides, in part, that “The subdivider may be required to provide a second access for minor subdivisions if the following conditions exist: the maximum cul-de-sac length standard is exceeded or topography or physical conditions so warrant. Residential driveways shall not have direct access to primary highways.” A deed restriction on the lots restricting further subdivision would help ensure additional access if subdivision were to occur.~~Section V-A-21 requires that minor subdivisions in high fire hazard areas to provide two accesses. Therefore, a second access meeting the road improvement requirements in Section V-A-10 should be required in order to ensure compliance with the design standards in the Subdivision Regulations and to provide for the public health and safety.~~

The existing covenants on the property, filed under Document Number 343196 and titled Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reciprocal Easement for Canyon Ranches Subdivision, do contain a section on Fire Protection (Article VII), and the existence of this document should be noted on the final plat (Section V-A-21 of the Carbon County Subdivision Regulations).

DEQ and County Sanitarian approval of well and septic provisions is required.

- 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. 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).
 - ii. The Carbon County Subdivision Regulations: The subdivision, once conditions have been met, conforms 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.

A condition requiring final plat preparation to be in conformance with the Subdivision Regulations will ensure compliance with County requirements, including state-mandated standards for final plats.

- iii. Applicable Zoning Regulations: Prior to construction, Group 1 Development Permits must be obtained for new residences.
- iv. Other regulations in effect in the area of the proposed subdivision: There are existing private covenants on the property (see Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements for Canyon Ranches Subdivision per Document Number 343196). Certain portions of this document are specific to the division and development of Lot 26.

The County does not enforce these private covenants, but notice of their existence should be placed on the final plat.

- v. Whether DEQ has approved the proposed subdivision for proposed subdivision that will create parcels of less than twenty (20) acres: DEQ approval is required for Lot 1, and the developer has submitted an application to DEQ (Sections III-B-11.C.ii and V-A-11, 12,13, and 14 of the Carbon County Subdivision Regulations).
- vi. Whether the subdivider has demonstrated that there is an adequate water source and at least one area 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: Lot 2 is over 20 acres and the applicant has identified a water source (an existing water system) and a location for a drainfield. Prior to final plat, evidence should be submitted indicating the County Sanitarian has approved of the water and sewer provisions for Lot 2 (Section III-B-11.c.ii of the Carbon County Subdivision Regulations).

d. Summary of Public Comments:

The Carbon County Planning Board held a public hearing and considered this subdivision application during their regular meeting of April 19, 2022. The following is a summary of the public comments received at the hearing.

Brent Moore of Interstate Engineering, agent for the developer, stated that Mr. Houden's plan is to build on Lot 2 and sell Lot 1. He sees this as simply an expansion of the original Canyon Ranches Estates Subdivision and noted that the design meets required lengths of the cul-de-sac and driveways. He also noted that there is no practical place to provide a second point of access and asked for Condition #10, related to that requirement, be deleted or changed. Mr. Moore noted that future development would trigger the second access, as requirements such as maximum cul-de-sac and driveway lengths would likely not be able to be met. He indicated the developer is agreeable to the other recommended conditions.

Anita Philipsborn asked where a second access would be located.

John Clayton asked about parks and trails development and access and noted the County has a degree of autonomy in determining when and where trails will be required through the requirement in law that certain subdivisions provide for park land. He noted the proximity of this subdivision to Forest Service land and the role trails and access to public land play in enabling denser subdivisions near established cities and existing services.

The Planning Board discussed the applicability of the public comments. Staff noted that the park dedication requirement in statute does not allow the local government to require a park dedication for subdivision in which only one additional lot will be created (76-3-621(3)(d), MCA). Staff also noted that the way the condition requiring the second point of access is written, it will be up to the developer to find a second point of access. Staff directed the Board to evaluate the requirement for a second access in relation to the findings regarding the fire hazard and the Subdivision Regulations relating to fire hazard, topography and physical conditions.

Dean Webb asked about maintenance of the existing dry hydrant and was informed that the homeowners' association maintains it. Mr. Moore noted that the hydrant was tested within the past year, but that the developer would verify it was in proper working condition.

Clint Peterson noted that regarding impacts on agriculture, impacts on grazing land, not just farmland, need to be evaluated. He also noted the need to be careful about removing the requirement of a second access.

Kim Ehrlich noted her experience in wildland firefighting and that a second access is important.

Further Board discussion largely focused on the second access issue. Staff explained that there is concern about cumulative impacts of small subsequent minor subdivisions creating unmitigated health and safety concerns, especially with regard to firefighting. Consensus emerged within the Board that future subdivision should provide a second access, but that this subdivision would not create a significant impact to the extent that requiring a second access at this time is justified. The Board amended the findings and Condition #10 to reflect their discussion and to require a deed restriction to be filed that would restrict further subdividing unless a second access is provided.

d. Planning Board Recommendation:

At its regular meeting of April 19, following a public hearing, the Carbon County Planning Board unanimously recommended approval of the Amended Plat of Lot 26, Canyon Ranches Estates 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 for water, wastewater, solid waste, and stormwater drainage provisions for Lot 1. (Sections III-B-11.C.ii and V-A-11, 12,13, and 14)
2. Filing of the final plat shall be subject to the determination by the Carbon County Sanitarian that there is an adequate water source and at least one area for a septic system and replacement area for Lot 2. (Section III-B-11.c.ii)

3. Building envelopes shall be shown on the final plat for each lot (Section V-A-5)
4. 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)
5. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a)
6. 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)
7. The bond required by the Weed District shall be paid to the satisfaction of the Weed District. (Section V-A-17)
8. Prior to final plat, the dry hydrant on Wilderness Lane shall be tested, at the subdividers’ expense, and evidence provided to the Red Lodge Fire Department and County that it is functioning properly. If the hydrant is not functioning properly, it shall be repaired or replaced in order to be functional. (Section V-A-21)
9. The cul-de-sac and turnaround size should be approved by the fire department prior to final plat. (Section V-A-21)
10. ~~A deed restriction shall be filed restricting further subdivision of Lots 1 and 2 of the amended Plat of Lot 26 unless a second point of ingress and egress is provided. second access to the subdivision shall be constructed prior to final plat that that meets the design requirements in Section V-A-10. (Sections V-A-10.a.vii and V-A-21)~~
11. Covenants should be prepared that detail building restrictions per fire department requirements and recommendations and filed with the final plat. (Section V-A-21)
12. The final plat shall contain a statement noting that the subdivision is subject to the Amended and Restated Declaration of Covenants, Conditions, Restriction and Reciprocal Easements for Canyon Ranches Subdivision filed under Document Number 343196 and subsequent amendments thereto. (Section V-A-21)
13. 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)
14. 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)
15. The final plat shall be prepared and reviewed in accordance with Section III-C of the Carbon County Subdivision Regulations and the Uniform Standards for Final Subdivision Plats (24.183.1107, ARM).