

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Rodney Wood

550 North 800 West
West Bountiful, Utah 84087

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City Recorder
Cathy Brightwell

City Engineer
Kris Nilsen

Public Works Director
Steve Maughan

THE WEST BOUNTIFUL CITY COUNCIL WILL HOLD ITS REGULAR MEETING AT 7:30 PM ON TUESDAY, JANUARY 19, 2021

*Meeting will be held ONLY electronically via Zoom (**see info below**)*

Mayor Romney has determined that due to the COVID-19 pandemic and the physical distancing needed to prevent the spread of infection, public meetings present a substantial risk to the health and safety of those who may be present. That risk can be substantially mitigated by holding City Council meetings through electronic means that allow for public participation without an anchor location. A copy of the Mayor's determination and order is available at www.wbcity.org

AGENDA: Invocation/Thought – Rod Wood; Pledge of Allegiance – Mark Preece

1. Approve Agenda.
2. Public Comment - two minutes per person, or five minutes if speaking on behalf of a group.
3. Rear Yard and Side Yard Variance Request – Mtn View Estates Lot 104 – 995 W 1950 N.
4. Options for Hole #16 at Lakeside Golf Course.
5. Scope of 2021 Porter Lane/800 West Street Restoration Project.
6. Discuss Sidewalk Repair Options Related to Trees.
7. Minutes from January 5, 2021.
8. Staff Reports – Police, Public Works, Engineering, Community Development, Administration.
9. Mayor/Council Reports.
10. Closed Session for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.
11. Adjourn.

This agenda was posted on the State Public Notice website, the City website, emailed to the Mayor and City Council, and sent to the Davis Journal on January 15, 2021.

Join Zoom Meeting:

<https://us02web.zoom.us/j/83205785088>

Meeting ID: **832 0578 5088**

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 408 638 0968 US (San Jose)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)



MEMORANDUM

TO: Mayor and Council

DATE: January 15, 2021

FROM: Staff

RE: Variance Request – Side and Rear Setbacks at 995 W 1950 N (Mountain View Lot 104)

This memo introduces the variance request submitted by the Israelsen family requesting the ability to encroach into the rear and side setbacks for a new home on Lot 104 of the Mountain View Estates subdivision. This memo is divided into the following sections: Background, Variance Law, and Analysis.

This memo also includes the following attachments:

- A. Original Subdivision Plat for Mountain View Estates¹
- B. Variance Request (including exhibits)
- C. Marathon Pipe Line's *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction
- D. Answer and Counterclaim to Marathon Complaint
- E. Letter from Marathon Pipe Line LLC to West Bountiful City (1/6/21)

Background

In September of 2018, the City Council granted Day Lay One LLC final plat approval for the Mountain View Estates subdivision, a 42-lot subdivision on 26.7 acres (R-1-22 zone), and it was recorded October 16, 2018. Several lots within the subdivision are affected by various large easements for transmission lines intersecting the subdivision related to power, sewer, natural gas, and petroleum.

Lot 104 is still owned by Day Lay One LLC, the original developer, but SI Builders entered into a contract to buy the lot, which it has since assigned to Jason and Shalane Israelsen. This lot has a limited building envelope due to oil and gas pipeline easements totaling 76 feet in width that run from the southwest corner to the northeast corner of the lot. The easternmost of the easements is

¹ There have been amendments to the original plat, but none affect Lot 104 or the easements as shown.

16.5 feet wide and is now owned by Marathon Pipe Line LLC (“Marathon”). This easement restricts the property owner from constructing or maintaining any structure on the easement or impairing or interfering with Marathon’s rights under the easement, including the right to operate, repair, maintain, or replace any of the pipelines within the easement.

The city has reviewed and approved a building permit application for this lot, but Marathon has filed a motion for restraining order preventing SI Builders from proceeding with its current plans; consequently, SI Builders has not picked up the building permit. While the proposed home is outside of the defined easement, Marathon is claiming that it is still too close to their pipeline (8’) for safety and maintenance purposes. Typically, Marathon requires 50’ of distance between its pipelines and residential structures. Marathon has therefore refused to allow the home’s utility lines and driveway to cross its easement unless the proposed home is moved farther away.

As a compromise between the parties, Marathon has stated that it will allow the crossings if the proposed home is built at least 20’ away from the location of the pipeline. To meet this requirement and keep the original building plans, the building would encroach 2’ into the west side yard setback (resulting in an 8’ setback instead of a 10’ setback) and 5.5’ into the south rear yard setback (resulting in a 24.5’ setback instead of a 30’ setback). These reduced setbacks are the purpose of the proposed variance request (see attached materials for a more comprehensive explanation by the applicant).

Variances

A variance is a waiver or modification of the requirements of a land use ordinance as applied to property, and it runs with the land. The City Council acts as the Appeal Authority in determining whether an applicant meets the mandated criteria, and its decision is effective when it issues a written decision, including findings.

The standard for obtaining a variance under state law and city code is very high. The appeal authority may grant a variance only if all five of these criteria apply:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.
 - a. The unreasonable hardship must be located on or associated with the property and come from circumstances peculiar to the property, not from conditions that are general to the neighborhood. An unreasonable hardship may not be self-imposed or economic.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed

- by other properties in the same zone;
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 5. The spirit of the land use ordinance is observed and substantial justice is done.

If the applicant fails to prove all five requirements, the variance must be denied. In granting a variance, the City Council may impose additional requirements on the applicant that will mitigate any harmful effects of the variance or serve the purpose of the standard or requirement that is waived or modified.

Analysis

The following sections provide staff's opinion of how the facts as presented by SI Builders may or may not apply to the outlined criteria that must be met for a variance to be granted.

1. Literal enforcement of the ordinance would cause unreasonable hardship that is not necessary to carry out the general purpose of the ordinance.

The applicant states that it has applied for the variance at Marathon's request due to maintenance and safety concerns with its 70-year-old pipeline. Although the applicant does not specify the hardships associated with literal enforcement of the setback requirements, it appears from its request that: 1) the designed home cannot meet the requirements imposed by Marathon, and 2) a smaller buildable footprint would be required for any building that meets setbacks and Marathon's safety standards. The applicant claims its proposed home already is too small for the minimum CC&R requirement, and it has had to obtain a waiver of minimum home size from the developer.

Arguably, these hardships are self-imposed or economic in nature in that:

- a) The shape, size, and access to the lot were all designed by Day Lay One LLC, which is still the listed owner of the lot. If a variance is granted, it would have the effect of negating the lot standards imposed—which the developer should have followed—in the subdivision process.
- b) The cost associated with re-designing a home that would fit within a new footprint is clearly an economic hardship only.
- c) Any costs associated with terminating a real estate purchase contract are also an economic hardship.
- d) Preferences about the size of home (or size allowed by CC&Rs) are also self-imposed (by the developer).
- e) Although Marathon's easement is confined to its boundaries, the developer could and should have checked with Marathon and other easement holders in laying out the

subdivision to verify building envelopes due to the width and nature of the many easements crossing the subdivision property. Marathon's refusal to allow the applicant to cross its easement for safety reasons appears to be an issue between Marathon and the property owner that should not demand relaxation of ordinance standards.

On the other hand, in purchasing the property, the applicant could not have reasonably anticipated that Marathon would impose distance requirements beyond the easement boundaries that would further reduce an already restricted building envelope in the rear corner of the property. If it chooses, the Council could find that this presents an unreasonable hardship that arises from circumstances peculiar to the property, not conditions that are general to the neighborhood. But note that the buyers may be able to avoid the hardship to some extent if they do not move forward with their purchase, which is contingent upon receiving a variance from the city as noted in an addendum to their purchase contract.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.

The applicant explains that the buildable area on the lot is on the east side, while utility lines are located on the west side. They must cross over Marathon's easement to provide service to the proposed house. Marathon's pipeline is near the east edge of the series of easements on the lot, and additional fill necessary for the lot caused the pipeline to be buried deeper than it was originally. As a result, Marathon requires more space between the pipeline and the house to safely engage in future maintenance activities.

In addition to reviving issues of self-imposed hardship, staff also notes that easements of this nature are common throughout this subdivision and other properties on the west side of the city. This particular easement and pipeline have been in place for 70 years, and could have been planned for during the development of the subdivision. Homes have been built on several other lots in this subdivision (and others) with limited space without needing to encroach into yard setbacks. Further, the issue of the lot owner being able to cross the easement for their construction is a dispute between two private parties.

On the other hand, in approving the lot configuration in the subdivision, the city (and the developer) relied on the principle that the defined easements would be confined to their boundaries and the remaining property would be available for building purposes. And had the buyers known of Marathon's requirements for crossing its easement, they could have planned for a smaller home that would not encroach into setbacks.

3. Granting the variance is essential to the enjoyment of a substantial property right enjoyed by other property in the same zone.

The applicant argues that without the variance – and to meet Marathon requirements – a house would likely be significantly smaller than other homes in the area, and will not meet the CC&Rs. It “would stand out as an aberration.”

Staff notes again that CC&Rs are a self-imposed problem created by the developer, and most importantly, that the applicant states that a smaller house could indeed fit on the property. If the Council is swayed by the idea that the owner is entitled to a house of a certain size (and the argument holds that there is a legal requirement to meet Marathon's requirements), staff would ask to see more evidence of house design options that would fit in the buildable space to verify claims that only very small buildings would fit.

4. The variance will not substantially affect the general plan or be contrary to the public interest.

The applicant contends that the home backs to a trail and canal, and that the neighbor to the east has erected a wall that would block the view of the side yard incursion; thus, other homeowners will not be affected by the reduced setbacks.

Staff notes that the applicant provided no information suggesting that the neighboring property owner has no issues with the incursion into the side yard easement. Also, the proximity to the trail in the rear may not affect other homeowners, but it has an impact on the public interest and the rural feel of the community as provided in the general plan. Staff is also concerned about how the variance would affect setback enforcement on other lots with easements and the design of future west side subdivisions – both issues impacting principles outlined in the general plan.

5. The spirit of the land use ordinance is observed and substantial justice done.

The applicant suggests that the larger front yard and west side yard setbacks offset the requested incursions, and that substantial justice is done by allowing the home to be farther away from safety risks associated with the pipeline.

Staff is concerned about creating a sort of moral precedent by waiving land use regulations to accommodate a third party and allow for a specific building plan when other designs are possible.

Conclusion

Staff does not believe that the applicant has presented sufficient evidence on each of the foregoing requirements to justify a variance under city ordinance and state law—especially for the developer and current owner of the property. However, the applicant has made arguments and provided information to support a contrary position—that at least for the buyers, due to the unreasonable hardship arising from the unique circumstances of this lot and the easement holder's building requirements, a setback variance may be an appropriate remedy.

If the Council determines to grant the variance, it should consider imposing conditions to mitigate the potential harmful effects of reduced setbacks. Examples of such conditions would be to grant a smaller incursion into the setback area, grant the rear incursion but not the side yard or vice versa, and/or require landscaping to buffer the proximity of the home to the neighboring property and trail.

The Council should also clarify that granting a variance for this parcel under these unique circumstances does not set a precedent for variances on other properties, including those with easements that must be crossed in order to build a home.

Sample motions:

Deny:

I move to deny the variance request on the grounds that the applicant has failed to establish each of the requirements for a variance for the reasons discussed in this meeting and in the staff memo, and to direct staff to prepare a written decision to that effect.

Grant:

I move to grant the variance request on the grounds that the applicant has met each of the requirements for a variance for the reasons discussed in this meeting and in the staff memo, and to direct staff to prepare a written decision to that effect.

Table:

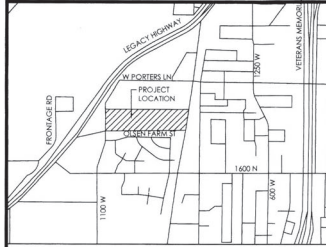
I move to table this application and request the following additional information...

2483-1

2483-1

MOUNTAIN VIEW ESTATES

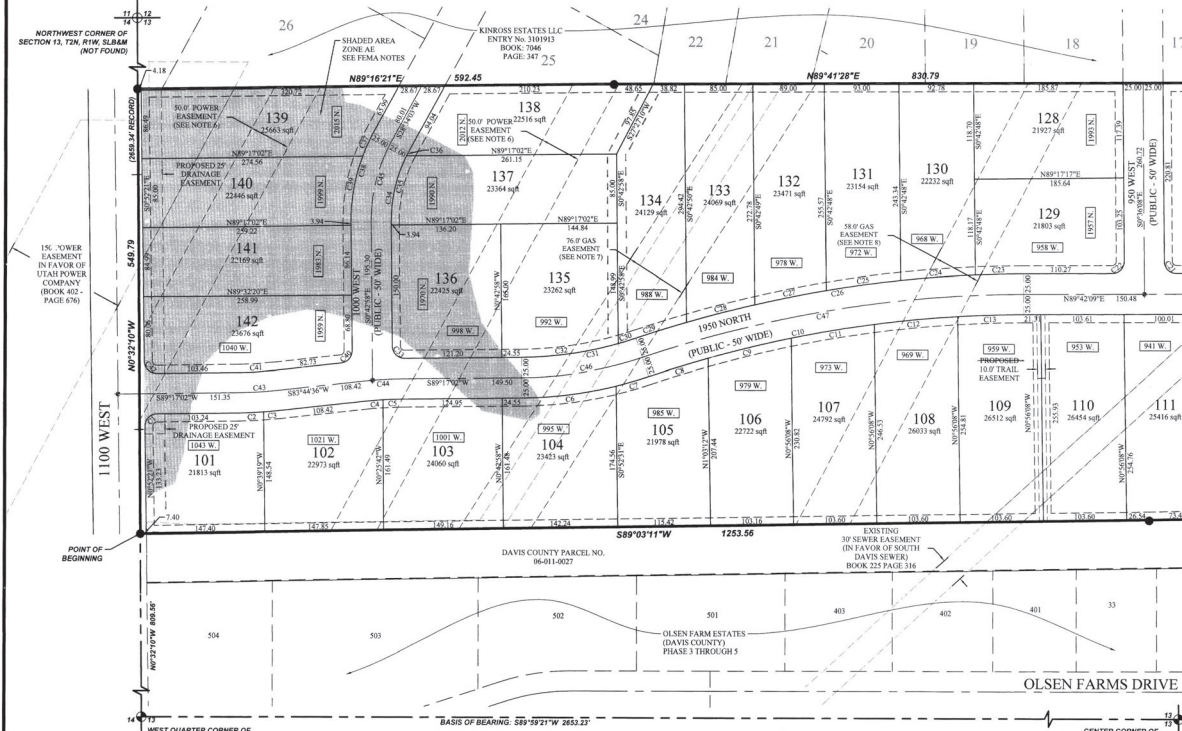
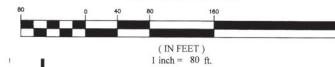
LOCATED IN THE NW 1/4 OF SECTION 13, T2N, R1W,
SALT LAKE BASE & MERIDIAN
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH



VICINITY MAP
N.T.S.



GRAPHIC SCALE



- NOTES**
1. ALL PUE'S ARE 10' FOR SIDE, FRONT, AND REAR YARDS, UNLESS OTHERWISE NOTED.
 2. ACCESS IS RESTRICTED FOR LOTS 101 AND 139-142. DOUBLE FRONTED LOTS CAN ONLY ACCESS ONE STREET.
 3. OWNER OF LOT 122 IS RESPONSIBLE TO INSTALL AND/OR REPAIR LANDSCAPING WHEN THE TEMPORARY CUL-DE-SAC IS REMOVED. CITY IS RESPONSIBLE TO REMOVE TEMPORARY TURNAROUND AND CONSTRUCT CURB AND SIDEWALK.
 4. APPROVAL OF THIS DEVELOPMENT PLAT DOES NOT CONSTITUTE ANY REPRESENTATION AS TO THE ADEQUACY OF THE SUB-SURFACE SOIL NOR THE LOCATION OR DEPTH OF GROUND WATER TABLES. CONSULT THE GEO-TECHNICAL STUDY FOR THIS PROJECT FOR ADDITIONAL INFORMATION.
 5. MAINTENANCE FOR THE REAR YARD DRAINS AND 12" DIAMETER STORM DRAIN PIPES OR SMALLER ON PRIVATE PROPERTY ARE THE RESPONSIBILITY OF THE PROPERTY OWNER.
 6. UTAH POWER AND LIGHT COMPANY WAS GRANTED 2 BLANKET EASEMENTS RECORDED IN BOOK D, PAGE 530 & BOOK 402, PAGE 676 ON RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.
 7. UTAH OIL REFINING COMPANY WAS GRANTED A BLANKET EASEMENT RECORDED IN BOOK O, PAGE 476 ON RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.
 8. WASATCH GAS COMPANY WAS GRANTED A BLANKET EASEMENT RECORDED IN BOOK H, PAGE 580 ON RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

FEMA NOTES

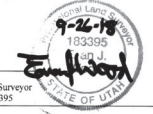
1. THE PROPERTY SHOWN ON THIS MAP LIES WITHIN FEMA ZONE AE AND ZONE X ACCORDING TO MAP NUMBERS 4901IC0391E AND 4901IC0392E WITH EFFECTIVE DATE JUNE 18, 2007.
2. ZONE AE (SHADE AREA) IS DEFINED AS SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD.
3. ZONE X IS DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

LEGEND

- BOUNDARY
- SECTION LINE
- CENTERLINE
- RIGHT-OF-WAY LINE
- PUBLIC UTILITY EASEMENT (P.U.E.)
- LOT LINE
- PROPERTY CORNER
- SECTION MONUMENT (FOUND)
- ⊕ SECTION MONUMENT (NOT FOUND)
- ⊕ STREET MONUMENT (TO BE SET)

SURVEYOR'S CERTIFICATE

I, Evan J. Wood, do hereby certify that I am a Professional Land Surveyor, and that I hold Certificate No. 183395 in accordance with Title 58, Chapter 22 of Utah State Code. I further certify by authority of the court(s) that I have completed a Survey of the property described on this Plat in accordance with Section 17-23-17 of said Code, and have subdivided said tract of land into lots, blocks, streets, and easements, and the same has, or will be correctly surveyed, staked and monumented on the ground as shown on this Plat, and that this Plat is true and correct.



Evan J. Wood
Professional Land Surveyor
Certificate No. 183395

Sept. 24, 2018
Date

BOUNDARY DESCRIPTION

BEGINNING AT A POINT N 00°32'10" W 809.56 FEET ALONG THE SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON AN EXTENDED FENCE LINE; RUNNING THENCE N 00°32'10" W 549.79 FEET ALONG SAID SECTION LINE TO A FENCE LINE EXTENDED; THENCE THE NEXT FOUR (4) COURSES TO AND ALONG AN EXISTING FENCE LINE, (1) N 89°16'21" E 592.45 FEET; (2) N 89°41'28" E 830.79 FEET; (3) N 88°26'02" E 248.82 FEET; (4) N 89°30'25" E 521.21 FEET TO THE WESTERLY RIGHT OF WAY LINE OF THE D&RGW RAILROAD; THENCE S 08°58'14" W 543.54 FEET ALONG SAID RIGHT OF WAY LINE TO AN EXISTING FENCE LINE; THENCE THE NEXT THREE (3) COURSES ALONG SAID FENCE LINE, (1) S 88°55'58" W 495.68 FEET; (2) S 88°59'41" W 354.28 FEET; (3) S 89°01'11" W 1233.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 26.78 ACRES.

OWNER'S DEDICATION

WE, THE UNDERSIGNED OWNERS OF THE HEREON DESCRIBED TRACT OF LAND, HEREBY SET APART AND SUBDIVIDE THE SAME INTO LOTS AND STREETS AS SHOWN ON THIS PLAT, AND NAME SAID TRACT

MOUNTAIN VIEW ESTATES

AND DO HEREBY DEDICATE, GRANT AND CONVEY TO WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH, ALL EASEMENTS AS SHOWN ON THIS PLAT AS PUBLIC UTILITY EASEMENTS, THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE AND OPERATION OF PUBLIC UTILITY SERVICE LINES AND DRAINAGE AS MAY BE AUTHORIZED BY BOUNTIFUL CITY, WEST BOUNTIFUL CITY.

SIGNED THIS 5 DAY OF OCTOBER, 2018

[Signature]
A NOTARY PUBLIC COMMISSIONED IN UTAH RESIDING IN DAVIS COUNTY

LIMITED LIABILITY ACKNOWLEDGMENT

STATE OF UTAH

SS. COUNTY OF DAVIS

ON THE 5th DAY OF OCT, A.D. 2018, I, PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, AND FOR THE COUNTY OF DAVIS, IN SAID STATE OF UTAH, *[Signature]* WHO AFTER BEING DULY SWORN, ACKNOWLEDGED TO ME THAT HE IS THE MANAGER OF DAY LAY INC, L.L.C., A UTAH L.L.C., AND THAT HE SIGNED THE OWNER'S DEDICATION FREELY AND VOLUNTARILY FOR AND IN BEHALF OF SAID LIMITED LIABILITY COMPANY FOR THE PURPOSES THEREIN MENTIONED.

MY COMMISSION EXPIRES: 5-23-20

A NOTARY PUBLIC COMMISSIONED IN UTAH RESIDING IN DAVIS COUNTY

MY COMMISSION No. 688814

[Signature]
PRINTED FULL NAME OF NOTARY

STATE OF UTAH, COUNTY OF DAVIS

RECORDED # 3122379

STATE OF UTAH, COUNTY OF DAVIS

RECORDED AND FILED AT THE REQUEST OF

[Signature] West Bountiful City

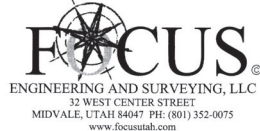
DATE: 10-16-2018 TIME: 9:44 a.m. BOOK: 7321 PAGE: 40

1/2018

[Signature] COUNTY RECORDER

SHEET 1 OF 2

ADDRESS AFFIDAVIT ENTRY 3323904, 3323905



PLANNING COMMISSION
APPROVED THIS 9 DAY OF OCT, 2018 BY THE WEST BOUNTIFUL CITY PLANNING COMMISSION.
[Signature]
PLANNING COMMISSION CHAIRMAN

CITY ENGINEER
APPROVED THIS 5th DAY OF OCTOBER, A.D. 2018.
[Signature]
WEST BOUNTIFUL CITY ENGINEER

CITY ATTORNEY
APPROVED THIS 11th DAY OF OCTOBER, A.D. 2018.
[Signature]
WEST BOUNTIFUL CITY ATTORNEY

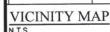
CITY COUNCIL
PRESENTED TO THE WEST BOUNTIFUL CITY COUNCIL THIS 11 DAY OF OCTOBER, 2018, AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.
[Signature]
MAYOR
ATTEST *[Signature]* CITY RECORDER

RECORDED # 3122379
STATE OF UTAH, COUNTY OF DAVIS
RECORDED AND FILED AT THE REQUEST OF
[Signature] West Bountiful City
DATE: 10-16-2018 TIME: 9:44 a.m. BOOK: 7321 PAGE: 40
1/2018
[Signature] COUNTY RECORDER

1-5890

1-5890

2049-9



LOCATED IN THE NW 1/4 OF SECTION 13, T2N, R1W,
SALT LAKE BASE & MERIDIAN
WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH



- NOTES**
1. ALL PUES ARE 10' FOR SIDE, FRONT, AND REAR YARDS, UNLESS OTHERWISE NOTED.
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 3. OWNER OF LOT 122 IS RESPONSIBLE TO INSTALL AND/OR REPAIR LANDSCAPING WHEN THE TEMPORARY "E" LOT 122-124C IS REMOVED. CITY WILL BE RESPONSIBLE TO REMOVE TEMPORARY TURNAROUND AND CONSTRUCT CURB AND SIDEWALK.
 4. APPROVAL OF THIS DEVELOPMENT PLAN DOES NOT CONSTITUTE ANY REPRESENTATION AS TO THE ADEQUACY OF THE SUB-SURFACE SOIL NOR THE LOCATION OR DEPTH OF GROUND WATER TABLES. CONSULT THE GEO-TECHNICAL STUDY FOR THIS PROJECT FOR ADDITIONAL INFORMATION.
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2. ZONE AE (SHADED AREA) IS DEFINED AS SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD.
3. ZONE X IS DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

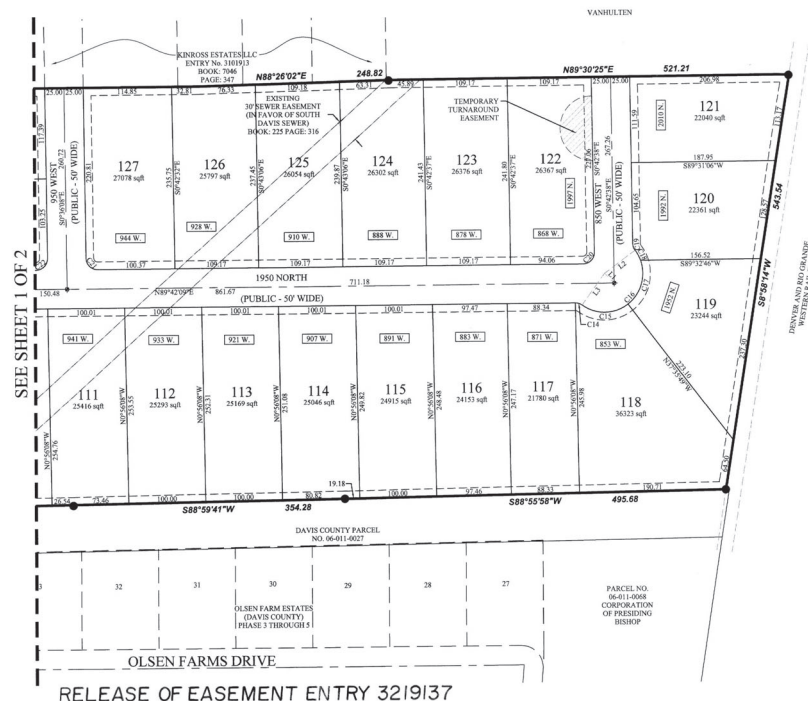


Table 1					
CURVE	RADIUS	LENGTH	CORRECTION	DIRECTION	CHORD
C1	15.00	9609223	23.80	54471220P	21.24
C2	510.00	3720087	29.09	5873658W	50.00
C3	1475.00	1712167	30.58	5873658W	19.49
C4	460.00	273731	21.68	5873658W	21.87
C5	460.00	274553	21.68	5874934W	21.80
C6	510.00	1717690	18.26	5827382W	13.99
C7	510.00	438365	42.12	N773755E	42.11
C8	1475.00	390144	71.33	N724604E	73.32
C9	1475.00	470733	106.22	S761938W	106.19
C10	1475.00	182612	148.63	S702892W	147.58
C11	1475.00	470173	168.81	S872853W	168.79
C12	1475.00	292577	103.05	S447079E	103.03
C13	1475.00	711587	181.31	S880651E	181.30
C14	35.00	3070544	9.46	N272135SW	9.50
C15	35.00	3722542	9.48	S890702W	9.58
C16	50.00	1627043	141.96	N442946E	98.86
C17	50.00	7250222	64.94	S162400W	50.78
C18	50.00	1571410	15.04	S281311E	14.98
C19	35.00	3630744	9.46	S1164293E	9.50
C20	35.00	3072452	24.67	N447079E	21.29
C21	35.00	3072452	24.67	N447079E	21.29
C22	15.00	9610128	23.80	S4471220P	21.24
C23	150.00	217358	40.07	N887436E	60.07
C24	150.00	239353	92.97	N887436E	92.96

LINE	DIRECTION	LENGTH
L1	S45°30'17"E	17.74
L2	S53°09'39"W	50.00
L3	S36°40'53"W	50.00

CURVE	RADIUS	DELTA	LENGTH	CURVE DIRECTION	CHORD LENGTH
C25	12522	3.713	93.73	S87°12'29"E	93.72
C26	15255	18°20'12"	690.71	S89°29'03"W	478.56
C27	15255	15°24'00"	608.75	S89°29'03"W	488.56
C28	15255	22°24'00"	678.75	S89°29'03"W	488.56
C29	15255	22°24'00"	681.81	N72°30'00"E	65.81
C30	6460	21°31'21"	22.95	N87°43'43"E	22.95
C31	6460	18°10'03"	141.66	N89°16'50"E	144.06
C32	6460	15°01'33"	121.81	N87°43'43"E	121.35
C33	15.00	90°00'00"	25.56	S49°42'58"E	21.21
C34	17.05	20°01'33"	89.44	S15°55'33"W	88.37
C35	17.05	17°23'33"	84.28	S15°04'00"W	83.46
C36	17.05	14°01'33"	5.17	S27°43'19"W	5.17
C37	225.00	81°00'33"	32.80	N24°29'01"E	32.85
C38	225.00	81°00'33"	115.00	S15°55'33"W	115.75
C39	225.00	21°06'36"	82.92	N09°30'30"E	82.45
C40	15.00	14°27'54"	22.91	N41°39'59"E	20.16
C41	6460	7°32'22"	44.48	N89°30'00"E	44.47
C42	15.00	49°00'33"	23.52	S43°14'00"E	21.18
C43	485.00	5°32'32"	46.90	S89°50'00"E	46.88
C44	485.00	7°32'32"	46.90	S89°50'00"E	46.88
C45	200.00	21°01'33"	102.22	S15°55'33"W	101.11
C46	485.00	18°10'33"	152.52	N89°16'50"E	150.89
C47	150.00	18°10'33"	48.67	N89°16'50"E	48.69

SHEET 2 OF 2

RELEASE OF EASEMENT ENTRY 3219137



RECORDED # 3122879

STATE OF UTAH, COUNTY OF DAVIS
RECORDED AND FILED AT THE REQUEST OF

West: Brantford, Ont.

DATE 10-16-2018 TIME 9:44 a.m. BOOK 7121 PAGE 40

DATE 10-16-2018 TIME 9:44 a.m. BOOK 7121 PAGE 40
\$102.⁰⁰
FEE _____
Richard T. Hughes
COUNTY RE _____

9-26-18
183095
Emery J.
Emery Wood

[illegible]



To: West Bountiful City Council

RE: Request for Setback Variance on Lot 104 in Mountain View Estates

SI Builders submitted for a building permit with a home that fits within the small buildable area at the back of lot 104. Because the buildable area is small, and a triangle shape, SI Builders had to custom design a home to fit within the triangle space, and had to request a home size variance from the developer that is about 600 sq ft smaller than required by the CC&R's. It complies with the side yard and back yard setback requirements and does not encroach on the gas easement. **The city engineer approved the building permit.**

Lot 104 has a 76-foot gas easement going through it diagonally with 5 gas lines. 3 gas lines are owned by Holly Gas on the west side of the easement. The 2 Gas lines on the East Side are owned by Marathon Gas – formally owned by Tesoro.

Because the Sewer, Electrical, and Water laterals are located on the west side of the Lot (they would need to cross to the east side), and because a driveway would also need to cross the easement, SI Builders submitted for encroachment permits with Holly, and Marathon Gas. Holly approved the encroachment permit, but Marathon denied the permit. In addition, Marathon informed SI Builders that they could not build on lot 104 because the home would be closer than 50 feet of their closest pipe – which was against company policy, and federal regulation.

SI Builders and Marathon went back and forth a few times, with no resolution. SI Builders was getting excavation pricing from a couple of excavators, and one of those excavators in hopes that they would get the job, called blue stakes. This greatly concerned Marathon Gas, and they filed a Lawsuit against SI Builders to Cease and Desist any work on the lot. After the attorneys at Marathon reviewed the 1949 Easement Language, and after Marathons staff reviewed the age of the pipe, and other safety concerns, Marathon finally agreed to a meeting with SI Builders to see if a compromise could be reached. They met together on 21st of December.

In that meeting, Marathon expressed concerns of how close the building would be to their pipe. Per the original plat, the house foundation would be 11 feet from Marathons Pipe. Marathon expressed that the pipe was installed in 1949, and at the time it was a couple feet deep in the ground. Since then, fill has been placed on the lot, and now the pipes are about 10 feet deep. If maintenance of the pipe were required, it would not be safe with a building that close and that deep, because of the amount of over digging necessary because of the depth of the pipe.

Although Marathon would prefer to not have a house on this lot, as a compromise, they are requesting a 20-foot distance from their pipe and the building. This setback from the pipe would require the building to have a side yard setback of 8 feet, and a back-yard setback of 24.5 feet from the property lines.

SI Builders is requesting a variance side yard setback (8 feet instead of 10), and the Backyard setback (24.5 feet instead of 30) based on the unique situation of the high-pressure gas pipes on the lot and the ability to safely maintain those pipes at depth. The unique small triangle shape of the buildable area has already resulted in a uniquely shaped home, and a smaller home than normal for the subdivision.

See attached 2 plat maps. 1- is the original approved building permit site plan with standard setbacks. 2- is the requested site plan with 8 foot side yard, and 24.5 foot back yard.

West Bountiful City Code:

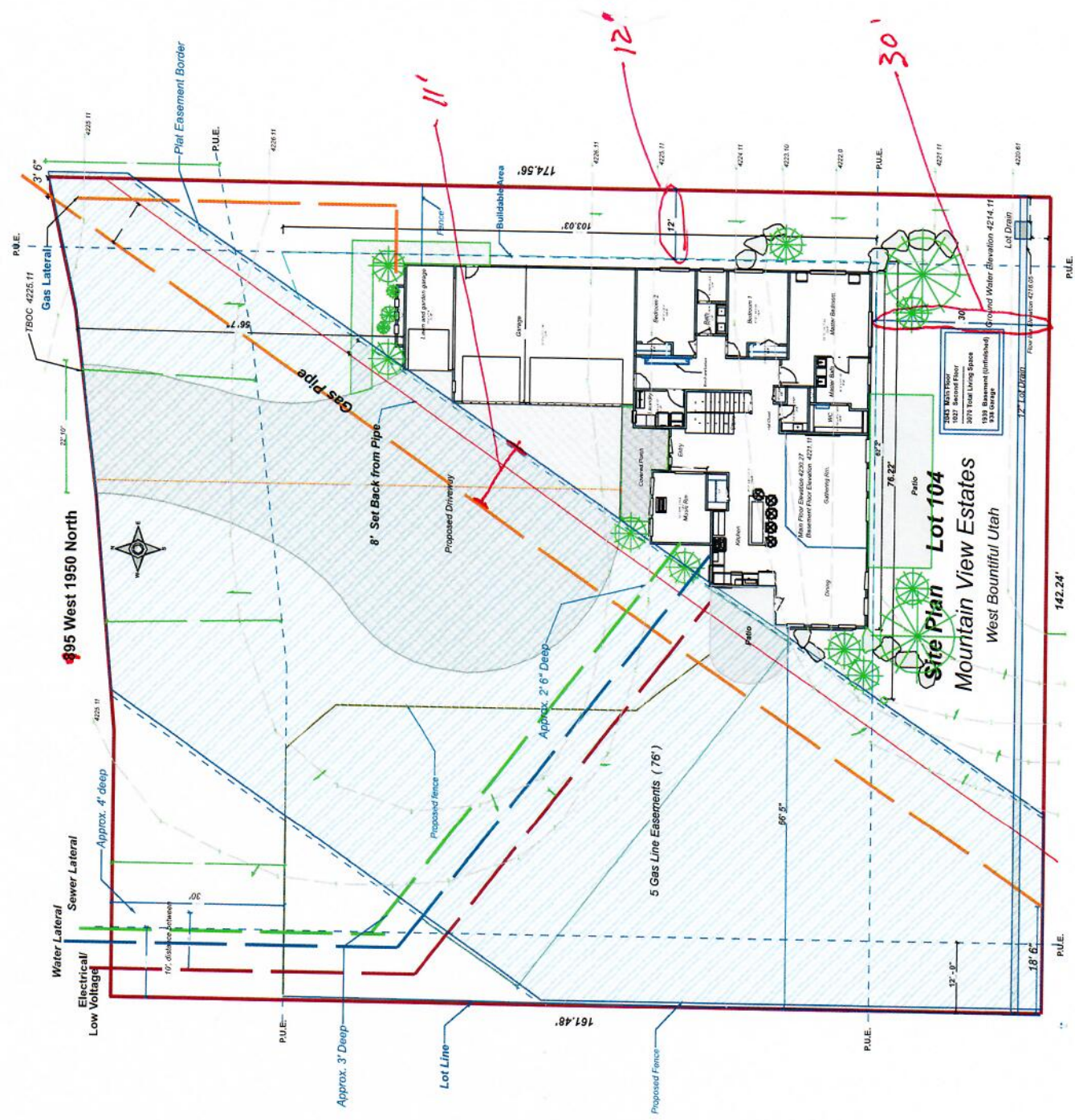
16.24.20 Variances

- A. Any subdivider desiring a waiver or modification of the requirements of this title as applied to the property to be subdivided may apply to the city council, acting as the appeal authority, for a variance from the terms of this title.
- B. The city council may grant a variance only if:
 1. Literal enforcement of the provisions of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the city's land use ordinances;
 1. The request for a variance is at the request of Marathon Gas, who makes a compelling argument that they need more space next to their pipe to be able to safely maintain it. By allowing for the variances on the east, and south of the property, the other sides of the property (west & north) the setbacks increase making for a net no change.
 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;
 1. There is a 76-foot-wide Gas Easement which runs diagonally through the property, and results in a buildable area that is unique. The only feasible buildable area is at the rear of the property on the east side. The laterals for sewer, electrical, and water are on the west side of the lot, requiring an encroachment over the gas line easements. The most easterly gas pipe (closest to the house) was installed in 1949. When it was installed it was a couple of feet deep. The pipeline easement extends about 8.25 feet to the east of this pipe. Since 1949 a substantial amount of fill has been placed on the lot, resulting in the pipes being about 10 feet (or more) deep today. Marathon Gas's concern is that they will have difficulty maintaining this 70-year-old pipe at that depth unless the home to be built is farther away from the pipe. They have requested that the building be at least 20 feet from the pipe. This will allow them to have the space required to over dig the sides of the trench and make it safer for workers in the trench.
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;
 1. Other properties in this subdivision are able to build homes on their lots, and substantially comply with the size requirements of a 2,600 sq ft home & 3 car garage as outlined in the CC&R's. However, due to the small size of the buildable area of lot 104, it is impossible to fit a house of that size. The Developer has already granted an exception to the size requirement for this house plan (2043 sq ft). If the setback variance is not granted, and the only option is to redesign a smaller house, the resulting house would be very small (about 1600 sq ft), it would not work for the Buyer, and it would be so small as compared to all the other houses in the neighborhood, it would stand out as an aberration (about 1000 sq ft smaller than all others).
 4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 1. Because the house sits near the back of the lot, and to the east side, it will not substantially affect the general plan. The home to the east has erected a cement wall and fence that essentially blocks the majority of the view of the 2 foot distance change. And the back side of the house (South) has a trail and canal adjacent to it before getting to the nearest neighbors. The 5.5 foot difference here may not even be noticed.
 5. The spirit of the land use ordinance is observed and substantial justice is done.
 1. The spirit of the ordinance has been observed because the areas where we had to be closer to the property lines, we compensated by allowing the opposite side of the lot to increase in setback. Substantial justice is done by increasing the safety of the home by allowing it to be a little bit further away from a pipe that will one day have to be dug up where it is now at a depth of 10+ feet and will require over digging the sides of the trench to safely obtain that depth.
- C. In determining whether or not enforcement of the provisions of this title would cause unreasonable hardship under Subsection B(1), the city council may not find an unreasonable hardship unless the alleged hardship:
 1. Is located on or associated with the property for which the variance is sought; and
 1. The Gas Lines are located on the property.
 2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 1. The circumstances are unique to Lot 104.
- D. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection B(1), the city council may not find an unreasonable hardship if the hardship is self-imposed or economic.

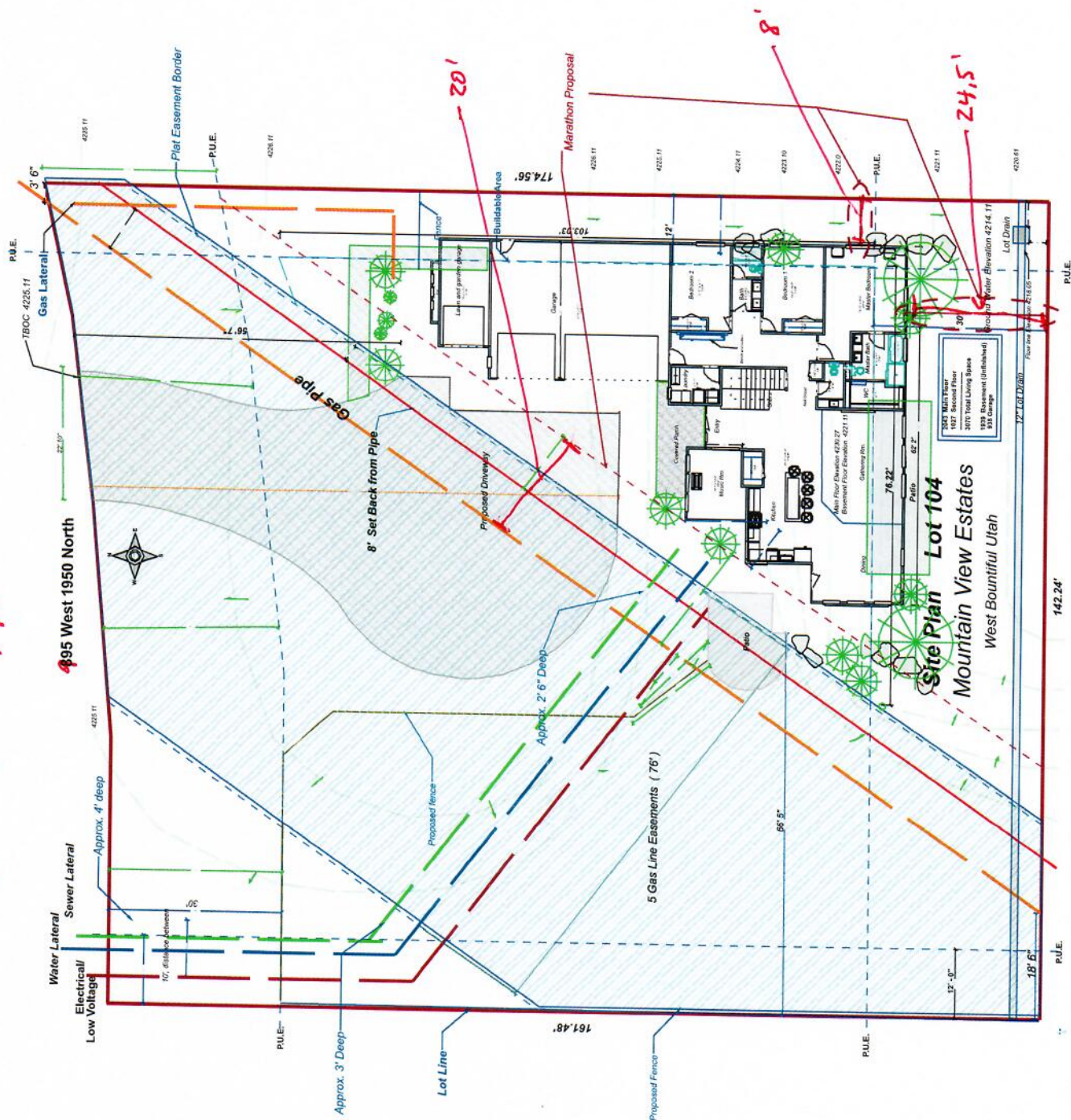
1. The hardship is not self-imposed (Marathon Gas is making the request.) It is not economic – the request is for the ability to safely maintain the pipes in the future.
- E. In determining whether or not there are special circumstances attached to the property under Subsection B(2), the city council may find that special circumstances exist only if the special circumstances:
 1. Relate to the hardship complained of; and
 1. The hardship complained of is the ability to safely maintain a 70 year old pipe at 10 foot of depth or greater.
 2. Deprive the property of privileges granted to other properties in the same zone.
 1. Privileges granted other properties in the neighborhood are being able to enjoy the property knowing that everything has been done to build a home that can exist where it stands at a safe distance from pipes or other utilities that may need to be maintained one day.
- F. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
 1. All conditions have been answered above.
- G. Variances run with the land.
 1. Yes, the variance would only apply to lot 104.
- H. The city council may not grant a use variance.
 1. This is not a use variance request.
- I. In granting a variance, the city council may impose additional requirements on the applicant that will:
 1. Mitigate any harmful effects of the variance; or
 2. Serve the purpose of the standard or requirement that is waived or modified.
- J. The city council shall issue a written decision, including findings, with respect to the request for variance. Such written decision will be final when issued, and may thereafter be appealed to district court in accordance with applicable law.

①

Original Building Permit Approved Site plan.



2



Cement Wall East of Lot 104



House East of Lot 104



Location of New Home for Lot 104



Marathon Gas Pipes crossing Lot 104



Proposed Residence For

SI Builders - Israelsen Residence



Table of Contents

Architectural Drawings		Structural Drawings	
Sheet	Description	Sheet	Description
Cover	Table of Contents / Deferred Submittals	S - 1	Footing & Foundation Plan
2	General Notes & Specifications	S - 2	Main Floor Framing Plan
Site Plan	Site Plan	S - 3	Upper Floor Framing Plan
SWPPP	SWPPP Plan	S - 4	Roof Framing Plan
Soil	Soil Cross Section	SD1	Structural Details
A-1	Basement Floor Plan	SD2	Structural Details
A-2	Main Floor Plan	SN	Structural Notes & Schedules
A-3	Upstairs Floor Plan		
A-4	Elevation - Front		
A-5	Elevation - West		
A-6	Elevation - Rear		
A-7	Elevation - East		
A-8	Main Floor Roof Plan		
A-9	Upstairs Roof Plan		
A-9	Vaulted Ceiling Plan (B) - (V)		
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A-11	Main Floor Framing Detail		
A-12	Second Floor Framing Detail		
A-13	Details		
E-1	Basement Electrical		
E-2	Main Floor Electrical		
E-3	Upstairs Electrical		

Deferred Submittal Items

Roof Truss Engineering
Plumbing Layouts (As Required)
Gas Piping Layouts, Sizing, Etc. (As Required)
Mechanical Equipment Etc.
Mechanical Venting layouts (As Required)
Water Line Sizing & Documentation
Stucco / EIFS ICC evaluation reports
Cultured Stone ICC evaluation reports

The above items are deferred by SI Builders and may be required upon submittal for building permit. Check with building official and include above items as needed.
Contractor to Verify

Finished Square Footage

Main Floor	2043
Basement	1939
Upstairs	1027
Garage	938

Plan # 2043 - S

SI Builders.com
Plan Number: 2043 - S
Page Number:

Prepared by: ALPHA ENGINEERING & DESIGN, LLC
Address: 1641 West Center Rd Farmington, UT 84205
Phone: (801) 727-4249

Scale: 1/4" = 1'-0"

SI BUILDERS
724 West 500 South Suite 200 West Bountiful, Utah 84063 801-423-4340

Sheet Number:
Sheet Title:

Client: SI Builders - Israelsen Residence
Project Address: 1641 West Center Rd, Suite 200, Farmington, UT 84205

Plan Number: 2043 - S
Page Number:

Douglas P. Farr (13208)
Annika L. Jones (16483)
SNELL & WILMER L.L.P.
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Gateway Tower West
Salt Lake City, Utah 84101
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Facsimile: 801.257.1800
Email: dfarr@swlaw.com
aljones@swlaw.com

*Attorneys for Plaintiffs Marathon Pipe
Line, LLC and Tesoro Logistics Northwest
Pipeline LLC*

**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH**

**MARATHON PIPE LINE LLC and
TESORO LOGISTICS NORTHWEST
PIPELINE LLC,**

Plaintiffs,

v.

**SI BUILDERS, LLC, and DAY LAY ONE,
LLC,**

Defendants.

**EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Case No. 200700973

Honorable David Connors

Pursuant to Utah Rule of Civil Procedure 65A, Plaintiffs Marathon Pipe Line LLC (“Marathon”) and Tesoro Logistics Northwest Pipeline LLC (“Tesoro”) (together, “Plaintiffs”) through counsel, respectfully move the Court for a Temporary Restraining Order and Preliminary Injunction to enjoin Defendants SI Builders, LLC (“SI Builders”) and Day Lay One, LLC (“Day Lay”) (together, “Defendants”) and their agents, representatives, affiliates, and

employees from beginning their planned construction on the Property (as defined below), or from otherwise unreasonably interfering with Plaintiffs' rights under a pipeline easement which runs over, across, under, and through that Property.

RELIEF SOUGHT AND GROUNDS THEREFOR

Plaintiffs request the Court issue a Temporary Restraining Order and Preliminary Injunction to enjoin Defendants from following through on SI Builders' threat to commence construction on Lot 104 of the Mountain View Estates Subdivision, which is located at approximately 995 W. 1950 N., West Bountiful, Davis County, Utah (the "Property"). Defendants' planned construction activities run in direct contravention to rights expressly granted to Tesoro by its pipeline easement. SI Builders' callous disregard not only threatens Tesoro's rights and violates Utah law, but it also creates significant and unnecessary safety risks. In short, Defendants threaten to construct a residential dwelling within 8 ¼ feet of, and on top of, an easement containing high-pressure oil and gas pipelines. Plaintiffs have denied Defendants' encroachment requests. Despite this, Defendants notified Plaintiffs that Defendants' construction will proceed, as soon as today. Plaintiffs therefore respectfully request the Court grant immediate injunctive relief enjoining Defendants from making good on their threat to commence construction on the Property.

STATEMENT OF MATERIAL FACTS

The Pipelines and the Easement

1. Tesoro and Marathon own and operate two 8-inch steel pipelines that are buried at the Property (each a "Pipeline", and, collectively, the "Pipelines").
2. The first Pipeline was constructed in 1949. The second Pipeline was constructed

several years later.

3. The interstate Pipelines transport crude oil and refined products, including gasoline, diesel, and jet fuel.

4. The Pipelines' average operating pressures are 900 psi and 1000 psi, respectively.

5. In connection with the Pipelines, Tesoro also owns certain easement rights, including an easement and right-of-way that runs over, through, along, and under the Property (the "Easement").

6. Arthur W. Seequist and Gladys R. Seequist (the "Grantors") granted the Easement to Salt Lake Pipe Line Company ("Sale Lake Pipeline") on or about July 18, 1949.

7. Thereafter, the Easement was recorded with the Davis County Recorder's Office in Book 5, Page 18, Entry No. 107275, a copy of which is attached hereto as Exhibit A.

8. Tesoro subsequently acquired Salt Lake Pipeline's ownership of, and rights to, the Pipelines and the Easement.

9. Upon information and belief, Day Lay now owns the Property and SI Builders intends to construct a single-family home on the Property, which currently sits as a vacant lot.

10. The Easement is binding on any "heirs, executors, administrators, successors and assigns." (Ex. A.)

11. Accordingly, the Easement is binding on Plaintiffs and Defendants.

12. Pursuant to the plain language of the Easement, Tesoro was granted a right-of-way to a "strip of land Sixteen and One Half (16 1/2) feet wide." (Ex. A.)

13. The Pipelines are located approximately six-feet apart within the 16.5-foot wide Easement.

14. On the Property, the Pipelines are clearly marked and identified by both permanent and temporary markers.

15. Additionally, the Easement grants Tesoro:

[T]he right of way from time to time to lay, construct, reconstruct, replace, renew, repair, maintain, operate, change the size of, increase the number of, and remove pipe lines and appurtenances thereof, for the transportation of oil, petroleum, gas, gasoline, water or other substances, or any thereof, and to erect, install, maintain, operate, repair, renew, add to and remove telegraph, telephone or power lines and appurtenances thereof on a single line of poles or underground, as [Tesoro] from time to time and place to place may elect, with the right of ingress and egress to and from the same, over and through, under or along [the sixteen and one half foot wide strip of land].

(Ex. A.)

16. The Easement provides that the Grantors and their successors “shall not construct or maintain the whole or any part of any structure on said strip of land or in any manner impair or interfere with the present or prospective exercise of any of the rights herein granted.” (Ex. A.)

SI Builders Seeks and Is Denied Approval to Encroach on the Easement

17. On September 3, 2020, SI Builders met with Plaintiffs and requested permission to encroach on the Easement in association with building a single-family home on the Property.

18. Marathon indicated Plaintiffs would not grant the requested encroachment because it would unreasonably interfere with Tesoro’s rights under the Easement and pose serious safety concerns.

19. Despite this, on or about September 4, 2020, SI Builders sent Plaintiffs an email that included a proposed layout for a residential structure on the Property, as well as certain utility encroachments that Defendants intended to build across the Easement and the Pipelines

(the “Original Site Plan and Encroachment Request”). A copy of the Original Site Plan and Encroachment Request is attached hereto as Exhibit B.

20. Then, on October 12, 2020, SI Builders submitted an updated site plan and encroachment request for the Property, a copy of which is attached hereto as Exhibit C (the “Amended Site Plan and Encroachment Request”).

21. The Amended Site Plan and Encroachment Request proposed additional utility encroachments and moved the footprint of the structure to 8 ¼ feet away from the centerline of the Easement.

22. Plaintiffs reviewed the Amended Site Plan and Encroachment Request.

23. On or about November 3, 2020, Plaintiffs denied Defendants’ Amended Site Plan and Encroachment Request via a letter, a copy of which is attached hereto as Exhibit D.

24. The letter explains that “the construction of a residential structure this close to a high pressure refined fuel pipeline line [] does not meet our development setback standards therefore we will not be issuing permits for any [utility and driveway] crossings at this location.” (Ex. D.)

25. The letter further explained, “[i]t is our desire that habitable structures be located approximately 50’ from the pipeline.” (*Id.*)

SI Builders Nevertheless Intend to Begin Construction Immediately

26. On November 11, 2020, SI Builders responded by letter to Plaintiffs’ denial of their Amended Site Plan and Encroachment Request, a copy of which is attached hereto as Exhibit E (the “November 11 Letter”).

27. The November 11 Letter states that despite Plaintiffs' denial, SI Builders intends to "proceed with my plan as I have submitted it" and "to start digging the footings next week" (Ex. E.)

28. In the November 11 Letter, SI Builders also claims that it is not required "to follow[] Marathon's company policies, or recommendations . . . [nor] to seek Marathon's permission," despite the fact that it did seek permission to encroach on the Easement, which request was denied.

29. On November 18, 2020, Plaintiffs responded to the November 11 Letter with a demand letter dated November 17, 2020, a copy of which is attached hereto as Exhibit F (the "Demand Letter").

30. The Demand Letter reiterates and expands on Plaintiffs' position regarding their denial of the Amended Site Plan and Encroachment Request. (Ex. F.)

31. Specifically, the Demand Letter describes the rights granted to Tesoro by the Easement, the ways in which the proposed construction on the Property (Lot 104) would infringe upon those rights, and the safety concerns implicated by SI Builders' proposed construction. (*See id.*)

32. The Demand Letter states:

[Y]ou are hereby notified that you must refrain from conducting any action related to the planned construction that violates the provisions of the Easement, such as constructing a patio or driveway on any part of the Easement or otherwise impairing or interfering with Tesoro's present or prospective operation and maintenance of the Pipelines. You are also

formally notified that Tesoro will not authorize sewer or water line crossings over the Easement in this instance.

(Id.)

33. The Demand Letter advises Defendants that “[i]f [they] violate the provisions of the Easement, Tesoro may take action, including but not limited to removing structures that are not in compliance with the terms and conditions of the Easement or seeking injunctive relief.”

(Id.)

34. On November 18, 2020, within hours of receiving the Demand Letter, SI Builders’ contractor, Rock Images and Excavation LLC (“Rock Images”), contacted Blue Stakes of Utah 811 regarding its intent to immediately begin construction on the Property (the “Blue Stakes Request”).

35. Rock Images submitted the Blue Stakes Request so that it could commence excavation work on the Property on behalf of Defendants.

36. Plaintiffs received notice of the Blue Stakes Request, which requires Plaintiffs to mark the location of their underground Pipelines on the Property within two business days.

37. By having Rock Images make the Blue Stakes Request, Defendants clearly indicated it intends to follow through on its threat to immediately commence construction on the Property as proposed by the Amended Site Plan and Encroachment Request.

38. Defendants intend to commence construction in complete disregard of Plaintiffs’ rights under the Easement.

The Planned Construction on the Property Is Contrary to the Terms of the Easement

39. Construction on the Property as provided by the Amended Site Plan and Encroachment Request will interfere with Tesoro's express rights under the Easement.

40. Pursuant to the express terms of the Easement, Defendants are prohibited from constructing "any part of any structure" on the Easement. (Ex. A.)

41. The Amended Site Plan and Encroachment Request identifies a patio and driveway that are to be constructed on top of the Pipelines and the Easement. (See Ex. C.)

42. The Easement also prohibits Defendants from "in any manner impair[ing] or interfer[ing] with the present or prospective exercise of any of the rights" granted by the Easement. (Ex. A.)

43. According to the Amended Site Plan and Encroachment Request, SI Builders intends to construct the residence within 8 ¼ feet of the Pipelines. (See Ex. C.)

44. This close proximity between the residence and the Easement/Pipelines will unreasonably impair and interfere with Tesoro's exercise of its rights under and use of the Easement.

45. Specifically, construction of the residence according to the Amended Site Plan and Encroachment Request will unreasonably impair the ability of Tesoro and/or Marathon to access, repair, maintain, or replace the Pipelines on the Property.

46. For example, because the Pipelines are buried anywhere from four to ten feet underground on the Property, they cannot be accessed without significant excavation. Such excavation access would be made impossible or unreasonably difficult if the patio and driveway

were constructed on top of the Easement as proposed by the Amended Site Plan and Encroachment Request.

47. And the excavation necessary to access the Pipelines will be made significantly and unreasonably difficult because such excavation would likely disturb and cause damage to the proposed dwelling.

48. The Amended Site Plan and Encroachment Request also indicates that gas, electrical, water, and sewer lines will each cross over the Easement and the Pipelines.

49. These utility lines, if constructed to crossover the Easement, would unreasonably impair Tesoro's rights under the Easement.

Construction on the Property Is Unsafe

50. Construction on the Property as proposed by the Amended Site Plan and Encroachment Request raises obvious and serious safety concerns.

51. Because the Pipelines contain gasoline, diesel, and jet fuel maintained at high pressures, any dwelling should be located at least 50 feet back from the Pipelines. *See* 49 C.F.R. § 195.210.

52. Gasoline, diesel, and jet fuel are highly flammable materials.

53. Thus, any disturbance in the high-pressure Pipelines would place the proposed dwelling at risk.

54. Although disturbances in the Pipelines are not common, they do occur, and the potential for harm if such disturbance were to occur within less than ten feet of a private residence is significant.

55. Marathon’s Property Development Specifications, which provide guidance “on how to safely perform a variety of excavation activities around a pipeline,” state that when working near high-pressure pipelines, any construction of “any obstruction above or below ground (including, but not limited to, buildings . . . [and] pavement . . . within 50 feet of any pipeline” is a variance that must be confirmed in writing by a Marathon representative. (Property Development Specifications, at 5, 14 (attached as Ex. G).)

56. This 50-foot guidance is in line with federal standards.

57. Federal regulations state that “pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings.” 49 CFR § 195.210.

58. These regulations also provide that “no pipeline may be located within 50 feet (15 meters) of any private dwelling . . . unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248.” *Id.*

59. Plaintiffs grant variances and/or encroachment requests from time to time, on a case by case basis.

60. However, Plaintiffs do not (and cannot) approve such variances or encroachments where, as here, the proposed construction would (a) unreasonably interfere with Tesoro’s rights under the Easement; or (b) pose significant and serious safety concerns.

Injunctive Relief is Warranted

61. If Defendants follow through on their threat to begin construction on the Property as proposed by the Amended Site Plan and Encroachment Request, such construction will cause Plaintiffs significant and irreparable harm, including deprivation of Tesoro’s express rights under the Easement and pose significant safety concerns.

62. Any harm to Defendants that could arise if they are enjoined from commencing or continuing construction on the Property is outweighed by the significant and irreparable harm the proposed construction would cause Plaintiffs.

63. An order enjoining Defendants from commencing or continuing construction on the Property would advance the public interest in the safe and reliable provision of gasoline, diesel, and jet fuel through the Pipelines.

ARGUMENT

A. Standard Governing Motion for Injunctive Relief

Pursuant to Utah Rule of Civil Procedure 65A(e), the Court may issue a restraining order and/or preliminary injunction upon a showing that:

- (1) The applicant will suffer irreparable harm unless the order or injunction issues;
- (2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;
- (3) The order or injunction, if issued, would not be adverse to the public interest; and
- (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

The Court's discretion to grant relief under Rule 65A "should be exercised within the purview of sound equitable principles, taking into account all the facts and circumstances of the case."

System Concepts, Inc. v. Dixon, 669 P.2d 421, 425 (Utah 1983).

Here, all four Rule 65A(e) factors weigh in favor of injunctive relief. Accordingly, as detailed more fully below, the Court should immediately enjoin Defendants from continuing their construction activities at the Property.

B. Plaintiffs Will Suffer Irreparable Harm Unless Defendants Are Enjoined

First, Plaintiffs will suffer irreparable harm from Defendants' unlawful planned construction unless they are enjoined. Generally, irreparable injury is harm which "cannot be adequately compensated in damages . . . in other words, harm from which the injured party cannot be made whole by monetary compensation." *Zagg, Inc. v. Harmer*, 2016 UT App 52, ¶ 6, 345 P.3d 1273 (internal quotation marks omitted). Irreparable harm justifying preliminary injunctive relief includes "wrongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard." *Hunsaker v. Kersh*, 1999 UT 106, ¶ 9, 991 P.2d 67 (internal quotation marks omitted).

Here, SI Builders is moving forward with permanent encroachments on the Easement by immediately commencing construction on the Property. Indeed, SI Builders has taken concrete steps toward making good on its threat, including by having its contractor, Rock Images, contact Blue Line Utah 811 on November 18, 2020—just hours after SI Builders received Plaintiffs' Demand Letter further denying Defendants' Amended Site Plan and Encroachment Request—regarding its plans to immediately begin excavation on the Property. Thus, SI Builders is moving forward with construction despite Plaintiffs' denial of, and objection to, Defendants' Amended Site Plan and Encroachment Request, and despite having been advised of the significant safety risks associated with the planned construction.

The threat of irreparable harm under these circumstances is clear. Defendants’ planned encroachment upon Plaintiffs’ Easement is a legal injury in and of itself. *See Metro. Water Dist. Of Salt Lake & Sandy v. SHCH Alaska Tr.*, 2019 UT 62, ¶ 49, 452 P.3d 1158 (describing an easement holder’s legal right to use its easement). Moreover, as described above and below, the planned construction will make it significantly more difficult or impossible for Plaintiffs to maintain, repair, or otherwise access the Pipelines. This violates both the express terms of the Easement and Utah law regarding easement holder’s rights. *See Metro. Water Dist. Of Salt Lake & Sandy v. Sorf*, 2019 UT 23, 445 P.3d 443 (an easement holder “has the right to access to repair and maintain its [pipeline] as reasonably necessary in accordance with its use since time immemorial”).

Defendants’ threats to begin their planned construction will also cause irreparable harm in the form of unnecessary and unreasonable safety risks. Both the construction and the presence of the proposed dwelling itself pose serious safety concerns, placing the Pipelines, the surrounding land, the construction site, and other dwellings in the area at risk. In fact, federal regulations state that “pipeline right-of-way must be selected to avoid, as far as practicable, areas containing private dwellings.” 49 CFR § 195.210. These regulations also provide that “no pipeline may be located within 50 feet (15 meters) of any private dwelling . . . unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248.” *Id.* Moreover, Defendants’ construction so close to the Pipelines increases the risk of a leak, and any leak that close to a residence increases the risk of explosive materials flooding into a family dwelling.

The Court need not wait until Defendants make good on their threats to begin construction in order to issue injunctive relief. Injunctive relief is “an *anticipatory* remedy purposed to *prevent* the perpetration of a *threatened* wrong or to compel the cessation of a *continuing* one.” *Dixon*, 669 P.2d at 428 (quotation omitted) (emphases in original). As of the time of filing, to Plaintiffs’ knowledge, Defendants have not yet begun construction on the Property. However, there is no question that is SI Builders’ intent as expressed in its November 11, 2020 letter and confirmed by its contact with Blue Stakes Utah 811 regarding planned construction on the Property. This threat warrants immediate injunctive relief. *Cf. Sorf*, 2019 UT 23, ¶ 12–14 (in an easement dispute, ordering the trial court to determine the parties’ respective rights to the property and easement, because one party’s plans for use of the easement created an “actual clash of legal rights and obligations”).

C. The Threatened Injury to Plaintiffs Far Outweighs Any Potential Harm to Defendants

Next, the potential harm to Plaintiffs posed by Defendants’ threats to begin their planned construction significantly outweighs any harm that injunctive relief might cause Defendants. As detailed above, Plaintiffs will suffer significant harm if SI Builders begins construction, including infringement of its legal rights under the Easement and restricted access to the Pipelines. And importantly, SI Builders’ plans to construct less than nine feet from the high pressure Pipelines, and to build a driveway and patio literally *on top* of the Easement and Pipelines, also pose serious safety concerns which place the Pipelines, the surrounding land, other dwellings in the area, the construction site, and the proposed dwelling itself at risk.

In contrast, any harm to Defendants posed by the injunction is minimal. As of the time of filing, to Plaintiffs’ knowledge, construction had not yet begun on the Property. An order

directing Defendants to refrain from rushing to construction in the face of a dispute over the Easement is the most obvious efficient solution, and is in both parties' best interests. The injunction will ensure Defendants do not escalate the problem by beginning construction which will need to be undone should the Court ultimately agree with Plaintiffs' position regarding the Easement (as is likely)—in other words, it will maintain the status quo. The balance of harms weighs strongly in favor of the injunction.

D. An Injunction Furthers the Public Interest

The injunctive relief Plaintiffs seek is not adverse to the public interest. In fact, the injunction furthers the public interest. As described above, Defendants' threats to begin the planned construction poses serious safety concerns to the Pipelines, surrounding land, other dwellings in the area, and the construction site and proposed dwelling itself. The injunction would therefore further public safety interests by preventing Defendants from rushing to construction in the face of these risks.

Moreover, thousands of individuals and businesses in Utah and in the United States rely upon the Pipelines for the safe and reliable delivery of fuel. *See Jesse H. Dansie Family Tr. v. Public Services Commission*, 2016 UT App 116, ¶ 17, 374 P.3d 1057 (acknowledging the public interest in "utilities' continued ability to serve the customers who rely upon them for essential services and products") (cleaned up). The public who relies on the Pipelines and the oil and gas they deliver have an interest in ensuring the Pipelines are subject to safe setback restrictions and that Plaintiffs are able to maintain access to the Pipelines to ensure they are in safe and working order.

E. Plaintiffs Are Substantially Likely to Prevail on the Merits

The final factor in the Court’s analysis is whether “there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or [whether] the case presents serious issues on the merits which should be the subject of further litigation.” Utah R. Civ. P. 65A(e)(4). Plaintiffs assert a claim for declaratory relief to determine its rights under the Easement and to establish that Defendants’ planned construction on the Property unreasonably infringes upon those rights. Plaintiffs are substantially likely to prevail on the merits of their claim.

1. Defendants’ Planned Construction Unreasonably Infringes on Tesoro’s Express Rights Under the Easement

Tesoro’s Easement grants Plaintiffs express rights in relation to the Property. In Utah, easements are interpreted using normal contract interpretation rules. *Wellberg Invs., LLC v. Greener Hills Subdivision*, 2014 UT App 222, ¶ 6, 336 P.3d 61. To determine the parties’ rights in this dispute, therefore, the Court need only look to the plain language of the Easement to discern the parties’ intent when it was created. *Id.*

Here, the plain language of the Easement is unambiguous. It grants the Easement holder—Tesoro—a sixteen and half foot right of way to “lay, construct, reconstruct, replace, renew, repair, maintain, operate, change the size of, increase the number of, and remove pipe lines . . . for the transportation of oil, petroleum, gas, water, or other substances.” (Ex. A.) The Easement provides that the owner of the servient estate “shall not construct or maintain the whole or any part of any structure” on the sixteen-foot strip of land constituting the Easement, “or in any manner impair or interfere with the present or prospective exercise of any of the rights” granted by the Easement. (*Id.*)

These provisions are unambiguous, and their import is clear in this case. Defendants' planned construction infringes upon Tesoro's express Easement rights in at least two ways.

First, Defendants plan to build structures on the Easement. The Easement by its express terms unambiguously prohibits Defendants from constructing or maintaining any part of any structure on the Easement. Defendants' Site Plan clearly contemplates a patio and driveway located on the Easement. (Ex. C.) The planned driveway, in particular, sits on top of a significant portion of the Easement and would cause concrete or asphalt to be laid over the Pipelines themselves. (Ex. C.)

The planned placement of the patio and driveway, which are structures under the Easement, therefore violates the express terms of the Easement and Tesoro's associated rights. In *Mid-America Pipeline Co v. Lario Entrps, Inc.*, the Tenth Circuit resolved a similar dispute in favor of the plaintiff, a high-pressure gas pipeline easement holder. 942 F.2d 1519 (10th Cir. 1991) (applying Kansas law). The property owner built several structures, including "asphalt covering . . . and fill dirt" overlying the pipeline easement. *Id.* at 1522. The Tenth Circuit considered the language of the easement, including reference in its language to the historical context under which it was first granted, and agreed the racetrack was a "structure" that violated the terms of the easement. The court agreed it was:

reasonable to assume the grantee intended to bar asphalt surfaces from crossing the easements because plaintiff plotted the pipelines to avoid developed property. It is also reasonable to assume that the grantors did not have a contrary intent, since the property was used for pasture and agriculture for decades before and after the easements were executed.

Id. at 1527. The court noted this construction of the term “structure” also “conforms with the dictionary definition of structure.” *Id.* Here, both the language¹ and historical context² of Tesoro’s Easement are nearly identical to those in *Lario*. Thus, the conclusion must be the same: the Defendants’ planned driveway (and patio) are “structures” which may not be built on the Easement pursuant to its express terms.

Second, the proximity of the planned construction and residence to the Easement significantly impairs Plaintiffs’ ability to access the Pipelines and to exercise their rights under the Easement. The Easement prohibits Defendants from impairing or interfering with the rights granted by the Easement, including Plaintiffs’ right to maintain, operate, repair, and remove the Pipelines. The planned construction and residence will interfere with these Easement rights significantly, because they will impair Plaintiffs’ ability to excavate in order to access the Pipeline, and therefore to perform maintenance and other tasks, including the ability to detect leaks.

Not only are the planned patio and driveway to be located on top of the Easement as just described, Defendants’ plan places the residence less than nine feet from the Easement and install lateral utility lines across the Pipelines. To access the Pipelines, Plaintiffs must excavate to a significant depth—between four and ten feet—in order maintain, operate, repair, or remove

¹ Tesoro’s Easement provides that the owner of the servient estate “shall not construct or maintain the whole or any part of any structure” on the Easement. (Ex. A.) The easement in *Lario* “prohibited the creation of ‘any buildings or other structures on the herein granted right of way that will interfere with the normal operation and maintenance’ of the pipeline.” 942 F.2d 1519, 1526. Thus, the Easement in this case is even broader because it does limit the restrictions to structures which interfere with operation and maintenance.

² As in *Lario*, Tesoro’s Easement appears to have been originally placed on land used for agriculture—it specifically references that the land may be “under cultivation” and that the grantee agrees to pay for damages it causes to the grantor’s crops. (Ex. A.)

the Pipelines. The planned construction makes this access significantly more difficult and expensive. First, Plaintiffs will be required to dig around, or through, the patio, driveway, and utilities if located on top of the Easement. Second, even if Plaintiffs can avoid the patio, driveway, and utilities, their ability to access the Pipelines will be restricted because any excavation must be done differently in order to avoid damaging the dwelling or other utilities. For example, if the necessary excavation extends below the water table, Plaintiffs will be required to take dramatic measures to avoid flooding or other harm to the residence. Defendants' planned construction will simply make any repairs to the Pipelines more difficult, and increase the risk that any leak would send oil directly into the planned dwelling.

By making access to the Pipelines significantly more difficult and expensive, the planned construction impairs Plaintiffs' ability to exercise their express rights to access and maintain the Pipelines. In *Lario*, the asphalt overlying the pipeline easement was not only a "structure," it also interfered with the pipeline companies' use of the easement. *Lario*, 942 F.2d at 1527. The structures made normal operation and maintenance of the pipelines—including excavation—"substantially more difficult and costly than it was prior to the construction of [the structures]." *Id.* (ordering structures to be removed because they would "increase the costs and difficulty of digging down to the pipelines, should doing so become necessary"). Such is the case here—Plaintiffs' planned construction will make access to the Pipelines more difficult, expensive, and dangerous, and it therefore interferes with Tesoro's Easement rights.

2. Defendants' Planned Construction Unreasonably Infringes on Tesoro's Rights to the Easement Under Utah Law

In addition to violating the express terms of the Easement, Defendants' planned construction also violates Utah law. "It is a long-held tenet of property law that a servient estate

cannot unreasonably restrict or interfere with the proper use of an easement.” *Carrier v. Lindquist*, 2001 UT 105, ¶ 19, 37 P.3d 1112 (quotations omitted). “Under Utah’s property law . . . the owner of the land has the right to continue using its land *so long as it does not unreasonably interfere with the easement holder’s use of its easement.*” *SHCH Alaska Tr.*, 2019 UT 62, ¶ 49, 452 P.3d 1158 (emphasis added). “Whether one party’s conduct interferes with the right of the other is a factual question, the answer to which depends on the particular circumstances of the parties and the nature of the easement.” *Id.*

Courts in Utah have repeatedly affirmed these principles. Indeed, the Utah Supreme Court recently emphasized that a property owner may not unreasonably interfere with pipeline easement holders’ access to a pipeline. *Sorf*, 2019 UT 23, ¶ 12. In *Sorf*, the plaintiff was a water district with an easement allowing it to “construct, reconstruct, operate and maintain a pipeline or pipelines on, over and across” a portion of the servient estate. *Id.* ¶ 12. The servient estate owner made improvements to the property, including on the easement, which the plaintiff claimed interfered with its ability to access its aqueduct. *Id.* ¶¶ 12–13. The court explained the appropriate question was not whether the improvements unreasonably interfered with the aqueduct but whether it interfered with the easement. *Id.* ¶ 12. In other words, the question was not plaintiff’s ability to access the property generally but the ability to “access the aqueduct for maintenance and repairs.” *Id.* This is not a new rule: in a 1976 case, Utah Supreme Court agreed that a canal company which held an easement on the servient estate “ha[d] the right to access to repair and maintain its canal as reasonably necessary in accordance with its use since time immemorial.” *North Union Canal Co. v. Newell* 550 P.2d 178, 179 (Utah 1976). The *Newell*

court emphasized that the plaintiff in that case had an “established easement, however minor or infrequent the necessity to do repair or maintenance work on the canal may be.” *Id.*³

Here, for the reasons explained above, Defendant’s planned construction unreasonably interferes with Plaintiffs’ use of their Easement, and associated rights. Plaintiffs must be able to access the Pipelines for myriad reasons; the proximity of the construction and planned dwelling to the Easement would make such access significantly more difficult and expensive, if not impossible, without risking significant damage to the land, surrounding homes, and new construction.

Utah law also instructs courts to refer to the purpose of an easement to resolve a dispute between the dominant and servient estates. Courts are instructed that the first step “in determining whether the holder of an easement is entitled to make a particular use challenged by the owner of the servient estate . . . is to determine whether the use falls within the *purposes* for which the [easement] was created.” *SRB Investment Co., Ltd. v. Spencer*, 2020 UT 23, ¶ 12, 463 P.3d 654 (emphasis in original) (quoting Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d).

Here, the purpose of the Easement is unambiguous. It is a pipeline easement, the express purpose of which is to provide Plaintiffs a sixteen-foot right of way on the Property to access the Pipelines, so that Plaintiffs may repair, replace, remove, and otherwise maintain them. Plaintiffs’ objection to Defendants’ planned construction is squarely in line with these stated purposes. Put

³ In *Newell*, the servient estate placed a fence on the property which blocked the canal company’s access. Rather than ordering the fence removed, the court ultimately ordered the servient estate to maintain gates to allow the canal company’s access. Here, unlike in *Newell*, there is no accommodation or compromise to the construction as it is currently proposed that would avoid an unreasonable infringement upon Plaintiffs’ rights. However, Plaintiffs are not opposed to considering a new construction plan that places the dwelling and any attached structures further away from the Easement and Pipelines.

differently, Plaintiffs' denial of SI Builders' encroachment request and its claim in this lawsuit seek only to ensure Plaintiffs' continued right to use the Easement as was intended.

For these reasons, Defendants' planned construction will violate Plaintiffs' rights under the Easement and unreasonably interfere with their use of the Easement. The construction should therefore be enjoined, at least until the Court determines the parties' rights.

CONCLUSION

For the foregoing reasons, a Temporary Restraining Order and Preliminary Injunction are necessary to preserve the lawful status quo and prevent irreparable harm to Plaintiffs and to the public. Plaintiffs therefore requests the Court enter a Temporary Restraining Order enjoining Defendants from commencing any construction efforts on the Property.

Plaintiffs also request the Court schedule a hearing as soon as practicable to decide Plaintiffs' request for a Preliminary Injunction.

DATED this 23rd day of November, 2020.

SNELL & WILMER L.L.P.

/s/ Douglas P. Farr

Douglas P. Farr

Annika L. Jones

*Attorneys for Plaintiffs Marathon Pipe Line,
LLC and Tesoro Logistics Northwest
Pipeline LLC*

EXHIBIT A

FOR AND IN CONSIDERATION of the sum of Five Dollars (\$ 10.00)

to the undersigned in hand paid, the receipt whereof is hereby acknowledged.

THE UNDERSIGNED

of the County of Davis, State of Utah, hereinafter called Grantor,

do hereby grant to SALT LAKE PIPE LINE COMPANY, a Nevada corporation, hereinafter called Grantee, the right of way from time to time to lay, construct, reconstruct, replace, renew, repair, maintain, operate, change the size of, increase the number of, and remove pipe lines and appurtenances thereof, for the transportation of oil, petroleum, gas, gasoline, water or other substances, or any thereof, and to erect, install, maintain, operate, repair, renew, add to and remove telegraph, telephone or power lines and appurtenances thereof on a single line of poles or underground, as Grantee from time to time and place to place may elect, with the right of ingress and egress to and from the same, over and through, under or along that

certain parcel of land situate in Davis County, State of Utah and described as follows, to wit:

That certain parcel of land owned by the Grantor in the Northwest Quarter of Section Thirteen, Township Two North, Range One West (NW 1/4 of Sec. 13, T. 2 N., R. 1 W.), Salt Lake Meridian, within the boundaries shown on the ownership plat on file in the office of the County Recorder of said County, and bounded on the north by lands of Thomas Q. Williams, on the east by the Denver and Rio Grande Western Railroad, on the south by lands of J. W. and Ruby Olsen, and on the west by the County Road.

The route selected by Grantee for the first pipe line laid hereunder shall be the center line of a strip of land Sixteen and One Half (16 1/2) feet wide within which all additional lines, as provided for herein, must be laid.

Said lines may, in so far as the interests of Grantor extend therein, be laid, erected, installed and maintained across roads, streets, alleys, ditches and canals that intersect or are adjacent to the described property or are appurtenant thereto.

Where said land is under cultivation said pipe lines shall be laid so that the tops thereof are at least eighteen (18) inches beneath the surface of the ground. At all other points said pipe lines shall be buried, excepting that where they cross water courses or projecting ledges of rock they may be laid above the surface.

Grantee shall have the right to trim trees or portions thereof overhanging said strip of land whenever in the opinion of Grantee the same shall be necessary or proper in the exercise of the pole rights herein granted.

Grantor reserves the right to use and enjoy said premises, provided that Grantor shall not construct or maintain the whole or any part of any structure on said strip of land or in any manner impair or interfere with the present or prospective exercise of any of the rights herein granted.

Grantee hereby agrees to pay any damages to Grantor's crops, fences or buildings which may be caused by Grantee hereunder; said damages, if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by Grantor, one by Grantee, and the third by the two so appointed as aforesaid. The award of such three persons or any two of them shall be final and conclusive.

The provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, these presents are hereby signed this 15 day of July, 19 49

WITNESSES:

Arthur H. Sequist
Wladys R. Sequist

Arthur H. Sequist
Wladys R. Sequist

STATE OF Utah
 COUNTY OF Davis ss.

On this 19 day of July, 19 49, before me personally appeared Arthur H. Sequist & Wladys R. Sequist his wife, known to me and known by me to be the person s. described in and who executed and whose name s. are subscribed to the within instrument, and acknowledged to me that They executed the same freely and voluntarily for the use and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day, month and year first in this certificate written.

My commission expires Apr. 16 - 1952

R. N. Schluter
 Notary Public for

Residing at Woods Cross, Utah

EXHIBIT B

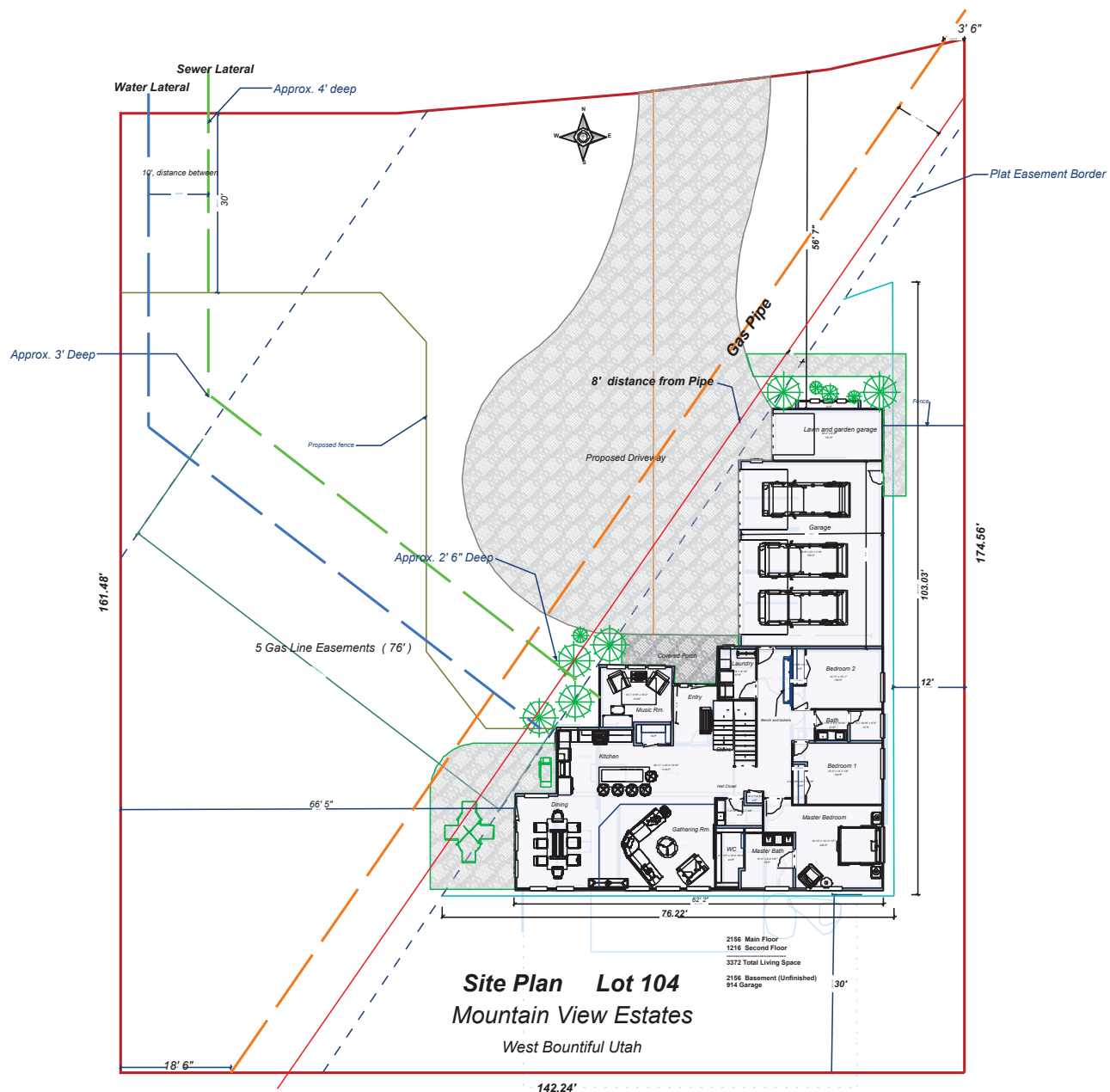
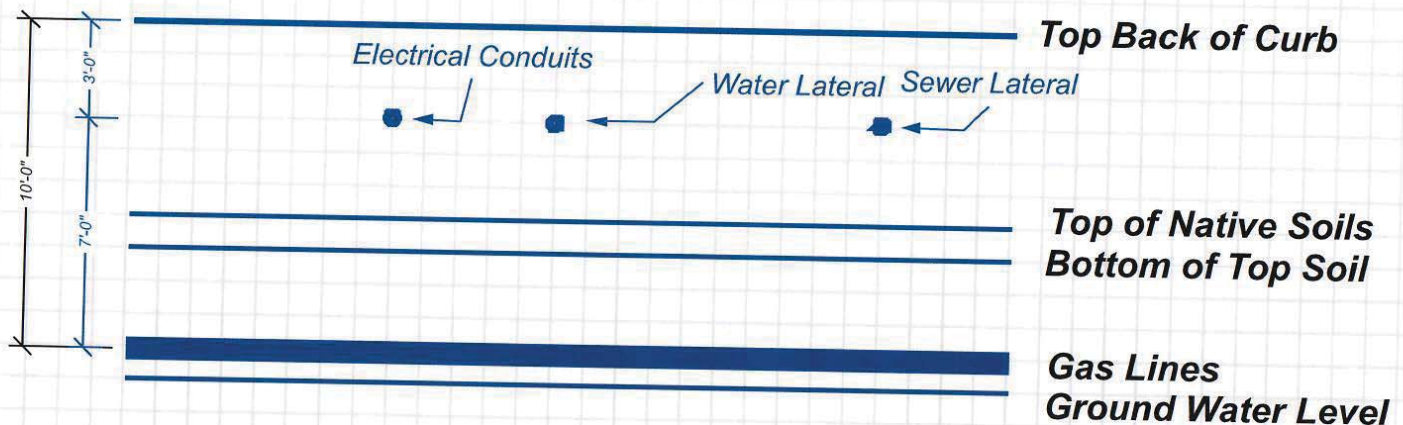


EXHIBIT C

Cross Section of Laterals and Gas Pipes

Lot 104 - ~~8~~95 W 1950 N

West Bountiful, UT



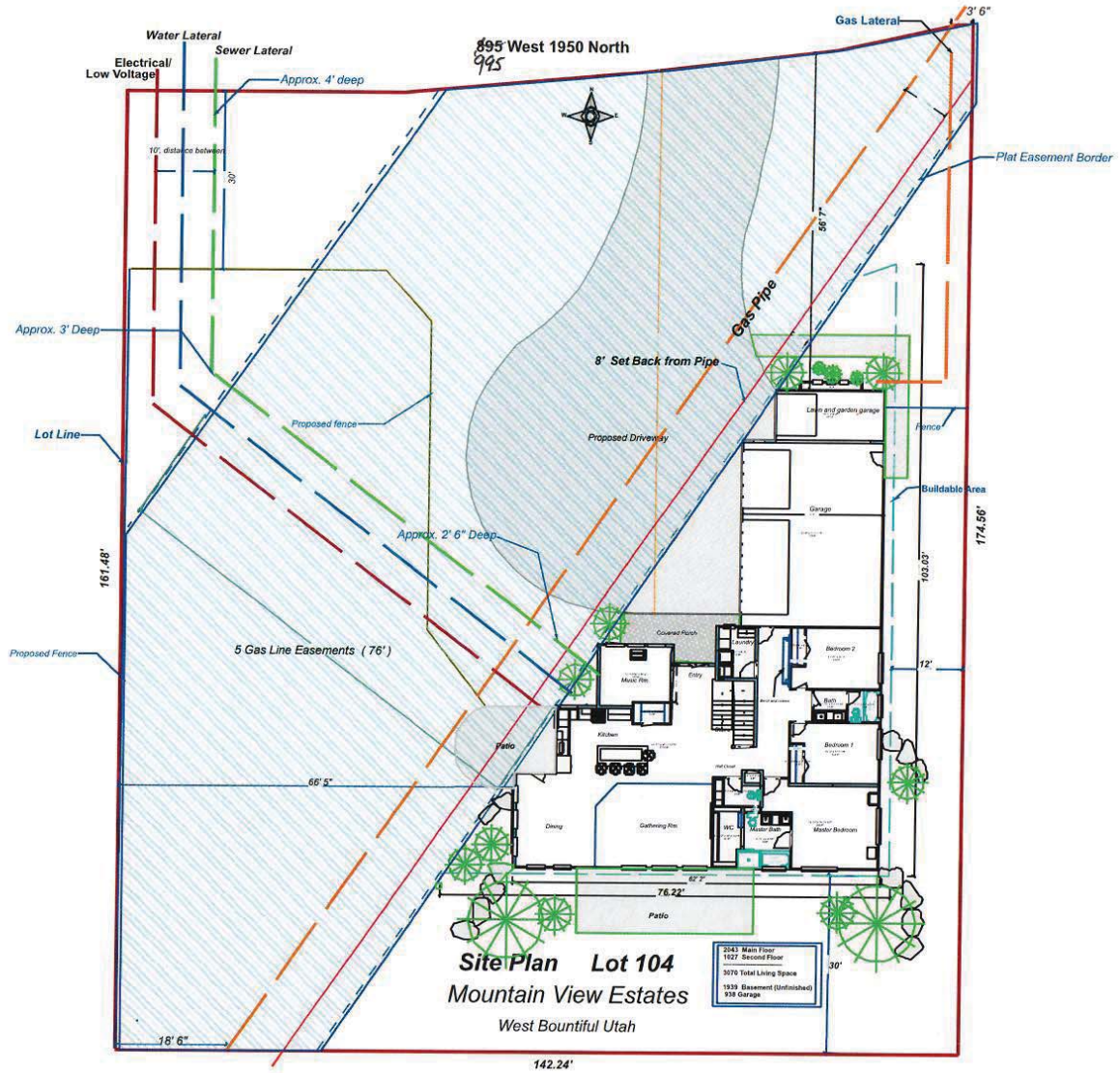


EXHIBIT D



Marathon Pipe Line LLC

257 East 200 South Suite 500
Salt Lake City, UT 84111
Telephone: (801) 898-7816

November 3, 2020

Steve Israelsen
724 West 500 South #200
West Bountiful, UT 84087

RE: Development Proposal—Lot 104 Mountain View Estates

Steve,

Thank you for reaching out to Marathon Pipeline (MPL) regarding your development plans for lot 104 of Mountain View Estates Subdivision. I have reviewed your proposal and recognize your desire to utilize lot 104 in a manner that will allow for a residential dwelling on the Southeast corner of the lot. I have also reviewed your request that certain utilities and driveway cross through the pipeline easement. Unfortunately, the construction of a residential structure this close to a high pressure refined fuel pipeline line does not meet our development setback standards therefore we will not be issuing permits for any crossings at this location. It is our desire that habitable structures be located approximately 50' from the pipeline.

Again thank you for reaching out to us regarding your proposal and while we know you would have liked a different response, we hope that you can appreciate the importance of operating the pipeline in manner that is safe for our employees, our neighbors, and the environment.

Best Regards,

Aaron Donat
Right-of-way Supervisor
Marathon Pipe Line LLC

cc: Jason Button (Marathon Pipeline)
Duran Lucas (Marathon Pipeline)

EXHIBIT E



November 11th, 2020

Aaron Donat
Right-of-way Supervisor
Marathon Pipe Line LLC
RE: Development of Lot 104 – Mountain View Estates

Aaron,

I appreciate you getting back to me regarding my plan to place a house on Lot 104 in the Mountain View Estates in West Bountiful, Utah. I understand that your position is that you do not want a house within 50 feet of Marathon's pipeline.

I have reviewed Marathon's Development Specifications (Revised 6/2020). In those specifications, it identifies your company's "Recommendation" that houses be 50 feet from the pipeline. And it also states that if the "Structure distance cannot meet the setback recommendations" that I am to submit a site-specific plan. As you can see from the site plan that I submitted, it is impossible on Lot 104 (a legal residential building Lot) to place the structure any farther away.

Also, the easement that Marathon has on this property allows for Marathon to install gas pipelines and to maintain them. The only restrictions are that I cannot build a structure in the easement, and that you may trim trees that may overhang into the easement.

Marathon's easement does not grant it the right to prohibit structures outside the easement, nor does it restrict access to utility crossing, fencing, piping, etc. By my reading, I am not required by the easement to following Marathon's company policies, or recommendations. Nor am I required to seek Marathon's permission.

Other home structures in the neighborhood have been built alongside and adjacent to the easement. Sewer, Water, Electric, Streets, Sidewalks, Driveways, Fencing, sprinkling systems, etc. are all crossing the easement in this neighborhood. Holly Frontier, who has 3 pipes in their easement, has given me a permit. I do not understand why you are discriminating against SI Builders' request to build.

Because I am not required by the easement to seek permission, I will proceed with my plan as I have submitted it. I plan to start digging the footings next week.

If this does not work for Marathon, then I suggest you contact my attorneys, who I have copied on this communication.

Thanks,

Steve Israelsen
President
SI Builders, LLC
724 W 500 S #200
West Bountiful, UT 84087

EXHIBIT F



Marathon Petroleum Company LP

539 South Main Street
Findlay, OH 45840
Telephone: (419) 422-2121
FAX: (419) 425-7040

Via E-Mail

November 17, 2020

Steve Israelsen
President
SI Builders, LLC
724 W. 500 S. #200
West Bountiful, UT 84087
steve@sibuilders.com

RE: Development of Lot 104 – Mountain View Estates

Dear Mr. Israelsen:

Please accept this letter in response to your correspondence dated November 11, 2020. In the letter, you state an intent to proceed with construction activities on Lot 104 of the Mountain View Estates in West Bountiful, Utah ("Lot 104") notwithstanding their encroachment on property rights held by Tesoro Logistics Northwest Pipeline LLC ("Tesoro"). For the reasons below, that would be unsafe, improper and cannot be permitted.

As you know, Tesoro has an easement 16 and ½ feet wide over and through, under or along the parcel of land situated in Davis County, Utah (the "Easement"). The Easement grants to Tesoro:

"The right of way from time to time to lay, construct, reconstruct, replace, renew, repair, maintain, operate, change the size of, increase the number of, and remove pipe lines and appurtenances thereof, for the transportation of oil, petroleum, gas, gasoline, water or other substances, or any thereof, and to erect, install, maintain, operate, repair, renew, add to and remove telegraph, telephone or power lines and appurtenances thereof on a single line of poles or underground, as [Tesoro] from time to time and place to place may elect, with the right of ingress and egress to and from the same."

The Easement provides that Tesoro has the right to trim trees or portions thereof overhanging the strip of land whenever in Tesoro's opinion is necessary or proper in the exercise of the pole rights granted in the Easement. The Easement also provides that the servient estate shall not construct or maintain the whole or any part of any structure on the strip of land or in any manner impair or interfere with the present or prospective exercise of any of the rights granted in the Easement. The Easement is recorded in Book 5 Page 18, Entry No. 107275 and is attached hereto again for your reference.

Tesoro owns and operates pipelines that transport crude oil and refined products. Here, Tesoro has two 8-inch, steel pipelines buried at the property in question (the "Pipelines"). The Pipelines were laid pursuant to the Easement, which was purchased by Tesoro. One of the lines was built in 1949, while the other was built several years later. The Pipelines carry gasoline, diesel, and jet fuel, and have average operating pressures of 900 psi and 1000 psi, respectively. Additionally, at the particular location, the second line runs on the east of the first, and there is an average of 6 feet of separation between the two. This information is known to you and carries significant import.

Specifically, your proposed site plan for Lot 104 includes an intent to build a private dwelling within 8 feet of the Pipelines. The site plan also includes an intent to construct and maintain a patio and driveway attached to the dwelling on top of the Pipelines and Easement. You previously requested permission to encroach on the Easement, recognizing the planned construction is contrary to the terms of the Easement. Tesoro rejected your request,

considering the obvious safety ramifications associated with constructing a family home so close to the Pipelines. Indeed, any new house should be setback at least 50 feet from a pipeline to be consistent with the federal pipeline safety requirements. Likewise, your proposed construction would interfere with the Pipelines in contravention of Tesoro's express rights under the Easement. The Pipelines are marked with permanent signage on the boundaries of Lot 104 and also temporary pin flags across the property.

You claim that by asserting and protecting its rights under the Easement (and citing obvious safety concerns) Tesoro is "discriminating against SI Builders' request to build" a house on Lot 104. That is not the case. Rather, Tesoro honors its mission to safely and reliably operate the Pipelines to delivery the petroleum products that are being carried. The constructed home, patio and driveway will interfere with the operation and maintenance of the Pipelines, which interference is prohibited by the Easement. The Easement prohibits the construction on the reserved area of any structure of any kind because any such structure would likely interfere with the free use of the area for the installation and maintenance of oil, petroleum, gasoline, water, telephone and power lines. You had express notice of the Easement and knowledge of Tesoro's position before Lot 104 was even purchased for potential residential development. In spite of this, your correspondence dated November 11, 2020 now states an intent to proceed with the planned construction notwithstanding Tesoro's refusal to permit you to encroach on the Easement. Still, this construction would violate the provisions of the Easement, as you have previously been advised.

Accordingly, you are hereby notified that you must refrain from conducting any action related to the planned construction that violates the provisions of the Easement, such as constructing a patio or driveway on any part of the Easement or otherwise impairing or interfering with Tesoro's present or prospective operation and maintenance of the Pipelines. You are also formally notified that Tesoro will not authorize sewer or water line crossings over the Easement in this instance.

Tesoro does not waive, and expressly reserves, any and all rights and claims with respect to the Easement and Tesoro's Pipelines. If you violate the provisions of the Easement, Tesoro may take action, including but not limited to removing structures that are not in compliance with the terms and conditions of the Easement or seeking injunctive relief. Tesoro reserves the right to seek exemplary damages and to assess you any such expenses, including any legal costs and attorney fees incurred in connection with protecting Tesoro's rights under the Easement and ensuring the safe operation of Tesoro's Pipelines.

Please contact me if you have any questions. If you are represented in this matter by counsel, you may have that person contact Tesoro's in-house counsel, Thomas Kemp, Jr., at (419) 421-2863.

Sincerely,

Tesoro Logistics Northwest Pipeline LLC



Aaron Donat
Right of Way Supervisor

Attachment

cc: Jeffery Williams, Esq. (jeffw@nchwlaw.com)
Stephen K. Christensen, Esq. (stevec@nchwlaw.com)
Thomas P. Kemp, Jr.

EXHIBIT G

Property Development Specifications



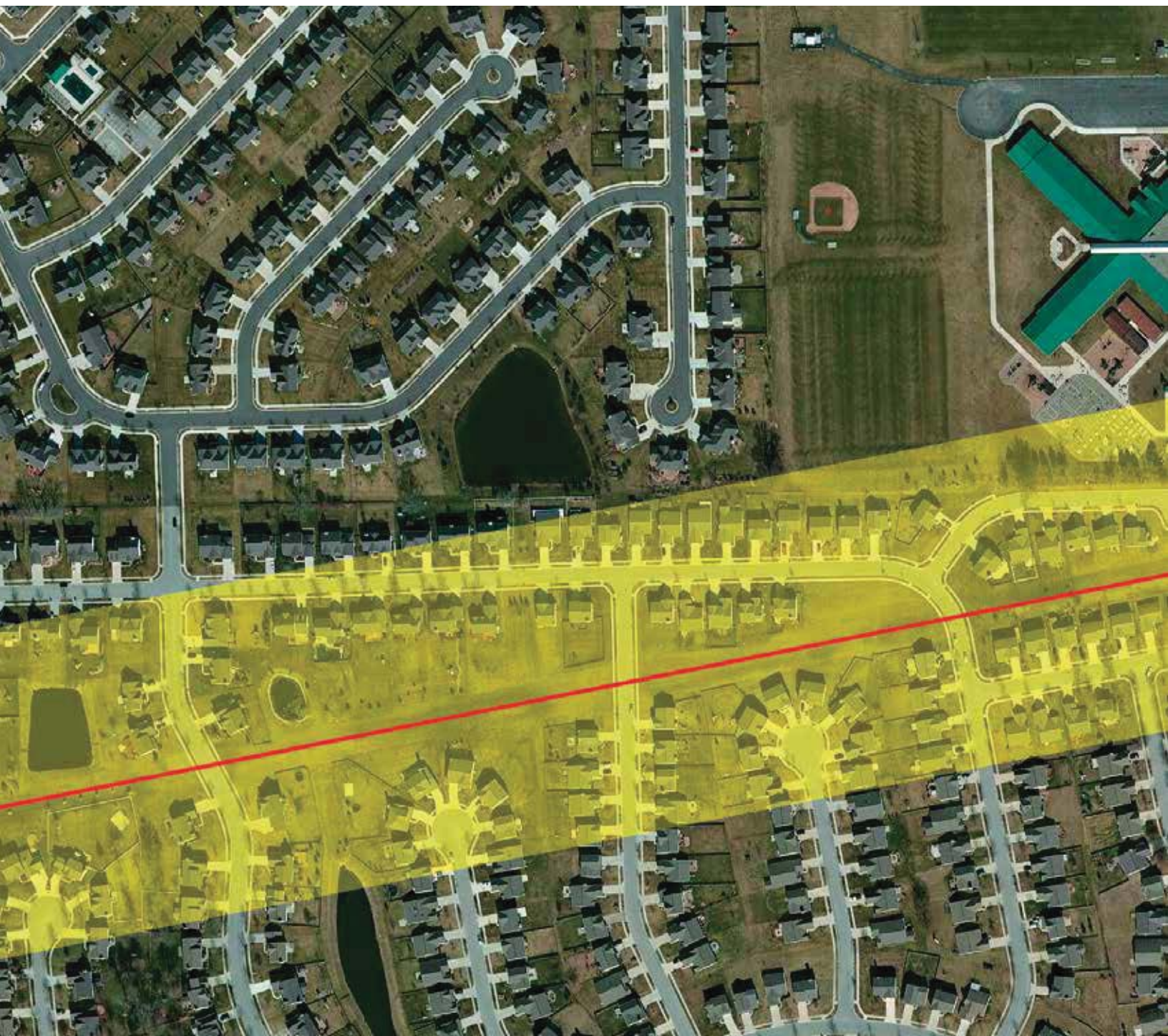
**Marathon
Pipe Line LLC**

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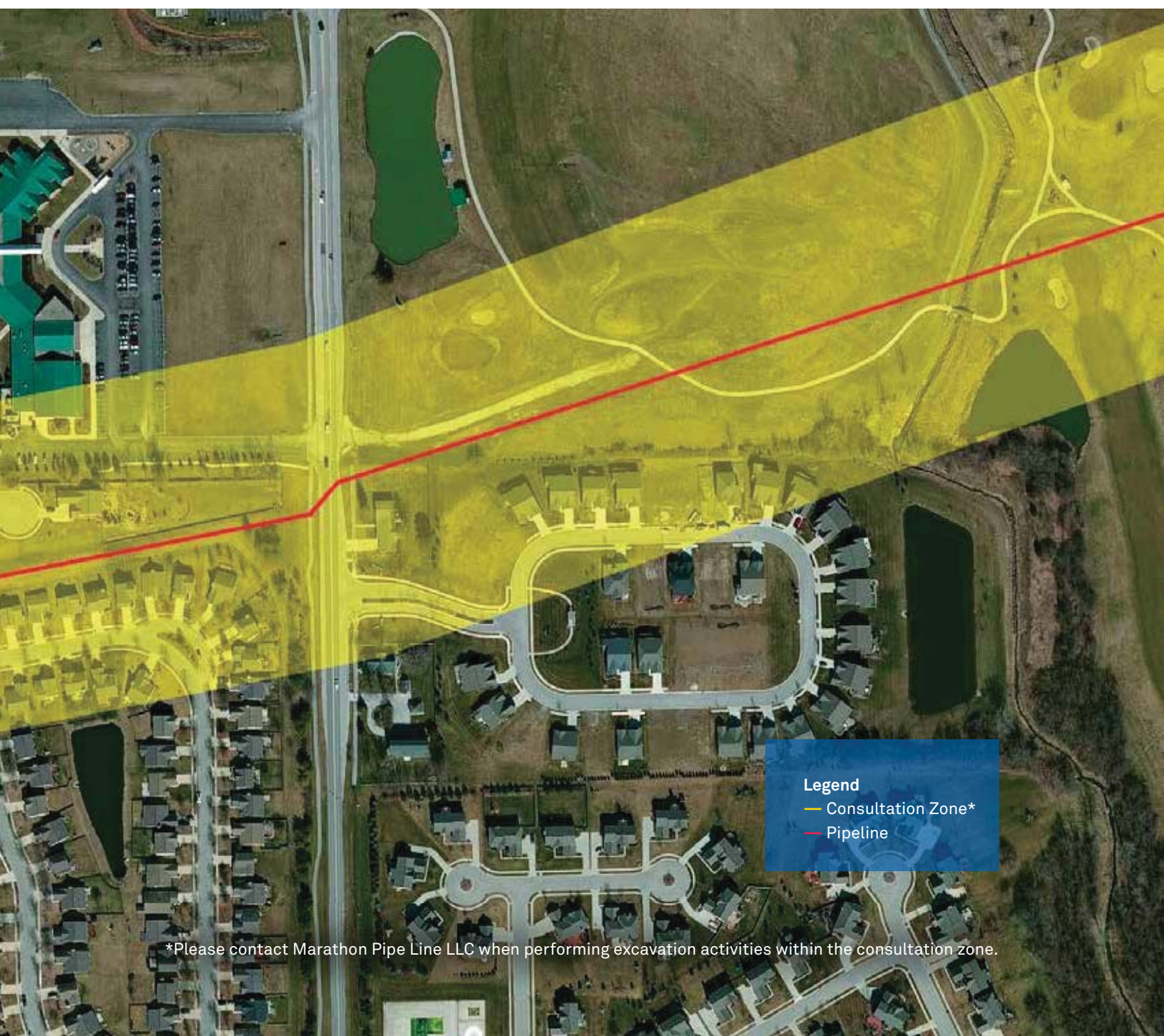
Partnering for Pipeline Safety

- Ensuring safe excavation and development operations



This publication provides guidance on how to safely perform a variety of excavation activities around a pipeline. It is intended for use by those involved in land use planning, excavation activities, property development, or agriculture operations. This includes:

- Real estate developers
- Engineers and surveyors
- General contractors and their subcontractors
- Local government planners and zoning boards
- Property owners



Legend

- Consultation Zone*
- Pipeline

*Please contact Marathon Pipe Line LLC when performing excavation activities within the consultation zone.

One Call System



→ Know what's below.
Call 811 before you dig.

Digging that seems harmless can be dangerous and may cause damage to underground facilities, resulting in interrupted utility service, environmental damage, property damage, injuries or even fatalities.

Most damage is avoidable. It's a simple matter of advance planning and using the one call system.

State law requires that you call at least two full business days (excluding Saturdays, Sundays and holidays) before you dig. Some states require more than two days' notice (refer to table on next page). This free call can help protect you from serious legal, financial and most importantly, physical harm resulting from damaging a buried pipeline or other utility.

Never assume the location of pipelines. They can change directions abruptly and without any aboveground physical evidence (even between marker posts). Their depths vary, and more than one pipeline may exist within a right of way.

Steps for Safe Digging

1 Call 811 or your state's one call number (see page 7) the required number of days before excavation is scheduled to begin. Provide the operator with the following information:

- Your county, city or township
- Digging location (street address and nearest cross street)
- Type and extent of work (front/rear/side of property)
- Digging start date and time

- 2** Outline the digging area with white paint or flags
- 3** The one call center will notify the appropriate utility companies. Trained technicians will mark the location of underground facilities with colored flags, stakes or paint, at no cost to you.
- 4** Do not remove the flags, stakes or paint marks until you have finished digging.
- 5** A Marathon Pipe Line LLC (MPL) representative must be present when work is performed within 50 feet of a pipeline operated by MPL. Always hand dig within the tolerance zone (see page 9).
- 6** Be available to answer questions and to meet utility representatives at the work site.

Color Code for Marking Underground Utility Lines

	Electric
	Gas-Oil-Steam
	Communication CATV
	Water
	Sewer
	Temporary Survey Markings
	Proposed Excavation

State	Advance Notice	Toll-Free Number	State	Advance Notice	Toll-Free Number
Alabama	2 days	800-292-8525	Nebraska	2 days	800-331-5666
Alaska	2 days	800-478-3121	Nevada	2 days	800-227-2600
Arizona	2 days	800-782-5348	New Hampshire	3 days	888-344-7233
Arkansas	2 days	800-482-8998	New Jersey	3 days	800-272-1000
California	2 days		New Mexico	2 days	800-321-2537
Underground Service Alert North		800-642-2444	New York	2 days	
Underground Service Alert South		800-422-4133	Dig Safely New York		800-962-7962
Colorado	2 days	800-922-1987	Long Island One Call		800-272-4480
Connecticut	2 days	800-922-4455	North Carolina	3 days	800-632-4949
Delaware	2 days	800-282-8555	North Dakota	2 days	800-795-0555
District of Columbia	2 days	800-257-7777	Ohio	2 days	800-362-2764
Florida	2 days	800-432-4770	Oklahoma	2 days	800-522-6543
Georgia	2 days	800-282-7411	Oregon	2 days	800-332-2344
Hawaii	5 days	800-227-2600	Pennsylvania	3 days	800-242-1776
Idaho	2 days	800-342-1585	Rhode Island	3 days	888-344-7233
Illinois	2 days	800-892-0123	South Carolina	3 days	888-721-7877
Digger (Chicago Utility Alert Network)		312-744-7000	South Dakota	2 days	800-781-7474
Indiana	2 days	800-382-5544	Tennessee	3 days	800-351-1111
Iowa	2 days	800-292-8989	Texas	2 days	
Kansas	2 days	800-344-7233	Texas One Call System		800-245-4545
Kentucky	2 days	800-752-6007	Texas Excavation Safety System		800-344-8377
Louisiana	2 days	800-272-3020	Lone Star Notification Center		800-669-8344
Maine	3 days	888-344-7233	Utah	2 days	800-662-4111
Maryland	2 days		Vermont	2 days	888-344-7233
Miss Utility		800-257-7777	Virginia	2 days	800-552-7001
Miss Utility of Delmarva		800-282-8555	Washington	2 days	800-424-5555
Massachusetts	3 days	888-344-7233	West Virginia	2 days	800-245-4848
Michigan	3 days	800-482-7171	Wisconsin	3 days	800-242-8511
Minnesota	2 days	800-252-1166	Wyoming	2 days	800-849-2476
Mississippi	2 days	800-227-6477			
Missouri	2 days	800-344-7483			
Montana	2 days				
Utilities Underground Location Center		800-424-5555			
Montana One Call Center		800-551-8344			

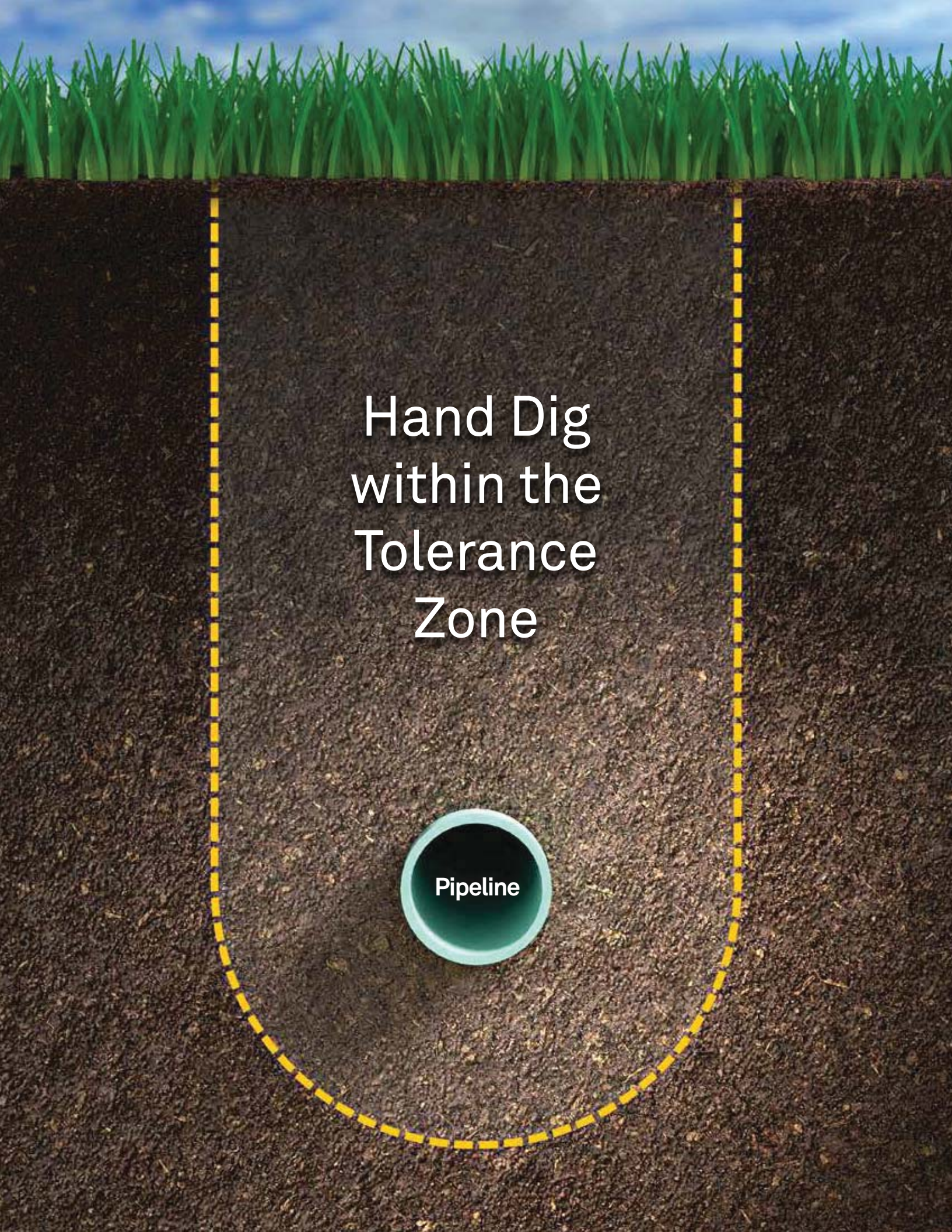
Tolerance Zone

→ Working within the buffer of protection

State	Zone	State	Zone	State	Zone
Alabama	18"	Kentucky	18"	North Dakota	24"
Alaska	24"	Louisiana	18"	Ohio	18"
Arizona	24"	Maine	18"	Oklahoma	24"
Arkansas	18"	Maryland	18"	Oregon	24"
California	24"	Massachusetts	18"	Pennsylvania	18"
Colorado	18"	Michigan	48"	Rhode Island	18"
Connecticut	18"	Minnesota	24"	South Carolina	24"
Delaware	24"	Mississippi	18"	South Dakota	18"
District of Columbia	18"	Missouri	24"	Tennessee	24"
Florida	24"	Montana	18"	Texas	18"
Georgia	18"	Nebraska	18"	Utah	24"
Hawaii	30"	Nevada	24"	Vermont	18"
Idaho	24"	New Hampshire	18"	Virginia	24"
Illinois	18"	New Jersey	24"	Washington	24"
Indiana	24"	New Mexico	18"	West Virginia	24"
Iowa	18"	New York	24"	Wisconsin	18"
Kansas	24"	North Carolina	24"	Wyoming	24"

What is the tolerance zone?

The tolerance zone is a horizontal area, measured from the marks, where the excavator should excavate using hand tools (or other non-invasive tools) to protect the marked underground facility until it is exposed. The tolerance zone includes the area from the ground surface down and around the facility.



The diagram shows a cross-section of the ground with green grass at the top. A light blue circular pipe is buried in the soil. A yellow dashed line forms a U-shape around the pipe, defining a 'Tolerance Zone'. The text 'Hand Dig within the Tolerance Zone' is centered within this zone.

Hand Dig
within the
Tolerance
Zone

Pipeline

Excavation Guidelines

→ Common Ground Alliance best practices

One Call Facility Locate Request

The excavator requests the location of underground facilities at each site by notifying the facility owner/operator through the one call center. Unless otherwise specified in state/provincial law, the excavator calls the one call center at least two working days and no more than 10 working days prior to beginning excavation.

White Lining

When the excavation site cannot be clearly and adequately identified on the locate ticket, the excavator will designate the route and/or area to be excavated using white marking, either on-site or electronically (when available through the one call center), prior to or during the request for the locate ticket.

Locate Reference Number

The excavator receives and maintains a reference number from the one call center that verifies the locate was requested.

Pre-excavation Meeting

When practical, the excavator requests a meeting with the facility locator at the job site prior to marking the facility locations. Such pre-job meetings are important for major, or unusual, excavations.

Facility Relocations

The excavator coordinates work that requires temporary or permanent interruption of a facility owner/operator's service with the affected facility owner/operator in all cases.

Separate Locate Requests

Every excavator on the job has a separate one call reference number before excavating.

One Call Access (24/7)

The excavator has access to a one call center 24 hours per day, 7 days a week.

Positive Response

The underground facility owner/operator either 1) identifies for the excavator the facility's tolerance zone at the work site by marking, flagging, or other acceptable methods; or 2) notifies the excavator that no conflict situation exists. This takes place after the one call center notifies the underground facility owner/operator of the planned excavation and within the time specified by state/provincial law.

Facility Owner/Operator Failure to Respond

If the facility owner/operator fails to respond to the excavator's timely request for a locate (e.g., within the time specified by state/provincial requirements) or if the facility owner/operator notifies the excavator that the underground facility cannot be marked within the time frame and a mutually agreeable date for marking cannot be determined, then the excavator re-calls the one call center. However, this does not preclude the excavator from continuing work on the project. The excavator may proceed with excavation at the end of two working days, unless otherwise specified in state/provincial law, provided the excavator exercises due care in all endeavors.

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commongroundalliance.com

2 3

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HALI
12"

→ Ensuring a safe and efficient process

Locate Verification

Prior to excavation, excavators verify that they are at the correct location, verify locate markings and, to the best of their ability, check for unmarked facilities.

Documentation of Marks

An excavator uses dated pictures, videos, or sketches with distance from markings to fixed objects recorded, to document the actual placement of markings.

Work Site Review with Company Personnel

Prior to starting work, the excavator reviews the location of underground facilities with site personnel.

One Call Reference at Site

Except in case of an emergency, the excavator at each job site has available a complete description of the dig site, a list of the facility owner members impacted at that dig site as identified by the one call center, and the one call center ticket number.

Contact Names and Numbers

The excavator's designated competent person at each job site has access to the names and phone numbers of all facility owner/operator contacts and the one call center.

Facility Avoidance

The excavator uses reasonable care to avoid damaging underground facilities. The excavator plans the excavation to avoid damage or minimize interference with the underground facilities in or near the work area.

Federal and State Regulations

The excavator complies with all applicable federal and state/provincial safety regulations and, when required, provides training as it relates to the protection of underground facilities.

Marking Preservation

The excavator protects and preserves the staking, marking, or other designation of underground facilities until no longer required for proper and safe excavation. The excavator stops excavating and notifies the one call center for re-marks if any facility mark is removed or is no longer visible.

Excavation Observer

The excavator has an observer to assist the equipment operator when operating excavation equipment around known underground facilities.

Excavation Tolerance Zone

The excavator observes a tolerance zone that is comprised of the width of the facility plus 18 inches on either side of the outside edge of the underground facility on a horizontal plane. This practice is not intended to preempt any existing state/provincial requirements that currently specify a tolerance zone of more than 18 inches.

Excavation within Tolerance Zone

When excavation is to take place within the specified tolerance zone, the excavator exercises such reasonable care as may be necessary for the protection of any underground facility in or near the excavation area. Methods to consider, based on certain climate or geographical conditions include hand digging when practical (pot holing), soft digging, vacuum excavation methods, pneumatic hand tools, other mechanical methods with the approval of the facility owner/operator, or other technical methods that may be developed. Hand digging and non-invasive methods are not required for pavement removal.

Mismarked Facilities

The excavator notifies the facility owner/operator directly or through the one call center if an underground facility is not found where one has been marked or if an unmarked underground facility is found. Following this notification, the excavator may continue work if the excavation can be performed without damaging the facility, unless specified otherwise in state/provincial law.

Exposed Facility Protection

Excavators support and protect exposed underground facilities from damage.

Locate Request Updates

The excavator calls the one call center to refresh the ticket when excavation continues past the life of the ticket (sometimes, but not always, defined by state/provincial law). This recognizes that it is a best practice to define ticket life. If not currently defined in state/provincial law, ticket life is ideally 10 working days but does not exceed 20 working days. Original locate request tickets are generated so that the minimum number of locate request updates are necessary for the duration of a project. After all the excavation covered by a locate request is completed, no additional locate request updates are generated. Communication between excavation project planners, field personnel, and clerical personnel is essential in accomplishing this task.

Facility Damage Notification

An excavator discovering or causing damage to underground facilities notifies the facility owner/operator and the one call center. All breaks, leaks, nicks, dents, gouges, grooves, or other damages to facility lines, conduits, coatings, or cathodic protection are reported.

Notification of Emergency Personnel

If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the excavator responsible immediately notifies 911 and the facility owner/operator. The excavator takes reasonable measures to protect everyone in immediate danger, including the general public, property, and the environment until the facility owner/operator or emergency responders arrive and complete their assessment.

Emergency Excavation

In the case of an emergency excavation, maintenance or repairs may be made immediately, provided that the excavator notifies the one call center and facility owner/operator as soon as reasonably possible. This includes situations that involve danger to life, health, or property or that require immediate correction in order to continue the operation of or ensure the continuity of public utility services or public transportation.

Backfilling

The excavator protects all facilities from damage when backfilling an excavation. Trash, debris, coiled wire, or other material that could damage existing facilities or interfere with the accuracy of future locates are not buried in the excavation.

As-built Documentation

Contractors installing underground facilities notify the facility owner/operator if the actual placement is different from expected placement.

Trenchless Excavation

All stakeholders comply with all best practices and the following general guidelines prior to, during, and after any trenchless excavation (as applicable).

Emergency Coordination with Adjacent Facilities

Emergency response planning includes coordination with emergency responders and other aboveground and/or underground infrastructure facility owner/operators identified by the Incident Commander through the Incident Command System/Unified Command (ICS/UC) during an emergency.

No Charge for Providing Underground Facility Locations

Upon notification by one call centers, locations of underground facilities are provided by operators at no cost to excavators.

Vacuum Excavation

Vacuum excavation, when used appropriately, is an efficient, safe, and effective alternative to hand digging within the designated underground facility tolerance zone. Use of equipment should also follow state/provincial laws and/or local ordinances.

Facility Owner Provides a Monitor During Excavation

If a facility owner/operator considers it necessary to be on-site during excavation activities to work with the excavator in protecting their existing facilities, the facility owner/operator makes arrangements with the excavator to be present during those excavation activities within the time specified by state/provincial law.

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Working Near High-Pressure Pipelines

→ Easement information and general specifications

Easement Information

An easement amendment may be required when crossing an existing easement.

General Conditions of an easement give the holder of the easement the right to operate a business in a safe and unencumbered manner. Easement Amendments & License Agreements attempt to change the legal document to reflect the physical changes to the property. These new arrangements may require the crossing party to:

- Recognize the rights and the needs of the utility being crossed by obtaining permission to encroach on the easement and follow the specifications for crossing the pipeline system.
- If the utility needs to be altered, then all costs will be the responsibility of the crossing party.
- Indemnify, and hold harmless, the utility from all claims and liabilities. Also, the crossing party shall pay all costs and fees for responding to failures, or in the enforcement of all details in the performance of the encroachment or crossing.
- Notify the utility three days before working near the utility system, and follow specifications and the directions of the utility representative.
- Develop diagrams and surveys with plan and profile views of the site and the method of construction including materials, equipment, personnel training, and construction loads.

General Specifications

Any variance from these specifications must be confirmed in writing by a Marathon Pipe Line LLC (MPL) representative. The crossing party shall:

- Not attempt to probe for or engage in any activities which might damage the pipeline or coating.
- Contact MPL to re-mark a pipeline if crossing party believes existing marks to be inadequate for any reason, including disturbance during construction.
- Not burn trash, brush or other items or substances within 50 feet of any pipeline.
- Not construct any obstruction above or below ground (including, but not limited to, buildings, engineering structures, pavement, fences, refuse, pools and waste disposal systems) within 50 feet of any pipeline.
- Not operate heavy equipment over any pipeline.
- Not blast within 1,320 feet of any pipeline.
- Cross as near perpendicular as possible to any pipeline.
- Perform no power digging within 50 feet of the side of the pipe unless an MPL representative is present.
- Ensure all excavation work complies with OSHA's excavation standards outlined in 29 CFR 1926 and correct any noncompliant excavation site before any MPL representative or contractor enters the site to perform work.



- Perform no power digging within 18-24 inches of the outer edge of the pipeline. See page 8 for state-specific Tolerance Zone requirements. The Tolerance Zone extends on all sides of the pipeline and includes the area from the ground surface down and around the facility (see diagram on page 9). Within the Tolerance Zone, use only hand excavation, air cutting and vacuum excavation.
- Not cross the pipeline by auto tunneling, boring or directional drilling methods unless approved and documented by MPL. An MPL representative must be present during this operation.
- Not develop or build retaining walls, drive piling or create an engineering works that develops or controls overburden loads that impact the pipeline without MPL's approval.
- Not chisel, plow or rip the soil until inspected by an MPL representative. Rip no greater than 16 inches deep only after the exact position of the pipe is known and not within three feet of the outer edge of any pipeline.
- Backfill and compact to the satisfaction and in the presence of an MPL representative:
 - At least six inches of fine, loose earth or sand with no sharp gravel, rock, hard clods, vegetation or other debris shall be placed on all sides of any pipeline, and remaining backfill shall be placed so as not to disturb this padding material or injure the pipe.
 - Compact backfill directly over any pipe by hand until 18 inches of cover is achieved.
 - Compact disturbed ground to the same degree of compaction of surrounding areas.
- Restore the site to its original condition except for items which are part of the approved change.

Other Considerations

- Consider establishing evacuation routes in the design of a development. Adequate evacuation routes may be necessary in the event of a pipeline incident or other emergency.

Foreign Pipeline Crossings

→ Crossing pipelines, gas transmission lines, mains, and service connections

General Specifications

A foreign [non-Marathon Pipe Line LLC (MPL)] pipeline crossing should cross as nearly perpendicular to the existing MPL pipeline and its designated right of way as possible.

A foreign pipeline shall not run parallel or nearly parallel to an MPL pipeline within the boundaries of the MPL right of way or within 25 feet of the pipeline without MPL's written approval.

Foreign pipelines shall cross underneath MPL pipelines with a minimum clearance of 24 inches. This elevation should be maintained across the entire width of MPL's right of way. A clearance of at least 24 inches shall also be maintained between MPL pipelines and any other buried structure. An additional 24 inches is required if a conventional bore/utility push or directional drill is utilized.

If during the course of the crossing MPL's pipeline is exposed and unsupported for a distance in excess of 10 feet, the pipeline must be supported by cribbing on each side of the crossing or by some other manner approved by MPL. Prior to backfilling the hole, the cribbing must be removed and replaced with sand bags or good, compacted fill in order to minimize settling of the pipeline.

If MPL's pipeline is unusually deep at the crossing location, MPL may consider allowing the utility to cross over MPL's pipeline as long as the utility is placed in a steel casing across the right of way or protected in some other manner acceptable to MPL.

Warning tape shall be placed one foot above the location of a foreign pipeline for a distance of 25 feet on either side of MPL's pipeline.

Pipeline markers or identifying markers should be located to indicate the route of the foreign pipeline across the right of way of an existing MPL pipeline.

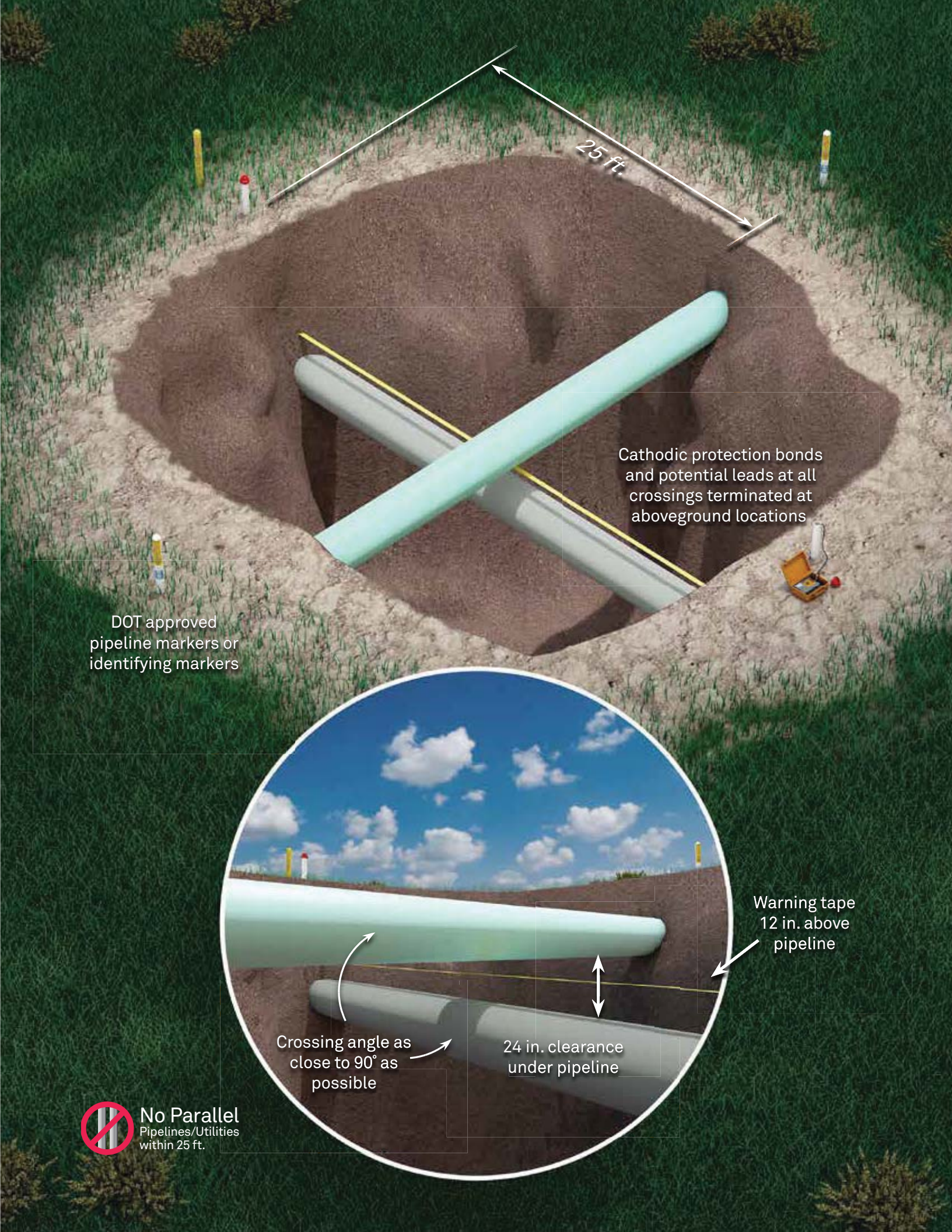
Metallic Pipe

Cathodic protection bonds and potential leads shall be required at all crossings and shall be terminated at aboveground locations. All test leads on MPL pipelines will be installed by MPL personnel.

The foreign pipeline should be coated with a suitable pipe coating for a distance of at least 50 feet on either side of the crossing.

Non-Metallic Pipe

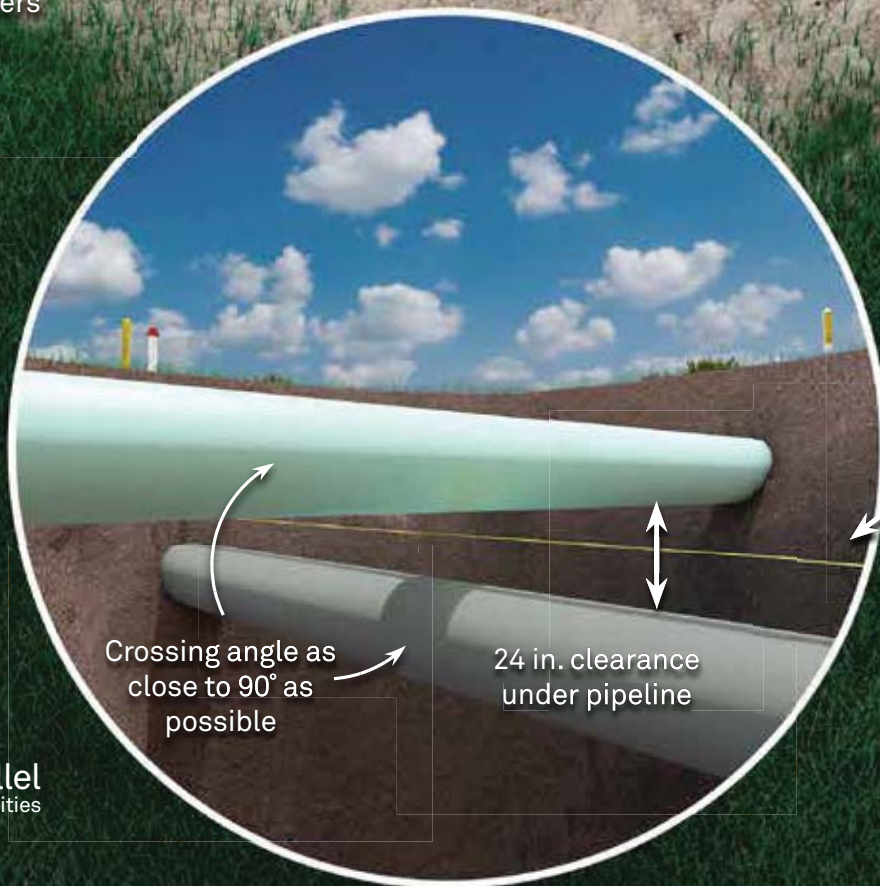
A tracer wire and warning tape for a non-metallic pipeline should be installed by the third party to allow easy identification.



25 ft.

Cathodic protection bonds and potential leads at all crossings terminated at aboveground locations

DOT approved pipeline markers or identifying markers



Warning tape
12 in. above
pipeline

Crossing angle as
close to 90° as
possible

24 in. clearance
under pipeline



No Parallel
Pipelines/Utilities
within 25 ft.

Agriculture Activities and Modifications

→ Field tile ditching and deep plowing

Agriculture Field Tile

The project should be planned in advance and the project plan should be followed. Many states establish required time frames for advance planning. Ample time is required to review design and verify pipeline depths and operational requirements. Prior to the installation of any field tile within Marathon Pipe Line LLC's (MPL) right of way, the installer should communicate and plan the project with MPL's field personnel.

During field tile installation, the pipeline should be located and a depth analysis made by an MPL representative. Yellow flags will be placed to mark the pipeline. The MPL technician will make a Depth Survey Report. Photos should be taken showing the flags.

When working within 50 feet of the pipeline, an MPL representative must be present. This will give adequate time and distance to keep everyone safe. It is recommended that long runs of parallel tile and pipeline should be spaced 25 feet apart (a minimum of 10 feet) where conditions and skills permit.

The pipeline should be crossed carefully. The crossing should be as near to perpendicular as possible and clear the pipeline by 24 inches. Where the field tile crosses the pipeline, it is recommended that solid tile be used and that pea gravel be used to prevent settling. Plastic pipe is preferred when crossing the pipeline. MPL shall conduct a field inspection of this work verifying pipeline depths and installation clearances.

Deep Plowing

Due to erosion and the removal of earthen cover in some areas, the existing depth of MPL's pipeline may not support deep plowing. MPL shall not allow deep plowing in areas where the integrity of the pipeline may be compromised.

Prior to any deep plowing, MPL should be notified well in advance. MPL shall locate and perform a depth analysis or pipeline depth profile. Yellow flags shall be placed to accurately mark the pipeline. These flags should be numbered and placed at frequent intervals, and should also indicate station and approximate depth.

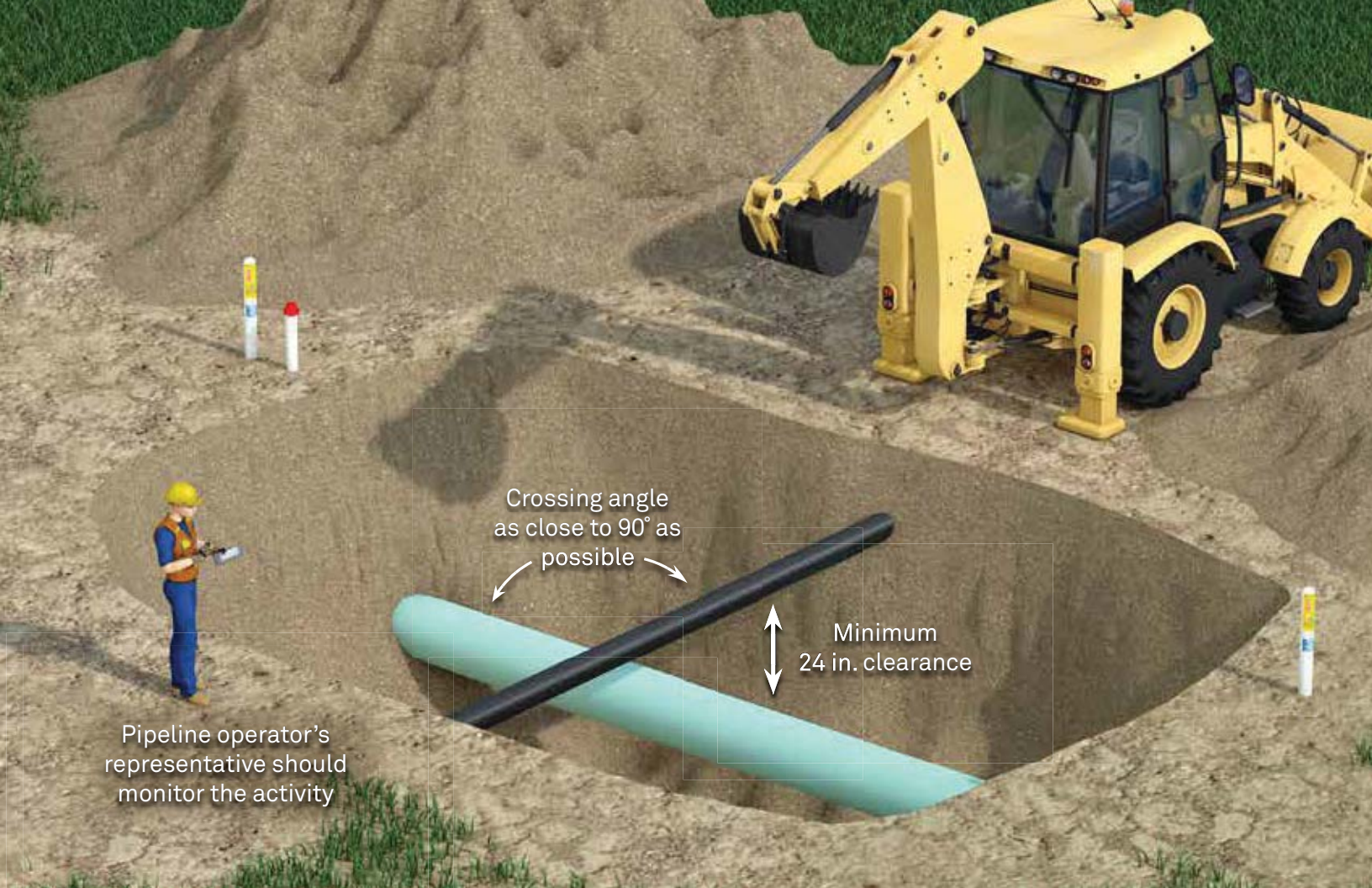
An MPL representative will prepare a Depth-of-Cover Survey, which shall include photographs showing the yellow flags.

When working within 50 feet of the pipeline, an MPL representative shall monitor the activity verifying pipeline depths and installation clearances.

Land Contour Modifications

Projects near an MPL pipeline that involve altering the land contour, including the installation of ponds, lakes and drainage ditches, require expert engineering in planning and implementation to ensure pipeline integrity. A plan should be developed and provided to MPL well in advance and take into consideration the integrity and safety of MPL's pipeline. There may be a conflict between the current location of the pipeline and the needs of the land modification project. The project planning process may indicate the need to relocate the pipeline or alter the land modification project. Ample time is required to review design and verify pipeline depths and operational requirements.

No substantial amount of cover shall be removed from above the pipeline. Typically, MPL requires at least 36 inches of cover over the top of the pipeline. Limited amounts of cover can be added. The pipeline should not be covered by more than 60 inches of soil without the prior written approval of MPL. The edge of a proposed surface improvement should maintain 25 feet of clearance with a buried pipeline when running parallel with the underground facility.



Crossing angle
as close to 90° as
possible

Minimum
24 in. clearance

Pipeline operator's
representative should
monitor the activity

Deep Plowing and Land Contour Modifications

Plan Ahead and Work Safe

- When planning your project, notify the pipeline operator well in advance.
- Pipeline experts can help with the planning process and pipeline safety.
- Pipeline operators monitor the activity when work is within 50 feet of the pipeline.



Boring and Drilling

→ Conventional boring and directional drilling

Conventional Bore/Utility Service Line Push

Prior to commencing any conventional bore/utility service line push under or within 25 feet of any Marathon Pipe Line LLC (MPL) facility or pipeline right of way, permission must be received from MPL. Lines installed by conventional boring/utility service line push shall cross a minimum of four feet below MPL's pipeline. All crossing should be perpendicular to the existing pipeline and its designated right of way.

MPL shall be supplied with written notification documenting the scope of the work, the project schedule, and plans detailing the bore/utility service line push, as well as any special conditions or proposed adjustments that will be incorporated into the conventional bore/utility service line push plan to prevent possible damage to the pipeline system. This plan shall be reviewed and approved by MPL.

MPL shall have a representative on-site to monitor the crossing within the right of way.

Conventional Bore

Some method must be employed to ensure this minimum clearance is met, such as excavating in the path of the crossing on either side of MPL's pipeline to a depth that if the foreign line does not appear, then the minimum clearance has been achieved. These inspection holes should be completed prior to the bore or push commencing to be sure MPL's pipeline is not hit.

Directional Drilling

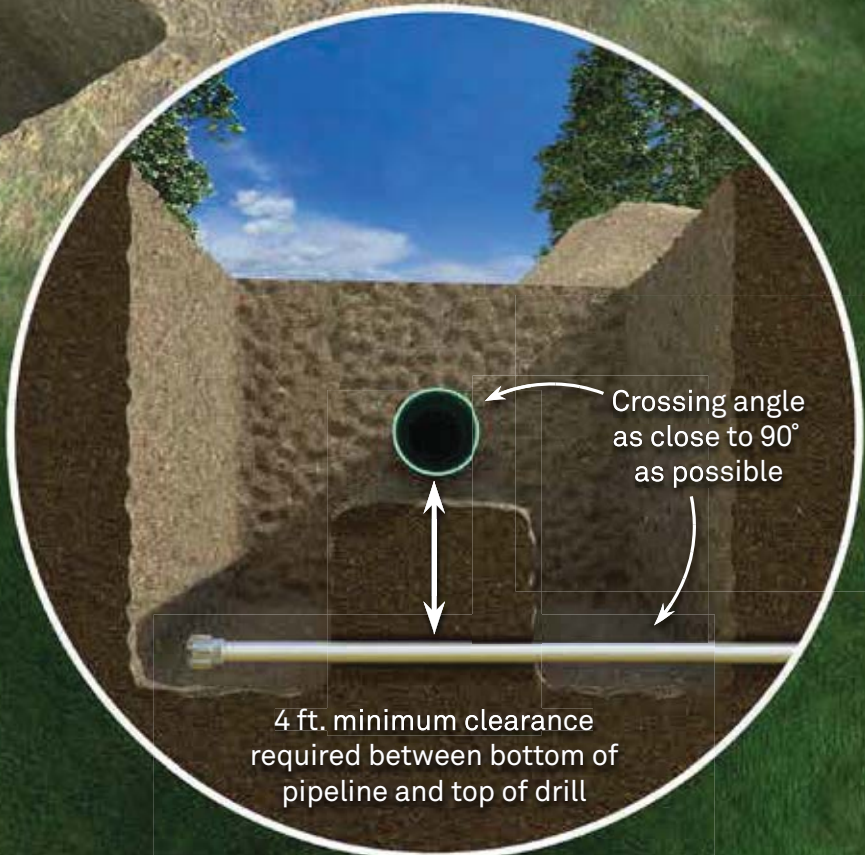
Prior to commencing any directional drilling activity under or in proximity to any MPL facility or pipeline right of way, permission must be received from MPL.

For any directional drilling operations across or within an MPL right of way, the excavator shall provide MPL with a directional drilling plan, complete with a written report documenting any special conditions or proposed adjustments that shall be incorporated into the directional drilling plan to prevent possible damage to the pipeline system. Lines installed by directional drilling shall cross a minimum of four feet below MPL's pipeline. This plan shall be reviewed and approved by MPL.

Some method must be employed to ensure this minimum clearance is met, such as excavating in the path of the crossing on either side of MPL's pipeline to a depth that if the foreign line does not appear, then the minimum clearance has been achieved. These inspection holes should be completed prior to the directional drill commencing to be sure MPL's pipeline is not hit.

Respect the Need for Safety

Pipeline operator's representative should monitor the activity when boring, drilling or tunneling in close proximity to the pipeline



No Parallel
Pipelines/Utilities
within 25 ft.

Cable Crossings

→ Overhead and underground cable infrastructure

General Specifications

All cable crossings should cross perpendicular to existing Marathon Pipe Line LLC (MPL) pipelines and its designated right of way to the extent possible.

No cable shall run parallel or nearly parallel to an MPL pipeline within the boundaries of the MPL right of way or within 25 feet of the pipeline without MPL's consultation and expressed written approval. No splice box, service riser, or energized equipment shall be installed within 25 feet of the pipeline.

After construction of cables with an operating voltage greater than 13.8 kV, MPL will investigate the possibility of induced current on the pipeline. If AC interference is evident, the crossing party shall be responsible for the cost of mitigating the AC interference.

Underground Cables and Conduit

Cables and electrical conduit shall cross underneath MPL pipelines with a minimum clearance of 24 inches and shall be installed in steel casing or installed in PVC conduit covered with six inches of concrete running 10 feet on each side of MPL's pipeline. Concrete used for protecting electric cables shall be dyed red. If MPL's pipeline is unusually deep, consideration may be given to crossing over the pipeline as long as the cable is placed in a steel casing or protected from damage in some other manner acceptable to MPL. An additional 24 inches of clearance is required if a conventional bore/utility push or directional drill is utilized.

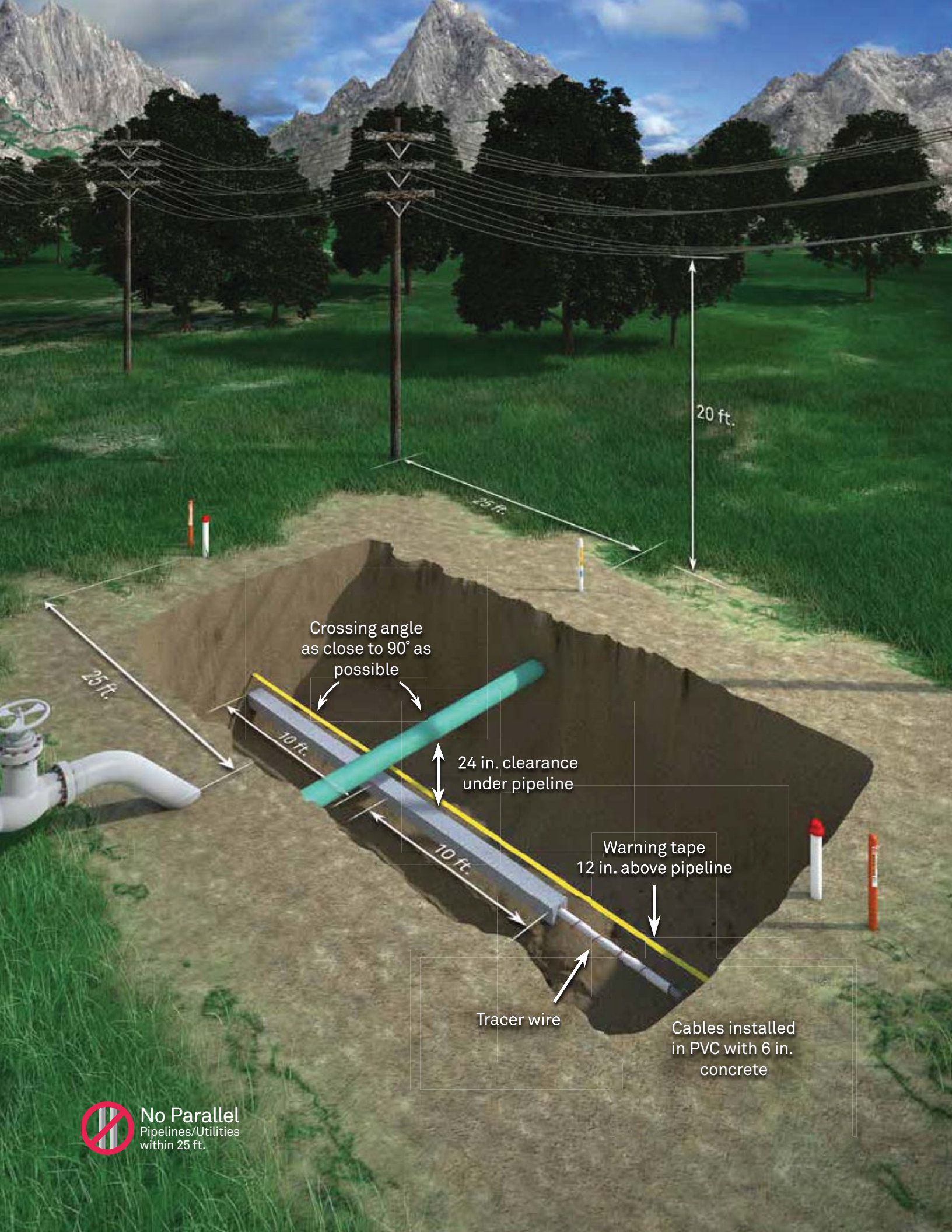
The minimum depth should be maintained and identification warning tape installed 12 inches above the cable for a distance of 25 feet on each side of the MPL pipeline.

Red aboveground "Warning Buried Cable" markers should be placed over the cable at a distance of 25 feet on each side of the MPL pipeline to properly identify the buried cable.

Overhead Cables

All overhead cables shall maintain a minimum height of 20 feet above grade for a distance of 25 feet on each side of the MPL pipeline.

No mechanical supports or service drops (including poles, towers, guy wires, ground rods, anchors, etc.) shall be installed within 25 feet of the MPL pipeline.



**No Parallel
Pipelines/Utilities
within 25 ft.**

Transportation Infrastructure

- Roads, railroads, paved lots, heavy equipment, vehicles, and logging operations

Temporary Crossing for Axle Loads Less Than 15,000 Pounds

Any traffic over a Marathon Pipe Line LLC (MPL) pipeline represents a risk and should be minimized unless adequate precautions (discussed below) are taken. Equipment with tracks, as opposed to having tires, is preferred if travel over the pipeline is required. In general, a minimum cover of 48 inches over a pipeline is required where a vehicle crossing is to be made for axle loads up to 15,000 pounds. Site conditions (such as damp soil), as determined by an MPL representative, may require that the crossing location be matted or provided with additional cover to compensate for soil displacement due to the subsidence of tires.

Temporary Crossing for Axle Loads Greater Than 15,000 Pounds

For axle loads greater than 15,000 pounds, which are common in mining and logging operations, MPL's pipeline shall be protected from excessive stress by placing one foot thick timber mats over the pipeline. The crossing design may require evaluation by MPL to ensure that the installation/crossing will not cause an excessive amount of stress on the underlying pipeline. If MPL determines that matting is required, then the mats shall be placed on a minimum of two feet undisturbed earth above the pipeline and oriented with the timbers perpendicular (across) the pipeline. Enough mats shall be placed to cover the complete width of the proposed crossing. An appropriate roadway material, such as crushed stone, can then be distributed over the mats to complete the crossing. Alternate means of protecting the pipeline must be approved by MPL.

Permanent Crossing

Permanent vehicle crossings, such as roads, railroads, and paved lots, that are planned over or near an MPL pipeline must meet the clearance requirements as defined by MPL. The crossing design will require evaluation by MPL to ensure that the installation/crossing will not cause an excessive amount of stress on the underlying pipeline. The crossing party shall provide MPL with a plan and profile drawing indicating the existing and proposed elevations of the proposed project; the pipeline and buried utilities within 25 feet of either side of the crossing shall be clearly indicated in all views. The proposed surface encroachments should cross a buried pipeline, where reasonably possible, in a perpendicular alignment (90 degrees) to minimize the length of the impact to the underground facility, but in no event less than 45 degrees. A geotechnical report may be required to identify soil profile components. This subsoil study will show the load array characteristics of the site.

In the event MPL determines that additional measures are necessary to provide adequate protection for the pipeline, the crossing party shall provide additional protection as approved by MPL. Some alternatives for additional protection are the provision of additional earth cover over the pipeline, the installation of reinforced concrete pads or pre-stressed concrete beams over the pipeline, or a lowering of the pipeline.



Recommended distances from pipeline. MPL must review plans prior to crossing activities taking place.

Cover Over Pipeline

Absent MPL's express written approval to the contrary, a minimum cover of 48 inches for roads and 72 inches for railroads will be required over the pipeline for both permanent installations over the pipeline and temporary crossings for heavy equipment. MPL's representative may require more, or allow less, cover depending on site-specific conditions.

The top of the pipeline must be a minimum of 36 inches below grade at drainage ditches on either side of a road or railroad, or at the perimeter of a paved lot.

The pipeline should not be covered by more than 60 inches of soil without the prior written approval of MPL.

Culverts

Culverts must not be located within 25 feet of the pipeline or in MPL's right of way, whichever is greater. Any modification or creation of a drainage pattern that affects MPL's right of way must be addressed such that erosion of pipeline cover is controlled. If there are no other options for relocating the culvert, or if the culvert is on public right of way (federal, state or local), then the design must be approved

by MPL. While reviewing the design, consideration should be given to additional stress placed on the pipeline, access to the pipeline for maintenance, and the effect any new drainage patterns might have on the pipeline right of way.

Logging Operations

- No trees shall be felled on, over, or across MPL's right of way. No trees or timber shall be stored on said right of way. No trees shall be trucked or skidded over or down the right of way without first obtaining approval from MPL.
- The same requirements for heavy equipment crossings as defined in Specifications for Road, Railroads, Paved Lots and Heavy Equipment Vehicles shall be followed for any logging operations proposing to work on MPL's right of way.

Future Responsibility

In the event that MPL deems it necessary to inspect or repair any section of pipeline under a road, railroad or paved lot at any time in the future, the cost of excavating and replacing any fill materials added to the original grade, and repairs to the road, railroad or paved lot itself, shall be borne entirely by the crossing party.

Non-Explosive Seismic Testing and Blasting Operations

→ Planning, testing, and blasting near pipelines

General Specifications

The third party responsible for the seismic testing or blasting operations shall comply with all applicable local, state, and federal regulations and requirements.

A seismic testing plan must be submitted and approved by MPL prior to commencement of any testing activity. All seismic testing or blasting operations shall be conducted by experienced personnel who are trained and certified in such operations and who are aware of the hazards involved.

Non-Explosive Seismic Testing

Seismic testing with steady state vibrator sources is prohibited within 150 feet of MPL's facilities or pipelines. All other non-explosive seismic testing sources, including the use of air guns, are prohibited within 600 feet of MPL's facilities or pipelines. Upon request, these distances may be reduced at the discretion of MPL and then only upon written permission from MPL.

The third party responsible for the seismic testing shall notify MPL immediately if any changes are made to the seismic testing plan.

Blasting Operations

Prior to commencement of any blasting activity within 1,320 feet (one-fourth mile) of MPL facilities or pipelines, permission must be received in writing from MPL. For any blasting operation within one-fourth mile of MPL's facilities or pipelines, MPL shall be supplied with a pre-work survey, complete with a written report documenting any special conditions or proposed adjustments which shall be incorporated

into the seismic testing or blasting activity plan to prevent possible damage to facilities or pipeline. This survey shall be performed by an accredited third-party surveyor and will be reviewed by MPL.

The third party responsible for the blasting shall notify MPL immediately if any changes are made to the blasting plan.

If blasting is to be performed within 600 feet of the pipeline, a seismic monitoring program shall be instituted by the contractor. A seismic monitoring unit in good working condition shall be utilized to measure the vibration at the pipeline. The geophone shall be inserted directly over the pipeline and covered with a sandbag if soil conditions prevent adequate insertion. The Peak Particle Velocity (PPV) shall not exceed four inches per second (IPS) for any blast. MPL shall be notified of any PPV readings approaching or exceeding four IPS.

No blasting shall be conducted closer than 50 feet to MPL's pipelines unless specifically approved by MPL.

Anyone suspecting blasting damage shall notify MPL immediately. If MPL has reasonable cause to believe that damage could have occurred during blasting operations, then MPL may recommend the pipeline be proof tested and/or excavated and inspected.

If PPV from blasting operations exceeds four IPS, then a proof test (leak survey) will be conducted by MPL. An MPL representative shall be on-site at the location of the blasting activity to observe the right of way during the proof test.



Blasting operations



Other non-explosive
testing devices



Steady state vibrator
or thumper source

1,320 ft.

600 ft.

150 ft.

Buried Pipeline

Property Improvements

→ On or near existing pipelines, facilities, and right of ways

General specifications

The crossing party shall provide Marathon Pipe Line LLC (MPL) a plan and profile drawing indicating the existing and proposed property improvements for the proposed project within 50 feet of the pipeline; MPL's pipeline shall be shown in both the plan and profile views. Each notification is evaluated on an individual basis; more stringent requirements may be required for a particular circumstance. Further, the crossing party assumes all risk and acknowledges that, while exercising easement rights, MPL may damage encroachments located within MPL's right of way.

Structures

In general, no structure or obstruction is allowed within MPL's right of way.

Landscaping

Trees, shrubs, and other plantings greater than three feet high are prohibited within 25 feet of any pipeline or appurtenance and typically all plantings are prohibited within 10 feet of any pipeline or appurtenance. MPL may trim or remove any trees, shrubs, and other plantings of any size within its right of way that it deems to interfere with the maintenance or integrity of the pipeline.

Fencing

Fence installation is not in the best interest of safe pipeline operation and should be avoided. If it is necessary for the installation of a fence, the following specifications should be followed: Fence posts shall not be installed within five feet of any MPL pipeline and, if crossing the pipeline, shall be equidistant from the pipeline. No fence shall cross MPL's right of way at less than a 60-degree angle

to the pipeline. Fences parallel to the MPL pipeline must be at least 10 feet from the pipeline. No masonry, brick or stone fences shall be installed on MPL's right of way.

Driveways or Lanes

Driveways or lanes should cross the MPL pipeline at no less than a 60-degree angle and shall not run parallel within 25 feet of the pipeline. A minimum cover of 36 inches for driveways and lanes, and 36 inches for side ditches is recommended, but MPL may want to evaluate the impact of the encroachment to the pipeline on a case-by-case basis. MPL shall approve in advance any lesser amount of cover.

Drainage and Septic Systems

Drainage and septic systems work on gravity. It is important that grade elevations and slope are considered before these systems are created. Septic systems and their leach fields should not be located within 25 feet of the pipeline. This area is reserved for heavy construction equipment for the pipeline. Crossing the pipeline with these systems must be accomplished with non-perforated solid pipe buried deep enough to carry heavy loads.

Removal or Deposit of Dirt

No amount of cover shall be added or removed from the pipeline right of way without the prior approval of MPL. Typically, MPL requires at least 36 inches of cover over the top of the pipeline. The pipeline should not be covered by more than 60 inches of soil without written permission from MPL.



Know what's
below. Call 811
before you dig
or visit:

call811.com



Setback Distances

New house, business, place of public assembly	50'
Addition to an existing dwelling, etc.	50'
Unoccupied permanent structure	50'
Garage	50'
Barn	50'
Deck and patio	50'
Swimming pool	50'
Pond	50'
Semi-moveable structure	25'
Garden shed	25'
Septic tank and leach field	25'
Telephone/light pole	25'
Water well	25'
Trees	25'
Yard light or mailbox	10'
Fence post	5'

NOTE: SITE-SPECIFIC PLANS ARE REQUESTED WHENEVER THE
STRUCTURE DISTANCE CANNOT MEET THE SETBACK RECOMMENDATIONS.

Pipeline Safety Awareness

→ Pipeline markers, excavation damage, leak recognition, and response

Pipeline Markers

The U.S. Department of Transportation requires the use of markers to indicate the approximate location of underground pipelines. Markers are located at road, railroad, and navigable waterway crossings. Markers do not indicate the depth of the pipeline.

Markers display:

- The material transported through the pipeline
- The name of the pipeline operator
- A toll-free emergency telephone number

Signs of a Petroleum or Natural Gas Release

Sight

- A pool of liquid on the ground
- A rainbow sheen on water
- Bubbling in wet or flooded areas
- A dense white cloud or fog
- Discolored or dead vegetation
- Dirt or water being blown in the air

Sound

- An unusual hissing or roaring noise

Smell

- An unusual odor such as gasoline, oil, sulfur or a rotten egg smell

Excavation Damage

If a Marathon Pipe Line LLC (MPL) pipeline is accidentally hit during excavation, stop working immediately, call MPL's toll-free emergency phone number (1-833-675-1234) and report your location. Even a minor gouge, scrape, dent or crease to the pipeline or the coating may cause a future problem. An MPL representative will travel to the work site, inspect the pipeline and determine if any repairs are necessary.

What You Should Do

- Turn off equipment if it can be done safely
- Leave the area immediately and remain upwind
- Keep possible ignition sources (starting an engine, sparks, open flame) away from the area
- Call 911 or your local emergency response number
- Call MPL's toll-free emergency phone number (1-833-675-1234) and report the location





Marathon Pipe Line LLC's
24-Hour Emergency Phone Number:
1-833-675-1234

If you are a landowner or tenant and have questions about Marathon Pipe Line LLC rights of way, call 1-855-888-8056 or email landowners@marathonpetroleum.com.

Pipeline Emergency?
Call 911, then call
Marathon Pipe Line LLC
at 1-833-675-1234

539 South Main Street
Findlay, OH 45840

1-855-888-8056
marathonpipeline.com



Earning Your
TRUST

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Attorneys for Defendant SI Builders, LLC

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR DAVIS COUNTY, STATE OF UTAH	
MARATHON PIPE LINE, LLC and TESORO LOGISTICS NORTHWEST PIPELINE, LLC, Plaintiffs vs. SI BUILDERS, LLC, and DAY LAY ONE, LLC, Defendants.	ANSWER AND COUNTERCLAIM Case No. 200700973 Judge David Connors Tier 2

Defendant SI Builders, LLC (“SI”), by and through its counsel of record and pursuant to the Utah Rules of Civil Procedure, hereby responds to, answers and counterclaims with respect to the numbered allegations of the complaint filed by plaintiffs Marathon Pipe Line, LLC and Tesoro Logistics Northwest Pipeline, LLC (unless otherwise indicated, collectively “Marathon”) as follows:

THE PARTIES, JURISDICTION, AND VENUE

1. SI denies the allegations of paragraph 1 of the complaint based on the present lack of information.
2. SI denies the allegations of paragraph 2 of the complaint based on the present lack of information.
3. SI admits the allegations of paragraph 3 of the complaint.
4. SI denies the allegations of paragraph 4 of the complaint based on the present lack of information.
5. With respect to the allegations of paragraph 5 of the complaint, SI admits that this dispute concerns, in part, a pipeline Easement relative to the Property. However, SI avers that this dispute is not limited to such issue. This dispute also includes damages and other harms suffered by SI. As such, SI denies the allegations of paragraph 5 of the complaint to the extent the same seek to limit the harms suffered by SI resulting from Marathon's actions or omissions relative to any Easement rights it may claim relative to the Property.
6. SI admits the allegations of paragraph 6 of the complaint.
7. SI admits the allegations of paragraph 7 of the complaint.
8. SI denies the allegations of paragraph 8 of the complaint relative to its counterclaim.

Otherwise, SI admits the same.

GENERAL ALLEGATIONS
The Pipelines and the Easement

9. SI admits that there are pipelines and an Easement claimed by Marathon. However, relative to the details of the pipelines and corresponding Easement, SI continues to investigate such circumstances. Therefore, SI denies the particulars of paragraph 9 of the complaint based on the present lack of information.
10. SI denies the allegations of paragraph 10 of the complaint based on the present lack of information.
11. SI admits that it has been informed that the pipelines transport crude oil and refined products. SI continues to investigate these claims and thus SI otherwise denies the allegations of paragraph 11 of the complaint based on the present lack of information.
12. SI denies the allegations of paragraph 12 of the complaint based on the present lack of information.
13. SI denies the allegations of paragraph 13 of the complaint based on the present lack of information.
14. SI denies the allegations of paragraph 14 of the complaint based on the present lack of information.
15. SI denies the allegations of paragraph 15 of the complaint based on the present lack of information.
16. SI denies the allegations of paragraph 16 of the complaint based on the present lack of information.

17. SI admits that it has a contract to build a home on the Property with a third party, and that Day Lay is under contract to sell the property to that third party. Outside of these specific admissions, SI otherwise denies the allegations of paragraph 17 of the complaint.
18. SI admits to the legal implications associated with the Easement as existing and defined under Utah law. SI otherwise denies the allegations of paragraph 18 of the complaint.
19. SI denies the allegations of paragraph 19 of the complaint.
20. SI admits to the legal implications associated with the Easement as existing and defined under Utah law. SI otherwise denies the allegations of paragraph 20 of the complaint.
21. SI denies the allegations of paragraph 21 of the complaint based on the present lack of information.
22. SI denies the allegations of paragraph 22 of the complaint based on the present lack of information.
23. SI admits to the legal implications of the Easement as existing and defined under Utah law. SI otherwise denies the allegations of paragraph 23 of the complaint.
24. SI admits to the legal implications of the Easement as existing and defined under Utah law. SI otherwise denies the allegations of paragraph 24 of the complaint.

SI Builders Seeks and Is Denied Approval to Encroach on the Easement

25. SI admits to certain conversations with Marathon regarding the ability to develop the Property in relationship to the Easement. SI denies the characterization of those conversations by Marathon. SI otherwise denies the remaining and all other allegations of paragraph 25 of the complaint.

26. SI admits that Marathon prevented any ability to move forward with reasonable efforts to develop the Property. SI denies any unreasonable interference with Marathon's claimed rights, and therefore, SI otherwise denies the remaining and all other allegations of paragraph 26 of the complaint.
27. SI admits to Exhibit B to the complaint and that SI provided the same to Marathon on or about the time period of September 4, 2020. SI avers that the contents and depiction represented in Exhibit B are best evidenced by a true and correct copy of the same. SI otherwise denies the remaining and all other allegations of paragraph 27 of the complaint.
28. SI admits to Exhibit C to the complaint and that SI provided the same to Marathon on or about the time period of October 12, 2020. SI avers that the contents and depiction represented on Exhibit C are best evidenced by a true and correct copy of the same. SI otherwise denies the remaining and all other allegations of paragraph 28 of the complaint.
29. SI avers that the contents and depiction represented on Exhibit C are best evidenced by a true and correct copy of the same. SI otherwise denies the remaining and all other allegations of paragraph 29 of the complaint.
30. SI denies the allegations of paragraph 29 of the complaint based on the present lack of information.
31. SI admits that Marathon has prevented all development of the Property. SI otherwise denies the remaining and all other allegations of paragraph 31 of the complaint.

32. SI admits to receiving a copy of the letter attached to the complaint as Exhibit D. SI avers that the contents of Exhibit D are best evidenced by a true and correct copy of the same. SI denies the remaining allegations, if any, of paragraph 32 of the complaint.

33. SI avers that the contents of Exhibit D are best evidenced by a true and correct copy of the same. SI denies the remaining allegations, if any, of paragraph 33 of the complaint.

SI Builders Nevertheless Intend to Begin Construction Immediately

34. SI admits to drafting and sending the letter attached to the complaint as Exhibit E. SI avers that the contents of Exhibit E are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 34 of the complaint.

35. SI avers that the contents of Exhibit E are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 35 of the complaint.

36. SI avers that the contents of Exhibit E are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 36 of the complaint.

37. SI admits to receiving the letter by Marathon attached as Exhibit F to the complaint. SI avers that the contents of Exhibit F are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 37 of the complaint. SI notes that Exhibit F purports to be a letter from the entity of Marathon Petroleum Company LLP, which entity is not a party.

38. SI avers that the contents of Exhibit F are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 38 of the complaint.

39. SI avers that the contents of Exhibit F are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 39 of the complaint.

40. SI avers that the contents of Exhibit F are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 40 of the complaint.

41. SI avers that the contents of Exhibit F are best evidenced by a true and correct copy of the same. SI denies the remaining and all other allegations of paragraph 41 of the complaint.

42. SI denies the allegations of paragraph 42 of the complaint.

43. SI denies the allegations of paragraph 43 of the complaint.

44. SI denies the allegations of paragraph 44 of the complaint based on the present lack of information.

45. SI denies the allegations of paragraph 45 of the complaint.

46. SI denies the allegations of paragraph 46 of the complaint.

The Planned Construction on the Property Is Contrary to Terms of the Easement

47. SI denies the allegations of paragraph 47 of the complaint.

48. SI denies the allegations of paragraph 48 of the complaint.

49. SI avers that the contents and depiction represented on Exhibit C are best evidenced by a true and correct copy of the same. SI otherwise denies the remaining allegations, if any, of paragraph 49 of the complaint.

50. SI admits to the implications associated with the Easement as existing and defined under Utah law. SI otherwise denies the remaining and all other allegations of paragraph 50 of the complaint.

51. SI avers that the contents and depiction represented on Exhibit C are best evidenced by a true and correct copy of the same. SI otherwise denies the remaining and all other allegations of paragraph 51 of the complaint.

52. SI denies the allegations of paragraph 52 of the complaint.

53. SI denies the allegations of paragraph 53 of the complaint.

54. SI denies the allegations of paragraph 54 of the complaint based on the present lack of information.

55. SI denies the allegations of paragraph 55 of the complaint.

56. SI avers that the contents and depiction represented on Exhibit C (Amended Site Plan) are best evidenced by a true and correct copy of the same. SI otherwise denies the remaining and all other allegations of paragraph 56 of the complaint.

57. SI denies the allegations of paragraph 57 of the complaint.

Construction on the Property is Unsafe

58. SI denies the allegations of paragraph 58 of the complaint.

59. SI denies the allegations of paragraph 59 of the complaint.

60. SI understands that such materials are flammable; however, such concerns can be and have been appropriately addressed, in that extensive residential construction exists in, along, and around the Easement. SI is being singled out by Marathon in a disproportionate and damaging manner.

61. SI denies the allegations of paragraph 61 of the complaint based on the present lack of information.

62. SI denies the allegations of paragraph 62 of the complaint based on the present lack of information.

63. SI admits to the existence of document attached as Exhibit G to the complaint. SI disputes that this document is capable of creating rights in addition to any Easement rights and SI disputes the legal consequence, if any, of this document. SI otherwise denies the remaining and all other allegations of paragraph 63 of the complaint.

64. SI denies the allegations of paragraph 64 of the complaint.

65. SI avers that federal law provides whatever it provides. SI otherwise denies the remaining and all other allegations of paragraph 65 of the complaint.

66. SI avers that federal law provides whatever it provides. SI otherwise denies the remaining and all other allegations of paragraph 66 of the complaint.

67. SI admits the allegations of paragraph 67 on the basis that significant development exists along and around the purported Easement. In this situation, however, Marathon has opted to disproportionately single out SI for harmful and damaging treatment relative to the purported Easement. Marathon seeks to destroy all economic value to the Property

and destroy SI's economic interests, and this course of action by Marathon is not supported by the Easement or any other law or right whatsoever. Marathon has an obligation to preserve and not damage the value of the Property.

68. SI denies the allegations of paragraph 68 of the complaint.

Injunctive Relief is Warranted

69. SI denies the allegations of paragraph 69 of the complaint.

70. SI denies the allegations of paragraph 70 of the complaint.

71. SI denies the allegations of paragraph 71 of the complaint.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

72. SI here incorporates by this reference the responses it provided to the paragraphs of the complaint as set forth above.

73. SI admits the allegations of paragraph 73 of the complaint.

74. SI admits the allegations of paragraph 74 of the complaint.

75. SI denies the allegations of paragraph 75 of the complaint.

76. SI admits that declaratory relief is required based on the parties' dispute. However, SI denies that Marathon is entitled to any relief in its favor. Instead, SI is entitled to relief awarding it damages and declaring an end to Marathon's damaging and illegal conduct. SI otherwise denies the remaining and all other allegations of paragraph 76 of the complaint.

77. SI denies the allegations of paragraph 77 of the complaint.

SECOND CAUSE OF ACTION
(Injunctive Relief)

78. SI here incorporates by this reference the responses it provided to the paragraphs of the complaint as set forth above.

79. SI admits the allegations of paragraph 79 of the complaint.

80. SI denies the allegations of paragraph 80 of the complaint.

81. SI denies the allegations of paragraph 81 of the complaint.

82. SI denies the allegations of paragraph 82 of the complaint.

83. SI denies the allegations of paragraph 83 of the complaint.

84. SI denies the allegations of paragraph 84 of the complaint.

85. To the extent not specifically admitted herein, SI denies each and every allegation, claim, demand, and prayer of Marathon's complaint.

REQUEST FOR RELIEF

SI denies that Marathon is entitled to any relief in its favor. SI prays that Marathon's complaint be entirely dismissed, and that costs, fees, damages and injunctive relief be awarded in favor of SI and against Marathon.

AFFIRMATIVE DEFENSES

1. Marathon has failed to state a claim for relief against SI.
2. Marathon lacks standing to pursue the claims of its complaint.
3. Marathon has unclean hands and thus it is not entitled to equitable relief.
4. Marathon has failed to satisfy a condition precedent.

5. Marathon failed to properly preserve any rights under the Easement that would preclude development of the Property.
6. Marathon's claims are barred by the doctrines of in pari delicto, waiver, mistake, ratification, consent, abandonment, and/or acquiescence.
7. Marathon is not the proper party to pursue the claims of the complaint.

COUNTERCLAIM FOR DECLARATORY RELIEF

SI Builders, LLC ("SI"), by and through its counsel of record and pursuant to the Utah Rules of Civil Procedure, hereby alleges the following counterclaim against plaintiffs Marathon Pipe Line LLC and Tesoro Logistics Northwest Pipeline LLC (unless specified otherwise, collectively "Marathon") as follows:

1. This Court is vested with subject matter jurisdiction to resolve the issues presented by the parties' pleadings.
2. This Court is a court of proper venue because the Property and purported Easement are located within this judicial district.
3. Marathon claims to be the owner of the Easement that burdens the Property.
4. SI has a contract to build a home on the Property with a third party, and this third party is under contract to purchase the Property.
5. SI's contract relative to the Property confers a protectable economic benefit and right in favor of SI.
6. Marathon has unreasonably and/or illegally prevented all development of the Property based on its purported rights under the Easement.

7. No law, regulation or aspect of the Easement prevents any and all potential development of the Property.
8. Many lots and other properties that are in close proximity of the Easement (and pipelines) have been developed into existing residential homes.
9. Utah law, pursuant to the declaratory judgment statute, empowers this Court to resolve the respective disputes between the parties.
10. The Court is empowered to award damages and impose injunctive relief as part of its declaratory judgment rulings.
11. SI requests that the Court declare that Marathon's actions relative to the Easement and the Property have been illegal.
12. SI requests that the Court declare that the Easement cannot prevent all development on the Property.
13. Marathon has an obligation to preserve the economic value of the Property, and to work constructively to permit development of the Property.
14. SI requests permanent injunctive relief barring Marathon from further illegal and unreasonable actions relative to the Easement and Property.
15. SI prays that the Court award it damages for the delay or loss of the contractual right to develop the Property.
16. SI prays that the Court order such further and additional relief to fully remedy and resolve the damages and illegal conduct committed by Marathon.

DATED this __ day of December, 2020.

**NELSON CHRISTENSEN
HOLLINGWORTH & WILLIAMS**

/s/ Jeffery S. Williams
Jeffery S. Williams
Attorneys for Defendant SI Builders, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this __ day of December, 2020, a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIM** was served electronically via ECF notification upon all counsel of record.

 /s/ Jennifer Strottner
Legal Assistant



Marathon Pipe Line LLC

257 East 200 South Suite 500
Salt Lake City, UT 84111
Telephone: (801) 898-7816

January 6, 2021

Re: Lot 104 Mountainview Estates Variance Request

West Bountiful City Council
550 North 800 West
West Bountiful City, UT 84087

Dear City Council Members,

Marathon Pipeline (MPL), operator of the Tesoro Logistics Northwest Products Pipelines, is currently in litigation with SI Builders and Day Lay One, LLC regarding SI Builders' building proposal for Lot 104 at Mountain View Estates, located in Bountiful Utah. Several months ago, MPL reviewed SI Builders' proposal to build a residential structure very close to MPL's high pressure refined fuel pipeline. The proposal, as presented, was unacceptable to MPL both because it encroaches on MPL's rights pursuant to its pipeline easement and because it poses significant safety concerns. Neither MPL nor its predecessor were consulted in the planning phase of the Mountain View subdivision, resulting in Lot 104 being approved despite its close proximity to MPL's pipeline.

Nevertheless, MPL and SI Builders have engaged in discussions in an attempt to reach a mutually agreeable resolution of their dispute. MPL has conducted a review of Lot 104 and determined that a structure at this site may be safely set back 20 feet from the pipeline—a distance less than MPL's standard setback requirements but greater than SI Builders' original proposal. We have reviewed this setback accommodation with SI Builders, and SI Builders has requested variances to this effect from both the City and the Mountain View Estate Subdivision HOA. By this letter, MPL confirms it has reviewed and conditionally agrees to the 20-foot setback variance.

Please feel free to contact me if you have additional questions regarding MPL's setback requirements and thank you for your consideration of SI Builder's request.

Sincerely,

Duran Lucas
Marathon Pipe Line
801-715-4341

MEMORANDUM



TO: Mayor and City Council

DATE: January 15, 2021

FROM: Duane Huffman, City Administrator

RE: Lakeside Golf Course Hole #16 Options

This memo introduces options to improve safety related to golf balls leaving the course along hole #16 (east side of 1100 W north of the clubhouse).

Background

Hole # 16 is a par 3 (about 185 yards from farthest tee) that runs parallel to 1100 W. The hole's proximity to 1100 W has always presented a risk of errant golf balls leaving the course and striking vehicles or pedestrians. A row of about 15 poplar trees and a small fence provided some protection, but hooked golf balls did make it over the trees on occasion, and staff has always been interested improving safety in the area.

The 2020 windstorm significantly damaged the row of poplar trees, leaving them about half of the previous height. Since the storm, temporary tee boxes were moved north about 30 yards. The short distance results in a significantly smaller risk of errant balls leaving the course, but also significantly diminishes the hole's rating (this is the course's only par 3 of a longer length).

Options

The following four options are intended as broad solutions to the issue of errant balls in this area:

1. Status Quo / Re-plant Trees: Leave the tee boxes in their original location. Staff has ordered new trees, but they were not available last fall.
 - a. Pros: Leaves the course with a longer Par 3; low short-term costs.
 - b. Cons: It will take years for trees to gain height to provide previous protection; previous protection was sub-optimal.
2. Complete Hole Redesign: Cost about \$110,000. Move tee boxes so that they point to the north-east, making the hole less parallel with the street. Narrow the green and add bunkers to add diversity and challenge to the hole to make up for the shorter length (about 150 yards vs 185 yards). New trees still planted. See attached design.
 - a. Pros: Increases long-term safety; increases variety on the course (different green configuration).

- b. Cons: Upfront cost; hole shut down for 2-3 months; loses longer par 3; does not eliminate risk.
- 3. 400' Length of 60' High Net: Cost between \$80,000-\$115,000. This installs a net along the hole similar to the net along the driving range. (see attached quote)
 - a. Pros: Perhaps the best liability coverage; very quick solution with no closure; maintains the long par 3 design.
 - b. Cons: Upfront cost; will visually detract from the course and neighborhood; risk of damage from future windstorms.
- 4. Tee Box Redesign: Cost about \$40,000. This moves the tee boxes so that they point to the north-east (similar to option 2), but leaves the remainder of the hole design as it currently exists. See attached design.
 - a. Pros: Improves safety over original design while balancing playability; can be done without shutting down hole; allows space for future expansion of cart barn; more economical than other solutions.
 - b. Cons: Loss of longer par 3; does not eliminate risk.

Lakeside golf course

Hole 16 Concept 1b Remodel

Prints on 11 by 17 @ 50 Scale



GOLF AS-BUILT DESIGN
LIMITED LIABILITY COMPANY
Jim Ruelle
G.P.S. Golf As-Built Design L.L.C.
1547 East Fort Road
Park City, Utah 84098
Tel: 801.557.9021
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www.judgenettingmountainwest.com
UTAH CONTRACTORS LICENSE 11994873-5501

PROPOSAL & CONTRACT

Jan 14, 2021

Mr. Dallas Green
Lakeside Golf Course
West Bountiful, UT 84087
dgreen@wbcity.org

Re: Lakeside Golf Course - #16 Fairway, New Netting

Dear Mr. Green:

We propose to supply the material, labor, and equipment necessary to install a new netting barrier along the #16 Fairway. This includes:

- Dig and set new poles. Option for 50' above ground or 60' above ground poles.
- Wood poles will be new and treated.
- Steel poles will be painted black.
- The new barrier will be approximately 400' long.
- All hardware will be new, heavy duty galvanized. With heavy duty end anchors.
- All new cables will be 5/16" & 3/8" EHS guy strand.
- All new netting will be UV treated, with sewn rope borders.

We are a Utah licensed Contractor. All state and local taxes are included in this proposal with the pricing.

Price for this work with wood poles. (2) 30' poles and (7) 60' poles:	\$78,520_____
Price for this work with wood poles. (2) 25' poles and (7) 50' poles:	\$67,940_____
Price for this work with steel poles. (2) 30' poles and (7) 60' poles:	\$114,310_____
Price for this work with steel poles. (2) 25' poles and (7) 50' poles:	\$95,200_____
Option to include treated baseboard along the bottom of the netting:	\$4,000_____
Price for Utah Stamped Engineering	\$2,900_____
TOTAL:	_____

Payment Terms:

30% due upon acceptance, with 70% due upon completion. Invoices not paid when due are subject to a service charge of 1-1/2% per month. This is an annual percentage rate of 18%. Should suit be instituted to enforce the provisions of this Proposal and Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs as determined by the court or other tribunal hearing the matter.

Assumptions:

- Pricing firm for acceptance for a period of 30 days.

- Necessary access "to," "from," and "at" work site during construction.
- Excavation: the client will be responsible for locating any and all private underground utilities located on their property.
- The material that is excavated from the holes will be spread next to the hole.
- Golf activities may require alteration during construction to provide a safe working environment for our employees and equipment.
- Mobilization costs included in our proposal are based on one move-on and move-off. Any cessation of work due to lack of permits or any reason by client will require a \$2,000 re-mobilization charge with all work and materials invoiced to date.
- We are a non-union company and, as such, will not become signatory to any labor agreement.
- Our proposal is based on the 2009 IBC that are usual, standard and customary for the installation of structures such as anticipated by you. The foundation design is based on a 200 pound pcf allowable lateral soil bearing and a 85 mph wind gust speed, Importance Factor = 1, with an exposure "C". If this standard is unacceptable to the governing code authority in your area, we will be pleased to install the structure to the necessary standards and requirements contingent upon acceptance of a revised proposal which will include any cost implications and/or modifications.

Exclusions:

- Bonding, engineering, or prevailing wages, unless otherwise stated in this proposal.
- This bid does not include any permit fees or related costs involved in securing permits except as noted in this proposal. If Judge Netting Mountain West is not contracted to pull permits, the client is responsible for acquiring all permits and any costs relating to permit requirements. Should a government agency require changes, additional construction costs will be assumed by the client. Should the project be stopped for lack of permits or for any reason by client or government agencies, material and work will be invoiced, and a remobilization fee shall apply.
- Indemnification: Judge Netting Mountain West will not indemnify any additional Owners, Architects, Contractors, or Agents.
- Damage to driveways, parking lots, tennis courts, irrigation systems, or sod, that may be caused by our equipment.
- Subsurface or latent physical conditions at the site differing from those indicated.
- Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- The owner shall promptly investigate the conditions, and if it finds that conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a Change Order in the amount of contractor's expenses incurred plus 10%.
- Judge Netting Mountain West makes no warranty, either expressly or implied, as to the protective capabilities of netting or structures, including height requirements and/or performance of any existing material or material used during construction.

We appreciate the opportunity to present you with this proposal and look forward to working with you. Please contact us at kirt@jn-mw.com or 801-388-4178 with questions or concerns.

JUDGE NETTING MOUNTAIN WEST

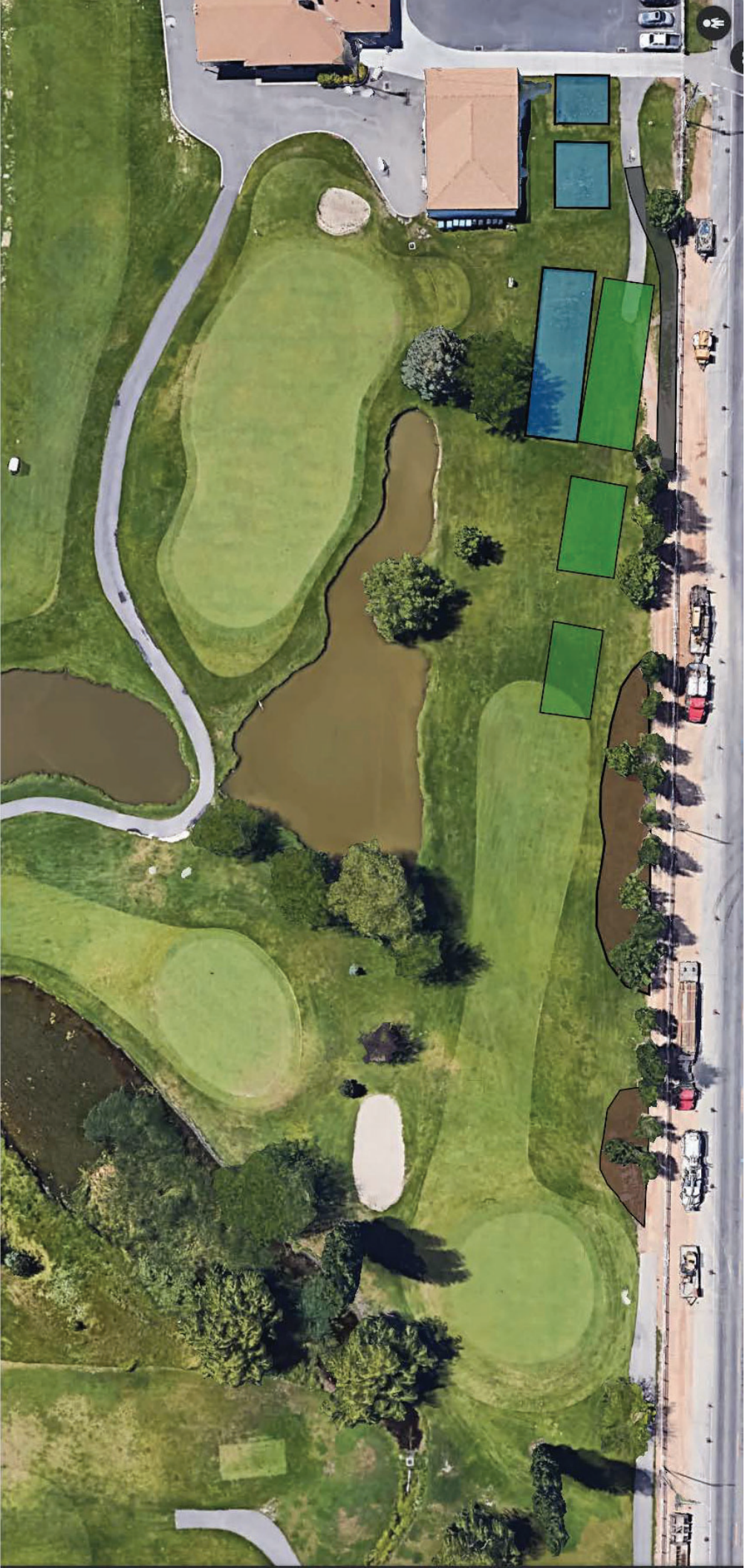
ACCEPTED: Lakeside Golf Course

By:  _____

By: _____

Date: Jan 14, 2021

Date: _____



PENDING – NOT YET APPROVED

Minutes of the West Bountiful City Council meeting held on **Tuesday, January 5, 2021** at West Bountiful City Hall, 550 N 800 West, Davis County, Utah.

Mayor Romney has determined that due to the current COVID-19 pandemic and the physical distancing required to prevent the spread of infection, public meetings present a substantial risk to the health and safety of those who may be present at the meetings. That risk can be substantially mitigated by holding City Council meetings through electronic means that allow for public participation without an anchor location. A copy of the Mayor's determination and order in this regard is available at www.wbcity.org.

All participants were on Zoom. Those in attendance:

MEMBERS: Mayor Ken Romney, Councilmembers James Ahlstrom, James Bruhn, Kelly Enquist, Mark Preece, and Rod Wood.

STAFF: Duane Huffman (City Administrator), Steve Doxey (City Attorney), Steve Maughan, (Public Works), Chief Brandon Erikson, Cathy Brightwell (City Recorder), Kris Nilsen (City Engineer), and Terri Hensley (Secretary).

PUBLIC: Alan Malan, Dennis Vest, Gary Jacketta, Gary Mills, Jason Utgaard, Chris Bratsch, Monique and Matt Draper.

Mayor Ken Romney called the meeting to order at 7:32 pm. Kelly Enquist gave an Invocation and the Pledge of Allegiance was led by Rod Wood.

1. Approve the Agenda.

MOTION: *James Ahlstrom made a motion to approve the agenda. Rod Wood seconded the Motion which PASSED by unanimous vote of all members present.*

2. Public Comment

Gary Jacketta, resident, asked about the large building on 400 North just west of 1100 West. He said it looks like an apartment building and inquired what will happen down the road if the family sells or decides to use it for people outside the family. Duane Huffman explained that the building is designated as a non-commercial structure. No one is permitted to live or conduct business there, and there is a recorded agreement to that effect that runs with the land.

3. Beverly Estates Minor Subdivision Final Plat at 1014 W Pages Lane.

Husky Real Estate, LLC has applied for a three-lot minor subdivision at 1014 W Pages Lane. The property is within the R-1-10 zone. This land was part of a larger property previously owned by Terry Olsen. On November 3, 2020, the City Council split the larger property into two parcels based on a divorce decree and quiet title order. Beverly Estates subdivision is proposed for the southern

parcel. The subdivision consists of three lots and has frontage on two existing streets. The South frontage is on Pages Lane (1600 North) and the East frontage is on Olsen Way (approximately 1000 West).

Kris Nilsen described the property, the proposed utilities, grading and drainage, street lighting and existing structures, and what needs to happen prior to filing a final plat. There was discussion about secondary water and easements. Mr. Nilsen will verify the situation prior to accepting the final plat.

- MOTION:** *James Ahlstrom made a Motion to Approve Beverly Estates Minor Subdivision Final Plat at 1014 W Pages Lane subject to the following:*
- 1. Address any comments from Davis County Recorder's office review of Final Plat.*
 - 2. Project site SWPP drawing and/or BMP's submitted to City Engineer.*
 - 3. Provide written approval from Weber Basin Water Conservancy District for service to all lots.*
 - 4. Remove the accessory structures on Lot 2 and Lot 3.*
 - 5. Provide a title report with no objectionable entries.*
 - 6. Payment of Inspection fee and storm water impact fee.*
 - 7. Post the appropriate improvement bonds.*
 - 8. Execute an Improvement Agreement with the City.*
 - 9. Deed the required water rights to the City.*
- Mark Preece seconded the Motion.*

The Motion PASSED with a vote as follows:

James Ahlstrom – aye	James Bruhn – aye
Kelly Enquist – aye	Mark Preece – aye
Rod Wood – aye	

4. Plat Amendment for 697 W 700 N – Matt Draper

Matt and Monique Draper own two lots at 697 W 700 North (Lot 209 Moss Farm Estates Plat B and a portion of Lot 4 Eggett Acres). They have requested to combine plat boundaries to form a new property designated as Moss Farm Estates Plat E. A previous owner had the County Recorder join the two lots into one parcel for taxing purposes, but the plats were never properly amended to form a single legal lot. The Draper's have submitted building permits for a home and a pool so it is important to combine the lots so that the center property line between the two plats can be eliminated. Council member Ahlstrom asked Mr. Draper if he understood that once the land was combined the owners would no longer be able to treat them separately for any land use rights, and Mr. Draper confirmed that this was his understanding.

- MOTION:** *Rod Wood made a Motion to Approve Plat Amendment for 697 W 700 N creating Moss Farm Plat E, based on a finding of good cause and subject to review and approval by city attorney of current title report; review and approval of final plat by city attorney, city engineer, and county recorder; and payment of county recording fees. Kelly Enquist seconded the Motion.*

The Motion PASSED with a vote as follows:

James Ahlstrom – aye James Bruhn – aye
Kelly Enquist – aye Mark Preece – aye
Rod Wood – aye

5. Presentation by Momentum Recycling Regarding Proposed Residential Glass Recycling

In November, Momentum sent a letter to the city introducing their intention to collect residential glass for recycling. However, as staff reviewed current city code, it found that the private collection of residential garbage, including glass, is currently prohibited. Upon learning about the city code, Momentum Recycling requested an opportunity to present before the city council and discuss possible solutions that would allow them to provide their services.

Jason Utgaard, Momentum's General Manager, described his business as family-owned, located by the Salt Lake airport. The business began as a recycling hauler that focused on glass recycling when it became apparent that existing companies could not handle the need. Momentum is the only glass recycling company in this state and handles glass in other states within 300 miles. He described the process used to recycle glass, which is endlessly recyclable. After gathering the glass, it is broken down, crushed, cleaned, and color separated then pulverized into smaller pieces and sold to fiberglass and sandblasting companies.

They currently serve about 700 commercial and 10,000 residential customers and are anxious to fill in unserved areas along the I-15 corridor including south Davis County. Mr. Utgaard explained that they provide 35 gallon bins to residential customers who can sign up for the monthly service on a website with no contract, or termination fee. The fee will be \$8 per month with a \$25 upfront fee. They expect to start with about 18 customers and grow it to 50+ and would appreciate some help promoting the service from the city.

Duane Huffman explained that the West Bountiful ordinance currently prohibits this private service and WBMC 8.08.020 and 8.08.090 would need to be changed. Council member Ahlstrom suggested language be included that would allow the city to terminate the services if needed. Mr. Utgaard indicated that would not be a problem as they currently have similar language in their agreements. Mr. Huffman will also check our current agreement with Ace Disposal to see if there is an exclusivity clause.

Council member Ahlstrom said this is a confusing issue for the public. The city should not have an ordinance stand in the way of something that makes good sense. If allowed, he would be one of the first to sign up.

Council member Enquist asked about drop-off bins. Could they be placed in the area for high use commercial customers? Mr. Utgaard said they currently service 40-50 public drop-off locations for larger users.

Steve Doxey asked Momentum if they would be contracting with the city or providing service directly to individual residents. Mr. Utgaard clarified that they intend to provide glass recycling directly to residents, which requires a business license from the city.

Mayor Romney suggested Momentum provide recommended language and work with Steve Doxey on a proposal that can be presented to city council.

6. Budget Report and Presentation of Proposed Budget Amendments for Fiscal Year Ending June 30, 2021.

Duane Huffman provided a summary of where the city stands with the budget and reviewed proposed budget amendments. These are based on information received from department heads regarding items they thought were needed. He proposed a public hearing be scheduled for February 2nd.

Big picture – Changes Since Budget Adoption:

- Ended year much higher than anticipated as a result of COVID-19
- Sales tax was up 11% from last year and 37% over budget
- The City received \$490K in CARES money

Still in progress:

- Financial statement corrections.
- Track COVID-19 expenses per fund.
- Capital project estimates (Porter Lane placeholder \$200K, golf course hole #16 and cart paths).
- Full time employees: Merit increases were included and implemented in September; inflation increase to scale was not included. (Every 1% = about \$15K.) Inflation rates – will provide options.
- General Fund has \$1.5M beginning balance with revenue deficit of \$60,800.
 - Revenue Adjustments: Increase in sales and related taxes - \$697,100; CARES Funding - \$490,300, Police sale of vehicles - \$52,000.
 - Expense adjustments: Windstorm \$20,500 – still waiting on FEMA; CARES expenses - \$205,000 + police wages \$200. Need to purchase 4 vehicles, sell 3.
 - Transfer up to \$750K to capital project fund to keep fund balance at 25%. Projected balance \$1.5M
- Capital Project fund – beginning balance \$2,473,824 + 750K = \$3,223,824 (the 2019 estimate for Public Works yard was \$5.9M)
- RAP beginning balance was \$609,510; projected ending \$473,310. James Ahlstrom asked if this included barrier landscaping on the south side of pickleball courts. The school has agreed to provide sod, will check on additional landscaping. Duane suggested the council start looking at big picture items for RAP.
- Correct Allocations – 800 West.
- Other Issues? Mayor Romney asked about sidewalk repair. There are several places where sidewalk is unsafe from trees that need to be removed. Duane said we have added some money already but may need more. Steve will put a list together of locations to be addressed.

MOTION: *James Ahlstrom made a Motion to set Public Hearing for February 2, 2021, to consider amendments to FY-21 Budget. Rod Wood seconded the Motion.*

The Motion PASSED with a vote as follows:

James Ahlstrom – aye James Bruhn – aye
Kelly Enquist – aye Mark Preece – aye
Rod Wood – aye

7. Minutes from December 15 and December 30, 2020.

MOTION: *Kelly Enquist made a motion to Approve Minutes from December 15 and December 30, 2020. Mark Preece seconded the Motion which PASSED by unanimous vote of all members present.*

8. Staff Reports

Police – Brandon Erikson

- The new officer application window closes this week - 20 applicants so far. We feel very good about the list of applicants.
- Mayor Romney asked Chief Erikson to look at last 2-3 years to ascertain how many months have we been fully staffed.
- Police staff are eligible to begin receiving COVID-19 vaccinations.
- Country Inn & Suites identity theft case has been quite the investigation with about 160 victim interviews. Hoping to wrap up soon.

Public Works – Steve Maughan

- Completing work on Porter Lane w/ Kris. Plan to get it out to bid in next couple of weeks

Community Development / Engineering – Cathy Brightwell / Kris Nilsen

- 400 N well house will be advertised next week and is on schedule for bid open on January 22. The engineering estimate is \$1.1M for the entire project.
- Homeowner that has been selling exercise equipment out of his garage on 1850 N will move the equipment to a storage shed until they can acquire retail space.
- Working with other Davis County cities on preliminary plans for a plane parade/flyover next summer.
- Thanks to Lowe's for their continued support of the best yard and best decorated homes contests. The winners of Lowe's Holiday Decorating contest:
 - 1st place - Steve & Deborah Weese at 937 W Porter Lane
 - 2nd place - Andrew & Lynn Barney at 1212 N 675 W
 - 3rd place - Ryan & Megan Peterson at 815 N Jessi's Meadow Drive
 - Honorable Mention - Gary Merrell & Jeff Dunn at 855 N Jessi's Meadow Drive

Administrative Report – Duane Huffman

- Birnam Woods Park– this past Fall public works did good job of leveling the northeast end of the park. Fencing had previously been damaged, and he asked if it should be repaired or removed. He showed pictures of a similar open space in North Salt Lake without fencing that provides better access. There was discussion that the developer likely installed the fence when the subdivision was built due to safety concerns about the swampy areas. There was support to remove the fence which will also make it easier to maintain.

- Federal legislation last year mandated that employers offer COVID-19 leave, not tied to personal sick leave, to provide a good incentive for employees not to come to work when sick or exposed. The mandate expired 12/31/20. Duane recommended the city continue the policy until the COVID-19 vaccine is more widely available. There was consensus that extending the policy makes good sense.
- A community zoom meeting is scheduled for next Tuesday, January 12 at 6 pm to discuss and answer questions about the new pickleball courts next to city hall. As most council members plan to attend, the meeting will be noticed as a special city council meeting.
- Duane will meet with Woods Cross tomorrow to discuss future southwest development and the idea of commissioning a study for the best use of area. There is money in the RDA fund for a study.

9. Mayor / Council Reports

Mayor Romney reported that in the weekly meeting with Davis County Health Department, they learned that West Bountiful had the second highest active COVID-19 rate. He also reported that vaccinations have been opened to all hospital workers, and other health care workers will be given the opportunity to get vaccinations in next couple of days, then first responders. K-12 teachers and residents of care centers will be next, then those ages 70+.

James Ahlstrom suggested the city approach our large commercial developers to see if they can woo Panera restaurant to our city. Utah is the only state they do not have a location. Council member Ahlstrom added that he has been asked to participate on the board of Centerpoint Legacy Theater. Centerpoint is a regional theater located in Centerville with city support from Centerville and Bountiful. He would like West Bountiful to support the theater in a way that does not take away from our Arts Council and its events. Duane Huffman suggested they submit a proposal that the city council can consider.

James Bruhn reported that the Arts Council continues to create online concerts and events using their new recording equipment.

Kelly Enquist asked Steve Maughan if the damaged sidewalk at city park had been replaced. It was part of the UTOPIA fiber installation when an unmarked CenturyLink line was hit. Steve indicated that CenturyLink has not returned to replace the sidewalk they damaged.

Mark Preece – Gas sales are going well for South Davis Sewer District, but they are struggling to get enough food waste.

Rod Wood – no report

10. Closed Session for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.

MOTION: *Rod Wood made a motion to move into Closed Session at 9:43 pm to discuss the Purchase, Sale, Lease or Exchange of real property; and Pending or Reasonably Imminent Litigation. The regular meeting will be adjourned at conclusion of Closed Session. James Ahlstrom seconded the Motion.*

The Motion PASSED with a vote as follows:

James Ahlstrom – aye	James Bruhn – aye
Kelly Enquist – aye	Mark Preece – aye
Rod Wood – aye	

The foregoing was approved by the West Bountiful City Council by unanimous vote of all members present on Tuesday, January 19, 2021.

Cathy Brightwell, City Recorder