

CONTRACT ATTORNEY AGREEMENT

This AGREEMENT effective the 1st day of June 2024, and memorialized this 17th day of July, 2024, pursuant to Montana Code Annotated [hereinafter MCA] §§ 7-5-2101, 7-4-2705 and including but not limited to Title 41 of the MCA, by and between Juli Pierce Law, PLLC hereinafter Juli Pierce Law, which has as its sole and managing member Juli M. Pierce, an attorney licensed to practice law in the State of Montana, hereinafter referred to as "Pierce," which has the mailing address of 301 N. 27th St., Suite 300, Billings, MT 59101, and Carbon County, Montana, a political subdivision of the State of Montana, whose mailing address is Post Office Box 810, Red Lodge, MT 59068, hereinafter referred to as "the County."

RECITALS

WHEREAS, Juli Pierce Law's sole member is Pierce, an attorney licensed and authorized to practice law in the State of Montana, who meets the education, training, and experience requirements to prosecute juvenile matters and Dependent Neglect matters pursuant to MCA §§ 41-5-101 et seq; and

WHEREAS, Pierce desires to provide prosecutorial services for juvenile criminal matters and Dependent Neglect matters, to the County; and

WHEREAS, the County desires to contract with Pierce for the purpose of providing prosecutorial services in and juvenile criminal matters and Dependent Neglect matters to the County; and

WHEREAS, Pierce will be an independent contractor paid in accordance with the terms of this Agreement, and no employee benefits will be provided to Pierce and no payroll or other taxes will be withheld as Pierce is an independent contractor;

NOW, THEREFORE, in consideration of the mutual covenants and agreements between the parties as set forth herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged by the parties, they agree as follows:

- I. **RECITALS.**
The foregoing recitals are true and correct.

- II. **SERVICES.**
Pierce agrees to perform professional services prosecuting juvenile matters and Dependent Neglect matters for the County as provided herein.

III. STAFFING BY PIERCE.

Pierce shall recruit, interview, hire, train supervise and pay (including all necessary withholding) all personnel provided or made available by Pierce to render the services under this Agreement. Such personnel shall be licensed, certified, or registered, as appropriate, in their respective areas of expertise as required by applicable Montana Law.

IV. INDEPENDENT CONTRACTOR.

In the performance of Services, and in the exercise of such rights granted under this Agreement, Pierce and its member(s), agents, and employees, at all times, shall act and perform as independent contractors with respect to the County. None of the provisions of this Agreement shall be deemed or interpreted, for purpose of this Agreement, to create any relationships between County and Pierce and any other persons, including, but not limited to Pierce's member(s), agents, or employees, other than that of independent contractors. Nothing contained in this Agreement shall be construed to create a relationship of employer and employee, master and servant, principal and agent, or partners or co-venturers between Pierce, its member(s), agents or employees, and the County.

Without limiting the generality of the foregoing:

- a. The Parties agree that PIERCE's member(s), agents, and employees, if any, are employees of PIERCE and are engaged in an independently established trade and practice and the County shall have no right to control or direct the details, manner or means by which services are performed. In performing services under this Agreement, the County shall have no control over or management authority with respect to PIERCE or its operations and services provided.
- b. PIERCE shall report, for federal and state income tax purpose, all amounts received by it under this Agreement as income. PIERCE shall have responsibility for, and shall ensure that there is withholding of all federal and state income taxes, workers' compensation insurance unemployment insurance tax, Social Security tax and other withholding for its member(s) and employees providing services under this Agreement, with respect to payments made to PIERCE from revenues PIERCE receives under this Agreement or from other permitted sources.
- c. Any person furnishing services under this Agreement will be member(s), employees of, or contracted to, PIERCE.

V. PIERCE'S DUTIES AND RESPONSIBILITIES.

PIERCE shall:

- a. Promulgate legal protocols deemed needed in the professional judgment of PIERCE to render services hereunder.
- b. As needed, communicate with personnel of any law enforcement, CPS case workers, and Youth Court Services personnel by any means necessary and available. To that end, PIERCE shall, to the extent technology allows, to be available, on a 24 hour/365 day a year, by means of a cellular phone. Notwithstanding the foregoing, it is understood and agreed that PIERCE will be available to provide services under this Agreement approximately ninety percent (90%) of the time because PIERCE is not required to always be in a location where PIERCE can be contacted.
- c. Prepare the documents and make the initial filings for all criminal juvenile filing referred by the Carbon County Sheriff's Office, the Red Lodge Police Department, the Bureau of Indian Affairs, the Federal Bureau of Investigation, Youth Court Services, or any other law enforcement agency or entity referring matters to Carbon County. Additionally, Pierce will prepare the documents and make initial filings for all Dependent Neglect filings referred by DPHHS, Child and Family Services (DPHHS/CFS), including prehearing conferences and Emergency Protective Services hearings. Immediately following the initial filing PIERCE shall communicate with the Office of the County Attorney and a determination will be made by the Office of the County Attorney whether PIERCE or another attorney will be substituted for PIERCE as counsel of record. It will then be the task of counsel of record to prosecute, to the extent needed in the sole judgment of counsel of record, the matter. Prosecution shall include but not be limited to the timely filing with the Court of all needed documents and the making of all appearances in Court and appearances as deemed necessary by counsel of record. Nothing herein shall be construed to require the consent of PIERCE or to prevent an attorney allowed to act from preparing and making the initial filings for any other juvenile criminal matter or DPHHS/CFS matter.
- d. Where PIERCE cannot prosecute an individual matter due to a conflict of interest or other concern, PIERCE shall immediately notify the County Attorney of such in order to ensure sufficient case coverage.
- e. PIERCE agrees not to provide counsel or representation to any criminal defendants in juvenile, misdemeanor, or felony criminal matters in Carbon County that create an actual conflict of interest.

Additionally, with the exception of the one family wherein Pierce represents the children in a pending DN action, Pierce agrees not to provide counsel or representation to any children, parents, or other parties in Dependent Neglect (DPHHS/CFS) matters in Carbon County.

VI. COMPENSATION.

- a. PIERCE shall be compensated at the rate of \$200/hour for any criminal juvenile matter or any DPHHS/CFS matter where she will act as Special Deputy County Attorney and continue with the prosecution of the matter from the inception/initial charging of the case through the end of a jury trial and/or sentencing hearing in juvenile criminal matters and from the inception/initial filing of a DPHHS/CFS case through dismissal. The County shall agree to provide an initial retainer of \$5,000 to be put in PIERCE'S IOLTA/trust account and shall not be transferred in any way until the work is completed each month by PIERCE. PIERCE shall provide monthly billing statements to the County for work completed by PIERCE. Additional retainer will be requested by PIERCE when the trust account balance becomes \$1,000. If the parties end this contract by mutual agreement, any money left in the trust account shall be returned to the County.
- b. Additionally, the County shall reimburse PIERCE for all costs, including postage, publication, and GSA rate mileage for business relating to the duties required by this Agreement. It is understood and agreed that all other expenses, including but not limited to staff wages, copies, and phone charges, are part of PIERCE's office overhead and are not reimbursable by the County. All reimbursable expenses must be set forth in the monthly invoices set forth above.
- c. All monies paid to PIERCE by virtue of this Agreement, whether the obligation arises under this Clause, VI, or otherwise shall be paid from the budget of the County Attorney.

VII. INSURANCE.

PIERCE shall maintain during the term of this Agreement the following insurance coverage for all its member(s) and employees:

- a. Professional liability with a limit of no less than One Million Dollars (\$1,000,000.00) per claim, and providing that should PIERCE default in any manner under said insurance policy that County be notified by the insurer. It is understood and agreed that PIERCE's insurance policy is primary to any other valid and collectible insurance available. For any claims related to this Agreement, PIERCE's insurance coverages shall be primary insurance as respects the County, its elected officials,

employees and attorneys. Any insurance or self-insurance maintained by the County, its elected officials, employees, or attorneys shall be excess of PIERCE's insurance and shall not contribute with it. PIERCE shall, at the time of the execution of this Agreement, provide County Certificates of Insurance indicating that it meets the requirements herein.

- b. As it regards any of PIERCE's insurance policies which are in the nature of claims made policies, including but not limited to Professional Liability Policies, PIERCE shall, at its sole expense, carry insurance that allows a claim to be made at least three (3) years after the termination of this Agreement. This provision shall survive the termination of this Agreement.
- c. Workers' compensation coverage in the statutory amounts as required by Montana law, unless PIERCE provides certificates of exemption from the State of Montana for all employees.

VIII. INDEMNIFICATION.

PIERCE and PIERCE's member(s) at their own expense, shall indemnify, defend and hold harmless the County from any and all claims arising out of or relating to personal injury (including death), civil rights violations, or property damage caused by any negligence, error, omission, default, or willful misconduct of PIERCE, its members(s), employees, or subcontractors. This provision shall survive the termination of this Agreement.

IX. TERM and RENEWAL.

This Agreement shall be effective on the date hereof through June 30, 2025, and may be renewed by mutual understanding of the parties. PIERCE's agreement to indemnify and hold harmless County and the provisions contained in paragraphs VII and VIII shall survive the termination of this agreement. Unless PIERCE is in default under this Agreement, PIERCE shall be paid for all work performed prior to the termination of this Agreement.

X. GOVERNING LAW and VENUE.

This Agreement shall be governed and interpreted in accordance with the laws of the State of Montana and Carbon County, Montana shall be the venue for any legal action between the parties.

XI. PUBLIC RECORDS.

The parties acknowledge the County, as a political subdivision of the State of Montana, is required to comply with Montana Laws regarding public disclosure including, but not limited to MCA §§ 2- 3-101 et seq and 2-6-

1001 et seq.

XII. MODIFICATION and TERMINATION.

- a. This Agreement may be modified or terminated at any time by mutual written agreement between both the County and PIERCE.
- b. It is understood that if either party fails to comply with the terms of this Agreement, the other party may terminate this Agreement by providing thirty (30) days written notice of its intent to terminate. Provided, however County may terminate this Agreement without notice upon PIERCE no longer being the sole and managing member of PIERCE.
- c. Either party may terminate this Agreement, without cause, by giving no less than thirty (30) days written notice to the other party of its intent to terminate.
- d. In the event of termination for any reason whatsoever PIERCE will at the sole option of County cooperate in any transition for a period not to exceed two (2) months during which time PIERCE will receive the same compensation as provided for herein. In such event, for all purposes under this Agreement the date of termination shall be the date that two (2)-month transition period ends.

XIII. NOTICES.

Unless otherwise provided herein, all notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or sent by certified mail, return receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:

PIERCE:	Juli M. Pierce JULI PIERCE LAW, PLLC 301 N. 27 th St., Suite 301 Billings, MT 59101
County:	Carbon County Commissioners PO Box 887 Red Lodge, MT
Copy to:	Carbon County Attorney PO Box 810 Red Lodge, MT

XIV. EQUAL PARTIES.

County and PIERCE acknowledge and agree that the parties are experienced and competent business professionals who have been given an opportunity to consult with an attorney concerning this Agreement. Therefore, no provision of this Agreement, including any amendment or addendum, shall be construed against the party who drafted this Agreement.

XV. THIRD-PARTY BENEFICIARY.

With the exception of the Carbon County Attorney, this Agreement does not and is not intended to confer any rights or remedies upon any person(s) or entities other than the parties.

XVI. COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAWS.

County and PIERCE each respectively understand that they are bound by applicable state and federal law and local ordinances. This includes, but is not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, PL 101-336, Section 504 of the Rehabilitation Act of 1973, the Patient Protection and Affordable Care Act [PL 111-48, 124 Stat. 119], if applicable, MCA 18-5-401, et seq. concerning the Blind Enterprise Program's vending facility rules, and Executive Order No. 12-2015 Amending and Providing for Implementation of the Montana Safe Grouse Conservation Strategy. In accordance with MCA 49-3-207, and Executive Order No. 04-2016, PIERCE agrees that (i) the hiring of persons, if any, to perform this Agreement will be made on the basis of merit and qualifications and (ii) there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, physical or mental disability, military service or veteran status, or marital status by the persons performing this Agreement.

XVII. LIMITS OF CONTRACT.

This instrument contains the entire Agreement between the parties, and no statements, or promises of inducements made by either party that are not contained in this Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except as provided by written agreement of the parties.

XVIII. ASSIGNMENT, TRANSFER, and SUBCONTRACTING.

a. PIERCE agrees not to assign or transfer any work contemplated under

this Agreement without prior written consent from the County. PIERCE further agrees not to transfer controlling interest in PIERCE without written consent of the County. PIERCE further agrees not to enter into subcontracts for any of the work contemplated under this Agreement without prior written approval of the County. The consents and/or approvals required under this clause may be withheld at the sole discretion of the County.

- b. This Agreement is binding upon the successors and assigns of the parties as if mentioned in each particular.

IN WITNESS THEREOF: County and PIERCE, by and through its sole member, Juli M. Pierce, have executed this Agreement on this ____ day of July, 2024.

JULI PIERCE LAW, PLLC

 7/17/24

JULI M. PIERCE

**CARBON COUNTY
BOARD OF COMMISSIONERS**

PRESIDING OFFICER

Attest:

Clerk and Recorder

Approved as to Form and Content (PIERCE contract):

Alex Nixon, County Attorney

Date

RENEWABLE RESOURCE PLANNING GRANT - GRANT AGREEMENT
CONSERVATION AND RESOURCE DEVELOPMENT DIVISION
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION


Recipient: Carbon County

Project Title: Carbon County Edgar Wastewater Lagoon PER

Grant Number: RPG-24-0813 Submission ID 46017664

Declarations

- Section 1. Purpose
- Section 2. Term
- Section 3. DNRC's Role
- Section 4. Project Scope
- Section 5. Project Budget
- Section 6. Availability of Funds
- Section 7. Disbursements
- Section 8. Reports
- Section 9. Records and Audits
- Section 10. Project Monitoring and Access for Inspection and Monitoring
- Section 11. Employment Status and Workers' Compensation
- Section 12. Equal Employment
- Section 13. Indemnity and Liability
- Section 14. Compliance with Applicable Laws
- Section 15. Copyright - Government Right to Use
- Section 16. Acknowledgement of Support
- Section 17. Failure to Comply
- Section 18. Assignment and Amendment
- Section 19. Montana Law and Venue
- Section 20. Waiver
- Section 21. Entire Agreement
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Reporting Requirements

<i>FOR DNRC USE ONLY</i>			<div style="border: 1px solid black; padding: 10px; margin: 0 auto; width: 80%;"> <p style="text-align: center; margin: 0;">Approved</p> <p style="margin: 5px 0;">No. <u>RPG-24-0813</u></p> <p style="margin: 5px 0;">Division <u>AM</u></p> <p style="margin: 5px 0;">Legal <u>CB</u></p>  </div>
Maximum Amount under this Grant:		\$40,000.00	
Source of Funds			
Fund Name	Fund No.		
Natural Resource Projects Account	02577		
Subclass	Org. No.	Amount	
540J6	3424101	\$40,000.00	
Appropriation Authority: 68 th Legislature/2023 HB 6			

GRANT AGREEMENT BETWEEN THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND Carbon County

THIS GRANT, administered by the Montana Department of Natural Resources and Conservation (DNRC), is consistent with the policies, procedures, and objectives of the Montana Renewable Resource Grant and Loan Program (Program) (85-1-6, MCA) for the enhancement of Montana's renewable resources. This grant is accepted by **Carbon County**, hereinafter referred to as the Recipient and represented by Scott Miller, Presiding Officer, (Authorized Recipient) and successors, PO Box 887, Red Lodge, Montana, 59068, commissioners@co.carbon.mt.us, (406) 446-1595. Both parties agree to the following terms and conditions:

SECTION 1. PURPOSE. The purpose of this Grant Agreement (Agreement) is to establish mutually agreeable terms and conditions, specifications, and requirements to grant funds to the Recipient for Carbon County Edgar Wastewater Lagoon PER.

SECTION 2. TERM. The effective date of this Agreement is **July 1, 2023**. The Recipient shall have until **December 31, 2025** to complete the project and work described in **SECTION 4. PROJECT SCOPE**. DNRC may grant an extension for completion upon request and showing of good cause by the Recipient. A request for extension must be submitted at least 45 days prior to the termination date of this Agreement. This agreement remains in effect until all reporting requirements as described in **SECTION 8. REPORTS** have been received by DNRC.

SECTION 3. DNRC's ROLE. DNRC is administering funds awarded by the Legislature to ensure that the funds are used according to the intent of the Legislature and the purposes, objectives, and procedures of the Program. DNRC will monitor project expenditures to assure payment eligibility. DNRC assumes no responsibility for the Recipient's obligation to faithfully perform the tasks and activities necessary to implement and complete a project. The DNRC liaison for this Agreement is Kylee Hughes at 406-444-4340, Kylee.Hughes@mt.gov, DNRC/CARDD, PO BOX 201601, Helena, MT 59620-1601. All requests for information and assistance, claims for grant funds, and reports shall be submitted to the DNRC liaison.

SECTION 4. PROJECT SCOPE. The scope of work for this project is described in Attachment A and incorporated herein by this reference. Supporting documents and attachments from the **Renewable Resource Grant and Loan Program Application** dated March 2024 are also incorporated herein by this reference. In the event content in the application differs from or conflicts with terms presented elsewhere in this Agreement, this Agreement text takes precedence.

4.1 N/A

4.2 N/A

SECTION 5. PROJECT BUDGET. A project budget showing anticipated expenditures is provided in Attachment B and incorporated herein by this reference. All transfers of funds between budget categories require written notification and approval from the DNRC liaison. A transfer of funds between budget categories exceeding 10% of the total grant will require an amendment of the agreement. Requests to modify the approved budget must be submitted in writing to the DNRC liaison for approval and must be made in advance of reimbursement requests.

SECTION 6. AVAILABILITY OF FUNDS. Funds will be released to the extent they are available. Costs incurred prior to July 1, 2023, are not eligible for reimbursement. Grant funds are not available for work performed after the termination date in SECTION 2. TERM.

6.1 N/A

6.2 The Recipient acknowledges and understands that grant funds become available through certain State of Montana revenue earnings. The DNRC must by law terminate this Agreement if funds are not appropriated or otherwise made available to support the DNRC's continuation of performance of this Agreement in a subsequent fiscal period (§18-4-313(4), MCA). If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Agreement (whether at an initial payment level or any increases to that initial level) in subsequent fiscal periods, the DNRC shall terminate this Agreement as required by law. The DNRC shall provide the Recipient with the date the State's termination shall take effect. The DNRC shall not be liable to Recipient for any payment that would have been payable had the Agreement not been terminated under this provision. The DNRC shall be liable to the Recipient only for the payment, or prorated portion of that payment, owed to Recipient up to the date the DNRC's termination takes effect. This is the Recipient's sole remedy. The DNRC shall not be liable to the Recipient for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

SECTION 7. DISBURSEMENTS.

The Recipient must submit reimbursement claims for funds to DNRC. Funds can only be expended for work described in SECTION 4. SCOPE OF WORK. The Recipient shall submit a complete vendor invoice, signed by the Authorized Recipient, itemizing actual project expenses that can be documented with accounting records. To receive payment, the Recipient shall submit a project progress report described in SECTION 8. REPORTS, and supporting documentation: proof of payment, receipts, vendor invoices, inspection certificates, timesheets, in-kind labor, and other documentation of expenses incurred.

DNRC only reimburses direct costs associated with the project. Direct costs are those which can be identified specifically as costs of implementing the approved project such as staff time directly attributable to the project, contracted expenses, materials and supplies for the project. DNRC cannot reimburse indirect costs, those that are incurred by the recipient in support of general business operations, but which are not attributable to a specific funded project.

DNRC will verify the claims and check them against the reports required in SECTION 8. REPORTS and the budget provided in SECTION 5. PROJECT BUDGET. DNRC will disburse grant funds to the Recipient upon approval and to the extent available. Reimbursement of Recipient expenditures will only be made for expenses included in the budget provided in SECTION 5. PROJECT BUDGET, within the dates identified in SECTION 2. TERM, and that are clearly and accurately supported by the Recipient's reports to DNRC. Total payment for all purposes under this Agreement shall not exceed **\$40,000.00.**

7.1 Reimbursement requests for work performed during the term of this Agreement must be submitted to the DNRC liaison within 90 calendar days after the expiration of this Agreement to receive payment.

7.2 DNRC will withhold 10 percent of the total authorized grant amount until all the tasks outlined in SECTION 4. PROJECT SCOPE and the final report required by SECTION 8. REPORTS are completed and approved by DNRC.

SECTION 8. REPORTS. The Recipient is responsible for submitting progress reports, a final report, and a signed Certificate of Compliance to DNRC at project completion in accordance with all requirements stated in Attachment C. Pictures of the project site before, during, and after construction will be provided to the DNRC liaison with reports or upon request. Because images may be used for publicity as well as project documentation, the Recipient must acquire any release(s) necessary for the government's right to use as provided in SECTION 15. COPYRIGHT – GOVERNMENT RIGHT TO USE.

8.1 Quarterly progress reports for the periods ending each March, June, September, and December shall be submitted to the DNRC liaison during the term of this Agreement. The Recipient must submit a project progress report with each reimbursement request at a minimum on a quarterly basis. Reports must include the information included in Attachment C. Quarterly reports must be submitted to the DNRC liaison within 15 calendar days following the close of the quarterly period. No claims for disbursements will be honored if the quarterly report has not been approved or if there is a delinquent report.

8.2 The Recipient is required to submit a final report upon project completion. Reports must include the information included in Attachment C. Failure to provide the reports as required is cause for termination of this Agreement or withholding of future grant payments. Final disbursement of grant funds is contingent upon DNRC receipt and approval of a report that meets requirements described in Attachment C.

8.3 N/A

8.4 N/A

SECTION 9. RECORDS AND AUDITS. The Recipient will maintain appropriate and adequate records showing complete entries of all receipts, disbursements, and other transactions relating to the project for a period of eight years after project completion. The DNRC, the Legislative Audit Division, or the Legislative Fiscal Division may, at any reasonable time, audit all records, reports, and other documents that the Recipient maintains under or during this Agreement to ensure compliance with its terms and conditions.

The Recipient is financially responsible for any audit exception or other financial loss to the State of Montana which occurs due to the negligence, intentional acts, or failure by the Recipient and/or its agents, employees, subrecipient, or representative to comply with the terms of this Agreement.

SECTION 10. PROJECT MONITORING AND ACCESS FOR INSPECTION AND MONITORING. DNRC, or its agents, may monitor and inspect all phases and aspects of the Recipient's performance to determine compliance with this Agreement, including the adequacy of records and accounts. This grant is publicly funded and requires the Recipient to accommodate all requests for public access to the site and the project records with due consideration for safety, private property rights, and convenience for all parties.

SECTION 11. EMPLOYMENT STATUS AND WORKER'S COMPENSATION.

The project is for the benefit of the Recipient. DNRC is not an owner or general contractor for the project and DNRC does not control the work activities, worksite of the Recipient, or any contractors that might be engaged in the completion of the project.

The Recipient is independent from and is not an employee, officer, or agent of the State of Montana or DNRC. The Recipient, its employees, and contractors are not covered by the Workers' Compensation laws applicable to DNRC as an employer. The Recipient is responsible for providing employees Workers' Compensation Insurance and that its contractors are following the coverage provisions of the Workers' Compensation Act.

SECTION 12. EQUAL EMPLOYMENT. In accordance with §49-3-207, MCA, and Executive Order No. 04-2016, Recipient agrees that the hiring of persons to perform this Agreement will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical

conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.

SECTION 13. DEFENSE, INDEMNITY AND LIABILITY. Recipient shall protect, defend, indemnify, and save harmless the State of Montana, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, penalties, fines, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Recipient's employees and agents, its subrecipients, its subrecipient's employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, violation of or non-compliance with any laws, regulations, or rules, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of, in connection with, or on account of this Agreement, any act or omission of Recipient, or any act or omission of Recipient's officers, agents, employees, or subrecipients. The Recipient obligations under this Section 13 survive termination or expiration of this Agreement.

SECTION 14. COMPLIANCE WITH APPLICABLE LAWS. All work must be in accordance with all federal, state, and local law, statutes, rules and ordinances.

14.1 It shall be the Recipient's responsibility to obtain all permits, licenses, or authorizations required from government authorities prior to initiation of the project or required to be obtained by the time of completion of the project to be eligible for reimbursement funds under this Agreement. Permits or authorizations may include but are not limited to: Beneficial Water Use Permits (§ 85-2-302(1), MCA), Change in Appropriation Right Authorization (§ 85-2-402(1)(a), MCA) or other requirement under the Montana Water Use Act that may apply; Sage Grouse Habitat (Executive Order 21-2015), 310 permitting requirements, or other permits or authorizations that may be required by state, local, or federal agencies prior to beginning work on the project or prior to completion of the project.

14.2 Procurement of labor, services, supplies, materials, and equipment shall be conducted according to applicable federal, state, and local statutes. The award of an agreement, or by Recipient entering into this Agreement, shall not be taken to imply that any required permits or authorizations issued by DNRC or other state, federal, or local agency will be approved. The DNRC may review any procurement solicitations that Recipient issues. The DNRC's review and comments will not constitute an approval of the solicitation. Regardless of the DNRC's review, the Recipient remains bound by all applicable laws, regulations, and Contract terms. If during its review the DNRC identifies any deficiencies, then the Department shall communicate those deficiencies to the Recipient within seven business days.

Recipient shall comply with applicable state prevailing wage laws (§§ 18-2-401 to -432, MCA).

14.3 It shall be the Recipient's responsibility to comply with MEPA (Title 75, Chapter 1 MCA; 36-2-503 ARM); and provide all required information requested by the DNRC related to any required MEPA decision.

SECTION 15. COPYRIGHT - GOVERNMENT RIGHT TO USE. Any graphic, photographic, or other material developed under this Agreement may be copyrighted with the proviso that the State of Montana will have a royalty-free, nonexclusive, and irrevocable right to produce, publish or otherwise use, and authorize others to use the work for state government purposes.

SECTION 16. ACKNOWLEDGEMENT OF SUPPORT. The Recipient is responsible for assuring that an acknowledgment of DNRC support (1) is made in any publication of any material based on or developed under this project, in the following terms: "This project is based upon work supported by the Department of Natural Resources and Conservation under Agreement No. (RPG-24-0813)" and (2) is verbally acknowledged during all news media interviews or public presentations about the project.

SECTION 17. FAILURE TO COMPLY, BREACH, DEFAULT, REMEDIES.

17.1 If the Recipient fails to comply with the terms and conditions of this Agreement or reasonable directives or orders from DNRC, DNRC may terminate this Agreement and refuse disbursement of any additional funds from this grant. Further, in the event of such termination, the Recipient shall immediately pay over to

the DNRC all unexpected funds together with all interest earned on the monies provided or herein remaining unexpended at such time. Such termination will become a consideration in any future application for funds from the DNRC Conservation and Resource Development Division.

17.2 The occurrence of any of the following events is a Recipient breach under this Agreement:

- i. failure of the Recipient or its contractors, subcontractors, or subrecipient entities to follow an Agreement term or condition; or
- ii. the Recipient makes an intentionally untrue statement or materially misleading certification in this Agreement or the Application; or any Recipient breach/default specified in another section of this Agreement.

17.3 Upon the occurrence of a breach, the DNRC shall issue a written notice of breach, identifying the nature of the breach, and providing 30 calendar days (or a lesser or additional time as may be agreed to by the parties) in which the Recipient shall have an opportunity to cure the breach. The parties will attempt in good faith to resolve all disputes, disagreements or claims relating to this Agreement.

However, if the DNRC determines that a public safety issue or an immediate public crisis exists, the DNRC will not be required to provide advance written notice or a cure period and may immediately terminate this Agreement in whole or in part if the DNRC, in its sole discretion reasonably exercised, determines that it is reasonably necessary to preserve public safety or prevent an immediate public crisis. Time allowed for cure does not diminish or eliminate Recipient's liability for damages.

17.4 If Recipient fails to cure the breach within the period specified in the written notice, Subrecipient is in default of its obligations, and the DNRC may exercise any or all the following remedies:

- i. pursue any remedy provided by law or this Agreement, including requesting repayment of funds; and
- ii. terminate the Agreement or applicable portions that are the subject of the breach in the Agreement; and
- iii. suspend Recipient's performance; and
- iv. withhold applicable payment until the default is remedied.

17.5 If termination occurs under this Section, any costs incurred will be the Recipient's responsibility.

SECTION 18. ASSIGNMENT AND AMENDMENT. This Agreement is not assignable. Amendment may be accomplished only by express written agreement of the parties. Amendments will be attached as an integral component of this Agreement.

SECTION 19. MONTANA LAW AND VENUE. Any action or judicial proceeding for enforcement of the terms of this Agreement shall be instituted only in the courts of Montana and shall be governed by the laws of Montana. Venue shall be in the First Judicial District, Lewis and Clark County, Montana. Each party will bear their own costs and attorney's fees.

SECTION 20. WAIVER. A waiver of any particular provision of this Agreement by the DNRC shall not be construed as a waiver of any other provision, nor shall any such waiver otherwise preclude the DNRC from insisting on strict compliance with this Agreement in other circumstances.

SECTION 21. ENTIRE AGREEMENT. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings.

The Recipient, Carbon County, hereby accepts this grant (RPG-24-0813) according to the above terms and conditions. I hereby certify that I represent a legal entity with authority to enter into this Agreement.

I further certify that the project or activity complies with all applicable state, local, and federal laws and regulations.

I further certify that I am authorized to enter into and sign a binding Agreement with the Department of Natural Resources and Conservation.

A facsimile, photocopy or electronic copy of the signature below shall have the same force and effect as an original signature and an electronic signature shall be regarded as an original signature.

Recipient:

By: _____
Recipient Signature

Scott Miller Commissioner presiding officer

Recipient Print Name and Title

In Process

For: Carbon County
Entity Name

Entity Tax ID #

Date

Department of Natural Resources and Conservation:

By: _____
DNRC Signature

Print Name and Title

For: The Montana Department of Natural Resources and Conservation

Date

Attachment A - Scope of Work
Carbon County Edgar Wastewater Lagoon PER

Background:

Following the extreme flood event in June 2022, Montana Rural Water Systems, Inc. conducted an inspection of Edgar Lagoon on June 23, 2022. The report highlighted severe erosion on the south end of the lagoon, both interior and exterior, necessitating immediate attention. Additionally, other areas of the dike exhibiting erosion require filling and compaction. The report underscores the need for rehabilitation of the discharge structure to accommodate anticipated dewatering during construction activities.

The original lagoons were constructed in 1964 with clay liner with a discharge structure to the Clarks Fork of the Yellowstone River. Clay liners in Montana have been known to fail, and the Town has not discharged to the Clarks Fork. Because of this, it is highly likely the lagoon is discharging untreated wastewater to groundwater. A lagoon leakage test will be conducted as part of the PER.

This grant proposal seeks funding for a Professional Engineering Report (PER) aimed at addressing the identified issues at Edgar Lagoon. The PER will provide comprehensive analysis, design, and recommendations for mitigating erosion, enhancing structural integrity, and ensuring the long-term functionality and resilience of the lagoon system.

The project aligns with the goals of safeguarding public health, protecting the environment, and enhancing community infrastructure resilience, benefiting the residents of Edgar and surrounding areas. Moreover, it contributes to the sustainable management of wastewater systems in rural communities, ensuring compliance with regulatory standards and fostering community well-being.

Scope of Work:

The planning grant will produce a PER for the Edgar Wastewater Lagoon Project.

Schedule:

Contracting: May 2024

Final PER: March 2025

Project Closeout: December 31, 2025.

Attachment B – Budget
Carbon County Edgar Wastewater Lagoon PER

Task	DNRC Funds	Match Funds	Total
Administration	\$	\$	\$
Professional/Technical	\$40,000.00	\$32,487.00	\$72,487.00
Construction			
Preliminary Engineering	\$	\$	\$
Construction Engineering	\$	\$	\$
Construction	\$	\$	\$
Contingency	\$	\$	\$
Total	\$40,000.00	\$32,487.00	\$72,487.00

Summary of Match Funding	
Funding Source	Amount
Carbon County	\$32,487.00
	\$
Total	\$32,487.00

Attachment C Reporting and Reimbursement Requirements

Progress Reports

The Recipient will provide progress reports to DNRC during the term of this Agreement. Reports will provide status information for each project implementation task and identify the reporting period. Status information will include, at a minimum:

- Project activities during the reporting period;
- Costs incurred;
- Funds remaining;
- Anticipated activities during the next reporting period, and
- Expected changes in scope, schedule, or budget.

The Recipient shall report on total project costs including those funded by the Recipient and other matching funds. Significant problems encountered shall be noted and necessary scope and time-line modifications requested.

The Recipient must submit a project progress report with each reimbursement request at a minimum on a quarterly basis. DNRC will not honor claims for reimbursement if DNRC has not approved the progress report or if there is a delinquent report. Reimbursement requests must:

- Include a State of Montana vendor invoice signed by an authorized agent.
- Be billed by the tasks identified in the project scope of work and budget.
- Be supported by backup documentation of contractor invoices, receipts, cancelled checks, or other documentation of costs.

Recipient invoices need to relate clearly to the scope of work and budget in this Agreement.

Projects with multiple funding sources need to submit a uniform status of funds spreadsheet (provided by DNRC) or other means of tracking and documenting match and the project budget.

Final Report

The Recipient must submit one hard copy and one electronic copy (pdf) of the final report that meets the requirements of this Attachment C to DNRC upon project completion. Final disbursement of funds is contingent upon DNRC receipt and approval of a final report that meets these requirements. Final reports must be submitted to DNRC within 90 days of the Agreement termination date.

Final reports must include a signed Certificate of Compliance (included in this attachment) to DNRC upon project completion.

Projects that included construction must also submit a signed Engineer's Statement of Completion. DNRC may also request as-built drawings for construction projects, IF APPLICABLE TO PROJECT.

The Recipient is not required to use the suggested format in this Attachment but must include the information listed below. At a minimum, the final report must describe the purpose and location of the project, project tasks, changes to the scope, schedule, or budget, how the project met stated goals and objectives, how the project benefited resources, and the current project status. Final reports will be made available to the public on the DNRC website.

Final Report Requirements

1. Title Page:

- A. Recipient's name, address, and telephone numbers.
- B. DNRC Grant Agreement Number
- C. Name, address, and telephone of other contacts if primary contacts are not available.
- D. Funding: total project cost and amount of agreement
- E. State where copies of the report may be obtained (Recipient contact person name, address, phone number. An email address or website is acceptable).
- F. A list of supporting documents (for example, construction completion reports or other project deliverables, if applicable).

2. **Introduction:** Describe the project history, location, and purpose. Provide a project location map.

3. Discussion and Results:

- A. Describe how project goals and tasks identified in the Agreement were completed:
 - Describe the planning process (for example: discuss project design, independent review, coordination with agencies, permits required and other activities).
 - Describe how each task listed in the scope of work was accomplished. Provide details on each task (for example: if trees were planted as an erosion control measure, state how many, the tree species, the age or size of the trees, and location of the plantings).
 - List the goals and/or objectives of the project as stated in the scope of work and briefly describe how they were met by the activities described in the tasks above. Discuss any differences between project goals and objectives and actual project results.
 - Provide an explanation for tasks that were not completed or any out-of-scope work.
 - Include a project map, data, and/or photos that document the project.

B. Summarize any problems encountered and solutions adopted. What would you do differently?

4. Resource and Public Benefits:

Describe the project's overall benefits. What are the anticipated and realized benefits to resources and to the local and regional area of the completed project? Were these benefits realized? If not, explain why.

5. Grant Agreement Administration & Project Costs:

- A. Work schedule: Compare the time allotted for project completion with actual schedule. Identify delays and discuss the reasons for delays.
- B. Budget: Include a table that summarizes how the monies were spent by budget category or task as described in Attachment B and funding source (i.e. DNRC, Sponsor, other State or federal agencies). Explain cost overruns or savings. Discuss unbudgeted expenses that arose over the course of the project.
- C. Match Funds: Identify all funds from other sources or in-kind services that were used to fund the project. If not all matching funds were spent provide a justification.

6. Project Completion and Certification

- A. Recipient's Certificate of Compliance (must be signed for all projects).
- B. As Built Drawings, if requested by the DNRC (construction projects only).
- C. Engineer's Statement of Final Completion (if applicable).

7. Final Report submitted electronically (PDF)

FINAL REPORT
CERTIFICATE OF COMPLIANCE

Recipient: Carbon County

Project Name: Carbon County Edgar Wastewater Lagoon PER

Grant Number: RPG-24-0813

Grant Amount: **\$40,000.00**

I, the undersigned, being duly qualified, respectfully, of the Carbon County, in _____
County, State of Montana, do hereby certify that the above-named project is in full compliance with all of the
covenants and conditions set forth in the Agreement identified above between the Carbon County and the State of
Montana, Department of Natural Resources and Conservation. I understand that any money remaining after the
final payment will be returned to the appropriate accounts at DNRC.

Authorized Recipient Signature

Date

This form is available on the DNRC website:
<https://dnrc.mt.gov/docs/conservation/CARDD-Training/Final-Report-Certificates.pdf>.

STATEMENT OF COMPLETION

Recipient: Carbon County

Project Name: Carbon County Edgar Wastewater Lagoon PER

Grant Number: RPG-24-0813

Grant Amount: \$40,000.00

I, _____, (Project Engineer) a Registered Professional Engineer in the State of Montana, license number _____, do hereby state that the above-named project was completed according to the approved plans and specifications. I further state that the record ("as-built") drawings for this project are a true and accurate representation of the completed construction.

In Process

Name

P.E. Number

Signature

Date

Name of Firm

Address of Firm

City, State Zip of Firm

Please consult the DNRC Liaison to verify if this form is required for your project.

This form is available on the DNRC website:
<https://dnrc.mt.gov/docs/conservation/CARDD-Training/Final-Report-Certificates.pdf>.

2300 PUBLIC SAFETY FUND

Org	Account	Object	Actuals				Current	%	Prelim.	Budget	Final	% Old
			20-21	21-22	22-23	23-24	Budget	Exp.	Budget	Changes	Budget	Budget
209 SHERIFF'S DEPARTMENT												
420100 LAW ENFORCEMENT SERVICES												
111	SALARIES & WAGES - PERM		899,190	968,818	984,957	958,446	1,141,000	84%	1,258,000		1,258,000	110%
	Adt's COPS Funded Dpty yr 1 \$90,000 in leave liability											
120	OVERTIME		19,029	37,226	38,467	35,456	41,000	86%	41,000		41,000	100%
141	UNEMPLOYMENT INSURANCE		2,087	3,229	3,260	2,265	3,800	60%	4,200		4,200	111%
142	WORKERS' COMPENSATION		31,846	30,275	28,515	22,349	36,740	61%	40,000		40,000	109%
143	HEALTH INSURANCE		122,463	147,298	126,955	123,396	151,800	81%	151,800		151,800	100%
144	F.I.C.A.		69,397	75,053	76,916	75,143	90,430	83%	100,000		100,000	111%
145	P.E.R.S.		4,409	5,261	5,472	5,427	5,900	92%	7,000		7,000	119%
147	SHERIFF'S RETIREMENT		113,814	124,548	115,358	114,771	155,020	74%	147,000		147,000	95%
210	OFFICE SUPPLIES		7,471	19,471	9,783	14,866	18,000	83%	18,000		18,000	100%
220	OPERATING SUPPLIES		9,411	8,075	10,107	3,789	12,500	30%	12,500		12,500	100%
	Night Vision \$2200 ea rifle plates \$1500 (should this be clothing?) Portable radios on a rotation? 1000 new deputy body camera											
222	CHEMICAL,LAB & MED SUPP		1,009	1,577	199	1,401	2,000	70%	2,000		2,000	100%
	VEHICLE MED KITS Crime Scene Kit \$200											
226	CLOTHING & UNIFORMS		13,686	12,061	9,945	10,861	26,000	42%	21,000		21,000	81%
	4 VESTS - \$1800ea = 6,000 DEPUTY UNIFORMS - \$950 ea x 10 = 9,500; Joliet \$500 2500/ea outfit 1 new deputies \$2500, finish outfitting other deputies											
227	FIREARM SUPPLIES		5,907	5,702	6,340	4,203	19,260	22%	19,000		19,000	99%
	5000 new deputy fire arms REQ - Increase for unspent budget in 22-23											
229	OTHER OPERATING SUPPLIES			3,641	5,206	670	15,700	4%	15,700	20,000	35,700	227%
	LESS-LETHAL SUPPLIES: BEAN BAGS \$5,400 BREACHING TOOLS \$2,000 UPGRADE DEPARTMENT TAZERS \$ REQ - Increase for unspent budget in 22-23											
231	GAS, OIL, DIESEL, GREASE		75,193	102,433	97,011	81,453	115,000	71%	115,000		115,000	100%
	increased for additional dpty and fuel prices											
232	MOTOR VEHICLE PARTS		21,548	25,641	32,202	12,265	40,000	31%	40,000		40,000	100%
233	MACHINERY & EQUIP PARTS					138	0	***%			0	0%
239	TIRES, TUBES ETC.		9,341	5,571	13,237	15,167	15,000	101%	15,000		15,000	100%
241	CONSUMABLE TOOLS		413	155	359	190	1,000	19%	1,000		1,000	100%
	IMPOUND GARAGE											
250	SUPPLIES FOR RESALE						250	0%	250		250	100%
	lock boxes											
311	POSTAGE, BOX RENT ETC.		491	598	570	784	900	87%	900		900	100%
312	FREIGHT AND SHIPPING		1,751	1,992	1,496	1,619	1,800	90%	1,800		1,800	100%
318	OTHER COMMUNICATION & TRA		4,954	4,660	4,853	5,625	9,300	60%	9,300		9,300	100%
	CJIN - \$9225.84											

CARBON COUNTY
Expenditure Budget by Fund/Org Split Report -- MultiYear Actuals
For the Year: 2024 - 2025

2300 PUBLIC SAFETY FUND

Org	Account	Object	Actuals				Current	%	Prelim.	Budget	Final	% Old
			20-21	21-22	22-23	23-24	Budget	Exp.	Budget	Changes	Budget	Budget
330	PUBLIC, SUBSCR, DUES, FEE		2,862	8,361	6,376	5,442	9,000	60%	9,000		9,000	100%
	LEADS ONLINE \$1200											
	MSPOA DUES \$410; MUTUAL AID POOL \$1300											
	CABLE BASIC STARTUP \$142, \$43 MO											
	TLO Investigation Software \$300/mo=3600											
332	SOFTWARE SUBSCRIPTIONS				192	3,999	12,000	33%	12,000		12,000	100%
	WATCHGUARD END OF LIFE 2024 - MOTOROLA SOFTWARE \$6,700											
	Team Viewer software (annual) - \$1,200											
	MENTAL HEALTH APP - \$4,000											
	TAZER SOFTWARE \$_____											
	SECURE WARRANT \$3,100											
345	TELEPHONE		15,623	17,292	17,738	15,785	18,000	88%	1,800		1,800	10%
	CELL PHONES \$45X14 = \$7,600											
	WI-FI CARDS \$40X14 \$6,750											
	FIBER INTERNET 300/mo \$3,600 (SPLIT W/ CO BLDG)											
351	MEDICAL, DENTAL, VET SERV		483	1,411	1,212	1,568	5,000	31%	5,000		5,000	100%
355	DATA PROCESSING SERVICES		4,167	3,656	3,775	5,371	4,000	134%	5,500		5,500	138%
	MFA											
361	REPAIR & MAINT MOTOR VEH		18,844	22,504	19,981	13,555	32,000	42%	32,000		32,000	100%
	Watchguard Maint											
363	REPAIR-MAINT OFFICE EQUIP		6,696	10,073	7,080	10,239	14,000	73%	14,000		14,000	100%
	TRI-TECH \$8000											
	NETMOTION MAINT \$2905											
	iRECORD MAINT \$2000											
370	TRAVEL, MEALS, ETC		3,936	20,376	10,243	4,336	20,000	22%	20,000		20,000	100%
	1@ academy; post hours; coroner basic for new officers											
380	TRAINING SERVICES		8,286	3,530	4,219	3,440	11,000	31%	11,000		11,000	100%
	academy; coronor basic new officers; post CEs											
390	OTHER PURCHASED SERVICES		32,108	33,252	16,823	12,060	45,000	27%	45,000		45,000	100%
	SHERIFF RESERVE AGREEMENT \$30,000											
	24-7 PROGRAM (PROJ 20)											
	DICTIONATION SERVICES (for Co Atty)											
	SECURITY											
	TOWING											
942	CONSTRUCT/MAINT-MACHINERY			40,708			0	0%			0	0%
944	TRANSPORTATION EQUIPMENT		5,537	107,838	307,020	144,127	122,000	118%	122,000		122,000	100%
	2 PATROL VEHICLES - \$60,000/EA \$120,000											
	2 PARTS & EQUIPMENT - \$16,000/EA \$32,000											
	2 RADAR \$3,500/EA = \$7,000											
	2 WATCHGUARD \$6,000/EA -\$12,000 (MIGHT BE NEW SYSTEM)											
947	OFFICE MACHINERY & EQUIP.					8,553	10,000	86%			0	0%
948	COMPUTER EQUIPMENT		13,706			5,938	42,000	14%	21,000		21,000	50%
	2 TOUGHBOOKS \$21,000											
949	OTHER MACHINERY & EQUIP						25,200	0%	25,000		25,000	99%
	6800 New Deputy Radio											
	5800 New Deputy Portable											
	REQ - Increase for unspent budget in 22-23											
	Account:		1,525,658	1,852,286	1,965,867	1,724,697	2,271,600	76%	2,343,750	20,000	2,363,750	104%

CARBON COUNTY
Expenditure Budget by Fund/Org Split Report -- MultiYear Actuals
For the Year: 2024 - 2025

2300 PUBLIC SAFETY FUND

Org	Account	Object	Actuals				Current	%	Prelim.	Budget	Final	%
			20-21	21-22	22-23	23-24	Budget	Exp.	Budget	Changes	Budget	Budget

420160 COMMUNICATIONS												
	111	SALARIES & WAGES - PERM	368,563	342,939	371,953	398,705	436,000	91%	444,500		444,500	102%
	120	OVERTIME					0	0%	18,000		18,000	*****%
	141	UNEMPLOYMENT INSURANCE	918	1,200	1,302	997	1,530	65%	1,650		1,650	108%
	142	WORKERS' COMPENSATION	1,123	5,973	4,002	3,799	5,930	64%	6,300		6,300	106%
	143	HEALTH INSURANCE	42,208	26,978	39,853	52,515	77,000	68%	77,000		77,000	100%
		ALL INS										
	144	F.I.C.A.	27,762	25,842	28,062	30,084	33,400	90%	35,400		35,400	106%
	145	P.E.R.S.	32,214	30,495	33,288	36,163	39,550	91%	42,000		42,000	106%
	231	GAS, OIL, DIESEL, GREASE			172	153	0	***%	200		200	*****%
		Account:	472,788	433,427	478,632	522,416	593,410	88%	625,050	0	625,050	105%

420165 COMMUNICATIONS INFRASTRUCTURE												
	945	COMMUNICATION EQUIPMENT	259,294				0	0%			0	0%
		Account:	259,294				0	***%	0	0	0	0%

420230 CARE & CUST OF PRISONERS												
	351	MEDICAL, DENTAL, VET SERV	13,619	1,781	7,615	4,331	12,000	36%	12,000		12,000	100%
	370	TRAVEL, MEALS, ETC	883	606	308	111	1,500	7%	1,500		1,500	100%
		Account:	14,502	2,387	7,923	4,442	13,500	33%	13,500	0	13,500	100%

420240 OTHER INSTITUTIONAL SERVI												
	392	BOARDING PRISONERS	181,885	206,305	171,241	222,927	200,000	111%	230,000		230,000	115%
		Account:	181,885	206,305	171,241	222,927	200,000	111%	230,000	0	230,000	115%

490500 OTHER DEBT SERVICE PYMTS												
	610	PRINCIPAL	155,494	281,275			0	0%			0	0%
	620	INTEREST	9,048	3,944			0	0%			0	0%
		Account:	164,542	285,219			0	***%	0	0	0	0%

521000 INTERFUND TRANSFERS OUT												
	820	TRANSFERS TO OTHER FUNDS	33,000	38,000	38,000		45,000	0%	35,000		35,000	78%
		FUNDING FOR A 3RD VEHICLE EVERY 2 YEARS										
		Account:	33,000	38,000	38,000		45,000	0%	35,000	0	35,000	77%
		Orgn:	2,651,669	2,817,624	2,661,663	2,474,482	3,123,510	79%	3,247,300	20,000	3,267,300	104%

CARBON COUNTY
Expenditure Budget by Fund/Org Split Report -- MultiYear Actuals
For the Year: 2024 - 2025

2300 PUBLIC SAFETY FUND

Org	Account	Object	Actuals				Current	%	Prelim.	Budget	Final	% Old
			20-21	21-22	22-23	23-24	Budget	Exp.	Budget	Changes	Budget	Budget

212 CORONER												
420800 CORONER SERVICES												
	112	SALARIES & WAGES - TEMP.	142	948			500	0%	500		500	100%
	141	UNEMPLOYMENT INSURANCE		3			5	0%	5		5	100%
	142	WORKERS' COMPENSATION		13			20	0%	20		20	100%
	144	F.I.C.A.	11	72			50	0%	50		50	100%
	145	P.E.R.S.	12	84			80	0%	80		80	100%
	220	OPERATING SUPPLIES	1,454	461	369	1,152	2,000	58%	2,000		2,000	100%
	231	GAS, OIL, DIESEL, GREASE		944			1,000	0%	1,000		1,000	100%
	312	FREIGHT AND SHIPPING	61	60	34	192	300	64%	300		300	100%
	330	PUBLIC, SUBSCR, DUES, FEE	650	325	410	950	1,000	95%	1,000		1,000	100%
	357	OTHER PROFESSIONAL SERV	17,125	22,625	15,688	11,700	29,000	40%	29,000		29,000	100%
	370	TRAVEL, MEALS, ETC		733	212	669	3,000	22%	3,000		3,000	100%
	380	TRAINING SERVICES		409	206	802	1,000	80%	1,000		1,000	100%
		Account:	19,455	26,677	16,919	15,465	37,955	41%	37,955	0	37,955	100%
		Orgn:	19,455	26,677	16,919	15,465	37,955	41%	37,955	0	37,955	100%
		Fund:	2,671,124	2,844,301	2,678,582	2,489,947	3,161,465	79%	3,285,255	20,000	3,305,255	104%
		Grand Total:	2,671,124	2,844,301	2,678,582	2,489,947	3,161,465		3,285,255	20,000	3,305,255	

CARBON COUNTY
Expenditure Budget by Fund/Org Split Report -- MultiYear Actuals
For the Year: 2024 - 2025

4006 PUBLIC SAFETY CAPITAL IMPROVEMENT FUND

Org	Account	Object	Actuals				Current	%	Prelim.	Budget	Final	% Old
			20-21	21-22	22-23	23-24	Budget	Exp.	Budget	Changes	Budget	Budget

209 SHERIFF'S DEPARTMENT												
420100 LAW ENFORCEMENT SERVICES												
	944	TRANSPORTATION EQUIPMENT				63,487	246,219	26%	231,230		231,230	94%
		CASH \$196,230										
		REV \$35,000										
		3 Vehicles										
		Account:				63,487	246,219	26%	231,230	0	231,230	93%
		Orgn:				63,487	246,219	26%	231,230	0	231,230	93%
		Fund:				63,487	246,219	26%	231,230	0	231,230	93%
		Grand Total:				63,487	246,219		231,230	0	231,230	

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

PROJECT MEMORANDUM

TO: Carbon County Board of County Commissioners

FROM: Forrest J. Mandeville, AICP – Contract Planner

DATE: July 17, 2024

RE: RnR Elk Resort Subdivision, Amended Plat Lot 9 Preliminary Plat Application

REQUIRED COMMISSION ACTION: Review, receive public comment, and action 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, Planning Board recommendation, and all of the information presented, I hereby move to **approve** of the RnR Elk Resort Subdivision, Amended Plat Lot 9, with the findings and conditions included in the project memorandum.*

Project/Application Summary:

Red Lodge Surveying, on behalf of Keith W. and Linda Waring, 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 8.3 acres with the new lots being 3.73 and 4.58 acres in size. The subdivision is Lot 9 of a previously platted subdivision, RnR Elk Resort Subdivision. Therefore, this subdivision is a subsequent minor subdivision, which is reviewed as a major subdivision.

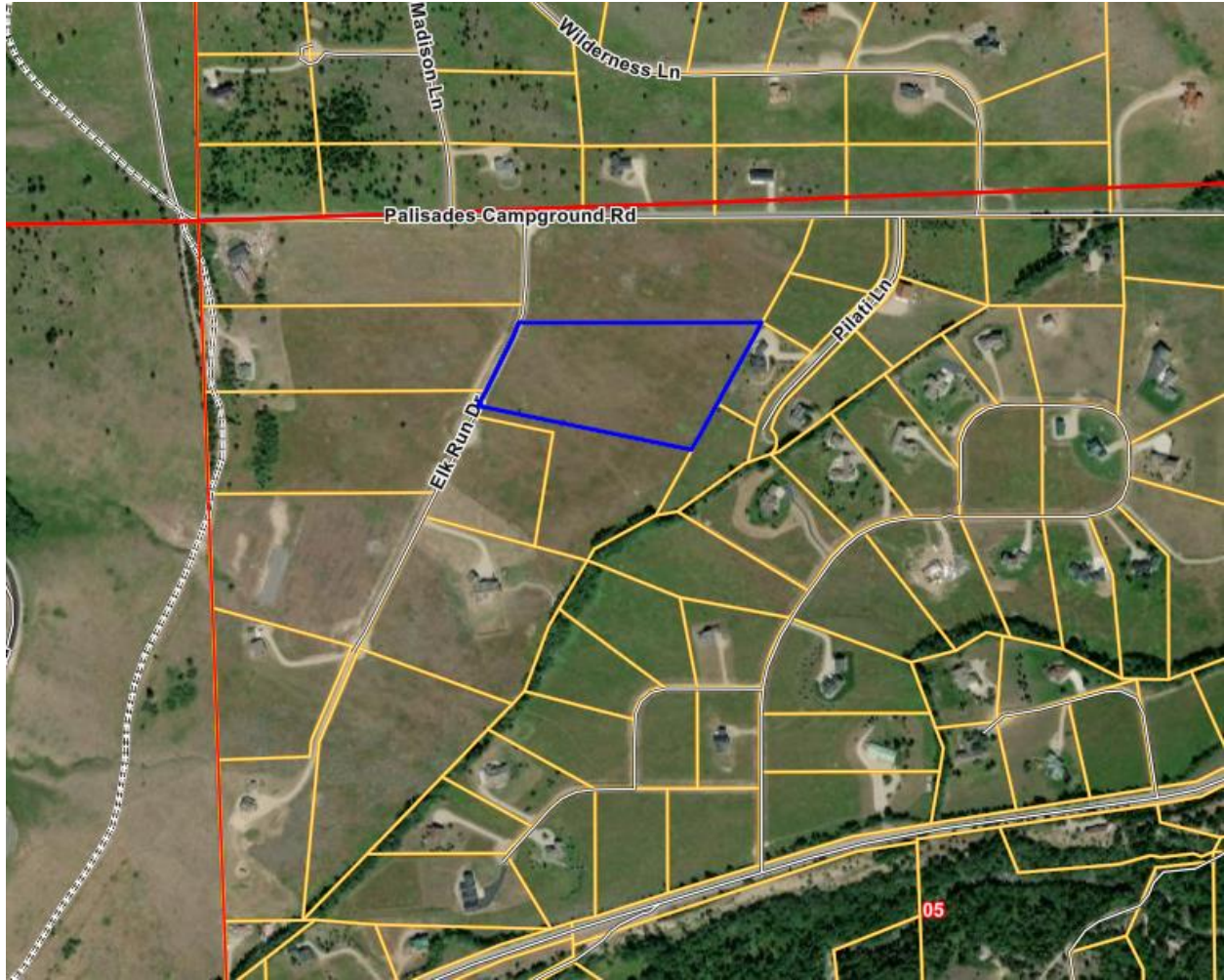
The subject property is located on Elk Run Drive, a private road, which accesses Palisade Campground Rd approximately .1 miles north of this subdivision. The property is legally described as Lot 9, RnR Elk Resort Subdivision, Plat 2148, located in Section 5, Township 8 South, Range 20 East, P.M.M., Carbon County, Montana.

Required 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 June 19, 2024, so a decision must be reached by September 13, 2024.

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

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



Proposed Subdivision Location (Blue) and Vicinity

- **Effect on agricultural water user facilities:** There are no irrigation ditches within the proposed subdivision. The McDonald Ditch lies about 145' to the southeast. There is an existing water right associated with the property for a domestic use well.

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, the Sheriff’s Department estimated a response time of 15-20 minutes.

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 and has a response time of “less than 20 minutes” according to documents submitted with the subdivision application. The Fire Control and Prevention Plan submitted with the subdivision documents indicates the subdivision will adhere to the Fire Suppression Plan on record (document number 320441) for RnR Elk Resort Subdivision and that a hammerhead turnaround on Lot 9B will allow for emergency service response. There is also a 30,000-gallon dry hydrant just south of the proposed subdivision, proper operation of which was recently confirmed as part of other subdivision reviews in the area. 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.



Existing Dry Hydrant

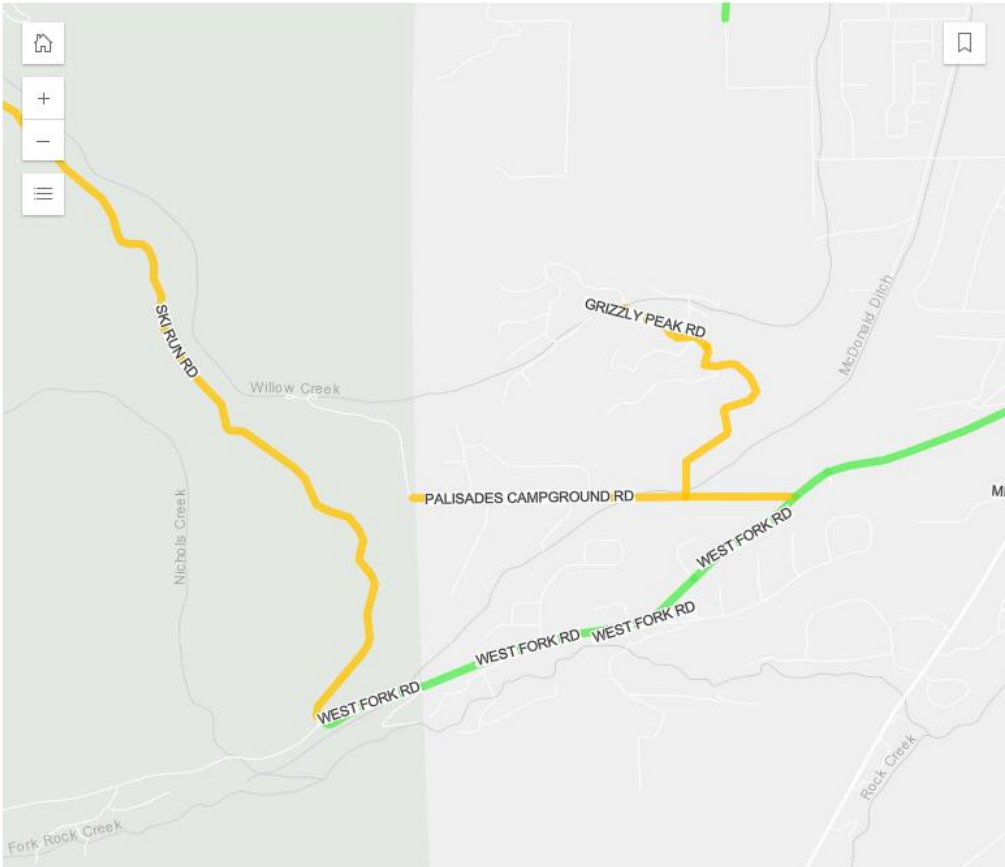
Elk Run Drive provides access to the subdivision and is a private road in a private easement. Palisades Campground Road is a paved County-owned road providing access to several area subdivisions and public land to the west. The road has minimal maintenance and snowplowing according to Road Priority Map on the County Road and Bridge Department website. The subdivision could result in eight additional vehicle trips per day on the County road system. Additional traffic may result in additional requests for maintenance.

As more lots develop on County roads, impacts will increase through demands for a higher level of maintenance. The County may eventually need to seriously consider requiring RSIDs for road maintenance, the adoption of impact fees, or other mitigation measures to address these cumulative impacts.

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

Road Priority Map

Priority 1 (Regularly scheduled maintenance and snowplowing) = GREEN
Priority 2 (Minimal maintenance and minimal snowplowing) = YELLOW
Priority 3 (Minimal maintenance and no snowplowing) = RED



County Road Priority Map

Beartooth Electric Cooperative provides power in the area and reports the ability to serve the site. Beartooth Electric requested an easement on the north side of Lot 9A, which is shown on the preliminary plat. 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 serves students in the area. Superintendent Fitzgerald notes that bus service is provided. 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 and cisterns will serve each lot. DEQ review is required. A well and septic/drainfield were previously approved through DEQ as part of the RnR Elk Resort Subdivision (E.Q.# 09-1347). Additional review for this division is 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.

A recent order from the Montana First Judicial District Court regarding a proposed subdivision in Broadwater County suggests that counties should require subdividers provide as much detail as possible on the impacts of a proposed subdivision on the potentially affected aquifer and should not simply rely on the Montana Department of Natural Resources and Conservation’s (DNRC) water right predetermination process. The Court also found errors with the DNRC process, which may result in only a single exempt well being allowed in each subdivision, regardless of water use of the whole subdivision.

The acquisition of a new water right for a subdivision is not typically required unless the combined subdivision lots will use 10 acre-feet of water per year, or if a well will pump more than 35 gallons per minute. The subdivision application indicates there is an existing domestic well and associated water rights on Lot 9A. Both lots are proposed to use individual wells in conjunction with 4,000-gallon cisterns for potable water supply.

Eric Butts, PE, of Beartooth Engineering provided written information regarding the aquifer:

To avoid any impact to the aquifer, it's proposed to equally allocate the physically available water to each lot. Each lot shall be limited to 1.75 gpm or 2,520 gpd which is greater than the 2,105 gpd needed to meet DEQ requirements. Each lot would file a 602 form water right for this annual amount of 919,800 gallons or 2.82 AF once the water is put to beneficial use. This amount is greater than the 2.5 AF/year forecasted in the DNRC predetermination letter.

If existing water rights are interfered with either as part of a subdivision or otherwise, DNRC has an adjudication process that can result in later appropriations being limited to protect senior water right holders.

Finding: There should be minimal impacts on the aquifer since lots will be equally allocated available water, which is greater than the forecasted amount needed, and will file water rights once the water is put to use.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated September 27, 2023. The report indicates there was spotted knapweed and houndstounge along Elk Run Drive on the west side of the property, but that it appeared the property had been recently sprayed. 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.

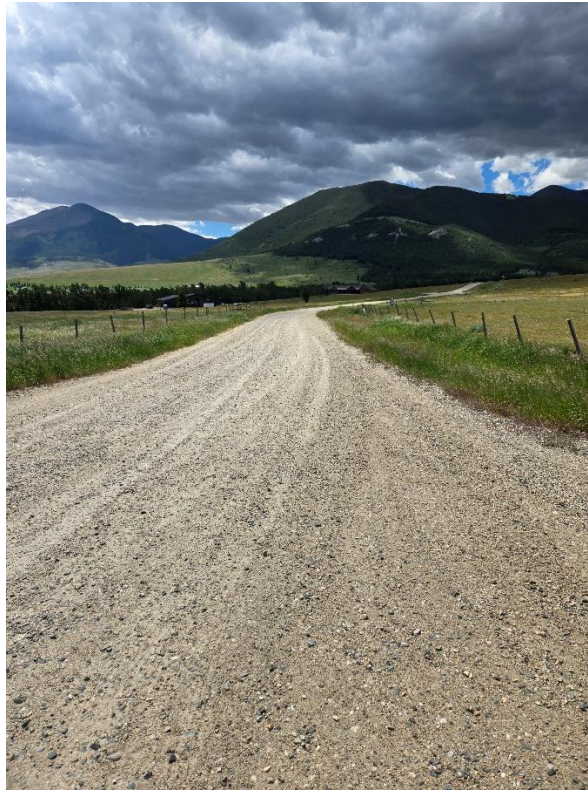
- Effect on wildlife habitat: No critical wildlife habitat has been identified on the property. The site is not identified as sage grouse habitat by the Montana Sage Grouse Habitat Conservation Program.

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).

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



Elk Run Drive and Intersection with Palisades Campground Road

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 Covenants, Conditions, and Restrictions on the property, as well as bylaws for the RnR Elk Resort Homeowners' Association. These covenants were originally recorded under Document #320442 and have been amended numerous times, most recently in August of 2021 under document #388482.

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

Finding: The final plat should include a notice of the existence of the existing covenants and that the subdivision lots are subject to said covenants.

- 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.

e. Planning Board Discussion:

The Planning Board held a public hearing for the subdivision at its July 16, 2024, meeting. There were no public comments for the proposed subdivision, though Kate Stout of Red Lodge Surveying was present in case of questions. Board discussion centered around water availability and the water right process. The Board did not make and changes to the findings or conditions.

f. Planning Board Recommendation:

The Carbon County Planning Board held a public hearing on this subdivision as part of its meeting on July 16, 2024, and subsequently unanimously recommended approval of the RnR Elk Resort Subdivision, Amended Plat of Lot 9, 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 contain a statement noting that the subdivision is subject to the Restrictions, Covenants and Conditions originally created under Document Number 330282 and subsequent amendments thereto. (Section V-A-23)
10. 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)

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

PROJECT MEMORANDUM

TO: Carbon County Board of County Commissioners
FROM: Forrest J. Mandeville, AICP – Contract Planner
DATE: July 17, 2024
RE: Montana Sky Minor Subdivision Preliminary Plat Application

REQUIRED COMMISSION ACTION: Review, receive public comment, and action 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, Planning Board recommendation and all of the information presented, I hereby move to **approve** of the Montana Sky Minor Subdivision, with the findings and conditions included in the project memorandum.*

Project/Application Summary:

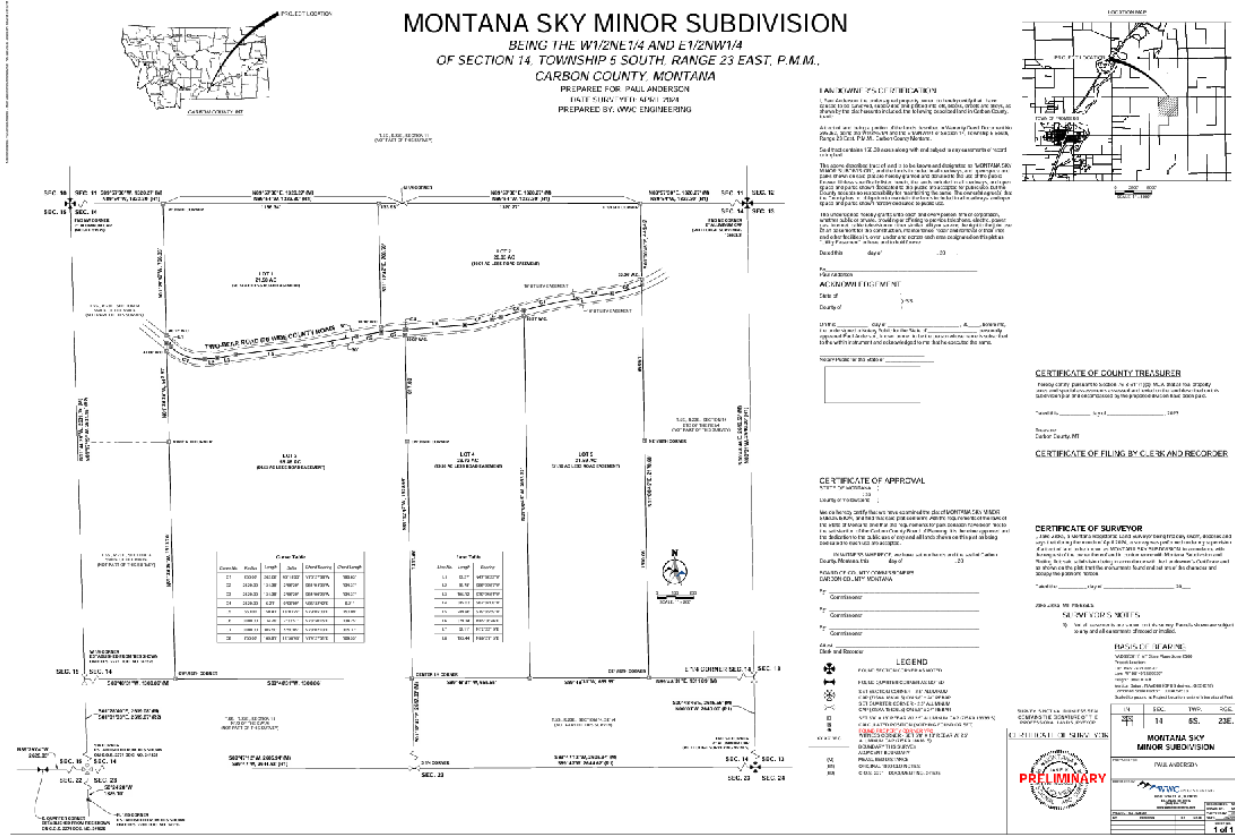
WWC Engineering, on behalf of Paul Anderson, has submitted a preliminary plat application for a 5-lot minor subdivision. The subdivision area is approximately 158.38 acres; proposed lots range from 20.03 acres to 55.46 acres in size.

The subject property is located on N Two Bear Road, approximately 1.3 miles east of the intersection with the Edgar-Fromberg Road. The property is legally described as being the W2NE4 and E2NW4, Section 14, Township 5 South, Range 23 East, P.M.M., Carbon County, Montana.

Required 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 35 working days of a determination of sufficiency. The application was determined to be sufficient on June 17, 2024, so a decision must be reached by August 6, 2024.

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.



Preliminary Plat

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 is proposed to utilize individual drainfields located on the lot it serves. Water will be provided by cisterns located on each lot. Being over 20 acres, lots 1, 3, 4, and 5 are not subject to review through the Montana Department of Environmental Quality (DEQ) but will be reviewed by the Carbon County Environmental Health Department. Lot 2 is less than 20 acres when the road right of way is subtracted and is subject to DEQ review.

Access is proposed to be provided to the subdivision by N. Two Bear Road, a dirt/gravel road which appears to be a County-owned road, but does not have much maintenance due to lack of use. New driveway approaches will be utilized.

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:** Approximately 52 acres classified as farmland of statewide importance by the USDA could be removed from production. The property has historically been used as grazing land. The Montana Cadastral Program Land Summary

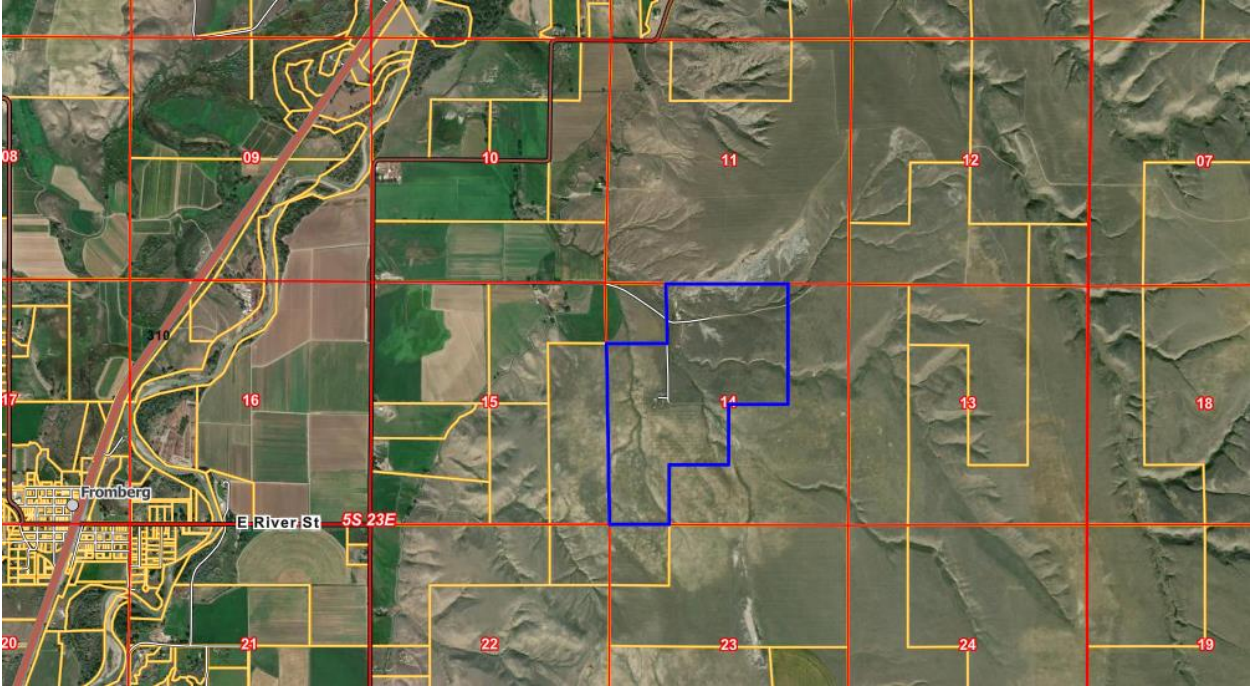
section references the 320 acres under the same ownership, and notes that about 225 acres is used for grazing, 94 acres is fallow, and 1 acre contains a farmsite.

The draft covenants for the property contain restrictions on animals. Lots with up to 22 acres would be allowed six chickens, three horses or three cow/calf pairs or 10 sheep/goats. Lots up to 38 acres would be allowed 12 chickens, six horses or six cow/calf pairs or 10 sheep/goats. The covenants also include language relating to fencing and the “right hand” rule.

The property is in an agricultural area and it should be recognized that as more people move into such areas there is the possibility of conflicts. Montana has right to farm laws that protect agricultural practices from complaints due to common agricultural practices.

Carbon County Weed District Coordinator Brian Ostwald inspected the site on April 25, 2024, and noted that all lots have evidence of leafy spurge with an estimated 20 acres of infestation. He recommended spraying and required a weed bond of \$6,000. Compliance with the Weed District requirements, including bond payment, should be a condition of final plat approval.

Finding: The subdivision will remove some property from agricultural production and has an infestation of leafy spurge. In order to minimize impacts on agriculture a condition should be required that all Weed District requirements are complied with, including payment of the required bond, prior to final plat approval.



Subdivision (Blue) and Vicinity

- Effect on agricultural water user facilities: There are no agricultural water user facilities located on the site.

There is an existing well and associated water right for domestic and stock use on Lot 3. The application materials indicated that the water right will be retained by the owner of Lot 3.

Finding: Because there are no ditches on the property and water rights are in place for the existing well, 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 has jurisdiction to provide law enforcement services to the subdivision. According to the subdivision application, the response time from Red Lodge would be about 40 minutes. This response time would be less if deputies are in the area.

Finding: This subdivision will have minimal adverse impacts on law enforcement, since services can be provided.

The Fromberg Volunteer Fire Department provides fire protection in the area and is located about 3.5 miles from the site. The application documents indicate the applicant has reached out to Chief Jay Carter for comment, but no written response had been received. Vegetation appears fairly sparse in the area and typically sage brush with a few scattered trees. There are some slopes associated with drainages on the site but there do not appear to be areas of steep slopes.

Finding: This subdivision will have minimal adverse impacts on fire protection in the area since fire protection is nearby and there are no identified areas of steep slopes and heavy vegetation.

N Two Bear Road is a dirt/gravel road owned ~~ed~~ by the County. Maintenance appears to end near the entrance to the subdivision. Additional traffic may result in more requests for maintenance and more complaints regarding dust control. The County has a process in which landowners can apply to the County to coordinate spraying for dust control.

As more lots develop on gravel County roads, impacts will increase through demands for a higher level of maintenance. The County may eventually need to seriously consider requiring RSIDs for road maintenance, the adoption of impact fees, or other mitigation measures to address these cumulative impacts.

Because access is dependent on parts of roads that are not regularly maintained and plowed, additional requested maintenance could be demanded of the County. This cost may be somewhat offset by additional tax revenue though it may take time before the subdivision is built out and sufficient tax revenue is realized to justify additional road expenditures, if such action ever becomes justified. A statement on the plat informing future lot owners that the subdivision is accessed by roads that are not regularly maintained or plowed would help mitigate the potential for complaints.

Finding: There should be minimal additional impacts on the County road system as a result of this subdivision if a statement is provided on the plat noting that the road is not regularly maintained.

Beartooth Electric Cooperative provides electrical services. The application contains comments from BEC indicating that an application for power has been received. 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.” The preliminary plat does show 10-foot wide utility easements along the north and south sides of the access road.

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

The subdivision is located within the Fromberg School District.

New residences valued at \$400,000 to \$500,000 could generate \$4,000 to \$5,000 per lot, per year, assuming a 1% tax rate.

Finding: Montana Sky Subdivision should have minimal impacts on other local services due to the small scale of the subdivision and because no service providers indicated an inability to service the proposed subdivision.

- Effect on the natural environment: New septic/drainfield systems are proposed for each lot. Cisterns will be used for potable water supply.

Review and approval of new septic, potable water, solid waste, and stormwater drainage is required by the Carbon County Sanitarian, for Lots 1, 3, 4, and 5, as they are over 20 acres, and by DEQ for Lot 2, since it is under 20 acres (less road). (See Sections IV-B-8.b, V-A-11 through 14, and MCA 76-3-622).

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

A recent order from the Montana First Judicial District Court regarding a proposed subdivision in Broadwater County suggests that counties should require subdividers provide as much detail as possible on the impacts of a proposed subdivision on the potentially affected aquifer and should not simply rely on the Montana Department of Natural Resources and Conservation’s (DNRC) water right predetermination process. The Court also found errors with the DNRC process, which may result in only a single

exempt well being allowed in each subdivision, regardless of water use of the whole subdivision.

The acquisition of a new water right for a subdivision is not typically required unless the combined subdivision lots will use 10 acre-feet of water per year, or if a well will pump more than 35 gallons per minute. If existing water rights are interfered with either as part of a subdivision or otherwise, DNRC has an adjudication process that can result in later appropriations being limited to protect senior water right holders.

There are domestic and stock water rights associated with an existing well which will be on Lot 3. These rights will be associated with the Lot and will be retained by the owner of Lot 3. There are no other known water rights associated with the property.

Cisterns are proposed for potable water supply, so there should be little or no impact on the aquifer due to new wells.

Finding: There should be minimal impacts on the aquifer since cisterns, not wells, will be utilized. Requiring DEQ/County Sanitarian approval will ensure the water supply, wastewater disposal, solid waste and stormwater drainage provisions meet the requirements of state law.

The applicant submitted a Weed Inspection Report completed by Carbon County Weed District Coordinator Brian Ostwald dated April 25, 2024. The report indicates leafy spurge was present and a \$6,000 bond was required.

Finding: There should be minimal impacts on the natural environment due to the proliferation of noxious weeds if Weed District requirements are met, including payment of the required bond.

There are no mapped wetlands, floodplains, or other similar sensitive areas in the subdivision. There are two freshwater emergent wetlands on lands adjacent to the subdivision, but it does not appear the subdivision would impact these wetlands since they are on different properties.

Finding: There is expected to be minimal impact on wetlands, since none exist within the subdivision.

- Effect on wildlife: Wildlife does frequent the area. There is a degree of human occupation on the site, with a home site just to the east and storage occurring on the eastern portion of the subdivision. Therefore, no significant adverse impacts on wildlife are anticipated other than what may have already occurred.

Finding: No significant adverse impacts to wildlife are anticipated due to the existing human occupation in the area.

- Effect on wildlife habitat: The subdivision is within General Sage Grouse Habitat according to the Montana Sage Grouse Habitat Conservation Program. The application indicates the Program has been contacted, but comments had not yet been provided.

Typically, the Program will require some type of mitigation for property in similar habitat.

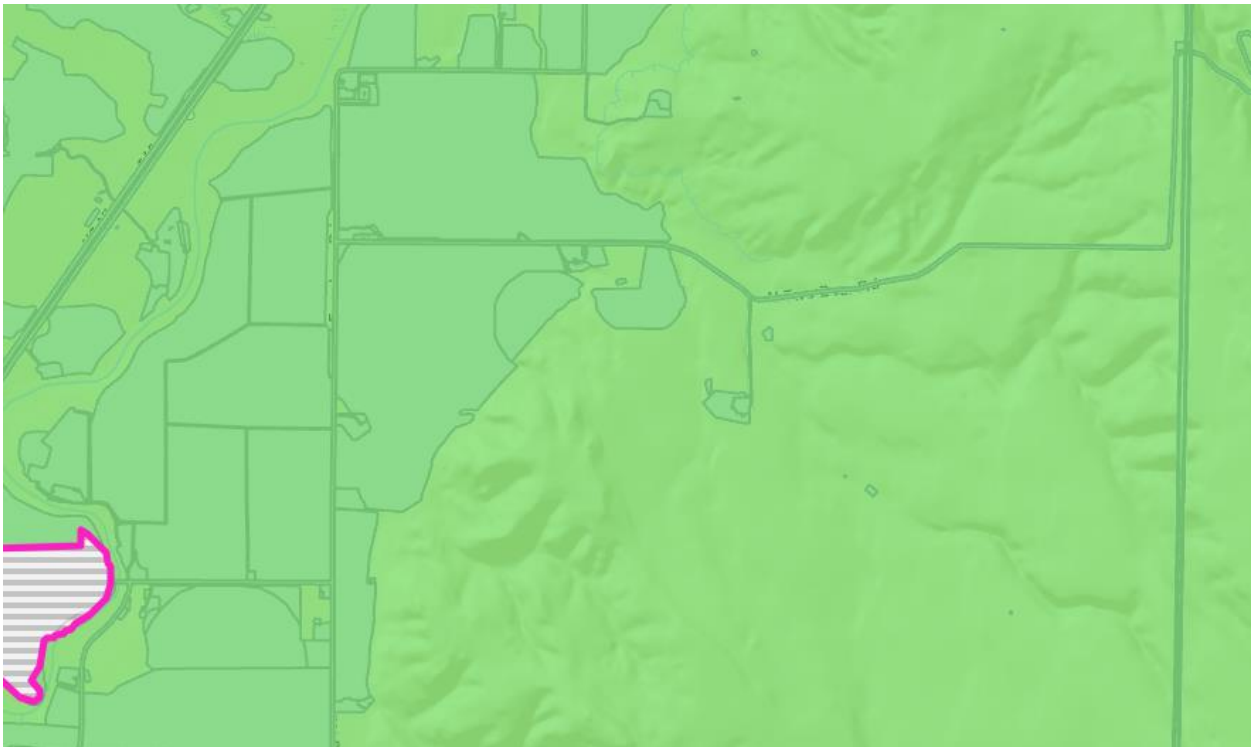
There does not appear to be other critical wildlife habitat on the site.

Finding: There should be no significant impact on wildlife habitat if any mitigation required by the Montana Sage Grouse Habitat Conservation Program is completed and noxious weeds are kept from proliferating on the property.

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

DEQ and County Sanitarian approval of potable water and septic provisions is required. See discussion under effects on the natural environment.

Finding: There should be minimal impacts on public health and safety if recommended conditions are imposed.



Sage Grouse Habitat Subdivision Location

- 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 IV-B-10.f.v of the Carbon County Subdivision Regulations). The

submitted Subdivision Guarantee indicates there are two mortgages on the property and that the Bank of Bridger is the mortgagee for both. A Consent to Platting from the Bank of Bridger was included with the preliminary plat application.

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 (Section IV-C-3.b.vi of the Carbon County Subdivision Regulations).

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 IV-C-5.b of the Carbon County Subdivision Regulations).

The Carbon County Subdivision Regulations, Section IV-B-11 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.

Private covenants are proposed for the subdivision. Though the County does not enforce such covenants, there are standards with which covenants must comply that are outlined in the Subdivision Regulations, Section V-A-23.

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 be obtained prior to residential development. The draft covenants submitted with the subdivision appear to conflict with the Development Regulations regarding setback requirements (Article III, Sections 6 and 7). The covenants

should be consistent with the zoning requirements to avoid conflicts or misunderstanding in the future.

Finding: Covenants should be consistent with the Development Regulations. Development permits will need to be obtained prior to development.

- v. Other regulations in effect in the area of the proposed subdivision: There are no other known regulations in effect for the area with which the subdivision would conflict. Private covenants are proposed and should be prepared per the requirements in the Subdivision Regulations and filed with the subdivision

Finding: The subdivision is not in conflict with any known regulations. Private covenants should meet the requirements of Section V-A-23 and be filed with the final plat.

- vi. Whether DEQ has approved the subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres: DEQ approval is required for Lot 2 since it is 19.01 acres less the County road easement.

Finding: Review and approval by DEQ 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: Lots 1, 3, 4, and 5 are over 20 acres and subject to review and approval by the Carbon County Sanitarian. (Sections IV-B-8.b.i and V-A-11, 12,13, and 14 of the Carbon County Subdivision Regulations)

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

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 1.3: Assist farmers and ranchers who wish to continue using their lands for agricultural production.
 - 1.3.C. Continue to fund and support an active County weed control program which includes both education and regulation. Streamline the process to treat noxious weeds and recover costs when landowners do not treat their weeds. Continue to require weed inspections and bonding as necessary for any land use change and new development with fees to cover staff time for inspections.
 - 1.3.E. Balance individual property rights with the rights of other property owners and community interests for the public health, safety and welfare of all citizens.
- 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 1.6: Encourage the voluntary preservation of open space and wildlife habitat in the county
 - 1.6.C. Encourage developers to mitigate impacts to wildlife, recreation areas, and agriculture, including, but not limited to, closing water storage tanks and pits, cleaning spills, and keeping major migration corridors as open as possible.
 - 1.6.D. When considering changes in land use, encourage consultation with wildlife agencies for potential impacts.
- 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

e. Summary of Public Comments and Planning Board Discussion:

The Planning Board considered this subdivision during their meeting on July 16, 2024. The following is a summary of public comment received and Board discussion.

Written comments from Meghan Combs of Heart E, LLC, were submitted ahead of the meeting and provided to the Planning Board. Ms. Combs concerns included possible groundwater impact if cisterns were not required or if agricultural wells were drilled on the new lots, as well as the lack of definition or restrictions on the extent of irrigating on the lots, traffic impacts and possible conflict with the movement of agricultural machinery, the possibility of future subdivision of the lots, and fire safety given the volunteer nature of the local fire department.

Shawn Birky, who owns land east of the subdivision at the far end of N Two Bear Road, asked about the status of the road and noted his history of research and discussion with County officials and staff about the ownership of the road. He indicated that sometimes the County would maintain the road. He also noted that he prefers a rougher road, which naturally limits access.

Robin George, owner of property to the south and east of the subdivision, noted that she accesses her property along the west and south borders of the subdivision and wants to maintain that access. The access is apparently not a filed easement, so there is the potential that a future owner

could prevent access to the property. She also noted that water is limited in the area and that they can only run about 50 cow/calf pairs on 1200 acres due to the lack of water.

John Combs of Heart E, a neighboring property owner to the west, asked how wells and cisterns would impact water availability in the area. He also noted concerns with the possible increase in traffic and noted the fire risk and higher response times associated with an all-volunteer fire department. He noted that there is open range cattle on the road leading to the property.

Douglas Wadkins, a landowner to the north of the proposed subdivision, noted that fires can move fast with the winds in the area. He noted potential difficulties in hauling water to the lots given the low level of maintenance on the road. Mr. Wadkins also indicated concerns about potential impacts on water and asked about wildlife impacts since there is a sage grouse lek near the property, as well as mule deer and sharptail habitat.

Aaron Redland of WWC Engineering, representing the subdivider, noted that the road status was only researched to the subject property, but that the petition indicates the road goes to the township line. She noted that cisterns are proposed specifically to not be dependent on groundwater and noted that the County Subdivision Regulations do not require a traffic study for minor subdivisions.

Mr. Combs asked if wells will be prohibited in the subdivision. Ms. Redland noted that wells will not be allowed for potable water. Staff gave an overview of the DEQ/Sanitation review and approval process.

Mr. Berky noted that there is a spring on the property, near a sandy spot near the road, which may need a culvert. It was noted that there are some wet areas on the property, but they are not mapped as wetlands.

Paul Anderson, the subdivider, indicated that his plan is to keep Lots 1 and 3, and that he will keep abreast of who develops and how they develop the other lots. When asked why he didn't just do a three-lot subdivision he noted that up to five lots is still reviewed as a minor subdivision, and keeps his options open. Mr. Anderson noted that his research and conversations indicate that the road is a county-owned road.

Mr. Wadkins asked if all easements are shown, and it was noted that all easements are required to be shown on the final plat.

Mr. Combs noted that the subdivider does not have to keep any lots, and can sell all five if they are approved.

Ms. George noted her experience of long emergency response times when relying on volunteers.

The Board closed public comments and moved into Board discussion.

Marni and Skip asked about the access to the George property. Ms. George noted she had some deeds and a legal issue had never been identified, but it did not appear an easement was ever officially recorded. The prescriptive easement process was discussed.

Skip asked about requiring the County road be brought to subdivision standard, and expressed concern about the adequacy of the road for emergency access. Staff noted that Section V-A-10.c.iii of the Subdivision Regulations allows the County to require improvements to roads accessing minor subdivisions if it is determined to be in the public interest. The possibility of requiring a waiver of the right to protest the creation of an RSID for road maintenance was discussed as a possible added condition.

Betsy noted that County roads are the responsibility of the County and can be expensive to maintain. She noted concerns about the length of the County road with a single point of access.

Dean also expressed concern about cutting off access to the George property. The Board noted that an easement could be pursued now, but expressed concern that requiring private easements be created and granted may be beyond the scope of the subdivision review process.

There was a discussion about the potential loss of agricultural land, but Clint noted that it is not great agricultural land stated that he thinks there must be room for some give and take on the issue, though he is generally not a fan of subdivisions.

A motion to approve failed on a 4-5 vote.

The Board discussed possible changes to the findings and conditions. Marni noted her concerns with fire protection, especially since it is a volunteer department.

Clint noted that the site was relatively close to the fire department, though there is always risk. He noted concern with the condition of the road.

Staff noted that the Subdivision Regulations classify being more than 10 miles from a fire department as potentially being a high fire hazard, and that there is no differentiation between full-time or volunteer departments in the Regulations.

Mike also noted his concerns regarding the road. Gordy stated that there is a certain degree of responsibility on the buyer. Skip noted he had road condition and water concerns.

It was noted that most of the concerns could be summarized as road conditions, the proposal and enforceability of cisterns for potable water, and emergency services response. Board members noted that they can only make a recommendation to the Commission.

After more discussion another motion was made to approve with the finding and conditions recommended, which passed on a 6-3 vote.

e. Planning Staff Recommendation:

The Carbon County Planning Board considered this subdivision at its meeting of July 16, 2024, and on a 6-3 vote recommended approval of the Montana Sky Minor Subdivision pursuant to the following conditions (Section references are to the Carbon County Subdivision Regulations unless otherwise noted):

1. All requirements of the Carbon County Weed District to control the proliferation of noxious weeds on the property shall be complied with to the extent required by the Weed District prior to filing of the final plat, including payment of the required bond. (Section V-A-17; Effect on Agriculture)
2. A notation shall be placed on the final plat indicating that area roads have minimal maintenance and snowplowing. (Section V-A-10; Effect of Local Services)
3. Filing of the final plat shall be subject to the review and approval by the Montana Department of Environmental Quality and the Carbon County Sanitarian, as appropriate, for water, wastewater, solid waste, and stormwater drainage provisions, as applicable. (Sections IV-B-8.b.ii and V-A-11, 12,13, and 14; Effect on the Natural Environment; Effect on Public Health and Safety)
4. The final plat shall show the location of all existing and required utility easements. (Section V-A-15.a; Effect on Local Services)
5. 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)
6. Prior to filing the final plat, evidence should be submitted showing any required mitigation through the Montana Sage Grouse Habitat Conservation Program has been completed. (Section V-A-5; Effect on Wildlife Habitat)
7. A notation shall be provided on the final plat that legal and physical access is provided per 76-3-608(3)(d), MCA. (Section IV-B-11.g.v; Compliance with the Montana Subdivision and Platting Act)
8. Prior to filing the final plat, the plat shall be submitted to the County Examining Land Surveyor and any comments sufficiently addressed. (Section IV-C-3.b.vi; Compliance with Survey Requirements)
9. The final plat shall be in substantial compliance with the plans and documents submitted as part of the preliminary plat application. (Section IV-C-5.b; Compliance with the Subdivision Regulations)
10. 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 IV-B-11; Compliance with the Subdivision Regulations)
11. Any new private covenants should be consistent with the requirements of the Carbon County Development Regulations, especially regarding setback requirements, meet the requirements of Section V-A-23, and be filed with the final plat. (Compliance with the Subdivision Regulations)
12. The final plat shall be prepared and reviewed in accordance with Section IV-C of the Carbon County Subdivision Regulations. (Compliance with the Subdivision Regulations)

Heart E, LLC

RECEIVED

JUL 15 2024

July 10th, 2024

CARBON COUNTY SANITARIAN

Re: Montana Sky Subdivision, Preliminary Plat

Carbon County Planning Board,

We have received notice dated June 24th, 2024 that the Carbon County Planning Office has received a preliminary plat application for a five lot minor residential subdivision located at W2NE4 and E2NW4, Section 14, Township 5 South, Range 23 East, Carbon County, Montana. This subdivision is to be known as Montana Sky Subdivision. It is our understanding that the board will be considering this subdivision at their upcoming meeting on July 16th, 2024. We have reviewed the application and have some concerns that we would like to bring to your attention.

Groundwater Impacts

The Summary of Probable Impacts states "*The installation of cisterns will minimize the impacts on groundwater quantity.*" However, it is not clear if use of cisterns will be required, or if they are merely optional. If optional, this eliminates any minimization of impacts on groundwater quantity. The Summary of Probable Impacts also indicates that there is one existing well on Lot 3 which is expected to be used for "agricultural purposes" due to low production. Thus, we assume that at least one new well is anticipated to be drilled on each lot. However, there is no description in the documents we have reviewed describing how these additional wells will be permitted. As of June 2024, there has been a substantial change in the process Montana Department of Natural Resources and Conservation (DNRC) uses to grant groundwater certificates in light of recent court decisions on what constitutes a "combined appropriation." Current guidelines from DNRC on this topic are vague and analyzed on a case-by-case basis [1]. As far as we know, it is unclear if DNRC will grant individual groundwater certificates for individual wells in a subdivision such as the Montana Sky Subdivision.

Additionally, per the draft of the Declaration of Restrictions Montana Sky Minor Subdivision, "*Owners are required to mow, irrigate, control noxious weeds, and otherwise maintain their lot so that the landscaping does not detract from the general appearance of the Subdivision.*" However, the covenants do not specify if owners are expected to irrigate their entire lot or part of the lot, nor are any restrictions placed on the total acres of irrigation permissible within each lot. The lots in Montana Sky Subdivision range from approximately 20 to 55 acres. Irrigating lots of this size will require substantial volumes of water which may 1) exceed DNRC's limits for groundwater certificates, assuming DNRC's analysis of lots in Montana Sky Subdivision allows for them in the first place; and 2) impact nearby water users. In our experience groundwater production in this area is poor, and the proposed domestic, irrigation, and/or other water demands represents a substantial increase in the strain on this resource which may impact the agricultural operations and livelihoods of adjacent landowners. The documents we have

reviewed do not satisfy our concerns that the Montana Sky Subdivision will not result in conflicts over water use.

Traffic Impacts

The Summary of Probable Impacts Montana Sky Minor Subdivision states "*traffic generation from the property is anticipated to be minimal, given the minimal number of new lots*" and "*The additional tracts will contribute a minor increase in traffic on the nearby roads that may cause interference with farm machinery movement, if farm machinery is moved on the County roadways.*" Using simple math and basic assumptions, we estimate that the number of daily trips on the county road will increase by as much as 1000%. These will be homes to individuals that will likely commute to jobs outside of the subdivision. Increased traffic increases the risk of potential accidents [2,3].

It should be noted that the county road is utilized by the adjacent property owner to move agriculture equipment on a near daily basis. This includes movement of large tractors with attached implements, sprayer, water truck with large tanks for tending to sprayer, stock trailers often loaded with livestock, feeding wagon, semi tractors with grain trailer, combine, trailers loaded with large round bales, etc. Safe movement of equipment is an essential part of the agricultural operation. Additionally, the proposed subdivision would be accessed via a county road that travels through open range land. Increased traffic through this range land increases the risk for conflict between humans and animals, which can lead to harassment of livestock, stress to livestock, and even death of livestock. Stress to livestock reduces productivity. Reduced productivity impacts the livelihood of the agricultural operation [4-7].

The site layout map prepared by WWC Engineering shows two petitioned roads to be known as N. Two Bear Lane and Holden Road. In review of the application, the creation of these petitioned roads does not appear to be acknowledged as contributing to probable impacts of the subdivision.

The draft of the Declaration of Restrictions Montana Sky Minor Subdivision states "*Developer hereby reserves the right, in its sole discretion, of this Declaration, to add lots in subsequent phases and filings of Montana Sky Minor Subdivision (hereafter referred to as expansion property) to the provisions of this Declaration, without the consent of any other owner, mortgagee, or trustee or beneficiary of any trust indenture.*" It is our interpretation that the Summary of Probable Impacts does not reflect the impact of further subdivision expansion. As can be read in the application, the developer reserves the right to expand the subdivision which would alter the impact to agriculture, agricultural water user facilities, public services, natural environment, wildlife and wildlife habitat, public health and safety. These should be thoughtfully considered when reviewing the application for the subdivision. If expansion were to occur, the probable impacts may no longer be minimal.

Public Safety Impacts

The native vegetation of the proposed subdivision is grasslands and sage brush. The climate is classified as cold semi-arid with average precipitation of ~11.5 inches per year [8, 9]. In the

absence of irrigation, this climate and vegetation leads to increased risk of wildfire / grassland fires during the hot and dry summers. Grassland fires can burn as many as 3,000 acres per hour and travel up to speeds of 4.5 miles per hour. Sagebrush fires can burn as many as 3,400 acres per hour and travel at speeds up to 6.5 miles per hour This is in comparison to a dense conifer forest that can burn 15 acres per hour with speeds of approximately 0.5 miles per hour [10]. Data also demonstrates that 84% of wildfires are human started [11].

As noted in the summary of probable impacts, the area is served by the Fromberg Volunteer Fire Department with the unmanned station located 3.5 miles away. It takes time for the volunteers to arrive at the station, don gear, and ready equipment prior to departure to a fire. It also stated that *"Unless law enforcement happens to be on patrol closer to the area, the nearest typical response would be from Red Lodge, about 40 minutes away."* As the saying goes, time is money, but in this case time could also be the lives and livelihoods of those around the proposed subdivision as well as the subdivision residents. The increased risk of fire is a public health and safety risk. In review of the application, there does not appear to be a fire mitigation system or plan including the ability for occupants of the subdivision to exit via more than one access road.

In closing, we thank you for your time and thoughtful consideration of our concerns. We believe that the creation of the Montana Sky Minor Subdivision would negatively impact the agricultural operations of adjacent landowners including our operation by affecting access to water, navigation of county roads, herd productivity, and fire safety.

Respectfully,

Heart E, LLC - Meghan Combs

Heart E, LLC - Meghan Combs

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- 3) Retallack, A. E., & Ostendorf, B. (2020). Relationship between traffic volume and accident frequency at intersections. *International Journal of Environmental Research and Public Health/International Journal of Environmental Research and Public Health*, 17(4), 1393. <https://doi.org/10.3390/ijerph17041393>
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