Montana Model Subdivision Regulations

STATE OF MONTANA

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DEPARTMENT OF COMMERCE

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2020

MONTANA
DEPARTMENT OF COMMERCE

MONTANA MODEL SUBDIVSION REGULATIONS 2020

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FOREWARD

The pages that follow contain the most up to date Model Subdivision Regulations produced by the Community Development Division's Community Technical Assistance Program (CTAP) housed within the Montana Department of Commerce. This resource is free and available to Montana local governments to use in crafting their own regulations for the development of major and minor subdivisions in their communities.

CTAP's goal is to provide a comprehensive guiding document that can serve as a template that cities and counties may use in adopting or updating their local regulations and a technical resource on best practices for local planners, board members, decision makers and the private sector in the "how's" and "why's" of subdivision review. Bringing these model regulations together and updating them to reflect best practices and legislative and rule changes has been a major undertaking. The CTAP program worked with partners in the planning community and the experts at the Montana League of Cities and Towns and Montana Association of Counties to assemble and refine these model subdivision regulations over the better part of the last two decades. Their input has been invaluable and made providing this resource possible.

This updated version of the Montana Model Subdivision Regulations was assembled and completed by CTAP program staff with the assistance of Orion Planning + Design.

If you have questions or comments regarding the Model Subdivision Regulations or would like further assistance in adopting or updating subdivision regulations for your community, please visit https://comdev.mt.gov/Programs/CTAP or contact the CTAP program by email DOCCTAP@mt.gov or by phone at (406) 841-2770.

CHAPTER I – GENERAL PROVISIONS

Chapter Overview

This chapter provides basic background for the regulations including authority, purpose, etc. A similar chapter has been included in previous versions of the model regulations. More specific guidance on specific sections is provided below.

I-A Title

These regulations will be known and shall be cited as "The Subdivision Regulations of [INSERT THE NAME OF THE CITY OR COUNTY]", hereinafter referred to as "these regulations".

I-B Authority

Authorization for these regulations is contained in the Montana Subdivision and Platting Act (hereinafter referred to as the "MSPA" or "the Act"), Title 76, Chapter 3, MCA.

I-C Effective Date & Applicability

These regulations take effect upon being adopted by the governing body through a resolution or ordinance as applicable.

I-D Purpose

As identified in the Act (76-3-102, MCA), the purposes of these regulations are:

1. To promote the public health, safety, and general welfare by regulating the subdivision of land;
2. To prevent the overcrowding of land;
3. To lessen congestion in the streets and highways;
4. To provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
5. To require development in harmony with the natural environment;
6. To promote preservation of open space;
7. To promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
8. To protect the rights of property owners;
9. To require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey; and
10. To provide for phased developments.

As required by 76-3-501, MCA, these regulations are intended to reasonably provide for:

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 adequate open spaces for travel, light, air, and recreation;

6. The provision of adequate transportation, water, and storm-water drainage systems;

7. The regulation of sanitary facilities;

8. The avoidance or minimization of traffic congestion; and

9. The avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services that would necessitate an excessive expenditure of public funds for the supply of the services.

I-E Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of [INSERT THE NAME OF THE CITY AND/OR COUNTY].

These regulations supplement all other regulations applicable to the subdivision of land within the [INSERT THE NAME OF THE CITY AND/OR COUNTY], but are not intended to displace other applicable laws, regulations, ordinances, or resolutions. Insofar as these regulations are more restrictive than any other law, these regulations shall be controlling, and if any other law is more restrictive, the more restrictive shall take precedence over a standard set forth in these regulations. Other laws, regulations or ordinances that may apply include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

I-F Severability

If any section, subsection, clause, or provision of these regulations is held invalid, the remainder of the regulations shall not be affected by such invalidity.

I.G Amendment of These Regulations

Before the governing body amends these regulations, it shall 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.

I-H Enforcement of These Regulations

Any person who violates any provision of these regulations shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of these regulations shall be deemed a separate and distinct offense (76-3-301, MCA).

I-I Responsibility for Interpretation

In the event that any question arises concerning any provision or the application of any provision of these regulations, the Subdivision Administrator, in consultation with the [INSERT THE NAME OF CITY OR

COUNTY] Attorney's Office as may be necessary, shall be responsible for such interpretation and shall look to the overall intent of these regulations and the Act for guidance. The Subdivision Administrator shall provide such interpretations in writing upon request.

I-J Conflicts Within These Regulations

When specific provisions within these regulations conflict, the more stringent of these provisions shall control unless the Subdivision Administrator provides clear guidance through a written interpretation, identifying which provisions will be applied and the rationale for application based on the situation and regulations in place.

I-K Supplemental Administrative Materials and Examples

Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

CHAPTER II - EXEMPTIONS FROM SUBDIVISION REVIEW

Chapter Overview

This chapter addresses the various types of divisions and aggregations of land that are exempted from review as subdivisions in accordance with the Montana Subdivision and Platting Act ("MSPA" or "the Act"), Title 76, Chapter 3, MCA. These are referred to in these regulations as "exemptions." This chapter also describes the process and criteria for reviewing exemptions.

II-A Authority

The authority in the Act for exemptions from subdivision to be addressed in these regulations is as follows:

- Title 76, Chapter 3, Part 2, MCA identifies specific exemptions from subdivision review;
- 76-3-201(5), and 76-3-207(4), MCA authorize the governing body to examine divisions of land to determine if the exemption is being used properly;
- 76-3-201(5) and 76-3-207(4), MCA authorize the governing body to establish fees for review, not to exceed $200;
- 76-3-504(1)(p), MCA requires the local subdivision regulations to establish criteria for determining what divisions qualify as exemptions; and
- 76-3-504(1)(p), MCA requires the regulations to include an appeal process to the governing body if the reviewing authority is not the governing body.

II-B Process for Review of Divisions Exempt from Subdivision

1. Review Committee

The Exemption Review Committee appointed by the [CITY/COUNTY GOVERNING BODY] consisting of the [TITLES OF APPROPRIATE CITY/COUNTY STAFF], shall review the application submitted by the landowner to determine if the landowner is eligible for the claimed exemption based upon the criteria set forth in these regulations and in the Act. The Review Committee shall be led by the Subdivision Administrator.

2. Review Process

The sequential steps in the review process are as follows:

a) The applicant contacts the Subdivision Administrator to assess if the division appears to qualify as an exemption from subdivision review. The applicant should be prepared to identify the legal tract of record proposed for division (refer to Ch. II-F(1) below).
b) It is the applicant's responsibility to contact the Department of Environmental Quality (DEQ) reviewer or local sanitarian. Applicants are advised to consult with the appropriate sanitation reviewer prior to finalizing division documents. Separate application forms and materials may be required for approval by DEQ and/or the local sanitarian (refer to Ch. II-E below for more information on sanitation requirements).
c) If a survey is required or desired, the applicant shall hire a surveyor to prepare a survey (refer to Ch. II-D below).
d) If a survey is not required and not desired, the applicant shall prepare the written documents necessary for the division. Private legal review of the documents is recommended.

e) The applicant shall submit the information electronically to the Subdivision Administrator. Information submitted in other formats may incur additional charges for copying, scanning, or distribution.
f) The Subdivision Administrator will review the materials to determine if all required information has been submitted. If incomplete, the Subdivision Administrator will notify the applicant in writing of any perceived deficiencies. If complete, the Subdivision Administrator will route the materials to the Exemption Review Committee.
g) Committee review of the exemption includes a check for compliance with the exemption criteria set forth in these regulations, the Act, the Administrative Rules of Montana (ARMs), and may include review by the Examining Land Surveyor if applicable (see Ch. II-D(2) below).
h) Once comments from the Exemption Review Committee have been received, the Subdivision Administrator will provide information in writing to the applicant on any corrections and/or additional materials needed. If the Review Committee determines that the proposed use of the exemption is incorrect or an evasion – and therefore denies the application - the Subdivision Administrator shall identify the reasons in writing to the applicant. The Review Committee will review and make a decision on an exemption within 30 working days of receipt of the application. The applicant may appeal the Review Committee's decision to the governing body as identified in Ch. II-C below.
i) As requested by the Subdivision Administrator and Exemption Review Committee, the applicant will resubmit surveys and documents with corrections.
j) If corrections are required by the Examining Land Surveyor, the Subdivision Administrator will route the corrected copy of the survey for final review by the Exemption Review Committee.
k) The Subdivision Administrator will send written notice to the governing body, Clerk and Recorder, and copy the applicant when the exempted division is approved by the Exemption Review Committee for recording. No action is required of the governing body prior to recording.
l) The applicant will submit the final documents to the CITY/COUNTY CLERK AND RECORDER, including warranty deeds and other information required to be recorded with the division document.

II-C Appeals

Any applicant whose proposed use of an exemption has been denied by the Exemption Review Committee may appeal the decision in writing to the governing body within 10 working days of the written decision. The applicant may submit additional evidence to demonstrate eligibility for the claimed exemption. The governing body shall notify the applicant and Subdivision Administrator of the date and time of the review of the appeal. The governing body's appeal decision shall be provided in writing to the applicant following the review. If the governing body's decision is to authorize use of the exemption, the survey must be recorded with the written authorization of the governing body.

If the applicant proposing to use an exemption chooses not to appeal a denial or if, upon appeal, the governing body affirms that the applicant is not eligible for the claimed exemption, the applicant may submit a subdivision application for the proposed division of land.

II-D Survey Requirements and Review

1. Survey Requirements

Only divisions exempted under 76-3-207, MCA require compliance with the survey requirements of 76-3-401, et. seq, MCA. All other exemptions described in Part 2 of the Act do not require a survey, but surveys may be submitted voluntarily.

Any survey, regardless of whether it is required or voluntary, must comply with the Uniform Standards for Survey Monumentation, Certificates of Survey, and Final Subdivision Plats (ARM 24.183.1101, 1104, and 1107), as applicable.

As provided for in 76-3-401, MCA, no survey is required for any exemption, including those in 76-3-207, MCA, when the exempted parcel can be described as 1/32 or larger aliquot part of U.S. government section or as a U.S. government lot, unless the parcel is a lot in a platted subdivision. A surveyed U.S. government lot in its entirety does not require a survey; smaller parcels within a government lot do require a survey. Any parcel that was segregated and conveyed individually prior to July 1, 1973 requires no survey (47 Op. Att'y Gen. No. 10).

Any survey submitted as a retracement of an existing parcel shall provide documentation that the parcel exists as a tract of record.

2. Review of Surveys - Compliance with Uniform Standards

The Examining Land Surveyor shall review all surveys for compliance with the Uniform Standards for Survey Monumentation, Certificates of Survey, and Final Subdivision Plats (ARM 24.183.1101, 1104, and 1107). In the event [INSERT THE NAME OF THE CITY OR COUNTY] has no Examining Land Surveyor, the Subdivision Administrator shall conduct a review for compliance with general requirements such as title of the survey, landowner certifications, etc. but shall not be responsible for aspects which can only be verified by a registered land surveyor, such as the mathematical accuracy of the survey.

3. Identification Codes Included on Surveys

To implement and monitor one or more tracts of record created by exemption, the following identification codes shall be added to the numbering of recorded certificates of survey:

- 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]
- ROW - Right-of-way or utility site [76-3-201(1)(h), MCA]
- RB - Relocation of Common Boundary [76-3-207(1)(a),(d), and (e), MCA]
- FT - Family Transfer [76-3-207(1)(b), MCA]
- AE - Agricultural Exemption [76-3-207(1)(c), MCA]
- AL - Aggregation of Lots [76-3-207(2)(f), MCA]

II-E Other Agency Review of Exempted Divisions

Divisions of land exempted from the Act are still subject to applicable regulations and requirements of other agencies. These requirements may restrict the use of the divided land or preclude the filing of the document creating the division. Laws and regulations that may restrict or preclude development include, but are not limited to, zoning, floodplain regulations, fire codes, and building codes, among others.

The Clerk and Recorder is prohibited from filing a division that does not meet the sanitation requirements of 76-4-122(2), MCA. The landowner is responsible for obtaining the sanitation approvals necessary for a division of land to be filed with the Clerk and Recorder. All divisions reviewed as exemptions under these regulations are subject to review by DEQ for parcels of less than 20 acres, or to the COUNTY sanitarian for parcels 20 acres or greater, unless a qualifying exemption under the Sanitation in Subdivisions Act (Title 76, Chapter 4 et seq., MCA) is deemed applicable and approved by the Exemption Review

Committee. The requirement for sanitation review applies to all parcels resulting from a division of a tract of record, not only the parcel created via the exemption under 76-3-201 or 76-3-207 et seq., MCA

II-F Filing Instruments of Transfer & Identifying Existing Tracts of Record

1. Evidence of Existing Tract of Record

The Clerk and Recorder may not file any instrument that purports to transfer title unless the instrument of transfer is accompanied by evidence that the parcel exists as a tract of record and has been surveyed as applicable. As required by 76-3-302, MCA, the evidence shall consist of:

a) An instrument of transfer describing the parcel or tract by reference to a filed certificate of survey or subdivision plat;
b) Documentation that the parcel is in a location in which the state does not have jurisdiction;
c) Previously recorded documents verifying the parcel was created before July 1, 1973; or
d) Documents that, if recorded, would verify the parcel was created before July 1, 1973.

In addition, as established by the Montana Attorney General (47 Op. Att'y Gen. No. 10), a US government lot or an aliquot part of a US government section is not a tract of record simply because its description appears in a deed on file. The Clerk and Recorder may not file any instrument that purports to transfer title to an aliquot part of a US government section or to a government lot unless accompanied by:

a) Reference to recorded documents that verify the parcel was segregated and individually conveyed prior to July 1, 1973; or
b) Reference to recorded documents that verify the parcel was segregated and individually conveyed after July 1, 1973, but which was exempted by definition of the word subdivision.

2. Remainders

A remaining parcel of land created through the use of one or more valid statutory exemptions is a tract of record.

3. Review Process for Instruments of Transfer

The applicant submitting the instrument of transfer, including but not limited to warranty deeds or quit claim deeds, shall provide the above referenced documentation of the tract of record to the Subdivision Administrator upon application for use of an exemption.

Once routed to the Exemption Review Committee, the Clerk and Recorder shall examine the filed documents referenced as evidence and may confer with committee members to verify that the instrument of transfer does not create a new parcel subject to review as a subdivision and/or subject to survey requirements.

If it is determined that the instrument of transfer is insufficiently documented to demonstrate no new parcel is created, the Clerk and Recorder shall notify the individual in writing that the instrument shall not be filed until the required documentation is submitted. In addition, the notice will state that if the individual cannot provide the documentation and wishes to create a parcel, he/she may contact the Subdivision Administrator for additional information on requirements for divisions of land as exemptions or subdivisions.

II- G General Submittal Requirements

1. Initial Submittal

The applicant shall apply for an exemption by submitting the following materials to the Subdivision Administrator. Except as otherwise noted below, the materials shall be submitted in electronic format (PDF, Word documents or as otherwise specified by the Subdivision Administrator). Information submitted in other formats may incur additional charges for copying, scanning, or distribution.

a) The applicable review fees.
b) Evidence that the parcel(s) to be divided or revised exists as a tract or tracts of record including legal description.
c) Documentation showing that the landowner is eligible for the exemption claimed, such as documentation of tract history, ownership history, etc.
d) A sketch or survey of the proposed division (refer to Ch. II-F above documenting legal tract of record).
e) For each parcel created by the division, draft sanitation language that contains an appropriate exemption from sanitation review or planned DEQ/local sanitarian approval.
f) A statement by the landowner that includes the complete citation of the applicable exemption in 76-3-201 or 76-3-207 et. seq., MCA or as otherwise required for each exemption type; and
g) Additional documentation meeting the requirements set forth for specific exemptions outlined in Ch. II-H.

2. Final Documents

Once the Subdivision Administrator has notified the applicant that the division meets the exemption criteria and may be recorded, the applicant shall submit the following documents to the Clerk and Recorder:

a) A Certificate of Subdivision Approval (COSA) from DEQ for each parcel created by the division, to be recorded with the division document; or, comparable approval of the proposed sanitation in subdivisions exemption documentation from the local sanitarian (for parcels 20 acres and greater) to be recorded with the division document; or, the exemption from DEQ rules or local public health ordinance cited on the face of the survey or division document;
b) The survey or division documents and any supplemental documents (such as warranty deeds) ready to record, with all signatures notarized and the surveyor's seal; and
c) All applicable filing fees.

II-H Evasion Criteria

1. General Criteria

The Exemption Review Committee, when determining applicability of an exemption, shall consider the evidence related to the proposed use of that exemption in light of all circumstances. Such evidence includes, but is not limited to:

a) Prior history of the particular tract of record in question;
b) Previous use of an exemption to create the tract of record in question;
c) Proposed configuration of tracts of record once the proposed exemption is completed;
d) Any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review; and

e) Intended purpose of the exemption in relation to the claimant's past actions on the property, including any previous attempts to subdivide the tract in question.

2. Specific Criteria

The remainder of this chapter is organized by specific exemption types. Each exemption type is accompanied by information on the applicability of the particular exemption, required documentation for submittal when claiming a specific exemption, and evasion criteria that would apply to that specific exemption.

a) Divisions of land exempt from review as a subdivision and also exempt from surveying requirements include:
   - Court order
   - Mortgage exemption
   - Severed interest (oil, gas, minerals, or water)
   - Cemetery lots
   - Life estate
   - Lease or rental for farming or agriculture
   - Outside of state jurisdiction
   - Rights-of-way or utility sites
   - Condominiums
   - Airport lands
   - State-owned lands
   - Conveyances prior to July 1, 1974
   - Lands acquired for state highways

b) Divisions of land exempt from review as a subdivision but subject to surveying requirements and applicable zoning regulations include:
   - Relocating common boundaries outside of platted subdivisions
   - Gift or sale to an immediate family member
   - Agricultural covenant
   - Relocation of common boundaries for five or fewer lots within a subdivision
   - Relocation of common boundaries for a single lot within a platted subdivision and land outside the subdivision
   - Aggregation of parcels

c) The following format is used to describe criteria for each specific exemption:
   - A description of the exemption, expressed as "This exemption applies to";
   - A description of the required documentation the landowner is required to provide at the initial submittal; and
   - Evasion Criteria: The use of the exemption shall be considered an evasion of the Act if the Exemption Review Committee finds existence of any one of the evasion criteria listed in the following sections or the general criteria listed in Ch. II-H - General Criteria above.

3. Divisions of Land Exempt from Review as a Subdivision and Exempt from Surveying Requirements

a) Court-Ordered Division (76-3-201(1)(a), MCA). This exemption applies to:
   - Land divisions created by court order; or

- Land divisions that could be created by an order of any court pursuant to the law of eminent domain, Title 70, Chapter 30, and for which there has been no agreement between parties to the sale.
    i. Required Documentation:
        A. Documents required per Ch. II-G(1); and
        B. Copy of the order issued by the court.
    ii. Evasion Criteria:
        A. No court order is filed;
        B. No transfer documents accompany the recording of the division; or
        C. The governing body has not been allowed to present written comment on the division prior to the court order.

b) Mortgage Security (76-3-201(1)(b) and 76-3-201(3), MCA). This exemption applies to:
- A division of land of any size to provide security for mortgages, reverse mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- Land that is divided and conveyed to a licensed 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 Act and these regulations; and
- Only the parcel that is created to provide security under this subsection. Any subsequent division of the remaining tract of land, if applicable, is subject to the provisions of the Act and these regulations.
    i. Required Documentation:
        A. Documents required per Ch. II-G(1);
        B. Documentation that the lending institution is a licensed financial or lending institution registered to do business in the State of Montana;
        C. A signed, notarized statement from the landowner(s) certifying:
            - The landowner will retain title to the entire tract of record until such time as the mortgage exemption parcel may be foreclosed upon;
            - The purpose of the mortgage, lien, or trust indenture is for construction, improvements to the land being divided, or refinancing;
            - The transfer of ownership of the separate mortgage exemption parcel will occur only upon foreclosure; and
            - The landowner will not transfer ownership of the remaining tract unless the mortgage exemption parcel has been foreclosed upon or the landowner has submitted a subdivision application and received final plat approval for the subdivision of the mortgage exemption parcel and the remaining portion.
        D. A draft of any certificate of survey proposed for the mortgage exemption parcel, or of any other document proposed to be filed with the Clerk and Recorder establishing the mortgage exemption parcel. The survey title shall include the exact wording of the exemption as found in 76-3-201(1)(b), and (3), MCA.
    ii. Evasion Criteria:
        A. Financing is not for construction, improvements to the exempted parcel, or refinancing;

B. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
C. 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; or
D. The notarized statements and draft certifications required as documentation have not been provided.

c) Severed Interest (76-3-201(1)(c), MCA). This exemption applies to:
- Divisions that sever interest in oil, gas, minerals, or water from surface ownership.
  i. Required Documentation:
    A. Proposed document to be filed to establish the division or a copy of any survey proposed to be filed; either document must include the exact wording of the exemption in 76-3-201(1)(c), MCA for subsurface interest and a notarized statement that there is no division of surface ownership or creation of new surface parcels.
  ii. Evasion Criterion:
    - The division will create divisions of surface ownership into parcels of 160 acres or less.

d) Cemetery Lots (76-3-201(1)(d), MCA). This exemption applies:
- To divisions for cemetery lots.
  i. Required Documentation:
    A. Documents required per Ch. II-G(1); and
    B. The document or survey to be filed including a statement limiting the use of the lots to cemetery lots only.
  ii. Evasion Criterion:
    A. Lots are not restricted to cemetery lot use only.

e) Life Estate (76-3-201(1)(e), MCA). This exemption applies to:
- Divisions for life estates as provided for in Title 70, Chapter 15 of the Montana Code.
  i. Required Documentation:
    A. Documents required per Ch. II-G(1); and
    B. The document to be filed including a statement that the interest is a life estate.
  ii. Evasion Criteria:
    A. The life estate does not qualify under provisions of Title 70, MCA; or
    B. The document that establishes the life estate does not state that the life estate parcel is temporary, and no longer a valid legal parcel after the death of the holder.

f) Agricultural Lease (76-3-201(1)(f), MCA). This exemption applies to:
- Parcels that will be rented or leased for farming and agricultural purposes.
  i. Required Documentation:
    A. Documents required per Ch. II-G; and
    B. The documents to be filed shall include a statement limiting the use of the parcel or parcels to agricultural lease or rent only.
  ii. Evasion Criteria:
    A. The division is created for the purpose of conveyance;
    B. The use is something other than rent or lease for farming or agricultural purposes;

C. A residence or residences exist or are proposed on the parcel to be rented or leased; or
D. Commercial uses exist or are proposed on the parcel to be rented or leased.

g) Federal and Tribal Lands (76-3-201(1)(g), MCA). This exemption applies to:
- Federal or tribal lands or other lands over which the state does not have jurisdiction.
  - i. Required Documentation:
    - A. Documents required per Ch. II-G.
  - ii. Evasion Criterion:
    - A. The land is within the state's jurisdiction.

h) Rights-of-Way and Utilities (76-3-201(1)(h), MCA). This exemption applies to:
- Rights-of-way as land dedication for city streets and other transportation systems typically requiring land dedication rather than easements; or
- Sites for public utilities as defined in 76-3-103, MCA.
  - i. Required documentation for rights-of-way:
    - A. Documents required per Ch. II-G;
    - B. Landowner approval or proof of eminent domain authority by the entity acquiring the right-of-way; and
    - C. The document filed shall include a notarized statement from the recipient accepting the right-of-way, stating the purpose of the right-of-way, and noticing that under 76-3-201, MCA a subsequent change in the use to residential, commercial, or industrial subjects the division to review.
  - ii. Required documentation for utility sites:
    - A. Documentation to verify the utility meets the definition in 76-3-101, MCA;
    - B. Documents required per Ch. II-G;
    - C. Landowner approval or proof of eminent domain authority by the utility; and
    - D. The document filed shall include a notarized statement from the utility accepting the utility site, stating the purpose of the site, and noticing that under 76-3-201, MCA a subsequent change in the use to residential, commercial, or industrial subjects the division to review under the Act.
  - iii. Evasion Criteria:
    - A. The purposes are for other than rights-of-way or utility sites; or
    - B. The entity for which a utility site is created does not meet the definition of a utility per 69-3-101, MCA.

i) Certain Condominiums (76-3-203, MCA). This exemption applies to:
- Condominiums, townhomes, or townhouses, as defined in 70-23-102, MCA, provided they are constructed on land subdivided in compliance with these regulations or on lots within incorporated cities and towns, and
- The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and applicable park dedications required by 76-3-621, MCA, are complied with; or
- The condominium, townhome, or townhouse proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.
  - i. Required documentation for previously reviewed divisions in areas without applicable zoning:
    - A. A copy of the filed plat or final approved plan that included the review of the condominiums, townhomes, or townhouses as a subdivision;
    - B. Evidence that the park requirements of 76-3-621, MCA are complied with; and
    - C. A proposed site plan if different from what was approved.

ii. Required documentation for proposals in a zoned, incorporated municipality or in other areas with applicable zoning regulations:
   A. A legal description or other evidence that the parcel to be divided exists as a tract of record;
   B. The proposed site layout; and
   C. Evidence that the proposal complies with zoning.

iii. Evasion Criteria:
   A. The proposed development does not comply with the requirements for unit ownership under Title 70, Chapter 23, MCA, or the definitions for a condominium, townhome or townhouse;
   B. The proposed development is within an incorporated municipality but does not conform to applicable zoning requirements;
   C. The proposed development is located outside of an incorporated and zoned municipality and was not previously reviewed and approved as a subdivision;
   D. The documents establishing the condominium division do not cite the exemption under 76-3-203, MCA; or
   E. The documents establishing the condominium division are not recorded with the "Declaration of Unit Ownership" and all accompanying materials, as approved by the Montana Department of Revenue and as required for declarations per 70-23-301, MCA.

j) Airport Lands (76-3-205(1), MCA). This exemption applies to:

- A division of land created by lease or rent of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority if such use is for on-site weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

i. Required Documentation:
   A. Documents required per Ch. II-G; and
   B. A map showing current ownership and location of the tract in relation to existing airport lands owned by the city, county, state, or a municipal or regional airport authority.

ii. Evasion Criteria:
   A. Land is not owned by the city, county, state, or a municipal or regional airport authority;
   B. The proposed use is not for on-site weather or air navigation facilities, or not for the manufacture, maintenance, and storage of aircraft, or air carrier-related activities;
   C. Land is proposed for conveyance other than lease or rent.

k) State-Owned Lands (76-3-205(2), MCA). This exemption applies to:

- State-owned land, except for divisions that create a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

i. Required Documentation:
   A. Documents required per Ch. II-G;
   B. Documentation or a certified statement that there has been no previous division; and
   C. Documentation that the proposed division is not for sale, rent, or lease for residential purposes.

ii. Evasion Criteria:

A. The division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes; or
B. The land is not owned by the state.

l) Conveyances Prior to July 1, 1974 (76-3-206, MCA). This exemption applies to:
- Any parcel created via deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.
  i. Required Documentation:
     A. No documentation is required to be submitted to the Subdivision Administrator for review as an exemption. Documentation will be required by the Clerk and Recorder to establish the legal existence of the parcel as a tract of record in accordance with Ch. II-F.
  ii. Evasion Criteria: None

m) Lands Acquired for State Highways (76-3-209, MCA). This exemption applies to:
- Lands acquired for state highways.
  i. Required Documentation:
     A. The instrument of transfer must refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA; or
     B. If the 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 surveys and plats when presented for recording.
  ii. Evasion Criteria:
     A. The land is not being acquired for state highways; or
     B. The land is not describable by reference to recorded state highway plans or by certificates of survey or plats.

4. Divisions or Aggregations of Land Exempt from Subdivision Review, but Subject to Surveying Requirements and Zoning Regulations

a) Relocation of Common Boundaries (outside of platted subdivisions) (76-3-207(1)(a), MCA). This exemption applies to:
- Relocating common boundary lines between adjoining properties.
  i. Required Documentation:
     A. Documents required per Ch. II-G;
     B. Evidence that the proposed action complies with applicable zoning;
     C. A survey conforming to the requirements of the ARMs. If no survey is required per 76-3-401, MCA because the area to be conveyed is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself;
     D. Draft language for certification by the CITY/COUNTY TREASURER that all taxes and special assessments assessed and levied on the surveyed land have been paid; and
     E. The landowner's signed and notarized statement on the survey that the area of the boundary relocation does not create an additional tract of record and is forever merged with existing parcels as shown on the survey, and that any restriction or requirement on the original parcel continues to apply to that portion after the boundary relocation.
  ii. Evasion Criteria:

A. The boundary relocation would create an additional tract of record; or
B. Parcels are not outside of platted subdivisions.

b) Relocation of Common Boundaries (within a platted subdivision) (76-3-207(1)(d), MCA). This exemption applies to:

- Relocation of common boundaries for five or fewer lots within a platted subdivision.
  i. Required Documentation:
     A. Documents required per Ch. II-G;
     B. Evidence that the proposed action complies with applicable zoning;
     C. A survey conforming to the requirements of the ARMs, entitled "amended plat of the (insert the name of the subdivision);" and
     D. The landowners' signed and notarized statement on the survey that the area of the boundary relocation does not create an additional tract of record, that the division does not involve or result in affecting more than five lots since the platting of the subdivision, and is forever merged with existing parcels as shown on the survey, and that any restriction or requirement on the original parcel continues to apply to that portion after the boundary relocation.
  ii. Evasion Criteria:
     A. The boundary relocation would create an additional tract of record, or
     B. The division involves more than five lots within a platted subdivision.

c) Relocation of Common Boundaries (between lots within and outside of platted subdivisions) (76-3-207(1)(e), MCA). This exemption applies to:

- Relocation of a common boundary between a single lot within a platted subdivision and adjoining land outside a platted subdivision.
  i. Required Documentation:
     A. Documents required per Ch. II-G;
     B. Evidence that the proposed action complies with applicable zoning;
     C. A survey conforming to the requirements of the ARMs;
     D. Draft language for certification by the CITY/COUNTY TREASURER that all taxes and special assessments assessed and levied on the surveyed land have been paid;
     E. A certificate of survey that clearly distinguishes between the existing boundary location(s) and the new boundary location(s), conforms to the requirements of the ARMs, and is entitled "amended plat of the (insert the name of the subdivision)"; and
     F. The landowners' signed and notarized statement on the survey that the area of the boundary relocation does not create an additional tract of record, the aggregation is forever merged with existing parcels to form the aggregate parcel(s) as shown on the survey, and that any restriction or requirement on the original parcel continues to apply to that portion after the aggregation.
  ii. Evasion Criteria:
     A. The boundary relocation would create an additional tract of record; or
     B. The division involves more than one lot within a platted subdivision.

d) Gift or Sale to Immediate Family (76-3-207(1)(b), MCA). This exemption applies to:

- Parcels located outside of a platted subdivision;
- A single gift or sale in each CITY/COUNTY to each member of the landowner's immediate family with the term "immediate family" meaning the spouse, children (by blood or adoption), or parents of the landowner (76-3-103(8), MCA). This exemption does not apply when the

land is owned by corporal legal entities such as corporations, companies, partnerships, and trusts.

i. Required Documentation:
   A. Documents required per Ch. II-G;
   B. A written statement from the landowners as to the intended purpose of the division, indicating the name and relationship of the person who will receive the land and that this action does not result in more than one gift or sale of a parcel to each member of the landowner's immediate family in the CITY/COUNTY;
   C. Evidence that the proposed action complies with applicable zoning;
   D. A survey conforming to the requirements of the ARMs. If no survey is required per 76-3-401, MCA because the area to be conveyed is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself; and
   E. Draft language for certification by the CITY/COUNTY TREASURER that all taxes and special assessments assessed and levied on the land have been paid.

ii. Evasion Criteria:
   A. The parcel to be transferred is within a platted subdivision;
   B. There has been a previous transfer of land in the CITY/COUNTY from the landowner to the same individual using the family transfer exemption;
   C. The recipient does not qualify as an immediate family member; or
   D. The landowner is a corporal legal entity such as a corporation, company, partnership, or trust.

e) Divisions of Land Proposed for Agricultural Use Only (76-3-207(1)(c), MCA). This exemption applies to:

- Parcels located outside of a platted subdivision when:
  - The landowner agrees to gift, sell, or enter into an agreement to buy/sell a portion thereof to be used exclusively for agricultural purposes; and
  - Parties to the gift, sale, or agreement to buy/sell establish a covenant running with the land, revocable only by mutual consent of the governing body and the property owner, stating that the divided land will be used exclusively for agricultural purposes; and
  - Any change in the use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision except as provided in Ch. II-H(4)(e)(iii) below.

i. Required Documentation:
   A. Documents required per Ch. II-G;
   B. A written statement from the landowners as to the intended agricultural purpose, and evidence that the parcel is large enough to accommodate that use;
   C. Evidence that the proposed action complies with applicable zoning;
   D. Documents establishing a written covenant that runs with the land, restricting use of the property to agricultural purposes only. The covenant language shall clarify that it is revocable only by mutual consent of the governing body and the property owner and that prior to officially revoking the covenant the parcel must be reviewed as a subdivision. The covenant shall be signed by all parties to the gift, sale, or agreement to buy/sell, and the governing body; and
   E. A survey signed by the landowners and conforming to the requirements of the ARMs (the survey must bear a signed and acknowledged recitation of the covenant on the face of the survey). If no survey is required per 76-3-401, MCA because the area to be conveyed is describable as a 1/32nd aliquot part, a copy

of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself.

ii. Evasion Criteria:

A. Any use other than agricultural is proposed; or

B. Non-agricultural buildings or structures are present on a tract of record created pursuant to this exemption.

iii. The governing body, in its discretion, may revoke the agricultural covenant provided for in 76-3-207(1)(c) and the division may proceed without subdivision review if:

A. The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or

B. A government or public entity seeks to use the land for public purposes as enumerated in 70-30-102, MCA. If the governing body proposes to revoke a covenant for public purposes the governing body shall hold a public hearing. Within 15 days of the hearing, the governing body shall issue written findings of fact and a decision based on the records. If the governing body approves the revoking of the covenants, the approval must be recorded with the Clerk and Recorder.

C. The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, Chapter 4, MCA.

f) Aggregation of Lots (76-3-207(1)(f), MCA). This exemption applies to:

- The aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot(s) or original un-platted parcel(s) continues to apply to those areas.

i. Required Documentation:

A. Documents required per Ch. II-G;

B. Evidence that the proposed action complies with applicable zoning;

C. A survey conforming to the requirements of the ARMs that clearly distinguishes between the existing boundary location(s) and the new boundary location(s), entitled “amended plat of the (insert the name of the subdivision)” when the aggregation affects lots within a subdivision. If no survey is required per 76-3-401, MCA because the area to be conveyed from one property to another is describable as a 1/32nd aliquot part, a copy of the document proposed to be recorded, which must include all of the information described above to be included for the survey, except for the survey itself;

D. Draft language for certification by the [CITY/COUNTY TREASURER] that all taxes and special assessments assessed and levied on the surveyed land have been paid;

E. The landowners’ signed and notarized statement on the survey that the aggregation is forever merged with existing parcels to form the aggregate parcel(s) as shown on the survey, and that a restriction or requirement on the original parcel continues to apply to that portion after the aggregation.

ii. Evasion Criteria:

A. The aggregation would create a new tract of record in addition to the aggregated parcel; or

B. The aggregation eliminates existing restrictions or requirements.

CHAPTER III – OVERVIEW AND TYPES OF SUBDIVISIONS

Chapter Overview

This chapter identifies the land divisions that require subdivision review in accordance with the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA ("MSPA") and discusses the categories of major and minor subdivisions, which are used throughout these subdivision regulations. This chapter also addresses additional criteria for approving specific types of subdivisions including condominiums, townhomes, townhouses, recreational vehicle and mobile home parks and phased developments. See definitions at 76-3-103 MCA.

III-A What Constitutes A Subdivision

For purposes of subdivision review under Chapters III through VIII of these regulations, a subdivision is "a division of land or land so divided that it 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 the parcels may be sold or otherwise transferred and includes any re-subdivision and condominium or townhouse development, unless exempted under 76-3-203, MCA. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed (76-3-103(16), MCA).

III-B Subdivision Categories: Major and Minor Subdivisions

All subdivisions shall be reviewed as major subdivisions or minor subdivisions, as defined below.

1. Major Subdivision

The following divisions shall be reviewed as major subdivisions as described in Chapter IV:

a) Any subdivision consisting of six or more lots; and
b) Subdivisions with five or fewer lots that do not meet the definition of a first minor subdivision or subsequent minor subdivision as defined below.

2. Minor Subdivisions

The following divisions shall be reviewed as minor subdivisions as described in Chapter IV:

a) First minor subdivisions, as defined in 76-3-609(2), MCA as the subdivision of a tract of record that has never been subdivided or created by a subdivision 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.
b) Subsequent minor subdivisions that result in not more than five parcels from any combination of subdivision or exemption under 76-3-201 or 76-3-207, MCA since July 1, 1973.

III-C Types of Subdivisions

The following sections identify specific types of subdivisions with special provisions or review considerations.

1. Condominiums

a) Overview. "Condominium" is the ownership of single units with common elements held jointly by unit owners. All land in a condominium subdivision is jointly held with undivided interest. The unit owners own their individual units, not the land beneath the units. The term does not include a townhome or townhouse.

The following establishes the unique provisions for condominiums under these subdivision regulations and with reference to Title 70, Chapter 23, Unit Ownership Act – Condominiums.

b) Process. All condominiums shall be reviewed as major or minor subdivisions, based on the number of units and the history of divisions on the existing tract of record, except as provided below.

   i. Condominiums are exempted from subdivision review, pursuant to 76-3-203, MCA, and Chapter II of these regulations, when:

      A. The approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621, MCA are complied with; or

      B. The condominium is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

   ii. No construction of any structure may begin until the subdivision site plan has been approved as a final site plan (70-23-301(8), MCA) and all other applicable agency approvals have been received (e.g., DEQ, building permits, etc.).

c) Review Criteria. Because a condominium does not divide land, a site plan is required instead of a plat. Condominiums shall be reviewed according to the criteria in Chapter V of these regulations in addition to the following requirements:

   i. Department of Revenue Approval pursuant to 70-23-304, MCA;

   ii. Compliance with the requirements of Title 70, Chapter 23 "Unit Ownership Act – Condominiums";

   iii. Building regulations, if applicable; and

   iv. Department of Environmental Quality approval per 76-4-102(22), MCA or municipal facilities certification as per 76-4-127, MCA.

d) Limits on Conveyance. Condominium units shall not be transferred, conveyed or leased until every mortgage and other lien affecting any unit, including the undivided interest of the unit in the common elements, is paid and satisfied or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded pursuant to 70-23-602, MCA.

e) Creation of Additional Parcels. No creation of a parcel for condominiums may result in a parcel or parcels of less than 160 acres, unless the parcels are reviewed as lots in a subdivision or as a valid exemption under Title 76, Chapter 2, MCA.

f) Submittal Requirements. The requirements of Chapter VI apply, except that no plat may be necessary but a site plan is required. The following clarifies other submittal requirements unique to condominiums:

i. Survey. The perimeter of the existing tract or tracts of record shall meet survey requirements of Title 76, Chapter 3, Part 4, MCA. It is strongly encouraged, but not required, that the site plan components described below are also represented through formal survey.

ii. Site Plan.

A. Site plans and floor plans as required by 70-23-306, MCA shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access, including internal streets, parking and storage areas.

B. The site plan shall be prepared by a registered architect, registered professional engineer, or registered professional land surveyor as required by 70-23-306, MCA. The preparer shall certify that the site plan meets requirements of these subdivision regulations and other site/floor plan requirements of the Unit Ownership Act for Condominiums.

C. The site plan shall identify the total number of units by type, dwelling units, commercial units or industrial units.

iii. Preliminary Plat/Site Plan Application. The preliminary plat/site plan application shall include all items required per Chapter VI and the following:

A. A site plan as identified in Ch. III-C(1)(f)(ii) above; and

B. A draft unit ownership declaration as required pursuant to 70-23-301, MCA.

iv. Final Plat/Site Plan Application. The final plat/site plan application shall include all items required per Chapter VI and the following:

A. A site plan as identified in Ch. III-C(1)(f)(ii) above;

B. A Declaration of Condominium Ownership that covers all applicable tracts of record and all units in the subdivision;

C. Department of Revenue approval of the declaration and certification that no other property in the County is using the same or similar name and that all taxes and assessments due and payable have been paid;

D. Bylaws of the condominium association meeting requirements of 70-23-307 and 308 MCA;

E. Floor plans to be recorded with the declaration as required by 70-23-306, MCA;

F. Documentation proving requirements on limits of conveyance have been met;

G. Certification from a lawyer licensed in Montana that the condominium complies with the requirements of Title 70, Chapter 23. The certification and supporting materials shall be filed with the final plan;

H. All applicable permits and approvals for construction, including construction of buildings and compliance with local and state building code; and

I. Evidence that the ownership meets requirements or 70-23-602, MCA regarding ownership, liens, and mortgages.

g) Design Standards. The design standards for condominiums are the same as for all other subdivisions, as identified in Chapter VII, with the following additions.

i. No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words “building”, “court”, “place”, or similar words;
ii. Off-street and guest parking shall be required in proximity to the unit served;
iii. Storage areas for the storage or parking of boats, trailers, or other recreational vehicles shall be required, or covenants prohibiting the location of these items within the condominium property shall be established;
iv. Parkland dedication shall be calculated according to the following table and applied to condominium developments in those locations that do not have zoning.

2. Townhomes and Townhouses

a) Overview. “Townhome” or “townhouse” means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

b) Process. All townhomes and townhouses shall be reviewed as major or minor subdivisions based on the number of units and the history of divisions on the existing tract(s) of record, except as provided below.
   i. Townhomes and townhouses are exempted from subdivision review, pursuant to 76-3-203, MCA, and Chapter II of these regulations, when:
      A. The approval of the original subdivision of land expressly contemplated the construction of the townhomes or townhouses, and any applicable park dedication requirements in 76-3-621, MCA are complied with; or
      B. The townhome, or townhouse proposed is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

c) Common Areas
   i. If there are no common areas or facilities proposed, the review of townhomes and townhouses is the same as for any other subdivision. Common areas not proposed as a condominium must be jointly owned through a legal entity, such as an incorporated property owners’ association.
   ii. If there are common areas or facilities proposed, the land division is reviewed similar to any other subdivision and the common areas are subject to the same provisions as Ch. III-C(2)(g)(iv) above.

3. Recreational Vehicle (RV) and Mobile Home Parks

a) Overview. This section of the subdivision regulations establishes the criteria and requirements for recreational vehicle and mobile home parks in addition to and different from other requirements in the subdivision regulations.
   i. RV Park - A RV park as used in these regulations is land intended for the renting or leasing of two or more recreational camping vehicle spaces.
   ii. Mobile Home Park - A mobile home park as used in these regulations is land intended for the renting or leasing two or more mobile home spaces.

b) Process. All RV and mobile home parks shall be reviewed as major or minor subdivisions based on the number of units and the history of divisions on the existing tract of record.

c) Review Criteria. In addition to the criteria listed in Chapter V, the following are required for RV and mobile home parks:
   i. DPHHS approval is required prior to final plat application; and

ii. DEQ approval is required per 76-4-102(22), MCA, even when rental spaces are 20 acres or greater.

d) Creation of Additional Parcels. No creation of a parcel for a RV or mobile home park may result in a parcel or parcels of less than 160 acres, unless the parcels are reviewed as lots in a subdivision or as a valid exemption under Title 76, Chapter 2, MCA.

e) Submittal Requirements. In addition to the requirements of Chapter VI, the following submittal requirements unique to RV and mobile home parks shall apply:

i. Survey. The perimeter of the existing tract or tracts of record shall meet survey requirements of Title 76, Chapter 3, Part 4, MCA. It is strongly encouraged, but not required, that the site plan components described below are also represented through formal survey.

ii. Site Plan. The delineation of the RV and mobile home spaces shall be shown on a site plan. Site plans shall conform to the requirements and content of plats except as follows:

A. Site plans shall be drawn in detail and to scale; site plans requiring more than one page will be numbered and include total number of pages.

B. The site plan shall include the following information:

- Locations and dimensions of any service building, cabin, cooking shelter, or other structure that will be available for public use, including showers and restrooms;
- Information required by DPHHS for the Layout Plan Review by ARM 37.111.205(1)(b), (2)(a) through(o), and, and (3);
- Location and ownership of existing utilities and roads in their true and correct location and location of proposed streets, roads, electrical lines, natural gas, cable, phone and any other utilities proposed to serve the mobile home or RV spaces;
- The dimensions and location of mobile home or RV pads, demonstrating compliance with the subdivision design standards outlined in Ch. III-C(3)(f) below; and
- Delineation of RV park areas from mobile home park areas if both are proposed.

iii. A completed copy of the Campground or Trailer Court Review Form to be submitted to DPHHS.

iv. A rental or lease agreement specifying terms identified in these regulations such as requirements for RV parks and spaces that can only be realized once a renter/lessor occupies the site. Each item required by these regulations shall be identified as "required by terms of approval by **[INSERT NAME OF GOVERNING BODY]**."

f) Mobile Home Park Design Standards. Mobile home parks are subject to the design standards in Chapter VII with the following exceptions and additions:

i. There shall be no road or street easement required in mobile home parks. Roads shall be dedicated to the use of the mobile home park and guests and owned and maintained by the property owner.

ii. One off-street parking space per five units shall be required in front of the manager's office and any communal facilities such as restrooms/shower/laundry facilities, recreational buildings, and retail facilities.

iii. All mobile home parks may be subject to lighting requirements for roads and public spaces. Lighting shall be required if the subdivision includes spaces with road frontage of less than 30 feet each or when the overall density is 20 spaces per acre or greater. Calculations shall be based on the net acreage of mobile home spaces, exclusive of roadways and public areas.

g) Mobile Home Space Requirements.

i. Mobile home spaces shall be arranged to permit the safe and practical placement and removal of mobile homes;

ii. The requirement for 50-foot minimum street frontage in Chapter VII does not apply to mobile home spaces;

iii. The boundary of each mobile home space shall be permanently delineated on the ground;

iv. An individual mobile home pad at least 14 feet wide and 70 feet long shall be provided in each mobile home space. These pads shall be constructed on at least six inches of gravel over a stabilized sub-base.

v. Setbacks.

A. Minimum side setbacks shall be 15 feet for principal buildings and 10 feet for accessory buildings.

B. Minimum rear setback shall be 10 feet.

C. Minimum front setback shall be 10 feet.

D. All mobile homes and appurtenances, including vehicle parking, shall be located a minimum 50 feet from the property line abutting a major arterial and a minimum 25 feet from all other public road rights-of-way.

E. All mobile homes and appurtenances, including vehicle parking, must be located a minimum 10 feet from a private road serving the space/unit.

vi. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed 2/3 the area of a space.

vii. Setbacks for mobile home spaces, mobile homes and appurtenances, including vehicle parking, shall be a minimum 15 feet from the exterior boundary of the surveyed mobile home park or adhere to the local zoning code requirements, whichever is more stringent.

viii. No mobile home or it's attached (e.g. awnings, carports) or detached structures (e.g. storage sheds) may be located within 20 feet of another mobile home or its attached structures.

ix. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile home space. The driveway must be located to allow for convenient access to the mobile home and be a minimum of 10 feet wide.

x. Each mobile home shall be skirted within 60 days after it is moved onto a space within the mobile home park. Skirting shall consist of a fire-resistant material similar to that of which the mobile home exterior is constructed and shall be attached to the mobile home.

xi. Mobile home parks shall dedicate land to use as park or recreation area. The area to be dedicated shall be 11% of the total mobile home park area as surveyed for the site plan pursuant to Ch. III-C(3)(e) above. These areas shall remain in private ownership and shall not be dedicated to the public unless specifically accepted by the local governing body. It shall be the responsibility of the mobile home park owner to maintain the park and recreation area. The governing body may accept cash-in-lieu of

park dedication in circumstances where it is demonstrated park land is not necessary to serve the mobile home park.

xii. Mobile home parks located adjacent to industrial, commercial, or lower-intensity residential land uses (e.g. single family residential) shall provide screening such as fences or natural growth along the property boundary line separating the park from these adjacent uses.

xiii. Underground electrical service shall be installed to each mobile home space. If natural gas is provided, it shall also be installed underground. No propane tanks shall be allowed on mobile home spaces unless it can be demonstrated the tank complies with applicable local fire code, or if no local fire code exists, with state or national standards. To demonstrate compliance, the subdivider must include these requirements in the lease agreement.

xiv. The governing body may require that a common area be provided for the storage or parking of boats, trailers, or other recreational vehicles. If such a common area is included, it shall be restricted for storage only and no structure, vehicle, boat or other container may be used for living inhabitation. This common area shall not be calculated or applied as part of the required parkland dedication.

h) RV Park Design Standards

i. Road and Public Parking Requirements

A. There shall be no road easement dedications required in RV parks. Roads shall be dedicated to the use of the RV park guests, and owned and maintained by the property owner.

B. The requirements for paving in Chapter VII may be waived with an approved variance request that demonstrates unpaved RV park roads will be maintained for dust suppression and a durable, drivable surface in wet or other inclement conditions shall be provided. In approving the variance, the governing body shall consider and make findings based on the variance criteria identified in Chapter VI.

C. Off-street parking spaces are required in front of the manager's office and any communal facilities such as restrooms/shower/laundry facilities, recreational buildings, retail facilities, etc.

i) RV Space Standards

i. RV spaces shall be arranged to permit the safe and practical placement and removal of RVs.

ii. The requirement for 50-foot minimum street frontage in Chapter VII does not apply to mobile home spaces.

iii. The prohibition on through or double front lots in Chapter VII does not apply to RV spaces as long as the access roads accommodate this through use of one-way streets or wider streets to accommodate turns.

iv. The boundaries of each RV space shall be permanently delineated on the ground.

v. An individual RV pad shall be provided in each RV space and sized to accommodate the proposed type of RV. The pads shall be constructed on at least six inches of gravel over a stabilized sub-base.

vi. All RVs shall be located at least 50 feet from the property line abutting upon a major arterial and at least 25 feet from all other public street rights-of-way.

vii. Setbacks for RV spaces shall be a minimum 15 feet from the exterior boundary of the surveyed RV park or adhere to the local zoning code requirements, whichever is more stringent.

viii. No detached structures are allowed in a designated RV space.

ix. No RV or its attached structures (e.g. awnings) may be located within 20 feet of another RV or its attached structures.

x. One off-street parking space must be provided on or adjacent to each RV space. The driveway must be located to allow for convenient access to the RV and be a minimum of 10 feet wide.

xi. RV parks shall dedicate land to use as a park or recreation area. The area to be dedicated shall be 11% of the total RV park area as surveyed for the site plan pursuant to Ch. III-C(3)(e) above. These areas shall remain in private ownership and shall not be dedicated to the public unless expressly accepted by the local governing body. It shall be the responsibility of the RV park owner to maintain the park and recreation area. The governing body may accept cash-in-lieu of park dedication in circumstances where it is demonstrated park land is not necessary to serve the RV park.

xii. RV parks located adjacent to industrial, commercial, or lower-intensity residential land uses (such as single family residential development) shall provide screening in the form of fencing or natural landscaping along the property boundary line to mitigate visual impacts to adjacent properties as well as mitigate potential negative impacts from adjacent uses on RV park guests.

xiii. The governing body may require that a common area be provided for the storage or parking of boats, trailers, or other recreational vehicles. If such a common area is included, it shall be restricted for storage only and no structure, vehicle, boat or other container may be used for living inhabitation. This common area shall not be calculated or applied as part of the required parkland dedication.

4. Phased Developments

a) Overview. Phased developments are subdivisions that are developed in a series of phases over a period of up to 20 years. Phased developments include review and approval of an overall phased development preliminary plat, which shows the type and extent of the overall development, and individual phases, which are reviewed, approved, and developed sequentially.

b) Review Process. The application and review processes for overall phased development preliminary plats and individual phases are described in Chapter IV, “Review Process.”

c) Review Criteria. The review criteria for overall phased development preliminary plats and individual phases are described in Chapter V, “Review Criteria.”

d) Design Standards. The design standards for water and wastewater treatment, roads, and other elements are described in Chapter VII, “Design Standards.”

CHAPTER IV – SUBDIVISION APPLICATION AND REVIEW PROCESS

Chapter Overview

This chapter describes the subdivision review process, from pre-application meeting to final plat approval in accordance with the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA ("MSPA"). There are two main parts to this chapter:

- Preliminary plat application and review process, and
- Final plat application and review process.

All subdivision applications must be reviewed according to the applicable processes set forth in in this chapter. All subdivision applications are reviewed as either major subdivisions or minor subdivisions, as defined in Chapter III. There are procedural differences between major and minor subdivisions related to time periods for review, public hearing requirements, and whether the planning board is involved. A subdivision is not complete and lots may not be transferred until the final plat has been approved and filed with the Clerk and Recorder as per 76-3-301, MCA.

This chapter also covers the process for requesting and receiving variances as part of a preliminary plat application, the processes to be followed when changes are made to an application, the process for considering new information after the planning board has reviewed a preliminary plat application, as well as the procedural requirements for phased developments.

IV-A Preliminary Plat Application and Review Process

1. Pre-Application

a) The applicant shall submit completed pre-application materials to the Administrator as described in Chapter V.

b) Within 30 days of receipt of the submittal, the Administrator shall schedule a meeting with the applicant or designated representatives to discuss the pre-application materials. At the meeting the Administrator shall:

   i. Identify state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision proposed;

   ii. Alert the applicant to potentially significant adverse impacts based on the subdivision review criteria in 76-3-608, MCA;

   iii. Provide a list of the public utilities, agencies of local, state, and federal government, and any other entities that shall be contacted by the applicant for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond;

   iv. Establish a time limit after a pre-application meeting by which an application must be submitted; and

   v. Provide the applicant with a list of information, documents, fees, and other materials explaining what must be submitted with a preliminary plat application. The identification of this information by the Administrator does not limit her/his ability to require additional information at a later time.

c) The Administrator may invite to the meeting representatives of affected public utilities and review agencies at the local, state, and federal levels including, but not limited to, the local

sanitarian, DEQ reviewer, clerk and recorder, and representatives from the public works department, fire department, law enforcement and others to provide preliminary comments related to their agency's purview.

d) If a preliminary plat application or request for a pre-application extension is not received within six months of the pre-application meeting, the pre-application meeting is void and must be repeated. Requests for an extension shall be made to the Administrator, who may approve one extension for up to six months. The Administrator shall notify the applicant in writing of a decision to approve or deny an extension. If denied, the reason for denial shall be included in the notice.

e) By requesting a pre-application meeting, the applicant agrees not to begin construction of subdivision-related improvements prior to approval of the preliminary plat application. Subdivision-related improvements include water, wastewater, stormwater, and solid waste facilities; utilities, roads, streets and any improvement requiring grading or earth moving. All historic, cultural, archeological and natural resources shall remain unaltered, including riparian vegetation and wetlands. The following activities are permitted prior to preliminary plat approval:

   i. Work related to testing, analytical, or monitoring activities that may be required by these regulations or are relevant to the processing of the subdivision application; and
   ii. Activities approved in advance and in writing by the Administrator that qualify as actions that are not subdivision related.

f) [**INSERT THE NAME OF THE CITY OR COUNTY**] shall not be responsible if improvements or alterations must be eradicated, moved, repaired, or rebuilt due to a applicant making improvements prior to and/or not in accordance with the requirements of these regulations or the conditions of preliminary approval. In such situations the applicant may be subject to the enforcement provisions and penalties described in Chapter I of these regulations, and the restoration of any resource that has been altered may be required as a condition of preliminary plat approval.

2. Preliminary Plat Submittal

a) The applicant shall provide all required preliminary plat elements identified in Chapter V of these regulations to the Administrator. The application materials should address comments and questions raised during the pre-application meeting, including information on potential adverse impacts to agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety, including how these potentially significant adverse impacts will be avoided or mitigated. If the development is proposed to be phased, the application must provide information identifying all phases of the development, including a schedule for when the applicant plans to submit for review of each individual phase of the development.

   i. When a subdivision is located in an incorporated area but proposed to be annexed into a city or town, the applicant shall submit the preliminary plat application to the Administrator for the city or town. The municipal government shall review the preliminary plat and annexation applications.
   ii. When a subdivision is located partly within a municipality and partly within the unincorporated county, and only a portion of the property is proposed to be annexed into the city or town, the applicant shall submit the preliminary plat application to both the Administrator for the city or town and the Administrator for the county. Both the municipal and county governing bodies shall review and issue decisions on the application.

b) The applicant shall include all correspondence with utilities, agencies and service providers identified through the pre-application process with the preliminary plat application materials. It is recommended that the applicant communicate with neighboring property owners early in the process to address any potential concerns that may arise, and documentation of this correspondence, if conducted, should be included with the preliminary plat materials.
c) When a subdivision is proposed to deviate from any of the design standards in Chapter VII, the preliminary plat application must include a request for variance in accordance with the requirements of Chapter V.
d) One a preliminary plat application has been submitted, the Administrator, governing body, planning board, Affected agencies and service providers may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the applicant and to subsequently monitor compliance with any conditions of preliminary plat approval until the final plat is approved. The submission of a preliminary plat application constitutes a grant of permission by the applicant.

3. Element Review

a) Timeframe and Process. A preliminary plat application is considered to be received on the date of delivery to the Administrator and when accompanied by the proper review fee.
    i. Within five working days of receipt, the Administrator shall determine whether the application contains all of the required elements listed in Chapter V and indicated during the pre-application meeting. The Administrator shall provide written notice to the applicant of the determination and identify any missing elements and the timeframe in which they must be submitted.
    ii. When a missing element is submitted by the applicant, the five working day timeframe for review begins again. This process shall be repeated until Administrator provides written notice to the applicant that the application contains all required elements. If the applicant fails to submit the required information within six months, the application is terminated and the applicant must reapply. The Administrator may grant one six-month extension to this requirement.
b) If the applicant alters the preliminary plat application during element review, the five working-day review period is suspended and the Administrator may require additional materials to clarify the proposed amendment including but not limited to a revised application form, preliminary plat, additional review fees, or documentation of potential impacts and mitigate. The five working-day review period resumes when the Administrator notifies the applicant that the application contains all required elements addressing the amendments proposed.
c) If the subdivision regulations change during element review, the determination of whether the application contains the required elements shall be based on the new regulations.
d) In the event a preliminary plat application differs so greatly from the plans submitted at the pre-application stage, the Administrator may require the applicant go through a new pre-application process reflecting the current plans.

4. Agency Review

a) Agency review may occur throughout the review process and may be initiated by the applicant, the Administrator, or an agency representative. Agency comments received at any time will be included in the files and records for the subdivision. Comments will be included in the staff report, planning board recommendation, and governing body decision.
b) After determining the application includes all required elements, the Administrator shall provide a summary of the application and preliminary plat to those utilities, federal, state,

and local government agencies, and service providers identified during the pre-application meeting. The Administrator may also notify others who may have a substantial interest in the subdivision such as a property owners association.

c) When the property to be subdivided lies within a rural school district, the Administrator shall provide a summary of the information contained in the application and preliminary plat to the rural school district superintendent for distribution to the school district trustees for comment (pursuant to 20-9-615, MCA).

d) If during the review of the application, the Administrator contacts a public utility, agency, or other entity that was not included on the list originally made available to the applicant, the Administrator shall notify the applicant of the contact and timeframe for response (pursuant to 76-3-504(1)(q)(iii), MCA).

e) The Administrator shall provide the applicant with copies of all comments received.

f) If the applicant makes substantial changes to the application during subsequent stages of the review process, the Administrator may seek additional comments from agencies and others.

g) A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body (pursuant to 76-3-504(1)(i), MCA).

h) If a federal or state government entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment, the comment or opinion may be included in the governing body's written statement under 76-3-620, MCA only if the comment or opinion provides scientific information or a published study that supports the comment or opinion.

i) Federal or state entities that have been involved in an effort to acquire or assist others in acquiring an interest in the real property of the proposed subdivision are required to disclose that information prior to submitting comments, opinion, or information.

j) Coordination Between Counties and Municipalities.

   i. When a proposed subdivision lies within one mile of a third-class city or town, within two miles of a second-class city, or within three miles of a first-class city, the Administrator shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment (pursuant to 76-3-601(2)(b), MCA).

   ii. When any portion of a proposed subdivision is intended to be annexed, the governing bodies of both the city and county shall coordinate annexation and subdivision procedures to minimize duplication of hearings, reports, and other requirements when possible. In general, it is recommended that the city and county Administrators meet to discuss the proposed annexation and subdivision, overlapping issues, and make a recommendation on coordination to their respective governing bodies. The most coordinated approach is a joint review, with one staff report prepared for both jurisdictions, joint planning board hearings, and joint governing body meetings or hearings.

   iii. If joint review is not conducted, each jurisdiction may conduct separate, concurrent reviews of the proposed subdivision application. If the governing bodies of the city and county grant approval or conditional approval of the subdivision to be annexed, the county shall approve the subdivision with a condition of annexation, and the municipality shall approve the annexation prior to approval of the subdivision application.

5. Sufficiency Review

a) Timeframe and Process.
   i. Within 15 working days of notifying the applicant that the application contains all required elements, the Administrator shall determine whether the application contains detailed, supporting information that is sufficient to allow for a comprehensive review of the proposed subdivision.
   ii. The Administrator shall provide written notice to the applicant of the determination, identifying any deficiencies and information needed for the application to be sufficient and the timeframe in which additional information must be submitted.
   iii. When a missing element is submitted by the applicant, the 15 working day timeframe for review begins again. This process shall be repeated until Administrator provides written notice to the applicant that the application contains detailed, supporting information that is sufficient to allow for review of the application. If the applicant fails to submit the required information within six months, the application is terminated and the applicant must reapply. The Administrator may grant one six-month extension to this requirement.

b) If the applicant alters the preliminary plat application during sufficiency review, the 15 working-day review period is suspended. The Administrator shall determine whether the change materially alters the application submittal and if so, may require additional materials to clarify the proposed amendment including but not limited to a revised application form, preliminary plat, additional review fees, or documentation of potential impacts and mitigate. The 15 working-day review period resumes when the Administrator notifies the applicant that the application is sufficient for review.

c) If the subdivision regulations change during sufficiency review, the determination of whether the application is sufficient shall be based on the new regulations.

d) A determination that an application contains sufficient information to allow for review does not ensure the application will be approved or conditionally approved, nor does it limit the ability of the Administrator, planning board, or governing body to request additional information during the review process. A determination of sufficiency also does not limit DEQ, the local sanitarian, or other agencies with permit authority to require additional information during their reviews.

6. Application Review

a) Once the application has been deemed sufficient, the local government's statutory review period for a decision begins. The review period begins the day after the Administrator provides written notification to the applicant that the application is sufficient for review. The timeframes in which the governing body must make a decision to approve, approve with conditions, or deny the preliminary plat application are as follows:
   i. 35 working days for a minor subdivision;
   ii. 60 working days for a major subdivision with less than 50 lots; and
   iii. 80 working days for a major subdivision with 50 or more lots.

b) The applicable review period may be extended or suspended by up to one year upon mutual consent of the applicant and the Administrator. Amending an application after it has been determined to be sufficient constitutes the applicant's consent to an extension of the review period. The review period is also extended if a subsequent public hearing is required.

c) If the applicant changes the application after the Administrator determines the application is sufficient for review but prior to the governing body's decision, the subdivision may be considered amended and require additional consideration based on the following factors.
   i. Clarifying information that is submitted in response to a question posed by the Administrator, planning board, or governing body and which does not constitute a material change to the application will not be considered an amendment.
   ii. In determining whether a change is material the Administrator will use the criteria identified in Chapter VI- C. Within five working days of receiving amendment materials the Administrator shall notify the applicant in writing that:
      - The change is not material and the review may proceed;
      - The change is material, requiring a change to the staff report, but the review may proceed; or
      - The change is material and of such significance that the application reverts back to sufficiency determination.
   iii. By amending the application, the applicant consents to a suspension of the review period. The Administrator may extend the review period by up to 30 working days to allow for rescheduling a public hearing or meeting, to provide public notice, or to amend the staff report as may be necessary.

7. Staff Report

a) The Administrator shall prepare a report evaluating the preliminary plat application for compliance with these regulations. The staff report shall contain:
   i. A recommendation for approval, conditional approval (including any conditions and mitigation measures), or denial of the preliminary plat application;
   ii. A summary providing the basis for the recommendation including findings of fact that describe the factual evidence and analysis of compliance with the review criteria (Chapter V) and submittal requirements (Chapter VI) ;
   iii. A summary of conditions of approval necessary to ensure significant adverse impacts identified through the review process are mitigated and to ensure compliance with state, local, and federal regulations, including these regulations, prior to final plat approval;
   iv. A recommendation for approval or denial of any variance requests, including any conditions of approval and a summary of facts forming the basis for the recommendation;
   v. An account of all agency and public comments received, including those provided with the subdivision application materials.

b) The Administrator shall submit the staff report to the applicant and governing body at least five working days prior to the governing body's meeting on the application for a minor subdivision. For a major subdivision, the Administrator shall submit the staff report to the planning board and applicant at least 15 working days prior to the public hearing.

8. Public Notice and Comment

a) The Administrator shall be responsible for providing public notice as follows:
   i. All major subdivisions require a public hearing before the planning board and a public hearing before the governing body (unless exempt per 76-3-616, MCA). Notice of the planning board hearing shall be in conformance with the requirements of 76-3-605(3), MCA. For any additional meetings of the planning board or governing body on an application, notice shall be posted a minimum of

48 hours in advance in accordance with the policies of **[INSERT THE NAME OF THE CITY OR COUNTY]**.

ii. Minor subdivisions are considered at a public meeting of the governing body where public comment shall be allowed. Notice of the meeting must be posted a minimum of 48 hours in advance of the hearing in accordance with the policies of **[INSERT THE NAME OF THE CITY OR COUNTY]**.

iii. The Administrator may post notice of any public hearing related to a proposed subdivision on the subject property and may also post notice of the hearing and materials related to the application on the **[INSERT THE NAME OF THE CITY OR COUNTY]** website or other digital media.

b) Public comment will be accepted at any point in the subdivision review process and at all public hearings and meetings. Comments received will be considered in the staff report, planning board recommendation, and governing body decision.

i. Written comments regarding the application shall be submitted to the Administrator, who shall keep a record of comments and include them in the files and records for the subdivision. The Administrator will transmit all written public comments to the applicant and the planning board and governing body, as applicable.

ii. The planning board and governing body will review and consider all public comments prior to making a recommendation or decision on the application.

iii. Following preliminary approval and when DEQ or local sanitation approval is required, the applicant shall, as part of the application for sanitation approval, forward a summary comments to the sanitation reviewer.

9. Planning Board Hearing and Recommendation

a) The planning board shall review, hold a public hearing, and make a recommendation on all major subdivisions except those exempted under 76-3-616, MCA. The planning board delegates the responsibility for reviewing minor subdivisions to the Administrator.

b) Public Hearing Requirements.

i. The planning board shall hold a public hearing separate from the governing body's public hearing on all major subdivisions, with public notice provided as described in Ch. IV-A(8) above.

ii. Public hearings shall be conducted as provided in the **[INSERT THE NAME OF THE CITY OR COUNTY]** Growth Policy.

iii. Unless otherwise established in the **[INSERT THE NAME OF THE CITY OR COUNTY]** Growth Policy, the planning board shall conduct all business on the subdivision during the public hearing or if necessary, continue the hearing to another date. Notice of the continued hearing must be posted at least 48 hours in advance.

iv. When a major subdivision is exempt from planning board review pursuant to 76-3-616 but requires a variance to these regulations, a separate public hearing shall be required to consider the variance request only.

c) Planning Board Consideration and Recommendation. The planning board shall evaluate the proposed subdivision under the review criteria in Chapter V, taking into consideration the preliminary plat application, staff report, variance request (when applicable), any additional information submitted and all public comments received. The planning board shall make a recommendation to the governing body to approve, conditionally approve, or deny the subdivision based on established findings of fact that support the

recommendation. The board's recommendation shall be provided in writing to the applicant and the governing and include:

i. Recommended findings of fact that describe the factual evidence and analysis of compliance with the submittal requirements and review criteria;
ii. Recommended conditions and mitigation measures;
iii. Disclosure of any preferences for mitigation expressed by the applicant to the planning board;
iv. A recommendation for approval or denial of any variance requests, including any conditions of approval and a summary of facts forming the basis for the recommendation;
v. An account of all agency and public comments received during the public hearing process;
vi. The staff report as submitted to the planning board; and
vii. Meeting minutes.

The Administrator shall compile the items listed above following the planning board hearing and submit the materials to the planning board chair for approval. Once approved, the Administrator shall submit the package to the governing body and applicant within 10 working days.

10. Governing Body Meeting or Hearing and Decision

a) The governing body shall review, hold a public hearing, and make a determination on all major subdivisions except those exempted under 76-3-616, MCA. The governing body shall hold a public meeting on all minor subdivisions pursuant to these regulations and 76-3-609(2)(e), MCA.

b) Public Meeting and Hearing Requirements.

i. The governing body shall hold a public hearing separate from the planning board's public hearing on all major subdivisions, with public notice provided as described in Ch. IV-A(8) above.
ii. Public hearings shall be conducted as provided in the **[INSERT THE NAME OF THE CITY OR COUNTY]** Growth Policy.
iii. Unless otherwise established in the **[INSERT THE NAME OF THE CITY OR COUNTY]** Growth Policy, the governing body shall conduct all business on the subdivision during the public hearing or if necessary, continue the hearing to another date. Notice of the continued hearing must be posted at least 48 hours in advance.
iv. When a major subdivision is exempt from review pursuant to 76-3-616 but requires a variance to these regulations, a separate public hearing shall be required to consider the variance request only.

c) Required Mitigation of Impacts.

i. The governing body may require mitigation measures through conditions to minimize potentially significant adverse impacts identified under the review criteria in Chapter V. When requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land.
ii. The governing body shall consult with the applicant and shall give due weight and consideration to the expressed preference of the applicant. The applicant shall express preferred mitigation no later than at the governing body's hearing or meeting; it is recommended the applicant submit mitigation measures as early in the review process as possible to allow for proper consideration.

iii. The governing body is not required to accept the applicant's preferred mitigation. In some instances, the impacts of a proposed development may be unacceptable and shall preclude approval of the subdivision.

d) New Information Submitted.

i. If new information is presented at the governing body's hearing for a major subdivision, the governing body shall consider the new information in accordance with the criteria set forth in Chapter VI to determine if the information represents or results in a material change to the proposed subdivision.

ii. If the information or analysis of information was presented at the planning board hearing and the public has had a reasonable opportunity to examine and comment on the new information, the governing body shall proceed with its decision to approve, conditionally approve, or deny the proposed subdivision.

iii. When new information, comments, or documents are presented following the planning board public hearing, and the information or analysis of information has never been submitted as evidence or considered by the planning board at a hearing on the application, the governing body may:

- Approve, conditionally approve, or deny the application without basing its decision on the new information if the governing body determines the information is either irrelevant or not credible; or
- Direct the planning board to schedule a subsequent public hearing for consideration of only the new 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 application.

iv. When a subsequent public hearing is required, the review period is suspended. The new hearing shall be noticed according to the applicable requirements of these regulations and be held within 45 days of the governing body's determination to schedule a new hearing.

v. The Administrator shall provide to the planning board a compilation of the new information, an addendum to the staff report that addresses only the new information, and any recommended changes to the planning board's previous recommendation and findings of fact resulting from the new information.

vi. The planning board shall consider only the new information, taking into consideration the staff report addendum and any comments and information received at the subsequent public hearing. Within 10 working days after the subsequent public hearing, the Administrator shall submit in writing to the applicant and governing body any changes to the materials required in Ch. IV-A(9)(c) above.

vii. The governing body shall hold a public hearing after receiving the planning board's revised recommendation based on the new material submitted. Notice of the governing body hearing must be posted a minimum of 48 hours in advance of the hearing. The applicable review period resumes at the time of the scheduled hearing.

e) Governing Body Consideration and Decision.

i. The governing body's decision to approve, conditionally approve, or deny a proposed subdivision shall be based upon an evaluation of the subdivision application, preliminary plat, environmental assessment, staff report, findings of fact, public comment, planning board recommendation, and any additional information provided by the applicant. The requirements for approving, approving

with conditions, or denying an application are specified in Chapter V and are the same criteria considered in the staff report and planning board recommendation.

ii. When an applicant requests a variance, the governing body shall review the request for compliance with the variance criteria in Chapter VI, taking into consideration the written request submitted by the applicant, public comment received, planning board recommendation, staff report, findings of fact, and any additional information pertinent to the request. The governing body shall review and make a determination on the variance request prior to making a decision on the preliminary plat application.

iii. The governing body shall provide record of their decision to the applicant, in writing pursuant to 76-3-504(1)(r), MCA, along with supporting materials to include the following:

- A summary of the decision to approve, approve with conditions, or deny the preliminary plat application, dated and with the appropriate signature of the governing body;
- A list of the conditions that apply to preliminary plat approval that must be satisfied before the final plat may be approved, accompanied by written findings in support of reasonable mitigation required to address impacts;
- The effective time period of the preliminary plat approval;
- A summary of the decision to approve or deny any requested variances, including any proposed conditions for approval, and a statement describing the facts and conditions upon which the decision is based;
- Information on the appeal process for denial or imposition of conditions;
- Findings of fact and conclusions that the governing body weighed and relied upon in making its decision to deny or impose conditions and reference documents, testimony, or other materials that form the basis of the decision;
- Identification of the regulations and statutes that were used in reaching the decision to deny or impose conditions that explains how they apply to the decision; and
- A summary of all public comments related to water and sanitation that have not already been provided to the applicant, as well as written notice that the applicant is required to submit public comments related to water and sanitation as part of the application for sanitation approval (pursuant to 76-3-604(7)(b), MCA).

The Administrator shall compile the items listed above following the hearing or meeting in which the decision is made and submit the materials to the planning governing body chair for approval. Once approved, the Administrator shall send the package to the applicant within 30 days of the decision being made.

a) Appeals

i. A person who has filed with the governing body an application for subdivision under 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 these regulations that is arbitrary, capricious, or unlawful (pursuant to 76-3-625(1), MCA).

ii. A party as identified in 76-3-625(3), MCA, 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 from the date of the written decision, appeal to the **[INSERT THE NAME OF THE CITY OR COUNTY]** District Court. The petition must specify the grounds upon which the appeal is made. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

11. Preliminary Plat Approval

a) After the preliminary plat application is approved, the governing body may not impose any additional conditions as a prerequisite of final plat approval.

b) The preliminary plat shall be in effect for no more than three calendar years, except as provided for phased developments approved under these regulations or unless the applicant and governing body have agreed to an extension.

   i. At the request of the applicant the governing body may extend the preliminary plat approval period provided the extension meets the extension criteria in Chapter V, the applicant has submitted the request according to the requirements of Chapter VI, the, and the extension is granted prior to the termination of the original approval period. The governing body may agree to more than one extension.

   ii. The final plat application must be submitted, approved, and filed with the clerk and recorder within the preliminary plat approval period.

   iii. If the preliminary plat approval period expires, a new application shall be required.

c) Phased Development.

   i. The governing body may approve phased developments that extend beyond the maximum three-year preliminary approval period set forth in 76-3-610, MCA in accordance with a phasing schedule proposed by the applicant. However, all individual phases must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body. Any phase not approved, conditionally approved, or denied within 20 years of the overall phased development preliminary approval shall be null and void.

   ii. The applicant may change the phasing schedule upon approval of the governing body following a public hearing. The governing body may approve a proposed change to the phasing schedule only if the change does not negate a condition of approval or otherwise adversely affect public health, safety, or welfare.

d) Restrictions on Transferring Title

   i. After the preliminary plat has been approved or conditionally approved but before final plat approval, the applicant may enter into contracts to sell lots in the proposed subdivision if the conditions of 76-3-303, MCA have been met.

   ii. Except as provided in 76-3-303, MCA, every final plat must be filed for record with the clerk and recorder before title to the subdivided land can be sold or transferred in any manner. In the case of a subdivision creating spaces for rent or lease for recreational camping vehicles or mobile homes, no rent or lease may occur until the governing body grants final subdivision approval.

   iii. If unlawful transfers, rental or lease agreements are made, the **[INSERT THE NAME OF THE CITY OR COUNTY]** Attorney shall commence action to enjoin

further sales, transfers, or rent or leases and compel compliance with the Montana Subdivision and Platting Act and these regulations.

12. Subsequent Processes and Procedures for Phased Development

a) Following approval of the overall phased development preliminary plat, the applicant shall provide written notice to the governing body through the Administrator of the intent to commence one or more phases. Along with the notice, the applicant shall submit an application form, preliminary plat, review fee, narrative describing the number and types of lots or units, deviations from the approved overall development plat (if any), and public improvements necessary to make that phase fully functional.

b) The governing body shall hold a public hearing on each phase and/or a change to an approved phasing schedule within 30 working days of receipt of written notice from the applicant.

c) Notice of the public 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 hearing. The applicant, each property owner of record whose property is immediately adjoining the land included in the phase, and each purchaser under contract for deed of property immediately adjoining the land included in the phase must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing. Notices shall include the time, date, and location of the hearing; a description of the phase and overall phased development; a description of the property, and how additional information may be obtained.

d) The Administrator shall draft a report evaluating the application submittal, surrounding conditions and circumstances, and propose findings on whether there are any changed primary review criteria impacts or if new information exists that creates new potentially significant adverse impacts. The Administrator shall submit the staff report to the governing body and applicant at least 15 working days prior to the public hearing.

e) After the hearing, the governing body shall determine whether any changed primary review criteria or new information creates new and potentially significant adverse impacts for the phase or phases under consideration. Notwithstanding the provisions of 76-3-610(2), MCA the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development.

f) Any additional conditions must be met before final plat approval is granted for each phase of development. Preliminary approval for each phase shall be in force for not more than three calendar years (pursuant to 76-3-611, MCA).

IV-B FINAL PLAT APPLICATION AND REVIEW PROCESS

1. Final Plat Submittal

a) Prior to submitting the final plat application, the applicant shall submit a draft of the final plat to the Administrator, who shall forward it to the examining land surveyor. The examining land surveyor shall review the plat for errors and omissions in calculation and drafting. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining land surveyor shall certify compliance in a printed or stamped certificate on the final plat; the stamped plat shall accompany the final plat application submittal.

b) The final plat application including the stamped final plat, supplementary documents, and review fees, must be submitted to the Administrator at least 40 working days prior to the expiration of the preliminary plat approval period.

c) The final plat application is considered to be received on the date of delivery to the Administrator when accompanied by all supplementary documents and review fees.

2. Application Review

a) Within 20 working days of receipt of the final plat application, the Administrator shall determine whether the final plat conforms to the conditions of preliminary plat approval, the requirements of the Montana Subdivision and Platting Act and all applicable requirements of these regulations, and whether the county treasurer has certified all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.
b) The Administrator shall notify the applicant in writing that the final plat application meets the requirements of Ch. IV-B(2)(a) above. If it is determined the final plat application does not meet the requirements of Ch. IV-B(2)(a), the Administrator shall identify the defects in the notification and provide a timeframe in which they must be addressed.
c) The Administrator may review subsequent submissions of the final plat application only for information found to be deficient during the original review of the final plat application.
d) If the Administrator determines the final plat and supplementary information differs materially from the approved or conditionally approved preliminary plat application, the Administrator shall review the changes according to Ch. IV-B(6)(c).
e) The review period provided in Ch. IV-B(1)(b) above applies to each subsequent submission until a written determination is made that the final plat application contains the required information and the applicant or the applicant's agent is notified. However, the applicant or the applicant's agent and the Administrator may mutually agree to extend the review period at any time.
f) After the final plat application is determined to meet the requirements of Ch. IV-B(2)(a) above, the Administrator shall prepare and distribute to the applicant and governing body a report documenting how the final plat meets each of the requirements.

3. Governing Body Review and Decision

a) Within 20 working days of receipt of the report required in Ch. IV-B(2)(f), the governing body shall review the final plat application and decide whether to approve or deny the request.
b) Governing body review and approval shall occur at a public meeting where public notice has been posted at least 48 hours in advance, and the Administrator has provided written notice to the applicant at least 10 working days prior to the meeting.
c) If the final plat is approved, the governing body shall certify its approval on the face of the plat. When applicable, a certificate of the governing body's acceptance of any dedicated land, easements, or improvements shall be placed on the face of the final plat.
d) If the final plat application is denied, the governing body shall return the final plat to the applicant within 30 days and provide a written statement that:
    i. Includes information regarding the appeal process for denial of the application;
    ii. Identifies the regulations and statutes that were used in reaching the decision to deny and explains how they apply to the decision;
    iii. Provides the facts and conclusions that the governing body relied upon in making its decision to deny and references documents, testimony, or other materials that form the basis for the decision; and
    iv. Provides the conditions that apply to the preliminary plat that must be satisfied before the final plat may be approved.
e) The applicant may make any necessary corrections to the plat or take other steps necessary to conform to the conditional approval and resubmit the final plat application. The re-

submittal must occur and the final plat must be approved within the original or extended preliminary plat approval period.

4. Filing the Final Plat

a) After receiving approval, the final plat may be filed with the clerk and recorder. The final plat may not be altered in any manner prior to filing.

b) The clerk and recorder may not accept any plat for filing that does not bear the approval of the governing body in proper form or a plat that has been altered after final plat approval.

c) The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Final Subdivision Plats.

a) Should a plat require amendment, it is subject to the procedures for review of a minor or major subdivisions, unless the changes meet the requirements for corrections found in 76-3-614, MCA, or qualifies for an exemption as identified in Chapter II of these regulations.

   i. The governing body may not approve an amended plat without written consent of the owners and lien-holders of all lots that will be modified by the proposed amendment.

   ii. The plat to be filed shall clearly be labeled as an amended plat of the previously approved subdivision.

CHAPTER V – SUBDIVISION REVIEW CRITERIA

Chapter Overview

This chapter addresses the criteria by which preliminary plat applications are approved, denied, or approved with conditions in accordance with the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA ("MSPA"). This chapter also addresses the criteria for determining whether amendments to an application are material and warrant additional information and procedural steps. This chapter also provides review criteria for final plat applications, variances, phased developments, and extensions of the preliminary approval period.

V-A Preliminary Plat Application Review Criteria

1. Information to be Considered

The governing body's decision to approve, conditionally approve, or deny a proposed preliminary plat application shall be based on review of the application, preliminary plat, applicable environmental assessment, public hearing and comment, planning board recommendation, staff report, and other information submitted or prepared in the review of the application. As per 76-3-608(10), MCA, findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations and the MSPA must be based on the record as a whole.

2. Review Criteria

The basis for the governing body's decision to approve, conditionally approve, or deny the proposed subdivision shall be whether the subdivision meets the requirements of the MSPA and these regulations. The findings of fact shall include an evaluation of the following criteria.

a) Compliance with These Regulations
The review is based on the subdivision regulations in place at the time the application is determined to contain sufficient information for review. Subdivisions that do not comply with the following standards shall be denied, unless the requirement is made a condition of approval or a variance is granted.

i. Design Standards – Compliance with provisions of the design standards in Chapter VII is required.
ii. Special Provisions for Condominiums, Townhouses, Townhomes, and RV and Mobile Home Parks - Condominiums, townhouses, townhomes, and RV and mobile home parks shall meet the additional design standards and requirements in Chapter III and as referenced in other chapters for these types of subdivisions.
iii. Compliance with Zoning – All subdivisions must demonstrate they are designed to comply with applicable zoning.
iv. Compliance with Other Regulations – All subdivisions shall demonstrate compliance with other applicable regulations including ARMs for sanitation and water supply, floodplain regulations, etc.
v. Conformance with Adopted Plans – Subdivisions must substantially comply with adopted plans such as a growth policy, transportation plan, or community wildfire protection plan. Because plans are not regulatory, no variance for non-conformance is required, nor can denial or a condition of approval be based solely on plan conformance.

b) Compliance with the Subdivision Review Procedure (76-3-608(3)(b)(iii), MCA)
All preliminary plat applications shall be reviewed in compliance with the procedures established in these regulations and the MSPA. The record shall demonstrate the review processes and timeframes in Chapter IV were followed. All conditional approvals shall include a timeframe for final plat filing.

c) Compliance with Survey Requirements (76-3-608(3)(b)(i), MCA)
The preliminary plat shall comply with the survey requirements in Part 4 of the MSPA.

d) Provision of Legal and Physical Access (76-3-608(3)(d), MCA)
All preliminary plat applications shall demonstrate how legal and physical access is to be provided to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

e) Provision of Utility Easements (76-3-608(c), MCA)
The preliminary plat application shall provide easements within and to the proposed subdivision for the location and installation of any planned utilities.

f) Impacts to Agriculture, Agriculture Water User Facilities, Local Services, the Natural Environment, Wildlife, Wildlife Habitat, and Public Health and Safety (76-3-608(3)(a), MCA)
The governing body shall identify any impacts it determines to be potentially significant and adverse to agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety. The criteria for determining significant adverse impacts are the criteria adopted in the [INSERT THE NAME OF THE CITY OR COUNTY] Growth Policy as required by 76-1-601(3)(h), MCA.

3. Limitations

a) Prohibition on Requiring Capital Facilities for Education (76-3-510, MCA)
Although the governing body may require the subdivider to pay or guarantee payments for part or all of the costs of extending capital facilities related to public health and safety, the costs of constructing or extending capital facilities related to education may not be imposed on the subdivider.

b) Restrictions on Conditional Approval or Denial for Water and Sanitation (76-3-608(6), MCA)
The governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided in the preliminary plat application or on public comment related to the provided sanitation information only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

c) Limitation on Waivers of the Right to Protest Improvement Districts (76-3-608(7), MCA)
The governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date the final subdivision plat is filed with the county clerk and recorder.

d) Restriction on Encroachment onto Adjoining Private Property (76-3-608(8), MCA)
The governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under the Montana Sanitation in Subdivisions Act or these regulations or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. For the purposes of this section, “well isolation zone” has the meaning provided in 76-4-102, MCA.

e) No Denial Solely for Education or Wildland Urban Interface (76-3-608(1), MCA)

The governing body may not deny a proposed subdivision solely for impacts to educational services or designation or based solely on parcels within the subdivision having been designated as urban-wildland interface parcels under 76-13-145, MCA.

f) No Delay or Denial Based on Failure of Public Utility or Agency to Comment (76-3-504(1)(i), MCA)
The governing body may not delay a decision on the preliminary plat application past the review period time limits provided in these regulations and may not deny a preliminary plat application due to failure of any public utility or agency to provide comments on the application.

V-B Final Plat Application Review Criteria

1. Information to be Considered

The governing body's decision to approve or deny the final plat application shall be based on an evaluation of compliance with conditions of preliminary approval, the final plat application including the plat and supplements, the administrator's written report, review of any legal agreements or contracts by the city/county attorney, and other information submitted or prepared in the review of the final plat application.

2. Review Criteria

A final plat shall not be approved for filing unless the final plat application demonstrates compliance with the following criteria.

a) No Material Change to the Preliminary Plat and Plans
There shall be no material changes to the approved preliminary plat and related materials except for the following circumstances:

i. When changes are specifically required by conditions of approval. Material changes in the site layout, subdivision design, or to the plat for DEQ or other agency approval or other required permits do not constitute an exception unless a condition specifically authorizes the change.
ii. If the administrator determines a condition of approval is illegal or impossible to comply with due to circumstances outside of the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a public hearing with notice provided as per 76-3-605(3), MCA in order to determine if the condition may be waived or amended.

Unless the change is one described in the two previous paragraphs, a final plat with a material change, as described below under Criteria for Amending Applications, shall be denied until it is brought into compliance or only has changes that are not material.

b) Compliance with Conditions of Approval (76-3-611, MCA)
The final plat application shall demonstrate compliance with all conditions of approval.

c) Abstract of Title and Lienholders Consent (76-3-612, MCA)
The subdivider shall submit with the final plat application a certificate of title abstracter dated within 30 days of receipt of the final plat application. The certificate shall show the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land. The subdivider shall provide written consent to the subdivision by all owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

d) Improvements Installed (76-3-507, MCA)

All improvements required prior to final plat filing shall be completed and approved and/or certified as required under Chapter VIII. Improvements that are not essential to public health and safety may be secured with a Subdivision Improvements Agreement and financial guarantee as detailed in Chapter VIII.

e) County Treasurer's Certification (76-3-611(2), MCA)
The final plat shall include the county treasurer's certification that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

f) Examining Land Surveyor Approval (76-3-611(2), MCA)
The governing body may require the final subdivision plat to be reviewed for errors and omissions in calculation and drafting by an examining land surveyor before recording with the county clerk and recorder. No final plat shall be recorded unless the plat includes a certificate of compliance signed by the examining land surveyor.

V-C Criteria for Amending Subdivision Applications

1. Applicability

Changes to a preliminary or final plat application after submittal triggers review as an amended application. Chapter IV "Subdivision Application and Review Process," identifies the steps to be taken when changes are made including:

a) Amendments to the application during element review;
b) Amendments to the application during sufficiency review;
c) Amendments to the application after sufficiency but prior to governing body decision; and
d) Amendments to the application after preliminary plat approval but prior to final plat approval. Please note no material changes are allowed after preliminary plat approval as per 76-3-611, MCA. The subdivider is advised that changes to the site layout for sanitation or other purposes can be considered a material change, even when such changes are required by an agency such as DEQ, that may issue an approval necessary for the subdivision.

2. Review Criteria for Material Change

If a subdivision application is determined to have a material change, the application may revert to an earlier stage in the review process. The criteria for determining if a material change has been made to an application are whether the change:

a) Significantly alters the layout or design of the subdivision;
b) Negatively impacts agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, or public health and safety in ways not previously identified or reviewed;
c) Requires a variance from a design standard; or
d) Significantly impacts other aspects of the subdivision in ways not previously identified or reviewed.

3. Examples of Material Change

The following are examples of potential material changes. These are examples only and not an exhaustive list.

a) Lots – Change in configuration or increase in the number of lots;
b) Access – Change of legal and physical access to one or more lots, relocation of road approaches, changes of access routes;
c) Infrastructure - Changes to the types or locations of water or sanitation systems;
d) Parkland or open spaces – Relocation of parkland or reduction in acreage, and
e) Easements - Change in location, width, or purpose of easements.

V-D Criteria For Changes and Amendments to Final Plats

1. Changes to Approved Final Plats Prior to Filing

No changes are allowed to an approved final plat prior to filing with the clerk and recorder.

2. Changes to Filed Final Plats

Changes that alter any portion of the filed must be made by filing an amended plat showing all alterations. The criteria for amending a final plat are the following:

a) Survey corrections
Survey Corrections shall be reviewed according to the survey requirements under Part 4 of the MSPA and do not require review as a subdivision. The governing body may also correct a final plat when it does not definitively show the location or size of lots or blocks or the location or width of any street or ally, as provided in 76-3-614, MCA.

b) Boundary Relocations and Aggregations of Lots in a Platted Subdivision
Boundary relocations and aggregations involving five or fewer lots within a platted subdivision shall be reviewed to determine if they qualify for an exemption under 76-3-207, MCA. Refer to Chapter II "Divisions of Land Exempt from Subdivision Review."

c) All Other Changes to a Final Plat
All other changes must be reviewed as an amended subdivision following the process and other requirements for a major or minor subdivision under these regulations.

V-E Variance Review Criteria

1. Applicability

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

2. Criteria for Approval

The criteria for approving variances are:

a) The variance will not be detrimental to public health, safety, or general welfare, or be injurious to adjoining properties;
b) Due to the physical shape, surroundings, or topographical conditions of the property, strict compliance with the regulations will impose an undue hardship. 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;
d) The variance will not place the subdivision in nonconformance with any adopted zoning regulations;
e) The variance will not allow subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
f) The variance shall comply with specific provisions for variances as may be described in Chapter VII, Design and Improvement Standards, and
g) The variance will not have the effect of nullifying the intent and purpose of these regulations.

3. Conditions of Approval

In granting a variance, the governing body may impose reasonable conditions to further the purposes of these regulations.

V-F Phased Development Review Criteria

1. Overall Phased Development Preliminary Plat Application

a) Information to be Considered
The governing body's decision to approve, conditionally approve, or deny a proposed overall phased development preliminary plat application shall be based on review of the application, preliminary plat, applicable environmental assessment, public hearing and comment, planning board recommendation, staff report, and other information submitted or prepared in the review of the application. As per 76-3-608(10), MCA, findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations and the MSPA must be based on the record as a whole.

b) Review Criteria
The basis for the governing body's decision to approve, conditionally approve, or deny a proposed overall phased development preliminary plat application shall be the same as the preliminary plat application review criteria provided in Ch. V-A(2) of this chapter. The findings of fact shall include an evaluation of the criteria.

2. Individual Phases

a) Information to be Considered
The governing body's decision to approve, conditionally approve, or deny an individual phase of a phased development shall be based on review of the application, preliminary plat, public hearing and comment, staff report, and other information submitted or prepared in the review of the application. As per 76-3-608(10), MCA, findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of these regulations and the MSPA must be based on the record as a whole.

b) Review Criteria
The basis for the governing body's decision to approve, conditionally approve, or deny an individual phase shall be:

i. Each phase shall be in substantial conformance with the overall phased preliminary plat;
ii. Each phase shall be reviewed and approved with in the required timeframe;
iii. Each phase shall comply with the subdivision regulations in effect on the date the overall phased development preliminary plat application was deemed sufficient for review;
iv. Each phase shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater treatment, parkland, and other infrastructure and services independent and without reliance on a future or subsequent phase; and
v. Required improvements for all prior phases have been be completed or secured with a subdivision improvements agreement and financial guarantee before commencement of a later phase.

3. Final Plat Review of Individual Phases

a) Information to be Considered
The governing body's decision to approve or deny the final plat application shall be based on an evaluation of compliance with conditions of preliminary approval, the final plat application including the plat and supplements, the administrator's written report, review of any legal agreements or contracts by the city/county attorney, and other information submitted or prepared in the review of the final plat application.

b) Review Criteria
The final plat of each individual phase shall be reviewed under the criteria provided in Ch. V-B(2), above.

V–G Criteria for Reviewing Preliminary Plat Approval Period Extension Requests

1. Information to be Considered

In considering whether to grant an extension to the preliminary plat approval period, the governing body shall consider the reasons for the request as explained in the subdivider's written request for an extension and shall consider the administrator's recommendation. The written request must be received no later than 40 days prior to the end of the preliminary plat approval period.

2. Criteria

a) Significant Changes in Regulations
The governing body shall consider whether subdivision, zoning, or other regulations have changed since the date of preliminary approval in ways that would make the preliminary plat application non-compliant if submitted today.

b) Significant Changes On or In the Vicinity of the Property
The governing body shall consider whether conditions on or in the vicinity of the property have changed significantly since the date of preliminary plat approval in ways that could impact public health, safety, and general welfare. Examples of significant changes include changes in traffic volumes and patterns, increased danger from wildfire or flooding, and changes in the ability of agencies or utilities to provide service to future subdivision occupants.

3. Time Periods

a) Extensions shall be no longer than three-year increments.
b) The total time period from preliminary plat approval until final plat filing shall not exceed 10 years, including extensions. This does not include phased developments.

4. Extension to be in Writing

Any mutually agreed-upon extension must be in writing, dated, and approved by the governing body with appropriate signature. The extension must be dated within the preliminary approval period.

CHAPTER VI - SUBMITTAL REQUIREMENTS

CHAPTER OVERVIEW

This chapter identifies what must be included in applications for various stages of subdivision review in accordance with the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA ("MSPA"). Refer also to the Chapter V "Subdivision Review Criteria," for the criteria for approving applications and Chapter IV "Subdivision Application and Review Process," for discussion of process, timing, and roles of the applicant, administrator, planning board, and governing body.

VI-A GENERAL FORMAT OF ALL APPLICATION SUBMITTALS

1. Application

Complete applications and supporting materials shall be submitted to the administrator at the following location:

[INSERT ADDRESS AND CONTACT INFORMATION FOR SUBDIVISION ADMINISTRATOR, OR PROVIDE WEB LINK FOR DIGITAL APPLICATION SUBMITTALS]

2. Format

Complete applications and supporting materials shall be provided in PDF format either electronically (email) or via an external USB drive as applicable. If the applicant is unable to create a PDF document, the applicant may contact the administrator to determine the number and dimensions of paper copies required.

3. Additional Copies and Formats

Additional paper copies or supporting materials submitted electronically or via external USB drive may be required in order to ensure that all reviewers have the documents in a format they can access and read.

VI-B PRE-APPLICATION MEETING

1. Application Contents

The applicant shall submit the following items when requesting a pre-application meeting:

a) Review Fee (if applicable).

b) Completed pre-application form and supporting materials (refer to Ch. V).

VI-C PRELIMINARY PLAT APPLICATION

1. Application Contents

The applicant shall submit to the administrator a complete application package containing the elements listed below as required by the administrator during the pre-application meeting:

a) Preliminary plat application form signed by the property owner(s) and applicant (if different).

b) Preliminary plat/plan (as applicable) on one or more sheets that clearly illustrates:

i. The lot layout showing the existing structures, proposed building sites, sanitation information required by DEQ, and pertinent environmental features including floodplains, wetland and riparian vegetation, ponds, lakes and other waterbodies;

ii. Existing and proposed easements, identified as to purpose and with record references (e.g., bk/pg) for existing easements;

iii. The road and street network showing legal and physical access to the site and to each individual lot;

iv. Pedestrian and bike access and circulation;

v. Existing and proposed utilities;

vi. Proposed parkland dedication;

c) The appropriate review fee.

d) Tract of record history clearly documenting the legal existence of the tract(s) of record being divided.

e) Proof of minor subdivision eligibility. If the subdivision is proposed as a minor subdivision as defined in Chapter III of these regulations, documentation of the original tract of record as of July 1, 1973 and copies of each certificate of survey, subdivision plat, or other division pertaining to that tract of record since July 1, 1973.

f) Applicable agricultural covenants. If the subject property was created with an agricultural covenant per 76-3-207(c), MCA, the application shall contain a written request to revoke the covenant.

g) Site location/vicinity map.

h) Aerial photo of property to be subdivided.

i) A brief narrative summarizing the proposed subdivision.

j) Overall phased development plat and schedule. If the applicant does not intend to install all improvements, including roads and electricity to each lot in the subdivision by final plat filing, the subdivider shall submit an overall phased development preliminary plat on which independent platted development phases are presented, as well as a schedule for when each phase will be submitted for review. Refer to Ch. VI-E below for specific application requirements.

k) A preliminary title report (less than three years old), including copies of all filed documents referenced.

l) Documentation demonstrating legal and physical access to the subdivision and to each proposed lot.

m) Documentation demonstrating compliance with applicable zoning regulations.

n) Required documentation and narrative pertaining to a request for variance from any component of the subdivision that does not conform to the requirements of Chapter VII, "Subdivision Design and Improvement Standards." Refer to Ch. VI-D for additional information on the variance request process.

o) A completed Environmental Assessment or Summary of Probable Impacts (refer to Chapter III, "Overview and Types of Subdivisions" to determine if an environmental assessment or a summary is required).

p) A description of any proposed mitigation measures to address significant adverse impacts related to the subdivision.

q) A list of agencies contacted by the applicant along with information supplied to the agencies and all comments received to date.

r) A certified list showing the names and addresses of all adjoining property owners.

s) Documentation of site suitability including a description and analysis of soils, topography, floodplain and identification of all natural and man-made hazards.

t) Proposed street or road plans.

u) A traffic impact study prepared and signed by a professional engineer.

v) A grading plan for any areas proposed for surface disturbance, including roads.

w) A stormwater drainage plan for any areas proposed for roads and for facilities (including swales or detention areas) that will serve more than one lot, meeting the requirements of the local public health office and DEQ (when applicable).

x) Water, sanitation, stormwater and solid waste information and documentation meeting the requirements of 76-3-62, MCA.

y) A solid waste management plan.

z) Information regarding existing and proposed irrigation on or adjacent to the subdivision, including any proposal to remove water rights from the property.

aa) A description of existing and proposed utilities on and adjacent to the site.

bb) A description of the proposed methodology to meet parkland dedication requirements.

cc) A fire suppression plan.

dd) A wetland delineation.

ee) A vegetation management plan.

ff) An irrigation plan and landowners' water use agreement.

gg) A dust control plan.

ff) A description of the status of existing mineral rights and proposed disposition of those rights.

hh) A description of existing and proposed access for children to/from the school(s) serving the development, including but not limited to crosswalks and bus stops/access.

ii) A description of the cultural and historic characteristics of the site and surrounding area accompanied by an assessment of the impacts to these characteristics as a result of subdivision.

jj) An assessment of potential wildlife/human interaction and impacts associated with the development.

kk) Draft Homeowners' Association (HOA) documents including proposed articles of incorporation, declaration and bylaws, covenants and maintenance provisions for any common areas or improvements not dedicated to the public.

2. Element Review

The list above constitutes the components required for "Element Review," referenced in Chapter IV, "Subdivision Review Process." Response to each item required at the pre-application meeting is required to be addressed in the preliminary plat application; however, if the required item does not apply to the proposed subdivision, the application shall provide a statement of explanation and information or documentation to support the statement.

The information submitted for each element listed above shall conform to the detailed requirements found in Ch. V.

3. Special Provisions for Condominiums, Townhomes, Townhouses, and RV and Mobile Home Parks

Applications for condominiums, townhomes, townhouses, and RV and mobile home parks shall submit a site plan in place of a plat, along with all other required information. The detailed requirements for these subdivisions and for a site plan are included in Appendix A, "Preliminary Plat Application Requirements."

4. Format and Number of Copies once the Application is Determined Sufficient

Once the application is determined sufficient, the administrator shall contact the applicant to request the required number of copies of the application that must be submitted[1], as well as the format and deadline for submittal. The original application and all responses to element and sufficiency review constitute the complete application.

VI-D REQUEST FOR VARIANCE

1. Separate Request for Each Design Standard

The applicant shall include in the preliminary plat application a separate request for each variance to a specific design standard that the proposed subdivision does not meet.

2. Application Contents

A request for a variance shall include the following information:

a) Complete application form.

b) The appropriate review fee.

c) The exact citation of the design standard for which the variance is requested.

d) A short summary stating the reason for the variance request; it is the burden of the applicant to prove that because of unique topography or other exceptional conditions on the property the strict application of these regulations would result in an undue hardship rectified only through approval of a variance.

e) Written Narrative and Documentation

Pursuant to the criteria found in Chapter 5 of these regulations, the applicant shall submit detailed narrative and documentation to support how the variance:

i. Will not be detrimental to public health, safety, or general welfare, or be injurious to adjoining properties;

ii. Is necessary because of unique physical conditions onsite;

iii. Will not cause a substantial increase in public costs:

iv. Will not place the subdivision in nonconformance with any adopted zoning regulations;

v. Will not allow subdivision for building purposes within a floodway of 100-year frequency;

vi. Will comply with specific provisions for variances as may be described in Chapter VII "Design and Improvement Standards"; and

vii. Will not have the effect of nullifying the intent and purpose of these regulations.

3. Format and Number of Copies

The format and number of copies for variance requests is the same as is required for preliminary plat applications described in Ch. VI-A above.

[1] Some jurisdictions require paper copies for each planning board member, one for public review, and one for each member of the governing body. Others prefer to distribute application materials electronically. It is recommended that prior to adoption of these regulations, the local government insert the number of paper copies required for major and minor subdivisions.

VI-E PHASED DEVELOPMENT

1. Materials to be Submitted with Preliminary Plat Application

The applicant shall include in the preliminary plat application a formal request and detailed plan with accompanying narrative describing the independent phases of development if the subdivision is proposed to be completed in phases (refer to Chapter VIII – Subdivision Capital Improvements and the Supplemental Administrative Materials[2] for additional detail).

2. Application Contents

The request for a phased development shall include all of the following:

a) A completed request for phased development form.

b) The appropriate review fee.

c) A Preliminary Plat/Plan that delineates:

   i. The number of lots and area (in acres) included in each phase.

   ii. The public facilities (including parkland) and improvements to be completed with each phase.

d) A public facilities improvement plan describing which improvements (including parkland) will be completed with each phase.

e) Documentation and a written statement confirming that each phase is fully capable of functioning with all the required improvements in place and meeting all applicable design standards and parkland dedication requirements found in Chapter VII, in the event the future phases are not completed or completed at a much later time.

f) Projected time frame for the completion of each phase.

3. Format and Number of Copies

The format and number of copies for phased development applications is the same as is required for preliminary plat applications described in Ch. VI-A above.

VI-F AMENDING APPLICATIONS

1. Application Contents

A request for amending a submitted application shall include the following:

a) A completed Request to Amend Application Form.

b) The appropriate review fee.

c) A detailed narrative summarizing the proposed changes, the reason for the changes, and how they differ from what was previously submitted.

d) A revised plat/plan identified as “Amended” in the title, along with the date of amendment.

e) Any supplemental materials and supporting documents that require amendment as a result of the proposed changes, identified as “Amended” in the title along with the date of amendment.

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[2] As noted in Ch. I-K, Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples of Supplemental Administrative Materials, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

2. Format and Number of Copies

The format and number of copies for an amended application is the same as is required for preliminary plat applications described in Ch. VI-A above.

VI-G MITIGATION PROPOSED BY THE APPLICANT (AFTER SUBDIVISION DETERMINED SUFFICIENT)

1. Application Contents

Proposed mitigation measures submitted following a sufficiency determination shall include the following information:

a) The name of the subdivision, legal description, location information, applicant contact information, and date submitted.

b) A detailed description of the proposed mitigation, to include:

i. Identification of the specific resource(s) that would be addressed by the mitigation (e.g., agriculture, agricultural water user facilities, local services, natural resources, wildlife, wildlife habitat, and/or public health and safety);

ii. Documentation of how the proposed mitigation reduces the significance of the impact to acceptable levels.

2. Format and Number of Copies

The format and number of copies for mitigation proposed after the subdivision application is determined sufficient is the same as is required for preliminary plat applications described in Ch. VI-A above.

VI-H FINAL PLAT APPLICATION

1. Application Contents

The final plat application and supplemental materials shall include the following:

a) A complete final plat application.

b) The appropriate review fee.

c) A final plat or site plan that complies with the Montana Uniform Standards for Final Subdivision Plats.

d) A written explanation and documentation of how each of the conditions of the preliminary plat approval has been satisfied.

e) Any other required elements as identified in 76-3-611, MCA.

2. Format and Number of Copies

The format and number of copies for the final plat application is the same as is required for preliminary plat applications described in Ch. VI-A above. Additional copies may be required by the Subdivision Administrator as necessary.

CHAPTER VII – DESIGN AND IMPROVEMENT STANDARDS

Chapter Overview

This chapter sets forth the design standards with which all subdivisions must comply in accordance with the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA ("MSPA"). The subdivider is advised to review this chapter carefully before submitting a preliminary plat application.

VII-AGeneral Standards

1. Compliance with Standards Required

All subdivisions must comply with the provisions of this section, except where granted a variance, pursuant to the requirements in Chapters IV, "Process," V "Review Criteria," and VI "Submittal Requirements." Additional design standards for RV and mobile home subdivisions and condominiums, townhouses/townhomes, and phased developments are included in Chapter III.

2. Site Design – Compatibility

a) Multiple Uses within a Proposed Subdivision
When multiple land uses (residential, commercial and/or industrial) are contemplated within a subdivision, the subdivision shall be designed to avoid or mitigate potential compatibility issues and to provide maximum convenience to the residents.

b) Multiple Uses in Proximity to a Proposed Subdivision
Commercial and industrial subdivisions in proximity to existing residential uses shall be designed to reduce health and safety issues such as noise, odors, air pollution, traffic safety, hazardous materials on-site or in transit to the site. Residential subdivisions in proximity to existing or potential commercial or industrial uses shall also be designed to avoid or mitigate potential health and safety issues.

3. Compliance with Regulations and Plans

a) Laws, rules and Regulations
The design and development of all subdivisions shall conform to all applicable local, state, and federal laws, rules, and regulations. These include locally adopted zoning, lakeshore protection, floodplain, and public health regulations, the Montana Sanitation in Subdivisions Act, County Weed Control Act, etc. A list of rules and regulations is included in the Supplemental Administrative Materials.[3]

b) Relation to Adopted Plans
Subdivisions must substantially comply with adopted plans such as a growth policy, transportation plan, or community wildfire protection plan. Because plans are not regulatory,

[3] As noted in Ch. I-K, Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples of Supplemental Administrative Materials, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

no variance for non-conformance is required, nor can denial or a condition of approval be based solely on plan conformance.

4. Subdivision Name

The subdivider shall propose a name for the subdivision with the preliminary plat application. The proposed name shall not duplicate, or too closely approximate, the name of any other subdivision within the jurisdiction covered by these regulations.

5. Addressing

In order to provide for timely response by emergency service providers, lot purchasers shall be notified of their responsibility to receive and post physical addresses. The notice shall be provided in documents to be filed with the final plat, covenants, and purchase agreements and shall read: "All addresses shall be assigned by the [INSERT THE NAME OF THE APPROPRIATE OFFICE OR TITLE]. Address numbers shall be clearly visible from the road, either at the driveway entrance or on the structure. Address numbers shall be at least four inches in length per number."

6. Improvement Design by Qualified Professional

a) Infrastructure Other than Water and Sewer Systems

   i. Engineer Required – Except as provided in Ch. VII-A(6)(ii) and (b) below, infrastructure improvements such as roads, bridges, building pads, storm water drainage facilities along roads, and other improvements shall be designed and certified by a professional engineer licensed in the State of Montana. Hereafter in these regulations, the terms "engineer," "licensed engineer," and "professional engineer" are the same as "professional engineer licensed in the State of Montana."

   ii. Exceptions – Exceptions to the requirement for a professional engineer are specified in design standards for specific elements in this chapter. For example, a professional engineer is not required to design and certify a 2-Lot Road.

b) Water Supply, Wastewater Treatment, and Storm Water Drainage Retention Not Along Roads

   Water supply and wastewater treatment systems shall be designed and certified by individuals meeting the criteria in applicable state rules for subdivisions requiring DEQ approval, as identified in the sections on Water Supply, Wastewater Treatment Systems, and Storm Water Drainage in this chapter.

c) Other Reports and Certifications

   The governing body may require the subdivider to engage the services of other licensed or qualified professionals to prepare impact reports, design specifications, or special studies to provide evidence in support of subdivision elements. For example, a geotechnical engineer may be required to assess geologic hazards and a hydrologist may be required to assess water information. The governing body may also require professional review of specialized reports with the cost of this review to be borne by the subdivider.

7. Easements

Easements created for the subdivision shall include text that describes who is granting the easement, its purpose, who is the recipient or beneficiary of the easement, responsibilities and restrictions on the lot owner, who or what entity is responsible for maintenance or other responsibilities related to the purpose of the easement, and the term of the easement.

8. Waiver of the Right to Protest Special Improvement Districts

When the governing body requires the subdivider and future lot purchasers to waive the right to protest establishment of a special improvement district or a rural improvement district as a condition of preliminary plat approval, the condition shall identify the specific capital improvements for which the protest is to be waived. A waiver of the right to protest may not be valid for a time period of longer than 20 years after the date the final subdivision plat is filed with the county clerk and recorder. The waiver shall be filed with the final plat.

9. Maintenance Declarations

When the governing body requires the subdivider to create a maintenance declaration or other mechanism for ongoing maintenance of improvements, the document shall be filed with the final plat.

10. Notice to Lot Purchasers

When the governing body requires notice to be provided to future lot purchasers as described in this chapter, at the discretion of the governing body, noticing shall be provided in covenants, on or attached to the final plat, or in a separate document to be filed and recorded with the final plat.

11. No Surface Disturbance Prior to Approvals

Other than for exploration and testing required to prepare the preliminary plat application such as soil profiles or groundwater monitoring, there shall be no surface disturbance, earthmoving for roads or building sites, ditching, or other disturbance until all approvals required for the disturbance have been received. These include governing body approval as well as approval of other agencies such as DEQ, Weed District Board, DNRC and others.

VII-B Natural and Cultural Environment

1. Character and Other Natural Features

a) Purpose

The design and development of subdivisions shall substantially preserve or enhance the unique character of an area.

b) Applicability

This section applies to all subdivisions.

c) Standards

i. Existing Conditions – New subdivisions shall be designed to generally preserve natural terrain, drainages, topsoil, and existing vegetation compatible with fire prevention and weed management.

ii. Preserve Natural, Scenic, Cultural, and Historic Features – New subdivisions shall not result in the destruction, loss, or damage to significant natural, scenic, cultural, or historic features.

iii. Conform to Topography, Minimize Alteration of Land Forms – Subdivision design and development shall conform to the existing general land forms and topography except in unique circumstances where significant alterations are necessary to meet an community need identified in a plan adopted by the governing body.

d) Applicable Plans

Applicable plans include an adopted growth policy, neighborhood plan, and historic preservation plan.

2. Unsuitable Lands

a) Purpose

Subdivisions shall not result in development of areas that are hazardous or detrimental to public health, safety, or welfare or that may result in excessive expenditure of public funds.

b) Applicability

Potential hazards may render a portion or all of the subdivision unsuitable for building sites, roads, and other improvements. Potential hazards include but are not limited to:

i. Flooding
ii. Landslides
iii. Steep terrain (in excess of 40%)
iv. Areas of seismic activity
v. High potential for wildfire
vi. High voltage power lines
vii. High pressure gas lines
viii. Rock falls
ix. Snow avalanches
x. Subsidence
xi. Soils unsuitable for construction
xii. High water table
xiii. Polluted or non-potable water
xiv. Aircraft or vehicular traffic hazards
xv. Exposure to hazardous chemicals
xvi. Other hazards identified on or in the vicinity of the property.

c) Standards

i. Map Hazard – The potential hazard areas shall be designated on the preliminary and final plats.

ii. Restrictions – Subdivisions in unsuitable hazard areas are prohibited unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures.

iii. Minimum Mitigation – Except as identified in Ch. VII-B(2)(c)(iv), the following minimum mitigation measures are required:

- Geotechnical – Geotechnical evaluation, hazard avoidance, and construction recommendations in areas prone to earthquakes or in proximity to faults, landslides, steep terrain, unstable soils, rock falls, subsidence, unsuitable soils, snow avalanches, and high water table.
- Steep Slopes – The minimum requirements for buildable sites and driveway access in areas of existing steep slopes shall be those identified in Ch. VII-D "Lots and Blocks." The minimum requirements for steep slopes for roads are included in Ch. VII-F "Transportation Plan."
- Wildfire – Determination of wildland-urban interface (WUI) fire concerns (and mitigation measures?) shall be made by the fire department authority having jurisdiction (AHJ) where the subdivision is located, the county disaster and emergency services coordinator, and the administrator. The determination shall be made with consideration of WUI areas officially adopted by the governing body in the community wildfire protection plan, growth policy, or

other documents and recognizing WUI maps are typically at a broad scale requiring refinement at the scale of subdivision plats.

- Improvements – Mitigation measures can be incorporated into design plans by the subdivider.
- Mitigation for Lot Purchasers – A written plan to be approved by the governing body prior to final plat approval that establishes how mitigation measures are to be completed by lot purchasers will be required and enforced; and
- Notice – Lot purchasers shall be notified of no-build zone or specific construction techniques or other mitigation measures that will be required to eliminate or overcome identified hazards. Notice shall be made according to the requirements of Ch. VII-A(10), "Notice to Lot Purchasers". This notice shall be filed with the final plat.

iv. Waiver of Requirements – When the hazard is located on the subdivision property, requirements for mitigation may be waived if the hazard area is delineated as a no-build zone on the final plat.

v. Mitigation Not Proposed or Approved – When mitigation of the identified hazard is not proposed, or when the subdivider's proposed mitigation is not approved by the governing body, the governing body shall determine if the application should be denied, the mapped hazard identified as a no-build zone or conditions of approval should be applied.

d) Applicable Plans
Plans applicable to hazards include the growth policy, pre-disaster mitigation plan, and community wildfire protection plan.

3. Flood Hazards

a) Purpose
The purpose of this section is to reduce potential for risks to public health and safety and property damage by setting limits for construction and development in areas subject to flooding.

b) Applicability
This section applies to any subdivision with land subject to flooding including lands within a 100-year floodplain as shown on officially adopted floodplain maps, historically flooded lands, and lands in proximity to a watercourse or drainway as those terms are defined in the Montana Floodplain and Floodway Management Act.

c) Standards

i. General Criteria

- Base Flood Elevation and Boundary – The base flood elevation and boundary of the 100-year floodplain area must be determined and considered during subdivision review;
- Location of Structures – Lots intended for development must include suitable area for structures and supporting facilities (e.g., individual onsite wastewater treatment system) outside of the 100-year floodplain;
- Surface Water Drainage – Adequate surface water drainage must be provided to reduce exposure to flood hazards;

- Utilities – Public utilities and facilities such as sewer, gas, electrical, and water systems must be located and constructed to minimize or eliminate flood damage; and
- Permits – Floodplain permits must be obtained before development occurs that is within a regulated flood hazard area such as a 100-year floodplain.

ii. Determining the Extent of Flood Hazard Areas

- Areas Identified on Floodplain Maps / in Floodplain Regulations – In areas where base flood elevations exist as part of flood studies and maps established by FEMA or DNRC, the flood hazard area shall be the area where the base flood elevations intersect site-specific surveyed ground elevations. In areas where no base flood elevations are known, the subdivider is responsible for the studies and surveys addressed below under "Methodology for Determining Base Flood Elevations." Note: These areas would also require a Letter of Map Revision to the submitted to FEMA per 44 Code of Federal Regulations 65.3.

  Note: If the property owner believes the subject property has been inadvertently included in a 100-year floodplain, the property owner may have elevation provided by an engineer and seek an amendment to the floodplain map. (See below)

- Area with Watercourse Not Identified on Floodplain Maps or Regulations – If the administrator determines the property contains area with a watercourse that has the potential for flooding to impact the subdivision and that is not identified on official floodplain maps or in locally adopted floodplain regulations, the area subject to flooding shall be determined by either option #1 or #2 below:

  Option #1 The flood hazard area shall be the area:
  - Within 2,000 horizontal feet and less than 20 vertical feet above the ordinary high-water mark of a watercourse draining an area of 20 square miles or more; or
  - Within 1,000 horizontal feet and less than 10 vertical feet above the ordinary high-water mark of a watercourse draining an area between 10 and 20 square miles.

  Option #2: The flood hazard area shall be the area where the base flood elevations intersect site-specific surveyed ground elevations. Base flood elevations shall be determined according to the "Method for Determining Base Flood Elevations" below.

- Methodology for Determining Based Flood Elevations
  The subdivider shall provide to the subdivision administrator, floodplain administrator, and Floodplain Management Section of the Water Resources Division of DNRC the base flood elevations and the 100-year floodplain boundaries, and include a written narrative methodology, and data and calculations used to determine the base flood elevations. The evaluation must be performed by a professional engineer experienced in this field of

work. The governing body may request DNRC Floodplain Management Section personnel to review and comment on the adequacy of the methodology, data, and results of the effort to determine base flood elevations on the property. If DNRC personnel are unable to provide a written review, the governing body or floodplain administrator may require the subdivider to pay the actual costs for independent peer review of the adequacy of the methodology, data and results of the study.

iii. Design Standards

There shall be no building, new development, or artificial obstructions including structures, roads, or bridges with the flood hazard area unless and until all appropriate permits are obtained.

iv. Plat Requirements

Preliminary and final plats shall show all flood hazard areas identified in Ch. VII-B(3)(c)(ii) above, "Determining the Extent of Flood Hazard Areas." Final plats shall identify any flood hazard area as a no-build zone where permanent structures designed for human assembly or habitation are prohibited.

v. Notice to Lot Purchasers

Notice shall be filed with the final plat that follows the requirements of Ch. VII-A(10) and includes the following information:

- Floodplain development permits may be required for construction; and
- Flood insurance is available through the National Flood Insurance Program, along with a recent indication of anticipated costs of obtaining such insurance.

vi. No Variance Allowed on Restrictions within Flood Hazard Areas

As required under 76-3-504, MCA, subdivisions for building purposes are prohibited in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76 Chapter 5, or determined to be subject to flooding by the governing body. This means each lot must be capable of supporting development located outside of the 100-year floodplain.

vii. Compliance with Other Laws and Regulations

Permits for any improvements to be installed by the subdivider (e.g., roads, electrical) must obtained prior to construction. If construction is approved to occur after final plat filing, the permits must be received prior to final plat filing. Applicable laws and regulations that may require permits include:

- Locally adopted floodplain ordinance.
- Conservation district 310 permit – Required when a private, nongovernmental individual or entity proposes work in or near a stream on public or private land (See 76-15-701 et seq., MCA for land use regulations and 75-7-101 et seq., MCA for streambed and adjoining land preservation laws)
- State land use license – A land use license or easement is required for an entity proposing a project on lands below the low water mark of navigable waters as designated by DNRC.

- 318 Authorization (formerly 3A) – A permit must be obtained from DEQ prior to initiating a short-term activity that may cause unavoidable short-term violations of state water quality standards. Montana Fish, Wildlife & Parks may also issue 318 authorizations during the 310 or 124 permitting process.
- Federal Rivers and Harbors Act – Under Section 10 of the Federal Rivers and Harbors Act, any structure or work on, over, under, or affecting navigable waters requires authorization from the U.S. Department of the Army Corps of Engineers.
- Clean Water Act – Under Section 404 of the federal Clean Water Act, a permit is required from the U.S. Department of the Army Corps of Engineers for the placement of dredged or fill materials in waters of the United States.
- 401 Water Quality Permit – Montana DEQ must provide 401 water quality certification prior to issuance of Corps of Engineers permits. The certification process is handled internally through agreements between the agencies.
- Montana Pollutant Discharge Elimination System (MPDES) – Administered by DEQ, MPDES permits are intended to ensure wastewater is properly handled and treated safely. These permits are required whenever an entity wishes to discharge water into a surface water of the state.
- Storm Water Discharge Permit Program for Construction Activity – Administered by DEQ, this permit is required for construction activities with a total area of one or more acres.
- Streamside Management Zone Laws in Chapter 5, Title 77 of Montana Code Annotated.
- Stream Protection Act – This act authorizes the 124 Permit issued by Montana Fish, Wildlife & Parks.

d) Applicable Plans
Plans applicable to floodplain hazards include pre-disaster mitigation plans and growth policies.

4. Wetlands

a) Purpose
The purpose of this section is to protect and retain wetlands for the objectives of providing flood control, shoreline stability, protecting water quality, recharging groundwater supplies, and providing fish and wildlife habitat.

b) Applicability
This section applies to subdivisions that contain or are in close proximity to wetlands. General planning level wetlands maps can be found at http://mtnhp.org/nwi/.

c) Standards
i. Prohibition – No subdivision for building purposes shall be approved that falls entirely within a wetland.
ii. Delineation and No-Build Zone – Wetlands shall be delineated by a qualified professional based upon the U.S. Army Corps of Engineers Wetland Delineation Manual including updated regional supplements. The delineated area shall be identified as a no-build zone on preliminary and final plats. However, where wetland extent is apparent, and when the preliminary and final plats identify the wetlands and

provide a 150-foot no-build zone buffer surrounding the wetland, the administrator may waive the wetland delineation requirement. The no-build zone includes a building setback and vegetated buffer area.

iii. Minimum Setback – Where wetlands have been delineated, the minimum building setback is 130 feet from the wetland, which includes a 100-foot vegetated buffer.

iv. For wetlands and wetland complexes that are important habitat for migrating game birds and/or shorebirds, the total building setback shall encompass cropland areas adjacent to the wetlands that are used by a diversity of these species.

v. Compliance with Other Laws and Regulations – Refer to Ch. VII-B(4)(c)(vii). above for floodplains.

d) Applicable Plans

Applicable plans include the growth policy.

5. Other Waterbodies

a) Purpose

The purpose of this section is to identify standards for subdivisions that contain or are located in close proximity to water bodies including lakes, reservoirs, ponds, perennial and intermittent streams, creeks and rivers. This section requires the use of building setbacks and vegetated buffers to protect water quality and fish and wildlife habitat while allowing for the use and enjoyment of landowners. Structural setbacks and vegetated buffers are intended for the purposes of:

- Reducing runoff by increasing stormwater infiltration into soil - less runoff means fewer nutrients and other pollutants entering the water;
- Stabilizing soils with plant root systems;
- Reducing shoreline erosion due to wave action;
- Providing flood control;
- Purifying water with aquatic vegetation; and
- Providing food, shelter, and shade for wildlife.

b) Applicability

This section applies to subdivisions that contain or are in close proximity to water bodies.

c) Standards

i. Prohibition – No subdivision for building purposes shall be approved that falls entirely within a riparian area.

ii. Existing Vegetation – All waterbodies, existing riparian vegetation, and vegetated buffers shall be identified and protected. The extent of riparian vegetation shall be shown on the preliminary and final plats.

iii. Setback and Buffer Standard – Unless locally adopted zoning includes standards for building setbacks from water bodies and requirements for vegetated buffers, the required building setback and buffer standards are as shown in Table 1 below. The total building setback shall be shown as a no-build zone preliminary and final plats. If the riparian area associated with the water body extends beyond the required vegetated buffer, the buffer shall be extended to encompass all of the riparian area. The requirements of the total building setback are:

A) No construction of homes or subdivision improvements except water-dependent facilities and roads and utilities as described in Ch. VII-B(5)(c)(viii) and (ix) below.

Lawns may be planted and native vegetation may be removed and disturbed within the building setback (but not the buffer); and

B) Vegetated Buffer – No disturbance to native vegetation except as provided in Ch. VII-B(5)(c)(vii) "Native Vegetation, " (viii) "Water Dependent Facilities," and (ix) "Road Exception" below.

Table 1: Minimum Vegetated Buffers and Setbacks

	Structural Setback from Edge of Buffer (ft)*	Vegetated Buffer (ft)**	Total Building Setback (ft)
River	50	250	300
Perennial Stream	50	150	200
Intermittent Stream, Lake, Pond or Reservoir	30	100	130

*The structural setback is measured from the farthest projection of any proposed structure (e.g., eave, wall, patio) to the outer edge of the buffer measured on a horizontal plane.

**The vegetated buffer is measured from the ordinary high-water mark of rivers, streams, lakes, ponds, and reservoirs toward the structure on a horizontal plane. For braided rivers, measure from the ordinary high-water mark of the outermost braid that is nearest to the proposed structure.

iv. Floodplains – The standards in this section shall apply to vegetated buffers within 100-year floodplains. Where a conflict exists between this section and Ch. VII-B(3) "Flood Hazards" above, the more restrictive standard shall apply.

v. Channel Migration Zones – If a channel migration zone study is completed for a river or stream for a time frame of 100 years or longer, the CMZ maps shall be used as a guide to extend the total building setback in order to locate development outside of the CMZ. Where the CMZ encompasses cropland, the vegetated buffer may be reduced below the required minimum.

vi. Prohibition – No subdivision shall be approved that is determined to be wholly within a riparian area.

vii. Native Vegetation – In addition to the provisions of Ch. VII-B(5)(c)(viii) and (ix) below, disturbance of native vegetation is only permitted to control noxious weeds (herbicides must be approved for use in riparian environments), reduce accumulated fuels related to fire protection, erect fencing, and to remove individual trees that pose a threat to public safety.

viii. Water-Dependent Facilities – Water-dependent agricultural facilities such as pumps, diversion structures, and similar improvements may be located within the total building setback and vegetated buffer. Water dependent recreation facilities such as docks, boat ramps, and trails that do not impact vegetated buffers supporting species of concern may be located within the total building setback.

ix. Road and Utility Line Exemption – Road and utility construction in a riparian area shall be exempt from this section provided there is no other practical route to access the subdivision. Road and utility construction shall comply with the following standards:

- Side-casting – The side-casting of road material into a waterbody during construction or maintenance is prohibited.

- Erosion Control – Effective erosion and sedimentation control practices shall be conducted during all clearing, construction, and re-construction operations.
- Minimize Site Disturbance and Fill Deposits – Vegetation and soil disturbance and fill deposits shall be the minimum necessary to meet the design standards of these regulations.
- Perpendicular Crossing – All crossing of streams, lakes, wetlands, or other water bodies must occur at a perpendicular angle and in such a manner as to mitigate disturbance of the riparian area.

x. Management Plan – Where roads or any other improvement is proposed to occur in a riparian area, the subdivider shall submit a management plan with the preliminary plat application. The plan shall be reviewed during the preliminary plat review process, approved by the governing body, and filed with the final plat. The plan shall include, but not be limited to the following:

- Proposed access to or through the area, if any;
- Proposed use of the area;
- Planned restoration of the area with native species;
- Planned mitigation of impacts. The plan shall demonstrate the mitigation will result in:
  - No significant adverse impact to water quality;
  - No increase in stream bank erosion;
  - No increase in flood heights or velocity of flood water; and
  - No impairment to the function of the riparian area.
- Planned buffers to mitigate development adjacent to riparian vegetation.
- Ownership of the buffer area (e.g., property owners association or owners of specified lots) and who will be responsible for implementing and enforcing the management plan.

xi. Plat Requirements – Riparian areas shall be shown on preliminary and final plats and labeled “Restricted Use Area.”

xii. Notice to Lot Purchasers – Notice shall be filed with the final plat the following the requirements of Ch. VII-A(10) and informs purchasers of the requirements and limitations provided in this section including Ch. VII-B(5)(c)(vii), (viii), (ix) and (xi).

xiii. Variances – Requests to vary any of the standards in this section must include information necessary to evaluate the variance request including plans, maps, specifications, photographs, and other information. The variance must be supported by finding that:

- The hardship is not created by the applicant;
- The variance would not adversely impact water quality or fish and wildlife habitat, increase stream bank erosion, increase flood heights or velocity of flood water, or impair the function of the riparian area.
- The variance is as small as reasonably possible to accommodate the proposed use while preserving the purpose of these provisions.

Variances approved under this section will be considered unique and not applicable to other properties.

d) Applicable Plans
Applicable plans include the growth policy.

6. High Groundwater

a) Purpose

The purpose of this section is to provide for public health and safety; to ensure that high groundwater does not affect the safe bearing capacity of soil; to safeguard against unforeseen issues related to the development and construction of buildings, roads, and other infrastructure, and to protect groundwater supplies.

b) Applicability

This section applies to areas with potential for high groundwater. Land shall be deemed subject to high groundwater based on the following:

i. Areas historically inundated with high groundwater;
ii. Areas identified as a high groundwater area by DNRC, the conservation district, or floodplain administrator;
iii. Soils which show signs of high groundwater and do not provide adequate percolation and absorption;
iv. Other relevant information indicating areas of seasonal or periodic high groundwater levels; or
v. Water measured less than four feet below the ground surface.

c) Standards

i. Evaluation – Land deemed to be subject to high groundwater as identified in Ch. VII-B(6)(b) above shall be identified in the preliminary plat application submittal and include discussion by a professional engineer of the subdivision's likelihood to experience subsurface flooding that would impact subdivision improvements.

ii. Restrictions and Exemptions – Lands with high groundwater shall not be subdivided for residential, commercial, or industrial purposes unless:

- Municipal or public sewer services will be provided for the subdivision, or other waste treatment systems approved by DEQ and/or the local public health officer or sanitarian;
- Building plans are provided by a qualified professional engineer that recommend specifications and construction methods that are suitable for construction in areas of high groundwater; and
- Presence of high groundwater is mapped and any construction recommendations are specified in a notice to lot purchasers, covenants, purchase agreements, and/or other documents filed with the final plat.

iii. Compliance with Other Laws and Regulations – Applicable laws may include, but not be limited to the following:

- Montana Ground Water Pollution Control System – A permit is required from DEQ to construct, modify, or operate a disposal system or to construct or use any outlet for discharge of sewage, industrial, or other wastes into groundwater.
- Sanitation in Subdivisions Act – A certificate of subdivision approval is required from DEQ and/or the local health department to ensure lots can be developed with adequate water supply, wastewater treatment, storm runoff controls and solid waste disposal systems.
- Construction Dewatering – A Montana Pollutant Discharge Elimination System permit may be required from DEQ for construction dewatering.

d) Applicable Plans
Plans applicable to high groundwater may include the pre-disaster mitigation plan, growth policy, and water quality protection plans.

7. Weed Management and Revegetation

a) Purpose
The purpose of this section is to ensure areas of disturbance for roads, infrastructure, and other subdivision improvements are restored with vegetation so as to not increase the proliferation of noxious weeds.

b) Applicability
This section applies to subdivisions with improvements that will be installed by the subdivider.

c) Standards
i. Vegetation Management Plan – The subdivider shall prepare a plan to comply with the Montana County Weed Control Act describing the time and method of erosion control, seeding, fertilization practices, plant species, use of weed-free seed, and ongoing weed management procedures to be used. The vegetation management plan shall be comprised of two parts: 1) A plan and timeline the subdivider will use in conjunction with construction of subdivision improvements, and 2) plans and requirements for individual lot purchasers and for areas to be maintained jointly or as part of a property owners association.
ii. Weed District Board Approval – The subdivider shall submit the vegetation management plan to the local Weed District Board prior to submittal of the preliminary plat application. Surface disturbance for subdivision improvements shall not occur until the plan is approved by the Weed District Board.
iii. Financial Guarantee May Be Required – All areas disturbed for subdivision improvements shall be restored and re-seeded in compliance with the approved plan. The governing body may require a financial guarantee for any re-vegetation measures to be completed after final plat approval as part of a subdivision improvements agreement.
iv. Responsibility for Maintenance Over Time – Vegetation along roadways shall be maintained according to the provisions of a road maintenance declaration for the subdivision (refer to Ch. VII-F “Transportation Design”). Open space or property owned in common shall be maintained via a property owners association or other valid users agreement.
v. Notice to Lot Purchasers – Notice shall be filed with the final plat the following the requirements of Ch. VII-A(10) to inform purchasers of the requirements and limitations provided in this section.

d) Applicable Plans
Applicable plans include the Weed District’s Management Plan and the growth policy.

8. Air Quality – Dust Control

a) Purpose
The purpose of this section is to minimize additional dust and air quality impacts from areas disturbed for construction, new gravel roads, and increased traffic on existing gravel roads.

b) Applicability
This section applies to subdivisions with improvements to be installed by the subdivider that will result in surface disturbance, as well as impacts from increased traffic generated from the subdivision on existing gravel roads.

c) Standards
i. Dust Control Plan – The subdivder shall submit with the preliminary plat application a plan intended to minimize dust during construction of subdivision related improvements. The plan shall be reviewed with the preliminary plat application. All approved dust control measures shall be carried out during construction.
ii. Dust Control Measures – Any subdivision related activity that disturbs the top layer of soil shall provide dust control measures that may include, but are not limited to, regular watering of unpaved roadways during construction, covering soil stockpiles in anticipation of wind events, and applying soil binding agents on unpaved roadways and other disturbed areas.
iii. Carryout to Paved Roadways Prohibited – Construction activities shall not result in carryout of mud and soils from the subdivision site onto paved roadways. The subdivider shall be responsible for ensuring soil is not carried out to adjacent roadways and may be required to sweep or wash road surfaces.
iv. Proportionate Share – The subdivider may be required to provide for a proportionate share of dust suppression of offsite gravel roadways during construction.
v. Ongoing Dust Suppression - Dust suppression responsibilities and cost sharing for new roads and unpaved surfaces within the subdivision shall be addressed in a road maintenance Declaration (see Ch. VII-F. “Transportation Design”). Lot purchasers may be required to provide for a proportionate share of dust suppression of offsite gravel roadways over time with notice to be provided to purchasers as described in Ch. VII-A(10) of this chapter.

d) Applicable Plans
Applicable plans may include air quality plans and the growth policy.

9. Wildlife and Wildlife Habitat

a) Purpose
The purpose of this section is to ensure that new development is designed to avoid or reasonably minimize adverse impacts to wildlife and wildlife habitat and to reduce the potential for human/wildlife conflicts.

b) Applicability
These standards apply to any subdivision containing or adjacent a water body, big game winter range, public hunting area, bear habitat, native grassland, native shrub habitat, and area where species of concern are known to occur.

c) Standards
i. Wetlands and Other Waterbodies
Subdivisions shall be designed to conserve wetland and other waterbodies in accordance with the standards in Ch. VII-B(4) and Ch. VII-B(5).

ii. Big Game Winter Range and Other Seasonal Habitat

- Clustering – Cluster areas to be develop as far from big game winter range as possible and close to existing and planned development (e.g., roads, other structures).
- Open Space – Locate areas of open space adjacent to existing big game winter range or open space on adjacent lands to maintain functional connections.
- Wildlife Linkages – Provide or maintain linkage within a big game winter range patch, between isolated patches of big game winter range, or between other seasonal habitat and big game winter range. Where possible, maintain wildlife linkage widths a minimum of one mile for elk and one-half mile for other species. For white-tailed deer, mule deer, and moose, maintain wildlife linkages along wetlands, other waterbodies and associated riparian areas where present.

iii. Wildlife Management/Public Hunting

Subdivisions shall be designed to avoid or reduce conflicts between subdivision development and public hunting areas. Based on topography and other physical characteristics, locate development a safe distance from adjacent public hunting areas.

iv. Areas of Human/Bear Conflicts

- Solid Waste – Where common garbage collection facilities are provided, the facilities shall be designed to be bear-resistant. Where no common facilities are provided, notice shall be provided to lot purchasers recommending the use of bear-resistant garbage containers and practices (e.g., store containers in enclosed buildings until pickup).
- Notice to Lot Purchasers – Notice shall be provided to lot purchasers to discourage bear attractants such as bird feeders, fruit trees, and chicken coops in accordance with Ch. VII-A(10) of this chapter.

v. Native Grassland and Native Shrub Habitats

- Clustering – Cluster development areas as far from native grassland and native shrub habitats as possible and close to existing and planned development (e.g., roads, other structures).
- Extent – For native grassland and native shrub habitat larger than 25 acres in size, a maximum of 20% of the property shall be designated for development (e.g., roads, utilities, structures) to maintain larger landscapes for wildlife habitat.
- Open Space – Located areas of open space adjacent to existing native grasslands and native shrub habitats to maintain functional connections and linkages for wildlife movement.
- Utility lines – Utility lines shall be placed underground.

vi. Species of Concern

- Where species of concern are known or predicted to occur on or adjacent to the subdivision property, the subdivision shall be designed to avoid or reduce potential impacts. The subdivider is advised to contact Montana Fish,

Wildlife & Parks and/or a professionally trained biologist for guidance on specific species of concern.

- No Build Zone – The subdivider may be required to designate areas important for wildlife and wildlife habitat as a no-build zone on the plat.
- Notice to Lot Purchasers – The subdivider may be required to provide notice to lot purchasers of the requirements of this section in accordance with Ch. VII-A(10).

VII-C Water Rights and Agricultural Water User (Irrigation) Facilities

1. Purpose and Applicability

a) Purpose

The purpose of this section is to ensure water rights associated with the property are understood and conveyed in accordance with the requirements of the MSPA. This section is also intended to ensure irrigation companies can continue to convey irrigation water and surplus drainage water and can continue to maintain the facilities. This section is intended to comply with the provisions of 76-3-504, MCA regarding water rights and irrigation facilities.

b) Applicability

All subdivision property that has irrigation water rights, including when the property is located within an irrigation district or similar entity, shall comply with this section. Provision of easements for irrigation facilities is dependent on the qualifying criteria in the sections below.

2. Disposition of Water Rights

a) Documentation

The subdivider shall document all existing appropriated water rights and/or any contract, membership, or interest in a public or private entity providing water to or through the land to the subdivided.

b) Subdivisions with Lots Averaging Less than Five Acres

When 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 addressed the following:

i. Requirements for Reserving and Transferring Water Rights – The owner of the land to be subdivided can either 1) reserve and sever all surface water rights from the land; or 2) transfer all or a portion of the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water. After transfer to the single entity, the subdivider shall reserve and sever any remaining surface water rights from the land.

ii. Contract or Interest in an Entity Providing Water – If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots:

- Landowners' Water Use Agreement – The subdivider shall establish a landowners' water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; and

- Review by Entity Providing Water – The subdivider shall provide the entity providing water with the draft landowners' water use agreement for review and comment. The governing body may require the subdivider to modify the draft agreement prior to filing the final agreement with the final plat.

c) Subdivisions with Lots Averaging Five Acres or More
When a subdivision will create lots averaging five acres or more in size, the subdivider shall provide an irrigation plan as described in Ch. VII-C(4) below or shall reserve and sever all irrigation water rights/shares from the property.

d) Compliance with Other Applicable Laws and Regulations
Water rights are managed by Montana DNRC. Irrigation entities may have policies for management and use of irrigation water and facilities within the districts.

3. Irrigation Easements

a) Easement Requirements
Except as provided in Ch.VII-C(4)(b) below, the subdivider shall establish ditch easements that meet all of the following requirements.

i. Sufficient Location for Placement and Maintenance – Ditch easements shall be in locations of appropriate topographic characteristics and of sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of irrigation water to persons and lands 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. Easement Measurement from Centerline – Easements shall be a sufficient distance from the centerline of the ditch or pipeline to allow for construction, repair, maintenance, and inspection.

iii. Structures and Certain Vegetation Prohibited – The placement of structures and the planting of vegetation other than grass within the ditch easement shall be prohibited without written permission from the ditch owner.

iv. Review by Entity Providing Water - The subdivider shall provide the entity providing water with the draft plat and/or easement documents for review and comment. The governing body may require the subdivider to modify the easement prior to filing the final plat.

b) Exemptions from Irrigation Easement Requirements
The subdivider need not establish irrigation easements if:

i. Average Lot Size is Less than One Acre and Disclosure of Possible Assessment – No easement is required if the average lot size is one acre or less and the subdivider provides for disclosure in a document to be recorded with the final plat that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable.

ii. Disclosure of Water Rights to be Removed – No easement is required if the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water

rights in not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions. This notification shall be included in a document to be recorded with the final plat.

c) Easements to be Filed and Recorded

i. Plat and Written Easements Required – The subdivider shall show the easements on the preliminary and final plat and file and record with the county clerk and recorder, written easements for the ditches or pipelines.

ii. Language Required for the Easement – The easement document to be filed and recorded with the final plat must include the following language: "The ditch easement is for the unobstructed use and maintenance of water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water to lands within and adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. Placing structures, including fences, or planting vegetation other than grass within the irrigation easements is prohibited without the written permission of the ditch owner."

4. Irrigation Plan

a) Water Delivery System

i. Required When Water and/or Assessments to be Allocated to Subdivision Lots – When irrigation water, water rights, shares, or operation and maintenance assessments are to be transferred to one or more of the lots within a subdivision or to a single entity, the subdivider submit an irrigation plan with the preliminary plat application.

ii. Irrigation Plan Contents – The irrigation plan shall identify of how water will be provided to lot owners. Access ways and irrigation facilities such as ditches, headgates, pumps, and pipelines shall be depicted on maps. The plan shall identify rights and responsibilities of landowners and irrigation facility owners/operators including how and when repair and maintenance will be performed and how costs will be divided among the various parties. The plan shall also identify how costs are to be divided and how water is to be allocated.

iii. Preparer – The plan shall be prepared by a person with working knowledge or irrigation water delivery systems.

iv. Provider Review – The subdivider shall provide the entity providing water with the draft irrigation plan for review and comment. The governing body may require the subdivider to modify the plan to address the comments prior to approval by the governing body and filing the final plat.

v. Installation of Improvements Prior to Final Plat Approval – Unless otherwise agreed to by the entity providing water and governing body, all improvements specified in the approved irrigation plan shall be installed prior to final plat approval.

vi. Recording Irrigation Plan – The approved irrigation plan and all related information such as irrigation water users association documents shall be filed with the entity providing water as well as the county clerk and recorder prior to or concurrent with final plat filing.

b) Approval for Severing Water Rights or Shares

If irrigation water rights or shares are proposed to be severed from all or a portion of the subdivision property, the subdivider shall obtain written approval of the irrigation entity/provider.

c) Applicable Plans
Applicable plans include the growth policy.

VII-D Lots and Blocks

1. Lots

a) Purpose
The purpose of this section is to ensure each lot has a safe and suitable building site, is accessible to emergency service providers, and is adequately sized to meet zoning requirements.

b) Applicability
This section applies to all subdivisions.

c) Standards
i. Building Site – Each lot shall contain one or more building site to support the proposed use of the property and that conforms to requirements for water supply, wastewater treatment, storm drainage, and applicable zoning regulations.
ii. Steep Slopes
- Requirements for Residential Lots in Areas of Steep Slopes
  - Building Site – Each residential lot shall have an identifiable building site of at least 40 x 40 feet on land that is less than or equal to 40% slope, prior to any alteration of the property. Where a potential building site is not obvious, two-foot ground contour intervals shall be shown on the preliminary plat for a building site that is accessible by a driveway meeting the standards below. Any building site on slopes between 25 and 40% shall be required to undergo a geotechnical soils analysis by a licensed professional engineer prior to final plat approval. The analysis shall demonstrate development of the lot would not pose significant risk to the lot or neighboring property due to geological hazards.
  - No-Build Zones - No building site shall exceed 40% slope prior to any alteration of the property. Areas in excess of 40% shall be labeled a no-build zone on the final plat.
  - Driveway Access – A building site must be accessible by a 12-foot wide driveway with bearing capacity and curve design sufficient to support a loaded fire truck. The driveway must have a maximum grade of 12% with a maximum 5% slope for the initial 20 feet adjoining the access road, and a safe turn-around area for a fire truck. Where a potential driveway location to a building site is not obvious, evidence of suitability for the driveway shall be demonstrated with a schematic location of the driveway on the final plat (or site plan to be filed with the final plat), geotechnical analysis,

and certification from a licensed engineer that a driveway meeting these standards is buildable.

- Requirements for Commercial and Industrial Lots in Areas of Steep Slopes - No building site shall exceed 15% prior to alteration of the property. Areas in excess of 15% shall be labeled a no-build zone on the final plat.
- Fire Chimneys – Building sites are prohibited within ravines and other topographical features that can rapidly convey wildland fire. Building sites shall be placed at least 150 feet from the apex of fire chimneys. Such features shall be labeled a no-build zone on the final plat.
- Grading Requirements – If grading is proposed, necessary, or required for development of the subdivision, grading shall follow the requirements of Ch. VII-E(4) "Grading and Drainage."

iii. Dimensions and Orientation

- Irregular Shapes – Lots with irregular shapes such as narrow necks, points, and flag shapes shall be permitted only when the subdivider can demonstrate the proposed lot designs are necessary due to unique topography or other constraints. The minimum width for a flag shaped lot is 20 feet abutting a street or road.
- Depth to Width Ratio – The maximum depth to width ratio shall be 3:1 unless the average lot width is more than 200 feet.
- Orientation to the Road – Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- Through or Double-Front Lots – Through or double-fronted lots are prohibited except when essential to provide for the separation of residential development from Arterial or Collector streets and roads, or to overcome specific disadvantages of topography or orientation and there is no other acceptable design alternative.

iv. Zoning Compliance – The size, width, depth, shape, and orientation of lots shall conform with applicable zoning regulations. Zoning regulations shall govern in any case of conflict with the following subdivision requirements.

v. Division by Right-of-Way and Other Boundaries

- Prohibitions
  - Jurisdictional Boundaries and Districts – No lot may be divided by a municipal or county boundary line, different zoning districts, or by separate taxing districts.
  - Rights-of-Way and Vehicular Access Easements – No lot may be divided by a dedicated right-of-way or vehicular access easement (road, street, alley, etc.), railroad line, or in the case of a blanket easement, the actual location of vehicular access.
- Certain Divisions by Easement Allowed – No lot may be divided by a public or private utility easement, including irrigation, pipeline, and powerline easements, unless the preliminary plat application demonstrates the easement will not limit access to all portions of the property, and will not interfere with development of the property for its intended use.

vi. Lot Access

- Road Frontage – All lots must front on a street or road and shall have at least the minimum frontage width as required by applicable zoning regulations.

- Minimum Street Frontage – The minimum street frontage for any lot is 50 feet, except for irregularly shaped lots (Ch. VII-D(1)(c)(iii) above), where the minimum shall be 20 feet. An irregularly shaped lot includes any lot located on a cul-de-sac or abutting a curved section of a roadway.
- Alleys – Alleys may be used to provide the primary vehicular access to a lot provided the lot also fronts on a street or road.
- Corner Lots – Corner lots must have driveway access from the street or road designed to serve less traffic. The final plat shall show the street or road where no access is allowed as a no-access area or no-access easement.
- Access by Fire Suppression Equipment – All lots shall be designed to ensure fire trucks have access to within 150 feet of all portions of building sites.
- Cross Access – Cross access for on-site parking shall be required for commercial and mixed-use complexes that front Arterial or Collector streets. All lots shall provide an access connection to abutting parking areas that is at least 36 feet in width. The subdivider shall establish a common access easement across the lots. Cross access is also the desired standard for multi-unit housing developments with adjoining parking.

vii. Lot Use – Lots may be created that are not intended for building (e.g., a park or a lot for a community wastewater treatment system). In these cases, the preliminary and final plats shall designate the intended purpose of the lot and who shall own the lot.

2. Blocks

a) Two Rows of Lots Required
Blocks must be wide enough to allow for two rows of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography or orientation.

b) Length and Other Requirements
Other requirements for blocks, including length, are included in Ch. VII-F., “Transportation Design.”

VII-E Local Services and Infrastructure

1. Water Supply

a) Purpose
The purpose of this section is to ensure water quantity and quality adequate for human consumption, fire protection, and the proposed use of the subdivision.

b) Applicability
This section applies to all subdivisions.

c) Standards

i. Lots Less Than 20 Acres – The proposed method of supplying water to each lot in a subdivision must comply with the design standards adopted by Montana DEQ and contained in the Administrative Rules of Montana 17.36.330 – 17.36.336.

ii. Lots Greater Than or Equal To 20 Acres – The subdivider shall demonstrate, in accordance with 76-3-622, MCA, there is an adequate water source on each lot prior to final plat approval.

iii. Existing Water Systems for Lots Greater Than or Equal to 20 Acres – The subdivider must provide documentation of compliance with local health department standards

for water supplies. If there are no written standards, the minimum standard shall be documentation that the existing system is functioning properly, is permitted (or established prior to state permitting requirements), and a lot layout demonstrating there is an adequate space for the water supply source and at least one area of a septic system and replacement drainfield for each lot.

iv. Cisterns – If cisterns are proposed, either using on-site or off-site water supply, the proposed water supply system must meet local health department standards. If there are no written standards, the system shall meet the standards adopted by Montana DEQ.

v. Will Isolation Zone Encroachment – The well isolation zone of any proposed well to be drilled for a proposed subdivision shall not be allowed to encroach onto adjoining private property unless the owner of the private property authorizes the encroachment via written agreement.

vi. DEQ/Local Health Department Approval – The governing body shall not approve a final plat unless the subdivision has been approved by DEQ for subdivisions with lots less than 20 acres and by the local health department for lots equal to or greater than 20 acres. The approval shall be filed with the final plat.

vii. Public Water Systems – All subdivisions with a public water supply as defined in 75-6-102, MCA shall be reviewed and approved by Montana DEQ.

viii. Water Supply for Fire Suppression – All subdivisions must provide adequate and accessible water for fire suppression per the requirements of these regulations. Refer to Ch. VII-E(8) for fire suppression requirements.

ix. Easements – Easements are required for any water system other than individual. Easements are also required if the source of water for an individual lot is not located on that lot.

x. Other Permits/Approvals:

- Public Service Commission (PSC) – Shared, multiple user, and public systems are subject to the jurisdiction of the Montana PSC unless exempted per the definition in 69-3-101, MCA.
- Department of Natural Resources and Conservation (DNRC) – Montana law requires the development of new water sources (after July 1, 1973) to be filed with the Montana DNRC to receive a water right. For groundwater developments, wells and developed springs, the amount of water to be used will determine which form to file with DNRC.

d) Applicable Plans

Applicable plans include the growth policy, local health department plans, infrastructure extension policies, and capital improvements plans for public water supplies.

2. Wastewater Treatment

a) Purpose

The purpose of this section is to provide for wastewater treatment systems that protect public health, safety, and water quality.

b) Applicability

This section applies to all subdivisions.

c) Standards

i. Lots Less Than 20 Acres – The proposed method of treating and disposing of wastewater from each lot in a subdivision must comply with the design standards adopted by Montana DEQ and contained in the Administrative Rules of Montana 17.36.320 – 17.36.327.

ii. Lots Greater Than or Equal To 20 Acres – The subdivider shall demonstrate, in accordance with 76-3-622, MCA, there is at least one area for a septic system and a replacement drainfield for each lot prior to final plat approval.

iii. Existing Wastewater Systems for Lots Greater Than or Equal to 20 Acres – The subdivider must provide documentation of compliance with local health department standards for wastewater treatment. If there are no written standards, the minimum standard shall be documentation that the existing system is functioning properly, is permitted (or established prior to state permitting requirements), and a lot layout demonstrating there is an adequate space for the water supply source and at least one area of a septic system and replacement drainfield for each lot.

iv. DEQ/Local Health Department Approval – The governing body shall not approve a final plat unless the subdivision has been approved by DEQ for subdivisions with lots less than 20 acres and by the local health department for lots equal to or greater than 20 acres. The approval shall be filed with the final plat.

v. Public Sewage Systems – All subdivisions with a public sewage system as defined in 75-6-102, MCA shall be reviewed and approved by Montana DEQ.

vi. Easements – Easements are required for any system other than individual. Easements are also required if the source of water for an individual lot is not located on that lot.

vii. Other Permits/Approvals:

- Public Service Commission – Shared, multiple user, and public systems are subject to the jurisdiction of the Montana PSC unless exempted per the definition in 69-3-101, MCA.

d) Applicable Plans

Applicable plans include the growth policy, local health department plans, infrastructure extension policies, and capital improvements plans for public wastewater treatment.

3. Solid Waste

a) Purpose

The purpose of this section is to ensure solid waste disposal can occur in a safe and healthful manner.

b) Applicability

This section applies to all subdivisions.

c) Standards

The subdivider shall provide a plan for collection and disposal of solid waste that meets the requirements of the local health department, Montana DEQ (for lots less than 20 acres), and the following standards.

i. Solid Waste Haul Responsibilities – Subdivisions with lots of five acres or greater in size may include plans for individual lot owners to haul solid waste. Subdivisions with lots of less than five acres shall be provided with either curbside pick-up, alleyway pick-up, or an off-street collection area where collection service is available. The

subdivider shall consult with a private hauler to determine whether curbside or alleyway pick-up or an off-street collection area is more appropriate.

ii. Off-Street Collection Area – When an off-street collection area within the subdivision is planned, the collection area shall be screened from public view and conveniently accessible to collection vehicles.

iii. Licensed Solid Waste Disposal Site – Solid waste removed from a subdivision must be disposed of at a site licensed by Montana DEQ in accordance with 17.50.508, ARM or at an appropriate site out-of-state.

iv. Easements – Easements shall be required for off-street collection areas unless the area is located on a separate lot intended for the purpose of managing solid waste.

v. Other Permits/Approval

- Local Health Department and DEQ – Approval of the solid waste collection system by DEQ (for lots less than 20 acres) and the local health department (for lots 20 acres or more) is required.
- Hauler and Solid Waste Facility – Written notice from the entity managing the proposed solid waste facilities (e.g., transfer stations and landfills) that there is adequate capacity to serve the subdivision must be submitted prior to final plat approval. If a contract hauler is proposed, the subdivider shall submit written notice prior to final plat approval that the hauler can serve the subdivision.

d) Applicable Plans

Applicable plans include the growth policy, local health department plans, infrastructure plans, and capital improvements plans for solid waste.

4. Grading and Drainage

a) Purpose

The purpose of this section is to protect public health and safety by minimizing hazards including soil erosion, instability of sites for road and buildings, water pollution, and other dangers associated with development on hillsides, ravines, coulees, and other areas of steep slopes.

b) Applicability

This section applies to all subdivisions where surface disturbance is required for construction of infrastructure including roads, utilities, and stormwater systems. It also applies where the subdivider or lot purchasers will grade sites for buildings and driveways.

c) Grading Standards

Grading is the work of ensuring a level base or a specified slope. Grading occurs when an area is prepared for constructing building sites, utilities, and roads. Grading on slopes results in cut and fill. Cut is soil material that is removed from an area. Fill is soil material added to an area. Cut and fill can be balanced, meaning that cut and fill soils are from the same site. Cut and fill can also be imported to a site or exported to another location.

i. Engineered Plans – All grading plans and specifications shall be prepared and certified by a licensed professional engineer to meet the following standards.

ii. Soils with Sufficient Bearing Capacity – All soils shall be compacted and stabilized to a sufficient bearing capacity for the intended use (e.g., roads, residential buildings sites, commercial-industrial sites).

iii. Stormwater Runoff – Grading shall not significantly increase the rate of stormwater runoff and shall avoid the erosion of natural or constructed slopes and sediment accumulation in natural drainage channels and watercourses. Runoff shall be directed away from cut and fill slopes.

iv. Natural Drainage – Grading shall not significantly alter natural drainage patterns.

v. Contours of Existing and Adjoining Landforms – Final contours and slopes shall generally reflect existing landforms and be compatible with existing grades on adjoining property.

vi. Natural Vegetation – Grading shall be designed to preserve natural or established vegetation to the greatest practical extent.

vii. Balanced Cut and Fill – Grading plans shall balance cut and fill onsite so that the import and export of materials for development is minimized to the greatest practical extent.

viii. Slope Ratio – The desired minimum slope is 3:1 (horizontal:vertical). Slopes steeper than 2:1 on other than a solid rock face shall not be allowed unless it can be demonstrated there is no alternative.

ix. Re-vegetation – Areas disturbed for grading shall be re-vegetated according to the approved vegetation management plan. Refer to Ch. VII-B(7)(b) in this chapter.

x. Easements shall be required for any cut and fill that extends beyond the easement for a road or otherwise not included in another easement.

xi. Other Permits and Approvals – Refer below for stormwater drainage.

xii. Notice to Lot Purchasers – Notice shall be made to lot purchasers of their responsibilities for grading according in accordance with the requirements of Ch. VII-A(10). This notice shall be filed with the final plat.

d) Stormwater Drainage Standards

i. Lots Less than 20 Acres – When a subdivision include any lot less than 20 acres in size, the subdivider must submit a stormwater management plan with the preliminary plat application. The plan must be approved by Montana DEQ prior to final plat approval.

ii. All Lots 20 Acres or Greater – When all lots are 20 acres or greater, the stormwater management plan must meet the standards of and be approved by the local health department, and must meet the standards set forth in these regulations. If the health department has no written standards, the stormwater drainage plan shall meet the standards identified in DEQ Circular 8 and the applicable ARMs. At the time these subdivision regulations were prepared, the applicable rules are found in 17.36.310, ARM.

iii. Roadside Drainage – Subdivision roads shall have drainage facilities designed to collect roadway drainage and to prevent runoff from surrounding land from sheet-flowing over the road. This shall include roadside drainage ditches or swales, and culverts and bridges where necessary.

iv. Design for Natural Drainage – Natural drainage ways shall be preserved and accommodated at necessary crossings to access subdivision lots. Lots shall be arranged to preserve and maintain natural drainage channels. Ephemeral streams or channels shall be addressed in stormwater drainage plans.

v. Easements – Drainage facilities for any surface runoff generated within the subdivision must be located in street or road rights-of-way or in perpetual easements of appropriate size and location. The subdivider shall dedicate or obtain easements

to prevent encroachment into or disruption of drainage facilities. All drainage easements must be shown on the plat along with a signed statement from the subdivider dedicating the easements for this purpose.

vi. Subdivider Installation – The subdivider shall install all improvements specified in the approved stormwater management plan that serve more than two lots, including stormwater facilities along or across roads and detention and retention facilities.

vii. Maintenance – The stormwater management plan must include a method of maintenance including cost sharing, and designate responsible parties.

viii. Other Permits/Approvals – The subdivider shall obtain and provide a copy of following permits prior to final plat approval or prior to construction, whichever comes first:

- Stormwater Discharge – Construction activity resulting in greater than one acre of disturbance requires a permit from the DEQ Water Protection Bureau.
- Wastewater Discharge – Discharge to surface water, including work related to construction dewatering, requires a Montana Pollution Discharge Elimination System permit from the DEQ Water Protection Bureau.

ix. Notice to Lot Purchasers – Notice shall be made to lot purchasers of their responsibilities for stormwater drainage in accordance with the requirements of Ch. VII-A(10). This notice shall be filed with the final plat.

e) Applicable Plans

Applicable plans include the growth policy, infrastructure extension policies, and capital improvements plans for public stormwater facilities.

5. Utilities (Electricity, Telecommunications, Gas)

a) Purpose

The purpose of this section is to ensure all lots in a subdivision have power and telephone capability to ensure public health and safety. Further, it is the purpose of this section to provide for underground installation to reduce fire and public safety hazards that may occur with overhead lines, as well as to reduce visual impacts.

b) Applicability

This section applies to all subdivisions. For the purposes of this section, utilities means electricity, telecommunications (telephone, internet and cable television), and gas.

c) Standards

i. Installation by the Subdivider

- Subdivider to Install Electricity and Telephone – The subdivider shall install electrical power and telephone service connections to the street property line of each platted lot. Documentation of existing cellular telephone service is a legitimate alternative for underground telephone lines.
- Other Utilities – The governing body may require installation of gas lines, telecommunications (broadband, cable), or conduit (for later installation of service lines. If conduit is required it shall meet the specifications of the utility provider.

ii. Location

- Underground Utilities – All new utilities shall be installed underground.
- Location in Relation to Roads and Lots:
    - Required Location – Utilities shall be located along roadways or alleys, or when necessary between adjoining lots. When utilities are to be installed along roadways, they must be installed after the road has been brought to grade and before it is surfaced.
    - Service Provider Preference – If a utility provider prefers another location not required by these regulations, the location shall be subject to approval by the governing body.
    - Encroachment Permit – When a utility is to be located in an existing dedicated right-of-way, a notice of the utility occupancy or encroachment permit must be obtained from the road authority such as the road department, public works department, or Montana Department of Transportation.
- Co-Location and Separation Distances
    - In Relation to Water, Sewer and Others – Location of electric, gas, and telecommunications lines in proximity to water, sewer, storm drainage and other water conveyances shall meet the separation distances in Ch. VII-F, "Transportation Design."
    - Design Plan for Co-Location – The subdivider shall provide a design plan for co-locating electricity, telecommunications, gas, and any other utility or service in a single trench to all affected service providers for review prior to installation.

iii. Easements

- Extending Utilities to the Subdivision – The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- Easements on Adjoining Lots – Easements serving adjoining lots must be centered on adjoining lot lines.
- Width – Easements must be a minimum of 30 feet unless otherwise designated by the utility providers. Easements shall be of sufficient width to allow the physical placement and unobstructed maintenance of the utilities.
- Purpose – The easement shall clarify use of the easement as single utility or for co-location of electricity, telecommunications, and gas lines. Any additional purposes shall be clearly specified.
- Lot Owner Restrictions – The easement shall specify any restrictions on use of the easement by the lot owner, including but not limited to placement of structures, vegetation other than grass, etc.

iv. Plat Requirements – Preliminary and final plats shall show all existing and proposed utilities and easements in their true and correct locations. This shall include the location of utilities to be installed to the subdivision on the plat or a supplement.

v. Utility Provider Review and Approval – The subdivider shall submit documentation of utility provider approval with the final plat application. This shall include approval of any co-location design plan, easement locations, and easement document language when applicable.

d) Applicable plans

Applicable plans include the growth policy, capital improvements plans, and engineering plans.

6. Mail Delivery

a) Purpose

The purpose of this section is to provide for safe and convenient U.S. Postal Service (USPS) delivery and to avoid on-site mailbox along roadways that may pose a hazard to public health and safety.

b) Applicability

This section applies to all subdivisions except on-lot subdivisions with an existing dwelling or occupied business already receiving mail at the location.

c) Standards

i. U.S Postal Service Approval – Mail delivery for the proposed subdivision shall be designed in consultation with the USPS as either delivery to individual lots, cluster mailbox units (CBUs) within the subdivision, post office boxes, or a combination. USPS approval is required prior to final plat approval.

ii. CBUs:

- Location – The preferred location is within a designated off-street area such as a parking lot. At a minimum, CBUs located along a road shall have a vehicle pull-out no less than 10 feet wide.
- Montana Department of Transportation or Local Government Approval – Written approval is required from MDT or the local road or public works department for CBU locations along state highways or local government roads.
- Installation and Maintenance – The subdivider shall install the road pull-out and CBU and provide a plan for long-term maintenance, including year-round access (e.g., snow removal), repair and replacement of the CBU, and mechanisms by which lot owners will be assessed to cover costs.

7. Parkland Dedication Requirements

a) Purpose

The purpose of this section is to provide for parks and recreation areas.

b) Applicability

This section applies to:

i. First minor subdivisions:

- That include condominiums or other multi-family housing;
- Areas where zoning regulations permit condominiums or other multi-family housing; and
- Where any lots are within a municipal boundary.

ii. Subsequent minor subdivisions; and

iii. All major subdivisions (6 or more lots) including subdivisions creating spaces for RVs, mobile homes, condominiums, and townhomes.

iv. Exceptions – Any subdivision is exempted from these parkland dedication requirements under the following conditions:

- The subdivision only creates one additional lot;

- The subdivision creates lots that are all nonresidential; or
- All residential lots in the subdivision are greater than five acres in size.

c) Standards

i. Dedication of Parkland or Cash Donation – The dedication of parkland or cash donation shall be made by either of the formulas below.

- Formula for Subdivisions in Areas with No Density Requirements – The subdivider shall dedicate to the governing body cash or land donation equal to:
  - 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
  - 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;
  - 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  - 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- Formula for Subdivisions in Areas with Density Requirements – The subdivider shall dedicate to the governing body cash or land donation equal to 0.03 acres per dwelling unit. For these purposes, dwelling unit means a residential structure in which a person or persons reside. The governing body may require the calculation to be based on the maximum number of dwelling units allowable under the zoning for the area.

ii. Land to Be Usable and Accessible – Land dedicated for parks or recreational purposes shall be useable, of appropriate shape and size for the intended purpose, and shall have convenient access by public roads. However, in circumstances where the parkland contains important natural or environmental features such as a stream or wetland, a portion of the parkland may be a natural area used for passive recreation such as sitting on a park bench overlooking the area.

iii. Location of Land Donation – The governing body may approve land for parks and recreation inside or outside of the subdivision.

iv. Governing Body Determination of Land or Cash Donation – The governing body, in consultation with the subdivider and planning board or parks board, 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 combination. When a combination of land and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

v. Calculation of Cash Donation – For the purposes of this section, cash donation means the fair market value of the unsubdivided, unimproved land. The subdivider shall provide satisfactory evidence of the fair market value which may be a current appraisal from a certified general appraiser dated no more than six months prior to final plat application submittal to set the baseline value of the parkland dedication. Any appraisal fees shall be paid by the subdivider.

vi. Governing Body Use of Monetary Donation – The governing body may use dedicated money to acquire, develop, or maintain parks or recreational areas or for purchasing open space and conservation easements only if the governing body has:

- Adopted a park plan that establishes the needs and procedures for use of the money; and
- The land dedicated for parks or recreation facilities are within a reasonably close proximity to the subdivision.
- The governing body may not use more than 50% of the dedicated money for park maintenance.

vii. Dedication to School District – Subject to the approval of the governing body and acceptance by school district trustees, a subdivider may dedicate a parkland donation to a school district, adequate to be used for school facilities or buildings.

viii. Waivers for Dedication by Governing Body – The governing body shall waive the parkland dedication requirement if it determines that:

- The preliminary plat provides for a planned unit development or other development that permanently sets aside land for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required per Ch. VII-E(7)(c)(i) above, "Dedication of Parkland or Cash Donation;"
- Protection of Lands for Other Purposes – The preliminary plat will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the land area set aside for this purpose is equal to or exceeds the area that would have had to be dedicated per Ch. VII-E(7)(c)(i) above, "Dedication of Parkland or Cash Donation;"
- Combination of Parklands and Other Land Protection – The land is proposed to be dedicated to a combination of park, recreation, or other uses and is equal to or exceeds the area required Ch. VII-E(7)(c)(i) above, "Dedication of Parkland or Cash Donation;" or
- Parkland Outside of the Subdivision – 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 the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required per Ch. VII-E(7)(c)(i) above, "Dedication of Parkland or Cash Donation."

ix. Optional Waiver – The governing body may approve lands that are within or outside of the subdivision for other uses as described in Ch. VII-E(7)(c)(vii), "Dedication to School District," when the land to be set aside equals or exceeds the dedication required per Ch. VII-E(7)(c)(i) above, "Dedication of Parkland or Cash Donation."

x. Maintenance Plan Required for Lands Dedicated Per This Section and Not Accepted by the Governing Body – A parkland maintenance declaration is required for any parkland or other area meeting the requirements of this section but which is not dedicated to and accepted by the governing body.

xi. Ownership of Land Not Accepted by the Governing Body – The final plat or supplemental materials to be filed with the final plat shall identify ownership of the lands meeting the parkland dedication requirements. If lands are to be dedicated to a property owners association or other entity, the transfer document shall be filed with the final plat.

d) Applicable Plans
Applicable plans include the growth policy and parks and recreation plans adopted by the governing body.

8. Fire Protection and Water Supplies for Fire Suppression

a) Purpose
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 to protect persons and property.

b) Applicability
This section applies to all subdivision except for the following:
   i. Subdivisions that create one additional lot containing an existing dwelling unit; and
   ii. Minor subdivisions that are within a 15-minute response time from an existing fire station, with written approval from the Fire Department Authority Having Jurisdiction (AHJ) for the area indicating existing fire trucks and water tenders have capacity to suppress fire within the subdivision. Subdivisions receiving this approval shall nonetheless comply with requirements for fuel breaks in wildland-urban interface (WUI) areas, as described below.

c) Standards – General to All Subdivisions
   i. Compliance with Adopted Fire Code - Subdivisions shall comply with applicable provisions of any fire code adopted by the governing body.
   ii. Fire Suppression Water System Required – The system shall be built to standards of a fire suppression plan that is approved by the AHJ and the governing body.
      - Fire Suppression Plan for Private Systems – The plan shall be developed and certified by a licensed engineer to meet the requirements of this section and address at a minimum the following:
         - Needed water quantity and fire flow (as per the standards in Ch. VII-E(8)(c)(iv) below);
         - The type of water system such as a pressurized or non-pressurized system, water supply source including water volume and pressure, hydrants, access, source of electrical power, and other relevant factors;
         - Specifications and dimensions including types of materials, capacity, connections, colors, and fittings;
         - The location of the system and necessary easements (must also be shown on the plat);
         - Inspection and Maintenance Plan including testing schedule, who will conduct and pay for the tests, how the system will be maintained in an operative condition at all times, and how and where records will be kept. Requirements include:
            - Hydrants inspected at least annually and maintained as necessary to keep them in good operating condition;

- Surveys conducted at least annually to reveal any deterioration in water supply and availability;
- Trimming of grass, brush, and other vegetation with a minimum three-foot radius around hydrants;
- Maintaining reflective materials at the water system to ensure visibility; and
- Protecting risers and other fixtures from deterioration.

- Fire Suppression Plan for Public Systems to Be Built and Owned by Existing System Operator/Owner – Plans for fire suppression systems that will be owned and operated by a system owner such as a municipality or public water district do not require a fire suppression plan as described above but must meet the requirements of the owner/operator.
- Maintenance Declaration for Private Systems – A fire system maintenance declaration incorporating the provisions of the fire suppression (including the inspection and maintenance provisions) approved by the AJH and governing body shall be filed with the final plat.

iii. Alternative Systems – Requirements for a fire suppression water system may be waived if an alternative system for residential and/or commercial sprinkler systems meets all of the following circumstances and conditions:

- The system is voluntarily proposed by the subdivider and the system and water supplies are fully described in the proposal;
- The subdivision is within an area with building codes or fire codes that require inspection and approval of the system prior to occupancy;
- The entity administering and enforcing the building codes approves the alternate system and water supply; and
- The subdivider provides an estimate of lot owner cost and notice of the requirements for lot owners to obtain permits and install sprinkler systems on the face of the plat, covenants, and purchase agreements.

iv. Determination of Water Quantity and Flow

- The following subsections identify the methodology for calculating water quantity and flow necessary for fighting fires in various locations. The calculations shall be based on the proposed number of potential single-family, multi-family, commercial and industrial buildings to be served.
- Subdivisions in Municipalities with Urban Density – The subdivider shall have a licensed engineer submit calculations for water volume and fire flow using the methodology and requirements of the International Fire Code Appendix B, “Fire-Flow Requirements for Buildings.” These requirements specify a minimum of 1,000 gallons per minute (gpm) for one hour for one- and two-family dwellings have a fire flow calculation area that does not exceed 3,600 square feet. Standards for other residential and commercial structures with varying square footage and construction types are also located in Appendix B.

- Subdivisions Outside of Municipalities with Suburban and Rural Densities – The subdivider shall have a licensed engineer submit calculations for water volume and fire flow based on the requirements of Chapter 4 and Annex H of the National Fire Protection Association (NFPA) 1142, “Standards for Water Supplies for Suburban and Rural Fire-Fighting.”
- Subdivisions in the Wildland-Urban Interface (WUI) – In WUI areas outside of a municipality, the water system shall be capable of being supplied onsite at a minimum of 1,000 gpm for a minimum of 30 minutes, as recommended in the DNRC Guidelines for Development within the Wildland-Urban Interface.

v. Water Supply and Delivery Systems

- Year-Round Capacity – All water supply sources shall maintain at least the minimum capacity and delivery requirements on a year-round basis, including surface water sources.
- Year-Round Access – Water supply sites shall have year-round emergency vehicle access from a road constructed in accordance with these regulations and maintained to permit continuous access.
- Signage – Onsite signage and reflective materials approved by the AHJ shall be used at all hydrants and fill sites.
- Pressurized Systems with Hydrants
    - IFC Requirements – Water supply and hydrants shall meet the requirements of IFC Section 507, “Fire Protection Water Supplies.”
    - System Owner Requirements – If the system is to be acquired by an existing system owner such as a municipality or water district, it shall be approved by and meet the specifications of the system owner. In accordance with the policies of the owner, the subdivision water system may be required to be dedicated to and accepted by the owner prior to final plat filing.
- Non-pressurized Systems
    - NFPA Requirements – the system shall meet the design and location criteria of NFPA 1142, Standard on Water Supplies for Suburban and Rural Fire Fighting Chapter 8, “Dry Hydrants.”

vi. Inspection, Review, and Approval

- Construction Timing – No construction or installation of systems shall occur until after the AHJ and governing body have approved the fire suppression plan.
- Installation Prior to Final Plat Application – the water system shall be completely installed, inspected, tested, and approved by the AHJ prior to final plat application.
- Water Supply Test – As required by IFC Section 407.4, the AHJ and administrator shall be notified prior to the water supply test. The test shall be witnessed by the AHJ or approved documentation of the test shall be certified by a licensed engineer. The test results and certification shall be provided to the AHJ and administrator.

vii. Easements – Easements shall be required for all fire facilities in the subdivision, including water supply sources.

viii. RSID/SID Waiver – If no community or municipal water system with 1,000 gallons per minute minimum fire flow is provided, a RSID/SID waiver statement shall be required stating that at such time a community or municipal water system is available, the property owners shall be required to participate in the RSID/RID. This waiver shall comply with the requirements of Ch. VII-5(c), "Waiver of Right to Protest Improvement District."

ix. Access by Fire Suppression Equipment – The subdivider shall provide notice to lot purchasers of their responsibility for buildings to be constructed so that fire trucks will have access to within 150 feet of all portions of buildings. Notice shall be provided in accordance with the requirements of Ch. VII-A(10) and shall be filed with the final plat.

d) Additional Standards for the WUI – Subdivisions in the WUI shall also comply with the following design standards, in addition to the standards provided in Ch. VII-E(8)(c) above:
   i. Back-up Power Supply for System – Water supply facilities dependent on electrical power shall provide a standby power system to ensure that an uninterrupted water supply can be provided, unless primary power is underground.
   ii. Defensible Space – Defensible space of not less than 30 feet shall be provided and maintained around water tank structures, water supply pumps and pump houses. Portions of trees and other combustible vegetation within 30 feet of the facilities shall be removed.

e) Other Permits/Approvals – The subdivider shall obtain applicable building permits for systems to be installed by the subdivider.

f) Applicable Plans
   Applicable plans include the growth policy and community wildfire protection plan.

VII-F Transportation

This section is designed to:

- Ensure the design of streets, roads, pedestrian pathways and bikeways conform to the recommendations of the growth policy;
- Provide for the safety of both motorized and non-motorized traffic;
- Provide for livable residential and retail commercial environments;
- Provide economy of land use, construction, and maintenance, and
- Provide safe and efficient access to property.

This section promotes narrower street widths and greater connectivity. The intent is to more efficiently disperse traffic, protect pedestrians from high vehicular speeds, reduce stormwater runoff, protect water quality, and provide cost savings for developers and home buyers.

1. Roads – Functional Classification

Roads and streets are categorized hierarchically by function and capacity. Capacity is often expressed as Average Daily Traffic (ADT) or Average Annual Daily Traffic (AADT). The major

road classes in the United States are freeways, arterials, collectors, and local roads. For purposes of these subdivision regulations, the classification system below shall apply.

2. Design Components by Functional Classification

Roads within the subdivision shall conform to the standards as more fully described in the following sections.

a) Functional Classifications

i. 2-Lot Road – This type of road is allowed for up to two residential lots with no direct access from an existing road, subject to the following:

- 2-Lot Roads are allowed in a zoning district that limits development to one dwelling unit per lot. In areas without such zoning, road access to two residential lots is subject to Residential Lane classification (below). Subdividers who voluntarily place a restriction of one dwelling unit per lot on the face of the plat, buy/sell agreements, covenants, and deeds shall qualify for 2-Lot Roads.

ii. Alleys – Alleys provide access to the side or rear of individual land parcels. They may be required in urban areas to continue existing development patterns, when a water or sewer authority desires separation between infrastructure, or when a public service entity or agency desires access to the rear of the lot.

iii. Residential Lanes – This road type is allowed for residential subdivisions of five or fewer lots, subject to the following:

- The subdivision is in a zoning district with regulations that limit the subdivision area to not more than two dwelling units per lot. In areas without such limitations, subdividers who voluntarily place a limit of two dwelling units per lot on the plat, buy/sell agreements, covenants, and deeds shall qualify for Residential Lane roads.
- If the criteria for Residential Lane roads are not met, the road access will be subject to local road standards.

iv. Local Roads – This type of road is intended to primarily serve residential development. Commercial and industrial subdivisions with projected traffic volume of less than or equal to 400 ADT shall design to the Subcollector standard, except as noted below.

v. Subcollectors – This road type is not intended for direct access to residential lots, but may provide access for commercial, public facilities, and other uses.

vi. Collectors – This road type is not intended for direct access to residential lots, but may provide access for commercial, public facilities, and other uses.

vii. Arterials – This road type is the highest road classification discussed in these regulations, carrying the most vehicles at the highest speeds. Few subdivisions will include internal arterials except as extensions of existing facilities across the

subdivision. Existing roads leading to a subdivision may require upgrades to this classification.

b) Number of Residential Lots

i. 2-Lot Roads - Limited of one dwelling unit per lot either via zoning regulations or voluntary restrictions by the subdivider.

ii. Residential Lanes – Limited to no more than five lots with no more than two dwelling units per lot either via zoning regulations or voluntary restrictions by subdivider.

iii. **Local Roads, Subcollectors, Collector and Arterial. These roads have standards reflective of ADT rather than number of lots.**

c) **Average Daily Traffic**

i. **Average daily traffic (ADT) is the daily volume of vehicular traffic averaged over the course of a year. The ADT is the maximum standard for the road based on traffic type.**

ii. **For roads other than 2-Lot Roads, Alleys, and Residential Lanes, the following shall apply:**

- **ADT shall be calculated on the use with the highest level of road impact allowed within the zoning district. If the subdivision is not within a zoning district that sets allowable uses, ADT shall be calculated on the most impactful range of use common in the area or projected to occur, based on discussion with the administrator.**
- **Subdividers who voluntarily restrict use to a specific type or types through zoning or other means may base ADT and subsequent road design on that basis, provided the restriction is revocable only with consent of the governing body and is included on the plat, buy/sell agreements, covenants and in deeds.**

iii. **Roads that can reasonably be expected to serve additional ADT in the future may, at the discretion of the governing body, be required to be designed to meet the functional classification of the additional ADT. Further, the governing body may require the subdivider to build the road to the anticipated future standard. For such improvements the subdivider shall only be required to pay the amount equal to the requirements of the subdivision. Refer to Ch. VII-F(5)(e) below for how to calculate the subdivider's share.**

iv.

that can reasonably be expected to serve additional ADT in the future may, at the discretion of the governing body, be required to be designed to meet the functional classification of the additional ADT. Further, the governing body may require the subdivider to build the road to the anticipated future standard. For such improvements the subdivider shall only be required to pay the amount equal to the requirements of the subdivision. Refer to Ch. VII-F(5)(e) below for how to calculate the subdivider's share.

d) **Design Speed**

i. **This is the intended maximum driving speed in miles per hour. The road shall be designed to facilitate this speed and not higher speeds.**

ii. **Arterials – Design speed for arterials depend on a variety of factors including projected ADT, existing and proposed traffic control devices, frequency of stop signs and stop lights. In no case shall an arterial, other than a state or federal highway, have speed limit greater than the highest speed limit for the local jurisdiction's roads.**

e) **Road Right-of-Way and Easement Width**

i. **Road right-of-way includes the minimum right-of-way widths that would be dedicated and deeded to a local government (typically a municipality) and easement widths, which conveys rights but do not transfer ownership (more typical of unincorporated areas).**

ii. **The dimensions are in feet and are the minimum starting point for determining final width of the right-of-way or easement. Final width depends on the number of travel lanes and parking lanes as well as the size of storm drainage areas, pedestrian facilities, snow removal needs, utilities, and topography.**

f) **Travel Lanes**

This refers to the minimum number of travel lanes required. The road shall be designed to include any turn lanes that may be required to ensure road safety.

g) **Parking Lanes**

i. **This refers to the minimum number of on-street parking lanes.**

ii. **Parking lanes are not allowed for alleys in residential areas.**

iii. **"As Needed" is determined as follows:**

- **Within municipalities and growth areas, parking lanes shall be included if they are required in locally adopted road standards.**
- **When a subdivision road is a continuation of an existing road, the subdivision road shall at a minimum provide right-of-way or easement area for parking lanes similar to those on the adjoining existing road.**
- Subdividers shall identify proposed use of lots and determine the number of parking spaces required as Ch. VII-F(4)(d) below. The subdivider shall identify location of the required parking spaces as either off-street, on-street, or a combination of both. If off-street parking is proposed, the subdivider shall follow requirements of Ch. VII-F(4)(d).
- Parking lanes shall be a minimum of 8 feet wide and 24 feet long.
- On-street parking is not permitted on arterial roadways.

h) **Travel Surface Width**

This is the minimum width in feet allowed for the road surface. It is also the maximum width desired for residential areas under normal conditions. The travel surface is the

total width of the travel lanes and does not include parking lanes, shoulders, or curb and gutter.

i) **Travel Surface Type**

i. **"Context-Dependent or Gravel" – This applies to 2-Lot Roads and Residential Lanes.**

- **At a minimum the road shall be gravel surfaced. If the road providing access to the subdivision is a higher standard, the adjoining subdivision road surface shall be built to the higher standard.**
- **Exception for rural 2-Lot Roads and Residential Lanes in low density areas outside of municipalities, growth areas, and rural communities.** In low density rural areas, 2-Lot Roads and Residential Lanes may be gravel even if they adjoin a paved road, but shall be required to pave the first 50 feet to prevent gravel from degrading the pavement on the existing road.

ii. **"Context Dependent or Paved" – This applies to local roads. The requirement is for these to be paved, but in areas where similar properties are unpaved, the road shall be built to a gravel road standard at a minimum.**

iii. **"Paved" – This applies to Subcollectors, Collectors, and Arterials.**

Roads that are required to be paved either as Subcollectors, Collectors, or Arterials, or by "context" for lower classification roads, shall be built to the following standards or to the paved standard of the adjoining road, whichever is the higher standard.

- **Roads not requiring curb and gutter must at a minimum be chip-sealed.**
- **Roads requiring curb and gutter must at a minimum be asphalt.**

iv. **Refer to the "Road Construction Specifications" section for detailed standards for gravel and paved roads.**

v. **If the road providing access to the subdivision does not meet the standards for its functional classification, refer to Ch. VII-F regarding substandard roads leading to a subdivision.**

j) **Shoulder Width**

Shoulder width, expressed in feet, is the minimum shoulder width and applies to:

i. **Gravel roads and paved roads without curb and gutter.**

ii. **Roads with paved road, curb, and gutter – The shoulder width shall be added to the width of the travel surface and included in the total curb-to-curb width. Roads with curb and gutter must have a minimum width of 20 feet for fire protection access.**

k) **Shoulder Surface**

The shoulder surface is context-dependent and varies with the type of road surface and the storm drainage system as follows:

i. **Paved roads with curb and gutter shall have paved shoulders.**

ii. **Paved roads without curb and gutter:**

- **Paved shoulder is required in municipalities and growth areas if required by local road standards, or if adjoining roads have paved shoulders.**
- **Graveled shoulder for all other paved roads without curb and gutter.**

iii. **Gravel roads shall have gravel shoulders.**

l) **Road Pull-Outs for Fire Department Equipment**

Where the road travel surface is 20 feet or less in width and where curves, hills, or vegetation may obstruct views of oncoming traffic, there shall be areas for fire department equipment to pull to the side of the road. Pull-out areas must provide space for a vehicle to safely move out of a traffic lane in order to permit the passage of emergency or other types of vehicles. At a minimum, a pull-out shall be a total width of 20 feet, including road travel surface, shoulders, and adjoining unobstructed area that allows a driver to stop safely. The requirement and location of pull-outs shall be determined by the local fire department.

m) Vertical clearance

The minimum vertical clearance above the travel surface is 13.5 feet. This is the minimum clearance for any obstruction including bridges or overpasses, tree limbs, or overhanging rock features. For arterial roads, the vertical clearance shall follow American Association of State Highway Transportation Officials (AASHTO) standards for the design speed.

n) Unobstructed Width

This is the minimum unobstructed width in feet for any obstruction including tree limbs that extend over the roadway.

o) **Corner Radius**

i. **Corner radius, also described as curb radius, measures the sharpness of a corner at an intersection. A large curb radius increases the distance a pedestrian must travel to cross the road. The measurement is expressed in feet.**

ii. **Generally, where a lower classification road intersects with a higher classification road, the higher classification requirement applies.**

iii. **In industrial subdivisions, the corner radius shall be designed to meet the needs of projected vehicle types such as large semi-trucks and trailers.**

p) **Centerline Radius**

i. **A horizontal curve in a road can be a slow, smooth curve or a sharp, angular curve. The sharpness of a curve is defined by its centerline radius, expressed in feet. For example, a long, gradual curve may have a radius of 5,000 feet while the curve at a driveway entrance may have a much shorter radius, such as 15 feet.**

ii. **The first criterion is that all curves shall have the capacity to carry the largest current or anticipated fire truck in the district serving the subdivision. If none is specified by the AHJ, the minimum weight capacity shall be 75,000 pounds as identified in the International Fire Code.**

iii. **For arterial roads, the centerline radius shall follow AASHTO standards for the design speed.**

q) **Minimum Stopping Sight Distance**

i. The stopping sight distance is the distance a vehicle travels from the instant a driver sights an object to the point at which a braking vehicle stops. Stopping sight distance is the sum of two distances: (1) the distance traversed by the vehicle from the instant the driver sights an object necessitating a stop to the instant the brakes are applied; and (2) the distance needed to stop the vehicle from the instant brake application begins. These are referred to as brake reaction distance and braking distance, respectively. The faster the speed of the vehicle, the longer the distance is needed to stop.

ii. **The** stopping sight distance on a roadway shall be sufficiently long to enable a vehicle traveling at the design speed to stop before reaching a stationary object in its path.

iii. **Sight** distance varies on level ground or on hills (vertical curves). Stopping sight distance also varies with conditions such as night driving conditions, rain, snow, and ice. The sight distance determination shall be based on AASHTO standards and methodology for finished road contours.

iv. For arterial roads, the sight distance shall follow AASHTO standards for the design speed.

r) Minimum Intersection Sight Distance

i. The operator of a vehicle approaching an intersection shall have an unobstructed view of the entire intersection and an adequate view of the intersecting roadway to permit control of the vehicle to avoid a collision.

ii. For arterial roads, the intersection sight distance shall follow AASHTO standards for the design speed and intersection configurations.

s) Maximum Grade

Maximum grade is the maximum slope of a road expressed in percent. No grade shall be less than 0.5 percent. The minimum cross-slope of a road shall be two percent and the maximum shall be four percent.

t) Block Length

i. Block length is the maximum permitted length of blocks in feet. Where expressed as a range, such as 300-600 feet, the shorter block length of 300 feet applies to higher density development (at least six dwelling units per acre). The longer block length of 600 feet applies to low density development (three to six dwelling units per acre). Where expressed as “NA,” block length does not apply – as in 2-Lot Roads,

Residential Lanes serving five or fewer lots (total 10 dwelling units) or local roads serving low density development (1-2 dwelling units per acre).

ii. Commercial and Industrial Blocks – Commercial blocks shall not exceed 600 feet on any road types other than arterial unless the subdivider provides evidence the proposed block length is in context with adjoining or surrounding block lengths. Industrial blocks shall be designed to fit the context of the area and to support the intended future uses although it is recommended block lengths not exceed on quarter mile.

iii. Arterials – Block length does not apply to arterials as classified in these regulations, although it is recommended block lengths on developed arterials not exceed on quarter mile.

u) Roadside Storm Drainage

i. Drainage along roadsides is typically comprised of curbs and gutters, swales, or a combination of both. The drainage along roadways shall conform to local context. The word context means that the roadside drainage system shall match the system of adjoining roads or include a swale as described in this section, whichever is the higher standard.

ii. All storm water drainage shall meet the requirements of Ch. VII-E(4)(d), “Stormwater Drainage Standards.”

iii. Curb and Gutter – If curb and gutter is required, it shall conform to the curb and gutter requirements of the local jurisdiction or to the standard of the adjoining road, whichever standard is higher. The curb and gutter shall align with the curb and gutter system of the adjoining road.

iv. Drainage Swales

- Final determination of drainage swale width, depth, and retention capacity for lots less than 20 acres shall be made by Montana DEQ. For lots larger than 20 acres, swales shall meet local health department standards or DEQ standards if the local health department does not have written standards.
- Slopes of roadside swales shall not exceed a slope of 4:1 and shall be well rounded.
- Swales shall be designed and built to ensure flow.
- Stormwater drainage swales shall not function as irrigation ditches.
- Swales on sustained grades can result in erosion to the swale as well as the cut-to-fill transition. When sustained grades are present the designer shall provide the following features:
    - Cross drains and swale blocks to allow runoff to outfall into a natural drainage.
    - If no viable outfall exists within a reasonable interval, check structures shall be used to reduce flow velocities and corresponding erosion potential.

v. High density developments (more than six units per acre) and commercial or industrial developments may be required to extend a storm drain if one is located within 500 feet of an existing storm drain facility when the storm drain owner indicates available capacity and willingness to accept the runoff.

v) Pedestrian Facilities Along Roads

i. Pedestrian facilities along roads include sidewalks and paths. Construction by the subdivider is based on a variety of factors, described below in Ch. VII-F(2)(v)(iv). "Context" means that an easement and possibly construction may be required as follows.

ii. No pedestrian facility or easement is required for:

- 2-Lot Roads;
- Low density Residential Lanes with no potential for future pedestrian connectivity. Examples of no future pedestrian connectivity include roads terminating at a natural barrier such as a rock face.
- Local roads with a maximum future density of two dwelling units per acre, serving less than 10 lots, and no potential for pedestrian connectivity.
- Other roads that have no potential for future pedestrian connectivity; or
- Internal roads serving industrial subdivisions.

iii. Easements for pedestrian facilities are required for all other roads with potential for pedestrian connectivity.

iv. The subdivider shall construct pedestrian facilities for roads requiring pedestrian easements (per [iii] above) when:

- Adjoining properties have pedestrian facilities;
- Local zoning or municipal street design standards require sidewalks or pathways;
- Commercial lots are proposed;
- There is a need for safe access to schools, playgrounds, shopping, adjoining neighborhoods, transportation and other community facilities, or for the continuation of existing, planned, or reasonably anticipated routes;
- When the area of the subdivision is included in an adopted pedestrian or non-motorized plan that calls for pedestrian facilities; or
- The subdivision is within one-quarter mile of an existing developed pathway.

v. Refer to Ch. VII-F(4)(f) below for additional construction requirements for pedestrian facilities.

vi. Pedestrian facilities shall be separated from roadways as follows:

- Gravel roads and paved roads with no curb and gutter - The storm drainage swale and/or utility corridor shall separate pedestrian facilities from the roadway edge. At a minimum separation shall be no less than three feet.

- Paved roads with curb and gutter – Separation shall be a minimum distance of three feet on local roads, five feet on Subcollectors, Collectors, and Arterials.

vii. Refer to Ch. VII-F(5)(b) below for information on width of easements for pedestrian facilities.

w) Bike Lanes

i. Bike lanes along roads may include individual bike lanes reserved for bicyclists, combined with pedestrian paths, or striped as part of the road system. Subdivisions are subject to bike lanes "As Required".

ii. Easements for bike lanes shall be required for:

- Local roads in accordance with an adopted non-motorized transportation plan or bike plan (if such exists); and
- For Subcollectors, Collectors, and Arterials (in all cases unless precluded by an adopted non-motorized plan or bike plan).

iii. Bike lanes shall be constructed for:

- Subcollectors, Collectors, and Arterials; and
- Local Roads when adjoining properties have bike lanes, when local zoning or municipal street design standards require bike lanes, or when the area is included in an adopted plan and the subdivision is within ¼ mile of existing bike lanes.

iv. Bike lanes shall connect to and align with an adopted bike lane plan (if such exists) and bike lanes on abutting property.

v. Bike paths not located on the road travel surface shall be separated from the roadway as for pedestrian facilities (See Ch. VII-F(2)(v)(6) above.)

vi. Refer to Ch. VII-F(4)(f) for additional construction requirements for bicycle facilities.

vii. Refer to Ch. VII-F(5)(b) for information on width of easements for bicycle paths.

x) Street Lighting

i. Subdivisions are subject to street lighting "As Needed," as described below. "NA" means that street lighting is not required.

ii. "As Needed" Street lighting is required for:

- Subdivisions where pedestrian facilities are to be constructed. At a minimum lighting shall be provided at intersections. Light fixture placement and spacing shall be in accordance with the jurisdiction's adopted lighting policy, if any.
- Subdivisions in jurisdictions with applicable street-lighting requirements adopted by the governing body.

iii. Street lighting is not required for 2-Lot Roads unless required by other ordinance adopted by the governing body.

iv. Street lighting shall focus downward, avoid light trespass and glare.

3. Connectivity and Access

a) Connectivity

A well-connected road network spreads traffic efficiently, provides greater opportunities for access by service and emergency vehicles, and furthers pedestrian mobility by increasing the number of destinations that can be reached by walking or biking.

i. General Standards for Connectivity

A proposed development shall provide multiple direct connections in its local road system to and between local destinations such as parks, schools, and shopping, without requiring the use of Collectors or Arterials.

ii. External Connections

- Road Connections
  - Road Stubs and Temporary Turnarounds. To ensure future road connections where a proposed subdivision abuts unplatted land or a future development phase of the same subdivision, temporary turnarounds (road stubs) shall be provided to provide access to abutting properties to logically extend the road system into the surrounding area. All road stubs shall be provided with temporary turn-arounds or cul-de-sacs and the restoration and extension of the road shall be the responsibility of any future developer of the abutting land. Easements or right of way shall be put in place as part of the final plat to assure future connections.
  - Roads within and contiguous to the subdivision shall be coordinated with other existing or planned roads within the general area as to location, widths, grades, and drainage.
  - No new half-street rights-of-way are allowed. Where the proposed subdivision abuts an existing half-street, the other half of the street shall be platted.
  - This section is not intended to require roads to project into floodplains, bluffs, or other natural features or existing development that has no accommodations for connection.
- Non-motorized Connections

  Where the local jurisdiction has adopted a non-motorized plan, pedestrian plan, and/or bike plan that identifies planned trails through a subdivision, separate from those along a roadway, the subdivider is encouraged to establish an easement for the trail(s). Refer to Ch. VII-E(7) for a discussion of how a trails easement may qualify as parkland dedication.

iii. Internal Connections

- Roads Ending in Permanent Turnaround
  - Applicability
    - Subcollectors, Collectors, and Arterials shall not end in permanent turnarounds. By definition of their functional classification, they are intended to route traffic from roads of lower classification.
    - 2-Lot Roads are allowed to end in permanent turnarounds.
    - All other internal subdivision roads designed to permanently end in turnarounds are prohibited except where it can be clearly demonstrated by the subdivider that no other options are available due to slopes in excess of 20%, other topographic and environmental considerations such as rivers, lakes, etc., or where parcel configuration does not provide any alternative.
  - The maximum length of a road ending in a permanent turnaround is as follows:
    - Not to exceed the length of blocks in Ch. VII-F(2)(t) above except where it can be clearly demonstrated by the subdivider that no other options are available due to slopes in excess of 20%, other topographic and environmental considerations such as rivers, lakes, etc., or where parcel configuration does not provide any alternative
    - 600 feet in areas of extreme fire hazard, with areas of “extreme fire hazard” as shown in an adopted plan or where no such plan exists, as determined by the local fire AHJ.
    - 1,000 feet for all other settings in the WUI.
    - Outside of areas designated as WUI by the local jurisdiction, roads longer than 1,000 feet may be allowed if approved by the local fire AHJ to have necessary pull-outs as described in Ch. VII-F(2)(l), “Road Pull-Outs for Fire Department Equipment” and areas sufficient for fire department trucks to safely turn around in the roadway. The fire department shall approve locations of pull-outs and turn-around areas in the roadway. Length of a road terminating in a turnaround shall be measured from the point at which the road with turnaround intersects a road with two points of access onto a higher classification road.
  - Design for Permanent Turnarounds
    - Dimensions are for travel surface only and do not include additional right-of-way needed for snow storage or storm drainage.
    - Alternate designs may be approved if designed and built in accordance with the most current edition of A Policy on Geometric Design of Highways and Streets by the American Association of State Highway Transportation Officials (AASHTO) and when approved by the local fire protection authority.

- Provisions for Non-Motorized Connectivity – Roads ending in permanent turnarounds shall provide for pedestrian and bicycle connections by extending an easement for pedestrian access to the nearest road within or adjacent to the subdivision.

b) Design and Configuration of Road Access

i. Primary Access Requirements - Generally

A primary access is a main entry into and out of the subdivision. In an unincorporated area, the access for all subdivisions with six or more lots shall be from a highway or county road or from a road with a functional classification of Subcollector or higher. In subdivisions providing for more than 30 dwelling units, the primary access shall be from a highway or county road or from a road with a functional classification of Collector or higher.

ii. Multiple Accesses Required for Subdivisions

- Applicable to Subdivisions Within or Outside of the Wildland Urban Interface
  - Subdivisions of one- or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with a minimum of two separate accesses.
  - Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with a minimum of two separate access roads. Projects having up to 200 dwelling units may have a single approved access meeting the standards of these regulations only if the subdivider requires all buildings, including nonresidential occupancies, to be equipped with approved automatic sprinkler systems installed in accordance with Section 903.3.1.1 of the International Fire Code.
  - Commercial or industrial subdivisions with potential gross building area of more than 62,000 square feet shall be provided with two separate and approved fire apparatus access roads. Projects having a gross building area of up to 124,000 square feet may have a single approved fire apparatus access road when the subdivider voluntarily requires all buildings or otherwise ensures they will be equipped with approved automatic sprinkler systems.
- Within the Wildland Urban Interface
  - All lots in subdivisions shall be provided with a minimum of two primary accesses.
  - Subdivisions that would be allowed one primary accesses outside of the Wildand Urban Interface, may be allowed one primary access in the WUI if approved by the fire AJH to contain adequate pull-outs and turn-around areas within the roadway as described in Ch. VII-F(2)(l) “Road Pull-Outs for Fire Department Equipment.”
- Location of Multiple Primary Access Roads

Primary access points shall be located as remotely from each other as possible to assure more than one escape route for residents and access routes by emergency vehicles.

iii. Emergency Access Roads

- The subdivider may include emergency access roads for vehicular passage in emergency situations only. An emergency access road shall not qualify as a primary access road for purposes of Ch. VII-F(1) and (2) above.
- Emergency access ways must not be open to general vehicular travel and must be provided with removable bollards, gates, or other means approved by the AJH to restrict general vehicular access. Emergency access ways may serve as pedestrian and bicycle pathways.
- Emergency access routes shall be identified on the plat with notice of use restrictions. Emergency access routes that do not meet the minimum design and construction standards of a Local Road shall also include on the plat notice that the emergency access route may not be designed to accommodate fire equipment.

iv. Gates

No subdivision shall be designed in such a way that prevents or inhibits public access by a gate or other method of obstruction on any road within or accessing the subdivisions. Gated subdivisions shall not be allowed.

4. Other Design and Construction Standards

a) Intersections and Approaches

i. Design Standards

- No more than two roads shall intersect at one point.
- Roads shall intersect at right (90 degree) angles +/- 10 degrees.
- Two roads meeting a third shall be offset by the sight distance at the intersection as described in Ch. VII-V(2)(r), “Minimum Intersection Sight Distance.”
- 2-Lot Roads and Residential Lanes shall not intersect with Arterials.
- Intersections located less than the stopping sight distance from a hilltop are not allowed. Refer to Ch. VII-F(2)(q), “Minimum Stopping Sight Distance” for the minimum distances for intersections in proximity to hilltops.
- The grade of an approach shall not exceed five percent within 20 feet of an intersection (unless state-owned, in which case state standards prevail).
- The governing body may require cattle guards to be placed where a subdivision road meets a public or private road.

ii. Approach permits

The subdivider shall obtain approach or encroachment permits for subdivision roads to access to public roads and state highways prior to road construction. For subdivisions with direct driveway access onto a state or local jurisdiction road, the subdivider shall provide written verification from Montana Department of Transportation or the local jurisdiction that a specific driveway approach has been approved or that the lot has suitable location for an approvable driveway approach in the future.

b) Road Names and Signage

i. Names

Names of new roads shall not duplicate names of existing roads unless the new road continues or aligns with an existing road. All new road names shall be made in accordance with a locally adopted emergency dispatch policy (e.g., E-911 policy). Where there is no adopted policy or where it provides insufficient guidance regarding road names, the person responsible for addressing within the jurisdiction shall approve new road names.

ii. Road Name Signs

Road name signs shall be installed at all intersections within and abutting the subdivision. Such signs shall be manufactured and installed by the subdivider in accordance with locally adopted policies. Where there is no adopted policy or where it provides insufficient guidance regarding road name signage, signs shall be in accordance with the Federal Highway Administration Manual on Uniform Traffic Control Devices.

c) Warning and Regulatory Traffic Signs

i. General

- Regulatory and warning traffic signs and plaques shall be based on the traffic impact study, road contours and other features, as well as information indicating likely safety issues in particular locations.
- Regulatory and warning signage includes but is not limited to stop signs, yield signs, and signs for speed limits, one-way roads, dead-ends, sharp turns, railroad crossings, pedestrian crossings, etc. It also includes reflective markers for bridges or other objects (e.g., railings). As necessary, signage also includes traffic lights.
- Signage shall be in accordance with the local jurisdiction's adopted policy. Where there is no adopted policy or where it provides insufficient guidance regarding warning and regulatory traffic signs, signage shall be in accordance with the FHWA Manual on Uniform Traffic Control Devices

ii. Signage – Minimum Standards

- Signage shall be in accordance with the FHWA Manual on Uniform Traffic Control Devices unless the jurisdiction's locally adopted policys has more stringent or specific requirements.
- The signs shall be manufactured and installed by the subdivider.

- Load limits should be posted on all bridges.
- Roads with no parking lanes may be required to post “no parking - fire lane” signs. Signs shall have a minimum dimension of 12 inches wide by 18 inches high and have red letters on a white reflective background.

d) Off-Street Parking: (note: Zoning ordinances must be met if present.)

i. Number of Parking Spaces

- Single family detached units with adequate provision in the lot space for a driveway and garage shall not be required to provide additional parking.
- For all other proposed development, if no on-street parking is to be provided, off-street parking spaces shall be required. The number of spaces shall be based on the most current edition of Parking Generation by the Institute of Transportation Engineers. Shared parking may be allowed where proposed land uses have peak parking demands at different times of the day.
- Where off-street parking is proposed, the subdivider shall identify on a site plan the location of parking spaces, dimensions, ADA parking locations, and provisions for landscaping if required

ii. Dimensions

Off-street parking spaces shall have a width of 9 feet.

iii. ADA Parking

Parking spaces must be provided for the physically handicapped according to the Americans with Disabilities Act including the number, size, location and labeling requirements.

iv. Circulation

- Circulation systems in parking areas shall provide for continuous traffic flow with efficient, non-conflicting movement throughout the site and accommodation for emergency vehicle access. Conflicts between areas of significant pedestrian movement and vehicular circulation shall be minimized.
- Parking areas with more than three spaces shall be designed so that vehicles can enter and exit without backing onto the access road.

v. Location

- Parking lots shall be separated from sidewalks, walking and/or bike paths either by a minimum of three feet of landscaping, or with a physical buffer, such as fence.
- Residential parking lots shall be located in the rear of the parcel.

vi. Construction

The lot developer who constructs the buildings on the lots shall be responsible for the parking construction. The requirements of this section shall be included in covenants for the property.

- Parking shall be installed per the approved site plan for the lot.
- Off-street parking facilities with more than 10 spaces shall have a paved surface, marked for stalls and for ADA sites. Industrial facilities are exempted from the requirements for paving.
- Parking areas shall be graded to drain surface water.
- Parking lots shall be lighted at night. Lighting fixtures must be so spaced and so equipped as to provide adequate levels of illumination throughout the development for the safe movement of vehicles and pedestrians. Lighting fixtures shall meet requirements of Ch. VII-F(2)(x).
- Parking lots with more than 10 spaces shall be landscaped. The landscaping must cover a minimum of 10% of the total area to be paved. Parking lot landscaping must be in the form of landscaped islands. Landscaped islands must be protected by curbs, curb stoppers, fences or raised planters. Interior islands must be planted with ground cover and contain at least one deciduous or evergreen tree per 150 square feet of landscaped island area, with a minimum of one deciduous or evergreen tree per island.

e) Road Surfacing and Construction

i. General

- Gravel Roads - Gravel roads shall meet the standards of Ch. VII-F(4)(e)(ii) below.
- Paved Roads - Paved Roads shall meet the standards of gravel roads prior to applying the paved surface.
- Temporary cul-de-sacs or turnarounds - The turnaround portion of a road designed to continue in another future road segment shall be constructed to gravel road standards.
- Roads shall be built to carry the largest current or anticipated fire trucks in the district serving the subdivision. If none is specified by the fire district authority, the minimum weight capacity shall be 75,000 pounds, as identified in the International Fire Code. Roads shall be constructed to ensure proper drainage.
- Where construction standards are not adequately explicit in these subdivision regulations or in locally adopted standards, the provisions of the Montana Public Works Standard Specifications (MPWSS) shall apply.

ii. Gravel Roads

Gravel roads shall be constructed to standards in the MPWSS, as follows.

- Exception for 2-Lot Roads and Alleys. Roads in these categories are exempted from the following requirements for gravel construction if:
  - The road is certified by an engineer or licensed contractor to safely carry (without damage to the road) the largest current or anticipated fire trucks in the district serving the subdivision. If none is specified by the fire district

authority, the minimum weight capacity shall be 75,000 pounds, as identified in the International Fire Code; and

- Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. There shall be a minimum of four inches of sub-base course and twi inches of crushed base course.
- Streets and roads must be designed to ensure proper drainage.

- Density Control Testing to be conducted per MPWSS Section 02230 “Street Excavation, Backfill and Compaction,” Subsection 1.3 “Density Control Testing.”
- Sub-grade classifications and Requirements for Geotextile or Separation Fabric. Subgrades materials will determine if geotextile or separation materials are required below the sub-base. The classifications of sub-grade materials shall be used to describe existing site conditions:
  - Where sub-grade materials are classified as “Poor,” an approved geogrid and geotextile fabric combination shall be required unless sub-excavation is to a suitable soil horizon. Determination of a suitable soil horizon for the proposed road type shall be made by an engineer.
  - Where sub-grade materials are classified as “Average,” geotextile fabric shall be required unless the subdivider provides evidence from an engineer certifying that that none is required using the methodology in Section 02110 “Geotextiles” of the MPWSS and using methodology per references in Subsection 1.2 of Section 02110, and MPWSS Section 02230 “Street Excavation” Subsection 1.3 “Density Control Testing” or by providing sub-excavation as provided in Ch. VII-F(4)(e)(i) above.
  - Geotextiles shall be installed according to all parts of Section 02110 of MPWSS.
- Sub-excavation and replacement below subgrade shall be made in accordance with Parts 2.3 and 3.9 of MPWSS Section 02230 “Street Excavation, Backfill and Compaction.”
- Blasting - If blasting is required for road preparation, subdivider shall follow provisions of MPWSS Section 02221 “Trench Excavation and Backfill….” Part 3.3.D “Blasting.”
- Excavation, Backfill and Compaction - Shall be completed per requirements of MPWSS Section 02230 “Street Excavation, Backfill and Compaction.”
- Sub-Base Couse shall be completed per requirements of MPWSS Section 02234 “Sub Base Course.”
- Crushed Base Course shall be completed per requirements of MPWSS Section 02235 “Crushed Base Course.”

iii. Paved Roads

Paved roads shall have a paved surface unless the context for pavement is a higher standard material.

- Asphalt Standard
  - The standards for asphalt shall be those per MPWSS Section 02500 “Paving and Surfacing,” including asphalt primer and/or tack coat (Section 02502), asphalt seal coat (Section 02504) and pavement markings (Sections 02581 and02582).
- All Other Paved Road Types
  - When the context calls for another pavement type, such as concrete, the road shall be constructed to meet the higher standard.

iv. Cut and Fill Standards

- Roads proposed in areas with greater than 60% slopes shall not be approved.
- Where cuts and fills are necessary, they shall be built to standards in Ch. VII-F(4)(c) “Grading Standards” and MPWSS Section 02230 “Street Excavation, Backfill and Compaction,” Subsection 3.8 “Embankment Placement and Compaction.
- Cut and Fill slopes for roads shall be designed and constructed to be stable over time and with slopes that can be revegetated. “Balanced Cut and Fill” is the desired standard.
- Cuts and fills shall be designed for stable slope and storm drainage that does not overtop the road, to avoid the problems.

v. Revegetation

The standards of VII-B-7 shall apply.

vi. Curb and Gutter Standards

The standard shall be that of the local jurisdiction. Where no standards exist the following shall apply:

- Continuous curb cuts are prohibited.
- Where curb and gutter is used in a storm drainage system, a Type F curb shall be used.
- Residential-only subdivisions may utilize a rolled curb.
- Curb and gutter shall be installed per requirements of MPWSS Section 02528 “Concrete Curb and Gutter.”

f) Construction of Sidewalks, Pedestrian and Bike Paths

The type of sidewalk or path (concrete, asphalt, aggregate, etc.) shall be based on the context or as required in adopted plan (e.g., a concrete sidewalk on adjacent property shall be continued on the subdivision property). The subdivider’s engineer shall certify that the

construction and materials are comparable to adjoining paths and sidewalks. Where there are no standards for concrete sidewalks, they shall be built to standards of MPWSS Section 02529 "Concrete Sidewalks."

g) Roads Crossing - Watercourse and Irrigation Facilities

i. Permits or Other Approval

- A permit "Floodway/Floodplain Provisions" is required to construct a bridge or culvert or wherever a road crosses a watercourse.
- Other permits, such as a US Army Corps of Engineers "404" permit may be required depending on the type of watercourse. It is the subdivider's responsibility to obtain the necessary permits for watercourse crossings prior to construction.
- All roads that intersect or cross water conveyance facilities shall be agreed to in writing by the water users and/or water conveyance facility's authorized representatives.

ii. General Standards for Design and Construction

- Where local jurisdictions have adopted bridge or culvert standards, those standards shall apply.
- Where separate standards apply to water conveyance facilities, as determined by authorized representatives of the facilities, those standards shall apply.
- Where there are no locally adopted bridge or culvert standards or standards do not sufficiently describe design and construction, the crossing shall be designed by an engineer to AASHTO standards for the design speed and projected traffic of the bridge crossing.
- In addition to the three bullet points above, the following standards for bridges and culverts shall apply.

iii. Bridge Standards

- Projected Future Traffic - Bridges shall be designed to accommodate the level and type of traffic made necessary by the subdivision and current users at the time of final plat. Projections shall be made using methodology to be identified by the engineer and approved by the administrator. At a minimum the projected future traffic should take into account traffic from the proposed subdivision and from other future developments that would likely utilize the bridge.
- Scouring - Bridges shall be designed to accommodate the scour that occurs at the 100-year and 500-year flood events.
- Load Capacity - Bridges shall be designed to carry an AASHTO standard HS-20 or HL-93 load.
- Pedestrian and Bicycle Needs - The pedestrian and bicycle needs shall be designed by an engineer to meet the needs safely.

- Provision for High Water
  - The lowest horizontal chord of the bridge shall be at least two feet above the base flood elevation to help pass ice flows, the base flood discharge, and any debris associated with the discharge.
  - For water conveyance facilities, the bridge shall be at least two feet above the highest water flow for the facility and include base flood discharge.
- Railings - Citing applicable AASHTO standards, the engineer shall design railings to safely accommodate future projected motorized and non-motorized traffic on the bridge.

iv. Culvert Standards

- Projected Future Traffic - Culverts shall be designed to accommodate the width of the road needed to convey motorized, pedestrian and bicycle traffic. Projections shall be made using methodology to be identified by the engineer and approved by the administrator. At a minimum the projected future traffic should take into account traffic from the proposed subdivision and from other future developments that would likely utilize the bridge.
- Scouring - Culverts shall be designed to accommodate the scour that occurs at the 100-year and 500-year flood event.
- Load Capacity - Culverts shall be designed to carry an AASHTO standard HS-20 or HL-93 load.
- Width
  - The road extending over the watercourse or water conveyance facility shall at a minimum be the same width as the road on either side of the culvert and sufficiently wide to safely accommodate pedestrians and bicyclists.
  - All culverts shall, at a minimum, extend across the entire improved width of the road cross section.
- Provision for High Water
  - Culverts shall be designed to pass the base flood discharge and maintain at least two feet freeboard on the crossing surface.
  - For water conveyance facilities, the culvert shall be designed to maintain at least two feet freeboard on the crossing surface to pass the highest water flow for the facility and include base flood discharge.

5. Rights of Way, Easements, Off-Site Road Improvements, and Responsibilities For Roads

a) Road Dedication

i. Municipalities

Streets in municipalities are typically dedicated on the face of the plat to the public and accepted into the municipality as parcels of land (right-of-way). In some cases municipalities may not wish to accept additional roads. In that case the road may either be established as a parcel to be owned by a property owners' association or as an easement granted to a property owners' association or to the appurtenant property owners.

ii. Counties

County roads in Montana are typically by easement, where the property owners on either side of the road own to the centerline of the road.

iii. Dedication to Local Government

A road or street is not a municipal or county road unless it has been expressly accepted by the governing body on the face of the plat.

iv. Other

When local governments do not accept a road dedication to the public, the following statement shall appear on the final subdivision plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, water or sewer service, mail and package delivery, public schooling, law enforcement, fire protection and emergency medical services the right to joint use of an easement for the provision of services and facilities including the right to travel on subdivision roadways as well as 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 an access and/or utility easement to have and to hold forever."

AND where appropriate:

"Roads identified as 'stubs' on this plat shall be extended provided the parties creating the extension pay for the extension and road improvements within [name of subdivision] needed to accommodate additional traffic. The parties creating the extension shall also participate in facility maintenance as provided for in the Road Maintenance Declaration filed with this plat.

b) Rights-of-Way and Easements – Width and Location:

i. Road Rights-of-Way and Easements

Road easements shall be sufficient to accommodate the infrastructure required or anticipated for the road including sidewalks, pedestrian and bicycle paths, snow storage, storm drainage, and utilities including electricity, gas, telecommunications, water, and sewer. These requirements vary from subdivision to subdivision. Road right-of-way and easement widths shall be calculated using the minimum road width and additional widths for other required facilities as identified.

ii. Easements – Generally

No portion of a structure or other obstruction shall be placed in easements described below with the exception of cut and fill easements, which may include retaining walls and other soil stabilization structures.

iii. Municipal Urban Fringe Area/Growth Area

For subdivisions within a municipal growth area as described in an adopted growth policy or other document adopted by the governing body, the right-of-way shall provide enough width to accommodate municipal infrastructure and correspond at a minimum to the right-of-way for the anticipated municipal classification if the area is annexed in the future. For municipalities without an adopted growth area map, the growth area shall be considered as the area within one mile of a town or third-class city, two miles of a second-class city, or within three miles of a first-class city.

iv. Storm Drainage Systems - Storm drainage easements along roadways shall accommodate the swale or other facilities as required by DEQ or when no DEQ is required, the requirements in Ch. VII-F(4)(c).

v. Pedestrian and Bicycle Facilities

- The bike and pedestrian facilities must be separated from the roadway as follows:
  - Gravel roads and paved roads with no curb and gutter: The storm drainage swale and/or utility corridor (refer to Ch. VII-F(5)(b)(i) regarding road-related utility easements) shall separate pedestrian facilities from the roadway edge. At a minimum this shall be no less than three feet.
  - Paved roads with curb and gutter: Separation shall be a minimum distance of three feet on Local Roads, five feet on Subcollectors, Collectors, and Arterials.

vi. Snow Removal and Storage - Road easements shall provide adequate width for snow removal and storage. Where snow cannot be stored safely within the existing road easement, special areas for snow storage shall be designated as easements either adjacent to the roadway or off-site.

vii. Pull-outs and Turn-arounds for Fire Department Access - Where pull-outs and turn-around areas are needed along the roadway, the right-of-way and/or easement shall be adjusted as needed to incorporate these areas.

viii. Cut and Fill Easements - Where a cut or fill area of a road is outside of the normal right-of-way or easement, a slope easement of sufficient width shall be required to allow maintenance of the cut or fill area.

ix. Utility Easements – Water, Sewer, Gas, Electric, Telephone, Cable

- Public or multi-user water and sewer systems are typically placed in the road. If additional easement is needed outside of the road, the easement shall be as prescribed in standards adopted by the local jurisdiction. If none exist or have insufficient detail, width of easement shall be determined in coordination with DEQ and the facility owner.

- Trenches for co-locating electric, telecommunications, and gas shall be a minimum of 18 inches in width, unless otherwise designated in writing by the utility companies. The easement may be located within or outside of the road right-of-way or easement, unless otherwise specified by standards adopted by the local jurisdiction or by utility companies.
- Parallel separations shall be as follows:
  - If a public or multi-user water or sewer system is proposed, parallel separations for water supply, sewer, and storm drainage facilities shall be as required by DEQ.
  - Electric, telecommunications, and gas utilities shall be separated from water supply systems by 5 feet, from sewer systems by 10 feet, and from storm drainage systems or irrigation facilities by 5 feet, unless otherwise designated in writing by the utility company.

c) Waiver of Right to Protest Improvement District

Whenever a subdivision includes easements or other provisions for infrastructure such as sidewalks, bike paths, street lighting, etc. the subdivision plat shall include a "Waiver of Right to Protest" the formation by the governing body of a special taxing district to pay for the improvements. A template for such language is included in Supplemental Administrative Materials.[4]

d) Off-Site Easements

i. Where access to the subdivision is other than from a public road (or other road with clearly established public access) the subdivider shall obtain easements of sufficient width to satisfy the requirements of this chapter. Such easements must be granted in perpetuity by the parties to the easement, in a signed and notarized document and be recorded prior to or concurrent with final plat filing. Where the dedication of the existing easement is unclear, the subdivider shall obtain the easement from those persons owning lands crossed by the road.

ii. The location of any road or utility easements used to access the subdivision must be shown on the preliminary plat or on a supplemental map. The existence of easements providing legal access to the subdivision shall be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

e) Substandard Municipal or County Road leading to a Subdivision

i. General

When a substandard road is used to access a subdivision, the governing body shall consider the two options below for improving the road and choose the option that in its estimation is most likely to result in (A) improved safety and efficiency along the road and (B) equitable

[4] As noted in Ch. I-K, Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples of Supplemental Administrative Materials, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

distribution of the costs related to the extension of capital facilities. The most obvious travel route due to convenience and destinations shall be used for determining traffic flows and counts.

ii. Option 1 (generally for major subdivisions but may be applied to minors):

- Where a subdivision is accessed by a substandard road, the subdivider shall be required to contribute to the local jurisdiction an amount equal to the proportional share of the improvements necessary to bring said road up to the standards for the relevant functional classification as identified in these subdivision regulations.
- The cost of improvements shall be determined by a consulting engineer who shall identify the road deficiencies and estimate materials, labor and other cost items necessary to bring the road to the determined standard. The consulting engineer shall be selected with approval from the administrator and the jurisdiction's public works director or road supervisor. Costs of the consulting engineer shall be borne by the subdivider. Note: Typically the subdivider's engineer would provide this information.
    - The subdivider's proportional cost shall be found by adding current ADT figures from the road to the projected ADT to be generated by the subdivision, then dividing the projected subdivision ADT by the total. (Please see the example below.) ADT shall be determined by recent counts by the jurisdiction, if available, or by an independent agent to collect traffic count data over a one week period, and may be required to be adjusted for seasonal fluctuations. The independent agent shall be selected with approval from the administrator and jurisdictions public works director or road supervisor. Again, this would normally be the subdivider's engineer. Costs are to be paid by the subdivider. Traffic count locations shall be determined by the administrator and public works director or road supervisor.
    - As determined by the governing body, the subdivider's funds will either:
        - Be deposited into an account held by the local jurisdiction in a dedicated fund for the road improvements and will be used only for improvements to the substandard road; or
        - The developer will use the funds to make the specified improvements to the substandard road prior to final plat filing or under an improvements agreement.

iii. Option 2 (generally for minor subdivisions but may be applied to majors):

Where a subdivision is accessed by a substandard municipal or county road, as a condition of plat approval the governing body may require the future lot owners to waive their right to protest the formation of a rural improvement district related to access and drainage improvements that will benefit the future owners.

f) Substandard Privately Maintained Roads Leading to a Subdivision

Where a subdivision is accessed by a substandard road that is maintained privately or by an entity other than the municipality or county, the subdivider shall make all improvements that are necessary to bring that road up to locally adopted standards, or the standards for the relevant functional

classification as identified in these subdivision regulations. The subdivider shall be required to enter into a maintenance agreement so that the road is maintained over time.

g) Payback Agreement

For improvements that a subdivider constructs beyond those that are directly attributable to the subdivision, including those used to access other unsubdivided or subdivided lands, the subdivider may request a payback agreement in order to provide a mechanism for reimbursement for a portion of the costs the subdivider incurs which are not directly attributable to impacts caused by the subdivision. Payback funds would be exacted from future subdividers and others who directly benefit from the capital improvements.

h) Private Roads – Maintenance Declaration

Subdivisions with a new road shall include a road maintenance declaration that shall be filed concurrent with or prior to the final plat. The declaration shall only contain items related to road maintenance, and include the following:

i. A description of the parcels subject to the agreement;

ii. A description of the road(s) and appurtenant facilities, including storm drainage, pedestrian and bicycle facilities, etc. that are subject to the agreement;

iii. Statement that the agreement is binding on any person having an interest in a parcel that is subject to the agreement;

iv. Extension of road “stubs” that extend to the property boundary shall be allowed under the following circumstances:

- The cost of the extension is paid for by the party creating the extension;
- The extension shall not result in incompatible traffic type, such as semi-trucks in residential areas;
- The party creating the extension shall pay for improvements to the road and related facilities (storm drainage, pedestrian-bike paths) resulting from increased traffic due to the extension;
- The existing easements within the subdivision provide adequate capacity for projected increases in traffic; and
- The properties served by the extension shall become parties to this Road Maintenance Agreement, but may have reduced voting rights;

v. That any party providing public utilities, mail and package delivery, public schooling and emergency and public safety services shall have an easement over the road for such utilities and services;

vi. That decisions to undertake any road, bicycle or pedestrian facility maintenance and improvements are the responsibility of the owners of the parcels subject to the agreement, and such decisions shall be based on a majority vote of the parties to the agreement;

vii. A description of who is eligible to cast a vote and the number of votes per parcel;

viii. A description of how the costs of maintenance will be assessed (equally or disproportionally) against the parties to the agreement;

ix. A description of how the amount will be assessed in the event a party subdivides a parcel subject to the agreement;

x. A description of how the amount will be assessed in the event outside parties (owners of lots outside of the subdivision) may be required to use the road and pedestrian and bicycle facilities;

xi. In the event that an assessment becomes delinquent, the assessment and interest and the cost of collection shall become a continuing lien on the parcel;

xii. The agreement is perpetual and cannot be rescinded unless the county, state or a municipality agrees to maintain the roadway and/or pedestrian and bicycle facilities described in the agreement;

xiii. Maintenance shall include dust control, stormwater facilities, traffic control devices, snow removal, ordinary upkeep, reconstruction and pedestrian and bicycle facility installation, as applicable; and

xiv. The agreement may be amended, but only with the consent of the governing body.

Condominiums

h) Design Standards. The design standards for condominiums are the same as for all other subdivisions, as identified in Chapter VII, with the following additions.
   i. No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words “building”, “court”, “place”, or similar words;
   ii. Off-street and guest parking shall be required in proximity to the unit served;
   iii. covenants prohibiting the location of boats, trailers or other recreational vehicles within the condominium property shall be established;
   iv. Parkland dedication shall be calculated and applied to condominium developments in those locations that do not have zoning.

Mobile Home Parks

j) Mobile Home Park Design Standards. Mobile home parks are subject to the design standards in Chapter VII with the following exceptions and additions:
   iv. There shall be no road or street easement required in mobile home parks. Roads shall be dedicated to the use of the mobile home park and guests and owned and maintained by the property owner.
   v. One off-street parking space per five units shall be required in front of the manager’s office and any communal facilities such as restrooms/shower/laundry facilities, recreational buildings, and retail facilities.
   vi. All mobile home parks may be subject to lighting requirements for roads and public spaces. Lighting shall be required if the subdivision includes spaces with road frontage of less than 30 feet each or when the overall density is 20 spaces per acre or greater. Calculations shall be based on the net acreage of mobile home spaces, exclusive of roadways and public areas.

k) Mobile Home Space Requirements.

xv. Mobile home spaces shall be arranged to permit the safe and practical placement and removal of mobile homes;

xvi. The requirement for 50-foot minimum street frontage in Chapter VII does not apply to mobile home spaces;

xvii. The boundary of each mobile home space shall be permanently delineated on the ground;

xviii. An individual mobile home pad at least 14 feet wide and 70 feet long shall be provided in each mobile home space. These pads shall be constructed on at least six inches of gravel over a stabilized sub-base.

xix. Setbacks.

A. Minimum side setbacks shall be 15 feet for principal buildings and 10 feet for accessory buildings.

B. Minimum rear setback shall be 10 feet.

C. Minimum front setback shall be 10 feet.

D. All mobile homes and appurtenances, including vehicle parking, shall be located a minimum 50 feet from the property line abutting a major arterial and a minimum 25 feet from all other public road rights-of-way.

E. All mobile homes and appurtenances, including vehicle parking, must be located a minimum 10 feet from a private road serving the space/unit.

xx. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed 2/3 the area of a space.

xxi. Setbacks for mobile home spaces, mobile homes and appurtenances, including vehicle parking, shall be a minimum 15 feet from the exterior boundary of the surveyed mobile home park or adhere to the local zoning code requirements, whichever is more stringent.

xxii. No mobile home or it's attached (e.g. awnings, carports) or detached structures (e.g. storage sheds) may be located within 20 feet of another mobile home or its attached structures.

xxiii. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile home space. The driveway must be located to allow for convenient access to the mobile home and be a minimum of 10 feet wide.

xxiv. Each mobile home shall be skirted within 60 days after it is moved onto a space within the mobile home park. Skirting shall consist of a fire-resistant material similar to that of which the mobile home exterior is constructed and shall be attached to the mobile home.

xxv. Mobile home parks shall dedicate land to use as park or recreation area. The area to be dedicated shall be 11% of the total mobile home park area as surveyed for the site plan pursuant to Ch. VII-E(7). These areas shall remain in private ownership and shall not be dedicated to the public unless specifically accepted by the local governing body. It shall be the responsibility of the mobile home park owner to maintain the park and recreation area. The governing body may accept cash-in-lieu of park dedication in circumstances where it is demonstrated park land is not necessary to serve the mobile home park.

xxvi. Mobile home parks located adjacent to industrial, commercial, or lower-intensity residential land uses (e.g. single family residential) shall provide screening such as fences or natural growth along the property boundary line separating the park from these adjacent uses.

xxvii. Underground electrical service shall be installed to each mobile home space. If natural gas is provided, it shall also be installed underground. No propane tanks shall be allowed on mobile home spaces unless it can be demonstrated the tank complies with applicable local fire code, or if no local fire code exists, with state or national standards. To demonstrate compliance, the subdivider must include these requirements in the lease agreement.

xxviii. The governing body may require that a common area be provided for the storage or parking of boats, trailers, or other recreational vehicles. If such a common area is included, it shall be restricted for storage only and no structure, vehicle, boat or other container may be used for living inhabitation. This common area shall not be calculated or applied as part of the required parkland dedication.

l) RV Park Design Standards

ii. Road and Public Parking Requirements

D. There shall be no road easement dedications required in RV parks. Roads shall be dedicated to the use of the RV park guests and owned and maintained by the property owner.

E. Off-street parking spaces are required in front of the manager's office and any communal facilities such as restrooms/shower/laundry facilities, recreational buildings, retail facilities, etc.

m) RV Space Standards

xiv. RV spaces shall be arranged to permit the safe and practical placement and removal of RVs.

xv. The requirement for 50-foot minimum street frontage in Chapter VII does not apply to mobile home spaces.

xvi. The prohibition on through or double front lots in Chapter VII does not apply to RV spaces as long as the access roads accommodate this through use of one-way streets or wider streets to accommodate turns.

xvii. The boundaries of each RV space shall be permanently delineated on the ground.

xviii. An individual RV pad shall be provided in each RV space and sized to accommodate the proposed type of RV. The pads shall be constructed on at least six inches of gravel over a stabilized sub-base.

xix. All RVs shall be located at least 50 feet from the property line abutting upon a major arterial and at least 25 feet from all other public street rights-of-way.

xx. Setbacks for RV spaces shall be a minimum 15 feet from the exterior boundary of the surveyed RV park or adhere to the local zoning code requirements, whichever is more stringent.

xxi. No detached structures are allowed in a designated RV space.

xxii. No RV or its attached structures (e.g. awnings) may be located within 20 feet of another RV or its attached structures.

xxiii. One off-street parking space must be provided on or adjacent to each RV space. The driveway must be located to allow for convenient access to the RV and be a minimum of 10 feet wide.

xxiv. RV parks shall dedicate land to use as a park or recreation area. The area to be dedicated shall be 11% of the total RV park area as surveyed for the site plan pursuant to Ch. VII-E(7). These areas shall remain in private ownership and shall not be dedicated to the public unless expressly accepted by the local governing body. It shall be the responsibility of the RV park owner to maintain the park and recreation

area. The governing body may accept cash-in-lieu of park dedication in circumstances where it is demonstrated park land is not necessary to serve the RV park.

xxv. RV parks located adjacent to industrial, commercial, or lower-intensity residential land uses (such as single family residential development) shall provide screening in the form of fencing or natural landscaping along the property boundary line to mitigate visual impacts to adjacent properties as well as mitigate potential negative impacts from adjacent uses on RV park guests.

xxvi. The governing body may require that a common area be provided for the storage or parking of boats, trailers, or other recreational vehicles. If such a common area is included, it shall be restricted for storage only and no structure, vehicle, boat or other container may be used for living inhabitation. This common area shall not be calculated or applied as part of the required parkland dedication.

CHAPTER VIII - SUBDIVISION CAPITAL IMPROVEMENTS

Chapter Overview

The intent of this chapter is to provide standards by which the subdivider shall execute their respective responsibilities and guarantee proper construction and completion of subdivision improvements in accordance with the Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA ("MSPA"). This chapter covers the installation, review, and approval of capital improvements within and leading to a subdivision. The purpose of this chapter is to establish:

- What capital improvements must be installed by the subdivider prior to final plat approval;
- What capital improvements may be installed by the subdivider after final plat approval if secured by a Subdivision Improvements Agreement and financial guarantee;
- The process for the governing body to provide final review and approval of capital improvements related to new subdivisions;
- How Subdivision Improvements Agreements and financial guarantees are to be administered;
- Considerations for phasing a subdivision to reduce the amount of up-front capital expenditures; and
- How to assess what offsite capital improvements are necessary to serve a subdivision and can be required of a developer as part of the subdivision approval process.

VIII-A Required Improvements

1. General Requirements

The subdivider shall complete all capital improvements required by the governing body and these regulations following preliminary plat approval but prior to final plat approval, or enter into a Subdivision Improvements Agreement with the governing body.

2. Improvements Installed Prior to Final Plat

The following improvements are required to be 100% completed prior to final plat approval:

a) Physical access to the subdivision and to each lot shall be constructed to the sub-grade standards established in Chapter VII - F or pursuant to CITY/COUNTY ROAD STANDARDS) or as otherwise required by preliminary plat conditions of approval;
b) Bridges and culverts shall be constructed to the standards established in Chapter VII-F or CITY/COUNTY ROAD STANDARDS or as otherwise required by preliminary plat conditions of approval;
c) All temporary roads shall be adequately sloped and drained to prevent road deterioration until road and final storm-water drainage facilities have been completed;
d) All directional and traffic control signage shall be installed;
e) Water supply systems (other than individual supply on individual lots) shall be completely installed as approved by [MONTANA DEQ or INSERT NAME OF CITY PROVIDING THE WATER];
f) Wastewater treatment systems (other than individual systems on individual lots) shall be completely installed as approved by [MONTANA DEQ or INSERT NAME OF CITY PROVIDING THE SERVICE};

g) Fire protection water supply systems;
h) Fire protection fuel breaks;
i) Infrastructure necessary to supply electricity to each lot shall be installed;
j) If cell service is not available or inadequate, land-line telephone installation shall be provided to each lot; and
k) Other improvements necessary for public health and safety not listed above but approved by the governing body may also be required to be 100% completed as a condition of preliminary plat approval.

3. Improvements Permitted to be Installed After Final Plat Approval

The following improvements may be completed after final plat approval, provided they are secured with a Subdivision Improvements Agreement and financial guarantee as required in Ch. VIII-C below:

a) The final surface treatment of roads (gravel or pavement), as permitted by these regulations and secured by an approved Subdivision Improvements Agreement;
b) All roadside stormwater drainage facilities, including but not limited to the construction of drainage swales, curb and gutter;
c) Stormwater drainage facilities serving more than one lot, including but not limited to the construction of detention and retention facilities;
d) Street lighting;
e) Pedestrian and bike facilities;
f) Postal service collection units;
g) Noxious weed management;
h) Park facilities;
i) Irrigation improvements;
j) Required re-vegetation; and
k) Other improvements not specified above but which are either proposed by the subdivider or required by conditions of approval.

4. Improvements Not Required

The following improvements are not required to be installed by the subdivider:

a) Individual water supply and wastewater treatment systems;
b) Driveways serving only one lot; and
c) Storm water drainage serving only a single lot.

VIII-B Completion of Improvements Prior To Final Plat Approval

1. Preliminary Plat Approval

a) All improvements shall be built to the applicable design standards set forth in Chapter VII and as otherwise specified by the conditions of preliminary plat approval.
b) Except upon written approval of the Administrator, no grading, removal of trees or other vegetation, land filling, construction of improvements or other material change, except for purposes of aiding in preparation of final engineering drawings or plans, shall commence on the subject property until the subdivider has received approval of the construction plans and all necessary development approvals.

2. Plans Submitted

a) Prior to installation of improvements and the final plat application, the subdivider shall submit engineering and construction plans and specifications for all improvements to the Administrator. The subdivider shall also submit copies of the plans and specifications for DEQ approval to DEQ, and a copy of these elements to the Administrator.
b) With the exception of the improvements identified below, all plans and specifications shall be certified by an engineer licensed in the State of Montana to meet design standards of the subdivision regulations and requirements of conditions of approval.
c) The following may be certified by a licensed contractor (in place of a professional licensed engineer) to meet the design and construction standards identified in Chapter VII-F or in accordance with the [CITY/COUNTY ROAD STANDARDS].
    i. Two-Lot Roads
    ii. Alleys

3. Agency Review

a) The Administrator shall route the plans to each reviewing agency or service provider for comment, including but not limited to the public works department, local fire department, emergency response authorities, electrical and utility companies, irrigation district, etc.
b) Agencies shall submit comments to the Administrator within 15 days of receiving the plan materials.
c) The Administrator shall forward comments to the subdivider, who shall address the comments or make changes to the plans submitted. Any revised documents shall be submitted to the administrator who shall route again for agency review.
d) This process is repeated until all reviewing agencies have submitted written approval of the final version of the plans and specifications.
e) Once all reviewing agencies submit written approval of the plans, the Administrator shall provide written notice to proceed to the subdivider.

4. Installation of Improvements

a) Once the subdivider has received written notice to proceed from the administrator, the subdivider may install improvements in accordance with the approved plans and specifications.
b) The governing body, Administrator, and approval agencies may inspect any improvements at any time before, during, or after installation.
c) Field certification of installations at identified stages, identified by the applicable agencies, shall be completed by the engineer (unless another party is designated and approved in the plans).

5. Certification of Completed Improvements

a) The subdivider shall provide the following to the Administrator for those improvements that require design and certification by a licensed engineer:
    i. As-built plans drawn based on the original construction plans and profiles. The as-built plans shall show the actual location of all improvements installed, shall clearly designate any and all changes from the approved plans and specifications, and shall bear the signature and seal of the engineer who prepared it.
    ii. All improvements shall be certified by an engineer as being built in substantial compliance with the approved plans and specifications.
    iii. The subdivider's engineer shall submit a copy of the field inspection logs along with the certification.

iv. If there are no changes in actual installation compared to plans, the engineer shall certify improvements were completed as designed.

b) For those improvements that were not required to be designed and planned by an engineer, the subdivider shall submit to the Administrator a signed, notarized statement from the construction contractor certifying the installed improvements meet the applicable design standards and conditions of approval. The statement shall include the exact wording of the standards and conditions.

c) For those improvements requiring agency approval, the subdivider shall submit verification from reviewing agencies and service providers confirming the required improvements have been installed to the agencies' specifications, as indicated by the agency's approval signature on the as-built plans.

6. Governing Body Review

If any improvements are to be dedicated to the public and accepted for maintenance by the governing body, the governing body or its designee shall inspect the improvements prior to dedication and acceptance. In such cases the subdivider shall warranty improvements as being free from defect for a period of one year, during which time the governing body may require the subdivider to make all necessary repairs to bring the improvement to like-new condition in accordance with the specifications of these regulations. A financial guarantee may be required to secure the warranty.

7. Final Approval

Once the installation and as-builts have been approved by all agencies and the governing body, the subdivider may proceed to final plat application. The subdivider may proceed with the process for a Subdivision Improvements Agreement (Ch. VIII-C below) for those improvements that may be completed after final plat approval (identified in Ch. VIII - A(3) above).

VIII-C Subdivision Improvements Agreement Process

Improvements that are not essential to public health and safety and human habitation may be completed after final plat approval if secured with a Subdivision Improvements Agreement and financial guarantee. The Subdivision Improvements Agreement is a contract between the subdivider and the governing body designed to document the outstanding improvements, establish the estimated cost and timeframe for completing the improvements, and provide a mechanism and financial security for the governing body to install the improvements in the event the subdivider fails to install them. A model Subdivision Improvements Agreement is provided in the Supplemental Administrative Materials[1].

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[1] As noted in Ch. I-K, Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples of Supplemental Administrative Materials, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

1. Required List of Improvements and Cost

a) The subdivider shall submit a list of remaining improvements and cost estimates for improvements not necessary to protect public health and safety (as permitted in Ch. VIII-A(3).

b) The improvement plans and specifications require agency approval pursuant to Ch. VIII-B(3)above. The governing body shall not enter into a Subdivision Improvements Agreement until all DEQ and other federal, state and local approvals are obtained.

c) The cost of the improvements shall be determined by the subdivider's engineer providing an itemized list of all outstanding improvement costs, including all labor, equipment, materials, insurance and other necessary items.
d) The Administrator shall determine if all remaining improvements qualify and are addressed by the Subdivision Improvements Agreement.
e) The governing body may require a second estimate of the cost of improvements. The cost of obtaining a second estimate shall be borne by the subdivider.

2. Length of Agreement

The length of time of the agreement shall be determined by the governing body but shall not to exceed 12 months with the option for extension. A request for an extension must be submitted in writing to the Administrator no less than one month prior to the end of the initial 12-month period. Up to two six-month extensions may be allowed.

3. Review Process

a) The [CITY/COUNTY] Attorney shall review the Subdivision Improvements Agreement and provide comments and recommendations to the governing body.
b) The Administrator shall review the Subdivision Improvements Agreement to determine if all remaining improvements are addressed sufficiently.
c) The governing body may also review or appoint a designee for additional review.
d) Once the Subdivision Improvements Agreement, list of improvements, amount, and form of the financial guarantee are sufficient for approval by the governing body, the administrator shall provide written notice to the subdivider.

4. Final Plat Application

The subdivider shall submit the final plat application, including the Subdivision Improvements Agreement and required financial guarantee, for consideration by the governing as part of the final plat approval process.

5. Partial Installation of Improvements

a) Once the subdivider has received final plat approval, the subdivider may proceed to install improvements in accordance with the approved plans and specifications.
b) If the Subdivision Improvements Agreement has specifically provided for sequential partial installation of improvements and release of funds, the subdivider shall submit as-built plans and certifications as required in Ch. VIII-B(4) and (5).
c) The governing body, Administrator, and approval agencies may inspect any improvements at any time before, during, or after installation.
d) Field certification of installation at identified stages shall be completed by the engineer unless another party is designated and approved in the plans.

7. Administrative Review

Once partial improvements are determined to comply with the requirements of the Subdivision Improvements Agreement and are in compliance with the design standards and applicable conditions of approval, partial release of funds will be made according to the provisions of the Subdivision Improvements Agreement.

8. Completion of Improvements

Once all improvements are completed, the improvements shall be certified according to Ch. VIII-B(5).

9. Final Review and Approval
   a) The same process outlined in Ch. VIII-C(7) and (8)shall be followed for final review and approval.
   b) Once the installation and as-builts have been approved by all agencies and the governing body, the governing body will issue final approval and release of any required financial guarantee(s).

VIII-D Financial Guarantees

Financial guarantees shall comply with the following requirements:

1. Financial guarantees shall be in the form of a certificate of deposit in the name of the governing body, an irrevocable letter of credit redeemable only by the governing body, or cash.
2. The amount of the financial guarantee shall include:
   a) An amount equal to 125% of the estimated cost of completion of improvements to cover the cost of the governing body having to complete improvements in the event the subdivider does not finish the work. The governing body shall have the discretion to require up to 150% of estimated completion costs during times of rapid inflation of prices of materials, fuel, and labor.
   b) The governing body will retain 15% of the financial guarantee to cover an anticipated one-year warranty period after work has been completed and approved.
3. The expiration of the financial guarantee shall not be less than 15 months from the date of approval of the completed improvements.
4. Requests for partial release of the financial guarantee shall only occur after improvements are completed, certified by the subdivider and the subdivider's engineer as being built to the approved specifications, inspected and accepted by the governing body, as-built drawings have been submitted (if applicable), and after the adopted administrative review fee has been paid by the subdivider or withheld from the release payment to the subdivider.
5. Requests for partial release shall only be in amounts such that the financial guarantee will always equal at least the value of the uncompleted work as per the approved cost estimate, plus the administrative fee and the warranty amount.
6. After final completion, certification, inspection, and acceptance of all improvements, and after expiration of the one-year warranty period when no defects are found, the governing body shall return all remaining portions of the financial guarantee to the subdivider along with a letter signifying final completion of the subdivider's obligations.

VIII-E Extending Capital Facilities

1. The subdivider shall design and install all roads, sewer lines, water supply lines, storm drainage, electrical and telephone utilities, fire protection facilities, pedestrian and bicycle facilities and easements necessary to serve the subdivision in accordance with these regulations.
2. The subdivider shall be responsible for 100% of the costs of providing these services to the subdivision but shall not be held responsible for installing improvements that are not directly related to the anticipated impacts of the subdivision or are disproportionate to the anticipated impacts of the subdivision, as determined by the governing body.
3. In the event a subdivider is willing to install improvements with a greater capacity than required by the subdivision, a payback agreement may be developed and administered by the governing body to help the subdivider recover up-front costs.

CHAPTER IX - DEFINITIONS

100-YEAR FLOODPLAIN - The area of the flood of 100-year frequency -- a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% percent chance of occurring in any given year (76-5-103, MCA).

ADT OR AADT - ANNUAL AVERAGE DAILY TRAFFIC - The average daily volume of traffic estimated on a yearly basis based on one year (365 days) of data (as defined by the United States Department of Transportation). This includes all traffic in both directions.

ADJACENT LAND BUFFER – screening, fencing, natural growth.

ADMINISTRATOR – The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.

ADT - AVERAGE DAILY TRAFFIC - For purposes of these regulations the definition of ADT is the same as AADT. However, when AADT is not available based on 365 days of data, the calculations may be derived as follows: The total volume of traffic during a given time period (in whole days greater than one day and less than one year) divided by the number of days in that time period (as defined by the United States Department of Transportation. ADT volumes can be determined by continuous traffic counts or periodic counts. Where only periodic traffic counts are taken, ADT volume shall be established by applying correction factors such as for season or day of week. This includes all traffic in both directions.

AGENCY - An administrative division of government, such as the agency charged with enforcing state sanitation regulations.

AGGREGATE (VERB) - To join two or more tracts of record into a single tract of record.

AGGREGATE (NOUN) - Coarse particulate material used in construction, including sand, gravel, or crushed stone.

AGGREGATION (NOUN) - The result or condition of having joined two or more tracts of record into a single parcel.

AGRICULTURAL COVENANT - A covenant restricting use of the land to agricultural use only, as required by 76-3-207, MCA.

AGRICULTURAL USE - Use of land for agriculture activities. Refer to “Agriculture” definition.

AGRICULTURAL WATER USER FACILITIES - Any facility established to provide water for agricultural use or irrigation purposes or to drain excess irrigation water or to otherwise drain land for purposes of farming or grazing. These facilities include, but are not limited to ditches, canals, head gates, pipes, and other water conveying facilities.

AGRICULTURE - The production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, in accordance with the requirements for “eligibility of land for valuation as agricultural” described in 15-7-202, MCA.

AUTHORITY HAVING JURISDICTION (AHJ) - Fire Department, code official or other entity with a statutory authority or legal responsibility to inspect and enforce requirements for fire safety.

ALIQUOT PART - The standard divisional parts of a U.S. government section including a half section, quarter section, or quarter-quarter section, and smaller fractional parts.

ALLEY - A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on another street or road.

APPLICABLE ZONING - Zoning enacted under title 76, Chapter 2 of the Montana Code that could affect the uses or design of a subdivision, including provisions for setbacks, minimum lot sizes, etc.

APPROACH - The area where a road, street or driveway intersects another road or highway. See also encroachment.

ARMS – The Administrative Rules of Montana. ARM

ARTIFICIAL OBSTRUCTION - Any obstruction that is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any flood plain or floodway that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property (76-5-103, MCA).

AS-BUILT DRAWINGS - The final set of drawings produced at the completion of a construction project. They include all the changes that have been made to the original construction drawings, including notes, modifications, and any other information pertinent to changes.

ASPHALT - A mixture of dark bituminous pitch with sand or gravel, used for surfacing roads.

ASPHALT PRIMER - Liquid asphalt of low viscosity that is applied to a non-bituminous surface such as gravel to prepare the surface for an asphalt course.

ASPHALT SEAL COAT - A thin asphalt surface treatment used to waterproof and improve the wearing surface texture of pavement.

AUTOMATIC SPRINKLER SYSTEM - Apparatus for automatically extinguishing fires in a building, consisting of a system of water pipes in or below the ceilings, with valves or sprinklers usually made to open automatically at a certain temperature.

BASE FLOOD ELEVATION (BFE) - The elevation of surface water resulting from a flood of 100-year frequency.

BASE FLOOD ELEVATION STUDY - A study conforming to the guidelines in DNRC's "Guidelines for Obtaining 100-year Flood Elevations in Approximate Zone A or Unmapped Areas."

BIG GAME WINTER RANGE – Areas where big game (white-tailed deer, mule deer, elk, antelope, bighorn sheep, moose, bison, and mountain goat) tend to concentrate during winter, commonly from November through April. These areas are considered a subset of overall year-round big game habitat.

BLANKET EASEMENT - A blanket easement, also referred to as a floating easement, is an easement where there is no fixed route, location, method or limit to the right of way. Such easements are not limited to any specific part of the servient estate. For example, a right-of-way may cross a field, without any visible path, or allow egress through another building for fire safety purposes. Floating easements are also referred as blanket easements.

BLOCK - A group of lots, tracts, or parcels within well-defined and fixed boundaries, such as streets, roads, highways, railroad rights-of-way, or watercourses.

BOLLARD - A short post used to divert traffic from an area or road.

BUILDING CODE - Set of standards established and enforced by local government for the structural safety of buildings.

BUILDING PERMIT - A permit required by jurisdictions that enforce building codes for new construction, additions to pre-existing structures, and in some cases major renovations. New construction is typically inspected during construction and after completion to ensure compliance with local building codes.

BUILDING REGULATIONS - Regulations for building construction including building codes and zoning codes.

BUILDING SITE - The area of a lot or parcel suitable for a building.

BYLAWS - The rules and regulations enacted by an association or a corporation to provide a framework for its operation and management. Property owners' associations, for example, will need bylaws for their operation.

CAPITAL IMPROVEMENTS - The addition of a permanent structural improvement or the restoration of some aspect of a property that will either enhance the property's overall value or increase its useful life. All improvements required to be installed by the subdivider prior to final plat approval or secured with a financial guarantee are considered capital improvements. In addition, capital improvements may be installed by property owners through property owners' associations or via taxing districts (rural improvement districts or special improvement districts). Examples include subdivisions that elect to connect to public water or sewer systems years after final plat.

CAPITAL IMPROVEMENTS PLAN (CIP) - A plan adopted by a local government that plans out and budgets for local government public infrastructure such as water facilities, sewers, streets, parks and buildings along with equipment like fire trucks, radios, police cars, telecommunications equipment, furniture and computers. Capital projects also include low income housing projects and the purchase of land. Capital Improvements Plans are typically for increments of five to ten years.

CLUSTER BOX UNIT (CBU) - A centrally located installation with multiple compartments for the centralized delivery of mail to the residents of an entire neighborhood, eliminating the need for door-to-door or curbside delivery. "Clustered" type mailboxes include free-standing, pedestal-mounted cluster box unit (CBU), or other cluster mailboxes mounted in a wall, kiosk, or shelter.

CERTIFICATE OF SURVEY COS) - A drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations (76-3-103, MCA).

CFR – THE CODE OF FEDERAL REGULATIONS.

CHIP-SEAL - Chip seal is a pavement surface treatment that combines one or more layers of asphalt with one or more layers of fine aggregate. In the United States, chip seals are typically used on rural roads carrying lower traffic volumes.

CISTERN - A tank for storing water.

CLERK AND RECORDER - A person elected or appointed by the county commission who is responsible for the safekeeping of records related to land ownership when filed in the clerk and recorder's office.

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 in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped (76-3-103, MCA).

COMMERCIAL SPRINKLER SYSTEM - An automatic sprinkler system designed for commercial buildings or industrial settings.

COMMERCIAL SUBDIVISION - A subdivision with two or more lots for commercial-retail or other purposes related to business and commerce.

COMMERCIAL UNIT (CONDOMINIUM) - A unit in a condominium for commercial-retail or other purposes related to business and commerce.

COMMON AREAS (CONDOMINIUM) - Any area within a condominium that is not part of a unit for individual use. Refer also to the definition of 'unit'.

COMMON FACILITIES (CONDOMINIUM) - Facilities that serve all or some of the condominium owners. Facilities include recreation centers, central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and portions of buildings not part of individual units such as entrances, elevators, etc.

CONCRETE - A heavy, rough building material made from a mixture of broken stone or gravel, sand, cement, and water, that can be spread or poured into molds and that forms a stone-like mass upon hardening.

CONDOMINIUM - Ownership of single units with common elements located on property meeting the requirements of Title 70, Chapter 23 "Unit Ownership Act," MCA. The term does not include a townhome or townhouse (70-23-102, MCA).

CONDUIT (FOR UTILITIES) - A rigid tube or duct for carrying and protecting electrical wires or cables.

CONSTRUCTION PLANS - Plans for constructing capital improvements in a subdivision. Refer also to 'engineering plans'.

COUNTY CONSERVATION DISTRICT - A district formed under authority of Title 76, Chapter 15 of the MCA. Conservation Districts are formed to provide for soil conservation, prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water (76-15-102, MCA).

COURT ORDER - A court order is an official proclamation by a judge or panel of judges of a court established under state or federal law. Such ruling requires or authorizes the carrying out of certain steps by one or more parties to a case. A court order must be signed by a judge; some jurisdictions may require it to be notarized.

COVENANTS - Covenants consist of restrictions or requirements placed on the land, typically to "run with the land" (called a covenant appurtenant), meaning that any future owners of the land must abide by the terms. Covenants are typically administered and enforced by a property owners' or homeowners' association.

CROSS ACCESS - A vehicular and/or pedestrian connection between abutting properties which permits the exchange of trips between the two adjacent sites without the need to use the street system.

CRUSHED BASE COURSE - Layer of material in an asphalt roadway that is located directly under the surface layer. For gravel roads, it is the layer above the sub-base.

CUL-DE-SAC - A road closed at one end with an area for vehicular turnaround.

CULVERT - A structure that allows water to flow under a road, railroad, trail, or similar obstruction.

DECLARATION OF UNIT OWNERSHIP (CONDOMINIUM) – A legal instrument that creates a condominium, including all requirements of 70-23-301, MCA.

DEDICATION - The deliberate appropriation of land by an owner for a public use.

DEED RESTRICTIONS - Deed restrictions are private, contractual covenants which limit land use. Deed restrictions are placed on real property by affirmative action of the owner of the real property. Refer also to "Covenants."

DEFENSIBLE SPACE - An area, either natural or manmade, where material capable of allowing a fire to spread unchecked has been treated, removed, or modified to slow the rate and intensity of an advancing wildfire and to provide a safe working area for wildfire suppression operations to occur while protecting life and/or improved property.

DENSITY REQUIREMENTS - The number of people or residential units allowed or required per unit of land. Zoning is the typical method for establishing density requirements, which may be set as standards for minimum density (e.g., "at least two residential units per city lot" which promotes denser development and reduces sprawl) or maximum density (e.g., not more than two residential units per lot).

DEPARTMENT OF REVENUE (DOR) - The Montana Department of Revenue.

DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) - The Montana Department of Environmental Quality.

DEWATERING - The discharge of groundwater and/or surface water from construction sites. This includes the pumping of water from excavation trenches for utilities, and in preparing roadbeds or building construction.

DIVISION OF LAND - The segregation of one or more tracts of record from a large tract of record held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract. This also includes the filing of a certificate of survey or subdivision plat that establishes separate tracts of record.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) - The Montana Department of Natural Resources and Conservation.

DOMINANT ESTATE - Real property which has an easement or other use imposed upon it in favor of another property, such as right of way or use for access to an adjoining property or utility lines. The property giving usage is the servient estate, and the property holding usage of the easement is the dominant estate.

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS) - The Montana Department of Public Health and Human Services.

DRAINWAY - Any depression two feet or more below the surrounding land serving to give direction to a current of water less than nine months of the year and having a bed and well-defined banks (76-5-103, MCA).

DREDGED MATERIAL - Material that is excavated or dredged from waters of the United States as defined in the U.S. Clean Water Act.

DRY HYDRANTS - An arrangement of pipe permanently connected to a year-round water source other than a piped, pressurized water supply system that provides a ready means of water supply for firefighting purposes and that utilizes the drafting (suction) capability of fire department pumpers.

DWELLING UNIT - A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation facilities for use solely by one family or one household.

DWELLING UNIT (CONDOMINIUM) - A unit in a condominium for residential purposes of a single family or household.

EASEMENT - The right to use the real property of another for a specific purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes. Typical easements are for access to another property, for utility or sewer lines both under and above ground, use of spring water, entry to make repairs on a fence, drive cattle across and other uses.

EMERGENCY ACCESS ROAD - A roadway that does not meet road standards but is intended primarily for the evacuation of persons within the subdivision.

EMINENT DOMAIN – The right to take private property for public use as described in 70-30-102, MCA, and including property for roads, public buildings, infrastructure such as water and sewer, and other uses.

ENCROACHMENT - A use that hinders or obstructs the use of a property or an easement. For example: a driveway that blocks a storm drainage swale from functioning properly.

ENCROACHMENT PERMIT - A permit required by the local jurisdiction or State of Montana for facilities within a road or highway right of way or easement – such as an encroachment permit for a pipeline crossing under a state highway. Approach permits for roads are synonymous with the term encroachment permit.

ENGINEER (LICENSED PROFESSIONAL ENGINEER; PE) - A person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana. Synonymous with "licensed professional engineer," "professional engineer," "registered engineer," or "licensed engineer" in these regulations.

ENGINEERING PLANS - Design and construction plans prepared by an engineer to comply with the requirements of these subdivision regulations.

ENVIRONMENTAL ASSESSMENT - A component of a subdivision application for major subdivisions that provides information needed for the assessment of impacts to agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety resulting from the subdivision. See 76-3-603, MCA.

EROSION AND SEDIMENTATION CONTROL - Erosion control is a preventive measure focusing on the cause of sedimentation. Erosion control best management practices (BMPs) usually consist of ground cover that is used to prevent any of the forms of erosion from occurring. Emphasis should be placed on controlling erosion through preventative practices and control measures, which include: planning, project phasing, managing vegetative cover, and grading controls. Sediment control BMPs are designed to prevent soil particles already being carried in storm water from discharging from the construction site. Sediment controls come into play after the damage from erosion has already impacted the site. Sediment control BMPs are not as effective as erosion control BMPs and are typically considered secondary practices installed after all opportunities for erosion control have been implemented. Examples of sediment control BMPs include: inlet protection, silt fence, straw wattles, sediment traps, and other perimeter control devices. Refer to the Montana DEQ BMP Field Guide.

EXAMINING LAND SURVEYOR - A registered land surveyor appointed by the governing body to review surveys and plats submitted for filing (76-3-103, MCA).

EXEMPTION REVIEW COMMITTEE - A committee established by these regulations or by the governing body to review land divisions to determine whether the division qualifies as an exemption or must be reviewed as a subdivision.

FEDERAL LAND - Lands owned by the U.S. government, such as national forest system lands.

FEMA – The Federal Emergency Management Agency.

FHWA – The Federal Highway Administration.

FIELD INSPECTION LOGS - A record maintained by the engineer of inspections conducted during development of capital improvements and grading to ensure that construction follows approved plans and specifications. Inspections shall be made in accordance with an inspection plan included with construction and grading plans. Critical inspection points shall at a minimum include those identified in the Montana Public Works Standards and Specifications. As applicable, the field inspection plan shall identify when inspection by other entities is required—such as the installation of a fire suppression water supply tank prior to covering with soil.

FILL - For purposes of waters of the United States, "fill" is as defined in the Clean Waters Act: Material placed in waters of the United States where the material has the effect of i) replacing any portion of a water of the United States with dry land; or ii) changing the bottom elevation of any portion of a water of the United States. For all other purposes, fill is material from any source used to raise the level of the ground.

FINDING OF FACT - A written conclusion or determination based on evidence from which a decision is based.

FIRE CHIMNEY - Topographical features, usually canyons, gulches or valleys, which tend to funnel or otherwise concentrate fire toward the top of steep slopes. Fire chimneys are generally less than one-half mile in length, have slopes of 20 percent or steeper, are less than 600 feet wide, and are at least 120 feet deep as measured from the bottom of the ravine to the crest of either adjacent ridge or slope.

FIRE HYDRANT - A valve connection on a year-round water supply system having one or more outlets that is used to supply water for fire departments.

FIRE SPRINKLER SYSTEM - Same as Automatic Sprinkler System.

FIRE SUPPRESSION EQUIPMENT - Fire suppression equipment means the large equipment used by fire departments to fight fires, including fire trucks, pumper trucks, tanker trucks, ladder trucks, etc.

FIRE SUPPRESSION WATER SYSTEM - The infrastructure for supplying water for fire-fighting purposes for the subdivision. Fire suppression water systems include a water supply capable of providing the quantity and pressure needed to fight fires.

FIRST CLASS CITY - An incorporated municipality having a population of 10,000 or more (7-1-4111, MCA).

FIRST MINOR SUBDIVISION - A proposed subdivision of a tract of record that has not been subdivided or created by a subdivision under these regulations, or has not resulted from division of a tract of record that has created more than five parcels through exemption, created from a tract of record under Title 76, Chapter 3 MCA.

FLOOD FRINGE - All parts of the 100-year floodplain that are outside the floodway.

FLOODPLAIN - The area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheet flood areas that receive less than one foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the Federal Emergency Management Agency (76-5-103, MCA).

FLOODWAY - The channel of a watercourse or drainway and those portions of the flood plain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway (76-5-103, MCA).

FREEBOARD - Distance of clearance between the lowest point of the bridge superstructure and the design water surface elevation immediately upstream of the bridge. For a culvert, the measurement is

made from the top of the interior of the culvert structure. The design water surface elevation is typically the 100-year flood event.

FRONT MINIMUM SETBACK - The minimum distance by which a building or structure must be separated from the front of the lot, or RV or mobile home space.

GEOGRID - Geo-synthetic material used to reinforce soils and similar materials. Geogrids are commonly used to reinforce retaining walls as well as subbases or subsoils below roads or structures.

GEOTECHNICAL ANALYSIS - Geotechnical analysis usually uses principles of soil mechanics and rock mechanics to investigate subsurface conditions and materials; determine the relevant physical/mechanical and chemical properties of these materials; evaluate stability of natural slopes and man-made soil deposits; assess risks posed by site conditions; design earthworks and structure foundations; and monitor site conditions, earthwork and foundation construction. A typical geotechnical engineering project begins with a review of project needs to define the required material properties. Then follows a site investigation of soil, rock, fault distribution and bedrock properties on and below an area of interest to determine their engineering properties including how they will interact with, on or in a proposed construction. Site investigations are needed to gain an understanding of the area in or on which the engineering will take place. Investigations can include the assessment of the risk to humans, property and the environment from natural hazards such as earthquakes, landslides, sinkholes, soil liquefaction, debris flows and rockfalls.

GEOTECHNICAL SOILS ANALYSIS - See Geotechnical Analysis.

GEOTEXTILE - A strong synthetic fabric usually used in civil engineering construction projects (such as highway or dam building) that stabilizes loose soil and prevents erosion.

GOVERNING BODY - The board of county commissioners or the governing authority of an incorporated city or town, such as a city council.

GPM - Gallons per minute.

GRADING - Grading is the work of ensuring a level base, or one with a specified slope for purposes of construction or slope stabilization.

GROUND WATER - Any water beneath the Earth's surface.

GROWTH AREA - A municipal growth area as described in an adopted growth policy or other document adopted by the governing body. For municipalities without an adopted growth area map, the growth area shall be considered as the area within one mile of a town or third-class city, two miles of a second-class city, or within 3 miles of a first-class city.

HALF STREET - A half street or half road is a road with right-of-way or easement for only one-half or a road that has been only constructed to half the full width.

HIGH GROUNDWATER - Groundwater that lies close to the surface of the Earth; also referred to as "shallow surface water" or "high water table."

HOMEOWNERS ASSOCIATION (HOA) - A private, nonprofit corporation of homeowners or property owners, established according to state law for the purpose of owning, operating and maintaining various common properties.

HS-20 - A measurement of load capacity. An HS-20 loading is represented by a three-axle semitrailer combination weighing 72,000 pounds with 8,000 pounds on its steering axle and 32,000 pounds on its drive axle and 32,000 pounds on the semitrailer axle. The "20" in HS-20 stands for 20 tons (4 tons on the steering axle and 16 tons on the drive axle). The "S" stands for semitrailer combination which adds in the

additional 16 tons for the third axle to give a total of 36 tons or 72,000 pounds (pursuant to the Federal Highway Administration).

IFC – The International Fire Code.

IMMEDIATE FAMILY MEMBER - A spouse, children by blood or adoption, and parents (76-3-103, MCA).

INDIVIDUAL SEWAGE SYSTEM - A wastewater system that serves one living unit or commercial structure. The total number of people served may not exceed 24 (ARM 17.36.101).

INDIVIDUAL WATER SYSTEM - Any water system that serves one living unit or commercial structure. The total number of people served may not exceed 24 (ARM 17.36.101).

INDUSTRIAL SUBDIVISION - A subdivision with lots for industrial uses.

INDUSTRIAL USE - The manufacture, fabrication, processing or reduction of any article, substance, or commodity or any other treatment thereof in such a manner to change the form, character, or appearance thereof. It shall include trucking facilities, rail facilities, mining, warehousing, materials or equipment storage, and businesses serving primarily industry and similar enterprises.

INFRASTRUCTURE - The physical system, structure or piece of equipment, such as a paved or graveled road, water supply pipe system, bridge, etc. that provide essential services such as transportation, utilities, energy, etc. (also refer to definition of 'Local Services'). Infrastructure may include large equipment such as fire trucks, road graders, etc.

INFRASTRUCTURE PLAN - A plan for future infrastructure needs. Refer to the definition of 'Capital Improvements Plan' for infrastructure plans adopted by government.

INSTRUMENT OF TRANSFER - A document transferring property ownership including warranty deeds, quit claim deeds, deed of transfer, etc.

JURISDICTION - The powers and authority to impose and enforce requirements within a certain geographic area or function. When used in these regulations it is intended as the jurisdiction of the board of county commissioners or of the municipal governing body. When used in relation to a state or federal agency, it means the powers of that agency related to a specific topic such as the Montana DNRC authority regarding water rights.

JURISDICTIONAL AREA - The area governed by a board of county commissioners or municipal governing body.

LAND SURVEYOR - A person licensed as a land surveyor under Title 37, Chapter 67, MCA.

LEGAL ACCESS - Access to a parcel of land via city streets, county roads, or state and federal highways. If the access to the subdivision is via private roads, the easement shall provide for the proposed subdivision and its uses. A copy of an existing plat or survey that establishes a private road is insufficient unless the easement language clarifies that the road is intended for future lots and additional uses (refer to Montana Supreme Court decisions on Blazer v. Wall, Broadwater Development v. Nelson, Schmid v. Pastor).

LICENSED FINANCIAL INSTITUTION - A bank chartered under Chapter 1 of Title 32, MCA, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under Chapter 2 of Title 32, MCA, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Chapter 3 of Title 32, MCA, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code.

LICENSED LENDING INSTITUTION - Same as Licensed Financial Institution.

LIEN - A legal claim that someone or something has on the property of another person until a debt has been paid back.

LIFE ESTATE - An interest in land that lasts only for the life of the holder. Thus, the holder of a life estate cannot leave the land to anyone in their will because their interest in the land does not survive the person. The holder of a life estate has a full right to possess the land or transfer their interest during their lifetime, but must refrain from engaging in waste, activity which would prevent the next person in line from putting the property to full use (according to Cornell University Law School's Legal Information Institute).

LIGHT TRESPASS - Light falling where it is not wanted or needed (also known as spill light or obtrusive light).

LOAD CAPACITY - The safe-load carrying capacity of a bridge or culvert.

LOAD LIMIT (BRIDGES) – See Load Capacity.

LOCAL BOARD OF HEALTH - Title 50, Chapter 2 of Montana Code requires every county and every first or second class city to have a local board of health. 50-2-116, MCA requires local boards of health to adopt regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by the Sanitation in Subdivisions Act.

LOCAL FIRE CODE - Fire codes adopted by municipalities or counties or for a fire service area. Authority for municipalities and counties to adopt local fire codes is found in Title 7, Chapter 33 of the MCA. Not all municipalities or counties have adopted local fire codes. In fact, only a handful of counties or areas within counties established as "Fire Service Areas" under provisions of Title 7, Chapter 33, have adopted fire codes. Refer also to State Fire Code.

LOCAL PUBLIC HEALTH DEPARTMENT - The name often given to the entity that provides the services managed and directed by a local board of health. Refer to Local Board of Health.

LOCAL SANITARIAN - A sanitarian licensed under Title 37, Chapter 40 of the MCA employed by or providing services to a local board of health or local public health department.

LOCAL SERVICES - Local services are services provided by local governments, public or private utilities, fire departments, etc. to local residents. These services include but are not limited to services provided for law enforcement, fire protection, ambulance, water supply, recreation, streets and roads, parks, libraries, schools, wastewater, electrical and telephone service and solid waste collection and disposal.

LOT - A parcel, plot, or other land area created by subdivision.

LOWEST FLOOR - The lowest floor of the lowest enclosed area (including a basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of requirements (as defined by FEMA).

LOWEST FLOOR ELEVATION - The measured distance of a building's lowest floor above the design flood event. The subdivision regulation lowest floor elevation is a minimum of two feet above the 100-year flood elevation.

LOWEST HORIZONTAL CHORD (BRIDGE) - The component of the bridge used to establish the distance needed to pass flood flows. The subdivision regulations require the lowest horizontal chord of a bridge to be at least two feet above the base flood elevation to help pass ice flows, base flood discharge and any debris associated with the discharge.

MAINTENANCE DECLARATION - A declaration describing how infrastructure, facilities, and certain services will be provided after the subdivision is completed and lots transferred. Maintenance

declarations are required for roads, vegetation management (e.g., maintenance of required WUI fuel breaks around the subdivision and vegetation clearance along roadways), storm drainage systems, etc.

MAJOR SUBDIVISION - A subdivision of six or more lots. The term also includes minor subdivisions of five or fewer lots that result in a total of more than five parcels created by any combination of exemptions or subdivision from a tract of record since July 1, 1973.

MANUFACTURED HOME - A building meeting the definition established by the U.S. Department of Housing and Urban Development (HUD) as a manufactured home (formerly known as a mobile home) built to Manufactured Home Construction and Safety Standards (defined by HUD) and displays a red certification label on the exterior of each transportable section. Manufactured homes are built in the controlled environment of a manufacturing plant and are transported in one or more sections on a permanent chassis. Homes built prior to 1976 and Park Model Homes cannot qualify as a manufactured home even with modifications.

MCA – Montana Code Annotated.

MINOR SUBDIVISION - Minor subdivisions consist of five or fewer lots that do not result in a total of more than five parcels created by any combination of exemptions or subdivision from a tract of record since July 1, 1973. This definition includes first minor subdivisions as defined in Title 76, Chapter 3 MCA.

MITIGATION - The action(s) which minimizes the adverse impacts which would be created by a subdivision or development.

MOBILE HOME - A factory assembled structure equipped with necessary service connections, made so as to be readily movable as a unit on its own running gear, and designed to be used as a dwelling unit without a permanent foundation. Mobile homes are designed to be moved from one place to another by an independent power connected to them. The term includes “manufactured homes,” “trailers,” or “house trailers.”

MOBILE HOME PAD - That area of a mobile home space upon which a mobile home is physically situated.

MOBILE HOME COURT - See Mobile Home Park.

MOBILE HOME PARK - A parcel of land with two or more spaces available for rent or lease and designated for occupancy by mobile homes for use as residences.

MOBILE HOME SPACE - A portion of a parcel of land designed for the accommodation of one manufactured or mobile home and its accessory buildings or structures for the exclusive use of the occupants.

MONTANA SUBDIVISION AND PLATTING ACT (MSPA) - The state law requiring counties and municipalities to adopt subdivision regulations known as Title 76, Chapter 3 MCA.

MORTGAGE SECURITY – An asset-backed financial instrument that is secured by a mortgage or collection of mortgages.

MONTANA PUBLIC WORKS STANDARD SPECIFICATIONS (MPWSS) – the Montana Public Works Standard Specifications as distributed by the Montana Contractors’ Association.

MULTIPLE USER SEWAGE SYSTEM - A non-public wastewater system that serves or is intended to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units by the county average of persons per living unit based on the most recent census data (17.36.101 ARM).

MULTIPLE USER WATER SUPPLY SYSTEM - A non-public water supply system designed to provide water for human consumption to serve three through 14 living units or three through 14 commercial structures. The total number of people served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data (17.36.101 ARM).

MUNICIPAL URBAN FRINGE – See Growth Area.

NATIVE GRASSLANDS - Vegetation communities where native grass is predominant. They include native prairie grasslands in eastern Montana and intermountain/foothill grasslands in western Montana.

NATIVE SHRUB HABITATS - Vegetation communities where sagebrush or other shrub species are predominant in association with grasslands. Sagebrush grasslands are scattered throughout western, central, and eastern Montana and are co-dominated by shrubs (ranging from 5 to 35 percent or greater shrub cover, primarily sagebrush) and perennial grasses. Other shrub-grassland types include bitterbrush, buffaloberry, chokecherry, potentilla, juniper, hawthorn, and other woody species with high wildlife values occurring in localized settings across Montana.

NATURAL DRAINAGE - Storm water or other surface runoff channels, depressions, etc. in the existing surface topography of the Earth prior to changes made by unnatural causes.

NATURAL ENVIRONMENT - 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.

NFPA – The National Fire Protection Association.

NO-BUILD ZONE – A DESIGNATED AREA WHERE THE CONSTRUCTION OR PLACEMENT OF PERMANENT STRUCTURES DESIGNED FOR HUMAN ASSEMBLY OR HABITATION IS NOT PERMITTED.

NON-PRESSURIZED WATER SUPPLY SYSTEM - For purposes of fire suppression water supply, a non-pressurized water supply system is a system that requires drafting the water from its source with suction provided by a pumper truck (or similar).

NOXIOUS WEED – According to the Montana County Noxious Weed Act, any exotic plant species established or that may be introduced into the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated as a statewide noxious weed by rule of the department; or as a district noxious weed by a board, following public notice of intent and public hearing.

OFF-SITE WATER SUPPLY - Water supply (for consumption or fire suppression) for a subdivision that is not located within the subdivision.

OFF-STREET PARKING - Areas designated for parking that are not located within the road or street or on the road shoulders. Off-street parking typically consists of parking lots, driveways and garages.

OFF-STREET SOLID WASTE COLLECTION AREA - An area designated for large bins for solid waste from a subdivision. Lot owners bring their individual trash to the collection areas where it is routinely hauled to a licensed solid waste facility. In subdivisions, these areas must be established as easements or land held in common by a property owners' association.

ON-SITE WATER SUPPLY - Water supply (for consumption or fire suppression) for a subdivision that is located within the subdivision's perimeter boundary.

ON-STREET PARKING - An extension of the surface of a street or road designated for parking.

OPEN-SPACE - Land or water areas retained for use as active or passive recreation areas, resource protection and use, and for agricultural, horticultural, and silvicultural use.

PARCEL - A term used to describe a tract of record that was not created as a lot in a subdivision.

PARK MODEL HOME - Recreation vehicles primarily designed and intended to provide temporary living quarters for recreation, camping, or seasonal use. They are built on a single chassis, mounted on wheels with a gross trailer area not exceeding 400 square feet when set up. Units may be expandable when they reach their destination utilizing slide-outs or tip-outs.

PARK TRAILERS - See Park Model Home.

PAVED - For roads and streets, paved means the surface of the road has been treated with a hard, durable surface such as concrete or asphalt.

PAVEMENT MARKINGS - Markings on roads, paths, bikeways, etc. that separate lanes of travel, provide directional information, etc. Markings may be painted on the surface or be objects (such as reflectors) embedded into the road or path surface.

PAYBACK AGREEMENT - When a subdivider agrees to install improvements with a greater capacity than required by a subdivision, a payback agreement may be developed and administered by the governing body to help the subdivider recover upfront costs. Under a payback agreement (also referred to as a 'latecomers agreement'), the subdivider who pays some or all of the up-front costs in excess of what is required for the subdivision would be entitled to recover costs from the owners of properties beyond the subdivision who will benefit from the works in the future (i.e. 'latecomers'). Where a subdivider has paid up-front costs, the local government would collect the payback from latecomers via an assessment, tax, or fee and remit to the subdivider a share of those monies, as determined by the terms of the payback agreement.

PERMANENT TURNAROUND - A road permanently closed at one end with an area for vehicular turnaround.

PHASED DEVELOPMENT – A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

PHYSICAL ACCESS - The ability to safely reach a lot in a subdivision with a passenger vehicle year-round. Physical access is provided by existing roads and bridges suitable for safe passenger vehicle travel based on average daily traffic from existing and projected demand from the subdivision. Physical access on new roads built for the subdivision means that the new roads meet the design standards of the subdivision regulations.

PLANNED UNIT DEVELOPMENT - 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 and use (76-3-103, MCA).

PLANNING BOARD - The city planning board, a county planning board, or a joint city-county planning board formed under Title 76, Chapter 1, MCA for the jurisdictional area addressed by these subdivision regulations.

PLAT - A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications (76-3-103, MCA).

PLATTED SUBDIVISION - A subdivision platted according to the requirements of the Montana Subdivision and Platting Act (MSPA), or applicable laws in place prior to the creation of the MSPA, and locally adopted subdivision regulations at the time it was created.

PRELIMINARY PLAT APPLICATION – THE SUBDIVIDER'S submittal for preliminary review that includes the preliminary plat, an application form, and supporting documentation meeting the requirements of these regulations.

PRESSURIZED HYDRANT - An arrangement of pipe permanently connected to a year-round water source with a pressurized water supply system that provides a ready means of water supply for firefighting purposes.

PRESSURIZED WATER SUPPLY SYSTEM - A pressurized water system is usually thought of as a municipal water system whereby fire hydrants are installed on water mains using a grid system. In other words, water would arrive at the hydrant from two or more directions. Water in this type of system can be supplied using elevated tanks, pumps, gravity flow or a combination of these systems. A pressurized system can also be established by installing a dry hydrant utilizing an above grade water source, such as a pond.

PRIMARY ACCESS - A main point of entry into a subdivision via a road.

PROFESSIONALLY TRAINED BIOLOGIST - An individual with a minimum of a bachelor's degree in a fisheries or wildlife-related field and professional experience in applying current biological knowledge to on-the-ground stewardship and management of a resource and its environment, or an individual meeting the requirements of a Certified Wildlife Biologist (as established by The Wildlife Society) or a Certified Fisheries Professional (as established by the American Fisheries Society).

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.

PUBLIC SERVICES - See Local Services.

PUBLIC SEWAGE SYSTEM - A system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year (75-6-102, MCA).

PUBLIC UTILITY - Corporations, both public and private, companies, individuals, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal: heat; street-railway service; light; power in any form or by any agency; except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere; and regulated telecommunications service (69-3-101, MCA). The term also includes county or consolidated city and county water or sewer districts as provided for in Title 7, Chapter 13, Parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, Chapter 13, Parts 42, 43, and 44 (76-3-103, MCA).

PUBLIC WATER SUPPLY - A system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year (75-6-102, MCA).

PURCHASE AGREEMENTS - The agreement or contract for the purchase of a property, signed by the buyer and seller, containing the agreed-upon price and any other conditions. This may also be known as an agreement of sale, a purchase contract, or a sale contract.

QUIT CLAIM DEED - A deed releasing a person's interest in a property without stating the nature of the person's interest or rights, and with no warranties of ownership. While a quitclaim deed neither warrants nor professes that the grantor's claim is valid, it does prevent the grantor from later claiming they have an interest in the property.

REALTY TRANSFER CERTIFICATE - A form required by the Montana Department of Revenue when real estate is transferred to another owner.

REAR MINIMUM SETBACK - The minimum distance by which a building or structure must be separated from the rear of the lot, or RV or mobile home space.

RECREATIONAL CAMPING VEHICLE - A vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are: camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper (pursuant to the ARMs for DPHHS review of Trailer Courts and Tourist Campgrounds).

RECREATIONAL VEHICLE (RV) - See Recreational Camping Vehicle.

REGISTERED ARCHITECT - A person licensed as an architect pursuant to Title 37, Chapter 65, MCA.

REGISTERED PROFESSIONAL ENGINEER - Refer to "Engineer".

REGISTERED PROFESSIONAL LAND SURVEYOR - Refer to "Land Surveyor".

REMAINING PORTION/PARCEL - The portion or parcel of land that remains from a tract of record when a division occurs. Remaining portions of less than 160 acres resulting from a subdivision must be created as lots within the subdivision.

RESIDENTIAL SPRINKLER SYSTEM - An automatic sprinkler system designed for residential use.

RESIDENTIAL SUBDIVISION - A subdivision with lots proposed for residential use.

RETRACEMENT - A survey submitted for an existing tract of record which may not have previously been surveyed, or for which corrections are being submitted.

RIGHT-OF-WAY - Property that is publicly owned or upon which a governmental entity has an express or implied property interest held for a public purpose. Examples of such public purpose include a street, sidewalks, drainage facilities, crosswalk, water main, sanitary or storm sewer, etc. The term for subdivision platting purposes means that every right-of-way established and shown on a final plat is separate and distinct from the lots or parcels adjoining the right-of-way, and is not included within the dimensions or areas of such lots or parcels.

RIPARIAN AREA – An area of transition between a waterbody (e.g., stream or wetland) and upland area. Riparian areas have one or both of the following characteristics: (1) distinctly different vegetative species than adjacent areas; and (2) species similar to adjacent areas but exhibiting more vigorous or robust growth forms.

RISER/HYDRANT RISER - The riser on a fire suppression hydrant that brings the connection for the hose above ground.

ROAD PULL-OUT - An area along the edge of a street or road that provides a space for a vehicle to safely move out of a traffic lane in order to permit the passage of emergency or other types of vehicles.

ROAD SHOULDER - A reserved area along the edge of the road. Generally, it is kept clear of motor vehicle traffic and functions as a safety feature for drivers to drift into when being overtaken by passing vehicles, particularly on two-lane roads.

ROAD STUB - A temporary portion of a road with a turn-around designed to convert to an extension of the road onto an adjacent subdivision or phase.

ROAD – An open way for vehicles, people and animals, defined in several types of functional classifications based primarily on traffic counts and type of traffic. For the purposes of these subdivision regulations the terms street and road are used interchangeably.

ROADSIDE DRAINAGE (STORMWATER) - A system to collect and convey stormwater away from roads, consisting of swales or curb and gutter, underground storm drainage pipes, above-ground retention or detention facilities, or a combination of the above.

RURAL IMPROVEMENT DISTRICT - A district formed under Title 7, Chapter 12, Part 21 that may assess property for improvements within the district. A board of county commissioners may order and create special improvement districts outside the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102, MCA, in or for the benefit of the special improvement district.

RV PARK - A parcel of land with two or more spaces available for rent or lease which are designated for temporary occupancy by recreational camping vehicles for camping and sleeping purposes.

RV SPACE - A designated portion of a parcel of land designed for the temporary accommodation of one recreational camping vehicle and the exclusive use of its occupants.

SANITATION APPROVAL - Approval by the MT DEQ and/or local board of health for the aspects of subdivision for water, sewer, solid waste and storm drainage.

SCOUR - Removal of sediment such as sand and rocks from around bridge abutments or culverts. Scour, caused by swiftly moving water, can scoop out scour holes and compromise the integrity of a structure.

SECOND CLASS CITY - An incorporated municipality with a population of less than 10,000 and more than 5,000 (7-1-4111, MCA).

SEPARATION FABRICS - Woven geotextiles placed between dissimilar materials, such as road aggregate and subgrade to stabilize the soil, preserve the aggregate and reinforce the surrounding soil. They will also keep mud below the rock from “pumping” up and help keep cleanup to a minimum.

SEPTIC SYSTEM - A septic system consists of two main parts: a septic tank and a drainfield. The septic tank is a watertight box, usually made of concrete or fiberglass, with an inlet and outlet pipe. Wastewater flows from an inhabited structure to the septic tank through a sewer pipe. The septic tank treats the wastewater naturally by holding it in the tank long enough for solids and liquids to separate. The wastewater forms three layers inside the tank. Solids lighter than water (such as greases and oils) float to the top forming a layer of scum. Solids heavier than water settle at the bottom of the tank forming a layer of sludge. This leaves a middle layer of partially clarified wastewater. The layers of sludge and scum remain in the septic tank where bacteria found naturally in the wastewater work to break the solids down. The sludge and scum that cannot be broken down are retained in the tank until the tank is pumped. The layer of clarified liquid flows from the septic tank to the drainfield or to a distribution device, which helps to uniformly distribute the wastewater in the drainfield. A standard drainfield (also known as a leachfield, disposal field, or a soil absorption system) is a series of trenches or a bed lined with gravel or coarse sand and buried one to three feet below the ground surface. Perforated pipes or drain tiles run through the trenches to distribute the wastewater. The drainfield treats the wastewater by allowing it to slowly

trickle from the pipes out into the gravel and down through the soil. The gravel and soil act as biological filters (as defined by the National Environmental Services Center).

SERVIENT ESTATE - Real property which has an easement or other use imposed upon it in favor of another property (called the "dominant estate"), such as an easement for access to an adjoining property or utility lines. The property giving usage is the servient estate, and the property holding usage of the easement is the dominant estate.

SETBACK - The minimum distance by which any building, structure or facility must be separated from a property boundary, road easement, water body, or other identified legal, physical or biological condition.

SHARED WATER SYSTEM - A water system that serves or is intended to serve two living units or commercial structures. The total number of people served may not exceed 24. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data (17.36.101 ARM).

SIDE MINIMUM SETBACK - The minimum distance by which a building or structure must be separated from the side of the lot, or RV or mobile home space.

SIDECASTING - Moving excavated material to the downslope side during road and landing construction.

SITE LAYOUT – See Site Plan for RV Parks, Mobile Home Parks, and Condominiums. See Plat for all other subdivisions.

SITE PLAN - A schematic diagram, drawn to scale, of the lot, tract or parcel of land showing the specific location of all existing and proposed features, such as buildings, structures, driveways, parking, RV or mobile home pads and spaces, landscaped areas, easements, utilities, surface water, drainage, etc.

SLOPE RATIO - Relation of the horizontal projection of a surface to its rise. For example, a two-foot horizontal run to a one-foot vertical rise is shown as 2:1 or 2 to 1.

SOIL CARRYOUT - Soil or mud that is carried out from the construction site by wind, drainage, truck traffic or other means onto other surfaces, such as paved road surfaces. Carryout has the potential to create unsafe conditions.

SOIL HORIZON - A soil horizon is a layer generally parallel to the soil surface, where physical characteristics differ from the layers above and beneath. Horizons are defined in most cases by obvious physical features, chiefly color and texture.

SOIL TYPE - Types of soil as identified by the Natural Resources and Conservation Service and their Web Soil Survey tool.

SOLID WASTE - As defined in the Sanitation in Subdivisions Act, putrescible and non-putrescible wastes, including but not limited to: garbage, rubbish, and refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials (75-10-103, MCA).

SPECIAL IMPROVEMENT DISTRICT (SID) - A district formed under Title 7, Chapter 12, Part 41 that may assess property for improvements within the district. A city or town council may form a special improvements district for any number of improvements identified in the law, including streets, water supply, sewer, recreation, etc.

SPECIES OF CONCERN - Native wildlife species that are considered to be "at risk" due to declining population trends, threats to their habitats, and/or restricted distribution. A list of such species, called the Montana Animal Species of Concern, is produced jointly by the Montana Natural Heritage Program and Montana Fish, Wildlife & Parks. This list includes Threatened and Endangered Species.

STATE FIRE CODE – A set of rules prescribing minimum requirements to prevent fire and explosion hazards arising from storage, handling, or use of dangerous materials, or from other hazardous conditions. The State of Montana has responsibility for enforcing state fire codes for public buildings throughout the state (Title 50, Chapter 3 of MCA).

STORAGE AREAS - Areas designated for storage, whether interior to a building/enclosed space or out in the open air.

STREET – See Road.

SUB-BASE - One of the layers in road construction. Roads are built up in several layers consisting of sub-grade, sub-base, base and surface layer. The surface layer seals and prevents surface water from penetrating and weakening the base and sub-grade. The most common surface for rural roads is constructed from natural gravels. Bituminous and concrete surfaces provide more impermeable seals and are more resistant to the abrasive forces caused by the combined effects of weather and traffic. The road base (also referred to as the base course) is the main layer in terms of providing additional strength and load bearing capacity to the road. This layer often consists of crushed and graded materials or selected soils from natural sources which conform to certain characteristics known to improve the quality of the road. The sub-base is an additional strengthening layer with a similar purpose as the road base. As the road base takes care of the initial load dissipation, the sub-base will have less stringent quality requirements as compared to the road base. The sub-base may also act as a separating layer between the road base materials and the sub-grade. The natural soil on which the road is constructed is referred to as the sub-grade. The sub-grade consists of compacted or undisturbed soils or it may be a road fill with soils imported from elsewhere along the road line (source: Chapter 9, "Building Rural Roads" by the International Labor Organization).

SUB-GRADE - One of the layers in road construction. See Sub-Base.

SUBDIVIDER - A person who causes land to be subdivided or who proposes a subdivision of land (76-3-103, MCA).

SUBDIVISION - A division of land or land so divided that it 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 the parcels may be sold or otherwise transferred and includes any re-subdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed (76-3-103, MCA).

SUBDIVISION ADMINISTRATOR – See Administrator

SUBDIVISION IMPROVEMENTS AGREEMENT (SIA) - A contractual agreement that may be required by the governing body to ensure the construction of improvements after final plat approval. The improvement agreement requires collateral to secure the construction of such improvements.

SUBDIVISION PLAT – See Plat.

SUBDIVISION REVIEW - The review of subdivisions for compliance with the subdivision regulations and the Montana Subdivision and Platting Act.

SUBSEQUENT MINOR SUBDIVISION - A division of land which is the second or subsequent minor subdivision of a tract of record as it existed on July 1, 1973. A minor subdivision creates no more than five lots. Per these regulations, subsequent minor subdivisions that do not result in a total of more than five parcels created by any combination of exemptions or subdivision from a tract of record since July 1, 1973 are reviewed as "Minor Subdivisions." All other subsequent minor subdivisions are reviewed as "Major Subdivisions."

SUBSTANDARD ROAD - A road that does not meet the design standards of these subdivision regulations.

SUMMARY OF PROBABLE IMPACTS - One of the three elements of an Environmental Assessment, the Summary of Probable Impacts is also a required component of an application for a minor subdivision. It includes information for assessing the impacts of the subdivision on agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety.

SUPPLEMENTAL MATERIALS - As noted in Ch. I-K, Jurisdictions will adopt regulations to suit their local needs. Many Montana governmental units post Subdivision Regulations, forms and Supplemental Administrative Materials to their websites. For additional examples of Supplemental Administrative Materials, please contact the Community Technical Assistance Program at DOCCTAP@mt.gov.

SURFACE DISTURBANCE - Any actions taken to alter the existing vegetation or soil of a site, such as clearing, grading, filling, and excavating.

SURVEY – See Certificate of Survey.

SURVEYOR – See Land Surveyor.

TACK COAT - Tack coat (also known as bond coat) is a light application of asphalt emulsion between hot mix asphalt layers designed to create a strong adhesive bond without slippage. Heavier applications may be used under porous layers or around patches where it also functions as a seal coat (as defined by the Asphalt Emulsion Manufacturers Association).

TEMPORARY TURNAROUND - See Road Stub.

THIRD-CLASS CITY- An incorporated municipality with a population of less than 5,000 and more than 1,000 (7-1-4111, MCA).

TITLE COMMITMENT - A commitment on the part of the insurer, once a title search has been conducted, to provide the proposed insured with a title insurance policy upon closing.

TITLE REPORT - A contractual arrangement entered into to indemnify loss or damage resulting from defects or problems relating to the ownership of real property, or from the enforcement of liens that exist against it.

TOWN - An incorporated municipality with a population of less than 1,000 and more than 300 is a town (7-1-4111, MCA).

TOWNHOME - As defined in 70-23-102, MCA, property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

TOWNHOUSE - See Townhome.

TRACT OF RECORD - An individual parcel of that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the clerk and recorder's office (76-3-103(16)(a), MCA).

TRAFFIC IMPACT STUDY/ASSESSMENT (TIS/TIA) - A study that assesses the effects that a particular subdivision's traffic will have on the transportation network in the subdivision and roads leading to the subdivision. Such studies analyze existing conditions and provide projections of traffic increases from the subdivision, measured as annual average daily traffic. The TIS/TIA should identify any potential operational problems or concerns and recommend appropriate actions to address such problems or concerns.

TRANSFER DOCUMENTS – See Instruments of Transfer.

TRIBAL LANDS - Lands under the authority of tribal governments.

U.S. GOVERNMENT LOT - Irregular fractional sections in the rectangular Public Land Survey System that cannot be described as aliquot parts.

U.S. GOVERNMENT SECTION - A parcel within the federal Public Land Survey System that equates to approximately one square mile. The Public Land Survey System typically divides land into six-mile-square townships. Townships are subdivided into 36 one-mile-square sections. Sections can be further subdivided into quarter sections, quarter-quarter sections, or irregular government lots.

UNDIVIDED INTEREST - Title to real property held by two or more persons without specifying the interests of each party by percentage or description of a portion of the real estate. Such interests are typical between joint tenants, tenants in common, tenants by the entirety.

UNIT (CONDOMINIUM) - A part of a condominium property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway (70-23-102, MCA).

UNIT OWNERSHIP ACT - The portion of Montana law providing for the establishment of condominiums know as Title 70, Chapter 23, MCA.

UNITED STATES WATERS - All surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all other waters including intermittent streams, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce.

USEABLE PARKLAND - Parkland that is accessible by passenger vehicle and which has land that is available for recreation at all times of the year. Parkland that is often entirely inundated by a storm water retention or detention facility, for example, would not be considered useable parkland.

UTILITY – See Public Utility.

VARIANCE - Permission to depart from these regulations when it is determined that unique conditions on the property meet certain criteria.

VEGETATED BUFFER - Vegetated areas around waterbodies, or as required to mitigate impacts between conflicting uses. The term may also include a natural, undisturbed strip or “greenbelt” along the shorelines of a river, stream, or other waterbody, or as required to mitigate impacts between conflicting uses. The term does not include lawns and non-native landscaping. Riparian areas are a subset of “vegetated buffers” and include the green zones of native vegetation next to rivers, streams, and drainages. The word “riparian” is derived from Latin ripa, meaning riverbank (see also Riparian Area).

WARRANTY DEED - A deed that guarantees a clear title to the buyer of real property.

WATER CONVEYANCE FACILITY - Pipes, ditches, canals, flumes, or other mechanisms by which water is transported from one area to another. The term generally applies to water for surface use, including agriculture. The term does not include water supply systems intended for human consumption.

WATER RIGHT - The right to make use of the water from a stream, lake, irrigation canal or other source.

WATER TABLE - The level below which the ground is saturated with water.

WATERBODIES - Bodies of water including lakes, ponds, reservoirs, perennial or intermittent streams, creeks, rivers or reservoirs. Wetlands are treated separately under these regulations.

WATERCOURSE - Any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year and having a bed and well-defined banks. Upon order of the DNRC, the term also includes any particular depression that would not otherwise be within the definition of watercourse (76-5-103, MCA).

WELL ISOLATION ZONE – THE AREA WITHIN A 100-FOOT RADIUS OF A WATER WELL.

WETLAND - Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

WILDLAND-URBAN INTERFACE – THE LINE, AREA, OR ZONE WHERE STRUCTURES AND OTHER HUMAN DEVELOPMENT MEET OR INTERMINGLE WITH UNDEVELOPED WILDLAND OR VEGETATIVE FUELS.

WILDLIFE - Species of non-domesticated fish and wildlife, or other wild, non-domesticated animals (including mammals, birds, amphibians, reptiles and invertebrates) that inhabit the area affected by the subdivision.

WILDLIFE HABITAT - Land or water that meets the food, shelter or reproductive needs for species of wildlife; areas of known or suitable habitat for the physical features (e.g., topography, geology, stream flow) and biological characteristics (e.g., vegetation cover and other species) needed to meet the food, shelter, and reproductive needs of wildlife.

WILDLIFE LINKAGE - Wildlife habitat that allows wildlife movement within a winter range patch, between isolated patches of winter range, or other seasonal habitat and winter range. Linkages are sufficiently wide to allow the natural movement of wildlife without being impeded by disturbances associated with development.

WILDLAND-URBAN INTERFACE (WUI) - The line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels. The general areas are typically mapped in the jurisdiction's Community Wildfire Protection Plan, but these maps typically need refining at the scale of subdivisions.

ZONING REGULATIONS - Also referred to as a Zoning Ordinance, the regulations divide a community into districts or zones and regulate land use activity in each district, specifying the permitted uses of land and buildings, the intensity or density of such uses, and bulk (size) of buildings.