

# **MODEL SUBDIVISION REGULATIONS**

**September 2006**

**MODEL SUBDIVISION REGULATIONS**

**Prepared to comply with the  
Montana Subdivision and Platting Act  
*(Incorporates the 2005 amendments to the Montana Subdivision  
and Platting Act)***

---

These Model Subdivision Regulations were developed as a collaborative effort of representatives of the following organizations:

Joint Powers Insurance Authority of the Montana Association of Counties

Montana Association of Planners

University of Montana School of Law, Land Use Clinic

Montana Smart Growth Coalition

Montana Association of Realtors

With special thanks to all others who provided assistance, comments, and suggestions.

**The September 2006 update was prepared after JPIA conducted six workshops around the state, to incorporate comments made at those workshops. This document tracks those changes.**

September 2006

## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>DEFINITIONS .....</b>	<b>2</b>
<b>I. GENERAL PROVISIONS .....</b>	<b>10</b>
I-A. Title .....	10
I-B. Authority .....	10
I-C. Purpose .....	10
I-D. Jurisdiction .....	11
I-E. Severability.....	11
<b>II. GENERAL PROCEDURES .....</b>	<b>12</b>
II-A. Preliminary Plats .....	12
II-A-1. Construction Timing .....	12
II-A-2. Transfers of Title .....	12
II-A-3. Permission to Enter.....	12
II-A-4. Pre-application Process.....	13
II-A-5. Subdivision Application and Preliminary Plat Submittal .....	15
II-A-6. Review Process.....	16
II-B. Final Plats.....	17
II-B-1. Final Plat Contents.....	17
II-B-2. Final Plat Initial Review .....	18
II-B-3. Restrictive Covenants – Approval, Content and Enforcement by Governing Body .....	19
II-B-4. Public Improvements Agreement; Guaranty .....	20
II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval.....	20
II-B-6. Final Plat Approval.....	21
II-B-7. Final Plat Filing .....	22
II-B-8. Amending Filed Plats .....	22
<b>III. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS.....</b>	<b>23</b>
III-A. First Minor Subdivision Review .....	23
III-A-1. First Minor Subdivision Application and Preliminary Plat Submittal.....	23
III-A-2. First Minor Subdivision Exceptions .....	23
III-A-3. First Minor Subdivision Review Process.....	23
III-A-4. First Minor Planning Board Consideration and Recommendation.....	24
III-A-5. Subdivider's Preference for Mitigation.....	25

III-A-6.	First Minor Subdivision Governing Body Decision and Documentation.....	25
III-A-7.	First Minor Subdivisions – Amended Applications .....	29
III-A-8.	First Minor Subdivision Final Plat .....	31
III-B.	Subsequent Minor Subdivisions .....	31
<b>IV.</b>	<b>REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS .....</b>	<b>31</b>
IV-A.	Review and Approval Procedures for Major Subdivisions .....	31
IV-A-1.	Subdivision Application and Preliminary Plat Submittal .....	31
IV-A-2.	Time Period for Approval, Conditional Approval, or Denial .....	32
IV-A-3.	Public Hearings and Notices – In General.....	33
IV-A-4.	Planning Board Hearing, Consideration and Recommendation .....	33
IV-A-5.	Subdivider’s Preference for Mitigation .....	35
IV-A-6.	Governing Body Hearing.....	35
IV-A-7.	Subsequent Public Hearing.....	36
IV-A-8.	Governing Body Decision and Documentation .....	37
IV-A-9.	Amended Applications .....	41
IV-B.	Major Final Plats .....	43
<b>V.</b>	<b>DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW.....</b>	<b>44</b>
V-A.	Purpose .....	44
V-B.	General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA .....	44
V-C.	Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA] .....	44
V-D.	Divisions of Land Which May be Exempt from Review and Surveying .....	47
V-E.	Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations.....	48
V-E-1.	Relocation of Common Boundary [76-3-207(1)(a), MCA].....	48
V-E-2.	A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA] .....	49
V-E-3.	Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA].....	50
V-E-4.	Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA].....	51
V-F.	Procedures and Review of Subdivision Exemptions.....	51
V-F-1.	Submittal.....	51
V-F-2.	Review .....	52
V-F-3.	Appeals .....	52
V-G.	Remaining Parcels of Land .....	53

V-H.	Identification Codes .....	53
<b>VI.</b>	<b>DESIGN AND IMPROVEMENT STANDARDS .....</b>	<b>54</b>
VI-A.	Conformance with Regulations .....	54
VI-B.	Natural Environment .....	54
VI-C.	Lands Unsuitable for Subdivision .....	54
VI-D.	Floodplain Provisions.....	54
VI-E.	Improvement Design .....	55
VI-F.	Lots.....	55
VI-G.	Blocks.....	55
VI-H.	Streets and Roads .....	56
VI-I.	Drainage Facilities.....	61
VI-J.	Water Supply Systems.....	61
VI-K.	Sewage Treatment Systems.....	62
VI-L.	Solid Waste .....	62
VI-M.	Utilities .....	63
VI-N.	Water Course and Irrigation Easements .....	63
VI-O.	Disposition of Water Rights .....	64
VI-P.	Park Land Dedication – Cash in Lieu – Waivers -- Administration .....	65
VI-Q.	Fire Protection.....	67
VI-R.	Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard .....	67
VI-S.	Noxious Weeds.....	68
<b>VII.</b>	<b>AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES - LAND SUBDIVISIONS CREATED BY RENT OR LEASE.....</b>	<b>69</b>
VII-A.	Definition .....	69
VII-B.	Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes.....	69
VII-C.	Procedures for Review .....	70
VII-C-1.	Review and Approval .....	70
VII-C-2.	Improvements .....	70
VII-C-3.	Final Plan Review.....	70
VII-C-4.	DPHHS License.....	70
VII-D.	Design Standards for Subdivision Spaces Created by Rent or Lease.....	71
VII-D-1.	Design Standards .....	71

VII-D-2.	Additional Provisions .....	71
VII-E.	Mobile/Manufactured Home Park Standards .....	71
VII-E-1.	Mobile/Manufactured Home Spaces .....	71
VII-E-2.	Streets .....	72
VII-E-3.	Electrical Systems.....	72
VII-E-4.	Gas Systems.....	72
VII-F.	Recreational Vehicle Park Standards .....	73
VII-F-1.	Recreational Vehicle Spaces.....	73
VII-F-2.	Density.....	73
<b>VIII.</b>	<b>PLANNED UNIT DEVELOPMENTS.....</b>	<b>74</b>
VIII-A.	Purpose.....	74
VIII-B.	Procedures .....	74
VIII-C.	Standards .....	74
VIII-C-1.	Design Standards .....	74
VIII-C-2.	Streets .....	74
VIII-C-3.	Open Space .....	74
<b>IX.</b>	<b>CONDOMINIUMS .....</b>	<b>76</b>
IX-A.	Procedures .....	76
IX-A-1.	Review Where Land Will Not be Divided.....	76
IX-A-2.	Condominium Subdivisions Involving Land Divisions.....	76
IX-B.	Standards .....	76
IX-B-1.	Design Standards .....	76
IX-B-2.	Unit Ownership Act.....	76
<b>X.</b>	<b>CLUSTER DEVELOPMENT .....</b>	<b>77</b>
X-A.	Cluster Development, Option I.....	77
X-B.	Cluster Development, Option II .....	77
<b>XI.</b>	<b>ADMINISTRATIVE PROVISIONS.....</b>	<b>79</b>
XI-A.	Fee Schedule .....	79
XI-A-1.	Preliminary Plat Review .....	79
XI-A-2.	Other Reviews .....	79
XI-A-3.	Final Plat Review and Inspection .....	79
XI-B.	Variances.....	80
XI-B-1.	Variances Authorized .....	80
XI-B-2.	Variances from Floodway Provisions Not Authorized.....	80

XI-B-3.	Procedure .....	80
XI-B-4.	Conditions.....	80
XI-B-5.	Statement of Facts .....	80
XI-C.	Amendment of Regulations.....	81
XI-D.	Administration.....	81
XI-D-1.	Enforcement.....	81
XI-D-2.	Violation and Penalties .....	81
XI-D-3.	Appeals .....	81

**APPENDIX**

A.	Uniform Standards for Monumentation, Certificates of Survey, and Final Subdivision Plats	App.-1
----	--	--------

**ADMINISTRATIVE MATERIALS**

A.	Subdivision Application and Materials	A-1
	Part I General Description and Information	
	Part II Preliminary Plat Form, Contents and Supplements	
	Part III Environmental Assessment	
	Part IV Summary of Probable Impacts	
	Part V Community Impact Report	
B.	Final Plat Approval Form	B-1
C.	Sample Certificates	C-1
D.	Subdivision Improvements Agreement; Guaranty	D-1
E.	Grant of Access Easement	E-1

**ALTERNATIVE PROVISIONS AND PROCESSES**

Supplement 1.	Alternatives for only one public hearing by either the planning board or governing body	S-1
Supplement 2.	Alternatives for subsequent minor subdivision review	S-7
Supplement 3.	Alternatives for Expedited Review of a First Minor Subdivision	S-8
Supplement 4.	Model Subdivision Impact Regulations	S-10

## INTRODUCTION

The Montana Model Subdivision Regulations is intended to serve as an example and reference for local governments preparing or revising their own regulations. The Model is an advisory publication.

The Model reflects changes made to the Montana Subdivision and Platting Act through the 2005 legislative session.

We encourage local governments to adapt the Model to match local concerns and needs. Local governments should look carefully at each section of the Model and revise, and add or delete as needed to serve local objectives. In addition to actual regulatory language, the Model contains commentary to clarify issues frequently raised during the subdivision review process. **These comments are not to be incorporated into local regulations.**

## DEFINITIONS

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

1. **ACCESS (LEGAL AND PHYSICAL):**
  - a. Legal access means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has dedicated the easement or a private road for public use.
  - b. Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.
2. **ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.
3. **AGRICULTURE:** All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
4. **AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.
5. **BLOCK:** A group of lots, tracts or parcels within well-defined and fixed boundaries.
6. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.
7. **CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].
8. **COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY:** means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.

9. CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.
10. COVENANT (RESTRICTIVE COVENANT): A limitation contained in a deed or other document that restricts or regulates the use of the real property.
11. DEDICATION: The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3), MCA].
12. DEQ: The Montana Department of Environmental Quality.
13. DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4), MCA].
14. DWELLING UNIT: Any structure or portion thereof providing complete, independent and permanent living facilities for one household.
15. EASEMENT: Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.
16. ENGINEER (PROFESSIONAL ENGINEER): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.
17. FIRST MINOR SUBDIVISION: A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].
18. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA].
19. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude which has a one percent chance of occurring in any given year , or is a flood magnitude which is expected to recur on the average of once every 100 years [76-5-103 (9), MCA].
20. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency [76-5-103 (10), MCA].
21. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [76-5-103 (11), MCA].

22. **GOVERNING BODY:** The governing authority of a county, city, town, or consolidated local government organized pursuant to law [76-3-103 (7), MCA].
23. **IMPROVEMENT AGREEMENT:** A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.
24. **LANDOWNER:** All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms “property owner,” “landowner,” and “owner” mean both the seller and the purchaser under a contract for deed.
25. **LOCAL SERVICES:** Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.
26. **LOT:** A parcel, plot, or other land area created by subdivision for sale, rent, or lease.
27. **LOT MEASUREMENT:**
  - a. **Lot Depth --** The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
  - b. **Lot Width --** The average width of the lot.
  - c. **Lot Frontage --** The width of the front lot line.
  - d. **Lot Area --** The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.
28. **LOT TYPES:**
  - a. **Corner Lot:** A lot located at the intersection of two streets.
  - b. **Interior Lot:** A lot with frontage on only one street.
  - c. **Through or Double-Frontage Lot:** A lot whose front and rear lines both abut on streets.
  - d. **Flag Lot:** A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.
29. **MAJOR SUBDIVISION:** A subdivision that creates six or more lots..
30. **MINOR SUBDIVISION:** A subdivision that creates five or fewer lots

31. **MOBILE (MANUFACTURED) HOME:** A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.
32. **MOBILE (MANUFACTURED) HOME SPACE:** A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.
33. **MOBILE (MANUFACTURED) HOME PARK:** A tract of land that provides or will provide spaces for two or more mobile homes.
34. **MOBILE (MANUFACTURED) HOME PAD:** That area of a mobile home space which has been prepared for the placement of a mobile home.
35. **MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS:** Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.
36. **MONUMENT (PERMANENT MONUMENT):** Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
37. **MSPA:** Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.
38. **NATURAL ENVIRONMENT:** The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.
39. **OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
40. **OVERALL DEVELOPMENT PLAN:** The plan of a subdivision design proposed to be subdivided in stages.
41. **PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].
42. **PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.

43. **PLAT:** A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.
  - a. **Preliminary Plat:** A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA.
  - b. **Final Plat:** The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
  - c. **Amended Plat:** The final drawing of any change to a filed platted subdivision , or any lots within a filed platted subdivision.
  - d. **Vacated Plat:** A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.
44. **PRE-APPLICATION SKETCH (OR DRAWING):** A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision, all as more particularly set forth in section II-A-4(b).
45. **PRIVATE IMPROVEMENT:** Private improvements are the same types of improvements as defined under **PUBLIC IMPROVEMENTS**, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.
46. **PRIVATE ROAD:** A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.
47. **PUBLIC HEALTH AND SAFETY:** The prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.
48. **PUBLIC IMPROVEMENT:** Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.
49. **PUBLIC ROAD OR STREET:** A road or street is public if its right-of-way has been dedicated or acquired for public use.
50. **RECREATIONAL CAMPING VEHICLE:** A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

51. RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.
52. RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.
53. REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.
54. RIGHTS-OF-WAY: A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.
55. STATE: The State of Montana.
56. STREET TYPES: For purposes of these regulations, street types are defined as follows<sup>1</sup>:
  - a. Alley: A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
  - b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
  - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
  - d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
  - e. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
  - f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
  - g. Loop: A local street which begins and ends on the same street, generally used for access to properties.

---

<sup>1</sup> Street types should reflect a transportation plan or other local documents.

- h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
57. SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.
58. SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA]<sup>2</sup>.
59. SUBDIVISION ADMINISTRATOR: The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.
60. SUBSEQUENT MINOR SUBDIVISION: Any subdivision of five or fewer parcels that is not a first minor subdivision.
61. SURVEYOR (PROFESSIONAL LAND SURVEYOR): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
62. SURVEYOR (EXAMINING LAND SURVEYOR): A professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.
63. SWALE: A drainage channel or depression designed to direct surface water flow.
64. TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT): A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.
65. TOPOGRAPHY: General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.
66. TOWNHOUSE LOT: Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.

---

<sup>2</sup> Jurisdictions may choose to include definitions of rural and urban-suburban subdivisions, in order to differentiate between design standards, specific to road design standards.

67. **TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(17)(a), MCA].
68. **VICINITY SKETCH:** A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.
69. **WILDLIFE:** Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.
70. **WILDLIFE HABITAT:** The place or area where wildlife naturally lives or travels through.

## **I. GENERAL PROVISIONS**

### **I-A. Title**

These regulations will be known and may be cited as “The Subdivision Regulations of (City and/or County);” hereinafter referred to as “these regulations.”

### **I-B. Authority**

Authorization for these regulations is contained in the Montana Subdivision and Platting Act (“MSPA”). [Title 76, Chapter 3, MCA.].

### **I-C. Purpose**

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (76-3-102, MCA).

These regulations are intended to comply with Part 5 of the MSPA, and are intended to promote:

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The improvement of roads.
5. The provision of proper physical and legal access, including obtaining necessary easements.
6. The provision of adequate open spaces for travel, light, air, and recreation.
7. The provision of adequate transportation, water, drainage, and sanitary facilities.
8. The avoidance or minimizing of congestion.
9. The avoidance of subdivisions which would involve unnecessary environmental degradation.
10. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public improvements.

11. The avoidance of excessive expenditure of public funds for the supply of public improvements and services.
12. The manner and form of making and filing of any plat for subdivided lands.
13. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

**I-D. Jurisdiction**<sup>3</sup>

These regulations govern the subdivision of land within the jurisdictional area of the governing body of (City and/or County).

If a proposed subdivision lies within one mile of a third class city or town or within two miles of a second-class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

If a proposed subdivision is located in a rural school district, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality will combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

**I-E. Severability**

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

---

<sup>3</sup> **Comment: Jurisdiction**

The city or town council of a city or town is the “governing body” for the purposes of reviewing subdivisions located within the corporate limits of the city or town. The county commission of a county is the “governing body” for purposes of reviewing subdivisions located within the unincorporated areas of the county. If a proposed subdivision will overlap the corporate boundaries of a municipality, the subdivision must be reviewed and approved, conditionally approved, or denied by both governing bodies [§ 76-3-601(2), MCA].

## **II. GENERAL PROCEDURES**

The provisions of this section apply to Sections III, IV, VII, IX and X.

### **II-A. Preliminary Plats**

#### **II-A-1. Construction Timing**

Construction work shall not occur on land proposed for subdivision until the governing body has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility the work will have to be redone or removed. In addition, section 76-4-121, MCA, regulates subdivision activities.

#### **II-A-2. Transfers of Title**

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (76-3-303, MCA):

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;"
- e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid; and
- f. A copy of the contracts and escrow agreement described above must be submitted to the planning board (or subdivision administrator). The **name of the purchaser and** purchase price may be blacked out.

#### **II-A-3. Permission to Enter**

The governing body or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision

to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents , and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

**II-A-4. Pre-application Process**

- a. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator.<sup>4</sup> The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.
- b. At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.
  - i. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
    - A. Information on the current status of the site, including:
      - 1. location;
      - 2. approximate tract and lot boundaries of existing tracts of record;
      - 3. description of general terrain;
      - 4. natural features on the land, including water bodies, floodplains geologic hazards, and soil types;
      - 5. existing structures and improvements;
      - 6. existing utility lines and facilities serving the area to be subdivided;
      - 7. existing easements and rights of way;
      - 8. existing zoning or development regulation standards;
      - 9. existing conservation easements;
      - 10. existing covenants or deed restrictions;
      - 11. existing noxious weeds.
    - B. Documentation on the current status of the site, including:

---

<sup>4</sup> **Note:** This section is drafted to make the pre-application meeting mandatory.

1. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
  2. water rights, including location of Agricultural Water User Facilities;
  3. any special improvement districts; and
  4. rights of first refusal for the property.
- ii. Information on the proposed subdivision, including:
- A. tract and proposed lot boundaries;
  - B. proposed public and private improvements;
  - C. location of utility lines and facilities;
  - D. easements and rights of way; and
  - E. parks and open space and proposed conservation easements.
- c. At the pre-application meeting:
- i. the subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations floodplain regulations, building codes and fire codes;
  - ii. the subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
  - iii. the subdivision administrator shall may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application.<sup>5</sup> This does not limit the ability of the subdivision administrator to request additional information at a later time.
- d. Unless the subdivider submits a subdivision application within [6 months ~~180 days~~]<sup>6</sup> of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

---

<sup>5</sup> **Note:** This list should be the same as the preliminary plat application required list of submittal materials. Reference the application requirements.

<sup>6</sup> **Note:** This gives the subdivider six months from the date of the pre-application meeting to file the application. Some jurisdictions may wish to lengthen the time to as long as one year or shorten it to three or four months. It is within the jurisdiction's discretion.

## **II-A-5. Subdivision Application and Preliminary Plat Submittal**<sup>7</sup>

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator,<sup>8</sup> as applicable:

1. A completed and signed Subdivision Application Form;
2. The required review fee;
3. A preliminary plat;
4. A Vicinity Sketch;
5. A topographic map;
6. A grading and drainage plan;
7. Engineering plans for all Public and Private Improvements;
8. Overall development plan if development is in phases;
9. Abstract of Title (or Title Report);
10. Lienholders' acknowledgement of subdivision;
11. Documentation of legal and physical access;
12. Documentation of existing easements, including those for Agricultural Water User Facilities;
13. Existing covenants and deed restrictions;
14. Existing water rights;
15. Existing mineral rights;
16. Names and addresses of all adjoining property owners;
17. Proposed road plans and profiles;
18. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
19. Proposed easements;
20. Proposed disposition of water rights;
21. Proposed disposition of mineral rights;
22. Parkland dedication calculations;
23. Environmental assessment and/or summary of probable impacts;
24. Transportation impact analysis or transportation plan;
25. Fire risk rating analysis and fire prevention plan;
26. Weed management plan and re-vegetation plan;
27. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
28. FIRM or FEMA panel map and letter identifying floodplain status;
29. Required water and sanitation information;
30. A form of Subdivision Improvements Agreement, if proposed;

---

### <sup>7</sup> **Comment: Required Materials in an Application**

Montana State law now requires each local government to have a list of materials that must be included in a subdivision application. For the purpose of element and sufficiency review only, local governments should adopt a list of required materials that is exhaustive because local governments cannot require materials that are not listed in their subdivision regulations. This list is only suggestive of the materials that local governments may want to require in a subdivision application. Some of the materials are required by the Montana Subdivision and Platting Act, while others may be required by local subdivision regulations.

<sup>8</sup> **Note:** A model subdivision application form and detailed description of the information required by this list of materials are included in this model under Administrative Materials "A."

31. Letter requesting a revocation of agricultural covenants;
32. Letter indicating locations of cultural or historic resources;
33. Variance request or approval;
34. Re-zoning application or approval;
35. Flood hazard evaluation;
36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
37. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

**II-A-6. Review Process**

For both minor and major subdivisions, the initial review process is as follows:

a. Element Review

- i. Within 5 working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the subdivider of the subdivision administrator's determination.
  - A. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
  - B. The subdivider may correct the deficiencies and resubmit the application.
  - C. If the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required by section II-A-5, as applicable.
  - D. This process shall be repeated until the subdivider submits an application containing all the materials required by section II-A-5, or the application is withdrawn.

b. Sufficiency Review

- i. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.

- A. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
  - B. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
  - C. If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivision administrator shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
  - D. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.
- ii. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.
  - iii. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.
- c. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

**II-B. Final Plats**

**II-B-1. Final Plat Contents**

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats (Appendix A). Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

**II-B-2. Final Plat Initial Review**

a. Final Plat Submittal

The final plat approval application form (an example of which can be found in Administrative Materials Section B), and all supplementary documents must be submitted to the subdivision administrator at least 30 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- i. the final plat application;
- ii. the final plat review fee;
- iii. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;
- iv. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
- v. the DEQ or local Environmental Health Department approval;
- vi. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if required);
- vii. all engineering plans;
- viii. any homeowner association documents, including bylaws, covenants, and/or declarations;
- ix. county and/or city attorney approvals; and
- x. one 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats set forth in Appendix A.

b. Review by Subdivision Administrator

- i. The subdivision administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the subdivision administrator until all conditions of preliminary approval have been satisfied.
- ii. If the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to Section II-B-5.

- iii. The subdivision administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

**II-B-3. Restrictive Covenants – Approval, Content and Enforcement by Governing Body**

- a. The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, be set forth in a separate heading identifying them as plat approval covenants, and indicating: “These covenant(s) may not be repealed or amended without prior written consent of the (name of the governing body).”
- b. The governing body may require that all restrictive covenants it has required as a condition of plat approval contain the following language: “The (name of the governing body) is a party to this restrictive covenant and may enforce its terms.”
- c. If common property is to be deeded to a property owners’ association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
  - i. Formation of a property owners’ association concurrently with the filing of the final subdivision plat. Articles of Incorporation shall be filed with the Secretary of State’s office;
  - ii. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
  - iii. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
  - iv. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
  - v. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
  - vi. Adjustment of assessments to meet changing needs;
  - vii. Means of enforcing the covenants, and of receiving and processing complaints;
  - viii. Transition of control of the association from the Declarant to the homeowners.
  - ix. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body’s approval of the change; and
  - x. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

#### **II-B-4. Public Improvements Agreement; Guaranty**

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or fire fighting facilities, have been installed and engineering plans have been filed. A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are provided in Administrative Materials D.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the governing body indicating such, and including a copy of the engineered plans. The county engineer or consulting engineer designated by the governing body shall review and certify all public improvements have been installed in conformance with the plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the project surveyor or engineer in accordance with their licensing provisions, shall be filed in the clerk and recorder's office with reference to the final subdivision plat.

#### **II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval<sup>9</sup>**

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
  - i. Within 5 working days of receiving the proposed changes, the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.
  - ii. If the subdivision administrator determines the changes are material, the subdivision administrator ~~shall~~ may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.<sup>10</sup>
  - iii. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes, notify the subdivider and the governing body of that decision and the governing body shall approve of those changes in a meeting for which notice has been given of non-material changes to the final plat.

---

<sup>9</sup> **Note:** This section is new and is merely an example of how a local government might decide to handle amended preliminary plats prior to final plat approval. A local government is completely free to develop its own process for handling changes to an approved preliminary plat prior to final plat approval without requiring re-submittal of the entire application and preliminary plat.

<sup>10</sup> **Note:** The local government has discretion whether a new application/ fee will be required.

- b. The following changes, although not an exhaustive list, may be considered material:
  - i. configuration or number of lots;
  - ii. road layout;
  - iii. water and/or septic proposals;
  - iv. configuration of park land or open spaces;
  - v. easement provisions;
  - vi. designated access;
  - vii. proposed covenants; or
  - viii. changes to conditions of approval.
- c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
- d. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public hearing in order to determine if the condition may be waived or amended.

**II-B-6. Final Plat Approval**

a. Approval by the Governing Body

The governing body shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to (ii) below.

- i. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
- ii. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

b. Inaccurate Information

The governing body may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

**II-B-7. Final Plat Filing**

After it is approved, the final plat may not be altered in any manner except as provided in II-B-8. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats, contained in Appendix A.

**II-B-8. Amending Filed Plats**

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the governing body.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.
- c. The governing body may not approve an amendment that will place a lot in non-conformance with the standards contained in Section VI of these regulations or with local zoning regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section XI-B, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Appendix A).

### **III. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS**

Subdivisions containing five or fewer parcels shall be reviewed as set forth in this section.

First minor subdivisions shall be reviewed pursuant to section III-A and subsequent minor subdivisions shall be reviewed pursuant to section III-B.

#### **III-A. First Minor Subdivision Review**

The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

##### **III-A-1. First Minor Subdivision Application and Preliminary Plat Submittal**

- a. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application containing the materials identified in section II-A-5 and in the pre-application meeting, and
- b. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record;

##### **III-A-2. First Minor Subdivision Exceptions**

The following do not apply to first minor subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication;
- c. public hearing requirements; and
- d. review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, *if* the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those impacts.

##### **III-A-3. First Minor Subdivision Review Process**

- a. Time Period for Approval, Conditional Approval, or Denial

Within 35 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section III-A-6 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 35-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

**III-A-4. First Minor Planning Board Consideration and Recommendation**<sup>11</sup>

a. Recommendation

i. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application and preliminary plat with the following:

- A. these regulations, including but not limited to the standards set forth in Section VI;
- B. applicable zoning regulations;
- C. The MSPA, including but not limited to 76-3-608(3), as delineated in section III-A-6(a) and (b)(iv) of these regulations; and
- D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- A. the subdivision application and preliminary plat;
- B. the summary of probable impacts and proposed mitigation;
- C. an officially adopted growth policy;<sup>12</sup>
- D. subdivision administrator's staff report and recommendation; and

---

<sup>11</sup> **Note:** This section should only be included in jurisdictions where the planning board reviews first minor subdivisions. If the planning board does not review first minor subdivisions, remove this section and renumber.

<sup>12</sup> **Note:** The planning board may not base its recommendation solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

E. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the public meeting, the planning board shall submit the following, in writing, to the subdivider and the governing body:

- A. recommended findings of fact based on the evidence in subsection (a)(ii) above that discuss and consider the subdivision's compliance with and impact on the items listed in subsection (a)(i) of these regulations;
- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
- C. a recommendation for approval or denial of any requested variances (See Section XI-B).

b. Water and Sanitation Information

The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations.<sup>13</sup> The planning board shall forward all comments regarding water and sanitation to the governing body.

**III-A-5. Subdivider's Preference for Mitigation**

No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences regarding mitigation [76-3-608(5)(b), MCA].

**III-A-6. First Minor Subdivision Governing Body Decision and Documentation**

a. Prerequisites to Approval

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- i. provides easements for the location and installation of any planned utilities, both on and off site;

---

<sup>13</sup> **Note:** The water and sanitation information required to be submitted is detailed in Administrative Materials "A."

- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
- iv. assures that the requirements of 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted; and
- v. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted.

b. Consideration – Standards

In approving, conditionally approving, or denying a first minor subdivision application, the governing body shall consider subsection (a) above and whether the proposed subdivision complies with:

- i. these regulations, including but not limited to, the standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations;
- iv. the MSPA, including but not limited to the following impacts:<sup>14</sup>
  - A. impact on agriculture;
  - B. impact on agricultural water user facilities;
  - C. impact on local services;
  - D. impact on the natural environment;
  - E. impact on wildlife and wildlife habitat; and
  - F. impact on public health and safety.
- v. proposed mitigation.

---

<sup>14</sup> **Note:** The local jurisdiction may wish to insert text from its growth policy explaining these impacts, or use Supplement 4 of the Alternative Provisions and Processes as a guide.

c. Consideration – Evidence

In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the governing body may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the summary of probable impacts and proposed mitigation;
- iii. an officially adopted growth policy;<sup>15</sup>
- iv. subdivision administrator's staff report and recommendations;
- v. planning board recommendation;<sup>16</sup> and
- vi. any additional information authorized by law.

d. Water and Sanitation-Special Rules<sup>17</sup>

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat.<sup>18</sup> This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval.<sup>19</sup> This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.

---

<sup>15</sup> **Note:** The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

<sup>16</sup> **Note:** If the planning board does not have the authority to review first minor subdivisions, eliminate this subsection and renumber.

<sup>17</sup> **Note:** The model regulations have taken the affirmative perspective to require water and sewer approval as a condition of approval.

<sup>18</sup> **Note:** Section 76-3-604(7)(a) provides that the governing body *may* require approval by the DEQ as a condition of approval of the final plat. This sentence makes that procedure mandatory.

<sup>19</sup> **Note:** Section 76-3-604(7)(b) provides that the governing body *may* condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This sentence makes that procedure mandatory.

- iv. The governing body shall request public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- iv. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
  - A. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; or
  - B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.
- e. Documentation of Governing Body Decision
  - i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
  - ii. When the governing body approves,<sup>20</sup> denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
    - A. contain information regarding the appeal process for the denial or imposition of conditions;
    - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
    - C. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
    - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
    - E. set forth the time limit for approval, pursuant to subsection (f) below.

---

<sup>20</sup> **Note:** Section 76-3-620, MCA, does not make it mandatory for the governing body to provide a letter to the subdivider when it approves a subdivision application. However, we strongly recommend a jurisdiction adopt the language for approvals as well to provide documentation of the decision in case of a challenge.

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.<sup>21</sup>
  - A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.
  - B. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-B-4.
- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
- iii. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

**III-A-7. First Minor Subdivisions – Amended Applications**<sup>22</sup>

- a. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
  - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in subsection (c) below.
  - ii. The 35-working day review period is suspended while the subdivision administrator considers the amended application or preliminary plat.
  - iii. If the subdivision administrator determines the changes are not material, the 35-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.

---

<sup>21</sup> **Note:** The governing body must establish the term of the approval or conditional approval of the subdivision application and preliminary plat, which must be at least one but not more than three calendar years.

<sup>22</sup> **Note:** Section 76-3-504(1)(c) requires the subdivision regulations to contain procedures for amended applications. The statute gives no specific guidance on the subject; therefore, this Amended Applications section is only an example of how a local government might decide to handle amended applications.

- iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application or require the subdivider to present the changes to the Planning Board for consideration of the changes, only.<sup>23</sup>
- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).
- c. The following changes, although not an exhaustive list, may be considered material:
  - i. configuration or number of lots;
  - ii. road layout;
  - iii. water and/or septic proposals;
  - iv. configuration of park land or open spaces;
  - v. easement provisions;
  - vi. proposed covenants; or
  - vii. designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
  - i. The 35-working day review period is suspended until the governing body decision on the appeal is made.
  - ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection (a)(iv).
  - iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35-working day review period resumes as of the date of the decision.
  - iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided in subsection (d)(i).

---

<sup>23</sup> **Note:** The local government has discretion whether a new application fee will be charged when requiring the subdivider to resubmit the application from the beginning.

### **III-A-8. First Minor Subdivision Final Plat**

The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section II-B, Final Plats.

### **III-B. Subsequent Minor Subdivisions**

A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions. All the requirements and procedures of Section IV of these regulations must be followed for subsequent minor subdivisions.<sup>24</sup> However, a park dedication is not required.

## **IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS**

### **IV-A. Review and Approval Procedures for Major Subdivisions**

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA and these regulations.

The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

#### **IV-A-1. Subdivision Application and Preliminary Plat Submittal**<sup>25</sup>

- a. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.
- b. The requirement for preparing an environmental assessment, does not apply, pursuant to 76-3-210, MCA, when:
  - i. The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA; and

---

<sup>24</sup> **Note:** Jurisdictions are free to adopt regulations that provide for review of subsequent minors at least as stringently as a "first" minor but less stringently than a major subdivision. Supplement 2 of the Alternative Provisions and Processes provides some suggestions.

<sup>25</sup> **Comment: Required Materials in an Application**

Montana State law now requires each local government to have a list of materials that must be included in a subdivision application. For the purpose of element and sufficiency review only, local governments should adopt a list of required materials that is exhaustive because local governments cannot require materials that are not listed in their subdivision regulations. This list is only suggestive of the materials that local governments may want to require in a subdivision application. Some of the materials are required by the Montana Subdivision and Platting Act, while others may be required by local subdivision regulations.

- ii. The governing body has adopted zoning regulations pursuant to sections 76-2-301 through 76-2-328, MCA (municipal zoning); or sections 76-2-201 through 76-2-228, MCA (county zoning pursuant to a growth policy); and
  - iii. The governing body has adopted a strategy for development, maintenance, and replacement of public infrastructure pursuant to section 76-1-601(3)(e), MCA.
- c. The planning board (or governing body where no planning board exists) may waive the requirement for preparing any portion of the environmental assessment when the proposed subdivision is in an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA, and the proposed subdivision will be in compliance with the policy.
  - d. When an exemption from preparing any portion of the environmental assessment is sought, the applicant shall meet with the planning board, explain why the exemption is appropriate, and if granted the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review and shall be filed with the final plat.

**IV-A-2. Time Period for Approval, Conditional Approval, or Denial**

- a. Within 60 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-7 of these regulations. The review period of 60 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

- b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 60-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

### **IV-A-3. Public Hearings and Notices – In General**<sup>26</sup>

#### a. Hearings

The planning board and the governing body shall each hold a public hearing on the subdivision application when a hearing is required by these regulations.<sup>27</sup>

#### b. Notice

- i. The planning board and governing body shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearings.<sup>28</sup>
- ii. At least 15 days prior to the dates of the hearings, the planning board and the governing body shall give notices of the hearings by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The subdivider shall post notices at conspicuous places on the site of the proposed subdivision.<sup>29</sup>

### **IV-A-4. Planning Board Hearing, Consideration and Recommendation**<sup>30</sup>

#### a. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

---

#### <sup>26</sup> **Comment: Public Hearings**

Montana statute requires the governing body or its designated agent to hold at least one public hearing on the preliminary plat. Montana Statute [76-1-601(3)(i), MCA] also requires that a community’s growth policy contain a “statement explaining how public hearings regarding proposed subdivisions will be conducted.” The governing body or its authorized agent or agency should adopt procedures for the conduct of public hearings.

<sup>27</sup> **Note:** This section is drafted to reflect two hearings: one before the planning board and one before the governing body. Jurisdictions that do not have a planning board or that choose to have a hearing only by the governing body will need to adopt the changes provided in Supplement 1 of the Alternative Provisions and Processes.

<sup>28</sup> **Note:** Subsections i and ii are drafted with the intention that a single published notice may be given and a single mailing may be sent with the dates and times of both hearings to save money and time.

<sup>29</sup> **Note:** Posted notices are not required by the MSPA and have advantages ( people may not read the legal ads in a newspaper) and disadvantages (someone may tear down the notice) so it is up to the local jurisdiction to decide whether to include this paragraph.

<sup>30</sup> **Note:** This section is also drafted for jurisdictions where both the planning board and the governing body hold public hearings. Alternatives can be found in Supplement 1 of Alternative Provisions and Processes.

b. Recommendation

i. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:

- A. these regulations, including but not limited to the standards set forth in Section VI;
- B. applicable zoning regulations;
- C. The MSPA, including but not limited to 76-3-608(3), as delineated in sections IV-A-8(a) and (b)(iv) of these regulations; and
- D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- A. the subdivision application and preliminary plat;
- B. the environmental assessment;
- C. the summary of probable impacts and proposed mitigation ;
- D. an officially adopted growth policy;<sup>31</sup>
- E. information provided at public hearing(s);
- F. subdivision administrator's staff report and recommendation; and
- G. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the public hearing, the planning board shall submit the following, in writing, to the subdivider and the governing body:

- A. recommended findings of fact based on the evidence in subsection (b)(ii) above that discuss and consider the subdivision's compliance with and

---

<sup>31</sup> **Note:** The planning board may not base its recommendation solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

impact on the items listed in subsection (b)(i) above of these regulations;  
and

- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- C. a recommendation for approval or denial of any requested variances.(see Section XI-B).

c. Water and Sanitation Information

The planning board or planning staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations.<sup>32</sup> The planning board shall forward all comments regarding water and sanitation to the governing body.

**IV-A-5. Subdivider's Preference for Mitigation**

No later than two working days before the meeting or hearing at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations, as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation.

**IV-A-6. Governing Body Hearing**<sup>33</sup>

- a. After the planning board makes its recommendation, the governing body shall hold a public hearing on the subdivision application.
- b. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the governing body directly, to be forwarded to the governing body.
- c. Upon an objection made at the hearing, the governing body shall determine whether public comments or documents presented for consideration at the governing body's public hearing constitute either:
  - i. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
  - ii. new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision

---

<sup>32</sup> **Note:** The water and sanitation information required to be submitted is detailed in Administrative Materials "A."

<sup>33</sup> **Note:** This section is also drafted for jurisdictions where both the planning board and the governing body hold public hearings. Alternatives can be found in Supplement 1 of Alternative Provisions and Processes.

application, in which case the governing body shall proceed as set forth in subsection (d) below.

- d. If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (e) and (f) below.
  - i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
  - ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule or direct the planning board to schedule a subsequent public hearing pursuant to Section IV-A-7.
  - iii. At the subsequent hearing the planning board or governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- f. New information or analysis of information is considered to be credible if it is based on one or more of the following:
  - i. physical facts or evidence;
  - ii. supported personal observations;
  - iii. evidence provided by a person with professional competency in the subject matter; or
  - iv. scientific data supported by documentation.

**IV-A-7. Subsequent Public Hearing**

- a. If a subsequent public hearing is held pursuant to section IV-A-6, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. The planning board or governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

- i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
  - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
  - iii. The subdivider shall post notice of the subsequent hearing at a conspicuous place on the site of the proposed subdivision.
- b. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

**IV-A-8. Governing Body Decision and Documentation**

a. Prerequisites to Approval

The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- i. provides easements for the location and installation of any planned utilities;
- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
- iv. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted;
- v. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted; and
- vi. provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection (a) above, and whether the proposed subdivision complies with:

- i. these regulations, including, but not limited to, the standards set forth in Section VI;
  - ii. applicable zoning regulations;
  - iii. other applicable regulations;
  - iv. the MSPA, including but not limited to the following impacts:<sup>34</sup>
    - A. impact on agriculture
    - B. impact on agricultural water user facilities
    - C. impact on local services
    - D. impact on the natural environment
    - E. impact on wildlife and wildlife habitat;
    - F. impact on public health and safety; and
  - v. proposed mitigation.
- c. Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the summary of probable impacts and mitigation;
- iv. an officially adopted growth policy;<sup>35</sup>
- v. comments, evidence and discussions at the public hearing(s);
- vi. subdivision administrator's staff report and recommendations;
- vii. planning board recommendation; and
- viii. any additional information authorized by law.

---

<sup>34</sup> **Note:** The local jurisdiction may wish to insert text from its growth policy explaining these impacts, or use Supplement 4 of Alternative Provisions and Processes as a guide.

<sup>35</sup> **Note:** The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

d. Water and Sanitation-Special Rules<sup>36</sup>

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat.<sup>37</sup> This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval.<sup>38</sup> This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iv. The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- v. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
  - A. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

---

<sup>36</sup> **Note:** The model regulations have taken the affirmative perspective to require water and sewer approval as a condition of approval.

<sup>37</sup> **Note:** Section 76-3-604(7)(a) provides that the governing body *may* require approval by the DEQ as a condition of approval of the final plat. This sentence makes that procedure mandatory.

<sup>38</sup> **Note:** Section 76-3-604(7)(b) provides that the governing body *may* condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and replacement drain field for each lot. This sentence makes that procedure mandatory.

- B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Governing Body Decision

- i In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.
- ii. When the governing body approves,<sup>39</sup> denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
  - A. contain information regarding the appeal process for the denial or imposition of conditions;
  - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
  - C. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
  - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
  - E. set forth the time limit for approval, pursuant to subsection (f) below.

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
  - A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.
  - B. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in Section II-B-4.

---

<sup>39</sup> **Note:** Section 76-3-620, MCA, does not make it mandatory for the governing body to provide a letter to the subdivider when it approves a subdivision application. However, we strongly recommend a jurisdiction adopt the language for approvals as well to provide documentation of the decision in case of a challenge.

- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.
- iii. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

**IV-A-9. Amended Applications**<sup>40</sup>

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to section II-A-6 but before the Planning Board hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
  - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection (d) below.
  - ii. The 60-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
  - iii. If the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
  - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed changes.<sup>41</sup>
- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body hearing, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
  - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the

---

<sup>40</sup> **Note:** Section 76-3-504(1)(c) requires the subdivision regulations to contain procedures for amended applications. The statute gives no specific guidance on the subject; therefore, this Amended Applications section is only an example of how a local government might decide to handle amended applications.

<sup>41</sup> **Note:** It is up to the jurisdiction whether or not to impose a new fee. The statute neither requires nor prohibits a new fee.

subdivision application or preliminary plat are material pursuant to subsection (d) below.

- ii. The 60-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
  - iii. If the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
  - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
    - A. require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee;<sup>42</sup> or
    - B. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the subdivision administrator's determination to schedule a new planning board hearing shall be provided as set forth in section IV-A-3. A supplemental staff report shall be prepared to address the changes to the original application
  - v. If a new Planning Board hearing is held pursuant to subsection (b)(iv)(B) above, the 60-working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii).
- d. The following changes, although not an exhaustive list, may be considered material:
- i. configuration or number of lots;
  - ii. road layout;
  - iii. water and/or septic proposals;
  - iv. configuration of park land or open spaces;
  - v. easement provisions;
  - vi. proposed covenants; or
  - vii. designated access.

---

<sup>42</sup> **Note:** The local government has discretion whether a new application fee will be charged.

- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
  - i. The 60-working day review period is suspended until the governing body decision on the appeal is made.
  - ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to subsections (b)(iv)(A) or (B).
  - iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 60-working day review period resumes as of the date of the decision.
  - iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 60-working day review period provided in subsection (i) above.

**IV-B. Major Final Plats**

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section II-B, Final Plats.

## V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW<sup>43</sup>

### V-A. Purpose

The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3. These regulations address the more commonly used exemptions.

### V-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA

The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

### V-C. Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA]

The governing body will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in Section XI-A. The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
  - i. This Exemption Applies:
    - A. to a division of land of any size;

---

#### <sup>43</sup> **Comment:**

Local governments are required to prevent the misuse of the exemptions from local subdivision review by adopting criteria that define the proper and improper use of the exemptions. These criteria should be used by the governing body or reviewing authority to determine whether a proposed method of disposition is an attempt to evade subdivision review. The 2005 amendments to the Montana Subdivision and Platting Act also allow a subdivider to appeal to the governing body a decision that a division of land is for the purpose of evading subdivision review unless the governing body made the original decision.

- B. if the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations.
- C. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.

ii. Statement of Intent

Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a person who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.

iii. Use of Exemption

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot.

This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.

iv. Required Materials

When this exemption is to be used, the landowner must submit to the subdivision administrator:

- A. a statement of how many interests within the original tract will be created by use of the exemption;
- B. the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
- C. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and

- D. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

v. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- A. it will create more than one new building site;
  - B. the financing is not for construction or improvements on the exempted parcel, or for re-financing;
  - C. the person named in the “statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed” is anyone other than the borrower of funds for construction;
  - D. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
  - E. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
  - F. it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or
  - G. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
  - d. A division of land creates cemetery lots;
  - e. A division of land is created by the reservation of a life estate;
  - f. A division of land is created by lease or rental for farming and agricultural purposes;
  - g. A division of land is in a location over which the state does not have jurisdiction; or
  - h. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

**V-D. Divisions of Land Which May be Exempt from Review and Surveying**

- a. Generally condominiums are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land divided in compliance with these regulations and the MSPA, and:
  - i. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or
  - ii. The condominium proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.
- b. Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of the MSPA and these regulations, but must be submitted for review and approved by the governing body before portions may be rented or leased.
  - i. When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the MSPA or these regulations;
  - ii. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these regulations.
- c. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
- d. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
- e. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- f. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [ 44 A.G. Op. 25 (1992)]. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

**V-E. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations**

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder shall notify the subdivision administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Clerk and Recorder prior to the survey being submitted to the subdivision administrator for evasion review.

**V-E-1. Relocation of Common Boundary [76-3-207(1)(a), MCA]**

a. Statement of Intent

The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review.

b. Required Information

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) [Appendix A] must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

c. Use of Exemption

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

d. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- i. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
- ii. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

**V-E-2. A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]**

a. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.

b. Required Information

A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certification of compliance [ARM 24.183.1104(1)(f)] found in Appendix A. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. Use of Exemption

One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

d. Rebuttable Presumptions

- i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
- ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
- iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
- iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

**V-E-3. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]**

a. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

b. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(f)(iii) in the Appendix] The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

c. Use of Exemption.

- i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- iii. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

d. Rebuttable Presumptions.

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- i. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.
- ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
- iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

**V-E-4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]**

a. Statement of Intent

- i. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.
- ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the clerk and recorder.

b. Use of exemption<sup>44</sup>

Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

c. Rebuttable presumption

- i. If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

**V-F. Procedures and Review of Subdivision Exemptions**

**V-F-1. Submittal**

Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)

---

<sup>44</sup> **Note:** The conjunctive wording in 76-3-207 (d), MCA, has been interpreted as an alternative—no review is generally necessary if common boundaries are relocated within a platted subdivision or if fewer than five lots are aggregated in a platted subdivision.

**V-F-2. Review**

When a division of land for which an exemption is claimed is submitted to the subdivision administrator, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., county attorney, sanitarian, treasurer, and clerk and recorder). The subdivision administrator and governing body agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- a. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section V.
- b. The subdivision administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.
- c. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the subdivision administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and the criteria in this Section V, the subdivision administrator shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.
- d. The subdivision administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review .

**V-F-3. Appeals**

- a. Any person whose proposed use of an exemption has been denied by the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the subdivision administrator's decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the MSPA or these regulations, and, thereby rebut a presumption.
- b. If the governing body concludes that the evidence and information overcome the presumption that the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

- c. If the person proposing to use an exemption chooses not to rebut a presumption when the subdivision administrator deems the use of the exemption an attempt to evade the MSPA and these regulations, or if the governing body determines that the proposed use of an exemption was for the purpose of evading the MSPA or these regulations, the landowner proposing to use the exemption may submit a subdivision application for the proposed land division.

#### **V-G. Remaining Parcels of Land**

Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term “remainder” has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer.

A “remainder” less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review as a “remainder.” If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed.

~~A landowner claiming that a parcel is a “remainder” shall present evidence that the parcel is in fact intended to be retained and not to be transferred. Examples of such evidence include the existence of the landowner’s residence on the parcel or building plans for a structure to be built by or for the landowner.~~

#### **V-H. Identification Codes**

To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these regulations.

- CO ... Court order [76-3-201(1)(a), MCA]
- ME ... Mortgage Exemption [76-3-201(1)(b), MCA]
- LE ... Life Estate [76-3-201(1)(e), MCA]
- RB ... Relocation of Common Boundary [76-3-207(1)(a), MCA]
- FC ... Family Conveyance [76-3-207(1)(b), MCA]
- AE ... Agricultural Exemption [76-3-207(1)(c), MCA]
- OS ... Occasional Sale (used prior to April 6, 1993)
- AL ... Aggregation of Lots [76-3-207(e), MCA]

## **VI. DESIGN AND IMPROVEMENT STANDARDS**<sup>45</sup>

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section XI-B, Variances. The governing body may not grant variances from the provisions of Section VI-D, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to sections VII, VIII, and IX of these regulations.

### **VI-A. Conformance with Regulations**

The design and development of a subdivision must conform with any applicable zoning or other regulations.

### **VI-B. Natural Environment**

The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

### **VI-C. Lands Unsuitable for Subdivision**

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

### **VI-D. Floodplain Provisions**

Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and the 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The evaluation must follow the “guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas” which may be found at the following website: [www.mtfloods.org](http://www.mtfloods.org).

The subdivider shall be responsible for assuring the DNRC submits its report to the subdivision administrator, prior to the hearing or meeting on the subdivision application.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a

---

<sup>45</sup> **Note:** These standards have been changed very little from the 2003 model.

flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.

**VI-E. Improvement Design**

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

**VI-F. Lots**

Each lot must contain a satisfactory building site and conform to health department regulations, applicable zoning regulations and these regulations.

- a. No lot may be divided by a municipal or county boundary line.
- b. No lot may be divided by a public road, alley or utility right-of-way or easement.
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot.
- d. Corner lots must have driveway access to the same street or road that provides access to interior lots.
- e. Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.
- f. No lot may have an average depth greater than three times its average width.
- g. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

**VI-G. Blocks**

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,600 feet.
- c. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.

- d. Rights-of-way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

**VI-H. Streets and Roads**<sup>46</sup>

a. Design

- i. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
- ii. Roads must meet the design specifications in Table 1.
- iii. Where streets terminate, either a cul-de-sac or “T” turnaround must be provided at the terminus. Cul-de-sacs and “T” turnarounds must conform to the design specifications in Table 1.
- iv. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners’ association.
- v. Residential driveways must not have direct access to primary highways. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation.
- vi. Local streets must be designed so as to discourage through traffic.
- vii. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- viii. Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- ix. The alignment of all streets and roads must provide adequate sight distances.
- x. Intersections. The following requirements apply to intersections:

---

<sup>46</sup> **Comment: Streets, Roads, and Bridges**

Local governments must adopt standards for the construction of streets, roads, bridges, sidewalks, curbs, and gutters. These design standards must mirror the standards adopted by the county road department or the city street department.

- A. streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
  - B. two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
  - C. no more than two streets may intersect at one point.
  - D. intersections of local streets with major arterials or highways must be avoided.
  - E. intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
  - F. hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
  - G. the grade of approaches to major highways may not exceed five percent.
- xi. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.
  - xii. Proposed road plans and profiles as required by Section II-A-5 are subject to approval by the Public Works director or Road Department Superintendent.

b. Improvements

- i. All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations using materials approved by the governing body.
- ii. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the governing body.
- iii. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- iv. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1.

Easements must be granted by each property owner in a signed and notarized document. (Administrative Materials Section E contains a model road access easement).

The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

- v. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.
- vi. Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.
- vii. Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- viii. When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

**TABLE 1: Road Design Standards for Subdivisions**<sup>47</sup>

<u>Minimum Design Standards</u>	<u>Collector</u>	<u>Local Road</u>
1. Minimum right-of-way width	60 ft.	
a. level terrain		50 ft.
b. hilly terrain		60 ft.
2. Minimum roadway width <sup>1</sup>	26 ft.	24 ft.
3. Minimum curb radius or edge of pavement at intersections	25 ft.	15 ft.
4. Maximum grades	8%	10%
5. Approaches onto Public Roads		
a. minimum sight distance	200 ft.	150 ft.
b. minimum width	35 ft.	30 ft.
c. maximum grade for 20'	5%	5%
6. Curvature <sup>2</sup>		
a. design speed	30 mph	20 mph
b. maximum curve	23	53.5
c. minimum radius	249 ft.	107 ft.
7. Cul-de-sacs/Turnarounds		
a. maximum road length	-	1000 ft.
b. cul-de-sac: minimum outside right-of-way radius	-	40 ft.
c. cul-de-sac: minimum outside roadway radius	-	35 ft.
d. "T" turnaround: backup lengths (2 required)	-	30 ft. each
8. New bridges		
a. curb-to-curb widths <sup>3</sup>	26 ft.	24 ft.
b. design load capacity	20 tons	20 tons
c. vertical clearance	14.5 ft.	14.5ft.

<sup>1</sup> Where parking will be permitted add eight feet on each side. If guardrail installation is required or a shoulder is desired, add two feet to each side of roadway.

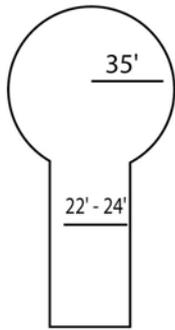
<sup>2</sup> Curvature is based on a super-elevation of .08/ft.

<sup>3</sup> Width of the bridge roadway surface should match the width of the roadway system it joins.

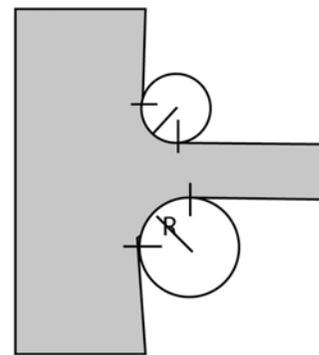
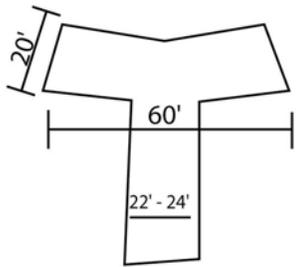
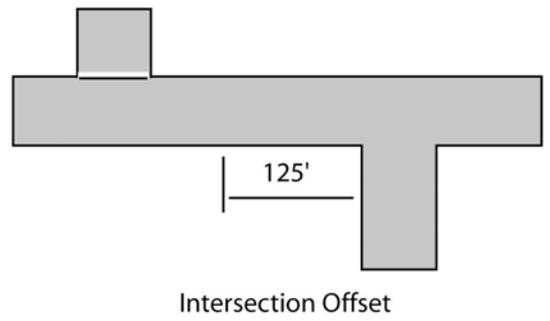
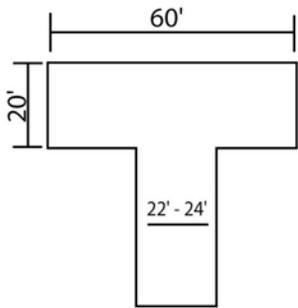
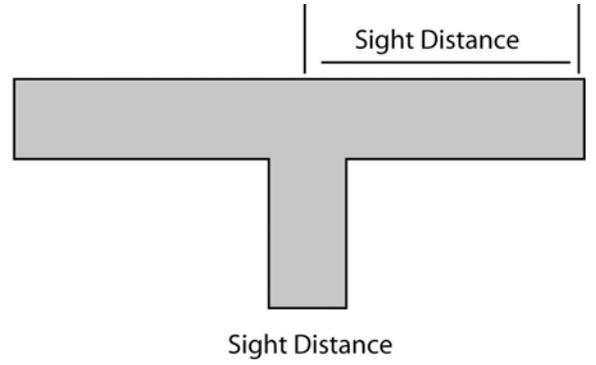
---

<sup>47</sup> **Comment:**

Local jurisdictions are encouraged to review these suggested design standards carefully and make any reasonable revisions to meet local circumstances relating to terrain and traffic volumes. The governing body may wish to adopt special road standards for subdivisions that, because of the number, size, shape, and location of lots or expected traffic loads, can be adequately served by roads built to lower standards. Graphics on the following page illustrate a number of the requirements.



Cul-de-sac



Curb Radius

**VI-I. Drainage Facilities**

- a. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- b. A grading and drainage plan as required by Section II-A-5(6) is subject to approval by the Public Works Director or Road Department Superintendent.
- c. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- d. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.
- e. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- f. Drainage systems must not discharge into any sanitary sewer facility.
- g. Drainage systems must be designed and certified by a professional engineer.
- h. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

**VI-J. Water Supply Systems**<sup>48</sup>

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.

---

<sup>48</sup> **Comment:**

Local governments are required to adopt standards in their regulations that either meet DEQ's standards or those set forth in 76-3-604 and 76-3-622. The local governing body may adopt these standards by reference, as shown above, or may restate the standards in full in its local regulations. If the governing body wishes to adopt standards more stringent than comparable standards adopted by DEQ, it must follow the requirements of section 76-3-511, MCA.

- b. The governing body may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.
- c. If the lots are 20 acres or greater in size, the subdivider shall demonstrate that there is an adequate water source on each lot prior to final plat approval.
- d. Any central water supply system must provide adequate and accessible water for fire protection.

**VI-K. Sewage Treatment Systems**

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the governing body can approve the final plat.
- c. For subdivisions containing parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot before the governing body may approve the final plat.

**VI-L. Solid Waste**

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of must comply with the standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- c. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA.
- c. For subdivisions that will create one or more parcels containing 20 acres ore more and less than 160 acres, the proposed method of storing and disposing of solid waste generated within the subdivision in the subdivision must comply with the local environmental health department regulations.

**VI-M. Utilities**

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.
- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.
- f. Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.
- h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as ‘Utility Easement’ to have and to hold forever.”

**VI-N. Water Course and Irrigation Easements**

- a. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements that:
  - i. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

- ii. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - iii. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
- i. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
  - ii. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
  - iii. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

**VI-O. Disposition of Water Rights**

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

- a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- c. reserved and severed all surface water rights from the land proposed for subdivision.

**VI-P. Park Land Dedication – Cash in Lieu – Waivers -- Administration**<sup>49</sup>

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
  - i. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
  - ii. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
  - iii. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  - iv. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- b. A park dedication is not required for:
  - i. minor subdivisions;
  - ii. subdivision lots larger than five acres;
  - iii. nonresidential subdivision lots;
  - iv. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  - v. subdivisions which will create only one additional parcel.
- c. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- d. The governing body will waive the park dedication requirement if it determines that:

---

<sup>49</sup> Comment: As provided in 76-3-621(2), MCA, if a proposed subdivision will be located entirely within an area for which the governing body has established density requirements in an adopted growth policy or zoning regulations, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or zoning regulations. These requirements are in lieu of those provided in subsection a., below, and may not exceed 0.03 acres per dwelling unit.

- i.
      - A. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
      - B. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection VI-P (a);
    - ii.
      - A. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
      - B. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection VI-P(a) above;
    - iii. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (d)(i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection VI-P(a); or
    - iv.
      - A. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
      - B. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection VI-P(a).
- e. The local governing body may waive the park dedication requirement if:
  - i. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
  - ii. The area of land to be subject to long-term protection, as provided in subsection (e)(i), equals or exceeds the area of dedication required under subsection VI-P(a).
- f. Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection VI-P(a) to a school district, adequate to be used for school facilities or buildings.
- g. The governing body will administer funds dedicated to the public under this section in accordance with 76-3-621, MCA.
- h. For the purposes of this park dedication requirement:
  - i. “cash donation” means the fair market value of the unsubdivided, unimproved land; and

- ii. “dwelling unit” means a residential structure in which a person or persons reside.

**VI-Q. Fire Protection**<sup>50</sup>

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. Measures must include:

- a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for fire fighting equipment.
- b. The presence of adequate fire fighting facilities on site, including an adequate water supply and water distribution system.
- c. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

**VI-R. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard**

For areas identified as wildfire hazard areas by the United States Forest Service, the Montana Department of Natural Resources and Conservation, a local fire protection authority, or a local growth policy, the following apply:

- a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan must include the following items:
  - i. an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
  - ii. a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;
  - iii. a map of the areas that are to be thinned to reduce the interlocking canopy of trees;
  - iv. the identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.
- c. At least two entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of 20 tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.

---

<sup>50</sup> **Comment:**

In setting fire protection standards, local officials should consult the current edition of the Uniform Fire Code, International Fire Code Institute, and local fire codes.

- d. Building sites may not be located on slopes greater than 25 percent or at the apex of “fire chimneys” (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. The Fire Prevention and Control Plan must be implemented before the governing body will approve the final plat, and will be considered part of the subdivider’s obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the fire chief has given written notice to the planning board or subdivision administrator that the Plan has been completed as approved by the (planning board).
- f. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A property owners’ association must be formed and designated to enforce the covenants, conditions, and restrictions.
- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by (the appropriate local fire protection authority).\*

\* In the absence of such standards, the subdivider must at least provide the following for effective fire control:

- a. A central water system with a minimum continuous flow of 1,000 gallons per minute; or
- b. Cisterns, reservoirs or fill ponds:
  - i. For single dwelling units: minimum capacity of 2,500 gallons;
  - ii. For 6 or more dwelling units: minimum capacity of 500 gallons per dwelling unit.

**VI-S. Noxious Weeds**

A weed control plan shall be developed and implemented for every new subdivision. An agreement with the [name of county] Weed Control Board shall be signed and notarized by the subdivider, and the agreement must be recorded with the final plat.<sup>51</sup>

---

<sup>51</sup> **Note:** The particular jurisdiction may add to this provision as local conditions warrant and the Weed Control Board requests.

**VII. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES - LAND SUBDIVISIONS CREATED BY RENT OR LEASE**

**VII-A. Definition**

A subdivision created by rent or lease, including a mobile home/manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.

**VII-B. Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes<sup>52</sup>**

a. Recreational Camping Vehicles

Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under section VII-F Recreational Vehicle Park Standards, below.

b. Mobile/Manufactured Homes

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under section VII-E Mobile/Manufactured Home Park Standards, below.

c. Subdivisions for Lease or Rent, Generally

- i. Land subdivision created by rent or lease will be reviewed under the procedures described in Section IV, Major Subdivisions, or Section III, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Section II.
- ii. Land subdivisions created by rent or lease are subject to the applicable standards contained in Section VI.

---

<sup>52</sup> **Comment:**

The MSPA defines the term “subdivision” to include areas, regardless of their size, that provide or will provide multiple spaces for recreational camping vehicles or mobile homes regardless of whether the spaces will be made available for rent by the general public for a fee. A development which is a subdivision under the MSPA because it will provide multiple spaces for recreational camping vehicles or mobile homes may also be subject to regulation by the Montana Department of Public Health and Human Services (DPHHS) under Title 50, Chapter 52, MCA, if it will be a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA. If so, the governing body should condition its MSPA approval of the development on the subdivider’s obtaining the appropriate license from DPHHS.

## **VII-C. Procedures for Review**

### **VII-C-1. Review and Approval**

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. However, these subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased.

#### **a. Submittal**

The subdivider shall submit a completed application in accordance with Section II-A-5 and a plan of the proposed development, conforming to the requirements for preliminary plats.

#### **b. Review**

The procedure used to review subdivisions for rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Section IV of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section III of these regulations. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

### **VII-C-2. Improvements**

The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

### **VII-C-3. Final Plan Review**

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats in Section II. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the (office of the city clerk, clerk and recorder, planning or other).

### **VII-C-4. DPHHS License**

If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

**VII-D. Design Standards for Subdivision Spaces Created by Rent or Lease**

**VII-D-1. Design Standards**

Subdivisions created by rent or lease must comply with the provisions of Section VI.

**VII-D-2. Additional Provisions**

The governing body may require provision for:

- a. storage facilities on the lot or in compounds located within a reasonable distance;
- b. a central area for storage or parking of boats, trailers, or other recreational vehicles;
- c. landscaping or fencing to serve as a buffer between the development and adjacent properties;
- d. an off-street area for mail delivery; and
- e. street lighting.

**VII-E. Mobile/Manufactured Home Park Standards**

**VII-E-1. Mobile/Manufactured Home Spaces**

- a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
- c. The mobile/manufactured home pad must be located at least 10 feet from the street that serves it.
- d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
- e. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- f. The governing body may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
- g. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
- h. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.

- i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of 10 feet wide.
- j. One guest parking space must be provided for each 10 mobile/manufactured home spaces. Group parking may be provided.
- k. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
- l. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

#### **VII-E-2. Streets**

Streets within a mobile/manufactured home park must meet the standards specified in Section VI-H Streets and Roads. Streets must be designed to allow safe placement and removal of mobile homes.

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

#### **VII-E-3. Electrical Systems**

Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

#### **VII-E-4. Gas Systems**

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the “National Fuel Gas Code” (NFPA Pamphlet 54-1981) and the “Standard for the Storage and Handling of Liquefied Petroleum Gases” (NFPA Pamphlet 58-1981).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.

- c. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

**VII-F. Recreational Vehicle Park Standards**

**VII-F-1. Recreational Vehicle Spaces**

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
- b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
- c. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

**VII-F-2. Density**

The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

## **VIII. PLANNED UNIT DEVELOPMENTS**

### **VIII-A. Purpose**

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider creativity in subdivision design. Section 76-3-103(10), MCA defines a planned unit development as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.”

### **VIII-B. Procedures**

If the governing body designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures contained in the following Sections:

IV. Major Subdivisions

II-B Applicable sections for Final Plats

### **VIII-C. Standards**

#### **VIII-C-1. Design Standards**<sup>53</sup>

PUDs must comply with the standards contained in Section VI Design and Improvement Standards. However, the governing body may modify the design and improvement standards contained in Section VI-F Lots, Section VI-G Blocks, Section VI-H Streets and Roads, and Section VI-P Park Land Dedication upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space. In such cases, no application for a variance under Section XI-B Variances of these regulations is necessary.

#### **VIII-C-2. Streets**

The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.

#### **VIII-C-3. Open Space**

Each PUD must comply with the requirements of Section VI-P(d) of these regulations. The open space must be:

---

#### <sup>53</sup> **Comment: Exceptions**

The local government may grant exceptions to the design standards contained in Section VI of these regulations when proposed PUDs include provisions for efficient traffic circulation, adequate light, air and open space. These subdivision regulations must state the circumstances under which modified design standards will be approved.

- a. Owned by a property owners' association; or
- b. Dedicated to public use, if acceptable to the governing body; or
- c. A combination of (a) and (b) above.

The governing body may waive dedication or cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and deed to the association land to be held in perpetuity for use as parks or playgrounds.

## **IX. CONDOMINIUMS**

### **IX-A. Procedures**

Unless exempted by section 76-3-203, MCA, all condominium developments are subdivisions subject to the terms of the MSPA as follows:

#### **IX-A-1. Review Where Land Will Not be Divided**

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section VII, Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Section II-B-4 Public Improvements Agreement; Guaranty.

#### **IX-A-2. Condominium Subdivisions Involving Land Divisions**

If a proposed condominium development will involve a division of land, the subdivision must be reviewed under the procedures contained in Sections:

IV-A Review and Approval Procedures for Major Subdivisions

II-B Applicable sections for Final Plats.

### **IX-B. Standards**

#### **IX-B-1. Design Standards**

Condominium developments must comply with applicable standards contained in Section VI, Design and Improvement Standards.

#### **IX-B-2. Unit Ownership Act**

Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA.

## **X. CLUSTER DEVELOPMENT**<sup>54</sup>

The [governing body] has adopted a growth policy that meets the requirements of 76-1-601, MCA, and further adopts the following to promote cluster development and preserve open space.

### **X-A. Cluster Development, Option I**

- a. As authorized by 76-3-509, MCA, the following apply to subdivisions proposed under this section:
  - i. An area of open space must be preserved that is at least as large as the area that will be developed.
  - ii. Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.
  - iii. Unless the subdivision will be provided with community sewer or water, each lot in the cluster must be a minimum of one acre.
  - iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
  - v. The maximum number of parcels permissible in a cluster development is the maximum number of parcels that are authorized by the administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA.
  - vi. The maximum size of parcels allowed within a cluster development is ( ) acres.
- b. Park dedication requirements for clustered subdivisions created under this section are waived.

### **X-B. Cluster Development, Option II**

- a. The following apply to cluster developments created under this option:
  - i. The development must preserve an area of open space that is at least as large as the area that will be developed.
  - ii. The proposal must provide a mechanism for the maintenance of the open space in perpetuity. The open space may be dedicated to a homeowners' association for the purpose of maintenance, and may be used for agricultural or other purposes that enhance the preserved area.
  - iii. Unless the subdivision will be served by a community sewer or water system, each lot in the cluster must be a minimum of one acre in size.

---

<sup>54</sup> **Note:** These options are examples, only. Refer to 76-3-509, MCA, and Supplement 4 of Alternative Provisions and Processes for other provisions. The law provides for an expedited review, if it is desired.

- iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
- b. Park dedication requirements are waived for clustered subdivisions created under this section.

**XI. ADMINISTRATIVE PROVISIONS**

**XI-A. Fee Schedule**<sup>55</sup>

**XI-A-1. Preliminary Plat Review**

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the county (or city) treasurer or planning department, are as follows:

<u>Number of Proposed Lots or Dwelling Units</u>	<u>Fee</u>
1-5 (first minor subdivisions)	(\$ __)
6 or more (major subdivisions) or subsequent minor subdivisions	(\$ __) plus (\$ __) per lot
Expedited subsequent minors	(\$ __)

**XI-A-2. Other Reviews**

Exemptions	(Not to exceed \$200)
Mobile/Manufactured Home Parks and Spaces	(Could be based on number of spaces)
Condominiums	(Could be based on number of units).

**XI-A-3. Final Plat Review and Inspection**

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a non-refundable fee at the time of application for final approval to the county (or city) treasurer or planning department at the following rate:

(\$ \_\_)

---

<sup>55</sup> **Comment: Fee schedules**

The governing body should develop and adopt fee schedules based on actual subdivision review and processing costs. Fees may include a review fee for Subdivision Improvements Agreements, Homeowners' Association documents, amending an application or plat, etc. Local governments may prefer to establish a fee schedule through a separate ordinance, and include it by reference rather than stating the fee schedule in the body of the regulations.

**XI-B. Variances**

**XI-B-1. Variances Authorized**

The governing body may grant variances from Section VI, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The governing body will not approve a variance unless it finds that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

**XI-B-2. Variances from Floodway Provisions Not Authorized**

The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

**XI-B-3. Procedure**

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

**XI-B-4. Conditions**

In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

**XI-B-5. Statement of Facts**

When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

**XI-C. Amendment of Regulations**

Before the governing body amends these regulations it will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

**XI-D. Administration**

**XI-D-1. Enforcement**

Except as provided in 76-3-303, MCA, and these regulations, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

**XI-D-2. Violation and Penalties**

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense.

**XI-D-3. Appeals**

- a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- b. A party identified in subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- c. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.
- d. The following parties may appeal under the provisions of subsection (b) above:
  - i. the subdivider;

- ii. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- iii. the county commissioners of the county where the subdivision is proposed; and
- iv. one of the following municipalities:
  - A. a first-class municipality as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;
  - B. a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits;
  - C. a third-class municipality, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

**APPENDIX A  
UNIFORM STANDARDS FOR MONUMENTATION,  
CERTIFICATES OF SURVEY, AND FINAL SUBDIVISION PLATS**

**24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION**

1. The following standards govern the monumentation of land surveys:
  - a. The terms "monument" and "permanent monument" as used in these regulations mean any structure of masonry, metal or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
  - b. All metal monuments must be at least one-half inch in diameter and 18 inches in length with a cap not less than 1 inch in diameter marked in a permanent manner with the license number of the surveyor in charge of the survey and either the name of the surveyor or the company employing the surveyor. Metal monuments marking a public land survey corner as described in 70-22-101, MCA, must be at least 24 inches long and 5/8 inch in diameter with an appropriately stamped metal cap at least 2 inches in diameter. A monument marking a public land survey corner may also consist of a cap as described in this rule set firmly in concrete.
  - c. Before a subdivision plat or certificate of survey may be filed for record the surveyor shall confirm the location of as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.
  - d. The surveyor shall set all monuments prior to the filing of a plat or certificate of survey except those monuments that will be disturbed by the installation of improvements or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.
    - i. If during the later monumentation of the corners of a plat or certificate of survey that were not monumented before the plat or certificate was filed, the surveyor finds that it is necessary to set a reference monument to a corner, the surveyor shall prepare and file an amended certificate of survey or subdivision plat.
    - ii. The failure of the surveyor to set the monuments by the date certified on the record of survey will be deemed a violation of these rules.
  - e. The surveyor shall set monuments at the following locations:
    - i. At each corner and angle point of all lots, blocks and parcels of land created by the survey.

- ii. At every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey.
  - iii. At every point of curve, point of tangency, point of reversed curve, point of compounded curve and point of intersection on each road right-of-way line created by the survey.
  - iv. At the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.
- f. If the placement of a required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument. This monument has the same status as other monuments of record if its location is properly shown. If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat.

**24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY**

1. A certificate of survey may not be filed by a county clerk and recorder unless it complies with the following requirements:
- a. A certificate of survey must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 ½ inch margin on the binding side.
  - b. One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
  - c. If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
  - d. A certificate of survey must show or contain on its face or on separate sheets referred to on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
    - i. A title or title block including the quarter-section, section, township, range, principal meridian and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision" or any title other than "Certificate of Survey."
    - ii. The name(s) of the person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.
    - iii. The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.

- iv. A north arrow.
- v. A scale bar. (The scale must be sufficient to legibly represent the required information and data.)
- vi. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
  - A. If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to which they will be set.
  - B. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).
- vii. The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the survey.
- viii. Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- ix. The bearings, distances and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
  - A. The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.
  - B. For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- x. Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.
- xi. Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- xii. A narrative legal description of the parcel surveyed as follows:

- A. If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
  - B. If the survey depicts the retracement or division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.
  - C. If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the parcel surveyed.
  - D. If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.
  - E. The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel.
- xiii. Except as provided by (1)(f)(iv), all parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.
  - xiv. The location of any easement that will be created by reference to the certificate of survey.
  - xv. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3- 625, MCA) and the regulations adopted under that Act.
  - xvi. A memorandum of any oaths administered under 76-3-405, MCA.
  - xvii. Space for the county clerk and recorder's filing information.
- e. Certificates of survey that do not represent a division of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must bear a statement as to their purpose and must meet applicable requirements of this rule for form and content.
  - f. Procedures for divisions of land exempted from public review as subdivisions. Certificates of survey for divisions of land meeting the criteria set out in 76-3-207, MCA, must meet the following requirements:
    - i. A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be

filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

- ii. If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.
- iii. If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
- iv. If a certificate of survey invokes the exemption for the relocation of common boundary lines:
  - A. The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);
  - B. The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;
  - C. If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.
- v. A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.
- vi. If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.
- vii. For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.

- g. Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205 and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

#### **24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS**

1. A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies with the following requirements:
  - a. Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.
  - b. One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
  - c. If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
  - d. A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended.," and unless it is exempt from subdivision review by 76- 3-201 or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder unless it meets the filing requirements for final subdivision plats specified in this rule.
2. A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
  - a. A title or title block indicating the quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".
  - b. The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.
  - c. A north arrow.
  - d. A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)

- e. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
  - i. If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.
  - ii. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c)
- f. The location of any section corners or corners of divisions of sections pertinent to the survey.
- g. Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- h. The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
  - i. The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.
  - ii. For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- i. Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.
- j. Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- k. The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.
- l. All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)
- m. All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all

other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.

- n. The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.
  - o. The total acreage of the subdivision.
  - p. A narrative legal description of the subdivision as follows:
    - i. If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
    - ii. If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
    - iii. If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
    - iv. If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
  - q. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.
  - r. A memorandum of any oaths administered under 76-3-405, MCA.
  - s. The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
  - t. Certification by the governing body that the final subdivision plat is approved.
  - u. Space for the clerk and recorder's filing information.
3. The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:
- a. If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.
  - b. If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.

- c. A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
- d. Copies of any covenants or deed restrictions relating to the subdivision.
- e. If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.
- f. A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.
- g. Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.
- h. If applicable, the certificate of the examining land surveyor.
- i. If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.
- j. The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

**ADMINISTRATIVE MATERIALS "A"**

**SUBDIVISION PLAT APPLICATION**

**PART I GENERAL DESCRIPTION AND INFORMATION**

1. Name of the proposed subdivision \_\_\_\_\_
2. Location (City and/or County) \_\_\_\_\_  
Legal description: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_
3. Type of water supply system:
  - a. Individual surface water supply from spring \_\_\_\_\_
  - b. Multiple-family water supply system (3-14 connections and fewer than 25 people) \_\_\_\_\_
  - c. Service connection to multiple-family system \_\_\_\_\_
  - d. Service connection to public system \_\_\_\_\_
  - e. Extension of public main \_\_\_\_\_
  - f. New public system \_\_\_\_\_
  - g. Individual well \_\_\_\_\_
4. Type of wastewater treatment system:
  - a. Individual or shared on-site septic system \_\_\_\_\_
  - b. Multiple-family on-site system (3-14 connections and fewer than 25 people) \_\_\_\_\_
  - c. Service connection to multiple-family system \_\_\_\_\_
  - d. Service connection to public system \_\_\_\_\_
  - e. Extension of public main \_\_\_\_\_
  - f. New public system \_\_\_\_\_
5. Name of solid waste garbage disposal site and hauler:  
\_\_\_\_\_
6. Is information included which substantiates that there will be no degradation of state waters or that degradation will be nonsignificant? \_\_\_\_\_
8. Descriptive Data:
  - a. Number of lots or rental spaces \_\_\_\_\_

- b. Total acreage in lots being reviewed \_\_\_\_\_
- c. Total acreage in streets or roads \_\_\_\_\_
- d. Total acreage in parks, open space, and/or common facilities \_\_\_\_\_
- e. TOTAL gross acreage of subdivision \_\_\_\_\_
- f. Minimum size of lots or spaces \_\_\_\_\_
- g. Maximum size of lots or spaces \_\_\_\_\_

9. Indicate the proposed use(s) and number of lots or spaces in each:

- \_\_\_\_\_ Residential, single family
- \_\_\_\_\_ Residential, multiple family
- \_\_\_\_\_ Types of multiple family structures and numbers of each (e.g. duplex)
- \_\_\_\_\_ Planned Unit Development (Number of units \_\_\_\_\_ )
- \_\_\_\_\_ Condominium (Number of units \_\_\_\_\_ )
- \_\_\_\_\_ Mobile Home Subdivision (Number of spaces \_\_\_\_\_ )
- \_\_\_\_\_ Recreational Vehicle Subdivision (Number of spaces \_\_\_\_\_ )
- \_\_\_\_\_ Commercial or Industrial
- \_\_\_\_\_ Other (please describe) \_\_\_\_\_

10. Provide the following information regarding the development:

- a. Current land use \_\_\_\_\_
- b. Existing zoning or other regulations \_\_\_\_\_
- c. Depth to ground water at the time of year when water table is nearest to the natural ground surface within the drainfield area \_\_\_\_\_
- d. Depth to bedrock or other impervious material in the drainfield area \_\_\_\_\_
- e. If a tract of land is to be subdivided in phases, an overall development plan indicating the intent for the development of the remainder of the tract.
- f. Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)

g. Indicate whether the mineral rights have been severed from the property:  
Yes\_\_\_\_\_ No\_\_\_\_\_

h. Indicate whether water rights have been severed from the property:  
Yes\_\_\_\_\_ No\_\_\_\_\_

11. Is the applicant claiming an exemption under Section IV-A-1 of the subdivision regulations from the requirement to prepare an environmental assessment?  
Yes\_\_\_\_\_ No\_\_\_\_\_

Name, address, and telephone number of designated representative, if any (e.g., engineer, surveyor).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

Name, address, and telephone number of owner(s).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of owner

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

Name, address, and telephone number of subdivider if different than owner(s).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of subdivider

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

The application must be signed by the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale.

## **PART II      PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS**

### **1.      Preliminary Plat Subdivision Application Form:**

The subdivider shall submit a completed subdivision application form that is signed by the landowner(s) of record.

### **2.      Preliminary Plat Review Fee:**

The subdivider shall submit the required review fee as identified in the pre-application meeting and in Section XI-A of the subdivision regulations.

### **3.      Preliminary Plat Form, Contents, and Supplements:**

The subdivider shall submit an 11” by 17” and an 18” by 24” (or 24” by 36”) preliminary plat completed by a land surveyor.

The following information must be provided on the preliminary plat or in supplements to the preliminary plat:

- a.      The subdivision or development name (the title must contain the words “plat” and/or “subdivision”)
- b.      The legal description, including Section, Township, and Range, and any underlying survey data;
- c.      A north arrow;
- d.      The scale used on the plat;
- e.      The certification of a professional land surveyor;
- f.      The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications);
- g.      The names of all owners of record and the subdivider [if different from the owner(s)];
- h.      The date the preliminary plat is completed;
- i.      Proposed lot layout with approximate dimensions and sizes;
- j.      Lots and blocks identified by number or letter;
- k.      The use of each lot, if other than for single-family residential;
- l.      The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given;
- m.      All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property;
- n.      All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each;
- o.      Existing and proposed road and street names;
- p.      Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, alleys, or highways;
- q.      The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted lands;
- r.      The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- s.      Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use;
- t.      The total gross area of the subdivision and the total net area, exclusive of public areas and rights-of-way;
- u.      Existing and proposed infrastructure and proposed utilities including:
  - i.      The approximate location, size, and depth of existing and proposed sanitary and storm sewers;

- ii. The approximate location, size, and depth of existing and proposed water mains, lines, wells, and facilities; and
  - iii. The approximate locations of gas lines, fire hydrants or firefighting water storage facilities, electric and telephone lines, and street lights.
- 4. A vicinity sketch showing:
  - a. The approximate locations of all existing buildings, structures, and other improvements;
  - b. Ownership of lands immediately adjoining a subdivision, and existing buildings, structures and other improvements on those lands; and
  - c. Any existing or proposed zoning of the tract and adjacent lands, if applicable.
- 5. A topographic map:
  - a. For any land area which will be subdivided or disturbed, contour intervals of 2' where the average slope is less than 10%; intervals of five feet where the average slope is greater than 10% and less than 15%; and intervals of ten feet where the average slope is 15% or greater.
  - b. Slopes greater than 25% shall be shown as no-build zones.
- 6. A grading and drainage plan that includes:
  - a. Proposed grades of all streets and roads;
  - b. Proposed drainage facilities for all lots, blocks, and other areas displaying accurate dimensions, courses, and elevations;
  - c. Existing and proposed contours, using the contour requirements of a topography map;
  - d. Graded slopes;
  - e. Calculations for a ten year frequency one-hour storm and a method to mitigate adverse impacts for a 100-year frequency one-hour storm; and
  - f. Construction procedures, slope protection, or information describing the ultimate destinations of storm runoff used to minimize erosion; and
  - g. Slope Stability Report shall be completed if the proposed subdivision includes areas with the potential for landsliding or slope instability. The report must be completed by a qualified soil or geotechnical engineer and indicate the locations, character, and extent of all areas of all slope stability, and these areas shall be shown on the plat.
- 7. Engineering plans for all public and private improvements;
- 8. Overall development plan and if the improvements are to be completed in phases, the approximate area of each phase shall be shown on the plat.
- 9. Abstract of Title (or Title Report) dated not more than 90 days prior to the date of submittal;
- 10. Lienholders' Acknowledgement of Subdivision for each lienholder identified on the Abstract of Title or Title Report;
- 11. Documentation of legal and physical access;
- 12. Documentation of existing easements, including those for Agricultural Water User Facilities;
- 13. Existing covenants and deed restrictions;
- 14. Existing water rights;
- 15. Existing mineral rights;
- 16. Names and addresses of all adjoining property owners;
- 17. A proposed road plan and profile that includes:
  - a. Street names.
  - b. Right-of-way or easement widths;
  - c. Pavement widths;
  - d. Street grades;
  - e. Pavement and base thickness;
  - f. Typical cross sections for each type of road;
  - g. Road profiles and cross sections for all proposed streets and roads which have grades exceeding 5%, or cuts and fills exceeding 3'.
  - h. The type and location of sidewalks and curbs (where required);
  - i. The minimum site distances at corners;
  - j. The minimum curb radiuses at corners;

- k. For cul-de-sac streets:
    - i. widths of turn around radiuses;
    - ii. minimum right-of-way widths at the turnarounds;
    - iii. minimum pavement or road surface width at the turnarounds;
    - iv. total lengths of the streets.
  - l. The locations and characteristics of bridges and culverts;
  - m. The locations and dimensions of adjoining lots and open spaces;
  - n. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets;
  - o. Typical grading and location of intersections with private driveways; and
  - p. Description of how the roads will be maintained.
18. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
  19. Proposed easements;
  20. Proposed disposition of water rights, as required by Section VI-O of the subdivision regulations;
  21. Proposed disposition of mineral rights;
  22. Parkland dedication calculations, including a property valuation assessment or appraisal if cash-in-lieu of parkland is proposed;
  23. Environmental Assessment and/or Summary of Probable Impacts including:
    - a. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
    - b. an explanation of how the subdivider has responded to the comments of the subdivision administrator at the pre-application meeting.
  24. Transportation Impact Analysis or Transportation Plan;
  25. Fire Risk Rating Analysis and Fire Prevention Plan as required in Section VI-R of the subdivision regulations;
  26. Weed Management Plan and Re-vegetation Plan;
  27. Property owners' Association Documents shall accompany the preliminary plat, and at a minimum shall provide the information, form, and contents included in Section II-B-3 of the subdivision regulations;
  28. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-D of the subdivision regulations and paragraph 35 of this Part II.
  29. Required water and sanitation information, including:
    - a. Provide the following attachments to the preliminary plat:
      - i. A vicinity map or plan that shows:
        - A. The location, within 100 feet outside of the exterior of the property line of the subdivision and on the proposed lots, of:
          1. floodplains;
          2. surface water features;
          3. springs;
          4. irrigation ditches;
          5. existing, previously approved, and for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
          6. for parcels less than 20 acres, mixing zones identified as provided in subsection (X); and
          7. the representative drainfield site used for the soil profile description as required under subsection (C)(4); and

- B. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.
- ii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, as provided below, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rule published by the DEQ;
- iii. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by DEQ pursuant to 76-4-104;

b. Water Supply

- i. High Groundwater Report indicating there is not a problem with high groundwater present on the property proposed for subdivision. When evidence of high groundwater is present, the developer must submit plans that are prepared by a professional engineer to mitigate the problem;
- ii. A vicinity map or plan that shows:
  - A. the location, within 100' outside of the exterior property line of the subdivision and on the proposed lots of:
    - 1. floodplains;
    - 2. surface water features;
    - 3. springs;
    - 4. irrigation ditches;
    - 5. existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
    - 6. for parcels less than 20 acres, mixing zones identified as provided in subsection c.i.C.1 below.
  - B. the location, within 500' outside the exterior property line of the subdivision, of public water and sewer facilities;
- iii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the Department of Environmental Quality in the Administrative Rules of Montana, or 76-4-101 et seq., MCA, including the following information:
  - A. If an **individual water supply system** is proposed for each parcel:
    - 1. Indicate the distance to the nearest public water system.
    - 2. Attach a copy of the lot layout showing the proposed location of each spring, well, or cistern and indicating the distance to existing or proposed wastewater treatment systems.
    - 3. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
  - B. For a **multiple user water system**:
    - 1. If an existing system is to be used:
      - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
      - b. indicate the system's capacity to handle additional load and its distance from the development;
      - c. provide evidence that permission to connect to the system has been granted;

2. provide the following attachments:
    - a. map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
    - b. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
  3. evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
  - iv. Where a new system is proposed:
    - a. Provide evidence of adequate water availability, unless cisterns are proposed:
      - i. obtained from well logs or testing of onsite or nearby wells;
      - ii. obtained from information contained in published hydrogeological reports; or
      - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
    - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
    - c. provide all information required in ARM 17.36.330-336 and Circular DEQ-3.
    - d. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
- C. For a **public water system**:
1. If an existing system is to be used:
    - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
    - b. indicate the system's capacity to handle additional load and its distance from the development;
    - c. provide evidence that permission to connect has been granted;
    - d. provide the following as attachments:
      - i. a map or plat showing the location, sizes, and depth of any existing water lines and facilities which will directly serve parcels within the proposed development;
      - ii. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
      - iii. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
  2. If a new system is proposed:
    - a. Provide evidence of adequate water availability:
      - i. obtained from well logs or testing of onsite or nearby wells;
      - ii. obtained from information contained in published hydrogeological reports; or
      - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
    - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;

- c. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
    - d. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
- c. Wastewater Treatment System
  - i. For new onsite wastewater treatment systems, evidence of suitability that at a minimum includes:
    - A. a soil profile description from a representative drainfield site identified on the vicinity map, as provided in section C.1.(a)(i)(G), that complies with the standards published by DEQ;
    - B. demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
    - C. in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in section (ii) above.
      - 1. For all new wastewater treatment systems a preliminary analysis of potential impacts to ground water quality using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.
  - ii. If **individual wastewater treatment systems** are proposed for each parcel:
    - A. Indicate the distance to the nearest public wastewater treatment system.
    - B. Provide all information required in ARM 17.36.320-345 and in Circular DEQ-4 for conventional systems or Circular DEQ 5 for alternative systems.
    - C. evidence of suitability as provided in subsection (a) of this section
    - D. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.
  - iii. For a **multiple-user wastewater treatment** system:
    - A. If an existing system is to be used:
      - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
      - 2. indicate the system's capacity to handle additional load and its distance from the development;
      - 3. provide evidence that permission to connect to the system has been granted;
      - 4. provide the following attachments:
        - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development; and



- a. Certification by a registered professional engineer;
  - b. An overall scaled plan view with identified scale for vertical and horizontal distance showing the following:
    - i. Watercourse
    - ii. floodplain boundaries
    - iii. location of property
    - iv. contours
    - v. cross-sections
    - vi. bridges or other contractions in the floodplains
    - vii. USGS gauging stations (if any);
  - c. The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
  - d. Cross-sectional information which contains the following information:
    - i. Elevations and stations that are determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.
    - ii. Each cross-section must cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Occasionally, wide floodplains require a dog-leg alignment to be perpendicular to the anticipated flow lines. Shots should be taken at the water's edge and measurements taken (if elevation shots cannot be taken) to determine the channel bottom shape. Cross sections must be accurately located on a USGS 7 ½ minute quad sheet.
    - iii. The number of cross-sections needed, and the distance between cross-sections, will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections are required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography. [Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.]
  - e. A description and sketch of all bridges within the reach, showing unobstructed waterway openings and elevations.
  - f. Elevation of the water surface is to be determined by survey as part of each valley cross section.
  - g. Supporting Documentation, such as engineering reports of computer computations, calculations, and assumptions that may include:
    - i. Hydrology (research of published hydrology or calculations showing how hydrology was derived)
    - ii. Input files (hardcopy and on diskette)
    - iii. Output files (diskette only)
36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
37. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

### **PART III ENVIRONMENTAL ASSESSMENT**

Information specified in this Part must be provided in addition to that required in parts I and II of this application form, unless the proposed subdivision qualifies for an exemption under Section IV-A-1.b of the subdivision regulations.

Describe the following environmental features, provide responses to each of the following questions and provide reference materials as required.

#### **1. Surface Water**

Locate on a plat overlay or sketch map:

- a. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
- b. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
- c. Time when water is present (seasonally or all year).
- d. Any areas subject to flood hazard, or in delineated 100 year floodplain.
- e. Describe any existing or proposed streambank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.

#### **2. Groundwater**

Using available data, provide the following information:

- a. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.
- b. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

#### **3. Topography, Geology and Soils**

- a. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:
  - i Shallow bedrock
  - ii Unstable slopes
  - iii Unstable or expansive soils
  - iv Excessive slope

- b. Locate on an overlay or sketch map:
  - i Any known hazards affecting the development which could result in property damage or personal injury due to:
    - A. Falls, slides or slumps -- soil, rock, mud, snow.
    - B. Rock outcroppings
    - C. Seismic activity.
    - D. High water table
- c. Describe measures proposed to prevent or reduce these dangers.
- d. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

#### 4. Vegetation

- a. On a plat overlay or sketch map:
  - (i) Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
  - (ii) Identify the location of critical plant communities such as:
    - A. Stream bank or shoreline vegetation
    - B. Vegetation on steep, unstable slopes
    - C. Vegetation on soils highly susceptible to wind or water erosion
    - D. Type and extent of noxious weeds
- b. Describe measures to:
  - (i) Preserve trees and other natural vegetation (e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover).
  - (ii) Protect critical plant communities (e.g. keeping structural development away from these areas), setting areas aside for open space.
  - (iii) Prevent and control grass, brush or forest fires (e.g. green strips, water supply, access.)
  - (iv) Control and prevent growth of noxious weeds

#### 5. Wildlife

- a. Identify species of fish and wildlife use the area affected by the proposed subdivision.
- b. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
- c. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

**Part IV            SUMMARY OF PROBABLE IMPACTS**

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

**1.        Effects on Agriculture**

- a.        Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
- b.        Describe whether the subdivision would remove from production any agricultural or timber land.
- c.        Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences).
- d.        Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
- e.        Describe effects the subdivision would have on the value of nearby agricultural lands.

**2.        Effects on Agricultural Water User Facilities**

- a.        Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
- b.        Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

**3.        Effects on Local Services**

- a.        Indicate the proposed use and number of lots or spaces in each:
  - \_\_\_\_\_ Residential, single family
  - \_\_\_\_\_ Residential, multiple family
  - \_\_\_\_\_ Types of multiple family structures and number of each (e.g. duplex, 4-plex)
  - \_\_\_\_\_ Planned unit development (No. of units)
  - \_\_\_\_\_ Condominium (No. of units)
  - \_\_\_\_\_ Mobile Home Park
  - \_\_\_\_\_ Recreational Vehicle Park
  - \_\_\_\_\_ Commercial or Industrial
  - \_\_\_\_\_ Other (Please describe \_\_\_\_\_)
- b.        Describe the additional or expanded public services and facilities that would be demanded of local government or special districts to serve the subdivision.

- i. Describe additional costs which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
  - ii. Who would bear these costs (e.g. all taxpayers within the jurisdiction, people within special taxing districts, or users of a service)?
  - iii. Can the service providers meet the additional costs given legal or other constraints (e.g. statutory ceilings on mill levies or bonded indebtedness)?
  - iv. Describe off-site costs or costs to other jurisdictions may be incurred (e.g. development of water sources or construction of a sewage treatment plant; costs borne by a nearby municipality).
- c. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible (e.g. allow installation of a central water system, or upgrading a country road).
- d. What are the present tax revenues received from the unsubdivided land?
- i. By the County \$ \_\_\_\_\_
  - ii. By the municipality if applicable \_\_\_\_\_
  - iii. By the school(s) \$ \_\_\_\_\_
- e. Provide the approximate revenues received by each above taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds (e.g. personal property taxes on mobile/manufactured homes are paid into the County general fund).
- f. Would new taxes generated from the subdivision cover additional public costs?
- g. How many special improvement districts would be created which would obligate local government fiscally or administratively? Are any bonding plans proposed which would affect the local government's bonded indebtedness?

**4. Effects on the Historic or Natural Environment**

- a. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.
- b. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.
  - i. Would any streambanks or lake shorelines be altered, streams rechanneled or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
  - ii. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?

- iii Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
  - iv Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
  - v Would the value of significant historical, visual, or open space features be reduced or eliminated?
  - vi Describe possible natural hazards the subdivision be could be subject to (e.g., natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes).
- c. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

## **5. Effects on Wildlife and Wildlife Habitat**

- a. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.
- b. Describe the effect that pets or human activity would have on wildlife.

## **6. Effects on the Public Health and Safety**

- a. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.
- b. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
- c. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.
- d. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which which would be created by the subdivision.

## **PART V COMMUNITY IMPACT REPORT**

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local government. Provide responses to each of the following questions and provide reference materials as required.

### **1. Education and Busing**

- a. Describe the available educational facilities which would serve this subdivision.
- b. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

### **2. Roads and Maintenance**

- a. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
- b. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
- c. Describe increased maintenance problems and increased cost due to this increase in volume.
- d. Describe proposed new public or private access roads including:
  - i. Measures for disposing of storm run-off from streets and roads.
  - ii. Type of road surface and provisions to be made for dust.
  - iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
  - iv. Seeding of disturbed areas.
- e. Describe the closing or modification of any existing roads.
- f. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
- g. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
- h. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

### **3. Water, Sewage, and Solid Waste Facilities**

- a. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).

- b. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
- c. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
- d. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
- e. Describe the proposed method of collecting and disposing of solid waste from the development.
- f. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

**4. Fire and Police Protection**

- a. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
  - i. Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?
  - ii. Law --Enforcement protection – Which of --is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department
- b. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?

**5. Payment for extension of Capital Facilities**

Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

**ADMINISTRATIVE MATERIALS "B"**  
**FINAL PLAT APPROVAL FORM**

Date \_\_\_\_\_

1. Name of Subdivision \_\_\_\_\_
2. Location: \_\_\_\_\_ 1/4 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ For Amended Plats: Lot(s) \_\_\_\_\_ Block(s) \_\_\_\_\_ Subdivision
3. Name, address and telephone number of subdivider:  
\_\_\_\_\_  
\_\_\_\_\_
4. Name, address and telephone number of persons of firms providing services and information (e.g.: surveyor, engineer, designer, planning consultant, attorney):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Descriptive Data:
  - a. Gross area in acres \_\_\_\_\_
  - b. Number of lots or rental spaces \_\_\_\_\_
  - c. Existing zoning or other regulations \_\_\_\_\_  
\_\_\_\_\_
6. Date Preliminary Plat Approved: \_\_\_\_\_
7. Any Conditions? \_\_\_\_\_ (If Yes, attach list of conditions.)
8. Any Deed Restrictions or covenants? \_\_\_\_\_ (If Yes, attach a copy.)
9. All improvements installed? \_\_\_\_\_ (If No, attach a subdivision improvements agreement or guarantees.)
10. List of materials submitted with this application:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
  - f. \_\_\_\_\_

I do hereby certify that all the statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the (governing body) of (city or county) for approval of the final plat of (Name of Subdivision).

\_\_\_\_\_  
Subdivider

-----  
FOR OFFICIAL USE ONLY

1. Application Number \_\_\_\_\_
2. Date Application Submitted \_\_\_\_\_
3. Date by which Final Plat must be approved or rejected \_\_\_\_\_

**ADMINISTRATIVE MATERIALS “C”  
SAMPLE CERTIFICATES**

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – County

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

**Certificate of Completion of Public Improvements Agreement**

(To be submitted with application for approval of final subdivision plat)

**CERTIFICATE OF COMPLETION**

I, (Name of Subdivider), and I, (Name of Subdivider's Registered Engineer), a registered professional engineer licensed to practice in the State of Montana, hereby certify that the following public improvements, required as a condition of approval of (Name of Subdivision), have been installed in conformance with the attached engineering specifications and plans: (List the improvements actually installed.)

\_\_\_\_\_  
Signature of Subdivider

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Professional Engineer

\_\_\_\_\_  
Date

Registration No. \_\_\_\_\_

\_\_\_\_\_  
Address

(Engineers Seal)



**Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof**

I, (Name of City or Town Clerk), (County Clerk and Recorder) of (Name of City or County), Montana, do certify that the following order was made by the (Governing Body) of (Name of City or County) at a meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, and entered into the proceedings of said Body to-wit: “Inasmuch as the dedication of park land within the platted area of (Name of Subdivision) is undesirable for the reasons set forth in the minutes of this meeting, it is hereby ordered by the (Name of Governing Body) that land dedication for park purposes be waived and that cash in lieu of park with the provisions of Title 76, Chapter 3, MCA.”

In witness whereof, I have hereunto affixed the seal of (Name of City or County), Montana this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Seal)

(Signature of Clerk)

**Certificate of Examining Land Surveyor Where Required – Final Plat**

I, (Name of Examining Land Surveyor), acting as an Examining Land Surveyor for (City or County), Montana, do hereby certify that I have examined the final plat of (Name of Subdivision) and find that the survey data shown thereon meet the conditions set forth by or pursuant to Title 76, Chapter 3, Part 4, MCA.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Signature)

(Name of Surveyor)

Registration No. \_\_\_\_\_

(City or County)

**Certificate of County Treasurer**

I hereby certify, pursuant to Section 76-3-611(1)(b), MCA, that all real property taxes assessed and levied on the land described below and encompassed by the proposed (Name of Subdivision) have been paid:

(legal description of land)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(seal)

(Signature of County Treasurer) Treasurer,  
\_\_\_\_\_ County, Montana



**ADMINISTRATIVE MATERIALS “D”  
SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY**

**MODEL SUBDIVISION IMPROVEMENT AGREEMENT**

The parties to this Subdivision Improvements Agreement (“this agreement”) are \_\_\_\_\_ (“the subdivider”) and \_\_\_\_\_ (“the City” or “the County”).

WHEREAS, the subdivider desires to defer construction of improvements described in Attachment (\_\_\_); and

WHEREAS, the purpose of this Agreement is to protect the City (or County) and is not intended for the benefit of contractors, suppliers, laborers or others providing work, services, or materials to the Subdivision, or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized by state law and the City (or County) subdivision regulations.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Effective Date: The effective date of this Agreement is the date that final subdivision plat approval is granted by the City (or County).
2. Attachments: The Attachments cited herein are hereby made a part of this Agreement.

Subdivider’s Obligations

3. Improvements: The Subdivider shall construct and install, at his own expense, those subdivision improvements listed in Attachment (\_\_\_) of this Agreement. The Subdivider’s obligation to complete the improvements arises upon approval of the final subdivision plat, is not conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision, and is independent of any obligations of the City (or County) contained in this Agreement.
4. Security: To secure the performance of his obligations under this Agreement, the Subdivider shall deposit with the City (or County) on or before the effective date, an Irrevocable Letter of Credit (or other financial security acceptable to the local officials) in the amount of \$ \_\_\_\_\_. The letter of credit shall be issued by (lending institution), be payable at sight to the City (or County) at any time upon presentation of (1) a sight draft drawn on the issuing lending institution in the amount up to \$ \_\_\_\_\_, (2) a signed statement or affidavit executed by an authorized City (or County) official stating that the Subdivider is in default under this Agreement; and (3) the original copy of the letter of credit.
5. Standards: The Subdivider shall construct the required improvements according to the standards and specifications required by the City (or County) as specified in Attachment (\_\_\_) of this Agreement.

6. Warranty: The Subdivider warrants that each and every improvement shall be free from defects for a period of 1 year from the date that the City (or County) accepts the dedication of the last improvement completed by the Subdivider.
7. Commencement and Completion Periods: The Subdivider shall complete all of the required improvements within (2) years from the effective date of this Agreement.
8. Compliance with Law: The Subdivider shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

#### City's (or County's) Obligations

9. Inspection and Certification:
  - a. The City (or County) shall provide for inspection of the improvements as they are completed and, where found acceptable, shall certify those improvements as complying with the standards and specifications set forth in Attachment (\_\_\_) of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Subdivider that the improvements are complete and that he desires City (or County) inspection and certification. Before requesting City (or County) certification of any improvement the Subdivider shall present to the City (or County) valid lien waivers from all persons providing materials or performing work on the improvement.
  - b. Certification by the City (or County) does not constitute a waiver by the City (or County) of the right to draw funds under the letter of credit in the event defects in or failure of any improvement are found following the certification.
10. Notice of Defect: The City (or County) shall provide timely notice to the Subdivider whenever inspection reveals that an improvement does not conform to the standards and specifications set forth in Attachment (\_\_\_), or is otherwise defective. The Subdivider shall have 30 days from the date the notice is issued to remedy the defect. The City (or County) may not declare a default under this Agreement during the 30 day remedy period unless the Subdivider clearly indicates he does not intend to correct the defect. The Subdivider shall have no right to correct the defect in, or failure of, any improvement found after the City (or County) accepts dedication of the improvements
11. Reduction of Security: After the acceptance of any improvement, the amount that the City (or County) is entitled to draw on the letter of credit shall be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown in Attachment (\_\_\_). At the request of the Subdivider, the City (or County) shall execute a certificate verifying the acceptance of the improvement and waiving its right to draw on the letter of credit to the extent of the amount. Upon the certification of all of the improvements the balance that may be drawn under the credit shall be available to the City (or County) for the one year warranty period plus an additional 90 days.
12. Use of Proceeds: The City (or County) shall use funds drawn under the letter of credit only for the purposes of completing the improvements or correcting defects in or failure of the improvements.

#### Other Provisions

13. Events of Default: The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:

- a. failure to complete construction of the improvements within two years of final subdivision plat approval;
  - b. failure to remedy the defective construction of any improvement within the remedy period;
  - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
  - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.
14. Measure of Damages: The measure of damages for breach of this Agreement is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment (\_\_) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Subdivider's liability. The City (or County) may complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.
15. Local Government Rights Upon Default:
- a. Upon the occurrence of any event of default, the City (or County) may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost [as shown in Attachment (\_\_)] of all improvements previously certified by the City (or County). The City (or County) may complete improvements itself or contract with a third party for completion, or the City (or County) may assign the proceeds of the letter of credit to a subsequent subdivider who has acquired the Subdivision and who has the same rights of completion as the City (or County) if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.
  - b. In addition, the City (or County) may suspend final plat approval. During this suspension the Subdivider may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City (or County) until the improvements are completed and certified by the City (or County).
16. Indemnification: The Subdivider agrees to indemnify and hold the City (or County) harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Subdivider is not an employee or agent of the City (or County).
17. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City (or County) and by the Subdivider.
18. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.
19. Third Party Rights: No person or entity who is not party to this Agreement has any right of action under this Agreement, except that if the City (or County) does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City (or County) to exercise its rights.

20. Scope: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
21. Time: For the purpose of computing the commencement and completion periods, and time periods for City (or County) action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the City (or County) from performing the obligations under this Agreement.
22. Assigns: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of the City (or County). Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City (or County) to assign its rights under this Agreement.

The City (or County) shall release the original Subdivider's letter of credit if it accepts a new security from any subdivider or lender who obtains the property. However, no action by the City (or County) constitutes a release of the original subdivider from his liability under this Agreement.

23. Severability: If any part, term or provision of this Agreement is held by the courts to be illegal the illegality shall not affect the validity of any other part, term or provision, and the rights of the parties shall be construed as if the part, term or provision were never part of the Agreement.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City (or County) Official

\_\_\_\_\_  
Subdivider

## ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

### *Comment:*

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is often the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider fail to install the required the improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below.

The subdivider shall provide one or more of the following financial security guarantees in the amount of 125 percent of the estimated total cost of installing all required improvements.

### 1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

- a. That the creditor guarantees funds in an amount equal to 125% of the cost, as approved by the governing body, of completing all required improvements.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor shall immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.

### 2. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the governing body.

Where an escrow account is to be used, the subdivider shall give the governing body an agreement with the bank guaranteeing the following:

- a. That the funds in the escrow account are to be held in trust until released by the governing body and may not be used or pledged by the subdivider as security for any obligation during that period.
- b. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the governing body for completing these improvements.

### 3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value

during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

#### 4. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

#### 5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of \_\_\_\_\_. The bond must be in effect until the completed improvements are accepted by the governing body.

#### 6. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision shall be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the board of county commissioners to create a rural improvement district pursuant to Section 7-12-2102, MCA.

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other

owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the county clerk and recorder and shall be deemed to run with the land.

***Comment:***

*Local officials should be cautious in accepting special improvement districts or rural improvement districts as forms of improvements guaranties. In a number of cases in Montana, the subdivider has been unable to pay the assessments, and the city or county has had to bear the cost of completing the required improvements. These problems occur most frequently where improvement districts are formed as a means to provide improvements on raw land, and local officials may want to avoid creating improvement districts for undeveloped property.*

*Local officials should consult a bond underwriter before accepting an improvement district as a form of improvements guaranty.*

*Letters of credit may be revocable, so it is important to express that the letter of credit is irrevocable. Because the letter of credit does not incorporate the subdivision improvement agreement, the issuer of the credit cannot raise objections to the demand for payment. If the letter of credit specifies that the local government need only present a signed statement or affidavit that the subdivider is in default, the local government need not present proof of default or signed statements from any other party.*

*Under the letter of credit the local government is committed to use the funds for completion of the improvement.*

*It is important that the expiration date of the letter of credit allows the local government a reasonable amount of time after the improvements completion deadline to inspect the improvements and, if defects are found, prepare proper drafts and present a notice of default to the lending institution.*

*Lending institutions may be reluctant to issue letters of credit to be in force for long periods of time. Typically, improvements can be completed in 18-24 months, and an additional 1 year warranty period is appropriate to allow the local government to monitor for defects or failures. Following the warranty period an additional 90 days is reasonable to give local officials time to submit any drafts and documentation to draw funds, if necessary.*

*A "sight draft" commits the payor to make payment at the time the draft is presented, or on sight. Other types of drafts allow a waiting period or approval before the payor must make the payment.*

**MODEL**

**IRREVOCABLE LETTER OF CREDIT**

Letter of Credit No. \_\_\_\_

Name of Local Government  
Address

Date

Gentlemen:

We hereby establish in your favor our Irrevocable Letter of Credit # \_\_\_\_ for the account of (Subdivider), available by your drafts at sight up to an aggregate amount of \$ \_\_\_\_\_. Should (Subdivider) default or fail to complete the improvements under the terms specified in the attached subdivision improvements agreement for (name of subdivision) we shall pay on demand your sight draft or drafts for such funds, to the limit of credit set forth herein, as are required to complete said improvements.

All drafts must be presented prior to expiration date and this Letter of Credit must accompany the final draft for payment. Drafts drawn hereunder must be by sight draft marked:

“Drawn under (lending institution), Letter of Credit # \_\_\_\_  
dated (date of Letter of Credit),” and the amount drawn endorsed on the reverse hereof by the lending institution.

Unless otherwise stated, this Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce. We hereby agree with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Credit that these drafts shall be duly honored upon presentation to the drawee.

This letter of credit may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

(Lending Institution)

(Signature and Title of Official)



**ALTERNATIVE PROVISIONS AND PROCESSES:**

**SUPPLEMENT 1**

Alternate provisions based on the number of public hearings

**Option 1. For those jurisdictions with no planning board or whose planning board has no authority to review subdivision applications, that wish to have one public hearing by the governing body:**

*Replace IV-A-3, pg. 32 with the following:*

**IV-A-3. Public Hearing – Notice and Procedures**

- a. Hearing  
The governing body shall hold a public hearing on the subdivision application when a hearing is required by these regulations.
- b. Notice
  - i. The governing body shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
  - ii. At least 15 days prior to the dates of the hearings, the governing body shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
  - iii. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.

*Replace IV-A-4, pg. 33 with the following:*

**IV-A-4. Governing Body Hearing**

- a. After the subdivision application has been deemed to have all the required elements and to contain sufficient information for review, and the subdivision administrator has prepared a staff report, the governing body shall schedule and hold a public hearing on the subdivision application.
- b. The governing body shall determine whether public comments or documents presented for consideration at the governing body's public hearing constitute either:
  - i. information or analysis of information that was part of the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
  - ii. new information or analysis of information that has never been submitted as evidence, in which case the governing body shall proceed as set forth in subsection (c) below.

- c. If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to this subsection and subsection (d) below.
  - i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
  - ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule a subsequent public hearing.
  - iii. At the subsequent hearing the governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- d. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be credible if it is based on one or more of the following:
  - i. physical facts or evidence;
  - ii. corroborated personal observations;
  - iii. evidence provided by a person with professional competency in the subject matter; or
  - iv. scientific data.

*Delete IV-A-5, pg. 34.*

*Replace IV-A-6, pg. 35 with the following:*

**IV-A-5. Subsequent Public Hearing**

- a. If a subsequent public hearing is held pursuant to section IV-A-4.b.ii above, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
  - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
  - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.

- iii. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.
- b. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

*Delete IV-A-7, pg. 36, Subsequent Public Hearings, and modify and renumber IV-A-8 as follows:*

**IV-A-6. Governing Body Decision and Documentation**

- a. Prerequisites to Approval [Same as VI-A-8 main text]
- b. Consideration – Standards [Same as VI-A-8 main text]
- c. Consideration – Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the statement of probable impacts and mitigation;
- iv. an officially adopted growth policy;<sup>56</sup>
- v. comments, evidence and discussions at the public hearing;
- vi. subdivision administrator’s staff report and recommendation;
- vii. the expressed preference of the subdivider concerning required mitigation; and
- viii. any additional information authorized by law.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

- d. Water and Sanitation-Special Rules [Same as IV-A-8 main text]
- e. Documentation of Governing Body Decision [Same as IV-A-8 main text]
- f. Subdivision Application and Preliminary Plat Approval Period [Same as IV-A-8 main text]

*Renumber subsequent section IV-A-9 Amended Applications, pg. 40 as IV-A-7*

---

<sup>56</sup> **Note:** The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

**Option 2. For jurisdictions with both a planning board and a governing body who wish to have only one public hearing by the planning board:**

*Replace IV-A-3, pg. 32 with the following:*

**IV-A-3. Public Hearing – Notice and Procedures**

a. Hearing

The planning board shall hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

- i. The planning board shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
- ii. At least 15 days prior to the date of the hearing, the planning board shall give notice of the hearing by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The planning board shall require that notice be posted at a conspicuous place on the site of the proposed subdivision.

*Replace IV-A-4, with the following:*

**IV-A-4. Planning Board Hearing, Consideration and Recommendation**

a. Hearing

After the subdivision application is deemed to have all the required elements and to contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

b. Recommendation

- i. Consideration-Standards [Same as IV-A-4 main text]
- ii. Consideration-Evidence [Same as IV-A-4 main text]
- iii. Written Recommendation

Within 10 working days after the public hearing, the planning board shall submit the following in writing to the subdivider and the governing body:

- A. recommended findings of fact based on the evidence in subsection (b)(ii) above that discuss and consider the subdivision's compliance with and impact on subsection (b)(i) above of these regulations; and

- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
- C. a recommendation for approval or denial of any requested variances.(see Section XI-B); and
- D. a finding as to whether any public comments or documents presented for consideration at the planning board's public hearing constitute information or analysis of information that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment.

c. Water and Sanitation Information

The planning board or planning staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The planning board shall forward all comments regarding water and sanitation to the governing body.

*IV-A-5, Subdivider's Preference for Mitigation, remains.*

*Replace IV-A-6, pg. 35 with the following:*

**IV-A-6. Subsequent Public Hearing**

- a. The governing body shall determine whether public comments or documents presented for consideration at the public hearing constitute either:
  - i. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
  - ii. new information or analysis of information that has never been submitted as evidence or considered by the planning board, in which case the governing body shall proceed as set forth in subsection (b) below.
- b. If the governing body determines that public comments or documents presented at the public hearing constitute new information or an analysis of information regarding the subdivision application that the public has not had a reasonable opportunity to examine and on which the public has not had a reasonable opportunity to comment, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (c) and (d) below.
  - i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or

- ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall direct the planning board to schedule a subsequent public hearing.
- iii. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- c. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- d. New information or analysis of information is considered to be credible if it is based on one or more of the following:
  - i. physical facts or evidence;
  - ii. corroborated personal observations;
  - iii. evidence provided by a person with professional competency in the subject matter; or
  - iv. scientific data.
- e. If a subsequent public hearing is held pursuant to subsection (b)(ii) above, it must be held within 45 days of the governing body's determination request a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
  - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
  - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.
  - iii. The governing body shall require the notice be posted at a conspicuous place on the site of the proposed subdivision.
- f. If a subsequent public hearing is held, the 60-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

*Renumber IV-A-8, pg. 36 as IV-A-7 and renumber any subsequent sections.*

## SUPPLEMENT 2

### Alternatives for Subsequent Minor Review

MCA 76-3-609(4) permits each jurisdiction to adopt regulations for subsequent minor subdivisions that are at least as stringent as those for first minor subdivisions. This supplement contains a list of possible alternative procedures for subsequent minors that are at least as stringent as first minors but not as stringent as those for major subdivisions. **This is only a list of possibilities – each jurisdiction should determine whether or not to review subsequent minor subdivisions differently than both first minor subdivisions and major subdivisions, and then draft substantive provisions to reflect one of the listed alternatives.**

#### **Alternatives for jurisdictions with both planning board and governing body public hearings under major subdivision review:**

- a. Same requirements for first minors but with public hearings. Environmental assessment and park dedication not required. 45 or 60 day review period.<sup>57</sup>
- b. Same requirements for first minors but with only one public hearing. Environmental assessment and park dedication not required. 45 or 60 day review period.
- c. Same requirements for first minors but with an environmental assessment, no public hearings, and no park dedication. 45 or 60 day review period.
- d. Same requirements for first minors but with an environmental assessment and only one public hearing. No park dedication required. 45 or 60 day review period.

#### **Alternatives for jurisdictions with either only a planning board hearing or only a governing body hearing under major subdivision review:**

- a. Same requirements for first minors but with a public hearing. Environmental assessment and park dedication not required. 45 or 60 day review period.
- b. Same requirements for first minors but with an EA. No public hearing or park dedication. 45 or 60 day review period.

---

<sup>57</sup> **Note:** The choice of days is entirely up to the jurisdiction, depending on how much time the jurisdiction thinks it will need to complete review of an environmental assessment or to hold a public hearing.

**SUPPLEMENT 3**  
Alternatives for Expedited Review of a First Minor Subdivision<sup>58</sup>

**OPTION 1:**<sup>59</sup>

**Expedited Review of a First Minor Subdivision (New Section)**

a. Criteria

A first minor subdivision application qualifies for expedited review if the proposed subdivision meets the following criteria:

- i. no more than two<sup>60</sup> additional lots are created;
- ii. no land is dedicated to the public for parkland, playgrounds, or other public uses and no additional streets will be dedicated to public use;
- iii. all lots have suitable access pursuant to County standards;
- iv. the proposed subdivision does not pose significant issues concerning public health, safety or welfare;<sup>61</sup>
- v. each lot can be or is already served by public sewer and/or water services, or approval from the DEQ has already been obtained and is submitted as part of the application; and
- vi. the proposed subdivision complies with these regulations and all applicable zoning laws.<sup>62</sup>

---

<sup>58</sup> **Note:** Section 76-3-609(2)(e) allows counties and municipalities to adopt procedures for expedited review of first minor subdivisions, if they so choose. The following options are only examples of what a county or municipality could decide to adopt. They are by no means exhaustive or the only ways a county or municipality can provide for expedited review.

<sup>59</sup> **Note:** This section is drafted for jurisdictions with both a planning board and a governing body and is only one option for those jurisdictions who want to waive the review process, as is done in Flathead County.

<sup>60</sup> **Note:** Could be changed to "one."

<sup>61</sup> **Note:** This is only one option. Another option is to require the proposal to have been approved by the DEQ. A third option is the following language: "no significant impacts on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habit, and public health and safety are anticipated."

<sup>62</sup> **Note:** These six criteria are the most popular criteria appearing in current subdivision regulations. A jurisdiction is free to add or delete any criteria it feels necessary or unnecessary.

b. Procedures

- i. The applicant shall request, in writing, consideration for expedited review at the time a pre-application meeting is requested.
- ii. The subdivision administrator shall determine whether the application qualifies for expedited review at the pre-application meeting.
- iii. The subdivision administrator shall provide a letter to DEQ advising it that the application qualifies for expedited review, so no public hearing is required and no public comments are available.
- iv. The applicant shall submit all required application materials identified in Section II-A-5 of these regulations and the DEQ approval, for element review in accordance with the application deadline in these regulations as required.
- v. The application will be reviewed for the required elements and sufficient information, as identified in Section II-A-6, subsection (a) and (b) (i through ii).
- vi. Once the subdivision administrator determines that the subdivision application is sufficient for review, the review period begins. The subdivision administrator shall review the application and make a recommendation for approval, conditional approval, or denial. The recommendation shall be forwarded to the applicant and the governing body no more than 15 working days after the application is deemed sufficient.
- vii. If the subdivision administrator determines that the subdivision application does not meet the expedited review criteria, the subdivision administrator shall notify the subdivider of the decision within 5 working days of making that determination.

e. Approval

After receiving the recommendation from the subdivision administrator, the governing body shall adopt findings of fact for approval, conditional approval, or denial at its next scheduled meeting, but no later than 35 working days after the application is deemed sufficient. The governing body decision shall be documented pursuant to Section III-A-6.e. A dated and signed statement of approval shall be provided to the subdivider pursuant to Section III-A-6.f.

f. Final Plat Filing

Once application has been approved by the governing body, or all conditions have been met if conditional approval was granted, the final plat can be prepared and filed in accordance with Section II-B and Section III-A-6.f.

## SUPPLEMENT 4

### Model Subdivision Impact Regulations

These model subdivision impact regulations will help local governments and cities address the impact of subdivisions on infrastructure and on the primary subdivision review criteria required under MCA 76-3-608(3)(a) - agriculture, agricultural water user facilities, local services, natural environment, wildlife and wildlife habitat, and public health and safety.

Subdivider's are required by law to address a proposed subdivision's potential impact on the primary review criteria in their subdivision applications. Legally, subdividers also have the burden of proof to show that they will not adversely impact those criteria. However, in practice, most local governments have moved that burden of proof onto themselves, their staff, and the public because the lacks clear standards for what the local government will consider to be adverse impacts and standards for what they will accept to mitigate those impacts.

Here is the way subdivision review of the primary review criteria currently takes place in most local governments:

Local governments allow the subdivider to define what he/she thinks the impacts of her/his subdivision will be on the primary review criteria;

If the subdivider admits to any impacts then he/she often create her/his own mitigation measures - sometimes with little if any guidance from the local government; and,

If a local government chooses to impose conditions on the subdivision then the local government has the burden of proving that their conditions are appropriate and legally defensible.

These model Subdivision Impact Regulations are designed to shift the burden of proof from the local government and public and to the place the burden of proof back where it legally and rightfully belongs - on the subdivider.

These model regulations move the burden of proof back to the subdivider in three ways:

1. On pages S-12 to S-16, you will find model subdivision impact standards that local governments can use to help them define what they will consider an adverse impact on the primary review criteria. These standards will clearly let the subdivider, local government, and the public know what types of impacts need to be mitigated or avoided by a proposed subdivision in order for the subdivision to receive preliminary plat approval. If these impacts are not mitigated or avoided by a proposed subdivision then these standards provide the local government a clear legal basis to impose conditions to mitigate those impacts or to deny the subdivision if adverse impacts cannot be mitigated;
2. On pages S-17 to S-20 , you will find model subdivision mitigation/design standards that subdividers and the local government shall use in order to ensure that the proposed subdivision mitigates the adverse impacts identified on pages 1-5. Currently, most local governments do not have clear standards for mitigation. This lack of standards forces local governments to create mitigation measures as conditions of approval that they may or may not be able to defend in court. In some cases, this has meant that local governments have been overly cautious or inconsistent when it comes to placing conditions on subdivisions which has resulted in local governments, at times, allowing developments to adversely impact the public, neighboring property, and the environment.

By adopting these or similar standards local governments will be creating a much more legally defensible process. The standards in this model are all based on standards that other local governments have adopted and that have been successful; and,

3. If a subdivider does not believe he can meet a particular subdivision mitigation/design standard then he must ask for a variance. Through the variance process, the subdivider has the burden of proving that he needs and deserves the variance. Again, this moves the burden of proof to the party who is seeking to make money from the development - the subdivider - where it belongs. These standards will also, for the first time, give neighbors and other nearby landowners a good idea of what types of impacts and mitigation they can expect from new subdivisions.

This model benefits everyone.

The benefit of following this model is that it creates a much more predictable development process for everyone involved. The benefit to the local government is that the burden of proof has been moved back to the subdivider. The benefit to neighbors and the public is that they know what to expect when a development is proposed. And the benefit to the development community is that subdividers know what the rules for approval are up-front. They also know that the local government will be less likely to create additional conditions out of thin air because the local government has adopted clear impact and mitigation standards.

Finally, this model makes it clear that a local government may impose additional conditions in order to prevent adverse public health and safety impacts that the local government did not anticipate when they adopted their subdivision regulations.

## Model Subdivision Impact Regulations

### Add to or Revise Chapters on Minor and Major Subdivision Review and Approval Procedures

#### IV-A-8. Governing Body Decision and Documentation

- a. Consideration – Evidence [Same as IV-A-8 in main text]
- b. Consideration - Standards

In approving, conditionally approving, or denying a [first minor or major] subdivision application, the governing body shall consider subsection (a) above and whether the subdivision complies with:

- i. these regulations, including but not limited to, the design standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations
- iv. the MSPA, including whether the proposed subdivision has been designed so that it does not adversely impact the criteria defined below, pursuant to 76-3-608(3), MCA, or that such adverse impacts have been avoided or mitigated to the maximum extent possible:

##### A. Impact on agriculture

- 1. Agriculture is defined as all aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market. Prime agricultural lands are defined under 82-4-203 (40), MCA.
- 2. All subdivisions must be designed so they do not adversely impact agriculture, pursuant to the MSPA and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
  - a. Proposed subdivisions that are within a designated urban growth area are considered to have a minimal effect on agriculture.
  - b. Proposed subdivisions or associated improvements that are located on or adjacent to prime farmland or farmland of statewide importance as defined by the Natural

Resource Conservation Service are considered to have an adverse impact on agriculture.

- c. Proposed subdivisions or associated improvements that predominately border land defined as agricultural or timberland by the Montana Department of Revenue or state trust lands are considered to have an adverse impact on agriculture.

B. Impact on agricultural water user facilities

1. Agricultural water user facilities are defined as those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.
2. All subdivisions must be designed so that they do not adversely impact agricultural water user facilities, pursuant the MSPA and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
  - a. Proposed subdivisions located on land with agricultural water user facilities or adjoining an agricultural water use facility are considered to have an adverse impact on agricultural water user facilities.
  - b. Proposed subdivisions that involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities are considered to have an adverse impact on agricultural water user facilities.
  - c. Proposed subdivisions or associated improvements that will alter access for maintenance of agricultural water user facilities are considered to have an adverse impact on agricultural water user facilities.
  - d. Proposed subdivisions or associated improvements that will alter the movement or availability of water are considered to have an adverse impact on agricultural water user facilities.

C. Impact on local services

1. Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens including but not limited to police, sheriff, fire, emergency, and public health services, as well as schools, busing, and roads.

2. All subdivisions must be designed so that they do not adversely impact local services, pursuant to the MSPA, and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
  - a. Proposed subdivisions that are contiguous to unincorporated town sites or within a designated urban growth area, will use existing utilities, will have safe and adequate access to existing road networks pursuant to *Model Subdivision Design Standards* under VI-A-20(c)(v),<sup>63</sup> and will meet applicable city zoning and building standards are considered to have a minimal impact on local services except as otherwise provided in subsection (F)(2)(f) .
  - b. Proposed subdivisions that will require the extension of city or public sewer or water more than \_\_\_ ft. are considered to have an adverse impact on local services.
  - c. Proposed subdivisions that are not contiguous to unincorporated town sites or within a designated urban growth area will be considered to have an adverse impact on services including but not limited to police, fire, and emergency services, school busing, and roads.

D. Impact on natural environment

1. The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.
2. All subdivisions must be designed so that they do not adversely impact the natural environment pursuant to the MSPA and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
  - a. Proposed subdivisions that are within a designated urban growth area and will use existing utilities are considered to have a minimal impact on the natural environment except as otherwise provided in subsections (b) and (e) below.
  - b. Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, rivers streams, lakes, wetlands, or other natural surface waters are considered to have an adverse impact on the natural

---

<sup>63</sup> **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

environment which may be mitigated by meeting or exceeding standards pursuant to *Model Subdivision Design Standards VI-A-20(d)*<sup>64</sup>.

- c. Proposed subdivisions or associated improvements that are proposed on land with a high water table (less than 4 feet from the surface) or designated groundwater recharge areas are considered to have an adverse impact on the natural environment.
- d. Proposed subdivisions or associated improvements that are proposed in locations with evidence of soils with building or site development limitations as defined by the soil survey, or are proposed on slopes greater than 25 percent, are considered to have an adverse impact on the natural environment.
- e. Proposed subdivisions or associated improvements that are proposed on land with historical, cultural, archeological, or paleontological features are considered to have an adverse impact on the natural environment.

E. Impacts on wildlife and habitat

- 1. Wildlife are defined as those animals that are not domesticated or tame. Wildlife habitat are defined as the place or area where wildlife naturally lives or travels through.
- 2. All subdivisions must be designed so that they do not adversely impact wildlife and wildlife habitat pursuant to the MSPA, and as identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
  - a. Proposed subdivisions that are within a designated urban growth area are considered to have a minimal impact on wildlife and wildlife habitat except as otherwise provided in subsections (c) and (e) below.
  - b. Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface waters are considered to have an adverse impact on wildlife and wildlife habitat.
  - c. Proposed subdivisions or associated improvements that are proposed in an area with rare, threatened, or endangered species, as identified by state or federal

---

<sup>64</sup> **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

agencies, are considered to have an adverse impact on wildlife.

- d. Proposed subdivisions or associated improvements that are proposed on or adjacent to land identified by state or federal agencies as critical habitat are considered to have an adverse impact on wildlife and wildlife habitat.
- e. Proposed subdivisions or associated improvements that are proposed in locations that would interfere with known important or critical wildlife corridors are considered to have an adverse impact on wildlife and wildlife habitat.

F Impacts on public health and safety

- 1. Public health and safety is defined as the prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.
- 2. All subdivisions must be designed so that they do not adversely impact public health and safety pursuant to the MSPA, and as identified but not limited to the adverse impacts identified below, or that such adverse impacts have been avoided or mitigated to the maximum extent possible.
  - a. Proposed subdivisions that are within a designated urban growth area where existing police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies and that meet or exceed the standards pursuant to *Model Subdivision Design Standard Chapter VI-A-20(f)*<sup>65</sup> are likely to have a minimal impact on public health and safety.
  - b. Proposed subdivisions or associated improvements that are located in an area identified as a medium to severe fire hazard area by a fire district are considered to have an adverse impact on public health and safety. If the level of fire hazard has not been determined for the site then the developer shall receive a determination from either the appropriate local volunteer fire department or from the DNRC before submitting a subdivision application.

---

<sup>65</sup> **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

- c. Proposed subdivisions or associated improvements that are proposed on land with high pressure gas lines or high voltage lines are considered to have an adverse impact on public health and safety.
- d. Proposed subdivisions or associated improvements that are proposed on land or adjacent to Superfund or hazardous waste sites are considered to have an adverse impact on public health and safety.
- e. Proposed subdivisions or associated improvements that are proposed on or adjacent to abandoned landfills, mines, wells, waste sites, or sewage treatment plants are considered to have an adverse impact on public health and safety.
- f. Proposed major or subsequent minor subdivisions located outside of areas where police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies are considered to have an adverse impact on public health and safety.
- g. Proposed subdivisions or associated improvements that are located in an area identified as a high seismic hazard areas are considered to have an adverse impact on public health and safety.
- h. Any other adverse impacts on health or safety that may result from the proposed subdivisions or associated improvements.

**Add to Sections on Minor or Major Subdivisions for General Design Standards**

**VI-A-20. Impacts of the Proposed Subdivision**

a. Impacts on Agriculture

Proposed subdivisions shall mitigate adverse impacts on agriculture by meeting or exceeding the following design standards:

- i. Prime agricultural lands on adjacent properties will be protected from adverse impacts by requiring that a 200 ft open space buffer be established between any structures and adjacent prime agricultural lands.
- ii. Prime agricultural lands located on the site will be protected from adverse impacts by requiring that at least 30% of the property be maintained as open space.
- iii. Open space shall consist primarily of lands designated as prime agricultural lands.

- iv. Open space will be protected in perpetuity through a conservation easement;
  - v. Open space may contain dedicated parkland, wildlife, river, and stream buffers, and up to 1/3 of open space areas may be used for community water and community wastewater systems. 100-year Floodplains and hillsides with slopes greater than 25% must be subtracted from the total amount of required open space.
  - vi. Protected lands will be clustered so that they abut neighboring open lands;
  - vii. The development will include a weed plan adopted by the County for the management of weeds within buffer, open space, and yards.
- b. Impact on agricultural water user facilities

Proposed subdivisions shall mitigate adverse impacts on agriculture water user facilities by meeting or exceeding the following design standard: the development shall be consistent with the provisions of 76-3-504, MCA;

- c. Impact on local services

Proposed subdivisions shall mitigate adverse impacts on local services by meeting or exceeding the following design standards:

- i. Whenever feasible, all streets and alleys shall connect to other streets within the neighborhood/development and connect to existing or projected through streets, as part of an interconnected street network, outside of the development;
- ii. All streets will be aligned in accordance with the local government's transportation plan and the developer will either develop planned arterials and collectors in accordance with transportation plans or donate right of way for arterials and collectors in accordance with transportation plans;
- iii. The development shall meet the road standards established in the subdivision regulations;
- iv. All developments shall waive their right to protest the creation of an special improvement districts or road improvement district; and
- v. All Developments shall have safe and adequate access on county roads or state or federal highways within the traffic impact area of the development. Safe and adequate access exists when traffic volumes do not exceed the capacity of the road; when operating conditions on the road and at intersections do not fall below the specified or existing level of service (LOS); and when paved and unpaved sections and structures can accommodate projected traffic. If a LOS is not specified for any road section within the traffic impact area then the applicant shall work with the County to identify the existing LOS. Traffic impact area at a minimum must include:
  - A. Internal roads;

- B. Adjacent roads;
- C. Off-site roads to the nearest county collector or arterial road or state or federal highway;
- D. Off-site roads where traffic from the development will account for at least ten percent of the average daily traffic on those roads; and
- E. Intersections where traffic from the proposed development will account for at least five percent of the traffic volume on any approach leg of the intersection.

If safe and adequate access cannot be provided or maintained within the traffic impact area, as a result of the proposed development's projected traffic, then in order to mitigate those impacts the developer shall either construct the necessary improvements to ensure safe and adequate access or provide payment in lieu to the applicable department to cover the costs of the constructing the improvements necessary to ensure safe and adequate access.

d. Impact on natural environment

Proposed subdivisions shall mitigate adverse impacts on the natural environment by meeting or exceeding the following design standards:

- i. All structures and roads shall meet the applicable setback standard (i.e., distance from the ordinary high water mark of the water body and any structures) and vegetated buffer standard, in which existing native species may not be removed. Setback distances shall be measured from the ordinary high water mark of the water body and no structure shall be allowed within the setback area:
  - A. Type I watercourses as defined under MCA 23-2-301 - 250 ft setback, 100 ft buffer;
  - B. Type II watercourses, generally defined as all main tributaries of type I water courses - 200 ft setback, 75 ft buffer;
  - C. Type III watercourses, generally defined as all tributaries of type II watercourses; all intermittent streams; and reservoirs - 100 ft setback, 50 ft buffer;
  - D. Type IV watercourses, which for these purposes are considered drainage channels capable of carrying or collecting stormwater and snowmelt runoff, and irrigation district canals - 50 ft setback, 30 ft buffer;
  - E. Within a designated urban growth area - 75 ft setback, 30 ft buffer.
- ii. The following minimum buffer areas must be establish from the boundary of a wetland identified by the County, the Army Corps of Engineers, U.S. Fish and Wildlife Service, DNRC, or FWP. If the subdivision application reveals a potential wetland on the site then the applicant is responsible for delineating the

wetland's boundaries on maps, plats, and site plans submitted as part of the subdivision application. Buffers from wetland boundaries within which structures and improvements may not be built, except for those for educational or scientific purposes, include:

- A. Wetlands of one acre or less - 50 ft;
- B. Wetlands of more than one acre - 100 feet

e. Impacts on wildlife and habitat

Proposed subdivisions shall mitigate adverse impacts on wildlife and wildlife habitat by meeting or exceeding the following design standards:

- i. Critical wildlife habitat and corridors will be protected from adverse impacts by requiring that a 200 ft open space buffer be established between any structures and any critical wildlife habitat and corridors;
- ii. Open space will be protected in perpetuity;
- iii. Protected lands will be clustered so that they abut neighboring open lands; and
- iv. The development will include a weed plan adopted by the County for the management of weeds on the buffer, open space, and yards.

f. Impacts on public health and safety

Proposed subdivisions shall mitigate adverse impacts on public health and safety by meeting or exceeding the following design standards:

- i. No structure shall be located within the 100-year floodplain;
- ii. No mixing zone from a septic or other wastewater treatment system shall be permitted to cross the development's property line;
- iii. Subsequent minor and major subdivisions shall provide substantial and credible evidence that the cumulative impact of all of the water supply systems that will be used to supply the development will not harm any existing senior water rights.
  - A. For developments that will be served by community water supply systems, the governing body may require that the subdivider receive a water right prior to final plat approval;
  - B. For developments that will be served by single family wells that produce less than 35 gallons per minute, the subdivider must provide substantial and credible evidence that the cumulative impact of all the wells together as a connected system will not harm any existing senior water rights; or
  - C. Developments that will be served by public water supply systems do not need to show any additional evidence other than DEQ approval before final plat approval.

- iv. Structures shall not be permitted in high fire hazard areas, or on 25% slopes, or at the apex of "fire chimneys;"
- v. Developments that will have impacts pursuant to the *Model Subdivision Impact Regulations (F)(2)(f)*<sup>66</sup> shall meet the standards for wildland fire protection developed by DNRC and included in County Subdivision regulations. (*i.e. internal sprinklers and higher GPM standards shall be required for these developments but not for developments that are within 5 minutes for 90% of all emergencies - fire fees should be eliminated from the subdivision regulations in exchange for the development of impact fees*).
- vi. Subsequent minor and major subdivisions that will have an adverse impact pursuant to the *Model Subdivision Impact Regulations (F)(2)(f)* may be denied approval by the governing body or the governing body shall require the subdivider and subsequent owners to disclose to potential buyers that "police, fire, and emergency services cannot respond within 5 minutes for 90% of all emergencies that might take place within this development" until such time as the subdivider or subsequent owners can demonstrate to the county commission that police, fire, and emergency services can respond within 5 minutes for 90% of all emergencies that might take place at the development.
- vii. The governing body may impose additional conditions to mitigate adverse impacts on public health or safety that may result from the proposed subdivision or associated improvements.

**Add to Cluster Development Procedures**

**X-A. Cluster Development - Standards**

- a. If a proposed subdivision meets the following cluster development standards then there is a rebuttable presumption that the development will not have an adverse impact on the 76-3-608(3)(a) criteria and therefore the subdivision application does not need to complete an environmental assessment. Cluster development standards:
  - i. The proposed subdivision clusters structures together and away from open space;
  - ii. Open space abuts neighboring open space and protects the most important and critical agricultural lands and wildlife habitat and corridors on the property;
  - iii. Open space constitutes at least 50% of the development's property including all past and proposed future phases of the development;
  - iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development;
  - v. There is no minimum lot size other than those authorized under administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA;

---

<sup>66</sup> **Note:** This reference is to the Model Subdivision Design Standards found on pages S-17 to S-20 of this Supplement.

- vi. The maximum size of parcels, not designated as open space, allowed within a cluster development is five acres;
  - v. The development complies with all applicable zoning, subdivision, and building code regulations and state laws; and
  - vi. Open space may contain dedicated parkland, wildlife, river, and stream buffers, and up to 1/3 of open space areas may be used for community water and community wastewater systems. 100-year floodplains and hillsides with slopes greater than 25% must be subtracted from the total amount of required open space.
- b. A cluster development receives the following incentives:
- i. Density bonuses allowing the developer to build:
    - A. 50% more units/lots than allowed under zoning if 50% to 75% of the development is placed in a perpetual conservation easement;
    - B. 100% more units/lots than allowed under zoning if 75% or more of the development is placed in a perpetual conservation easement;
  - ii. If a proposed subdivision meets the cluster development standards under (a) then there is a rebuttable presumption that the development will not have an adverse impact on the 76-3-608(3)(a) criteria and therefore the subdivision application does not need to complete an EA.
  - iii. Park dedication requirements for clustered subdivision created under this section are waived.

**X-B.**      **Cluster Development, Option I** [Same as main text]

**X-C.**      **Cluster Development, Option II** [Same as main text]