

Sanders County Subdivision Regulations

Adopted 06/10/2020

By Sanders County Commissioners

Land Services Department



TABLE OF CONTENTS

I. GENERAL PROVISIONS.....6

I-A. Title.....6

I-B. Authority.....6

I-C. Purpose.....6

I-D. Jurisdiction.....6

I-E. Servability.....7

I-F. Conditions.....7

II. GENERAL PROCEDURES.....7

II-A. Preliminary Plats.....7

II-A-1. Construction Timing.....7

II-A-2. Transfers of Title.....7

II-A-3. Permission to Enter.....8

II-A-4. Pre-application Process.....8

II-A-5. Subdivision Application and Preliminary Plat Submittal.....9

II-A-6. Review Process11

II-B. Final Plats12

II-B-1. Final Plat Contents12

II-B-2. Final Plat Initial Review12

II-B-3. Restrictive Covenants – Approval, Content and Enforcement by Governing Body13

II-B-4. Public Improvements Agreement; Guaranty14

II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval15

II-B-6. Final Plat Approval15

II-B-7. Final Plat Filing16

II-B-8. Amending Filed Plats16

II-B-9. Exemptions from Amended Plat Review17

III REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS17

III-A. First Minor Subdivision Review17

III-A-1. First Minor Subdivision Application and Preliminary Plat Submittal17

III-A-2. First Minor Subdivision Exceptions17

III-A-3. First Minor Subdivision Review Process17

III-A-4. First Minor Subdivision Governing Body Decision and Documentation18

III-A-5. First Minor Subdivisions – Amended Applications22

III-A-6. First Minor Subdivision Final Plat23

III-B. Subsequent Minor Subdivisions23

IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS23

IV-A. Review and Approval Procedures for Major Subdivisions23

IV-A-1. Subdivision Application and Preliminary Plat Submittal23

IV-A-2. Time Period for Approval, Conditional Approval, or Denial23

IV-A-3. Public Hearings and Notices – In General24

IV-A-4. Governing Body Hearing24

IV-A-5. Subsequent Public Hearing.....25

IV-A-6. Governing Body Decision and Documentation.....26

IV-A-7. Amended Applications30

IV-B. Major Final Plats30

V. REVIEW AND APPROVAL FOR PHASED DEVELOPMENTS [76-3-617MCA] 30

V-A. Review and Approval Procedures for Phase Development30

V-A-1. Review Process30

V-A-2. Length of Approval30

| | | |
|-----------|--|----|
| V-A-3 | Procedure for Review of Each Phase..... | 30 |
| VI. | DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW..... | 32 |
| VI-A. | Purpose..... | 32 |
| VI-B. | General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA..... | 32 |
| VI-C. | Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA]..... | 32 |
| VI-D. | Divisions of Land Which May be Exempt from Review and Surveying..... | 35 |
| VI-E. | Divisions of Land Exempt from Review but Subject to Survey Requirements..... | 36 |
| VI-E-1. | Relocation of Common Boundary [76-3-207(1)(a), MCA] | 36 |
| VI-E-2. | A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]..... | 37 |
| VI-E-3. | Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]..... | 38 |
| VI-E-4. | Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a),MCA] | 39 |
| VI-E-5. | Aggregation of Lots or Parcels [76-3-207(1)(f), MCA]..... | 40 |
| VI-F. | Procedures and Review of Subdivision Exemptions..... | 40 |
| VI-F-1. | Submittal..... | 40 |
| VI-F-2. | Review..... | 40 |
| VI-F-3. | Appeals..... | 41 |
| VI-G. | Remaining Parcels of Land..... | 41 |
| VI-H. | Identification Codes..... | 42 |
| VII. | DESIGN AND IMPROVEMENT STANDARDS..... | 42 |
| VII-A. | Natural Environment..... | 42 |
| VII-B. | Lands Unsuitable for Subdivision..... | 42 |
| VII-C. | Floodplain Provisions..... | 42 |
| VII-D. | Improvement Design..... | 43 |
| VII-E. | Lots..... | 43 |
| VII-F. | Blocks..... | 43 |
| VII-G. | Streets and Roads..... | 44 |
| VII-H. | Drainage Facilities..... | 50 |
| VII-I. | Water Supply Systems..... | 50 |
| VII-J. | Sewage Treatment Systems..... | 51 |
| VII-K. | Solid Waste..... | 51 |
| VII-L. | Utilities..... | 51 |
| VII-M. | Water Course and Irrigation Easements | 52 |
| VII-N. | Disposition of Water Rights | 53 |
| VII-O. | Park Land Dedication – Cash in Lieu – Waivers – Administration..... | 53 |
| VII-P. | Fire Protection..... | 55 |
| VII-Q. | Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard..... | 56 |
| VII-R. | Noxious Weeds..... | 57 |
| VIII | AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES..... | 57 |
| VIII-A. | Definition..... | 57 |
| VIII-A-1. | General..... | 57 |
| VIII-A-2. | Specific..... | 57 |
| VIII-B. | Review..... | 58 |
| VIII-C. | DPHHS License..... | 59 |
| VIII-D. | Design Standards for Mobile Home and Recreational Vehicle Parks..... | 59 |
| VIII-D-1. | General Design Standards..... | 59 |
| VIII-D-2. | Additional Provisions | 60 |
| VIII-E. | Mobile/Manufactured Home Park Standards..... | 60 |

| | |
|--|----|
| VIII-E-1.Mobile/Manufactured Home Spaces..... | 60 |
| VIII-E-2.Streets..... | 61 |
| VIII-E-3.Electrical Systems..... | 61 |
| VIII-E-4.Gas Systems..... | 61 |
| VIII-F. Recreational Vehicle Park Standards..... | 61 |
| VIII-F-1.Roads..... | 62 |
| VIII-F-2.Spaces..... | 62 |
| VIII-F-3.Density..... | 62 |
| IX PLANNED UNIT DEVELOPMENTS..... | 62 |
| IX-A. Purpose..... | 62 |
| IX-B. Procedures..... | 62 |
| IX-C. Standards..... | 62 |
| IX-C-1. Design Standards..... | 62 |
| IX-C-2. Streets..... | 63 |
| IX-C-3. Open Space..... | 63 |
| X CONDOMINIUMS..... | 63 |
| X-A. Procedures..... | 63 |
| X-A-1. Review Where Land Will Not be Divided..... | 63 |
| X-A-2. Condominium Subdivisions Involving Land Divisions..... | 63 |
| X-B. Standards..... | 63 |
| X-B-1. Design Standards..... | 63 |
| X-B-2. Unit Ownership Act..... | 64 |
| XI ADMINISTRATIVE PROVISIONS..... | 64 |
| XI-A. Variances..... | 64 |
| XI-A-1. Variances Authorized..... | 64 |
| XI-A-2. Variances from Floodway Provisions Not Authorized..... | 64 |
| XI-A-3. Procedure..... | 64 |
| XI-A-4. Conditions..... | 64 |
| XI-A-5. Statement of Facts..... | 64 |
| XI-B. Amendment of Regulations..... | 65 |
| XI-C. Administration..... | 65 |
| XI-C-1. Enforcement..... | 65 |
| XI-C-2. Violation and Penalties..... | 65 |
| XI-C-3. Appeals..... | 65 |
| Definitions..... | 66 |

I. GENERAL PROVISIONS

I-A. Title

These regulations will be known and may be cited as “The Subdivision Regulation of Sanders County” hereinafter referred to as “these regulations.”

I-B. Authority

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

I-C. Purpose

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

Further, to support the purposes of 76-3-102, MCA, these regulations are intended to promote (76-3-501, MCA):

1. The orderly development of Sanders County.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The improvement of roads.
5. The provision of proper physical and legal road access, including obtaining of necessary easements. [76-3-608(d) MCA]
6. The provision of adequate open spaces for travel, light, air, and recreation.
7. The provision of adequate transportation, water, drainage, and sanitary facilities.
8. The avoidance or minimizing of congestion.
9. The avoidance of subdivisions which would involve unnecessary environmental degradation.
10. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services.
11. The avoidance of excessive expenditure of public funds for the supply of public services.
12. The manner and form of making and filing of any plat for subdivide lands. [76-3-611 MCA]
13. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions. [76-3-504 MCA]

I-D. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of Sanders County.

If a proposed subdivision lies within **one mile of a third class city or town** or within two miles of a second class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision

lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

If a proposed subdivision is located in a rural school district, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees. [76-3-601(2)(b) MCA]

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

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements shall apply.

I-E. Severability

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

I-F. Conditions

Regulation of the subdivision of land and the attachment of reasonable conditions to land subdivision is an exercise of valid police power delegated by the State of Montana to Sanders County. Subdividers have the duty of complying with reasonable conditions for design, dedication, and improvements so as to conform to the physical and economic development of Sanders County and to the safety and general welfare of the future subdivision lot owners and of the community at large.

II. GENERAL PROCEDURES (Applies to Sections III, IV, V, VII, X and IX)

II-A. Preliminary Plats

II-A-1. Construction Timing

The subdivider may not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until the governing body has given conditional preliminary approval of the proposed subdivision plat.

II-A-2. Transfers of Title

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana.
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision

is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract.

- d. That the contracts contain the following language conspicuously set out therein: “The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.”
- e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid; [76-3-303(4) MCA] and
- f. A copy of the contracts and escrow agreement described above must be submitted to the subdivision administrator. The purchase price may be blacked out.

II-A-3. Permission to Enter

The Sanders County Commissioners or a representative of Land Services Dept. or its designated agent(s) may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body and/or its agents. [76-3-601 MCA]

II-A-4. Pre-application Procedures

- a. The subdivider shall meet with the subdivision administrator prior to submitting the required preliminary plat. The subdivision administrator is the authorized agent as designated by the governing body to review subdivision applications. The purpose of this meeting is to discuss applicable subdivision regulations and standards. The meeting shall occur within 30 days after the subdivider submits a written, electronic or verbal request for the meeting to the subdivision administrator.
- b. The subdivision administrator will notify the subdivider of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality (MDEQ).
- c. The subdivider shall provide a sketch plan of the proposed subdivision for discussion. The sketch plan must be a legible scale drawing showing the layout of proposed features in relation to the existing site conditions.
 - i. The sketch plan may be drawn freehand on a print of a topographic map. Scale dimensions must be noted.
 - A. The sketch plan must include pertinent information such as:
 1. location;
 2. approximate tract and lot boundaries of existing tracts of record;
 3. description of general terrain;
 4. natural features on the land, including water bodies, floodplains, geologic hazards, and soil types;
 5. existing structures and improvements;
 6. existing utility lines and facilities serving the area to be subdivided;
 7. existing easements and rights of way;

8. existing conservation easements;
9. existing noxious weeds

B. Information on the current status of the site, including:

1. ownership information, such as deed, option to buy or buy-sell agreement, including permission to subdivide;
2. water rights, including location of Agricultural Water Users Facilities;
3. existing covenants or deed restrictions;
4. rights of first refusal for the property.

ii. Information on the proposed subdivision, including:

- A. tract and proposed lot boundaries;
- B. phasing of the development, if applicable;
- C. proposed public and private improvements;
- D. location of utility lines and facilities;
- E. easements and rights of way;
- F. parks and open space and proposed conservation easements and

d. At the pre-application meeting:

- i. The subdivision administrator shall identify, for informational purposes, the state laws, local regulations that may apply to the subdivision review process.
- ii. The subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that must be contacted for comment by the subdivider. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
- iii. The subdivision administrator may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the subdivision administrator to request additional information at a later time.

e. Unless the subdivider submits a subdivision application within six months of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

II-A-5. Subdivision Application and Preliminary Plat Submittal [76-3-504(a), MCA]

- a. The subdivider shall submit, to the agent designated by the governing body one (1) copy of the complete subdivision application addressing these topics and containing the following materials determined

necessary at the pre-application meeting. Once sufficiency has been determined, five (5) complete, bound copies shall be submitted for review.

1. A completed and signed Subdivision Application Form;
 2. The required review fee;
 3. A preliminary plat;
 4. A Vicinity Sketch;
 5. A topographic map;
 6. A grading and drainage plan;
 7. Engineering plans for all Public and Private Improvements;
 8. Overall development plan, if development is in phases;
 9. Abstract of Title (or Title Report);
 10. Documentation of legal and physical access;
 11. Documentation of existing easements, including those for Agricultural Water User Facilities;
 12. Existing covenants and deed restrictions
 13. Existing water rights;
 14. Existing mineral rights;
 15. Proposed road plans and profiles;
 16. Proposed easements;
 17. Proposed disposition of water rights;
 18. Proposed disposition of mineral rights;
 19. Parkland dedication calculations; [76-3-603(2) MCA]
 20. Environmental assessment and/or summary of probable impacts; [76-3-608(3)/76-3-603 MCA]
 21. Transportation impact analysis or transportation plan;
 22. Fire risk rating analysis and fire prevention plan;
 23. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
 24. FIRM or FEMA panel map and letter identifying floodplain status;
 25. Required water and sanitation information, including well isolation zone; [76-3-622 MCA]
 26. A form of Subdivision Improvements Agreement, if proposed;
 27. Flood hazard evaluation;
 28. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
 29. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.
- b. The following materials shall be submitted within 30 days of preliminary approval:
1. Subdivision Noxious Weed Revegetation Application
- c. The following materials will need to be submitted with the final plat:
1. Lienholders' acknowledgement of subdivision;
 2. Approach, access, encroachment permits from Montana Department of Transportation or the local jurisdiction.
 3. Documentation that the noxious weeds have been treated.

II-A-6. Review Process

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

- a. Element Review [76-3-604 MCA]
 - i. Within 5 working days of receipt of a subdivision application and fee, date of receipt being when the subdivision application and appropriate fee are delivered to the reviewing agency, the subdivision administrator shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the subdivider of the subdivision administrator's determination.
 - A. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
 - B. The subdivider may correct the deficiencies and resubmit the application.
 - C. If the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required by section II-A-5, as applicable.
 - D. This process shall be repeated until the subdivider submits an application containing all the materials required by section II-A-5, or the application is withdrawn.
- b. Sufficiency Review
 - i. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.
 - A. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
 - B. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
 - C. If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivision administrator shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed

subdivision under these regulations.

D. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.

ii. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator or the governing body to request additional information during the review process.

iii. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. **Applicable Regulations**

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

II-B Final Plats

II-B-1 Final Plat Contents

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats as provided for in Administrative Materials. Final plats of subdivisions approved for phased development may be filed sequentially in accordance with the approval.

II-B-2 Final Plat Initial Review

a. **Final Plat Submittal**

- i. the final plat application;
- ii. the final plat review fee;
- iii. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;
- iv. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
- v. the DEQ or local Environmental Health Department approval;

- vi. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if required);
 - vii. all engineering plans (if required);
 - viii. any homeowner association documents, including bylaws, covenants, and/or declarations;
 - ix. Two 18" x 24" or larger mylar copies and one paper copy of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats as provided for in Administrative Materials.
- b. Review by Subdivision Administrator
- i. Within 20 working days of receipt of a final plat, the subdivision administrator shall determine whether the final plat contains the information required and review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received and shall notify the subdivider, or with the subdivider's written permission, the subdivider's agent of that determination in writing. If the governing body or its agent or agency determines that the final plat does not contain the information required, the administrator shall identify the final plat's defects in the notification. Final plat applications will not be considered complete by the subdivision administrator until all conditions of preliminary approval have been satisfied.
 - ii. If the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to Section II-B-5.
 - iii. The subdivision administrator will require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat. [76-3-611(2)(a) MCA]

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

- a. The governing body requires that every restrictive covenant contain the following language: This (These) covenant(s) may not be repealed or amended without the prior written consent of the Sanders County Commissioners.
- b. If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
 - i. Formation of a property owners' association concurrently with the filing of the final subdivision plat; Articles of Incorporation shall be filed with the Secretary of State's office;

- ii. Mandatory membership for each property owner. Purchasers of property may be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
- iii. Perpetual reservation of the common property when required under 76-3-621(6) (a), MCA;
- iv. Payment of liability insurance premiums, local taxes, and the maintenance expenses of recreational or other facilities;
- v. Provide for the placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
- vi. Adjustment of assessments to meet changing needs;
- vii. Means of enforcing the covenants, and of receiving and processing complaints;
- viii. Transition of control of the association from the Declarant to the homeowners.
- ix. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
- x. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

II-B-4. Public Improvements Agreement; Guaranty [76-3-507(4) MCA]

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements. The County Commissioners may require up to 100% completion of improvements related to public health and safety, such as roads, firefighting facilities and installation of utilities, before agreeing to the use of a subdivision improvements agreement. This requirement applies to preliminary plats approved prior to the adoption of these regulations. If 100% completion is required, engineering plans must be filed before approval of the final plat. A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are provided in Administrative Materials.

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

II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
 - i. Within 5 working days of receiving the proposed changes, the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.
 - ii. If the subdivision administrator determines the changes are material, the subdivision administrator may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee
 - iii. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes and notify the subdivider and the governing body of its decision.
- b. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions;
 - vi. designated access; or
 - vii. change to conditions of approval.
- c. A subdivider, whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator, may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
- d. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public hearing, if a hearing was required with the original submittal, in order to determine if the condition may be waived or amended.

II-B-6. Final Plat Approval

- a. Approval by the Governing Body

Within 20 days of receiving a complete final plat, the governing body shall examine and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to (ii) below.

- i. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
 - ii. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.
 - iii. The 20 working day review period may be extended by mutual agreement.
- b. **Inaccurate Information**
The governing body may withdraw approval of a final plat if it determines that material information provided by the subdivider is inaccurate.

II-B-7. Final Plat Filing

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

II-B-8. Amending Final Plats

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

for Monumentation, Certificates of Survey, and Final Subdivision Plats.

II-B-9 Exemptions from Amended Plat Review

Amended plats that show the relocation of common boundaries or the aggregation of five or fewer lots are exempt from subdivision review. These amended plats must be prepared following the requirements of the Montana Uniform Standards for Certificates of Survey [ARM 8.94.3002(1)(f)(v)].

III. REVIEW & APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

Minor subdivisions are those subdivisions containing five or fewer lots where proper access to all lots is provided, and no land will be dedicated to public use for parks and playgrounds that are eligible for review under 76-3-505 or 76-3-609, MCA, shall be reviewed under the procedures set forth on the following pages.

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

III-A. First Minor Subdivision Review

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

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

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

III-A-2. First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions:

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

III-A-3. First Minor Subdivision Review Process

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

Within 35 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section III-A-4 of these regulations, unless the subdivider

and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing.

b. Public Agency and Utility Review

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

III-A-4. First Minor Subdivision Governing Body Decision and Documentation

a. Prerequisites to Approval

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

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

b. Consideration – Standards

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

- i. these regulations, including but not limited to, the standards set forth in Section VII;
- ii. other applicable regulations;
- iii. the MSPA, including but not limited to the following impacts

- A impact on agriculture;
- B. impact on agricultural water user facilities;
- C. impact on local services;
- D. impact on the natural environment;
- E. impact on wildlife;
- F. impact on wildlife habitat; and
- G. impact on public health and safety.

iv. proposed mitigation.

c. Consideration – Evidence

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

- i. the subdivision application and preliminary plat;
- ii. the summary of probable impacts and proposed mitigation;
- iii. subdivision administrator's staff report and recommendations;
- iv. any additional information authorized by law.

Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion in order for the governing body to include the agency comment in its written statement.

d. Water and Sanitation-Special Rules

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat.
- iii. The governing body shall make any public comment submitted, regarding water and sanitation information, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

- iv. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres.
 - v. A subdivision cannot be approved if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 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.
 - vi. If the water supply or wastewater treatment systems are shared, multiple users or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public services commission jurisdiction or exempt from public service commission jurisdiction. If exempt, exemption must be provided.
- e. Documentation of Governing Body Decision [6-3-608(2)MCA]
- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections. They must be based on the subdivision application as a whole. The governing body's findings of fact must be sustained unless they are found to be arbitrary, capricious or unlawful.
 - ii. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall, within 30 working days following the oral decision, send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
 - E. set forth the time limit for approval, pursuant to subsection (f) below.
- f. Subdivision Application and Preliminary Plat Approval Period [76-3-610 MCA]
- i. Within 30 thirty days of granting approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of

approval. The approval shall be in force for no more than three calendar years

- A. At least 30 thirty days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year, not to exceed a total of 7 seven one year extensions.
 - B. All requests must provide responses to the following criteria and supporting documents:
 - 1. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
 - 2. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
 - 3. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision non-compliant with current design standards, such as road design, wildfire, or flood standards.
 - 4. Consistency with all adopted comprehensive planning documents.
 - 5. Impacts to public health, safety and general welfare.
 - 6. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
 - C. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-B-4.
 - D. Prior to granting any extension greater than three years past the original signed statement of original preliminary plat approval for a major subdivision a public hearing must be noticed and held by the governing body.
 - E. Prior to granting any extension of a preliminary plat approval for a minor subdivision, a public meeting will be noticed and held by the governing body.
 - F. After the hearing or meeting, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request.
- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
 - iii. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which

the approval or conditional approval was based, is inaccurate.

III-A-5. First Minor Subdivisions – Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in subsection (c) below.
 - ii. The 35-working day review period is suspended while the subdivision administrator considers the amended application or preliminary plat.
 - iii. If the subdivision administrator determines the changes are not material, the 35-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application.
- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).
- c. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions; and
 - vi. designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
 - i. The 35-working day review period is suspended until the governing body decision on the appeal is made.

- ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection (a)(iv).
- iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35-working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided in subsection (d)(i).

III-A-6. First Minor Subdivision Final Plat [76-3-609(4) MCA]

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

III-B. Subsequent Minor Subdivisions

A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions that create more than one additional lot shall require a public hearing, Environmental Assessment and park requirement. There is a 35 day review period.

IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

IV-A. Review and Approval Procedures for Major Subdivisions

- a. Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots.
- b. The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

IV-A-1. Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the governing body or to the agent or agency authorized by the governing body a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.

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

- a. Within 60 working days, 80 working days for subdivisions of 50 lots or more, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-6 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-5 of these regulations. The review period of 60 or 80 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider’s agent in writing that the subdivision application is sufficient for review.
- b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 60 or 80 working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

IV-A-3. Public Hearings and Notices

a. Hearings

The governing body will hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

- i. The governing body shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearings.
- ii. At least 15 days prior to the dates of the hearings, the governing body or designated agent shall give notices of the hearings by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

IV-A-4. Governing Body Hearing

- a. After the subdivision application has been deemed to have all the required elements and to contain sufficient information for review, and the subdivision administrator has prepared a staff report, the governing body shall schedule and hold a public hearing on the subdivision application.
- b. The governing body shall determine whether public comments or documents presented for consideration at the governing body's public hearing constitute either:
 - i. information or analysis of information that was part of the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. new information or analysis of information that has never been submitted as evidence, in which case the governing body shall proceed as set forth in subsection (d) below.
- c. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, opinion or information.
- d. If the governing body determines that public comments or documents presented at the hearing

constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to this subsection and subsection (e) & (f) below.

- i. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - ii. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule a subsequent public hearing.
 - iii. At the subsequent hearing the governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- f. New information or analysis of information is considered to be credible if it is based on one or more of the following:
- i. physical facts or evidence;
 - ii. supported personal observations;
 - iii. evidence provided by a person with professional competency in the subject matter; or
 - iv. scientific data supported by documentation.

IV-A-5. Subsequent Public Hearing

- a. If a subsequent public hearing is held pursuant to section IV-A-4(b)(ii) above, it must be held within 45 working days of the governing body's determination to schedule a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
 - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
 - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider and each adjoining landowner to the land included in the preliminary plat.
- b. If a subsequent public hearing is held, the 60 or 80 working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60 or 80 working day

review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

IV-A-6. Governing Body Decision and Documentation

a. Prerequisites to Approval

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

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

b. Consideration-Standards

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

- i. these regulations, including, but not limited to, the standards set forth in Section VII;
- ii. other applicable regulations;
- iii. the MSPA, including but not limited to the following impacts:
 - A. impact on agriculture;
 - B. impact on agricultural water user facilities;
 - C. impact on local services;
 - D. impact on the natural environment;
 - E. impact on wildlife;

- F. impact on wildlife habitat, and
- G. impact on public health and safety.

iv. proposed mitigation.

c. Consideration-Evidence

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

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment; not the equivalent of environmental assessments/impact under Montana Environmental Policy Act.
- iii. the summary of probable impacts and mitigation;
- iv. comments, evidence and discussions at the public hearing(s);

Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion in order for the governing body to include the agency comment in its written statement.

- v. subdivision administrator's staff report and recommendations;
- vi. any additional information authorized by law.

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

d. Water and Sanitation-Special Rules

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- iii. The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of

the subdivision application and preliminary plat.

- iv. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - A. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
 - B. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.
 - v. A subdivision cannot be approved if any of the features and improvements of that subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 or if the well isolation zone of any proposed well to be divided for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment.
 - vi. If the water supply or wastewater treatment systems are shared, multiple user or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public service commission jurisdiction or exempt from public service commission jurisdiction. If exempt, an explanation for the exemption must be provided.
- e. Documentation of Governing Body Decision
- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.
 - ii. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall within 30 working days following the oral decision, send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
 - E. set forth the time limit for approval, pursuant to subsection (f) below.

- f. Subdivision Application and Preliminary Plat Approval Period
- i. Within 30 days of granting approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
- A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year, not to exceed a total of 7 seven one year extensions.
- B. All requests must provide responses to the following criteria and supporting documents:
1. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
 2. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
 3. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision non-compliant with current design standards, such as road design, wildfire, or flood standards.
 4. Consistency with all adopted comprehensive planning documents.
 5. Impacts to public health, safety and general welfare.
 6. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
- C. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in Section II-B-4.
- D. Prior to granting any extension greater than three years past the original signed statement of original preliminary plat approval for a major subdivision a public hearing must be noticed and held by the governing body.
- E. Prior to granting any extension of a preliminary plat approval for a minor subdivision, a public meeting will be noticed and held by the governing body.
- F. After the hearing or meeting, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request.
- ii. After the application and preliminary plat are approved, the governing body may not

impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.

- iii. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

IV-A-7. Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to section II-A-6 but before the Governing hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection (c) below.
 - ii. The 60 or 80 working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
 - iii. If the subdivision administrator determines the changes are not material, the 60 or 80 working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed.
- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii).
- c. The following changes, although not an exhaustive list may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions; and
 - vi. designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed

by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

- i. The 60 or 80 working day review period is suspended until the governing body decision on the appeal is made.
- ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted.
- iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 60 or 80 working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 60 or 80 working day review period provided in subsection (i) above.

IV-B. Major Final Plats

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

V. REVIEW AND APPROVAL PROCEDURES FOR PHASED DEVELOPMENT [76-3-617 MCA]

V-A. Review and Approval Procedures for Phase Development

Phased developments consist of subdivision application and preliminary plat that at the time of submission consist of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

V-A-1 Review Process

The overall phased development is reviewed following IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS.

V-A-2 Length of Approval

All phases must be completed within 20 years of the date the overall phased development preliminary plat is approved by the governing body or those phases not completed are void.

V-A-3 Procedure for Review of Each Phase

- a. At the commencement of each phase the subdivider must provide written notice to the County commissioners and a public hearing is noticed and held within thirty (30) working days.
- b. A hearing will be held to determine whether there is new information or changes to preliminary review criteria that create potentially significant adverse impacts for that phase.
- c. The Board of County Commissioners must issue written finding of fact within 20 working days after the public hearing.

- d. The Board of County Commissioners may impose additional conditions on the phase being reviewed to mitigate potentially significant adverse impacts. It is not a re-review of the entire phased development. If imposed, additional conditions must be met before final plat for that phase

VI. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW [76-3-504(P) MCA]

VI-A. Purpose

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

VI-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA [76-3-201 MCA]

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

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

The governing body will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in Resolution 2008-01. The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
 - i. This Exemption Applies:
 - A. to a division of land of any size;
 - B. if the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations, except as provided in subsection D. (below)

- C. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.
- D. If a parcel of land located within the county was divided pursuant to 76-3-201(1)(b) MCA and one of the parcels created by the division was conveyed by the landowner to another party without a foreclosure before October 1, 2003, the remaining parcel is not subject to the requirements of the MSPA.

ii. Statement of Intent

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

iii. Use of Exemption

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

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

iv. Required Materials

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

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

v. Review Criteria

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

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

Rights-of way for land dedication for city, county roads or other transportation systems, typically require land dedications rather than easements, or utilities as utilities as defined in 76-3-103, MCA. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter and these regulations.

- ii. Requirements
 - A. Documentation required per
 - B. Landowner approval or proof of eminent domain authority by the entity acquiring the right-of-way.
 - C. Documentation to be 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 76-3-202, MCA a subsequent change in the use to residential, commercial or industrial subjects the division to review under the MSPA and these regulations.
 - D. Any certificate of survey that would use this exemption shall be accompanied by the instrument of conveyance, such as a deed.
- iii. Review Criteria
 - A. The proposed is for right-of-way or utility site.
 - B. The entity for which a right-of-way does meet the definition of city, county roads, or other transportation systems, or the entity for which a utility site is created does meet the definition of utility per 69-3-101, MCA.

VI-D. Divisions of Land Which May be Exempt From Review and Surveying

- a. Generally condominiums, townhomes, townhouses or conversions are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land subdivided in compliance with these regulations and the MSPA, as defined in 76-3-203, MCA and:
 - i. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes or townhouses and 76-3-621, MCA, is complied with; or They are constructed on lots subdivided in compliance with these regulations and the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, townhouses or conversion and any applicable park dedication requirements in 46-3-621, MCA and Section XI of these regulations are complied with, or
 - ii. The condominium, townhome or townhouse proposal is in conformance with applicable zoning regulations when local zoning regulations are in effect.
- b. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
- c. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for

residential purposes after July 1, 1974.

- d. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- e. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)] If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

VI-E. Divisions of Land Exempt from Review but Subject to Survey Requirements

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

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

a. Statement of Intent

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

b. Required Information

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

c. Use of Exemption

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional

parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

d. Review Criteria

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation.

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

a. Statement of Intent

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

b. Required Information

A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. Use of Exemption

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

d. Review Criteria

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

- iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

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

a. Statement of Intent

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

b. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant for the purpose of this chapter with the governing body that runs with the land in accordance with 76-3-207(1)(c) MCA, and a signed and acknowledged recitation of the covenant on the face of the survey set forth in ARM 24.183.1104(f)(iii), found in the Administrative Materials. The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

c. Use of Exemption.

- i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- ii. A change in use for anything other than agricultural purposes subjects a division to subdivision review under parts V & VI of this chapter. However, the governing body, in its discretion, may revoke the covenant for the purposes of this chapter 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 defined in the governing body's review criteria pursuant to 76-3-504(1)(p).
- iii. If the governing body proposes to revoke a covenant pursuant to subsection (1)(b), 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 record. If the governing body approves the revoking of the covenant, the approval must be recorded with the clerk & recorder.
- iv. The revocation of a covenant pursuant to this section does not affect sanitary

restrictions imposed under Title 76, Chapter 4.

- v. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

d. Review Criteria

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

- i. The landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of Section 1. The covenant must be signed by the property owner, the buyer, and the members of the governing body.
- ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
- iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202 MCA.

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

a. Statement of Intent

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

b. Use of Exemption

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

c. Review Criteria

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

VI-E-5. Aggregation of Lots or Parcels [76-3-207(1)(f) MCA]

a. Statement of Intent

Aggregation of parcels on a certificate of survey or of lots on a subdivision plat is allowed provided the boundaries of the original parcel or lot are eliminated and the boundaries of the larger aggregated parcel or lot are established.

b. Use of Exemption

This exemption may be used without a boundary line relocation but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply. A notarized statement on the amended plat or certificate of survey must reflect these restrictions/requirements, including any applicable zoning, covenants and/or deed restrictions.

c. Review Criteria

- i. If a resulting lot is inconsistent with the approved conditions of subdivision approval, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lot or parcel does not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- iii. If the amended plat or certificate of survey does not show fewer lots of parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

VI-F. Procedures and Review of Subdivision Exemptions

VI-F-1. Submittal

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

VI-F-2. Review

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

- a. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the

criteria in this Section V.

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

VI-F-3. Appeals

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

VI-G. Remaining Parcels of Land

Area, 160 acres or greater, that is left behind after the rest of the land has been subdivided or after an exemption is used to divide the land not to be labeled a "Remainder" but instead referred to as a remaining parcel.

A remaining parcel, less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot

in that subdivision and will not evade review. If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed.

VI-H. Identification Codes

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

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

VII. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section X-B, Variances. The governing body may not grant variances from the provisions of Section XI-A-2, Floodplain Provisions. For subdivisions created as planned unit developments, and condominiums, refer to sections IX & X of these regulations.

VII-A. Natural Environment

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

VII-B. Lands Unsuitable for Subdivision

The governing body may find land to be unsuitable for subdivision because of natural or human caused hazards identified during the subdivision review process. These lands must not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques or other mitigation measures authorized under 76-3-608(4) & (5), MCA.

VII-C. Floodplain Provisions

- a. Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards.
- b. If any portion of a proposed subdivision is in any FEMA or DNRC officially designated floodplain or within less than 2,000 horizontal feet and less than 20 vertical feet of a watercourse draining an area of 25 square miles or more and not designated, the developer shall provide the calculated 100 year frequency water surface elevations and the 100 year frequency floodplain boundaries. The flood elevations and boundaries must be determined and certified by a licensed professional engineer experienced in this field of work and shall be utilized during lot layout and building location design to meet minimum building standards of the Flood Hazard Management Regulations for designated

floodplains where applicable as well as subdivision regulations. Computations of the flood elevations and boundaries or location may follow the “guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas” and may be found at the following website” www.mtfloods.org.

- c. Any development in the official FEMA or DNRC designated floodplain must meet the Sanders County Floodplain Regulations for development within the official designated areas.

VII-D. Improvement Design

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

VII-E. Lots

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

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

VII-F. Blocks

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

by cul-de-sacs.

- d. Rights-of-way for pedestrian walks, not less than ten feet wide, must be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation, and other community facilities.

VII-G. Streets and Roads

AASHTO Guidelines for Geometric Design of Very Low Volume Roads and AASHTO Policy on Geometric Design of Highways and Streets shall be the preferred design standards for all subdivision roads.

The Sanders County Commissioners reserve the right to require a professional engineer to provide design and construction specifications for roads and other improvements in areas of special concern due to but not limited to drainage, geology, soils and topography. In lieu of an engineer designed road, a standard county road cross-section, F-1 Administrative Materials, may be substituted.

Proposed road engineering plans, profiles and calculations are subject to review and approval by an outside, independent consultant as may be required by the governing body. Costs associated with this review are the responsibility of the subdivider.

All road construction shall meet the standards set forth in the latest edition of the Montana Public Works Standard Specification, unless otherwise indicated in these regulations. Any deviation from these standards must be approved by the County Commissioners.

All subdivisions being proposed to utilize a public roadway will be required to waive the right to protest creation of a Rural Improvement District for the maintenance and improvement of those roads which will be in effect for 20 years from date of final plat.[76-3-608(7) MCA]

a. Design

- i. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety, and in their relation to the proposed uses of the land to be served by them.
- ii. Roads must meet the design specifications in Table 1.
- iii. Where streets terminate, either a cul-de-sac or "T" turnaround must be provided at the terminus. Cul-de-sacs and "T" turnarounds must conform to the design specifications set forth in Table 1.
- iv. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association, or have a recorded maintenance agreement.
- v. Residential driveways must not have direct access to primary highways unless approved and permitted by the Montana Department of Transportation.
- vi. Local streets should be designed so as to discourage through traffic.

- vii. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- viii. Whenever a subdivision abuts a county maintained road the governing body may require frontage and or internal private roads to provide access to all lots being created.
- ix. Half streets are prohibited except when essential to the development of the subdivision and when the governing body is assured that it will be possible to require the dedication of the other half of the street when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- x. The alignment of all streets and roads must ensure adequate sight distances.
- xi. Intersections. The following items apply to intersections:
 - A. Streets must intersect at 90 degree angles, except when precluded by topography. In no case may the angle of intersections be less than 60 degrees to the center line of the roadway being intersected.
 - B. Two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
 - C. No more than two streets may intersect at one point.
 - D. Intersections of local streets with major arterials or highways must be kept to a minimum.
 - E. Intersection design must provide adequate visibility for traffic safety as dictated by the designed operating speeds on the individual roadways.
 - F. Hilltop intersections are prohibited, except when no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative exists, additional traffic control devices may be required.
- xii. All subdivision road approaches onto state highways must be permitted by MDT.
- xiii. All driveway and subdivision road approaches onto county roads shall be permitted through the County and designed to prevent stormwater from draining on the surface of the county road.
- xiv. Names of new streets aligned with existing streets must be the same as those of the existing streets. Proposed street names must not duplicate or cause confusion with existing street names. All new road names must be approved by the Sanders County Rural Addressing Office prior to preliminary plat approval.

b. Improvement Standards

- i. All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations, using materials approved by the governing body or designated representative.
- ii. Roadway Specifications
 - A. Subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be proof rolled in the presence of the road foreman or designated representative. Any soft/yielding areas will need to be reworked until such time as the full subgrade is firm and unyielding.
 - B. Base will consist of 12" pit run gravel
 - C. Surface will be determined as condition of preliminary approval, consisting of specified material;
 - gravel – 3 inches 1½ inch road mix; or
 - chip seal – 1 inch; or
 - asphalt – 2 inches hot mix

Material may be allowed to deviate from the above standards upon the granting of a variance to do so by the governing body. The following criteria shall be considered when reviewing a variance request: use of material from previously utilized pits approved by the county, satisfactory onsite material approved by the district road foreman or commercial pit material or Geotechnical materials study for a specific road design.

- iii. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- iv. Subdivision roads and lot access driveways intersecting a paved county or state road shall have a paved approach for a minimum of 25 feet from the edge of the pavement.
- v. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements, adequate in width to allow construction of the roadway.

Easements must be granted by each property owner through a signed and notarized document. (Administrative Materials contain a model road access easement).

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

- vi. Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body.
- vii. Trees, brush and vegetation that interfere with sight paths for subdivision or driveway approaches need to be removed or cut back to provide a 25 foot clear vision triangle. No

materials over 36 inches in height are permitted within the clear vision triangle.

- viii. All areas disturbed during construction shall be revegetated by the subdivider with a weed free seed and fertilizer mix approved by the Weed Department. The subdivider shall address weed control during the revegetation process as noted in the Subdivision Noxious Weed & Revegetation Plan.
- ix. Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to address a public safety concern.
- x. Non-flammable street or road signs and traffic control devices of the size, shape and height as approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- xi. When required by the United States Postal Service, or the governing body, the developer must provide an off-roadway area for mail delivery. It shall not be the responsibility of the County to maintain or plow any mail delivery area constructed within a County road right-of-way.
- xii. All subdivision roads must have surfacing and maintenance programs in place that will eliminate or substantially reduce the potential for dust pollution.

c. Inspection and Certification

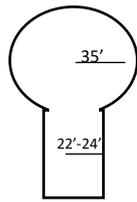
- i. All road construction shall be inspected by the County District Road Supervisor at the following designated stages:
 - A. Pre-construction;
 - B. Grub and Clear; (excavation, removal and disposal of topsoil, vegetation, roots, stumps, organic matter, frozen material, refuse, construction debris or other man-made items within top 12 inches of subgrade)
 - C. Base material and compaction; (roadway layout and shaping, deposit and spread material in uniform layer, add water if necessary and compact)
 - D. Final Acceptance (application of required material and finishing)
 - E. The Board Sanders County Commissioners reserve the right to require a professional engineer to provide construction observation and testing for roads and other improvements in areas of special concern.
- ii. Roadway improvements designed by and constructed under the supervision of a registered professional engineer shall, upon completion, be certified by the engineer as meeting the standards herein as a condition of final plat approval. The governing body may require a one-year warranty period on all subdivision road improvements.

TABLE 1: Road Design Standards for Subdivisions

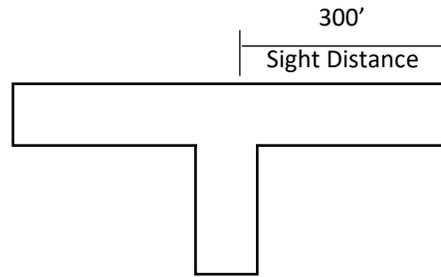
| <u>Minimum Design Standards</u> | <u>Collector</u> | <u>Local</u> | <u>Low</u> |
|---|------------------|--------------|------------|
| 1. Minimum right-of-way width | 60 ft. | | |
| a. level terrain | | 50 ft. | 50ft. |
| b. hilly terrain | | 60 ft. | 60ft. |
| 2. Minimum roadway width ¹ | 26 ft. | 24 ft. | 18ft. |
| 3. Minimum curb radius or edge of pavement at intersections | 25 ft. | 15 ft. | 15ft. |
| 4. Maximum grades | 8% | 9% | 9% |
| 5. Approaches onto Public Roads | | | |
| a. minimum sight distance | 200 ft. | 150 ft. | 150 ft. |
| b. minimum width | 76 ft. | 74 ft. | 68 ft. |
| c. maximum grade for 20' | 5% | 5% | 5% |
| 6. Curvature ² | | | |
| a. design speed | 30 mph | 20 mph | 20 mph |
| b. maximum curve | 23 | 53.5 | 53.5 |
| c. minimum radius | 249 ft. | 107 ft. | 107 ft. |
| 7. Cul-de-sacs/Turnarounds | | | |
| a. maximum road length | | 1000 ft. | 1000ft |
| b. cul-de-sac: minimum outside right-of-way radius | | 40 ft. | 40 ft. |
| c. cul-de-sac: minimum outside roadway radius | | 35 ft. | 35 ft. |
| d. "T" turnaround: backup lengths (2 required) | | 30 ft. | 30 ft. |
| 8. New bridges | | | |
| a. curb-to-curb widths | 26 ft. | 24 ft. | 18 ft. |
| b. design load capacity | 20 tons | 20 tons | 20 ton |
| c. vertical clearance | 15 ft. | 15 ft. | 15 ft. |

¹ Where parking will be permitted add eight feet on each side. A two foot shoulder is required on each side of roadway. Low Volume roads will require turnouts with location approved by road foreman.

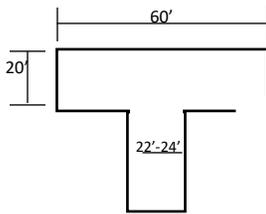
² Curvature is based on a super elevation of .02/ft.



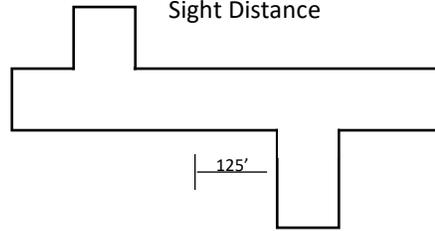
Cul-de-sac



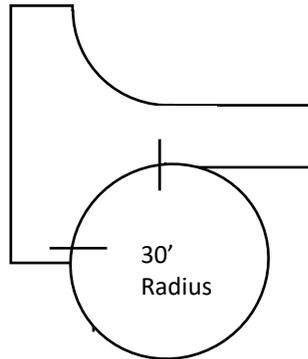
Sight Distance



Hammer Head



Intersection Offset



Curb Radius

OFF-SITE ROAD STANDARDS: Where primary access to the subdivision is to be provided by a road or roads not contained within the boundaries of the subdivision, access to the nearest publicly maintained road shall meet the following standards.

- (1) Right-of-way standards shall meet the standards of Section VI-G, Streets & Roads of these regulations.
- (2) Total improvements shall meet the standards of Section VI-G, Streets & Roads of these regulations.

VII-H. Drainage Facilities

- a. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be approved by the Montana Department of Environmental Quality.
- b. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- c. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.
- d. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate area and volume.
- e. Drainage systems must not discharge into any sanitary sewer facility.
- f. Grading and drainage systems must be designed and certified by a professional engineer or an individual familiar with DEQ stormwater design standards.
- g. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.
- h. Natural drainage ways shall be preserved except for necessary crossings in which the capacity of existing drainage ways shall be preserved. Drainage ways shall remain clear and open and shall not be obstructed with fences, structures, etc. Lots shall be arranged to preserve and maintain these drainage channels.
- i. During the construction of improvements in the subdivision, the subdivider shall be responsible for installing temporary erosion and sedimentation control facilities to control surface runoff. No silt laden water or excess shall flow to downstream areas or surface waters. Such controls shall be in accordance with acceptable best management practices.

VII-I. Water Supply Systems

- a. The proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the MDEQ and contained in the ARM 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Before the governing body will approve the final plat of a subdivision containing lots of less than 20

acres in size, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101 et seq., MCA.

- c. Any central water supply system must provide adequate and accessible water for fire protection.

VII-J. Sewage Treatment Systems

- a. The proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101 MCA.

VII-K. Solid Waste

- a. The proposed method of storing and disposing of solid waste generated within the subdivision must comply with the standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the Montana Department of Environmental Quality or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101 MCA.

VII-L. Utilities

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.
- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.

- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-wayline.
- f. Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.
- h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

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

VII-M. Water Course and Irrigation Easements [76-3-504(1)(k) MCA]

- a. Except as noted in b., below, the subdivider shall establish within the subdivision ditch easements that:
 - i. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - ii. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - iii. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
 - i. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - ii. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
 - iii. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider’s intention to remove the water right and shall document that intent,

when applicable, in agreements and legal documents for related sales transactions.

- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

VII-N. Disposition of Water Rights [76-3-504(1)(j), MCA]

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

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

VII-O. Park Land Dedication – Cash in Lieu – Waivers – Administration [76-3-621 MCA]

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 - i. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - ii. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
 - iii. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
 - iv. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- b. A park dedication is not required for:
 - i. first minor subdivisions;
 - ii. subdivision lots larger than five acres;

- iii. nonresidential subdivision lots;
 - iv. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
 - v. subdivisions which will create only one additional parcel.
- c. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.
- i. The governing body may not consider appropriate for park purposes the following:
 - A. a site less than 5 acres in size, except in cases of providing public access to water based recreation.
 - B. A site utilized in the past for industrial or other uses which could have hazardous waste implications.
 - ii. The governing body may consider the following highly desirable regardless of size:
 - A. Any area which is along a river, lake or provides public access to a water body;
 - B. Any area which is connected to and/or provides linkage to a trail system.
- d. The governing body will waive the park dedication requirement if it determines that:
- i.
 - A. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
 - B. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection VI-O(a);
 - ii.
 - A. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
 - B. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under a above 76-3-620(d); or
 - iii. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of

subparagraphs d (i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under subparagraph a.

- iv. A. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
- B. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection VI-O(a).
- e. The local governing body may waive the park dedication requirement if:
 - i. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
 - ii. The area of land to be subject to long-term protection, as provided in subsection (e)(i), equals or exceeds the area of dedication required under subsection VII-O(a).
- f. Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection VII-O(a) to a school district, adequate to be used for school facilities or buildings.
- g. The governing body will administer funds dedicated to the public under this section in accordance with section 76-3-621, MCA.
- h. For the purposes of this park dedication requirement:
 - i. “cash donation” means the fair market value of the unsubdivided, unimproved land; and
 - ii. “dwelling unit” means a residential structure in which a person or persons reside.

VII-P. Fire Protection [76-3-501(9)]

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forest land. To achieve this, subdivision proposals shall include the following:

- a. For subdivisions located in the WUI, the subdivider shall submit an assessment of the risk of wildfire hazards. The assessment shall include documentation of that risk signed by a representative of local fire district having authority, Montana Department of Natural Resources and Conservation, United States Forest Service, or other qualified person. Consideration may be given to wildfire hazard risk mapping found acceptable to the subdivision administrator.
- b. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.
- c. The presence of adequate firefighting facilities, including an adequate water supply and water distribution system available for emergency service providers to fight fires, and adequate emergency service vehicle access.

- d. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.
- e. Treatment of vegetation that poses a significant risk of wildfire ignition and spread.
- f. Maintenance provisions for any infrastructure such as water supplies, subdivision road signs and roadways.

VII-Q. Special Requirements for Subdivisions Proposed in Areas of High Wildfire Hazard

- a. For subdivisions identified as high wildfire hazard areas using the Sanders County Fire Risk rating Assessment form and/or current risk mapping, a Fire Prevention and Control Plan shall be required with the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan shall include the following items:
 - i. an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
 - ii. a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;
 - iii. a map of the areas that are to be thinned to reduce the interlocking canopy of trees and to provide defensible space around building sites, roads and driveways, fire breaks, and around fire suppression water supply systems;
 - iv. identification of roads, driveways, and bridges sufficient for emergency vehicle access and fire suppression activities. Slopes for all roads and driveways must be provided; and
 - v. plans for fire suppression water supply systems in accordance with (i) below.
- c. At least two entrance-exit roads must be provided to assure more than one escape route for residents and access routes by fire fighting vehicles. Bridges must be built to a design load of 25 tons, and must be constructed of non-flammable materials. Road rights-of-way must be cleared of slash.
- d. Building sites must be prohibited on slopes greater than 25 percent and at the apex of “fire chimneys” (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes) As a condition of preliminary approval, no-build zones may be required to be depicted on the final plat with restrictions on the final plat, conditions of approval sheet, and/or covenants outlining restrictions for the no-build zones.
- e. The Fire Prevention and Control Plan shall be implemented before approval of the final plat, and shall be considered part of the subdivider’s obligations for land development. The local fire chief, or designee, shall inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan shall not be considered fully implemented until the fire chief has given written notice to the subdivision administrator that the Plan was completed as approved by the Sanders County Commissioners.
- f.- In subdivisions or planned unit developments, provisions for the maintenance of the Fire

Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A homeowners' association shall be formed and named as a beneficiary of such covenants, conditions, and restrictions.

- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by the fire district in which the project is located. In the absence of such standards, the subdivider must at least provide the following for effective fire control:
 - i. A municipal or central water system with minimum water delivery rates as determined by the local fire district. Fire Districts may set required water delivery rates according to standards adopted by the local fire district, or may rely upon industry standards, such as those found in NFPA 1142. In any case, the minimum water delivery rate for central water systems shall not be less than 250 gallons per minute (NFPA 1142, Sec 4.6.3) or
 - ii. Where no municipal or central water system exists, cisterns, reservoirs or fill ponds, or a dry hydrant system with a water source for drafting must be provided at appropriate locations, to include a viable water source, with the following minimum capacities:
 - a. A central water system with a minimum flow of 1,000 gallons per minute;
 - b. Where no central water system exists, cisterns, reservoirs or fill ponds must be provided at:
 - 1. For one dwelling unit: minimum capacity of 2,500 gallons;
 - 2. For two to five dwelling units: minimum capacity of 5000;
 - 3. For six or more dwelling units: minimum capacity of 1,000 gallons per dwelling unit, but not required to exceed 30,000 gallons per stored water source in any location. Multiple locations may be required to provide for better distribution.
 - 4. In lieu of providing a water source and upon approval of the firefighting agency the county commission will consider a \$500.00 per lot contribution deposited into a revenue account established for each fire district to be used for the provision of water sources for initial fire suppression.
 - 5. For non-residential land uses, refer to NFPA 1142.
 - iii. Dry hydrant systems shall be designed and constructed to standards determined by the local fire district. Fire districts may rely upon industry standards, such as those found in NFPA 1142. In any case, all dry hydrant systems shall be designed and constructed to provide a minimum flow of 1,000 gallons per minute at draft on a year-round basis (NFPA 1142, Sec. 8.3) and minimum depths of water sources shall be based on the 50-year drought level (NFPA 1142, Sec 8.5).

Locations of water system delivery points (hydrants, dry hydrants or other fill points) shall be determined based on consultation with the local fire district. Delivery points shall be located within one road mile of each driveway access point and easily accessible by fire department water tenders and be approved by the local fire district.

VII-R. Noxious Weeds

A weed control plan shall be developed and implemented for every new subdivision. An agreement with the Sanders County Commissioners shall be signed and implemented by the subdivider, and the Weed Plan must be recorded with the final plat.

VIII. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLE (RV) OR MOBILE HOMES (MH) 76-3-103(16)

VIII-A Definition

VIII-A-1. General

A subdivision includes an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles (RV) or mobile homes (MH) will be placed. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Spaces which are designated through this process as being for rent or lease do not result in a division of land whose title can be conveyed. However, if necessary, the perimeter of the RV or MH Park and any part of the parent tract outside of the perimeter are considered lots in a subdivision whose titles can be conveyed and must be reviewed pursuant to these regulations.

VIII-A-2. Specific

a. Recreational Camping Vehicles

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

b. Mobile Homes

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

c. Preliminary site plan

A conceptual plan of a subdivision providing multiple spaces for rent or lease that is submitted at the time of preliminary plat application showing at minimum the boundaries of the subject parcel, the location of spaces, pads, roads, storage areas, parking areas, location of common areas and facilities, location of parks and/or recreation areas if required, and any other information deemed necessary by the governing body.

d. Final site plan

A site plan of a subdivision providing multiple spaces for rent or lease that is submitted at the time of final plat application showing at minimum the location of spaces, pads, roads, storage areas, parking areas, location of common areas and facilities, location of parks and/or recreation areas if required, and any other information deemed necessary by the governing body. The final site plan shall be submitted with the final plat.

VIII-B Review and Approval

Subdivisions which will create multiple recreational vehicle or mobile home spaces for lease or rent must meet the requirements of the MSPA, requiring both a plat if the recreational vehicle/mobile home park does not occupy the entire parent tract/parcel and a plan. They must be submitted for review and approved by the governing body before spaces may be rented or leased.

a. Submittal

- i. The subdivider shall submit a completed application in accordance with Section II-A-5;
- ii. A preliminary plat or survey of the tract/parcel;
- ii. In addition applications for MH and RV parks shall submit a preliminary site plan, drawn to scale showing the following:
 - A. A layout of all spaces, buildings or structures proposed;
 - B. location and dimension of internal roads;
 - C. location of storage areas, garbage collection areas, and parking areas;
 - D. location of common areas and facilities;
 - E. location of parks and/or recreation areas if required; and
 - F. any additional information required by the governing body.

b. Preliminary Review of the Mobile Home/Recreational Vehicle plan

The procedure used to review subdivisions for mobile home and recreational vehicle parks will depend on the number of spaces within the proposed subdivision.

- i. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Section IV of these regulations.
- ii. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section III of these regulations.

c. Final Review

i. Plat

The applicant shall submit an application for final plat review showing the perimeter of the proposed park if there is a remainder portion of the parent tract/parcel or if any additional lots are being

created. If the proposed park consists of an entire existing tract/parcel that survey may suffice.

ii. Plan

The applicant shall submit a final site plan, showing the following:

- A. A layout of all spaces, buildings or structures proposed;
- B. location and dimension of internal roads;
- C. location of storage areas, garbage collection areas, and parking areas;
- D. location of common areas and facilities;
- E. location of parks and/or recreation areas if required; and
- F. any additional information required by the governing body or to meet conditions of preliminary approval.

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

VIII-C. DPHHS License

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

VIII-D. Design Standards for Mobile Home and Recreational Vehicle

Mobile home and recreational vehicle parks must comply with all applicable provisions of Section VII, Design and Improvements Standards.

VIII-D-1 General Design Standards

- a. dedicated road right-of-ways or easements are not required within Mobile Home and Recreational Vehicle Parks.
- b. One-way roads must have a driving surface of at least 15 feet; two – way roads must have a driving surface of at least 24 feet.
- c. Streets must be designed to provide safe access to public roads and be addressed by Sanders County Rural Addressing where access enters Mobile Home or Recreational Vehicle Park.

VIII-D-2. Additional Provisions

The governing body may require provision for:

- a. storage facilities on the lot or in compounds located within a reasonable distance;
- b. a central area for storage or parking of boats, trailers, or other recreational vehicles;
- c. vegetative screening or fencing may be required along perimeters that abut a highway or residential area.
- d. an off-street area for mail delivery; and
- e. any lighting used to illuminate signs, parking areas or driving surfaces shall be arranged as to confine the direct light beams to the lighted property or driving surface by appropriate directional hooding.
- f. fire response plan and water supply of sufficient volume for effective fire control as approved by the local rural fire district or qualified authority.

VIII-E. Mobile/Manufactured Home Park Standards

VIII-E-1. Mobile/Manufactured Home Spaces

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

parking may be provided.

- k. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
- l. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

VIII-E-2. Streets

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

VIII-E-3. Electrical Systems

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

VIII-E-4. Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the appropriate provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- c. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. Such valve must not be located under a mobile home. Whenever the mobile/manufactured home lot outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

VIII-F. Recreational Vehicle Park Standards

VIII-F-1. Roads

Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.

VIII-F-2.-Spaces

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces. Spaces shall be numbered and be numbers be visible at the space access point.

- b. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- c. All recreational vehicle spaces must be located at least 25 feet from a public street or highway rights-of-way.

VIII-F-3. Density

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

IX. PLANNED UNIT DEVELOPMENTS

IX-A. Purpose

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

IX-B. Procedures

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

- IV. Major Subdivisions
- II-B. Applicable sections for Final Plats

IX-C. Standards

IX-C-1. Design Standards

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

IX-C-2. Streets

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

IX-C-3. Open Space

Each PUD must comply with the requirements of subchapter VII-O of these regulations. The open space must be:

- a. Held in common ownership by a property owners’ association; or

- b. Dedicated to public use, if acceptable to the governing body; or
- c. A combination of “a” or “b” above.

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

X. CONDOMINIUMS

IX-A. Procedures

Unless exempted by section 76-3-203 MCA, all condominium, townhome, townhouse or conversions developments are subdivisions subject to the terms of the Montana Subdivision and Platting Act as follows:

X-A-1. Review Where Land Will Not Be Divided

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

X-A-2. Condominium Subdivisions Involving Land Divisions

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

IV. Review and Approval Procedures for Minor or Major Subdivisions

II. Applicable sections for Final Plats.

X-B. Standards

X-B-1. Design Standards

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

X-B-2. Unit Ownership Act

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

XI. ADMINISTRATIVE PROVISIONS

XI-A. Variances

XI-A-1. Variances Authorized

The governing body may grant variances from Chapter VII, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not

be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The County Commissioners will conduct a public hearing on any variance request for all major subdivisions prior to taking action on the preliminary plat application.

Such variances must not have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that:

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

XI-A-2. Variances from Floodway Provisions Not Authorized

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

XI-A-3. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance and the facts of hardship upon which the request is based. The Sanders County Commissioners shall consider each requested variance at the public meeting or hearing on the preliminary plat.

XI-A-4. Conditions

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

XI-A-5. Statement of Facts

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

XI-B. Amendment of Regulations

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

XI-C. Administration

XI-C-1. Enforcement

Except as provided in 76-3-303 MCA, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel

compliance with all provisions of the Montana Subdivision and Platting Act and these regulations. The cost of this action shall be imposed against the party not prevailing.

XI-C-2. Violation and Penalties

Any person, firm, corporation, or other entity that violates any of the provisions of the Montana Subdivision and Platting Act or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the Montana Subdivision and Platting Act or these regulations shall be deemed a separate and distinct offense.

XI-C-3. Appeals

A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in 76-3-625 MCA.

Definitions

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

ABUT: to physically touch or border upon; or share a common property line.

ACCESS, LEGAL: means that the road abuts a public easement or right-of-way or a private easement that provides the right of access to the lot from a public road.

ACCESS, PHYSICAL: means that a road conforming to local development standards provides access.

ADJACENT LANDOWNER: The owner of record of a parcel of land that is lying near or close to land included within the boundaries of a preliminary plat.

ADJOINING LANDOWNER: The owner of record of a parcel of land that is immediately contiguous at any point with land included within the boundaries of a preliminary plat. .

AGRICULTURE: Montana Code Annotated contains definitions for the words "agriculture" and "agricultural" as follows:

41-2-103, MCA. Definitions. As used in this part, the following definitions apply: (1) "Agriculture" means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

81-8-701, MCA. Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) "Agricultural and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

AGRICULTURE WATER USERS FACILITIES: those facilities which provide water for agricultural land as defined in 15-7-202, MCA, or which provide water for the production of agricultural products as defined in 15-1-101, MCA including but not limited to ditches, pipes, and head gates.

AVERAGE DAILY TRAFFIC (ADT): means the average number of vehicles crossing a specific point on a roadway during a 24-hour period.

BASE FLOOD ELEVATION (BFE):

BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries, a tract or parcel of land bounded by public streets, streams, railroads, platted or unplatted lands or a combination thereof.

BICYCLE: means a device propelled exclusively by human power upon which any person may ride, having either a single wheel or two (2) or three (3) wheels.

BIKEWAY: means any road, street, path, lane or way which is specifically designated in the approved transportation plan as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations that conforms to ARM 24.183.1104.

COMPREHENSIVE PLAN, Growth Policy, or Master Plan: Defined in Section 76-1-103, MCA, as a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation and of other related matters.

CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units.

COVENANT: An agreement, in writing, of two or more parties by which any of the parties pledges to the others that something is done or shall be done.

COVENANT OR DEED RESTRICTION: means an agreement or restriction of two (2) or more parties, by deed in writing, by which either of the parties pledges himself or herself to the other.

DATE OF SUBMISSION: The date at which the preliminary plat, all required supplementary information and fees is received and certified as complete by the Land Services Department.

DATE OF PRESENTATION: The date at which the major plat all required supplementary information and fees is received and certified as complete by the Land Services Department

DEDICATION: The deliberate appropriation of land by an owner for any general and public use, reserving no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3) MCA]

DEQ: The Montana Department of Environmental Quality.

DESIGNATED AGENT: means the Sanders County Land Services Director.

DETENTION BASIN: A man-made or natural water collector facility designed to collect surface and sub-surface water in order to impede its flow and to release the same gradually at a rate not greater than that prior to the development of the property into natural or man-made outlets.

DIRECTOR: shall mean the county land services director, or designated representative, who is vested with the duty of administering subdivision and platting regulations within the unincorporated areas of the county.

DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the Montana Subdivision and Platting Act. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4)]

MCA]

DRAINAGE: The removal of surface water or groundwater from land by drains, grading, or other means.

DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one family.

EASEMENT: A right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the owner. Authorization by a property owner for another to use the owner's property for a specified purpose.

ENGINEER (REGISTERED PROFESSIONAL ENGINEER): 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.

ENVIRONMENTAL ASSESSMENT: A written report that documents the environmental, social, cultural impacts and consequences of a proposed development project, as required in 76-3-603 MCA. A subdivision environmental assessment is not the equivalent of environmental assessments/impacts under Montana Environmental Protection Agency (MEPA).

ENVIRONMENTAL CONSTRAINTS: Features, natural resources or land characteristics that are sensitive to improvements and may require conservation measures or the application of creative development techniques to prevent degradation of the environment or may require limited development, or in certain instances may preclude development.

FIRE CHIMNEY'S: Topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes.

FIRE RESPONSE PLAN: Identifies infrastructure for fire suppression to remain clear of obstructions, safe navigation of entrance/exit by fire response vehicles and park customers and anything else determined necessary for efficiency of response and evacuation in the event of a fire.

FIRST MINOR SUBDIVISION: A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, Montana Subdivision and Platting Act, 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.

FLOOD: The water of any watercourse or drainage, which is above the bank or outside the channel and banks of such watercourse, or drainage. [76-5-103(8) MCA]

FLOOD HAZARD AREA: The area at and below the base flood elevation

FLOOD OF 100 YEAR FREQUENCY: A flood magnitude expected to recur on the average of one every 100 years, or a flood magnitude, which has a one percent chance of occurring in any, given year. [76-5-103(9) MCA]

FLOODPLAIN: The area adjoining the watercourse or drainage, which would be covered by the floodwater of a flood of 100 year frequency. [76-5-103(10) MCA]

FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel, which are reasonably required to carry and discharge the floodwater of any watercourse or drainage. [76-5-103(11) MCA]

FOREST LAND: means contiguous land of 15 acres or more, in one ownership, that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. [15-44-102(5) MCA]

NFPA: National Fire Protection Association and/or reference to documents published by that agency.

GROWTH POLICY, Comprehensive Plan, or Master Plan: Defined in Section 76-1-103, MCA, as a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation and of other related matters.

GOVERNING BODY: The Board of Commission of Sanders County.

IMPROVEMENT AGREEMENT: A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.

LANDOWNER: All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.

LIMITED ACCESS: A way or means of allowing physical entrance to land at controlled locations or points. A no-access easement may be placed on a plat as a means of limiting access.

LOCAL SERVICES: Any and all services or facilities that local government entities are authorized to provide. [76-3-510 MCA]

LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.

LOT MEASUREMENTS:

- a. Lot Depth: The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width: The average width of the lot.
- c. Lot Frontage: The width of the front lot line.
- d. Lot Area: The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way.

LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.

- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access, a drive connecting it to the street.

MAJOR SUBDIVISION: A subdivision that creates six or more lots.

MASTER PLAN: means the same as "comprehensive plan", or "Growth Policy," when used within this chapter.

MCA: Montana Code Annotated

MINOR SUBDIVISION: A subdivision containing five or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds.

MOBILE (MANUFACTURED) HOME: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers" and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

MOBILE (MANUFACTURED) HOME SPACE: A designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

MOBILE (MANUFACTURED) HOME PARK: A tract of land providing two or more mobile home lots for lease or rent to the general public.

MOBILE (MANUFACTURED) HOME PAD: That area of a mobile home lot which has been prepared for the placement of a mobile home.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS: Minimum standards as set forth by the Montana Department of Environmental Quality, adopted pursuant to Title 76, Chapter 4, Part I, MCA.

MONUMENT (PERMANENT MONUMENT): Any structure of masonry, metal, or other permanent material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

MSPA: Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.

NATURAL ENVIRONMENT: The physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, noise, and objects of historic or aesthetic significance.

NO BUILD ZONE: An area in which no building or structure may be constructed or otherwise placed. A No build Zone is generally intended to mitigate potentially adverse impacts.

OPEN SPACE: An undeveloped land or water area devoid of buildings except where accessory to the provision of recreation.

OVERALL DEVELOPMENT PLAN: The plan of a subdivision design for a single tract proposed to be subdivided by stages.

PHASED DEVELOPMENT: A subdivision application and preliminary plat that at the time of submission consist of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

PLANNED UNIT DEVELOPMENT (P.U.D.): A land development project consisting of residential clusters, industrial parks, shopping centers, office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in a common ownership or use.

PLAT: A graphic representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications. [76-3-103(11) MCA]

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body. [76-3-103(12) MCA]
- b. Final Plat: The final drawing of the subdivision and dedication required to the prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. [76-3-103(6) MCA]
- c. Amended Plat: The final drawing of any change to a platted subdivision filed with the county clerk and recorder required to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in these regulations and the Subdivision and Platting Act. (Title 76, Chapter 3, MCA)
- d. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.

PRE-APPLICATION SKETCH (OR DRAWING): A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision, all as more particularly set forth in section II-A-4(c).

PRIVATE IMPROVEMENT: Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

PRIVATE ROAD: A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.

PROPERTY OWNER: Any person, firm, corporation or other entity shown as being legal owner of a tract, parcel or lot in the records of the County Clerk & Recorder.

PUBLIC HEALTH AND SAFETY: A condition of optimal well-being, free from danger, risk, or injury for a

community at large, or for all people, not merely for the welfare of a specific individual or a small class of persons.

PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public such as parks, streets and roads, sidewalks, curbs and gutters, street lighting, utilities and systems for water supply, sewage disposal and drainage.

PUBLIC PURPOSES: Any structure or facility constructed or use to serve the general public such as parks, streets and roads, satellite fire stations, libraries, utilities and systems for water supply, sewage disposal and drainage.

PUBLIC ROAD OR STREET: A dedicated right-of-way or public road easement. A road or street for which a municipality, county or a state or federal agency has maintenance responsibility

PUBLIC UTILITY: Any person, firm, corporation, municipal department, or board duly authorized to furnish and furnishing under state or municipal regulations to the public, electricity, gas, steam, communication, telegraph, transportation, wastewater or water. [76-3-103(13) & 7-1-13(22)(23) MCA]

RECREATIONAL CAMPING VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

RECREATIONAL VEHICLE PAD: A designated location in a Recreational Vehicle Space that identifies where recreational vehicles must park during occupation.

RECREATIONAL VEHICLE PARK: A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers or automobiles for transient dwelling purposes.

RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

RIGHT-OF-WAY: A strip of land dedicated or acquired for use as a public way by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water lines, sanitary sewer lines, storm sewer lines or other similar uses.

ROADWAY: That portion of the road right-of-way which is improved or is proposed to be improved to carry traffic.

STATE: State of Montana.

STREET TYPES: For purposes of these regulations, street types are defined as follows:

- a. Alley: A minor rights-of-way, which are used primarily for vehicular service, access to the

- back or side of properties otherwise abutting on a street.
- b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
 - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
 - d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
 - e. Low Volume: A road servicing 3 or fewer residential lots with no possibility of further subdivision.
 - f. Driveways: A private vehicular access serving no more than 2 lots.
 - g. Emergency Access: Vehicular access designed and intended to provide a second access for emergency service providers.
 - h. Half-Street: A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.
 - i. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
 - j. Loop: A local street, which begins and ends on the same street, generally used for access to properties.
 - k. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
 - l. Rural Lane: a road serving a very low density area. The maximum A.D.T. limits the number of single family homes on this road to 20.

SUBDIVIDER: Any person, firm or corporation, or other entity that causes land to be subdivided or who proposes a subdivision of land.

SUBDIVISION means 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 or possession of the parcel may be sold or otherwise transferred and includes any resubdivision 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.

SUBDIVISION ADMINISTRATOR: The authorized agent who performs the duties of review and administration set forth in these regulations.

SUBDIVISION GUARANTEE: A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.

SUBSEQUENT MINOR SUBDIVISION: Any subdivision of five or fewer parcels that is not a first minor subdivision.

SURVEYOR (REGISTERED LAND SURVEYOR): A person licensed in conformance with the Montana Professional Engineer's Registration Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

SURVEYOR (EXAMINING LAND SURVEYOR): A registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing. [76-3-103(5) MCA]

SWALE: A drainage channel or depression designed to direct surface water flow.

TOPOGRAPHY: General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

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.

TRACT: Land area proposed to be subdivided. An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office. [76-3-103(17)(a), MCA]

TRACT OF RECORD: A parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office. [76-3-103(16), MCA]

TRAFFIC CONTROL DEVICES: shall mean all of, but shall not be limited to, the following:

1. Street name signs
2. Regulatory signs
3. Warning signs
4. Pavement markings
5. Channelization
6. Traffic signals
7. Guard rail

TRANSPORTATION PLAN: shall mean the county transportation plan, or any modification which may exist and has been adopted by the county commissioners.

VICINITY SKETCH: A map at a scale suitable to locate the proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.

WATERCOURSE: Any natural stream, river, creek, drainage waterway, gully, ravine or wash in which water flows either perennially or ephemeral and has a definite channel bed and banks and includes any area adjacent therefore subject to inundation by overflow. The term watercourse shall not be construed to mean any facility created exclusively for the conveyance of irrigation water.

WELL ISOLATION ZONE: Area within a 100 foot radius of a water well.

WILDLAND URBAN INTERFACE OR WUI: The line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels. [ARM 24.321.301(1)(i)]

WILDLIFE: Living things, which are neither human nor domesticated.

WILDLIFE HABITAT: Place or type of site where wildlife naturally lives and grows.