

**Final Development Agreement
For Phase 2
of
Powder House Pass Community Improvement District**

This Final Development Agreement (FDA) for Phase 2 of the Powder House Pass Community Improvement District (CID) is entered into this _____ day of _____ 20____, between the County of Lawrence, South Dakota (the "County"), a political subdivision of the State of South Dakota, with its principal place of business at 90 Sherman Street, Deadwood, South Dakota 57732 in Lawrence County, South Dakota and BH Development, LLC. ("BHD"), with its principal place of business at P.O. Box 2524, Sioux Falls, SD 57101.

INTRODUCTION

Powder House Pass CID is located 3 miles south of Lead, South Dakota adjacent to Highway 85. The entire Powder House Pass CID includes an area of approximately 1,023 acres. Current land uses within the CID mainly forest with platted residential development occurring north of Powder House Trail in the Phase 1 area, which includes the former Wilderness Estates development. Figure 1 illustrates the general boundaries of the Powder House Pass CID along with the Phase 1 and Phase 2 areas.

BHD is in the preliminary design stages with what has been identified as Phase 2 of development within the Powder House Pass CID. The Phase 2 development area consists of approximately 100 acres and is currently planned for 102 single-family dwellings as shown in Figures 2 and 3.

The proposed Phase 2 development will continue the Phase 1 general pattern of development with no commercial or multi-family land uses anticipated at this time. Current development is planned to consist of single-family dwellings located on individual parcels ranging in size from 0.5 to 2 acres. The proposed land use pattern and infrastructure extensions were identified in the Amended Master Plan, as approved by the County in 2019.

Preliminary design work included a review of the existing water and wastewater systems to serve the anticipated growth within this phase. The CID provides wastewater collection and a centralized treatment facility. The collection system consists of 8-inch gravity and two lift stations with corresponding force mains.

The wastewater treatment facility (WWTF) is an activated sludge plant utilizing Moving Bed Bioreactor (MBBR) technology, rated to treat up to 25,000 gallons per day (gpd). Once treated, wastewater is discharged to an unnamed tributary of Whitewood Creek in compliance with the District's Surface Water Discharge Permit issued by South Dakota Department of Environment and Natural Resources (DENR). The WWTF was designed for phased implementation to meet both the current and future treatment needs of the CID. Figure 4 illustrates the planned extensions of the sanitary sewer collection system.

BH Development, LLC, established an agreement with Lead-Deadwood Sanitary District #1 in 2010 to receive raw water to serve Powder House Pass. Water treatment, storage, and distribution is owned by the CID and is managed through a third-party agreement. The CID currently relies on a single 100,000-gallon tank located just east of Highway 14a with a framework of six (6) inch distribution mains bisecting the development from north to south. Figure 5 illustrates the planned extensions of the water distribution system.

WITNESSETH

WHEREAS, The County established the Powder House Pass Community Improvement District on November 9, 2010; and

WHEREAS, the parties contemplated that BHD and/or its assignee, PHP would enter into final development agreements with the County for every phase of new development to ensure that the terms, obligations and conditions identified in the General Development Agreement ("GDA") are met and that final development agreements would be approved by the County prior to the commencement of final development and approval of any final plats; and

WHEREAS, on October 19, 2010, the County approved a Master Plan for the overall development of the District property for residential, retail, commercial, light industrial and recreation purposes; and

WHEREAS, on April 8, 2014, the County approved a Final Development Plan for Phase 1 of the District property for residential, retail, commercial, light industrial and recreation purposes; and

WHEREAS, on March 12, 2019 the County approved the Amended Master Plan of the District property for residential, retail, commercial, light industrial and recreation purposes; and

WHEREAS, BHD is willing to commit and bind itself, its successors and assigns to the future development in conformity with the Amended Master Plan and the GDA and this Final Development Agreement for the Phase 2 area depicted on Figure 3.

All located in B.H.M, Lawrence County, South Dakota.

WHEREAS, this Final Development Plan is specific and relates solely to Phase 2 of development in the District and is identified as Phase 2 for Powder House Pass Community Improvement District.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

SECTION 1. ZONING

That the development shall be developed and built in conformity with and subject to the terms of

the GDA, the Amended Master Plan and this Final Development Agreement with respect to any zoning requirements.

SECTION 2. FINAL PLAN

That this Final Development Plan for Phase 2 is intended to and insures that all development within the proposed area shall comply with all applicable Lawrence County Ordinances and Building Codes, as contemplated by the General Development Agreement unless a variance or exception are approved by the appropriate Lawrence County official, board, or commission.

SECTION 3. FINAL DEVELOPMENT PLAN

This Final Development Plan shall set forth in detail the terms, conditions, obligations and proposed detailed development plans of BHD, its successors and assignees and the County which addresses all of the requirements under the approved GDA and as referenced and agreed to in Section 2 above.

3A. MASTER PLAN REQUIREMENTS

BHD pursuant to and in conformity with the Amended Master Plan provides the following information in fulfillment and for the County's review and consideration, and agrees to construct and build Phase 2 of the Powder House Pass CID in accordance and in compliance as follows:

- A. Location map – Attached hereto and incorporated herein by this reference is the map identified as Figure 3 showing the overall details and layout of the proposed Phase 2 of the Development.
- B. List of Landowners in Master Plan.
- C. This phase of the overall development is identified as Phase 2 within the District.
- D. The map is to a scale of 1"=500.' By using this scale, the overall layout and design plan for Phase 2 can be included in perspective on a single map.
- E. Existing topography is shown on Figure 6.
- F. Jurisdiction – Phase 2 development is entirely within the County of Lawrence and is subject to the jurisdiction of the Lawrence County Commission for approval of this phase of the development and any future construction within the development.
- G. Map with roads – All of the proposed roads to be constructed in this phase of development will be hard-surfaced. The roadway alignments are shown on Figure 7. All roads will be constructed in accordance and compliance with existing County requirements.
- H. All roads will be shown on future preliminary plats. The primary service road will have a 66' right-of-way. All secondary roads will have 40' right-of-ways as shown on Figure 7. Any new roads shall be constructed in compliance with the existing Lawrence County ordinances in place at the time unless otherwise approved or granted a variance for

the road construction by the Lawrence County Commission.

- I. Lot layout – The general lot layouts for Phase 2 are shown on Figure 3. Specific lot location lines and lot and block numbers will be identified and shown on future preliminary plats.
- J. The location of all proposed Sanitary Sewer and Potable Water lines are shown on Figures 4 and 5.

3B. GENERAL DEVELOPMENT PLAN REQUIREMENTS

BHD will construct and develop Phase 2 for the District in compliance with the GDA requirements as provided in Section 5 of the GDA and set forth as follows:

- A. All building construction within Phase 2 shall be in compliance with existing international building codes requirements adopted by Lawrence County and any existing amendments thereto.
- B. The collection of wastewater will be through extension of the existing collection system. The treatment of wastewater will be through the existing wastewater treatment plant, owned and operated by the District.
- C. The potable water supply will be supplied through the existing water treatment facility, owned by the District. Raw water is purchased from the Lead Deadwood Sanitary District. The existing storage tank will provide adequate supply water to the lots contemplated within the Phase 2 area.
- D. Parking – There is no retail or commercial development proposed for Phase 2. All parking will be for residential and accessory uses.
- E. Road layout and design is shown on Figure 7. All roads will be hard-surfaced.
- F. Signage – No additional signage is proposed for this Phase of the development. All signage within the development will be in compliance with applicable county and state laws, rules and regulations. Regulation of any signage within the development will be by the District Board of Supervisors.
- G. The District is a local unit of special purpose government with taxing authority and with the power to borrow money, and issue bonds itself, certificates, warrants, notes or other evidence of indebtedness and similar revenue generating power enumerated in SDCL 7-25A-7, and shall exercise said authority to insure compliance with the proposed construction, making it unnecessary to require bonding for such infrastructure construction. Fully operational means the systems are proven to be able to provide potable water to all lots and accept wastewater and receive final approval of construction and operation by the South Dakota Department of Environment and Natural Resources.
- H. Covenants – Covenants for the Phase 2 area shall be adopted and enforced by the Board of Supervisors for the District.
- I. Construction all buildings shall be in conformity and compliance with the existing International Building Code and amendments thereto adopted by Lawrence County.
- J. General liability insurance policy for the proposed development is already in place. BHD shall secure and maintain general liability insurance.
- K. Lighting – Any lighting within Phase 2 for residential homes will be regulated and

enforced by the Board of Supervisors. All lighting within Phase 2 will be directed away from any other residence.

- L. Location of all fire hydrants within Phase 2 shall be in compliance with applicable rules, regulations, and ordinances of the County Subdivision Ordinance.
- M. Private utility lines shall be located in utility easements.
- N. Open space – Open space within Phase 2 will be in compliance with the GDA.
- O. Fire Plan – The District Board of Supervisors shall ensure that all the construction and development within Phase 2 is in conformity with the existing Fire Plan.
- P. Wetlands – There are no wetlands presently located within the proposed Phase 2 development area. Figure 8 presents the overall storm drainage plan for the area along with potential future stormwater detention sites.
- Q. Weeds – Noxious weed control within the Phase 2 area shall be under the control and enforcement of the District Board of Supervisors and shall be in compliance with all applicable County Weed Board standards for noxious weeds.
- R. Erosion control – All road construction within the Phase 2 area will include erosion and sediment control provisions in compliance with applicable county and state laws, rules, and regulations. Erosion and sediment control enforcement will be by the District Board of Supervisors to prevent sediment erosion control due to home construction from entering any of the ditches or common areas within the Phase 2 area. Additionally, no filling of any ditches or major drainage areas shall be allowed.
- S. A wastewater treatment facility is located in the northeast corner of the District. The wastewater treatment facility was designed, constructed, and is operated in accordance with all applicable requirements, standards, rules and regulations of the South Dakota Department of Environment and Natural Resources.

ASSIGNABILITY

This agreement is made and entered into between Lawrence County and BH Development, LLC with the full knowledge and understanding that all of the terms, obligations and conditions referenced herein shall be and are totally assignable to the District. The parties hereto understand and agree that the requirements for the General Development Agreement, Amended Master Plan and the Final Development Agreement are binding on the successors, assigns, and transferees of BH Development.

- A. BH Development, its assigns, or transferees, shall provide a copy of this Final Development Agreement to any future buyer of property or properties within Phase 2 of the District.

AMENDMENTS

This Final Development Agreement for Phase 2 within the Powder House Pass Community Improvement District shall only be amended in writing and by mutual agreement of the parties.

Dated this _____ day of _____, 20__.

IN WITNESS WHEREOF, the undersigned have executed this Development Agreement the day and year first written above.

COUNTY OF LAWRENCE

BH DEVELOPMENT

By _____

By _____

Its: _____

Its: _____

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF LAWRENCE)

On this _____ day of _____, 20__, before me, the undersigned officer, personally appeared _____ known to me or satisfactorily proven to be the _____ of the Lawrence County Commission, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public
My commission expires: _____

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF LAWRENCE)

On this _____ day of _____, 20___, before me, the undersigned officer, personally appeared _____ known to me or satisfactorily proven to be the _____ of BH Development, and that he/she as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public
My commission expires: _____

ATTACHMENTS

Figure 1 - Powder House Pass CID Vicinity Map

Figure 2 - Phases 1 and 2 Planned Lot Configuration

Figure 3 - Phase 2 Planned Lot Configuration

Figure 4 - Planned Sanitary Sewer Collection System Extensions

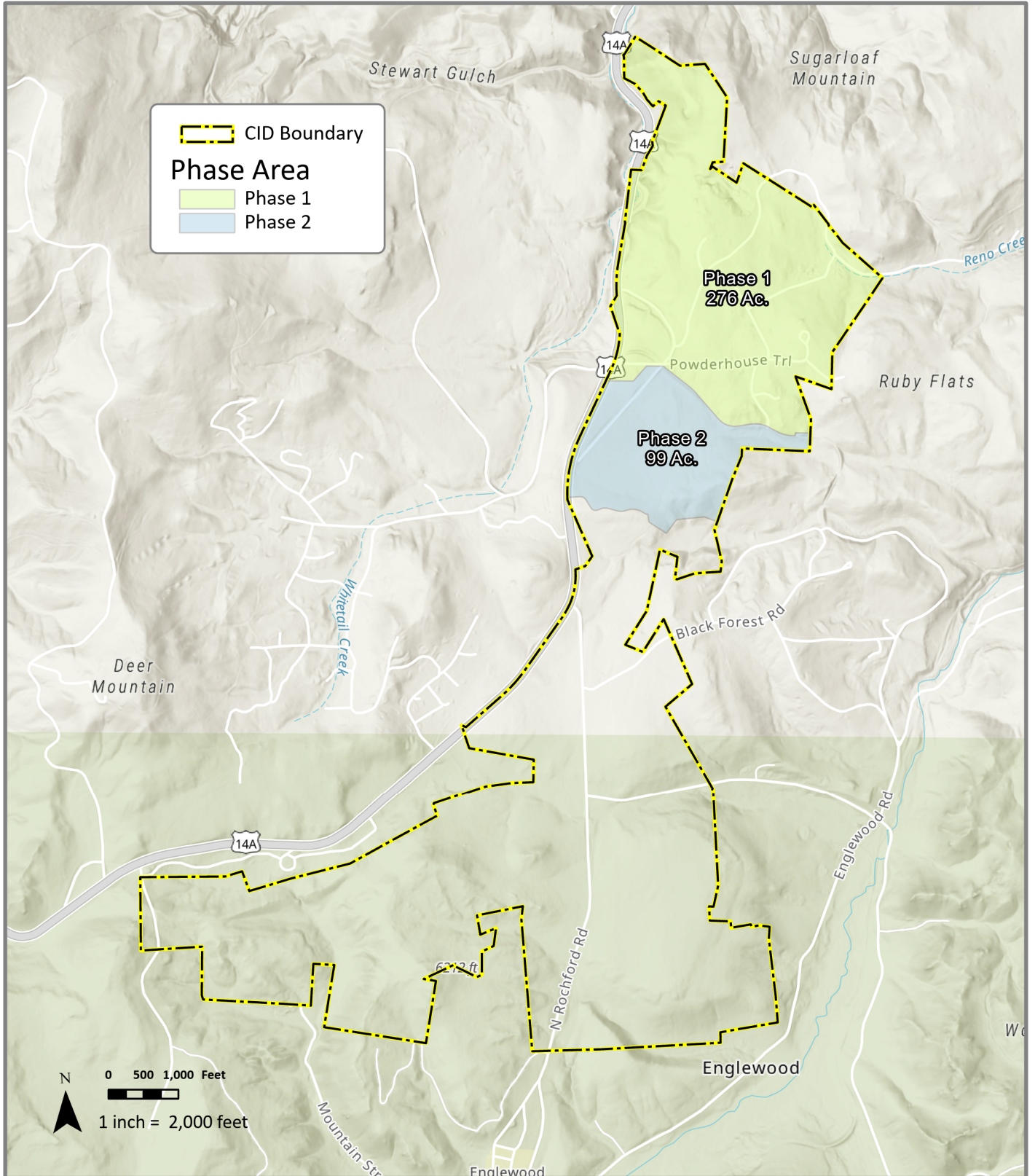
Figure 5 - Planned Water Distribution System Extensions

Figure 6 - Phase 2 Area Existing Topography

Figure 7 - Planned Transportation System Extensions

Figure 8 - Storm Drainage Plan

Figure 1 - Powder House Pass CID Vicinity Map



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Locator Map Not to Scale

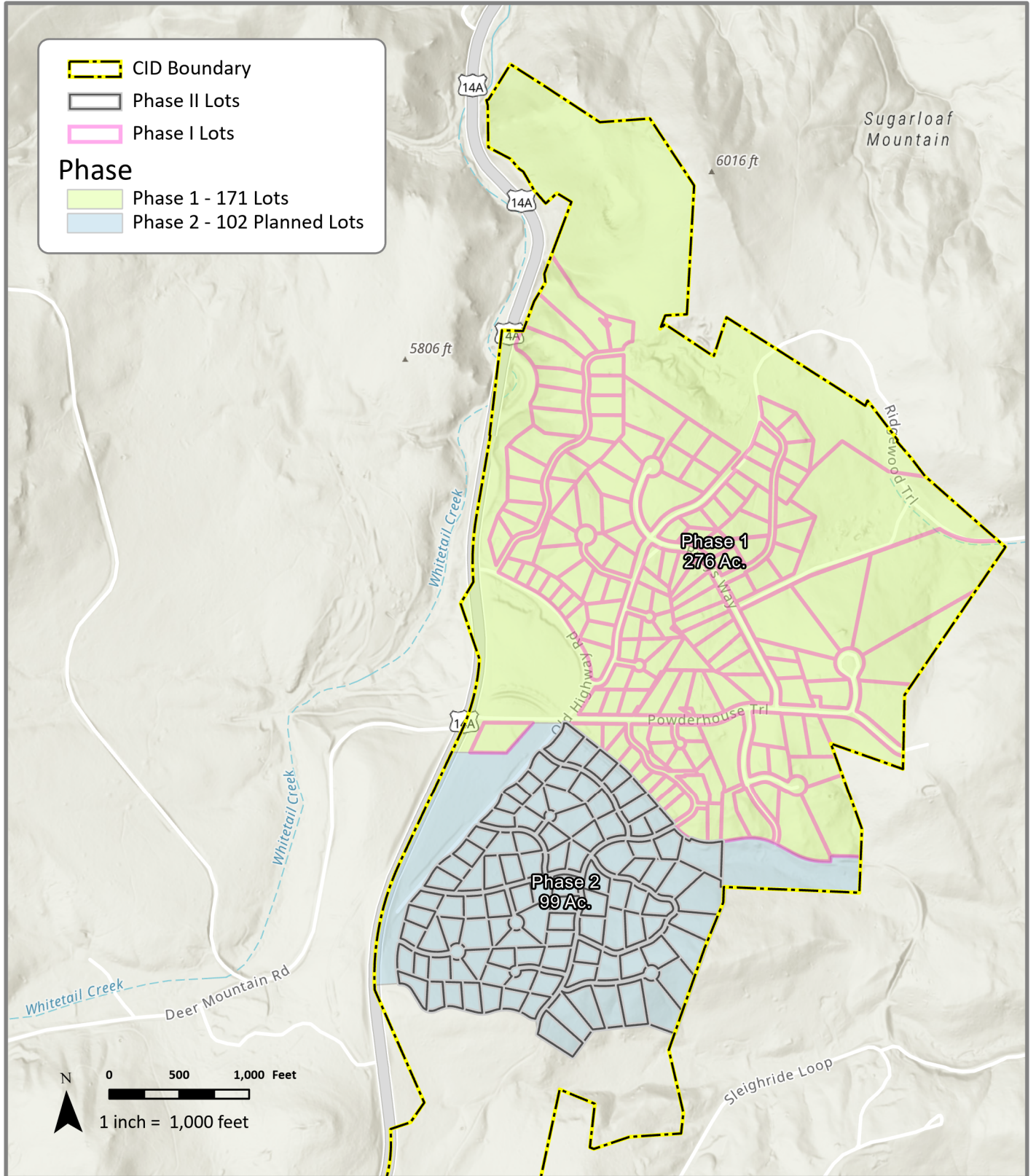
CID AREA

PHP PHASE II DEVELOPMENT
Lawrence County, SD



Date: 12/15/2020

Figure 2 - Phases 1 and 2 Planned Lot Configuration



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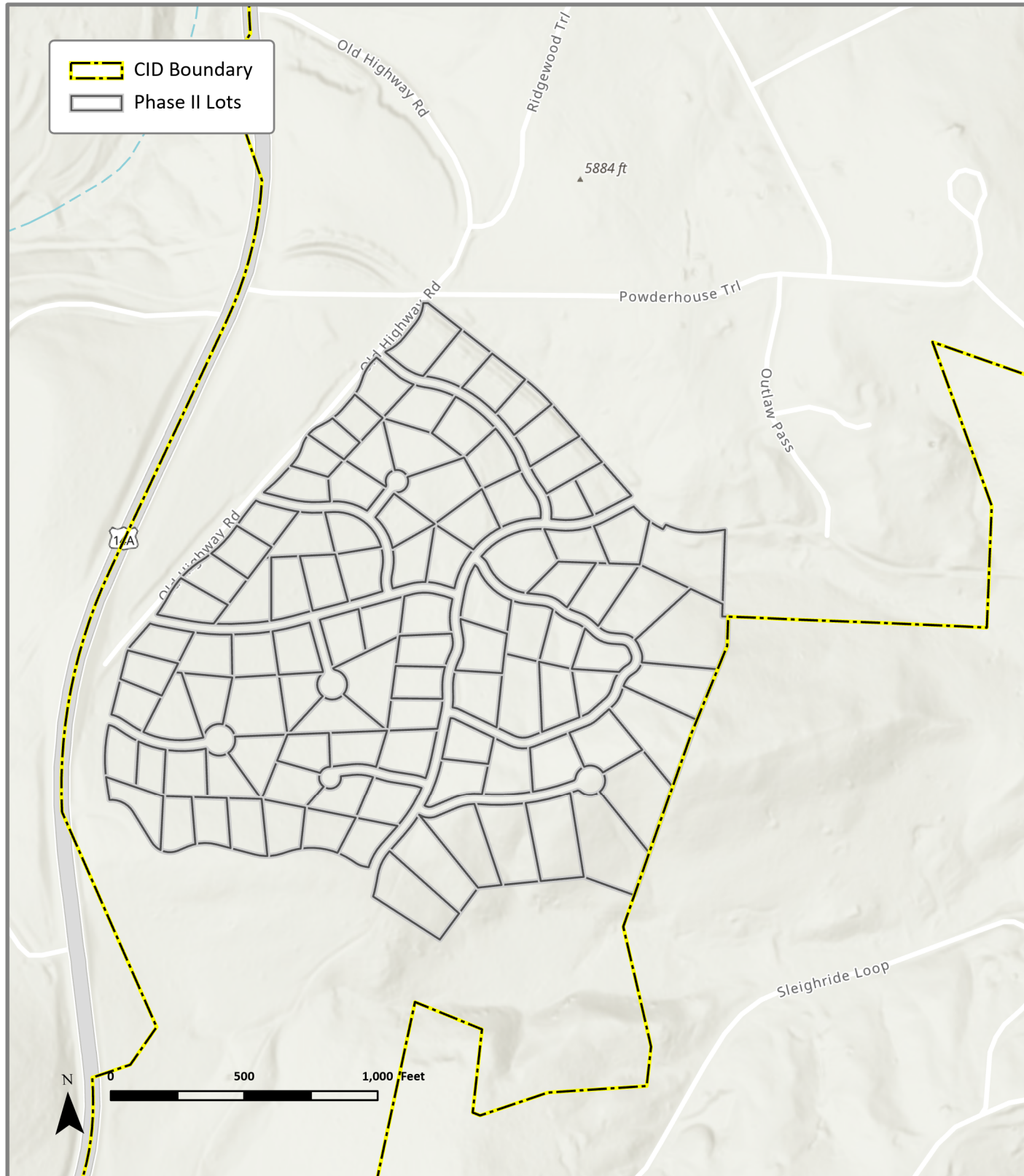
PHASE AREA

PHP PHASE II DEVELOPMENT
Lawrence County, SD



Date: 12/15/2020

Figure 3 - Phase 2 Planned Lot Configuration



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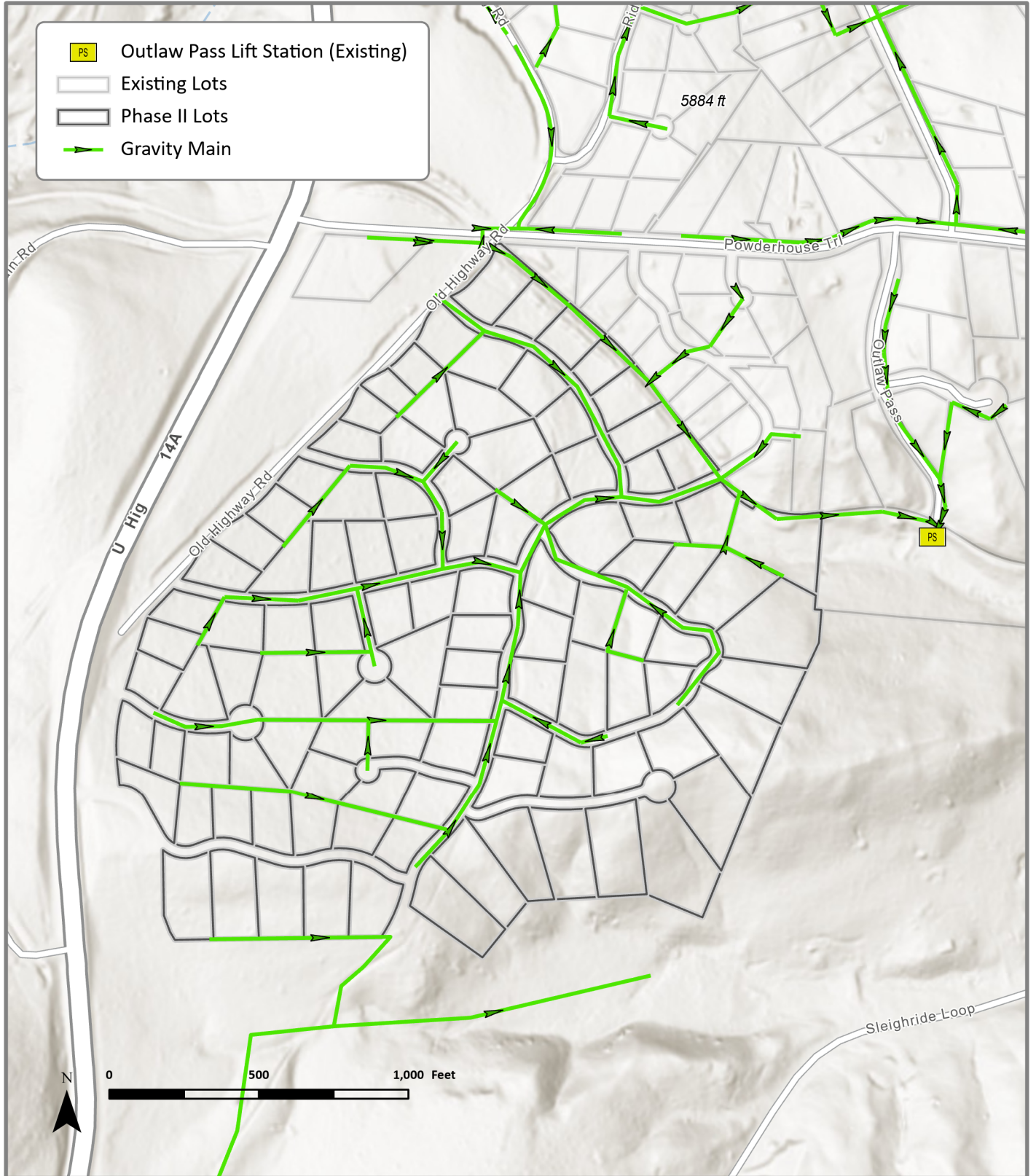
PROPOSED LOTS

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Figure 4 - Planned Sanitary Sewer Collection System Extensions



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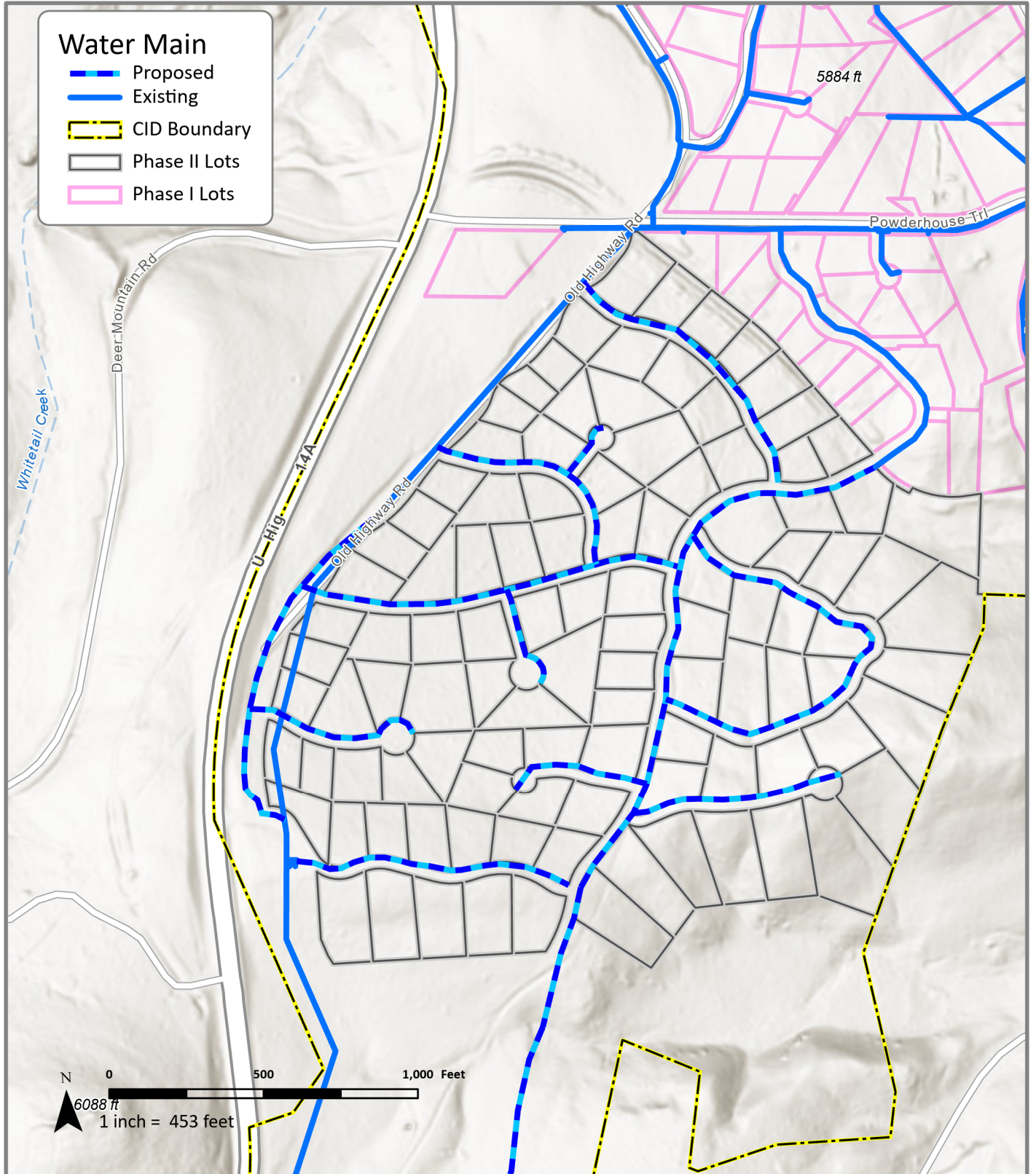
SANITARY COLLECTION

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Lawrence County, SD



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Figure 5 - Planned Water Distribution System Extensions



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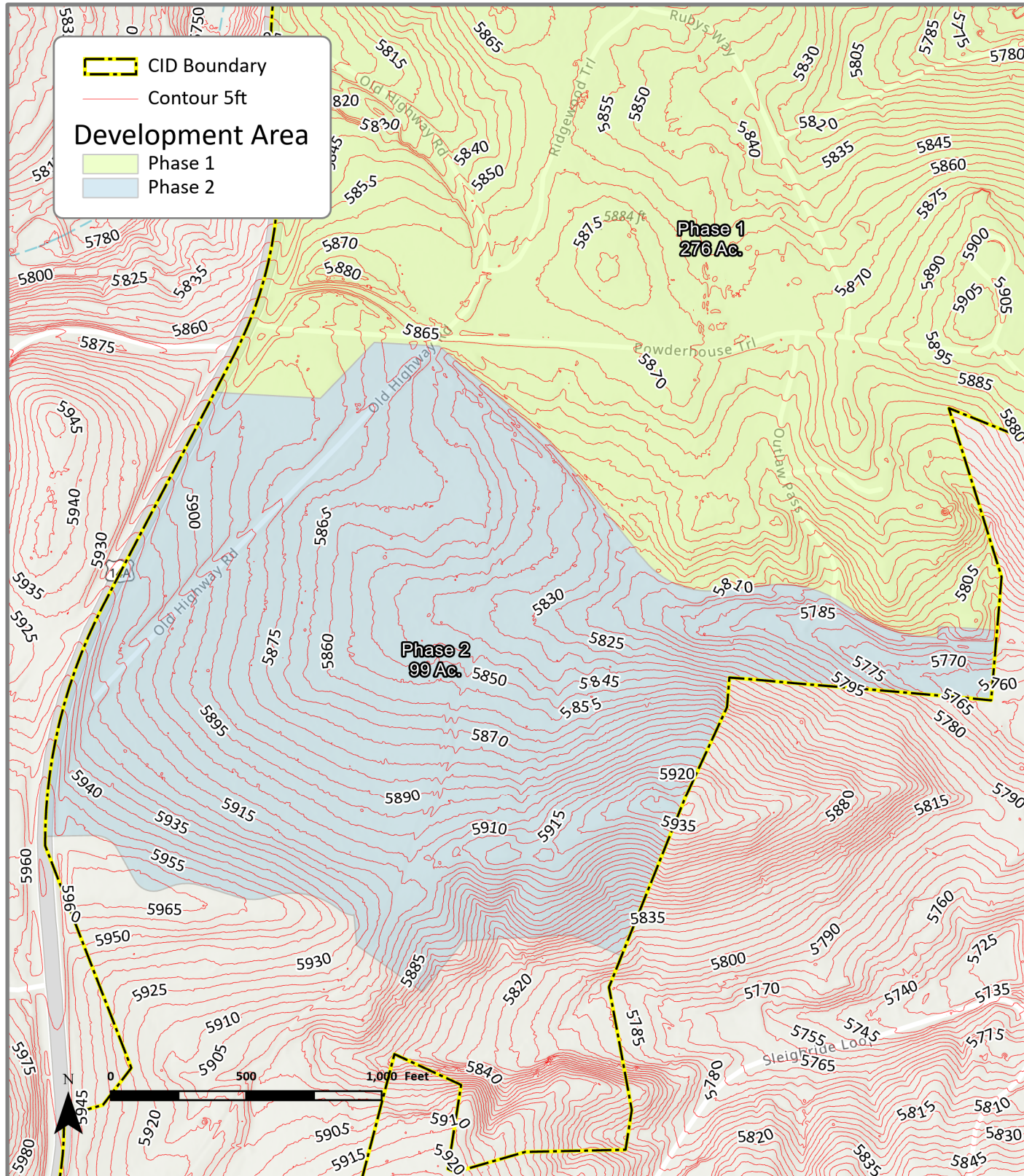
WATER DISTRIBUTION

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Lawrence County, SD



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Figure 6 - Phase 2 Area Existing Topography



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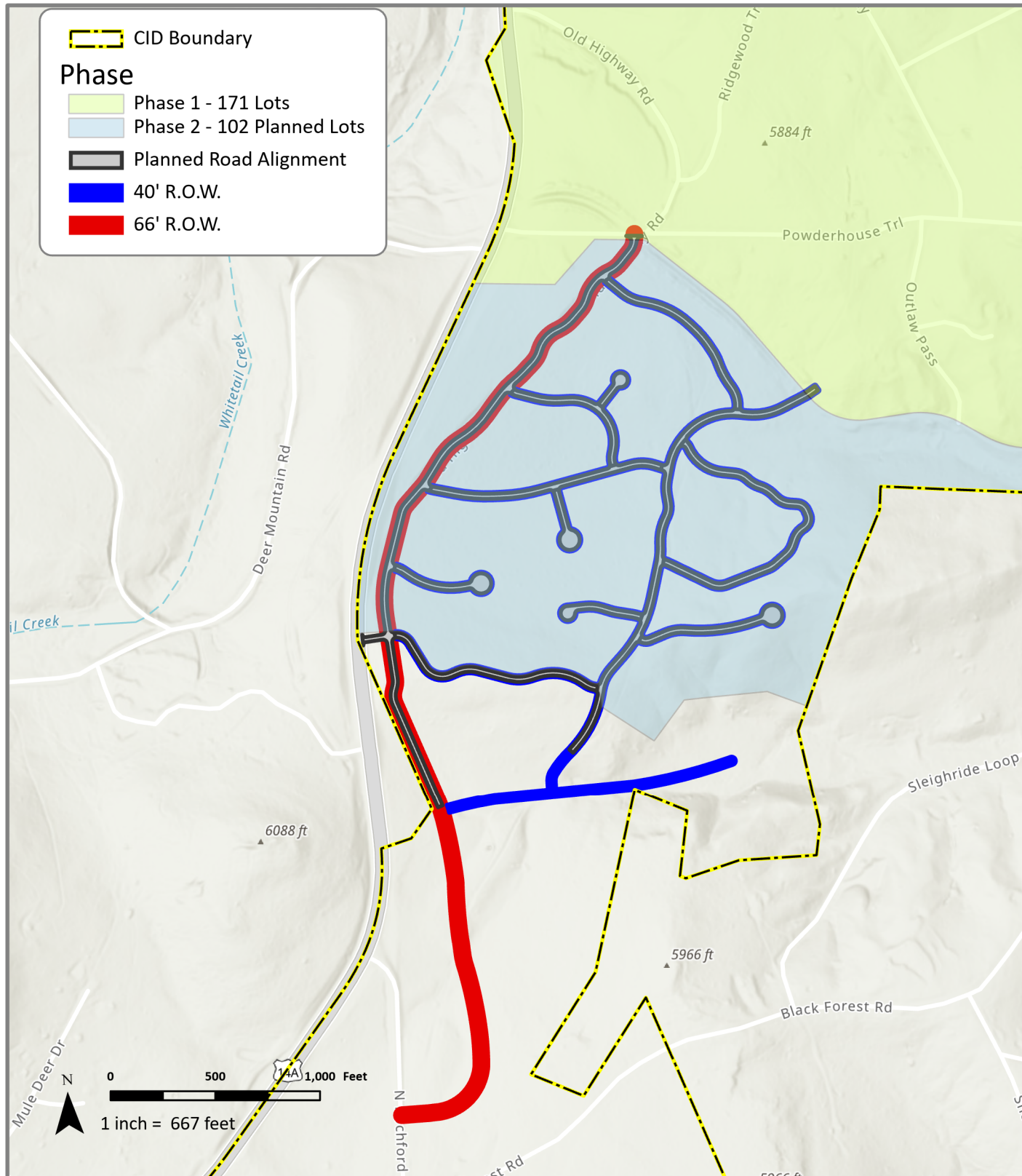
AREA TOPOGRAPHY

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Figure 7 - Planned Transportation System Extensions

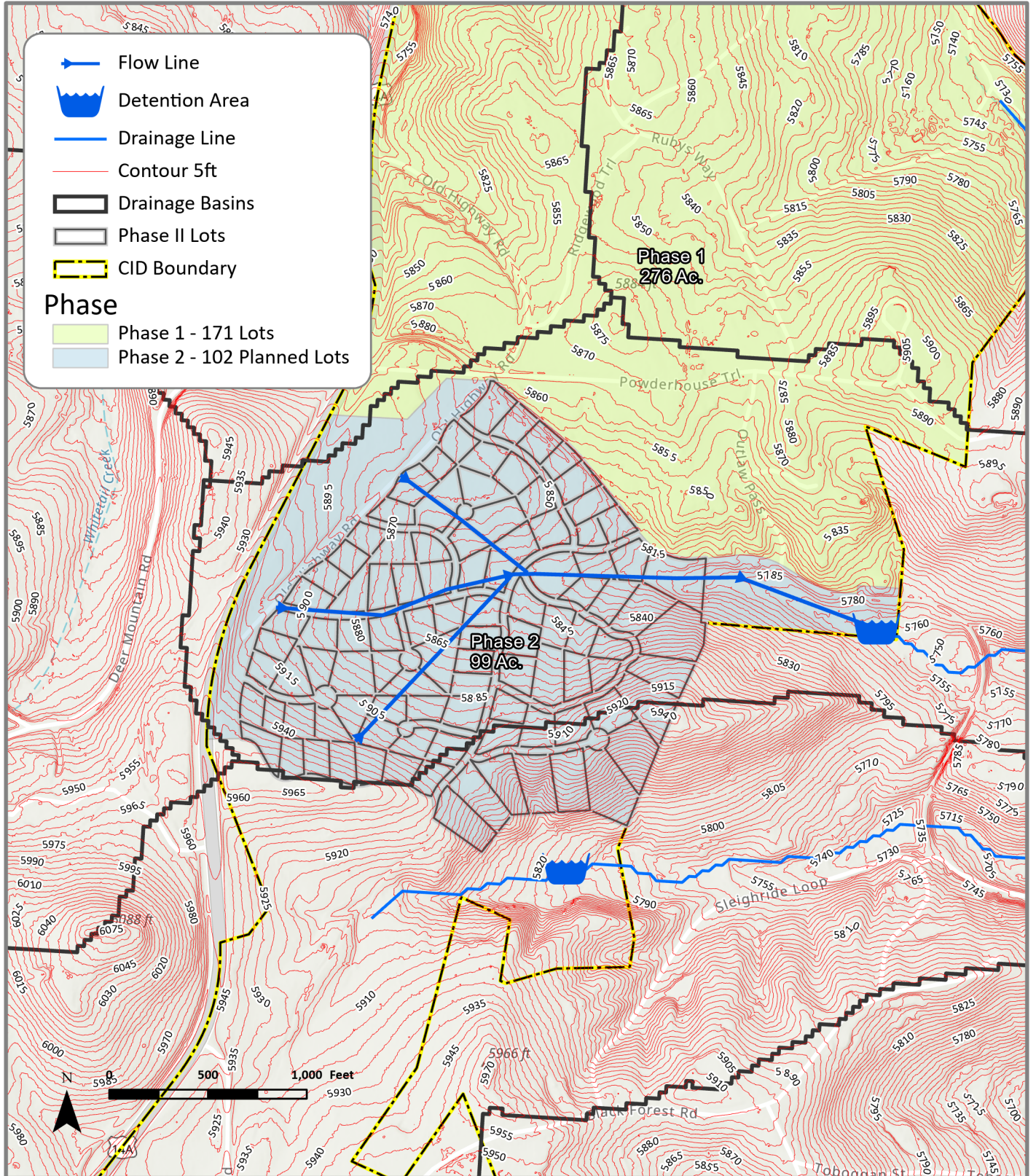


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Figure 8 - Storm Drainage Plan



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STORM WATER DRAINAGE

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Lawrence County, SD



Date: 12/15/2020