

Staff Report to the City Council Final Plat Review of RR Depot Minor Subdivision, September 16, 2025

This report is submitted to the City of Miles City's City Council for review of the final plat application for the RR Depot Minor Subdivision at a public meeting scheduled for Tuesday, September 23, 2025 at 6:00 p.m. Per 76-3-611, MCA, the City Council is required to review and approve or deny the final plat on or prior to the review deadline of September 26, 2025, unless the subdivider or the subdivider's agent and the City Council or subdivision administrator agree to extend the review period.

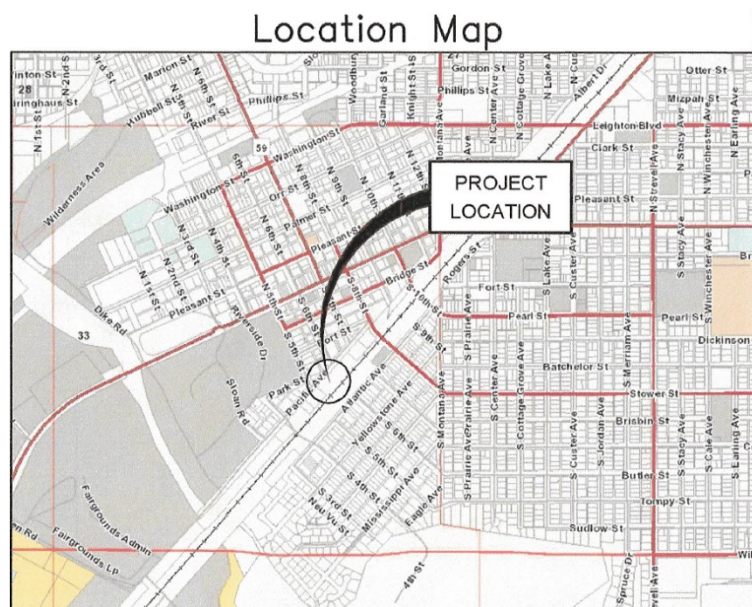
The RR Depot Minor Subdivision would create one lot, leaving a remainder tract over 160-acres that is not subject to subdivision review. See the final plat attached to this report. The BNSF Railway Company owns the railroad right-of-way that extends through the City of Miles City and beyond a southwest to northeast direction. The proposed Tract RR is located at 500 Pacific Avenue in the southwest portion of Miles City just south of downtown, within the BNSF railroad tract/right-of-way between S. 5th Street and S. 6th Street. See the 'Location Map' below.

The preliminary plat application qualified for review as an "administrative minor subdivision". Administrative minor subdivisions are a result of 2023 legislation, which introduced a new type of subdivision that must be reviewed in accordance with 76-3-609(8)(a), MCA. State law provides for the subdivision administrator to assume the decision-making authority to grant preliminary plat approval. The subdivision administrator granted preliminary approval to the subdivision subject to 12 conditions on January 8, 2025. The preliminary approval was for a three-year period.

The RR Depot Minor Subdivision would create one lot of 49,088 square feet, being Tract RR, located in Gov't Lot 5 & NE ¼ SE ¼ of Section 33 of Township 8 North, Range 47 East, P.M.M., Custer County, Montana; in the City of Miles City. The subdivided tract would be conveyed to Custer County after final plat approval and then subsequently conveyed to the Montana Department of Fish, Wildlife, & Parks (FWP) for use as a visitor center.

BNSF Railway Company is the owner of the subject property, and the Custer County Commissioners are the subdividers. Quinn Wright of Initial Point Surveys PLLC is the local agent for the subdividers and the project surveyor.

The subdivision lot is and will be provided City services.



The Final Plat application was submitted to the subdivision administrator on July 9, 2025 via email, with additional material submitted between then and August 7th.

The subdividers' agent, Quinn Wright, has requested that the City waive the requirement in Sec. 21-14(b)(2)(a)(5) of the Miles City Subdivision Regulations that requires consent to plat documents from lienholders to be dated no older than 30 calendar days prior to the date of submittal. The City Attorney, Daniel Z. Rice, has reviewed the subdivision guarantee submitted with the application, and addressed an apparent erroneous document referenced in the consent to plat documents noted by the subdivision administrator, and the document reference appears to be a typo. The City Attorney also recommends the City Council waive the 30-day requirement.

The following documents are attached to this report:

1. Final Plat of RR Depot Minor Subdivision
2. Final Plat Subdivision Application
3. August 7, 2025 email from Quinn Wright with waiver request for ages of Consent to Plat documents
4. Document from Initial Point Surveys to address how conditions of preliminary plat approval have been addressed
5. Examining Land Surveyor approval
6. Subdivision Guarantee
7. Consent to Plat from U.S. Bank
8. Consent to Plat from Citibank N.A.
9. City Attorney review of Subdivision Guarantee with recommendation on waiver request
10. Preliminary plat approval letter

The conditions of preliminary approval are listed below. Following each condition is a statement in italics indicating how the condition has been met.

Conditions:

1. The final plat and plans shall be in substantial compliance with the preliminary plat and plans reviewed and approved by the City of Miles City Subdivision Administrator, except as modified by these conditions. *[Sec. 21-14(b)(1) Miles City Subdivision Regulations (MCSR)]*

Compliance Statement: *The final plat for the subdivision has only been modified relative to the preliminary plat to accord to the conditions of preliminary plat approval; the plat and plans substantially comply with the preliminary plat and plans, satisfying Condition 1.*

2. The Subdivider shall comply with all other standards and procedures of the Miles City Subdivision Regulations, which are applicable to this subdivision prior to receiving final plat approval, as well as all conditions and mitigations offered through the application which were not altered or amended during the review process. The Subdivider is hereby informed that any unmet regulations, procedures, offered conditions and mitigations, or provisions that are not specifically listed as conditions of approval, do not, in any way, create a waiver, variance, or other relaxation of the lawful requirements of the Miles City

Subdivision Regulations or State law. *[This condition will ensure compliance with MCSR and MCA]*

Compliance Statement: *The final plat has proceeded in accordance with the Miles City Subdivision Regulations. With the exception of the age of the consent to plat documents, being over 30 days old at the time of submittal, the subdivision continues to comply with the applicable regulations. It should be noted that it would not be contrary to state law for the City Council to grant the waiver being requested for the age of the consent to plat documents.*

3. The approval period for the preliminary plat is three years. All conditions of preliminary approval shall be met within three years or the preliminary plat approval is null and void, unless an extension(s) is requested and agreed to by the governing body. The final subdivision plat must be filed and recorded with the Custer County Clerk and Recorder within the three-year approval period or extended period, if applicable. *[76-3-610(1), MCA]*

Compliance Statement: *The preliminary plat was approved on January 8, 2025, giving a three-year approval period for the preliminary plat that will be in force until January 8, 2028. The final plat will need to be recorded at the Custer County Clerk & Recorder's Office prior to that date, unless an extension is requested and granted in accordance with state law and local regulations. It is expected the final plat will be recorded soon after City Council approval.*

4. The Subdivider and/or landowner shall submit an application for final plat review subject to review and approval by the governing body. *[Sec. 21-14(b) MCSR and 76-3-611, MCA]*

Compliance Statement: *The subdividers' agent submitted a final plat application for review and approval by the City, which was signed by a representative of the landowner, BNSF Railway Company. Condition 4 is satisfied.*

5. The final plat and supplements shall comply with the Uniform Standards for Final Subdivision Plats and shall be reviewed by Custer County's Examining Land Surveyor and Miles City's Subdivision Administrator prior to final approval. *[Sec. 21-14(b) MCSR and 76-3-402 and 76-3-611(2), MCA]*

Compliance Statement: *The subdivision administrator has reviewed the PDF version of the final plat and found it to substantially comply with content requirements of the Uniform Standards for Final Subdivision Plats (A.R.M. 24.183.1107). The physical form items (such as size and materials) will need to be checked by the Custer County Clerk & Recorder's Office at the time of submittal for recording.*

The final plat submittal includes an Examining Land Surveyor (ELS) approval letter dated July 21, 2025 from Carl R. Kluesner P.L.S., as the Custer County Examining Land Surveyor. With the ELS approval, subdivision administrator findings, and Custer County Clerk &

Recorder's Office providing final signatures on the final plat after final plat approval by City Council, the final plat and supplements will comply with Condition 5.

6. The governing body shall approve the final plat only if it conforms to the conditions of approval set forth on the preliminary plat application and to the terms of the MSPA and MCSR; and if the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid. [76-3-611(1), MCA]

Compliance Statement: *Based on the subdivision administrator's review of the final plat and application, it appears all conditions are satisfied. The County Treasurer's signature certifying compliance with this requirement is on the face of the final plat. Condition 6 is satisfied, and the City Council may grant final plat approval if the requested waiver is granted for the age of the consent to plat documents.*

7. The Subdivider shall submit with the final plat a subdivision guarantee issued by an authorized title insurer or its title insurance producer showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land. The governing body may provide for the review of the subdivision guarantee for the land in question by the City Attorney. [76-3-612, MCA]

Compliance Statement: *The final plat application included a Subdivision Guarantee dated June 25, 2025 issued by First American Title Insurance Company (through Security Abstract & Title Company), which was dated 14 days old as of the July 9, 2025 final plat application submittal. The Subdivision Guarantee documents the vested owner as of that date being BNSF Railway Company, with lienholders listed including U.S. Bank and Citibank, N.A.*

The application also included a Consent to Plat document from Citibank, N.A. dated 5/14/2025, as well as a Consent to Plat document from U.S. Bank dated January 30, 2025. Both documents cite Document No. 208760, records of the Clerk & Recorder's Office of Custer County, as the lien instruments. Document No. 208760 is not listed in the Subdivision Guarantee as the applicable lien document, so the subdivision administrator requested the document from the subdividers' agent, and that the applicants/agent address the documents listed in the Subdivision Guarantee with the Consent to Plat documents. Mr. Wright's response was that there is no such document in Custer County Clerk & Recorder's Office as their numbers only go up in the 180,000's; Mr. Wright stated that with the help of the clerk of records, they still could not find it, but they did find documents during that time period (1970) that are filed in a book down in the basement that is completely BNSF stuff; apparently, it is about 3 inches thick, and they did not copy it for the application.

Sec. 21-14(b)(2)(a)(5) MCSR requires consent to plat documents to be dated no older than 30 calendar days prior to the date of submittal. This 30-day requirement is not a requirement from state law, but only a local requirement found in the subdivision regulations. Because the Citibank consent was 8 weeks old at the time of submittal, and the U.S. Bank consent was

over 5 months old, the subdivision administrator requested that the agent ensure the Consent to Plat documents are signed within 30 days prior to submitting them. Mr. Wright's response to the request was, "We are asking that this be waived, it's almost impossible dealing with the BNSF and their lenders and working on their schedule to meet that requirement." The subdivision administrator is unable to "waive" an administrative requirement in the subdivision regulations, but the City Council may waive such a requirement.

The subdivision administrator requested City Attorney Dan Rice review the Subdivision Guarantee, the Consent to Plat documents, and the waiver request for the age of the consents. Attorney Rice's analysis is attached to this report, and his discussion is as follows:

"I have reviewed the Subdivision Guarantee issued by First American Title pertaining to the RR Depot Minor Subdivision application, and find that it is complete and sufficient. The report describes the property in question, and identifies two lienholders who would be required to consent to the plat being approved.

Both U.S. Bank, and Citibank N.A., the identified lienholders, have submitted both Lienholder Acknowledgments and Consents to Plat in support of the present application. The banks both identify the real property correctly, although there is a persisting document number typo contained in all documents which is known to be a typo, as document numbers are sequential, and the mistyped number does not yet exist. I find this error to be administrative, harmless, not the fault of the parties, and not of concern given the proper identification of the property legal description, acknowledgment of the lien, and confirmation by the subdivision guarantee.

I would recommend that City Council waive the 30-day requirement as to the date of the bank acknowledgments and consents, which is merely a local rule, which does not adequately account for dealing with large entities such as BNSF, U.S. Bank, and Citibank. The documents are validly executed with reliance assurances, and the strict adherence to the local timeliness requirements under the circumstances serves no legitimate purpose."

In summary, both lienholders listed in the Subdivision Guarantee have signed a consent to plat document, the document reference is an apparent typographical error that does not negate the fact that the lienholders consent to the platting of this subdivision, and Attorney Rice recommends the City Council waive the 30-day requirement, which is a local rule that does not account for dealing with large entities such as BNSF, U.S. Bank, and Citibank. Strict adherence to the local timeliness requirements under the circumstances serves no legitimate purpose.

If the City Council waives the 30-day consent to plat requirement, Condition 7 would be adequately satisfied to allow final plat approval by City Council.

8. The proposed exclusion from sanitation review by the Montana Department of Environmental Quality (DEQ) shall be approved by the sanitarian for the Miles City/Custer County Health Board or DEQ prior to final plat approval. Certification of the

local health officer having jurisdiction shall appear on the final plat. [ARM 24.183.1107(3) and 76-4, MCA]

Compliance Statement: *The final plat includes under the “Certificate of Sanitarian” the signature of Michael Rinaldi dated June 3, 2025. The certificate approves of a sanitation exclusion from Montana DEQ review. Mr. Rinaldi has since retired from his position as local environmental health officer, but his signature adequately demonstrates compliance with Condition 8.*

9. The final plat and any instrument of transfer concerning the parcel shall identify the legal and physical access to the lot created by the subdivision. [76-3-608(3)(d), MCA]

Compliance Statement: *The final plat shows Tract RR as directly abutting Pacific Avenue, a City street, for legal and physical access. Future instruments of transfer concerning the parcel shall identify the legal and physical access to the lot to comply with that requirement of 76-3-608(3)(d), MCA and Condition 9. Condition 9 is therefore met at this time.*

10. All existing and proposed easements shall be identified as to purpose, dimensions and recipients of the dedication. [MCSR and ARM 24.183.1107]

Compliance Statement: *The final plat depicts Easement #1, a utility easement to encumber a large portion of Tract RR. The easement is being created to ensure various utilities that cross the tract are located within an easement that covers all of the utilities, and to comply with Sec. 21-18(a)(6)(c) MCSR, which states: “No single lot may be divided by a public or private road, alley or utility right-of-way or easement.” The easement language under the Purpose of Survey on the plat identifies the purpose and recipients of the dedication, and the dimensions are shown on Tract RR. The final plat complies with Condition 10.*

11. In addition to showing the location of utility easements on the plat with dashed lines, the following statement shall be on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, telecommunications, 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 their lines and other facilities, in, over, under and across each area designated on this plat as 'utility easement' to have and to hold forever." [Sec. 21-18(a)(13)(i) MCSR]

Compliance Statement: *The final plat depicts Easement #1, a utility easement to encumber a large portion of Tract RR. The easement language under the Purpose of Survey on the plat includes the above language as required by Condition 11 and Sec. 21-18(a)(13)(i) MCSR.*

12. Future uses of the lot shall be in accordance with the Miles City Zoning Code and consistent with the plans reviewed with the preliminary plat application, unless a variance is granted per the Zoning Code, as applicable, and an amendment is approved by the governing body. In addition, because the project has only been proposed for the non-

residential use allowed by the current General Commercial District regulations and the preliminary plat application did not contemplate residential uses and associated park land dedication requirements, no residential uses are allowed without further review and approval by the City of Miles City and if necessary, DEQ. [Sec. 21-14(b)(11) and Sec. 21-18(a)(16) MCSR]

Compliance Statement: *Condition 12 serves to inform the subdividers of the restrictions of the City zoning code and that residential uses, which have not been contemplated and would require additional review due to potential park land dedication requirements for subdivisions that create residential lots of 5-acres in size or less. Nothing further is required for compliance with Condition 12, which should therefore be considered satisfied.*

This preliminary plat approval is for the creation of one lot to be used in compliance with the Miles City Zoning Code and as contemplated in the subdivision application. Any changes to the approval would require additional review and approval by the City of Miles City.

Compliance Statement: *The final plat will create one lot, which will need to be used in compliance with the Miles City Zoning Code. No changes to the approval have been requested or made that would require additional review and approval by the City of Miles City.*

SUBDIVISION ADMINISTRATOR RECOMMENDATION:

Based on compliance with conditions of preliminary approval and subject to City Council approval of the waiver request for the age of consents to plat from lienholders discussed above, the subdivision administrator recommends the City Council approve the final plat and authorize the Mayor to sign the Certification of Final Plat Approval on the final plat. The final plat and documents listed below may then be recorded and/or filed at the Custer County Clerk & Recorder's Office.

Reviewed and submitted by:



Joel Nelson, Geoplant LLC
Contract Planner
(Subdivision Administrator)

September 16, 2025

Date

Items to be filed or recorded for the RR Depot Minor Subdivision:

- Final Plat of RR Depot Minor Subdivision (signed originals – the Custer County Clerk & Recorder's Office requires 2 mylars and 1 paper)
- Subdivision Guarantee dated June 25, 2025 (ARM 24.183.1107(1)(c) & (5)(a))
- Consent to Plat from CitiBank (ARM 24.183.1107(1)(c) & (5)(a))
- Consent to Plat from US Bank (ARM 24.183.1107(1)(c) & (5)(a))