

SUBDIVISION
REGULATIONS
FOR
MINERAL COUNTY
AND
THE TOWNS OF
ALBERTON AND
SUPERIOR MONTANA

EFFECTIVE
JUNE 30, 2011

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General Terms. Terms used throughout these Regulations are abbreviated as follows:

1. Montana Subdivision and Platting Act: *MSPA*
2. Mineral County Clerk and Recorder: *Clerk and Recorder*
3. Mineral County Commission: *County Commission or Commission*
4. Mineral County: *County*
5. Mineral County Attorney: *County Attorney*
6. Mineral County District Court: *District Court*
7. Mineral County Health Department: *MCHD*
8. Montana Department of Environmental Quality: *MDEQ*
9. Montana Department of Transportation: *MDT*
10. Natural Resources Conservation Services: *NRCS*
11. County, City-County planning boards as established under Title 76, Chapter 1, MCA: *planning board*
12. Various planning departments throughout Mineral County: *planning department*
13. Mineral County Subdivision Regulations: *Regulations*
14. Mineral County Road and Bridge Department: *Road Department*
15. Mineral County Road and Bridge Superintendent: *Road Superintendent*
16. Mineral County Treasurer: *Treasurer*
17. United States Geological Survey: *USGS*
18. Mineral County Weed Control Department: *Weed Department*
19. American Association of State Highway and Transportation Officials: **AASHTO**
20. Traffic Impact Study: **TIS**
21. Right-Of-Way: **ROW**
22. Manual on Uniform Traffic Control Devices: **MUTCD**

List of Appendices

- A. Subdivision Plat Application
- B. Final Plat Application Form
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- D. Subdivision Improvements Agreement
- E. Grant of Access Easement
- F. Uniform Standards for Final Subdivision Plats
- G. Subdivision Exemption Claim Application Form

DEFINITIONS

1. **ACCESS (LEGAL AND PHYSICAL):** Legal access means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has dedicated the easement or private road for public use. Physical access means that a street or road conforming to the subdivision design standards provides vehicular access to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which are dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.
2. **ADDRESS IDENTIFICATION NUMBER:** The posted numbers used to identify property addresses. It is important that address numbers be clearly visible for the efficient provision of delivery and emergency services.
3. **ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.
4. **ADT:** Average daily trips made by vehicles in a 24-hour period on a non-holiday weekday. ADT may be determined through traffic counts or a trip generation publication by the Institute of Transportation Engineers or another source deemed credible by the subdivision administrator.
5. **AGRICULTURE:** All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing or harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
6. **AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, headgates, pipes, and other water conveying facilities.
7. **AS-BUILTS:** The drawings and specifications that describe the actual layout, location, structures, materials, and systems of a building or property.
8. **BLOCK:** A group of lots, tracts or parcels within well-defined and fixed boundaries.
9. **BUILDING SETBACK LINE:** An imaginary line establishing the minimum distance that primary and accessory structures may be located from lot lines, street rights-of-way, natural drainages, or other physical or legal boundaries.
10. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

11. **CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].
12. **COMMON OPEN SPACE OR AREA:** Undeveloped land within a subdivision that has been designated, dedicated, reserved, or restricted in perpetuity from further development and is set aside for the use and enjoyment by residents of the development. Common open space shall not be part of individual residential lots. It shall be substantially free of structures, but may contain historic structures and archaeological sites, and/or recreational facilities for residents, including but not limited to, meeting rooms, benches, picnic tables, and interpretive signage as indicated on an approved development plan.
13. **COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY:** A comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.
14. **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, pursuant to Title 70, Chapter 23, MCA.
15. **CONSERVATION EASEMENT:** A voluntary restriction of land use, particularly with respect to residential development. A landowner may sell or donate a conservation easement to a public or private entity.
16. **CONSTRUCTION:** Cutting, moving and filling of earthen material that result in a travel-way for motorized and nonmotorized vehicles or the site for structures.
17. **COUNTY ROAD:** Any public road or road easement that is an existing county roadway or easement, or is dedicated by a subdivider to the county on a plat approved by the County Commissioners, or is approved by other official action. A county road includes a public road easement, drainage facilities and utility easements, and must be accepted by the County Commissioners pursuant to Title 7, Chapter 14, Part 26 of the MCA.
18. **COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed or other document that restricts or regulates the use of the real property.
19. **CUL-DE-SAC:** A road having only one outlet for vehicular traffic and terminating in a turn around area. (See Section 6 - Table One and Road Diagram One)
20. **CUT AND FILL:** The excavation of material in one place and depositing of it as fill in an adjacent place.
21. **DAYS:** Consecutive calendar days, unless otherwise specifically designated. Working days are days, exclusive of weekends or legal holidays.
22. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and

enjoyment of the public use to which the property has been devoted [76-3-103(3), MCA].

23. **DEFENSIBLE SPACE:** A designated area around a home or other structure the size of which is dependent on vegetation, proximity of tree crowns, slope and distance to adjacent buildings. Within this area all weeds, dry grass, slash, flammable debris and flammable fuel is removed. This managed buffer surrounding buildings and structures is designed to reduce the chances of a fire spreading to or from the building or structures.

24. **DEQ:** The Montana Department of Environmental Quality.

25. **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].

26. **DRIVEWAY:** A private route, typically for motor vehicles, connecting a single dwelling unit and/or garage with a public road.

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

28. **EASEMENT:** Authorization by a property owner for another to use, or restriction on the right of the owner to use, the owner's property for a specified purpose.

29. **EMERGENCY SERVICES:** Community services such as fire protection, law enforcement, ambulance service, quick response, search and rescue, and flood and disaster relief. Emergency services are generally provided by local governments or private, nonprofit organizations.

30. **ENGINEER (REGISTERED PROFESSIONAL ENGINEER):** A person licensed by the Montana Board of Professional Engineers and Professional Land Surveyors (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.

31. **EXAMINING LAND SURVEYOR:** The Professional Registered Land Surveyor duly appointed by the governing body to review surveys and plats submitted for filing, as required by MCA 76-3-103.

32. **FIRST MINOR SUBDIVISION:** A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].

33. **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].

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

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

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

37. GOVERNING BODIES: For purposes of these regulations the following governing bodies are organized pursuant to Montana law [76-3-103 (7), MCA]:

- a. The Board of County Commissioners of Mineral County, hereinafter referred to as “County Commissioners.”
- b. The Town Council for the Town of Alberton, hereinafter referred to as “Alberton Town Council.”
- c. The Town Council for the Town of Superior, hereinafter referred to as “Superior Town Council.”

38. GROWTH POLICY: An official public document adopted and used by a local government as a general guide for development and conservation decisions. It is not a regulation; rather, it is an official statement of public policy to guide growth and change. The required and optional elements of a growth policy are listed in Title 76, Chapter 1, Part 6, MCA.

39. GUESTHOUSE: A second dwelling on a parcel that is clearly subordinate to the principal dwelling, which provides temporary, transitory housing for guests who do not provide compensation.

40. HEALTH AUTHORITIES: Montana Department of Environmental Quality and/or the Mineral County Environmental Health and Planning Department.

41. HILLSIDE LAND: A slope with a grade over 25 percent (25%).

42. 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.

43. INDUSTRIAL USE: The activities predominantly connected with manufacturing, assembling, processing, or storing of products.

44. 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.

45. LOCAL FIRE AUTHORITY: A local fire district, fire service area, or the county fire marshal.

46. LOCAL SERVICES: Any and all services that local governments or public or private utilities are authorized to provide for the benefit of their citizens.

47. LOCATION MAP: A small scale map showing the location of a tract in relation to a larger land area.

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

49. LOT MEASUREMENTS:

a. Lot Depth -- The length of a line drawn perpendicular to the front lot line and extending to the rear lot line.

b. Lot Width -- The average width of the lot.

c. Lot Frontage -- The width of the front lot line.

d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

50. LOT TYPES:

a. Corner Lot: A lot located at the intersection of two streets.

b. Interior Lot: A lot with frontage on only one street.

c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.

d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

51. MAJOR SUBDIVISION: A subdivision which contains six or more lots and does not qualify for review as a minor subdivision.

52. MATERIAL (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria, bringing the proposal out of conformance with the Growth Policy for Mineral County and the Towns of Alberton and Superior or any adopted zoning or subdivision regulations.

53. MINOR SUBDIVISION: A subdivision containing five or fewer parcels where proper access to all lots is provided, no land in the subdivision will be dedicated to public use for parks or playgrounds, and the subdivision is eligible for review under 76-3-609, MCA.

54. MITIGATE: To ameliorate, alleviate, or avoid to the extent reasonably feasible.

55. 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

International Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

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

57. **MOBILE (MANUFACTURED) HOME PARK:** A tract of land that provides or will provide spaces for two or more mobile homes.

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

59. **MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS:** Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.

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

61. **MOTOR COACH COMMUNITY:** A subdivision that creates individual lots to facilitate Class A motor coaches which is typically served by public water and sewage treatment systems. Restrictive covenants will specify the type of motor coach that can utilize the lot.

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

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

64. **OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

65. **ORIGINAL TRACT OF RECORD:** A tract of land existing as of July 1, 1973.

66. **OVERALL DEVELOPMENT PLAN:** The plan of a subdivision design for a single tract proposed to be subdivided in stages or phases.

67. **PHASED DEVELOPMENT:** A development which is designed to be completed, one defined geographic area (phase) at a time, with each phase standing on its own in terms of access, circulation, utilities, parks and open space, and so on, in the event subsequent phase areas are delayed or cancelled.

68. **PLANNED UNIT DEVELOPMENT (PUD):** 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.

69. **PLANNER:** The person designated by the County Commissioners or town councils to receive, review, make recommendations and coordinate the approval or disapproval of all subdivision plans under the jurisdiction of Mineral County, hereinafter referred to as the “Planner.”

70. **PLANNING BOARD:** Mineral County Planning Board formed pursuant to Title 76, Chapter 1, MCA, hereinafter referred to as the “Planning Board.”

71. **PLAT:** A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

a. **Preliminary Plat:** A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the Montana Subdivision and Platting Act (MSPA).

b. **Final Plat:** The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. (Title 76, Chapter 3, MCA).

c. **Amended Plat:** The final drawing of any change to a filed platted subdivision, or any lots within a file platted subdivision.

d. **Vacated Plat:** A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.

72. **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 2.1.4.2.

73. **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.

74. **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.

75. **PUBLIC HEALTH AND SAFETY:** The prevailing healthful, sanitary condition of well-being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.

76. **PUBLIC HEARING:** A meeting or part of a meeting held by the governing body or its agent to solicit public testimony on a subdivision application or other action of the governing body or its agent.

77. **PUBLIC IMPROVEMENT:** Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.

78. **PUBLIC ROAD OR STREET:** A road or street is public if its right-of-way has been dedicated or acquired for public use.

79. **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. The term includes but is not limited to travel trailers, camping trailers, truck campers, and motor homes.

80. **RECREATIONAL VEHICLE PARK:** A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.

81. **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.

82. **RESIDENTIAL USE:** Any land use that provides for living space. Examples may include single family, multifamily, special residences, and mobile home park.

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

84. **RIGHT-OF-WAY:** A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, nonmotorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

85. **RIPARIAN AREA:** Defined by the University of Montana's Riparian and Wetland Research Program as the "green zone" which lies between channels of flowing water and uplands, and which serves several functions, including the following: water storage and aquifer recharge; filtering of chemical and organic wastes; sediment trapping; bank building and maintenance; flow energy dissipation; and primary biotic production. Riparian areas provide important habitat for many species of wildlife.

86. **RUNOFF:** That part of precipitation that flows off the land without filtering into the soil or being absorbed by plant material.

87. **SETBACK:** The horizontal distance required between the public right-of-way or property line (whichever is closest) and the building line.

88. **STATE:** The State of Montana.

89. **STREETS:** Also means roads.

90. **STREAM:** A body of running water (as a river or creek) flowing on the earth.

- a. **Ephemeral stream:** A stream that flows infrequently, usually only following precipitation events or snowmelt. This would include many gullies, coulees, and draws.
- b. **Intermittent stream:** A stream that flows more often than not, but may not flow a good portion of the time in some reaches. For instance, during the late summer there may be flow in some sections of an intermittent stream, and no flow in other reaches where water seeps into the stream bottom at a higher rate.
- c. **Perennial Stream:** A stream that typically flows all year for its entire length, although stretches may go dry during periods of extreme drought.

91. **STREAM BUFFER ZONE:** A portion of the stream setback that is designated to remain undisturbed. A buffer zone is not an additional setback distance. A buffer zone is an area where all natural vegetation, rocks, soil, and topography shall be maintained in their original state, or enhanced by the additional planting of native plants.

92. **STREAM SETBACK:** The horizontal distance from the ordinary high watermark within which the structures and uses defined in these regulations are not allowed. Setback and buffer distances are measured on a horizontal plane.

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

- a. **Alley:** A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.
- b. **Arterial:** A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
- c. **Collector:** A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
- d. **Local Streets:** A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
- e. **Half-Street:** A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- f. **Cul-de-sac:** A street having only one outlet for vehicular traffic and terminating in a turnaround area.
- g. **Loop:** A local street which begins and ends on the same street, generally used for access to properties.
- h. **Frontage Access (Service Road):** A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

94. **SUBDIVIDER:** Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed

or its agent, or the landowner's agent, if the landowner has provided the Planner written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

95. **SUBDIVISION:** A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple spaces for recreational camping vehicles or mobile homes [76-3-103(16), MCA].

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

97. **SURVEYOR (REGISTERED LAND SURVEYOR):** A person licensed by the Montana Board of Professional Engineers and Professional Land Surveyors (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

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

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

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

101. **TOWN HOUSE LOT:** Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.

102. **TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Mineral County Clerk and Recorder's Office, hereinafter referred to as the "County Clerk" [76-3-103(17)(a), MCA].

103. **UTILITIES:** Facilities serving the public by means of a network of wires, drainage ditches or pipes, and ancillary structures. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, as well as the disposal of sewage. County or consolidated town and county water or sewer districts may be defined as public utilities.

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

105. **WATERCOURSE:** A natural depression or channel that gives direction to a current of water at any time of the year. This could be a stream or gully, for example, that water flows towards and then through, in a prescribed path.

106. **WATERSHED:** When rain or snow falls on an area of land, it eventually runs downhill until it reaches a stream. The entire area over which water flows to a common point is called a watershed.

107. **WETLANDS:** Wetlands are areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

108. **WILDLIFE:** Living animals which are neither human nor domesticated.

109. **WILDLIFE HABITAT:** A place or area frequented by wildlife or site where wildlife naturally live or travel through.

110. **WILDLAND/URBAN INTERFACE:** The line, area or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels that are associated with forest and/or woodland areas.

111. **ZONING:** A regulatory tool available to local governments to designate the location and character of various land uses.

GENERAL PROVISIONS

1.1 Title

These regulations will be known and may be cited as “The Subdivision Regulations for Mineral County and the Towns of Alberton and Superior,” hereinafter referred to as “these regulations.”

1.2 Authority

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

1.3 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 minimize impacts to wildlife and to promote preservation of wildlife habitat; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (76-3-102, MCA). The adopted Growth Policy shall be considered when implementing these regulations.

These regulations are intended to comply with part five of the MSPA, and are intended to promote:

- 1.3.1 the orderly development of Mineral County;
- 1.3.2 the coordination of roads within subdivided land with other roads, both existing and planned;
- 1.3.3 the dedication of land for roadways and for public utility easements;
- 1.3.4 the improvement of roads;
- 1.3.5 the provision of proper physical and legal road access, including obtaining of necessary easements;
- 1.3.6 the provision of adequate open spaces for travel, light, air, and recreation;
- 1.3.7 the provision of adequate transportation, water, drainage, and sanitary facilities;
- 1.3.8 the avoidance or minimizing of congestion;

- 1.3.9 the avoidance of subdivisions which would involve unnecessary environmental degradation;
- 1.3.10 the avoidance or minimizing of impacts to wildlife;
- 1.3.10 the avoidance or minimizing of impacts to wildlife habitat;
- 1.3.12 the avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services;
- 1.3.13 the avoidance of excessive expenditure of public funds for the supply of public improvements;
- 1.3.14 the manner and form of making and filing of any plat for subdivided lands; and
- 1.3.15 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.
- 1.3.16 The Growth Policy of Mineral County and the Towns of Alberton and Superior lists several goals, objectives and policies that apply to these regulations, including the following:

Growth Patterns

1.3.16.1. Establish land use patterns which accommodate growth, preserve the identity and character of existing communities, and minimize conflicts with agriculture and existing businesses and industries;

1.3.16.2. Encourage new developments and public facility improvements that reflect densities and development patterns identified in the Growth Policy;

1.3.16.3. Encourage round-out and in-fill in existing areas or partially developed subdivisions and encourage new residential subdivisions in preferred development areas adjacent to existing communities;

1.3.16.4. Encourage new rural subdivisions to plan in a "fire wise" manner and be consistent with the Mineral County Community Wildfire Protection Plan;

1.3.16.5. Encourage development that provides a public benefit and that will minimize increases in public facility and service costs and/or increase the tax burden;

1.3.16.6. When access across National Forest land is proposed, the proponent should contact the Forest Service early in the planning process to discuss the

process for obtaining access rights and time frames for processing access requests;

1.3.16.7. Maintain and preserve the quality and quantity of surface and groundwater for both consumptive and nonconsumptive use;

1.3.16.8. Use landscaping or natural environmental features to mitigate or buffer areas of incompatible land uses;

1.3.16.9. Limit and discourage development of lands having severe physical limitations, including slope, soils, floodplains, etc. if limitations cannot be overcome with special engineering designs;

1.3.16.10. Encourage high quality, coordinated community services;

Adequate Public Facilities

1.3.16.11. Require land divisions to provide adequate access, streets, water, fire protection, drainage and sanitary and transportation facilities (including rights-of-way);

1.3.16.12. Identify and protect road corridors to serve future developments and public lands;

1.3.16.13. All roads shall meet or exceed minimum standards adopted by the responsible town or county jurisdiction;

1.3.16.14. Establish safe pedestrian and bicycle access in designated areas of the planning area as part of the nonmotorized circulation system;

1.3.16.15. Establish a curb/sidewalks improvements program in the towns of Alberton and Superior;

1.3.16.16. Construct a trail system (obtain easements) on the north side of the Clark Fork River near Superior to connect with the Fish, Wildlife and Parks fishing access site;

1.3.16.17. The primary responsibility for development of new roads shall be the users of the properties receiving direct benefit from and/or access to the new road. In cases where the new road system is designed to serve the public, development shall be the obligation of the agency or party initiating the road;

1.3.16.18. Roads constructed meeting proper design standards may be offered to the local government (city or county). If dedicated and accepted, the local government will assume maintenance responsibility for the road;

1.3.16.19. Continue American Disability Act (ADA) improvements in the towns and county;

1.3.16.20. Preserve and maintain existing open spaces and parks;

1.3.16.21. Provide for quality recreational services to serve all age groups within the planning area;

Environmental Protection

1.3.16.22. Protect environmentally sensitive areas from adverse effects of development;

1.3.16.23. Encourage the protection of agriculture, soil conservation, and continuation of noxious weed control;

1.3.16.24. Encourage the protection of wildlife habitat, realizing the economic benefits of these valuable resources;

1.3.16.25. Protect riparian areas adjacent to surface waters by designating buffers that are appropriate for the site under consideration; and

1.3.16.26. Support the restoration and protection of wild fisheries and the habitats that sustain them.

1.4 Jurisdiction

The County Commissioners are the “governing body” for purposes of reviewing subdivisions located within the unincorporated areas of Mineral County. The Town Councils are the “governing body” for the purposes of reviewing subdivisions in Alberton and Superior.

These regulations govern the subdivision of land within all of Mineral County.

If a proposed subdivision lies within one mile of the Town of Alberton or Superior the governing body must submit the preliminary plat to the appropriate Town Council or its designated agent for review and comment. If a proposed subdivision lies partly within the Town of Alberton or Superior and Mineral County, the preliminary plat must be submitted to, and approved, conditionally approved, or disapproved by both the County Commissioners and the appropriate Town Council.

When a proposed subdivision is also proposed to be annexed to the Town of Alberton or Superior, the appropriate Town Council will attempt to combine public hearings and otherwise coordinate the subdivision review process and annexation procedures with the County Commissioners, whenever possible.

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

1.5 Severability

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

2. GENERAL PROCEDURES

2.1. Preliminary Plats

2.1.1 Construction Timing

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

2.1.2 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):

- 2.1.2.1 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;
- 2.1.2.2 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;
- 2.1.2.3 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;
- 2.1.2.4 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;”
- 2.1.2.5 that the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid; and
- 2.1.2.6 a copy of the contracts and escrow agreement described above must be submitted to the Planner; the name of the purchaser and addresses must be provided; if escrow agreements have been effected prior to final platting, the subdivider shall inform the potential lot owners of the subdivider’s intention of bonding prior to the governing body entering into a bonding agreement with the subdivider.

2.1.3 Permission to Enter

The governing body or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

2.1.4 Pre-application Process

2.1.4.1 Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the Planner. The subdivision administrator (planner) is the authorized agent designated by the governing body to review subdivision pre-applications. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the Planner.

2.1.4.2 At the time of the pre-application meeting request, the subdivider shall provide to the Planner one or more sketches of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.

2.1.4.2.1 The sketches may be freehand drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:

2.1.4.2.1.1 location,

2.1.4.2.1.2 approximate tract and lot boundaries of existing tracts of record;

2.1.4.2.1.3 description of general terrain, including noxious weeds;

2.1.4.2.1.4 natural features on the land, including water bodies, floodplains, geologic hazards, and soil types;

2.1.4.2.1.5 existing structures and improvements;

2.1.4.2.1.6 existing utility lines and facilities serving the area to be subdivided;

2.1.4.2.1.7 existing easements and rights-of-way;

2.1.4.2.1.8 existing zoning or development regulation standards;

2.1.4.2.1.9 existing conservation easements;

2.1.4.2.1.10 existing covenants or deed restrictions;

2.1.4.2.1.11 wildlife;

2.1.4.2.1.2 Documentation on the current status of the site, including:

2.1.4.2.1.2.1 ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;

2.1.4.2.1.2.2 water rights, including location of agricultural water users facilities;

2.1.4.2.1.2.3 any special improvement districts; and

2.1.4.2.1.2.4 rights of first refusal for the property;

2.1.4.2.2 Information on the proposed subdivision, including:

2.1.4.2.2.1 tract and proposed lot boundaries;

2.1.4.2.2.2 proposed public and private improvements;

2.1.4.2.2.3 location of utility lines and facilities;

2.1.4.2.2.4 easements and rights-of-way; and

2.1.4.2.2.5 parks and open space and proposed conservation easements.

2.1.4.3 At the pre-application meeting:

2.1.4.3.1 the Planner shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations, floodplain regulations, and fire codes;

2.1.4.3.2 the Planner shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivider, Planner or planning board on the subdivision application; the Planner shall also identify the time frames that the public utilities, agencies, and other entities are given to respond¹; and

2.1.4.3.3 the Planner shall identify particular information that will be required for review of the subdivision application based on the list of materials in 2.1.5. below; this does not limit the ability of the Planner to request additional information at a later time; and

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

2.1.4.4 unless the subdivider submits a subdivision application within one year of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application. The Planner has the discretion to extend this time period for one additional year if he/she determines that the preliminary plat application information required to be submitted by the subdivider would be the same based on site and area specific conditions and the regulations in effect at the time of the request.

2.1.5 Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the governing body or to the agent (Planner) or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the Planner, as applicable:

- 2.1.5.1 completed and signed subdivision application form;
- 2.1.5.2 required review fee;
- 2.1.5.3 vicinity sketch;
- 2.1.5.4 topographic map (can be on preliminary plat);
- 2.1.5.5 grading and drainage plan, if requested;
- 2.1.5.6 engineering plans for all public and private improvements;
- 2.1.5.7 overall development plan if development is in phases;
- 2.1.5.8 abstract of title (or title report);
- 2.1.5.9 lien holders' acknowledgement of subdivision;
- 2.1.5.10 documentation of legal and physical access;
- 2.1.5.11 documentation of existing easements, including those for agricultural water user facilities;
- 2.1.5.12 existing covenants and deed restrictions;
- 2.1.5.13 existing water rights;
- 2.1.5.14 existing mineral rights;
- 2.1.5.15 names and addresses of all adjoining property owners;
- 2.1.5.16 proposed road plans and profiles;
- 2.1.5.17 existing encroachment permits from Montana Department of Transportation, Forest Service or the local jurisdiction;
- 2.1.5.18 proposed easements;
- 2.1.5.19 proposed disposition of water rights;
- 2.1.5.20 proposed disposition of mineral rights;
- 2.1.5.21 parkland dedication calculations;
- 2.1.5.22 environmental assessment and/or summary of probable impacts;
- 2.1.5.23 a copy of each certificate of survey or subdivision plat(s) pertaining to the subject property filed or recorded since July 1, 1973;
- 2.1.5.24 fire prevention and control plan, if requested;
- 2.1.5.25 weed management plan and revegetation plan;
- 2.1.5.26 property owners association documents, including draft articles of incorporation, declaration and bylaws;
- 2.1.5.27 FIRM or FEMA panel map and letter identifying floodplain status;
- 2.1.5.28 required water and sanitation information as per 76-3-622, MCA;
- 2.1.5.29 a form of subdivision improvements agreement, if proposed;
- 2.1.5.30 letter requesting a revocation of agricultural covenants, if applicable;

- 2.1.5.31 letter addressing cultural or historic resources;
- 2.1.5.32 variance request or approval, if applicable;
- 2.1.5.33 rezoning application or approval if applicable;
- 2.1.5.34 flood hazard evaluation, if applicable;
- 2.1.5.35 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;
- 2.1.5.36 such additional relevant and reasonable information as identified by the Planner during the pre-application meeting that is pertinent to the required elements of this section;
- 2.1.5.37 traffic impact studies when requested;
- 2.1.5.38 proof that at least 30 days have passed since the subdivider has submitted copies of the preliminary plat and environmental assessment, if applicable, to the following utilities and agencies of local, state, and federal government (as deemed applicable by the Planner) for review:
 - 2.1.5.38.1 Electrical utility
 - 2.1.5.38.2 Telephone utility
 - 2.1.5.38.3 Mineral County Sheriff's Department
 - 2.1.5.38.4 Fire department or fire district, or note lack of district
 - 2.1.5.38.5 Water or sewer district
 - 2.1.5.38.6 Montana Department of Transportation
 - 2.1.5.38.7 County or Town road department
 - 2.1.5.38.8 Montana Department of Fish, Wildlife and Parks
 - 2.1.5.38.9 Grade-school and high-school districts
 - 2.1.5.38.10 Mineral County Conservation District
 - 2.1.5.38.11 Irrigation district or ditch company, and
 - 2.1.5.38.12 depending on the location and nature of the proposed subdivision, the Planner may require the subdivider to submit copies of the preliminary plat and environmental assessment to additional governmental or service agencies.
- 2.1.5.39 preliminary plat in accordance with Appendix A, Part II.

2.1.6 Review Process

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

2.1.6.1 Element Review

2.1.6.1.1 Within five (5) working days of receipt of a subdivision application (**one copy**) and fee, the Planner shall determine whether the application contains all of the applicable materials required in Section 2.1.5 and identified at the pre-application meeting and shall give written notice to the subdivider of the Planner's determination.

2.1.6.1.1.1 If the Planner determines that elements are missing from the application, the Planner shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the Planner until the application is resubmitted.

2.1.6.1.1.2 The subdivider may correct the deficiencies and resubmit the application.

2.1.6.1.1.3 If the subdivider corrects the deficiencies and resubmits the application the Planner shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required by Section 2.1.5, as applicable.

2.1.6.1.1.4 This process shall be repeated until the subdivider submits an application containing all the materials required by Section 2.1.5, or the application is withdrawn.

2.1.6.2 Sufficiency Review

2.1.6.2.1 Within 15 working days after the Planner notifies the subdivider that the application contains all of the required elements as provided in Section 2.1.6.1 above, the Planner 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 Planner's determination.

2.1.6.2.1.1 If the Planner determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the Planner shall identify specific required information in his/her notification and return the application to the subdivider, and no further action shall be taken on the application by the Planner until the material is resubmitted.

2.1.6.2.1.2 The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.

2.1.6.2.1.3 If the subdivider corrects the deficiencies and resubmits the application in accordance with Section 2.1.6.1.1.2 above, the Planner 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.

2.1.6.2.1.4 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.

2.1.6.2.1.5 The subdivider or his/her consultant will provide the Mineral County Environmental Health and Planning Department with fifteen (15) copies of all materials that meet the sufficiency review requirements.

2.1.6.2.2 A determination that an application contains sufficient information for review as provided in this Section 2.1.6.2 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 Planner, planning board, or the governing body to request additional information during the review process.

2.1.6.2.3 A determination of sufficiency by the Planner pursuant to this section does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

2.1.6.3 Applicable Regulations

Subdivision review, including preliminary and final plat review, 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.

2.2 Final Plats

2.2.1 Final Plat Contents

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

2.2.2 Final Plat Initial Review

2.2.2.1 Final Plat Submittal

The final plat approval application form (which can be obtained from the Planner), and all supplementary documents must be submitted to the Planner at least 30 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- 2.2.2.1.1 the final plat application;
- 2.2.2.1.2 the final plat review fee;
- 2.2.2.1.3 a subdivision improvements agreement, if applicable;
- 2.2.2.1.4 a statement from the project surveyor or engineer describing (and including supporting documentation, as necessary) how each condition of approval has been satisfied;
- 2.2.2.1.5 a title report or updated abstract dated no less than 30 days prior to the date of submittal;
- 2.2.2.1.6 a signed, dated, notarized statement from each lien holder or claimant of record consenting to the platting of the subdivision dated no less than 30 days prior to the date of submittal;
- 2.2.2.1.7 the DEQ or local Environmental Health and Planning Department approval;
- 2.2.2.1.8 the final grading and drainage plan, including all road plans and profiles, state or local encroachment permits, and the traffic impact analysis (if required);
- 2.2.2.1.9 all engineering plans certifying the improvements have been installed in compliance with the required design standards;
- 2.2.2.1.10 any homeowner association documents, including bylaws, covenants, and/or declarations;
- 2.2.2.1.11 county or city attorney approvals; and
- 2.2.2.1.12 one 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats set forth in Appendix F.

2.2.2.2 Review by Planner

- 2.2.2.2.1 The Planner shall review the final plat submittal to ascertain that all conditions and requirements for final plat approval have been met. The Planner will not accept, begin processing, nor schedule any actions on a final plat submittal

until a complete application and fee, supporting documentation, and copies of the final plat have been received. Final plat applications will not be considered complete by the Planner until all conditions of preliminary approval have been satisfied.

2.2.2.2.2 If the Planner determines that the final plat differs materially from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to Section 2.2.5.

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

2.2.3 Restrictive Covenants – Approval, Content and Enforcement by Governing Body

2.2.3.1 The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, be set forth in a separate heading identifying them as plat approval covenants, and indicating: “These covenant(s) may not be repealed or amended without prior written consent of the (name of the governing body).”

2.2.3.2 The governing body may require that all restrictive covenants it has required as a condition of plat approval contain the following language: “The (name of the governing body) is a party to this restrictive covenant and may enforce its terms.”

2.2.3.3 If common property is to be deeded to a property owners association, the covenants and bylaws which govern the association must, at a minimum, provide for the:

2.2.3.3.1 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;

2.2.3.3.2 mandatory membership for each property owner; purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;

2.2.3.3.3 perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;

2.2.3.3.4 payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;

2.2.3.3.5 placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;

- 2.2.3.3.6 adjustment of assessments to meet changing needs;
- 2.2.3.3.7 means of enforcing the covenants, and of receiving and processing complaints;
- 2.2.3.3.8 transition of control of the association from the declarant to the homeowners;
- 2.2.3.3.9 dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
- 2.2.3.3.10 regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

2.2.4 Public (Subdivision) Improvements Agreement; Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. The Governing Body 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. 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 by the Planner.

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. 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.

2.2.5 Amending Approved Preliminary Plats Before Final Plat Approval

- 2.2.5.1 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 Planner for review.
 - 2.2.5.1.1 Within five (5) working days of receiving the proposed changes, the Planner shall determine whether the changes to the preliminary plat are material pursuant to Section 2.2.5.2 below.
 - 2.2.5.1.2 If the Planner determines the changes are material, and depending on the severity of the changes, the Planner 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. The Planner also has the

discretion of reviewing the proposed changes with the planning board at a properly noticed public hearing, where the planning board makes a recommendation of approval, conditional approval, or denial on the proposed changes using the criteria for minor and major subdivisions in Chapters 3 and 4. Such review requires a fee for all costs including report preparation and legal notice.

- 2.2.5.1.3 If the Planner determines the changes are not material, the Planner shall accept the changes and notify the subdivider and the governing body of that decision and the governing body shall approve of those changes in a meeting for which notice has been given of non-material changes to the final plat.
- 2.2.5.2 The following changes, although not an exhaustive list, may be considered material (also see definition):
 - 2.2.5.2.1 configuration or number of lots (e.g. an increase in lots, the removal of legal and physical access to lots);
 - 2.2.5.2.2 road layout (e.g. relocation of road approaches, changes to proposed access routes);
 - 2.2.5.2.3 water and/or septic proposals (e.g. changing the types of systems);
 - 2.2.5.2.4 configuration or relocation of parkland or open spaces or cash in lieu;
 - 2.2.5.2.5 easement provisions (e.g. inability to dedicate road easements to public use);
 - 2.2.5.2.6 designated access (e.g. changing the proposed access route);
 - 2.2.5.2.7 proposed covenants that would impact compliance with the subdivision regulations, zoning regulations or the primary review criteria (76-3-608, MCA), or permitting a use not previously identified; or
 - 2.2.5.2.8 change to phasing plans or conditions of approval or change in design necessitating a variance from the design and improvement standards.
- 2.2.5.3 A subdivider whose proposed changes to the preliminary plat have been deemed material by the Planner may appeal the Planner's decision to the governing body by written notice within ten (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.
- 2.2.5.4 If the subdivider and Planner determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public hearing in order to determine if the condition may be waived or amended.

2.2.6 Final Plat Approval

2.2.6.1 Approval by the Governing Body

Upon receiving notice from the Planner that all conditions of preliminary approval have been met and the final plat conforms with all requirements, the governing body shall post notice of its intent to examine the final subdivision plat and application. The notice shall be posted for at least two working days prior to the date of examination. At a meeting open to the public and where the public may comment, the governing body shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to Section 2.2.6.1.2 below.

2.2.6.1.1 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.

2.2.6.1.2 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 ten (10) working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

2.2.6.2 Inaccurate Information

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

2.2.7 Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in Section 2.2.8. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats, available from the Mineral County Environmental Health and Planning Department.

2.2.8 Amending Filed Plats

2.2.8.1 Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the governing body.

2.2.8.2 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 lien holders of all lots which will be modified by the proposed amendment.

2.2.8.3 The governing body may not approve an amendment that will place a lot in non-conformance with the standards contained in Section 6 of these regulations or with local zoning regulations unless the governing body or board of adjustment, as appropriate, holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section 13.2, Variances, or the variance procedure of the applicable zoning regulations.

2.2.8.4 The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats available from the Mineral County Environmental Health and Planning Department.

3. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

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

First minor subdivisions shall be reviewed pursuant to Section 3.1 and subsequent minor subdivisions shall be reviewed pursuant to Section 3.2.

3.1 First Minor Subdivision Review

The pre-application process and initial review process set forth in Section 2, General Procedures, apply to this section.

3.1.1 First Minor Subdivision Application and Preliminary Plat Submittal

3.1.1.1 The subdivider shall submit to the Planner a subdivision application containing the materials identified in Section 2.1.5 and in the pre-application meeting, and

3.1.1.2 sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record.

3.1.2 First Minor Subdivision Exceptions

The following requirements do not apply to first minor subdivisions:

3.1.2.1 preparation of an environmental assessment;

3.1.2.2 parkland dedication;

3.1.2.3 public hearing requirements; and

3.1.2.4 review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, if the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those impacts.

3.1.3 First Minor Subdivision Review Process

3.1.3.1 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 3.1.6 of these regulations, unless the subdivider and the Planner agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins once the Planner has given notice to the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for

review. Notification constitutes the date when the Planner sends the notice to the subdivider.

3.1.3.2 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 Planner contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Planner shall notify the subdivider of the contact and the time frame for response.

3.1.3.3 Subdivider, Adjacent Landowner and Planning Board Notification

At least 15 working days prior to the scheduled meeting at which the governing body will consider the subdivision, the Planner shall notify the subdivider, and the landowner if different from the subdivider, of the date and time of the meeting by first class mail.

Also, at least 15 working days prior to the scheduled meeting of the governing body on the subdivision, the Planner shall notify adjacent landowners and planning board members of the subdivision proposal by first class mail. At the discretion of the Planner, she/he may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include, but are not limited to, those landowners who share a private road, irrigation facilities (delivery point, ditch, etc.), are within 150 feet of the subject property, across a watercourse, etc.

3.1.4 **Review Authority, Planner's Report, Consideration and Recommendation**

As per 76-1-107(2), MCA, the planning board delegates to the Planner its responsibility to advise the governing body on all proposed first minor subdivisions.

3.1.4.1 Planner's Report

3.1.4.1.1 After the subdivision application has been deemed to be sufficient for review, the Planner shall prepare a report for consideration by the governing body. The report shall include:

3.1.4.1.1.1 Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA (76-3-608[3]):

3.1.4.1.1.2 A description of any variance requests as well as the pertinent facts and conditions relating to the request;

3.1.4.1.1.3. All public, agency and planning board comment received;

3.1.4.1.1.4. Any other information deemed pertinent by the Planner; and

3.1.4.1.1.5. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat, based on the following standards:

3.1.4.1.1.5.1 these regulations, including but not limited to the standards set forth in Section 6;

3.1.4.1.1.5.2 applicable zoning regulations;

3.1.4.1.1.5.3 the MSPA, including but not limited to 76-3-608(3), as delineated in Sections 3.1.6.1 and 3.1.6.2.4 of these regulations; and

3.1.4.1.1.5.4 other applicable regulations.

3.1.4.1.2 Consideration - Evidence

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

3.1.4.1.2.1 the subdivision application and preliminary plat;

3.1.4.1.2.2 the summary of probable impacts and proposed mitigation;

3.1.4.1.2.3 an officially adopted growth policy;

3.1.4.1.2.4 information and testimony provided by the public, agency and service providers, and planning board members; and

3.1.4.1.2.5 any additional information authorized by law;

3.1.4.1.3 Capital Facilities

As provided in section 76-3-510, MCA, “a local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision.” The payment may be included in the conditions of approval.

3.1.4.1.4 Planning Board Members Written Comments

Within 10 working days of the public meeting at which the governing body will consider the subdivision, the planning board members may submit comments to the Planner including:

3.1.4.1.4.1 comments in regard to potential findings of fact based on the evidence in Section 3.1.4.1 above that discuss and consider the subdivision's compliance with and impact on the items listed in Section 3.1.4.1.2 of these regulations;

3.1.4.1.4.2 comments in regard to conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and

3.1.4.1.4.3 comments in regard to any requested variances (See Section 13.2).

3.1.4.2 Water and Sanitation Information

The Planner shall collect comments regarding the water and sanitation information required by the MSPA and these regulations. The Planner shall forward all comments regarding water and sanitation to the governing body. The governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622, MCA or public comment received on the information provided pursuant to 76-3-622, MCA only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce. (76-3-608[6], MCA)

3.1.5 Subdivider's Preference for Mitigation

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

3.1.6 Minor Subdivision Governing Body Decision and Documentation

3.1.6.1 Prerequisites to Approval

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

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

- 3.1.6.1.2 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;
- 3.1.6.1.3 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 2.2.4 of these regulations;
- 3.1.6.1.4 assures that the requirements of 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section 6.1.16 have been considered and will be accomplished before the final plat is submitted; and
- 3.1.6.1.5 assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section 6.1.15 have been considered and will be accomplished before the final plat is submitted.

3.1.6.2 Consideration – Standards

In conditionally approving or denying a first minor subdivision application, the governing body shall consider Section 3.1.6.1 above and whether the proposed subdivision complies with:

- 3.1.6.2.1 these regulations, including but not limited to the subdivision review procedure and the standards set forth in Section 6;
- 3.1.6.2.2 applicable zoning regulations;
- 3.1.6.2.3 other applicable regulations;
- 3.1.6.2.4 the MSPA, including but not limited to the following:
 - 3.1.6.2.4.1 impact on agriculture;
 - 3.1.6.2.4.2 impact on agricultural water user facilities;
 - 3.1.6.2.4.3 impact on local services;
 - 3.1.6.2.4.4 impact on the natural environment;
 - 3.1.6.2.4.5 impact on wildlife;
 - 3.1.6.2.4.6 impact on wildlife habitat;
 - 3.1.6.2.4.7 impact on public health and safety; and
- 3.1.6.2.5 proposed mitigation.

3.1.6.3 Consideration – Evidence

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

- 3.1.6.3.1 the subdivision application and preliminary plat;
- 3.1.6.3.2 the summary of probable impacts and proposed mitigation;
- 3.1.6.3.3 an officially adopted growth policy;
- 3.1.6.3.4 Planner's staff report and recommendations;
- 3.1.6.3.5 public, agency and planning board comments; and
- 3.1.6.3.6 any additional information authorized by law.

3.1.6.4. Water and Sanitation - Special Rules

- 3.1.6.4.1 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.
- 3.1.6.4.2 For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.
- 3.1.6.4.3 The governing body shall request public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- 3.1.6.4.4 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:

3.1.6.4.4.1 reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; or

3.1.6.4.4.2 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.

3.1.6.5 Documentation of Governing Body Decision

3.1.6.5.1 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 sections.

3.1.6.5.2 When the governing body 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:

3.1.6.5.2.1 contain information regarding the appeal process for the denial or imposition of conditions;

3.1.6.5.2.2 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;

3.1.6.5.2.3 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;

3.1.6.5.2.4 provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved; and

3.1.6.5.2.5 set forth the time limit for approval, pursuant to Section 3.1.6.6 below.

3.1.6.6 Subdivision Application and Preliminary Plat Approval Period

3.1.6.6.1 Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

3.1.6.6.1.1 At least 30 days prior to the expiration of the preliminary plat approval, the subdivider may request an extension to the preliminary plat approval period. The governing body may, at its discretion, extend the preliminary plat approval for a period of

time mutually agreed-upon by the governing body and the subdivider.

3.1.6.6.1.2 Any agreed upon extension must be documented in writing and dated and signed by the governing body and the subdivider or the subdivider's designated agent. The governing body in its discretion may issue more than one such extension.

3.1.6.6.1.3 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, or if modifications to the preliminary plat are proposed by the subdivider, as addressed in 2.2.5.

3.1.6.6.2 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 conditional approval was based, is inaccurate.

3.1.7 **First Minor Subdivisions – Amended Applications Prior to Governing Body Decision**

3.1.7.1 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 Planner for review.

3.1.7.1.1 Within five (5) working days of receiving the amended application or preliminary plat, the Planner may determine whether the changes to the subdivision application or preliminary plat are material, as determined in Section 3.1.7.3 below.

3.1.7.1.2 The 35-working-day review period is suspended while the Planner considers the amended application or preliminary plat.

3.1.7.1.3 If the Planner determines the changes are not material, the 35-working-day review period resumes when the Planner mails notice of the decision to the subdivider.

3.1.7.1.4 If the Planner determines the changes are material, and depending on the potential impact of the changes, the Planner shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application, or require the subdivider to present the changes to the governing body for consideration.

3.1.7.2 By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in Section 3.1.7.1.2.

3.1.7.3 The following changes, although not an exhaustive list, may be considered material:

- 3.1.7.3.1 configuration or number of lots (e.g. an increase in lots, the removal of legal and physical access to lots);
 - 3.1.7.3.2 road layout (e.g. relocation of road approaches, changes to proposed access routes);
 - 3.1.7.3.3 water and/or septic proposals (e.g. changing the types of systems);
 - 3.1.7.3.4 configuration or relocation of parkland or open spaces;
 - 3.1.7.3.5 easement provisions (e.g. inability to dedicate road easements to public use);
 - 3.1.7.3.6 proposed covenants that would impact compliance with the subdivision regulations, zoning regulations or the primary review criteria (76-3-608, MCA), or permitting a use not previously identified;
 - 3.1.7.3.7 designated access (e.g. changing the proposed access route); or
 - 3.1.7.3.8 change to conditions of approval or change in design necessitating a variance from the design and improvements standards.
- 3.1.7.4 A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planner may appeal the Planner'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.
- 3.1.7.4.1 The 35-working-day review period is suspended until the governing body decision on the appeal is made.
 - 3.1.7.4.2 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 Section 3.1.7.1.4.
 - 3.1.7.4.3 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.
 - 3.1.7.4.4 By appealing the decision of the Planner, the subdivider agrees to suspension of the 35-working-day review period provided in Section 3.1.7.4.1.

3.1.8 First Minor Subdivision Final Plat

The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section 2.2, Final Plats.

3.2 Subsequent Minor Subdivisions

A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions. When the subsequent minor is to be reviewed as a major subdivision the requirements and procedures of Section 4 of these regulations must be followed. However, a park dedication is not required. The determination of whether a subdivision is a first minor or a subsequent minor will be made by the Planner. Within 30 days of issuance, the subdivider may appeal the Planner's decision to the governing body.

4. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

4.1 Review and Approval Procedures for Major Subdivisions

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

The pre-application process and initial review process set forth in Section 2, General Procedures, apply to this section.

4.1.1 Subdivision Application and Preliminary Plat Submittal

4.1.1.1 The subdivider shall submit to the Mineral County Environmental Health and Planning Department (agency authorized by the governing body) a subdivision application containing the materials identified in Section 2.1.5 and in the pre-application meeting.

4.1.2. Phased Major Subdivisions

The subdivider, as part of a planned unit development and/or preliminary plat application, may propose to phase a major subdivision over time. Phasing must be identified at preliminary plat application submittal. Phasing must be approved at the time of preliminary plat approval.

4.1.2.1. Each phase must be filed sequentially, according to the phasing plan, and be fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much later time. Final plat approval for each subsequent phase will be contingent upon the completion of all improvements in each preceding phase;

4.1.2.2. A phasing plan must be submitted and must include the following:

4.1.2.2.1 a plat delineating each phase and a general timeframe for development of each phase; and

4.1.2.2.2 a public facilities improvement plan showing which improvements will be completed with each phase.

4.1.2.3. The governing body may require that parkland requirements, as part of the preliminary plat approval pursuant to Section 6.17. for the entire subdivision be met prior to approval of the first phase final subdivision plat. Parkland dedication for each phase shall not be deferred until a later phase.

4.1.2.4. The preliminary plat of a phased subdivision shall have the following time limits:

4.1.2.4.1. the first phase final subdivision plat must be approved and filed within three years of preliminary phased plat approval. Final plats for each successive phase must be filed within three years of the previous final plat approval. Failure to meet this time frame will cause the remainder of the preliminary plat to become void, and no additional final phased plats shall be accepted;

4.1.2.4.2. a one year extension of preliminary plat approval for any phase may be requested by the subdivider;

4.1.2.4.3. the subdivider shall include a revised time frame for all remaining phases with a request for any phased preliminary plat extension.

4.1.3. Contents of Environmental Assessment

As per 76-3-603, MCA, when required, the environmental assessment must accompany the subdivision application and must include:

4.1.3.1. a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

4.1.3.2 a summary of the probable impacts of the proposed subdivision based on the criteria in 76-3-608, MCA;

4.1.3.3. a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage and solid waste facilities, and fire and police protection; and

4.1.3.4. additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501, MCA as may be required by the governing body.

4.1.4 Time Period for Approval, Conditional Approval, or Denial

4.1.4.1 Within 60 working days, or 80 working days for proposals containing 50 or more lots, the governing body shall conditionally approve or deny the proposed subdivision according to Section 4.1.10 of these regulations, unless the subdivider and the Planner agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section 4.1.9 of these regulations. A subdivision application is deemed submitted for review, and the 60 or 80-working day period begins the day after the Planner notifies the subdivider or the subdivider's agent in writing that the application contains sufficient information to conduct the review.

4.1.4.2 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 Planner 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 Planner shall notify the subdivider of the contact and the time frame for response.

4.1.5 Public Hearings and Notices – In General

4.1.5.1 Hearings

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

4.1.5.2 Notice

4.1.5.2.1 The Planner 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.

4.1.5.2.2 At least 15 days prior to the date of the hearing, the Planner shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

4.1.5.2.3 The subdivider shall post notices at conspicuous places on the site of the proposed subdivision that includes the hearing date.

4.1.6 Planning Board Hearing, Consideration and Recommendation

4.1.6.1 Hearing

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

4.1.6.2 Recommendation

4.1.6.2.1 Consideration - Standards

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

4.1.6.2.1.1 these regulations, including but not limited to the standards set forth in Section 4 and the required subdivision review procedure;

4.1.6.2.1.2 applicable zoning regulations;

4.1.6.2.1.3 The MSPA, including but not limited to 76-3-608(3), as delineated in Sections 4.1.10.1 and 4.1.10.2.4 of these regulations; and

4.1.6.2.1.4 other applicable regulations.

4.1.6.2.2 Consideration - Evidence

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

- 4.1.6.2.2.1 the subdivision application and preliminary plat;
- 4.1.4.6.2.2 the environmental assessment;
- 4.1.4.6.2.3 the summary of probable impacts and proposed mitigation ;
- 4.1.4.6.2.4 an officially adopted growth policy;
- 4.1.4.6.2.5 information provided at public hearing(s);
- 4.1.4.6.2.6 Planner's staff report and recommendation; and
- 4.1.4.6.2.7 any additional information authorized by law.

4.1.6.2.3 Capital Facilities

As provided in section 76-3-510, MCA, “a local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision.” The payment may be included in the conditions of approval.

4.1.6.2.4 Written Recommendation

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

- 4.1.6.2.4.1 recommended findings of fact based on the evidence in Section 4.1.6.2.2 above that discuss and consider the subdivision's compliance with and impact on the items listed in Section 4.1.6.2.1 above of these regulations; and
- 4.1.6.2.4.2 a recommendation for conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- 4.1.6.2.4.3 a recommendation for approval or denial of any requested variances.(see Section 13.2).

4.1.6.3 Water and Sanitation Information

The planning board or planning staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The planning board shall forward all comments regarding water and sanitation to the governing body. The governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622, MCA or public comment received on the information provided pursuant to 76-3-622, MCA only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce. (76-3-608[6], MCA)

4.1.7 Subdivider's Preference for Mitigation

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

4.1.8 Governing Body Public Hearing

4.1.8.1 After the planning board makes its recommendation, the governing body shall hold a public hearing on the subdivision application.

4.1.8.2 All comments and documents regarding the subdivision shall be submitted to the Planner, rather than to the governing body directly, to be forwarded to the governing body.

4.1.8.3 At the hearing the governing body shall determine whether public comments or documents presented for consideration at the governing body's public hearing constitute either:

4.1.8.3.1 information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to conditionally approve or deny the proposed subdivision; or

4.1.8.3.2 new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall proceed as set forth in Section 4.1.8.4 below.

4.1.8.4 If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body

shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to Sections 4.1.8.5 and 4.1.8.6 below.

- 4.1.8.4.1 If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall conditionally approve or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - 4.1.8.4.2 If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule or direct the planning board to schedule a subsequent public hearing pursuant to Section 4.1.9.
 - 4.1.8.4.3 At the subsequent hearing the planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- 4.1.8.5 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.
- 4.1.8.6 New information or analysis of information is considered to be credible if it is based on one or more of the following:
- 4.1.8.6.1 physical facts or evidence;
 - 4.1.8.6.2 supported personal observations;
 - 4.1.8.6.3 evidence provided by a person with professional competency in the subject matter; or
 - 4.1.8.6.4 scientific data substantiated by documentation.

4.1.9 Subsequent Public Hearing

- 4.1.9.1 If a subsequent public hearing is held, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- 4.1.9.1.1 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.
 - 4.1.9.1.2 At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, each

adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

4.1.9.1.3 The subdivider shall post the notice of the subsequent hearing at a conspicuous place on the site of the proposed subdivision that includes the hearing date.

4.1.9.2 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.

4.1.10 Governing Body Decision and Documentation

4.1.10.1 Prerequisites to Approval

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

4.1.10.1.1 provides easements for the location and installation of any planned utilities;

4.1.10.1.2 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;

4.1.10.1.3 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 2.2.4 of these regulations;

4.1.10.1.4 assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section 6.1.15 have been considered and will be accomplished before the final plat is submitted;

4.1.10.1.5 assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section 6.1.14 have been considered and will be accomplished before the final plat is submitted; and

4.1.10.1.6 provides for the appropriate park dedication or cash-in-lieu.

4.1.10.2 Consideration - Standards

In conditionally approving or denying a subdivision application and preliminary plat, the governing body shall consider Section 4.1.10.1 above, and whether the proposed subdivision complies with:

4.1.10.2.1 these regulations, including, but not limited to, the standards set forth in Section 6 and the subdivision review procedure;

- 4.1.10.2.2 applicable zoning regulations;
- 4.1.10.2.3 other applicable regulations;
- 4.1.10.2.4 the MSPA, including but not limited to the following impacts:
 - 4.1.10.2.4.1 impact on agriculture;
 - 4.1.10.2.4.2 impact on agricultural water user facilities;
 - 4.1.10.2.4.3 impact on local services;
 - 4.1.10.2.4.4 impact on the natural environment;
 - 4.1.10.2.4.5 impact on wildlife, and impact on wildlife habitat; and
 - 4.1.10.2.4.6 impact on public health and safety; and
 - 4.1.10.2.4.7 proposed mitigation.

4.1.10.3 Consideration - Evidence

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

- 4.1.10.3.1 the subdivision application and preliminary plat;
- 4.1.10.3.2 the environmental assessment;
- 4.1.10.3.3 the summary of probable impacts and mitigation;
- 4.1.10.3.4 an officially adopted growth policy;
- 4.1.10.3.5 comments, evidence and discussions at the public hearing(s);
- 4.1.10.3.6 Planner's staff report and recommendations;
- 4.1.10.3.7 planning board recommendation; and
- 4.1.10.3.8 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.

4.1.10.4 Water and Sanitation - Special Rules

- 4.1.10.4.1 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.
- 4.1.10.4.2 For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- 4.1.10.4.3 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.
- 4.1.10.4.4 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:
 - 4.1.10.4.4.1 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
 - 4.1.10.4.4.2 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.

4.1.10.5 Documentation of Governing Body Decision

- 4.1.10.5.1 In rendering its decision to 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.
- 4.1.10.5.2 When the governing body denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter within 30 working days of the decision, with the appropriate signature, and make the letter available to the public. The letter shall:
 - 4.1.10.5.2.1. contain information regarding the appeal process for the denial or imposition of conditions;

- 4.1.10.5.2.2 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;
- 4.1.10.5.2.3 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;
- 4.1.10.5.2.4 provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved; and
- 4.1.10.5.2.5 set forth the time limit for approval, pursuant to Section 4.1.10.6 below.

4.1.10.6 **Subdivision Application and Preliminary Plat Approval Period**

- 4.1.10.6.1 Upon conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of conditional approval. The approval shall be in force for no more than three calendar years.
 - 4.1.10.6.1.1 At least 30 days prior to the expiration of the preliminary plat approval, the subdivider may request an extension to the preliminary plat approval period. The governing body may, at its discretion, extend the preliminary plat approval for a period of time mutually agreed-upon by the governing body and the subdivider.
 - 4.1.10.6.1.2 Any agreed upon extension must be documented in writing and dated and signed by the governing body and the subdivider or the subdivider's designated agent. The governing body in its discretion may issue more than one such extension.
- 4.1.10.6.2 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, or if modifications to the preliminary plat are proposed by the subdivider, as addressed in 2.2.5.
- 4.1.10.6.3. 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.

4.1.11 **Amended Applications**

- 4.1.11.1 If the subdivider changes the subdivision application or preliminary plat after the Planner makes a determination of sufficiency pursuant to Section 2.1.6 but before the

planning board hearing, the subdivider shall submit the amended application to the Planner for review.

- 4.1.11.1.1 Within 5 working days of receiving the amended application or preliminary plat, the Planner shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to Section 4.1.11.4 below.
 - 4.1.11.1.2 The 60 or 80-working day review period is suspended while the Planner considers whether the changes to the subdivision application or preliminary plat are material.
 - 4.1.11.1.3 If the Planner determines the changes are not material, the 60- or 80-working day review period resumes when the Planner mails notice of the decision to the subdivider.
 - 4.1.11.1.4 If the Planner determines the changes are material, and depending on the potential impact of the changes, the Planner shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed changes.
- 4.1.11.2 If the subdivider changes the subdivision application or preliminary plat after the planning board hearing but before the governing body hearing, the subdivider shall submit the amended application or preliminary plat to the Planner for review.
- 4.1.11.2.1 Within 5 working days of receiving the amended application or preliminary plat, the Planner shall determine whether the changes to the subdivision application or preliminary plat are material pursuant to Section 4.1.11.4 below.
 - 4.1.11.2.2 The 60 or 80-working day review period is suspended while the Planner considers whether the changes to the subdivision application or preliminary plat are material.
 - 4.1.11.2.3 If the Planner determines the changes are not material, the 60- or 80-working day review period resumes when the Planner mails notice of the decision to the subdivider.
 - 4.1.11.2.4 If the Planner determines the changes are material, the Planner shall either:
 - 4.1.11.2.4.1 require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee; or
 - 4.1.11.2.4.2. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the Planner's determination to schedule a new planning board hearing shall be

provided as set forth in Section 4.1.5. A supplemental staff report shall be prepared to address the changes to the original application.

- 4.1.11.2.5 If a new planning board hearing is held, the 60- or 80-working day review period is suspended for the time period between notice of the Planner's determination and 10 working days after the date of the second planning board hearing.
- 4.1.11.3 By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in Sections 4.1.11.1.2 and 4.1.11.2.2.
- 4.1.11.4 The following changes, although not an exhaustive list, may be considered material:
 - 4.1.11.4.1 configuration or number of lots (e.g. an increase in lots, the removal of legal and physical access to lots);
 - 4.1.11.4.2 road layout (e.g. relocation of road approaches, changes to proposed access routes);
 - 4.1.11.4.3 water and/or septic proposals (e.g. changing the types of systems);
 - 4.1.11.4.4 configuration or relocation of parkland or open spaces or cash in lieu;
 - 4.1.11.4.5 easement provisions (e.g. inability to dedicate road easements to public use);
 - 4.1.11.4.6 proposed covenants that would impact compliance with the subdivision regulations, zoning regulations or the primary review criteria (76-3-608, MCA), or permitting a use not previously identified;
 - 4.1.11.4.7 designated access (e.g. changing the proposed access route); or
 - 4.1.11.4.8 change to phasing plans or conditions of approval or change in design necessitating a variance from the design and improvement standards.
- 4.1.11.5 A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planner may appeal the Planner'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.
 - 4.1.11.5.1 The 60 or 80-working day review period is suspended until the governing body decision on the appeal is made.
 - 4.1.11.5.2 If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision

application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to Section 4.1.11.2.4.1 or 4.1.11.2.4.2.

4.1.11.5.3 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.

4.1.11.5.4 By appealing the decision of the Planner, the subdivider agrees to suspension of the 60 or 80-working day review period provided in Section 4.1.11.5.1 above.

4.2 **Major Final Plats**

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section 2.2, Final Plats.

5. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

5.1 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.

5.2 General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA

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

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

The governing body or designated agent will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in Section 13.1. 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:

5.3.1 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.

5.3.2. 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.

5.3.2.1 This Exemption Applies:

5.3.2.1.1 to a division of land of any size;

5.3.2.1.2 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; and

- 5.3.2.1.3 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.

5.3.2.2 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.

5.3.2.3 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.

5.3.2.4 Required Materials

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

- 5.3.2.4.1 a statement of how many interests within the original tract will be created by use of the exemption;
- 5.3.2.4.2 the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
- 5.3.2.4.3 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
- 5.3.2.4.4 a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

5.3.2.5 Rebuttable Presumptions

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

- 5.3.2.5.1 it will create more than one new building site;
- 5.3.2.5.2 the financing is not for construction or improvements on the exempted parcel, or for refinancing;
- 5.3.2.5.3 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;
- 5.3.2.5.4 title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
- 5.3.2.5.5 there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
- 5.3.2.5.6 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
- 5.3.2.5.7 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.

- 5.3.3 A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- 5.3.4. A division of land creates cemetery lots;
- 5.3.5 A division of land is created by the reservation of a life estate;
- 5.3.6 A division of land is created by lease or rental for farming and agricultural purposes;
- 5.3.7 A division of land is in a location over which the state does not have jurisdiction; or
- 5.3.8 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.

5.4 Divisions of Land Which May be Exempt from Review and Surveying

- 5.4.1 Generally condominiums 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, and:

- 5.4.1.1 The approval of the original subdivision of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or
- 5.4.1.2 The condominium proposal is in conformance with applicable zoning regulations when local zoning regulations are in effect.
- 5.4.2 Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of the MSPA and these regulations, but must be submitted for review and approved by the governing body before portions may be rented or leased.
 - 5.4.2.1 When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the MSPA or these regulations;
 - 5.4.2.2 The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these regulations.
- 5.4.3 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 on-site weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
- 5.4.4 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.
- 5.4.5 The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- 5.4.6 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.

5.5 Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the

MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 Chapters 2. 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 Planner 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 Planner for evasion review.

5.5.1 Relocation of Common Boundary [76-3-207(1)(a), MCA]

5.5.1.1 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.

5.5.1.2 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) (available from the Mineral County Environmental Health and Planning Department) 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.

5.5.1.3 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.

5.5.1.4 Rebuttable Presumptions

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

5.5.1.4.1 the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or

5.5.1.4.2 the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

5.5.2 A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]

5.5.2.1 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.

5.5.2.2 Required Information

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

5.5.2.3 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.

5.5.2.4 Rebuttable Presumptions

5.5.2.4.1 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.

5.5.2.4.2 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.

5.5.2.4.3 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.

5.5.2.4.4 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.

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

5.5.3.1 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.

5.5.3.2 Required Information

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

5.5.3.3 Use of Exemption.

5.5.3.3.1 "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.

5.5.3.3.2 Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.

5.5.3.3.3 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.

5.5.3.4 Rebuttable Presumptions.

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

5.5.3.4.1 The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.

5.5.3.4.2 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.

5.5.3.4.3 The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

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

5.5.4.1 Statement of Intent

5.5.4.1.1 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.

5.5.4.1.2 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 Mineral County Clerk and Recorder office.

5.5.4.2 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] or relocation of common boundaries and aggregation of lots [76-3-207 (1)(d)] are allowed because no additional parcels are created. Subdivision review is not necessary because the relocations do not create any additional divisions of land. Review by the governing body is required if the exemption is used to increase the number of lots or redesign or rearrange six or more lots [76-3-207 (2)(a)].

5.5.4.3 Rebuttable presumption

5.5.4.3.1 If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

5.5.4.3.2 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.

5.5.5 Aggregation of Lots or Parcels [76-3-207(1)(f), MCA]

5.5.5.1 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 parcels or lots are eliminated and the boundaries of the larger aggregated parcel or lot are established.

5.5.5.2 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 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.

5.5.5.3 Rebuttable presumption

5.5.5.3.1 If the 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.

5.5.5.3.2 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.

5.5.5.3.3 If the amended plat or certificate of survey does not show fewer lots or parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

5.6 Procedures and Review of Subdivision Exemptions

5.6.1 Submittal

Any person seeking exemption from the requirements of the MSPA shall submit to the Planner (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)

5.6.2 **Review**

When a division of land for which an exemption is claimed is submitted to the Planner, the Planner 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 Planner 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.

5.6.2.1 Landowners or their agents are encouraged to meet with the Planner to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section 5.

5.6.2.2 The Planner 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.

5.6.2.3 If the Planner finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the Planner 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 Planner finds that the proposed use of the exemption does not comply with the statutes and the criteria in this Section 5, the Planner shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.

5.6.2.4 The Planner 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 .

5.6.3 **Appeals**

5.6.3.1 Any person whose proposed use of an exemption has been denied by the Planner because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the Planner'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.

5.6.3.2 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.

5.6.3.3 If the person proposing to use an exemption chooses not to rebut a presumption when the Planner 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.

5.7 Remaining Parcels of Land

Occasionally tracts of record are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term “remainder” has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer. The Montana Supreme Court has ruled in the decision of *Mills v. Alta Vista*, 2008 that “remainders” do not exist.

A “remaining tract of land” less than 160 acres in size, contiguous to and created by a subdivision, will be considered a lot in that subdivision and will not evade review as a “remainder.” A remaining parcel of land created through the use of a valid statutory exemption is a tract of record. If that tract of record is less than 20 acres in size, it must be surveyed and legally described on a recorded certificate of survey. If that tract of record is 20 acres or greater in size and can be described as an aliquot part it does not have to be surveyed, but must be adequately identified on any certificate of survey or instrument of conveyance that is otherwise required to be recorded to create a valid exempt tract of record under the Act and these regulations. Any subsequent divisions of such remaining tracts of record will be subject to review under the Act and these regulations.

5.8 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)©, MCA]
- OS ... Occasional Sale (used prior to April 6, 1993)
- AL ... Aggregation of Lots [76-3-207(e), MCA]

6. 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 13.2, Variances. The governing body may not grant variances from the provisions of Section 13.2.2, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to Sections 8, 9, and 10, respectively, of these regulations.

6.1 Conformance with Zoning

The design and development of a subdivision must conform to any applicable zoning regulations.

6.2 Natural Environment

6.2.1 The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation. To protect water quality, maintain wildlife habitat, and protect natural drainage systems and riparian areas along all waterways in Mineral County, building sites or structures shall be located:

6.2.1.1 a minimum of 50 feet from the high water mark as defined by bank full elevation or actively eroding bank for streams or creeks.

6.2.1.2 a minimum of 50 feet from the high water mark as defined by bank full elevation or actively eroding bank, or 25 feet from the top of the bank in stable bank areas for rivers. Decks, patios, stairways or area modification must also meet the 25-foot setback from the top of the bank in stable bank areas.

6.2.2 No construction or related activity shall cause the removal of vegetation within 50 feet of the high water mark from any stream or river.

6.3 Lands Unsuitable for Subdivision

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards such as flooding; high potential for wildfires, snow avalanches, rock falls, or land slides; steep slopes in excess of 25 percent; subsidence; high water table; polluted or non-potable water supply; high voltage lines; high pressure gas lines; air of vehicular traffic hazards or congestion; or because of unreasonable burdens on the general public, such as a need for excessive expenditures of public funds, or other features which may be detrimental to the health and safety of existing or future residents may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

6.4 **Floodplain Provisions**

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

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

The subdivider shall be responsible for assuring the DNRC submits its report to the Planner, prior to submittal of the subdivision application.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.

6.5 **Improvement Design**

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

6.6 **Lots**

Each lot that is intended to be built upon must contain a satisfactory building site and conform to health department regulations, applicable zoning regulations and these regulations. A satisfactory building site is an area shaped for the intended purpose that is at least 2,500 square feet in size, on a slope $\leq 25\%$ ², that is accessible by a 12-foot wide driveway that has a maximum slope of 12%, where seasonal high groundwater is greater than 4 feet from the ground surface. Where slopes $>25\%$ are prevalent on a property, the Planner may require that a building site be shown on one or more lot on the preliminary plat to demonstrate compliance with this standard.

² A lot may have a building site on a slope $>25\%$ if a licensed engineer with expertise in the field provides a stamped development suitability study prior to final plat approval. The study must demonstrate that development of the building site is feasible and would pose no significant geological hazard to the lot or impact neighboring properties. The study shall be filed along with the final plat and all construction on the lot shall comply with the recommendations of the study. In the event the engineer determines the lot to be unbuildable, that lot shall be consolidated into the adjoining parcels or designated as open space on the final plat.

- 6.6.1 No lot may be divided by a municipal or county boundary line.
- 6.6.2 No lot may be divided by a public road, alley or right-of-way or access easement.
- 6.6.3 No lot may be divided by a public or private utility easement, including irrigation related easements, unless the subdivision application demonstrates that the easement will not limit access to all portions of the property, and that the easement will not interfere with development on any designated building site.
- 6.6.4 Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot.
- 6.6.5 Corner lots must have driveway access to the same street or road that provides access to interior lots.
- 6.6.6 Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.
- 6.6.7 No lot may have an average depth greater than four times its average width, unless the minimum width is 200 feet.
- 6.6.8 Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- 6.6.9 Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

6.7 Blocks

- 6.7.1 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.
- 6.7.2 Unless impractical, block length must not be more than 1,600 feet.
- 6.7.3 Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.
- 6.7.4 Rights-of-way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

6.8 Streets and Roads

6.8.1 Public Streets/Roads

Public roads shall lie within rights-of-way or easements, which have been dedicated to the public. An approved homeowners association for major subdivisions shall maintain public subdivision roads, rights-of-way, and easements. Roads shall generally be centered in the easement.

6.8.2 Private Streets/Roads

Private roads/streets shall lie within private roadway right-of-ways or easements. An approved homeowners association (if feasible) shall maintain these roads. Mineral County will accept a maintenance agreement with participation by all lot owners for minor subdivisions for road maintenance. Roads shall generally be centered in the easement. Where private roads are proposed, the following certification shall appear on the final plat:

The above described tract of land is to be known and designated as _____ (Name of Subdivision), and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted to the use of the public forever. The roadways are accepted for public use, but Mineral County accepts no responsibility for maintaining the same. The owner(s) agree(s) that Mineral County has no obligation to maintain the roads hereby dedicated to public use.

6.8.3 Homeowners Associations

A homeowners association shall be formed for all subdivisions that have public roads, parks and/or common areas. The homeowners association and its covenants, bylaws and easement agreements shall be recorded with the final plat. The homeowners association shall have language in its governing documents to assess for maintenance and grading the subdivision roads, installation and maintenance of drainage improvements if applicable, dust abatement application, snow removal, and noxious weed control as well as other responsibilities of the association. Homeowners associations formed to maintain listed items in this section shall be formed to run with the land and not have provisions for termination.

6.8.4 Design Standards

6.8.4.1 The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

6.8.4.2 Roads must meet the design specifications in Table 1 and Mineral County Minimum Road Construction Standards.

- 6.8.4.3 Dead end roads/streets without cul-de-sacs are not permitted. Where streets terminate, a cul-de-sac must be provided at the terminus. Cul-de-sacs must conform to the design specifications in Road Diagram One (following Table 1). Other types of road endings are permitted by variance only, and must conform to AASHTO guidelines.
- 6.8.4.4 All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners association.
- 6.8.4.5 Residential driveways must conform to the following:
 - 6.8.4.5.1 Driveways must not have direct access to primary highways.
 - 6.8.4.5.2 A driveway must not provide access to more than one lot. A driveway must not cross an adjoining lot from lot line to lot line.
 - 6.8.4.5.3 Driveways must not be more than 500 feet in length.
 - 6.8.4.5.4 Driveways must provide adequate turnaround area for emergency vehicles.
 - 6.8.4.5.5 Driveways must have a minimum graveled road surface of 12 feet to facilitate emergency vehicle access.
 - 6.8.4.5.6 If provisions in Sections 6.8.4.5.1 through 6.8.4.5.5 will not be provided by the subdivider then language on the face of plat and covenants will notice that lots accessed by substandard driveways may jeopardize adequate emergency response measures.
- 6.8.4.6 Any vehicular access onto a state highway must be approved by the Montana Department of Transportation.
- 6.8.4.7. 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.
- 6.8.4.8 Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.

- 6.8.4.9 The alignment of all streets and roads must provide adequate sight distances.
- 6.8.4.10 The following requirements apply to intersections:
 - 6.8.4.10.1 Streets must intersect at approximately 90-degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the centerline of the roadway being intersected.
 - 6.8.4.10.2 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.
 - 6.8.4.10.3 No more than two streets may intersect at one point.
 - 6.8.4.10.4 Intersections of local streets with major arterials or highways must be avoided.
 - 6.8.4.10.5 Intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
 - 6.8.4.10.6 Hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
 - 6.8.4.10.7 The grade of approaches to major highways must be level for a minimum of 25 feet.
- 6.8.4.11 Roads shall generally be located in the center of easements.
- 6.8.4.12 Gateposts or other fencing shall not be constructed in road easements without prior approval of the governing body.
- 6.8.4.13 Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names. An addressing system shall be developed in conformance with the Mineral County Addressing Standards.
- 6.8.4.14 All areas disturbed during construction shall be revegetated by the subdivider with seed and fertilizer, mixture and rate approved by the Mineral County Weed Board. A detailed revegetation plan shall be submitted as part of the drawings and specifications. The plan shall contain sufficient information to assure the governing body that all

area of disturbed soil will be completely revegetated. The plan shall address weed control during the revegetation process.

6.8.5 Improvements and Construction Standards

- 6.8.5.1 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 its designated representative.
- 6.8.5.2 Guardrails may be required for road sections that have slopes of greater than 20 percent starting at the shoulder of the road where no barrow ditches are provided.
- 6.8.5.3 Roads for subdivisions anticipated to generate 81 or more average daily trips (ADT) shall have paved or double chip sealed surfaces. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the governing body or its designated representative.
- 6.8.5.4 Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- 6.8.5.5 Where access from a public road to the subdivision will cross properties, whether public or private, not owned by the subdivider, the subdivider must obtain proper easements of a minimum of 50-foot width to satisfy the requirements of Table 1.
- 6.8.5.6 Easements must be granted by each property owner in a signed and notarized document. (Appendix E contains a model road access easement.)
- 6.8.5.7 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.
- 6.8.5.8 Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.
- 6.8.5.9 Trees, brush and vegetation that interfere with sight paths for subdivision or driveway approaches may need to be removed or “cut back” to provide increased view area for vehicular traffic.

- 6.8.5.10 Streetlights will be required in subdivisions proposed within or adjacent to areas with existing streetlights. Streetlights may be required in other areas when necessary for public safety. Streetlights shall be downward pointed and side-shielded to prevent glare from leaving the property.
- 6.8.5.11 Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the Manual on Uniform Control Devices available from the Montana Department of Transportation.
- 6.8.5.12 Road signs of the size, shape and height as approved by Mineral County shall be placed at intersections by the subdivider, or a cash bond equal to 150 percent of the cost for the purchase and installation of the signs must be provided to the Environmental Health and Planning Department prior to final acceptance of subdivision roads.
- 6.8.5.13 Location of road signs shall be designated on road plans. Signs should not be located as to interfere with road maintenance such as snow removal.
- 6.8.5.14 Posts shall be metal that are two-inch (2”) schedule 40 galvanized steel. Mounting hardware shall be resistant to corrosion.
- 6.8.5.15 Signs shall be six inches wide by twenty-four, thirty or thirty-six inches long and shall be a minimum of .08-inch flat aluminum with short-radius rounded corners. Signs shall be coated with engineer grade Scotchlite or equivalent reflective surface.
- 6.8.5.16 When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.
- 6.8.5.17 Roads in major subdivisions (six or more lots) shall be designed and inspected through the course of construction and certified as built to Mineral County Approved Subdivision Road Standards by a licensed professional engineer when completed. Certification shall also be required where a subdivision road crosses a slope of $\geq 15\%$ and where a road variance is granted.
- 6.8.5.18 Subdividers and purchasers in subdivisions utilizing public roadways will be required to waive the right to protest the future creation of a Rural Improvement District for specific improvements in accordance with 76-3-608(7), MCA.
- 6.8.5.19 All subdivisions with an access road or driveway intersecting a paved County or State road shall have a paved approach for a minimum of 20 feet. A distance of greater than 20 feet may be required in certain

circumstances. The approach shall slope from the exiting road to prevent storm runoff from flowing onto the roadway.

- 6.8.5.20 The governing body may require a warranty period to ensure that road construction standards have been met. The warranty period will be determined on a case-by-case basis.
- 6.8.5.21 For major subdivisions that have a density of one single family dwelling per 15 or more acres, and lots are permanently restricted from further division, the 24-foot road surface other than pavement may be considered.
- 6.8.5.22 Annual dust abatement shall be applied following road construction for roads with gravel surfaces. Initial application shall occur in a timely fashion and prior to filing the final plat unless weather conditions practicably prohibit the application of the dust abatement chemical.

6.8.6 Traffic Impact Study Required

Where a subdivision subdivision is anticipated to generate 161 or more vehicle trips per day the subdivider shall submit along with the preliminary plat application a traffic impact study to gauge the impacts of development on transportation facilities, safety and traffic flow. For the purposes of these regulations single-family detached housing will be assumed to generate an average daily traffic (ADT) of 8 vehicle trips. The ADT of other land uses will be gauged using the most current volume of the Institute of Traffic Engineers Trip Generation Manual.

- 6.8.6.1 Preparation. A professional engineer or transportation planner must prepare the traffic impact study.
- 6.8.6.2 Form and content. The traffic impact study must be in written form along with supporting maps and other appropriate information. At a minimum, the report must include the following elements:
 - 6.8.6.2.1 purpose and goals;
 - 6.8.6.2.2 a description of the site and the study area, which shall extend to the most logical collector or arterial road based on trip distribution patterns;
 - 6.8.6.2.3 existing traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, significant land uses, crash data, intersection evaluations, roadway capacity, conditions of roads leading to the subdivision and other relevant information;

6.8.6.2.4 anticipated traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, significant land uses, crash data, intersection evaluations, roadway capacity and other relevant information;

6.8.6.2.5 anticipated effects of the subdivision on the existing road network; and

6.8.6.2.6 recommendations and alternatives to alleviate the negative effects (if any).

6.8.7 Substandard Roads Leading to a Subdivision

When a substandard road is used to access a subdivision, the governing body shall consider the two options below for improving the road(s) and choose the option that in its estimation is most likely to result in (A) improved safety and efficiency along the road(s) and (B) equitable distribution of the costs related to the extension of capital facilities. The most obvious travel route(s) due to convenience and destinations shall be used for determining traffic flows and counts.

6.8.7.1. Option 1 (*generally for major subdivisions but may be applied to minors*):

Where a subdivision is accessed by a substandard publicly-maintained road, the subdivider may be required to contribute to the governing body an amount equal to the proportional share of the improvements necessary to bring said road up to the adopted road standards, or to a standard deemed acceptable by the governing body, over its relevant length.

The cost of improvements shall be determined by a consulting engineer hired by the subdivider in consultation with the County/City road supervisor, who both shall identify the road deficiencies and estimate materials, labor and other cost items necessary to bring the road to the determined standard. The subdivider's proportional cost shall be found by adding current ADT figures from the road to the projected ADT to be generated by the subdivision, then dividing the projected subdivision ADT by the total. (Please see the example below.) ADT shall be determined by county/city records or the subdivider collecting traffic count data over a one week period, and may be required to

be adjusted for seasonal fluctuations. Traffic count location(s) shall be determined by the County/City Road Supervisor.

As determined by the governing body, the subdivider's funds will either (A) be deposited into an account held by the governing body for the road improvements and will be used only for improvements to the substandard road or (B), the developer will use the funds to make the specified improvements to the substandard road(s) prior to final plat filing or under a public improvements agreement. Under either option, the subdivider and lot purchasers will not be made responsible for additional road and related improvement costs under a rural improvement district within ten years of final plat filing. In the event the funds are deposited into an account for road improvements by the governing body but are not used for a period of ten years, the governing body will refund the subdivider's money upon written request.

Example	
Current ADT on Market Road	300
Projected ADT increase from subdivision	+ 150
Total current and projected ADT	450
<p>150 ÷ 450 = .33. Therefore, the subdivider is responsible for 33% of the cost of bringing Market Road up to adopted standards, or to a lesser standard acceptable to the governing body.</p>	

6.8.7.2 Option 2 (*generally for minor subdivisions but may be applied to majors*):

Where a subdivision is accessed by a substandard County or City-maintained road(s), as a condition of plat approval the governing body may require the future lot owners to waive their right to protest the formation of a Rural Improvement District related to specific road improvements that will benefit the future owners, subject to the limitations set forth in 76-3-608(7), MCA.

6.8.8. Offsite paving

When a subdivision is accessed off of a non-asphalt or non-chip-sealed road that, after buildout of the subdivision, is projected to have an ADT of 81 or more, the subdivider shall be required to asphalt or double chip-seal the road leading to the subdivision using the methodology provided in Subsection 6.8.7, Substandard Roads Leading to a Subdivision.

6.8.9 Secondary (Emergency) Access Roads

Secondary access roads function as emergency ingress/egress to a subdivision. These roads shall connect to other publicly or privately maintained roads but are not intended to serve as primary access or carry daily traffic. Secondary access roads shall meet the following standards:

6.8.9.1 Minimum driving surface no less than 18 feet wide;

6.8.9.2 Minimum centerline curve radius of 50 feet;

6.8.9.3 Maximum grade of 12%;

6.8.9.4 Minimum right-of-way of 40 feet;

6.8.9.5 The surface must be improved with an all-weather surface of asphalt, chip-seal or gravel and the road must be capable of supporting vehicles weighing 20 tons.

6.8.9.6 The right-of-way shall be cleared of slash and the homeowners association documents or road maintenance agreement shall include provisions for road and vegetation maintenance.

6.8.10. Double Chip Seal Standard

6.8.10.1 MC250 oil or an equivalent approved by the governing body is laid on top of the crushed gravel surface at a rate of 0.45 gallons per square yard.

6.8.10.2 A layer of ½ inch crushed rock is laid at a rate of 45 pounds per square yard.

6.8.10.3 The surface is compacted via rubber tire roller.

6.8.10.4 Repeat steps 1-3.

TABLE 1

Mineral County Subdivision Road Design Standards

Minimum Design Standards	<u>1 – 40 ADT</u>	<u>41 to 80 ADT</u>	<u>81 – 160 ADT</u>	<u>161+ ADT</u>
1. Minimum right-of-way width	50 – 60 ft.	60 ft.	60 ft.	60 ft.
2. Minimum roadway (driving surface) width <i>A</i>	20	24 ft.	24 ft.	24 ft.
3. Minimum approach radius at intersections	15 ft.	25 ft.	25 ft.	35 ft.
4. Maximum grades <i>B</i>	8%	8%	8%	8%
5. Minimum stopping sight distance	150 ft.	150 ft.	200 ft.	200 ft.
6. Angle of intersecting centerlines	At least 75°	At least 75°	At least 75°	At least 75°
7. Maximum cul-de-sac road length <i>C</i>	1,500 ft.	2,500 ft.	2,500 ft.	2,500 ft.
8. Cul-de-sac minimum outside right-of-way	50 ft.	50 ft.	50 ft.	50 ft.
9. Minimum centerline roadway radius	75 ft.	100 ft.	154 ft.	250 ft.
10. New bridges	Must comply with Mineral County Bridge Standards or AASHTO design guidelines <i>D, E</i>			
10.a. Design load (AASHTO) minimum	HS – 20	HS – 20	HS – 20	HS – 25
10.b. Vertical clearance	14.5 ft.	14.5 ft.	14.5 ft.	14.5 ft.
11. Paving requirements <i>F, G, H</i>	--	--	Double chip seal or paving required <i>I</i>	Paving required
12. Dust abatement	Considered	Required		

A- Roads must also have 2-foot wide compacted gravel shoulders on each side.

B- Grades greater than 8% shall be by variance and not exceed 100 feet in length.

C- Measured from center of intersection to center of cul-de-sac. Turnouts may be required.

D- American Association of State Highway Transportation Officials.

E- Roadway surface on bridge shall not be less than roadway driving surface it connects to.

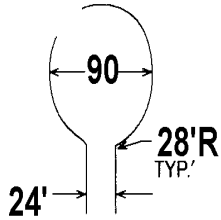
F- See Mineral County Paving Requirements.

G- Where all lots are less than 1-acre in size and connected to public water and sewer, double chip seal or paving is required regardless of ADT.

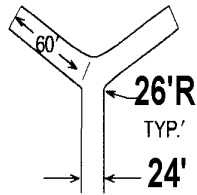
H- Roads within mobile home parks and RV parks shall be paved or double chip sealed, regardless of ADT.

I- The choice of double chip seal or paving is made at the discretion of the subdivider.

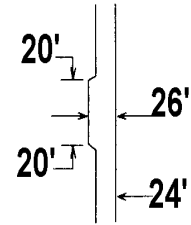
ROAD DIAGRAM ONE



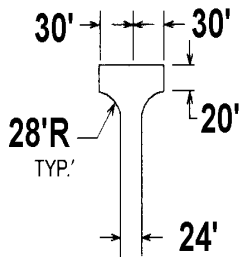
90' DIAMETER
CUL-DE-SAC



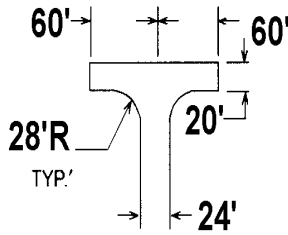
ACCEPTABLE
ALTERNATIVE TO
120' HAMMERHEAD



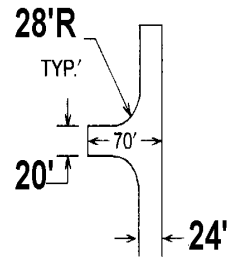
MINIMUM
CLEARANCE AROUND A
FIRE HYDRANT



60'
HAMMERHEAD



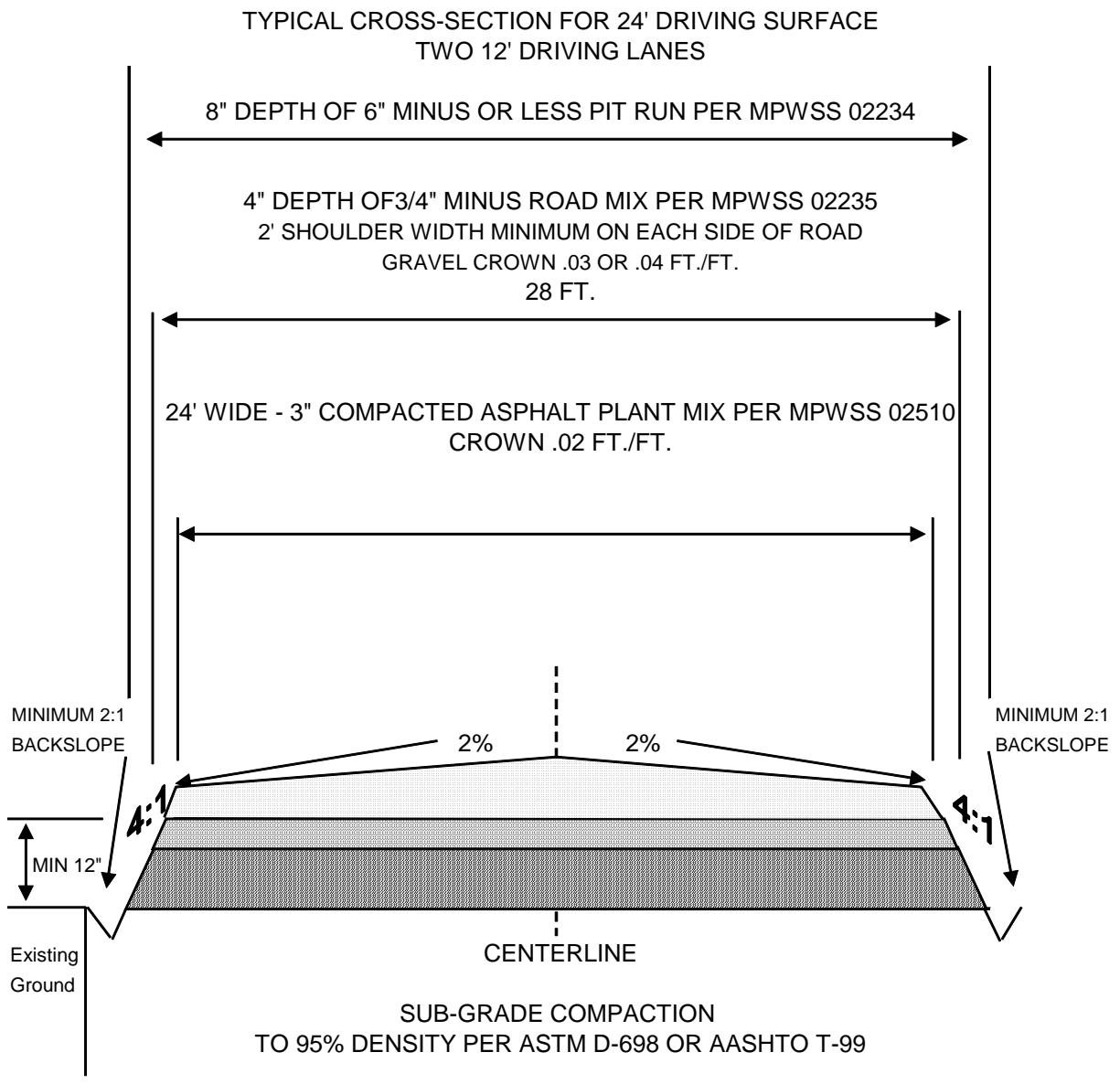
120'
HAMMERHEAD



ACCEPTABLE
ALTERNATIVE TO 120'
HAMMERHEAD

ROAD DIAGRAM TWO

MINERAL COUNTY MINIMUM ROAD CONSTRUCTION STANDARDS



ENGINEER INSPECTION OR WRITTEN APPROVAL REQUIRED ON EACH OF THE FOLLOWING:

- (1.) SUB-GRADE AND DITCHES
- (2.) COMPACTED PIT RUN MATERIAL, 6 IN. MINUS OR LESS
- (3.) COMPACTED CRUSHED TOP SURFACING TYPE "A" 3/4 MINUS
- (4.) FINISHED ROADWAY AND STREET SIGNS PER MUTCD

6.8.11 Right-of-Way Widths

Road rights-of-way not only provide a corridor for the road, but also provide space for the road slope and borrow area, cuts and fills, locating utilities, and holding plowed snow. An adequate right-of-way width is essential, but an excessively wide right-of-way wastes land that could be effectively used for development. In addition it needlessly removes land from the tax base. Where separate utility easements are to be provided, the width of rights-of-way can be reduced.

Because road construction in hilly or mountainous terrain usually requires more cutting and filling than is required on level ground, wider right-of-way in uneven terrain will be necessary.

6.8.12 Road Widths

Each driving lane shall be at least 10 feet wide to accommodate moving vehicles including trucks, motor homes, and camper trailers. A shoulder of two feet on each side of the road provides reasonable safety, so a minimum road width of 24 feet is a reasonable standard with non-paved shoulders. Roads are wider for subdivisions with greater traffic volumes or where higher driving speeds are expected (See Table 1). Where on-street parking will be allowed, an eight-foot parking lane should be added to the width of the driving lane.

Road widths should be based on traffic volumes and safety concerns. Requiring unnecessarily wide roads results in excessive construction and maintenance costs. Wide roads also encourage higher speeds and are usually not compatible with residential uses.

6.8.13 Cul-de-sacs/Turnarounds

Circular cul-de-sacs are the traditional means of allowing vehicles to turn around at the end of a street. A 45-foot minimum radius is adequate for cul-de-sacs in residential subdivisions. Fire trucks, ambulances, moving vans, garbage trucks, and snowplows can make the turn with one backing movement. Most of these vehicles use residential streets infrequently, and in most cases attending personnel can guide the driver during backing maneuvers.

The “T” turnaround is a practical alternative that may be allowed by variance and uses about 1/6 the land area of a typical cul-de-sac. Also, “T” turnarounds avoid the awkward pie-shaped lots often associated with cul-de-sacs. Each leg of the “T” turnaround should be 30 feet long. Parking restrictions may be necessary.

6.9 Bridge Standards

6.9.1 New bridges shall have a minimum width of the driving surface of the road they connect. The minimum design load capacity shall be 40 tons for primary access and constructed of nonflammable material. All other bridge within the

development shall be built to a design load of 25 tons and constructed of nonflammable material. Vertical clearance for overhead structures shall be a minimum of 14.5 feet.

- 6.9.2 Existing bridges will be improved to meet safety recommendation from an engineered study or other applicable report to provide a safe bridge. Width of the bridge roadway surface should match the width of the roadway system it joins.

6.10 Drainage Facilities

- 6.10.1 The drainage system and facilities required for any surface runoff affecting the subdivision is subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- 6.10.2 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.
- 6.10.3 Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential runoff from upstream drainage areas.
- 6.10.4 The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- 6.10.5 Drainage systems must not discharge into any sanitary sewer facility.
- 6.10.6 Drainage systems must be designed and certified by a professional engineer or other knowledgeable person that submits storm runoff plans to the DEQ.
- 6.10.7 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.

6.11 Water Supply Systems

- 6.11.1 The proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, 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.

- 6.11.2 Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 et seq., MCA.
- 6.11.3 If the lots are 20 acres or greater in size, the subdivider shall demonstrate that there is an adequate water source on each lot prior to final plat approval.
- 6.11.4 A central water supply system may be required to provide adequate and accessible water for fire protection.

6.12 Sewage Treatment Systems

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

6.13 Solid Waste

- 6.13.1 The proposed method of storing and disposing of solid waste generated within the subdivision must comply with the standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- 6.13.2 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 DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, et seq., MCA.

6.14 Utilities

- 6.14.1 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.
- 6.14.2 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. Electrical utilities must be placed underground to reduce the potential for ignitions in forested areas wherever practical.
- 6.14.3 Where practical, overhead utility lines must be located at the rear property line.
- 6.14.4 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.
- 6.14.5 Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.
- 6.14.6 Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body.
- 6.14.7 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.
- 6.14.8 In addition to describing, dimensioning and showing the location of utility easements in their true and correct location 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.”

6.15 Water Course and Irrigation Easements [76-3-504(1)(j), (k), MCA]

- 6.15.1 Except as noted in Section 6.15.2, below, the subdivider shall establish within the subdivision ditch easements that:
- 6.15.1.1 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;

6.15.1.2 are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

6.15.1.3 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.

6.15.2 The subdivider need not establish irrigation easements as provided above if:

6.15.2.1 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

6.15.2.2 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

6.15.2.3 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.

6.15.3 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, 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.

6.16 Disposition of Water Rights [76-3-504(1)(i), 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:

6.16.1 reserved all or a portion of the appropriated water rights owned by the owner of the land to be subdivided and transferred 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;

6.16.2 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 landowners 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

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

6.17 Parkland Dedication – Cash in Lieu – Waivers – Administration

6.17.1 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 in the following amounts:

6.17.1.1 eleven percent of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

6.17.1.2 seven and one-half percent of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;

6.17.1.3 five percent of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and

6.17.1.4 two and one-half percent of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.

6.17.2 A park dedication is not required for:

6.17.2.1 minor subdivisions;

6.17.2.2 subdivision lots larger than five acres;

6.17.2.3 nonresidential subdivision lots;

6.17.2.4 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

6.17.2.5 subdivisions which will create only one additional parcel.

6.17.3 The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and

playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

6.17.4 The governing body will waive the park dedication requirement if it determines that:

6.17.4.1 either:

6.17.4.1.1 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

6.17.4.1.2 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 Section 6.17.1;

6.17.4.2 or:

6.17.4.2.1 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

6.17.4.2.2 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 to have been dedicated under Section 6.17.1 above;

6.17.4.3 the area of the land proposed to be subdivided, by virtue of a combination of the provisions of Sections 6.17.4.1 through 6.17.4.2 above, is reduced by an amount equal to or exceeding the area of the dedication required under Section 6.17.1; or

6.17.4.4 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

6.17.4.5 the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under Section 6.17.4.1.

6.17.5 The local governing body may waive the park dedication requirement if:

- 6.17.5.1 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
- 6.17.5.2 the area of land to be subject to long-term protection, as provided in Section 6.17.5.1, equals or exceeds the area of dedication required under Section 6.17.1.
- 6.17.6 The governing body will administer funds dedicated to the public under this section in accordance with section 76-3-621(5), MCA.
- 6.17.7 For the purposes of this park dedication requirement:
 - 6.17.7.1 “cash donation” means the fair market value of the unsubdivided, unimproved land; and
 - 6.17.7.2 “dwelling unit” means a residential structure in which a person or persons reside.
- 6.17.8 A land donation under this Section 6.17.1 may be inside or outside of the subdivision.

6.18 Fire Protection

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

- 6.18.1 the placement of structures so as to minimize the potential for flame spread and to permit adequate access for fire fighting equipment;
- 6.18.2 the presence of adequate fire fighting facilities on site, when required by the governing body;
- 6.18.3 an adequate water supply and water distribution system to fight fires on site, when required by the governing body;
- 6.18.4 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;
- 6.18.5 provision for a second emergency exit; and
- 6.18.6 that any bridge constructed for access to a proposed subdivision have a minimum load design of 25 tons.
- 6.18.7 Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard.
 - 6.18.7.1 For areas identified as wildfire hazard areas by the United States Forest Service, the Montana Department of Natural Resources and

Conservation, a local fire protection authority, or a local growth policy, the following apply:

6.18.7.1.1 A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.

6.18.7.1.2 The Fire Prevention and Control Plan must include the following items:

6.18.7.1.2.1 an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;

6.18.7.1.2.2 a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;

6.18.7.1.2.3 a map of the areas that are to be thinned to reduce the interlocking canopy of trees; and

6.18.7.1.2.4 the identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities; slopes of all roads and driveways must be provided.

6.18.7.2 At least two entrances/exits must provide escape routes for residents and access to the subdivision by firefighting vehicles. Bridges providing access to the subdivision must be built to a design load of 25 tons and constructed of nonflammable materials. Road rights-of-way must be cleared of slash.

6.18.7.3 Building sites may not be located on slopes greater than 25 percent or at the apex of “fire chimneys” (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).

6.18.7.4 The Fire Prevention and Control Plan must be implemented before the governing body will approve the final plat, and will be considered part of the subdivider’s obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The plan will not be considered fully implemented until the fire chief has given written notice to the governing body or Planner that the Plan has been completed as approved by the governing body.

6.18.7.5 Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A property owners association must be formed and designated to enforce the covenants, conditions, and restrictions.

6.18.7.6 Open space, parkland, 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.

6.18.7.7 A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by recommendations by the appropriate local fire protection authority.*

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

6.18.7.7.1 a central water system with a minimum continuous flow of 1,000 gallons per minute; or

6.18.7.7.2 cisterns, reservoirs or fill ponds:

6.18.7.7.2.1 for single dwelling units: minimum capacity of 2,500 gallons;

6.18.7.7.2.2 for six or more dwelling units: minimum capacity of 500 gallons per dwelling unit.

7. NOXIOUS WEEDS

7.1 The subdivider will provide a Mineral County Weed Management Plan approved by the Mineral County Weed Board to the Mineral County Environmental Health and Planning Department prior to final plat approval. This plan will include the name and address of the property owner or applicant, the legal description and location of the property, vicinity or other map locating the property and ownership. The noxious weed data shall include:

7.1.1 types of noxious weeds present;

7.1.2 approximate number of acres infested with noxious weeds;

7.1.3 anticipated land use and other environmental concerns (surface water);

7.1.4 planned weed control activities;

7.1.5 plans for future weed control for a period of two years; and

7.1.6 signature(s) of property owner(s).

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

8.1 Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes

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

8.1.1 Recreational Camping Vehicles

Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under Section 8.5, Recreational Vehicle Park Standards, below.

8.1.2 Mobile/Manufactured Homes

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under Section 8.4, Mobile/Manufactured Home Park Standards, below.

8.1.3 Land Subdivisions Created by Rent or Lease

Land subdivisions that will be created by rent or lease, rather than by sale, are subject to review and approval under the MSPA but, under section 76-3-208, MCA, are exempt from the Act’s surveying and filing requirements. Consequently, after the governing body approves a preliminary plat of a subdivision to be created by rent or lease, the subdivider should prepare a final “plan” rather than a surveyed final “plat.”

8.1.3.1 Land subdivision created by rent or lease will be reviewed under the procedures described in Section 3, Minor Subdivisions, or Section 4, Major Subdivisions, as may be appropriate, except that the subdivider shall submit an un-surveyed final plan drawn to scale, rather than a final plat.

8.1.3.2 Land subdivisions, created by rent or lease, are subject to the applicable design and improvement standards contained in Section 6, Design and Improvement Standards.

8.2 Procedures for Review

8.2.1 Definition

A subdivision created by rent or lease, including a mobile home or recreational vehicle park, is any tract of land divided by renting or leasing portions thereof. It is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common).

8.2.2 Review and Approval

Subdivisions, which will provide multiple spaces for recreational camping vehicles or mobile homes, and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. These subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased. The subdivider shall submit a completed application form and a plan of the proposed development. The procedure used to review subdivisions created by rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Section 4 of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section 3 of these regulations. The subdivider shall submit to the governing body the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the lot layout and the proposed location of the mobile home, recreational vehicle, or other unit on the lot.

8.2.3 Improvements

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

8.2.4 Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats contained in Appendix A, Preliminary Plat Form, Contents, and Supplements. The subdivider shall submit the plan to the Planner. The plan will be reviewed to ensure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the Mineral County Clerk and Recorder's Office and/or the Mineral County Environmental Health and Planning Department.

8.2.5 Department of Public Health and Human Services 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 DPHHS under Title 50, Chapter 52, MCA.

8.3 Design Standards for Subdivision Spaces Created by Rent or Lease

8.3.1 Design Standards

Subdivisions created by rent or lease must comply with the provisions of Section 6, Design and Improvement Standards.

8.3.2 Additional Provisions

The governing body may require provision for:

- 8.3.2.1 storage facilities on the lot or in compounds located within a reasonable distance;
- 8.3.2.2 a central area for storage or parking of boats, trailers, or other recreational vehicles;
- 8.3.2.3 landscaping or fencing to serve as a buffer between the development and adjacent properties;
- 8.3.2.4 an off-street area for mail delivery; and
- 8.3.2.5 streetlights.

8.4 Mobile Home Park Standards

8.4.1 Mobile Home Spaces

- 8.4.1.1 Mobile home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- 8.4.1.2 All mobile 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.
- 8.4.1.3 The mobile home pad must be located at least 10 feet from the street that serves it.
- 8.4.1.4 The size of the mobile home pad must be suitable for the general market to be served and must fit the dimensions of mobile homes anticipated.
- 8.4.1.5 A mobile home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- 8.4.1.6 The governing body may require that the mobile home pad be improved to provide adequate support for the placement and tie-down of the mobile home.

- 8.4.1.7 No mobile home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
- 8.4.1.8 No detached structure, such as a storage shed, may be located within five feet of any mobile home or its attached structures.
- 8.4.1.9 A minimum of two off-street parking spaces must be provided on or adjacent to each mobile home space. The driveway must be located to allow for convenient access to the mobile home, and be a minimum of 10 feet wide.
- 8.4.1.10 One guest parking space must be provided for each 10 mobile home spaces. Group parking may be provided.
- 8.4.1.11 The limits of each mobile 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.
- 8.4.1.12 Each mobile home must be skirted within 30 days after it is moved to a space within the mobile home park. The skirting must be of a fire-resistant material similar to that of the mobile home exterior.

8.4.2 Streets

Streets within a mobile home park must meet the design standards specified in Section 6.8, Streets and Roads, except that all streets in a mobile home park shall be paved or double chip sealed, regardless of estimated ADT. Streets must be designed to allow safe placement and removal of mobile homes.

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

8.4.3 Electrical Systems

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

8.4.4 Gas Systems

8.4.4.1 Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the “International Fuel Gas Code” (NFPA Pamphlet 54-1981) and the “Standard for the Storage and Handling of Liquefied Petroleum Gases” (NFPA Pamphlet 58-1981).

8.4.4.2 A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near the point of connection of the liquefied petroleum gas container.

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

8.5 Recreational Vehicle Park Standards

8.5.1 Recreational Vehicle Spaces

8.5.1.1 Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.

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

8.5.1.3 Roads within recreational vehicle parks shall be paved or double chip sealed, regardless of estimated ADT.

8.5.1.4 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.

8.5.1.5 No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

8.5.2 Density

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

9 PLANNED UNIT DEVELOPMENTS

9.1 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].

9.2 Procedures

If the governing body designates a proposed development plan as a Planned Unit Development hereinafter referred to as “PUD,” the preliminary plat may be submitted for review. Submittal must comply with requirements and procedures contained in the following sections:

- 4.1. Review and Approval Process and Procedures for Major Subdivisions
- 2.1.5 Preliminary Plats
- 2.2. Final Plats

9.3 Standards

9.3.1 Design Standards

PUDs must comply with the standards contained in Section 6, Design and Improvement Standards. However, the governing body may modify the design and improvement standards contained in Section 6.6, Lots; Section 6.7, Blocks; Section 6.8, Streets and Roads; and Section 6.17, Park Land Dedication, upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation and adequate light, air, and open space. In such cases, no application for a variance under Section 13.2, Variances, of these regulations is necessary.

9.3.2 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.

9.3.3 Open Space

Each PUD must comply with the requirements of Section 6.17.4 of these regulations. The open space must be:

- 9.3.3.1 owned by a property owners association; or
- 9.3.3.2 dedicated to public use, if acceptable to the governing body; or
- 9.3.3.3 a combination of the above.

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

10 CONDOMINIUMS

10.1 Procedures

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

10.1.1 Review Where Land Will Not be Divided

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section 8.1.3, Land Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Section 2.2.4, Public Improvements Agreement; Guaranty.

10.1.2 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:

- 3 or 4 Review and Approval Procedures for Minor or Major Subdivisions
- 2.1. Preliminary Plats
- 2.2. Final Plats

10.2 Standards

10.2.1 Design Standards

Condominium developments must comply with applicable standards contained in Section 6, Design and Improvement Standards.

10.2.2 Unit Ownership Act

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

11 CLUSTER DEVELOPMENT

Mineral County may require cluster development for subdivisions to provide open space, but the open space may not be suitable for the creation of perpetual conservation easements to the public. Open spaces preserved under this section would be dedicated to and maintained by a homeowners association.

- 11.1 The development must preserve an area of open space that is at least as large as the area that will be developed.
- 11.2 The proposal must provide a mechanism for the maintenance of the open space in perpetuity. The open space may be dedicated to a homeowners association for the purpose of maintenance, and may be used for agricultural or other purposes that enhance the preserved area.
- 11.3 Unless the subdivision will be served by a community sewer or water system, each lot in the cluster must be a minimum of one acre in size.
- 11.4 Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
- 11.5 Park dedication requirements are waived for clustered subdivisions created under this section.

12 GENERAL COMMERCIAL AND INDUSTRIAL DEVELOPMENT STANDARDS

12.1 Development Standards Scope

12.1.1 Intent

Commercial development should be located in areas that do not conflict with existing residential development. Adequate parking for commercial, employee and customer vehicles must be provided and the parking shall not interfere with public road rights-of-way.

12.1.2 Minimum Standards

Plans for commercial or industrial lots shall incorporate the following standards:

12.1.2.1 Adequate lot area to facilitate the proposed development.

12.1.2.2 Adequate parking shall be provided within the property boundary to accommodate average daily use. Required parking shall be located so as to preclude backing maneuvers onto any public rights-of-way, and shall not be located within any setback area.

12.1.2.3 Parking lots shall not create excessive dust. Paving or double chip sealing may be required.

12.1.3 Commercial and Industrial Landscaping Standards

Landscaping shall be provided to enhance the general appearance of buildings and parking areas. The plant species shall be either native or compatible with the local climate and shall be located between the building and parking area and surrounding streets.

12.1.4 Commercial and Industrial Sign Standards

Signs should be located to minimize visual impact. Signs should be of similar size to existing signs. Signs must be located on private property unless easements are granted by the governing body of the public right-of-way for sign locations. All signs shall be maintained by the property owner and in good repair.

13 ADMINISTRATIVE PROVISIONS

13.1 Fee Schedule

13.1.1 Preliminary Plat Review

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a nonrefundable fee at the time of application for preliminary plat approval. The fees, payable to the county treasurer submitted through the Planner, are as follows:

<u>Number of Proposed Lots or Dwelling Units</u>	<u>Fee</u>
1 - 2 (minor subdivisions)	\$350.00 plus \$25.00 per lot
3 - 5 (minor subdivisions)	\$450.00 plus \$25.00 per lot
6 to 10 (major subdivisions)	\$650.00 plus \$25.00 per lot
11 to 15 (major subdivisions)	\$950.00 plus \$25.00 per lot
16 to 20 (major subdivisions)	\$1,250.00 plus \$25.00 per lot
Fees shall increase \$250.00 for each additional five (5) lots plus \$25.00 per lot	
Fees shall apply for reapplications of applications that were denied by the governing body just as for new applications.	

13.1.2. Final Plat Review and Inspection

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a nonrefundable fee at the time of application for final approval to the county treasurer submitted through the Planner at the following rate:

\$75.00 plus \$5.00 per lot created.

13.1.3 Exemption Use Review Fee

The fee for review for an exemption will be \$100.00 per application. This fee also pertains to Lifting of Agricultural Restrictions from tracts or parcels.

13.1.4 Examination of Plats or Certificate of Surveys

The fee for plat or survey review will be \$200.00 unless the examining land surveyor fee exceeds the \$200.00, then actual expenses will be remitted prior to recording plat or survey.

13.2 Variances

13.2.1 Variances Authorized

The governing body may grant variances from Section 6, 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 Planning Board or 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. The governing body will not approve a variance unless it finds that:

- 13.2.1.1 the granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- 13.2.1.2 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;
- 13.2.1.3 the variance will not cause a substantial increase in public costs; and
- 13.2.1.4 the variance will not place the subdivision in nonconformance with any adopted zoning regulations.

13.2.2 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.

13.2.3 Procedure

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

13.2.4 Conditions

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

13.2.5 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.

13.2.6 Fees for Variances

The fee for a variance hearing before the county commissioners or appropriate town council with a public hearing notice shall be \$100.00.

13.2.7 Fees for Material Changes to Preliminary Conditional Plat Approvals

For fee for applications or requests to amend granted conditions are as follows:

Minors	Fifty percent of application fee
Majors	Forty percent of application fee

13.3 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.

13.4 Administration

13.4.1 Enforcement

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

13.4.2 Violation and Penalties

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

13.4.3 Appeals

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

13.4.3.1 A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.

13.4.3.2 A party identified in Section (13.4.3.4) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the written decision, appeal to the district court in the county in which the

property involved is located. The petition must specify the grounds upon which the appeal is made.

13.4.3.3 For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

13.4.3.4 The following parties may appeal under the provisions of Section (13.4.3.2) above:

13.4.3.4.1 the subdivider;

13.4.3.4.2 a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

13.4.3.4.3 the county commissioners of the county where the subdivision is proposed;
and

13.4.3.4.4 one of the following municipalities:

13.4.3.4.4.1 a first-class municipality as described in 7-1-4111, if a subdivision is proposed within three miles of its limits;

13.4.3.4.4.2 a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within two miles of its limits;

13.4.3.4.4.3 a third-class municipality, as described in 7-1-4111, if a subdivision is proposed within one mile of its limits.

APPENDIX "A"

SUBDIVISION PLAT APPLICATION

PART I GENERAL DESCRIPTION AND INFORMATION

1. Name of the proposed subdivision _____
2. Location (City and/or County) _____
Legal description: _____ 1/4 _____ 1/4 of Section _____ Township _____ Range _____
3. Type of water supply system:
 - a. Individual surface water supply from spring _____
 - b. Multiple-family water supply system (3-14 connections and fewer than 25 people) _____
 - c. Service connection to multiple-family system _____
 - d. Service connection to public system _____
 - e. Extension of public main _____
 - f. New public system _____
 - g. Individual well _____
4. Type of wastewater treatment system:
 - a. Individual or shared on-site septic system _____
 - b. Multiple-family on-site system (3-14 connections and fewer than 25 people) _____
 - c. Service connection to multiple-family system _____
 - d. Service connection to public system _____
 - e. Extension of public main _____
 - f. New public system _____
5. Name of solid waste garbage disposal site and hauler:

6. Is information included which substantiates that there will be no degradation of state waters or that degradation will be nonsignificant? _____
7. Descriptive Data:
 - a. Number of lots or rental spaces _____
 - b. Total acreage in lots being reviewed _____

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

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

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

9. Provide the following information regarding the development:

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

- g. Indicate whether the mineral rights have been severed from the property:
Yes_____ No_____
- h. Indicate whether water rights have been severed from the property:
Yes_____ No_____
- 10. Is the applicant claiming an exemption under Section 4.1.1 of the subdivision regulations from the requirement to prepare an environmental assessment?
Yes_____ No_____

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

Name Phone

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

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

Name Signature of owner

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

Date Phone

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

Name Signature of subdivider

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

Date Phone

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

PART II PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS

1. Preliminary Plat Subdivision Application Form:

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

2. Preliminary Plat Review Fee:

The subdivider shall submit the required review fee as identified in the pre-application meeting and in Section 13.1 of the subdivision regulations.

3. Preliminary Plat Form, Contents, and Supplements:

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

The following information must be provided on the preliminary plat or in supplements to the preliminary plat when required by the Planner:

- 2.2 The subdivision or development name (the title must contain the words "plat" and/or "subdivision")
- 2.3 The legal description, including Section, Township, and Range, and any underlying survey data;
- 2.4 A north arrow;
- 2.5 The scale used on the plat;
- 2.6 The certification of a professional land surveyor;
- 2.7 The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications);
- 2.8 The names of all owners of record and the subdivider [if different from the owner(s)];
- 2.9 The date the preliminary plat is completed;
- 2.10 Proposed lot layout with approximate dimensions and sizes;
- 2.11 Lots and blocks identified by number or letter;
- 2.12 The use of each lot, if other than for single-family residential;
- 2.13 The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given;
- 2.14 All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property;
- 2.15 All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each;
- 2.16 Existing and proposed road and street names;
- 2.17 Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, alleys, or highways;
- 2.18 The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted lands;
- 2.19 The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- 2.20 Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use;
- 2.21 The total gross area of the subdivision and the total net area, exclusive of public areas and rights-of-way;
- 2.22 Existing and proposed infrastructure and proposed utilities including:
 - 2.22.5 The approximate location, size, and depth of existing and proposed sanitary and storm sewers;

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

- k. For cul-de-sac streets:
 - i. widths of turn around radiuses;
 - ii. minimum right-of-way widths at the turnarounds;
 - iii. minimum pavement or road surface width at the turnarounds;
 - iv. total lengths of the streets.
 - l. The locations and characteristics of bridges and culverts;
 - m. The locations and dimensions of adjoining lots and open spaces;
 - n. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets;
 - o. Typical grading and location of intersections with private driveways; and
 - p. Description of how the roads will be maintained.
18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
 19. Proposed easements;
 20. Proposed disposition of water rights, as required by Section VI-O of the subdivision regulations;
 21. Proposed disposition of mineral rights;
 22. Parkland dedication calculations, including a property valuation assessment or appraisal if cash-in-lieu of parkland is proposed;
 23. Environmental Assessment and/or Summary of Probable Impacts including:
 - a. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
 - b. an explanation of how the subdivider has responded to the comments of the Planner at the pre-application meeting.
 24. Transportation Impact Analysis or Transportation Plan;
 25. Fire Risk Rating Analysis and Fire Prevention Plan as required in Section VI-R of the subdivision regulations;
 26. Weed Management Plan and Re-vegetation Plan;
 27. Property owners' Association Documents shall accompany the preliminary plat, and at a minimum shall provide the information, form, and contents included in Section II-B-3 of the subdivision regulations;
 28. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-D of the subdivision regulations and paragraph 35 of this Part II.
 29. Required water and sanitation information, including:
 - a. Provide the following attachments to the preliminary plat:
 - i. A vicinity map or plan that shows:
 - A. The location, within 100 feet outside of the exterior of the property line of the subdivision and on the proposed lots, of:
 1. floodplains;
 2. surface water features;
 3. springs;
 4. irrigation ditches;
 5. existing, previously approved, and for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 6. for parcels less than 20 acres, mixing zones identified as provided in subsection (X); and
 7. the representative drainfield site used for the soil profile description as required under subsection (C)(4); and
 - B. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.

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

b. Water Supply

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

- a. map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
 - b. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
3. evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
- 2.22.8 Where a new system is proposed:
- a. Provide evidence of adequate water availability, unless cisterns are proposed:
 - i. obtained from well logs or testing of onsite or nearby wells;
 - ii. obtained from information contained in published hydrogeological reports; or
 - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
 - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - c. provide all information required in ARM 17.36.330-336 and Circular DEQ-3.
 - d. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;

C. For a **public water system**:

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

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

- B. If a new system is proposed:
 - 1. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - 2. provide all information required in ARM 17.36.320-326 and Circular DEQ-4 or Circular DEQ-5.
 - 3. evidence of suitability as provided in subsection (a) of this section.
 - 4. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.
- iv. For a **public wastewater treatment system**:
 - A. If an existing system is to be used:
 - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - 2. indicate the system's capacity to handle additional load and its distance from the development;
 - 3. provide evidence that permission to connect to the system has been granted;
 - 4. provide the following attachments:
 - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
 - b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 and Circular DEQ-2 or Circular DEQ-4.
- d. Storm Water
 - i. Describe measures for the collection and disposal of storm run-off from streets and roads within the subdivision.
 - ii. Indicate the type of road surface proposed.
 - iii. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
 - iv. Describe how surface run-off will be drained or channeled from parcels.
 - iv. Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
 - iv. Describe any existing or proposed streambank or shoreline alteration, and any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.
 - iv. Provide the grading and storm water or drainage plan as required by section II-3 Preliminary Plat Supplements, subsection (e) of this appendix.
- e. Solid Waste
 - i. Describe the proposed method of solid waste collection and disposal.
 - ii. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
 - iii. If on-site disposal of solid waste is proposed, provide the information required in ARM 17.36.309(2).
- 30. A form of Subdivision Improvements Agreement, if proposed;
- 31. Letter requesting a revocation of agricultural covenants;
- 32. Letter indicating locations of cultural or historic resources;
- 33. Variance request or approval;
- 34. Re-zoning application or approval;
- 35. When required, a flood hazard evaluation which contains the following detailed information:[to be submitted to the Water Resources Division, Department of Natural Resources]:
 - a. Certification by a registered professional engineer;
 - b. An overall scaled plan view with identified scale for vertical and horizontal distance showing the following:

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

PART III ENVIRONMENTAL ASSESSMENT

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

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

1. Surface Water

Locate on a plat overlay or sketch map:

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

2. Groundwater

Using available data, provide the following information:

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

3. Topography, Geology and Soils

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

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

4. Vegetation

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

5. Wildlife

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

Part IV SUMMARY OF PROBABLE IMPACTS

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

1. Effects on Agriculture

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

2. Effects on Agricultural Water User Facilities

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

3. Effects on Local Services

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

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

4. Effects on the Historic or Natural Environment

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

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

5. Effects on Wildlife and Wildlife Habitat

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

6. Effects on the Public Health and Safety

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

PART V COMMUNITY IMPACT REPORT

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

1. Education and Busing

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

2. Roads and Maintenance

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

3. Water, Sewage, and Solid Waste Facilities

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

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

4. Fire and Police Protection

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

5. Payment for extension of Capital Facilities

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

APPENDIX "B"
FINAL PLAT APPLICATION FORM

Date _____

1. Name of Subdivision _____
2. Location: _____ 1/4 Section _____ Township _____ Range _____ For Amended Plats: Lot(s) _____ Block(s) _____ Subdivision _____
3. Name, address and telephone number of subdivider:

4. Name, address and telephone number of persons of firms providing services and information (e.g.: surveyor, engineer, designer, planning consultant, attorney):

5. Descriptive Data:
 - a. Gross area in acres _____
 - b. Number of lots or rental spaces _____
 - c. Existing zoning or other regulations _____

6. Date Preliminary Plat Approved: _____
7. Any Conditions? _____ (If Yes, attach list of conditions.)
8. Any Deed Restrictions or covenants? _____ (If Yes, attach a copy.)
9. All improvements installed? _____ (If No, attach a subdivision improvements agreement or guarantees.)
10. List of materials submitted with this application:
 - a. _____
 - b. _____
 - c. _____

 - d. _____
 - e. _____
 - f. _____

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

Subdivider

FOR OFFICIAL USE ONLY

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

**APPENDIX “C”
SAMPLE CERTIFICATES**

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

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

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – County

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

Certificate of Completion of Public Improvements Agreement

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

CERTIFICATE OF COMPLETION

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

Signature of Subdivider

Date

Signature of Professional Engineer

Date

Registration No. _____

Address

(Engineers Seal)

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

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

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

(Seal)

(Signature of Clerk)

Certificate of Examining Land Surveyor Where Required – Final Plat

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

Dated this _____ day of _____, 20 ____.

(Signature)

(Name of Surveyor)

Registration No. _____

(City or County)

Certificate of County Treasurer

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

(legal description of land)

Dated this _____ day of _____, 20 ____.

(seal)

(Signature of County Treasurer) Treasurer,
_____ County, Montana

Certificate of Final Plat Approval – County

The County Commission of _____ County, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this _____ day of _____, 20 ____.

(Signatures of Commissioners)

ATTEST:

(Signature of Clerk and Recorder)

(Seal of County)

_____, Montana

Certificate of Final Plat Approval – City

The (Commission) (Council) of the City (Town) of (Name of City or Town), Montana does hereby certify that it has examined this subdivision plat and, having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this _____ day of _____, 20 ____.

by (Signature of City or Town Clerk)
Clerk

(Signature of Mayor)
Mayor

Certificate of Filing by Clerk and Recorder

STATE OF MONTANA)
) ss.
County of _____)

Filed for record this _____ day of _____, 20 ____, at _____ o'clock.

(Signature of Clerk and Recorder)

County Clerk and Recorder, _____ County, Montana

**APPENDIX “D”
SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY**

MODEL SUBDIVISION IMPROVEMENT AGREEMENT

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

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

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

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

Subdivider’s Obligations

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

7. Commencement and Completion Periods: The Subdivider shall complete all of the required improvements within (2) years from the effective date of this Agreement.
8. Compliance with Law: The Subdivider shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

City's (or County's) Obligations

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

Other Provisions

13. Events of Default: The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:
 - a. failure to complete construction of the improvements within two years of final subdivision plat approval;
 - b. failure to remedy the defective construction of any improvement within the remedy period;

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

conditions occur will not be included if the events prevent the Subdivider or the City (or County) from performing the obligations under this Agreement.

22. Assigns: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of the City (or County). Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City (or County) to assign its rights under this Agreement.

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

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

Dated this ____ day of _____, 20____.

City (or County) Official

Subdivider

ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

Comment:

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

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

1. Letter of Credit

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

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

2. Escrow Account

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

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

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

3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property

as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

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

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

4. Sequential Development

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

5. Surety Performance Bond

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

6. Special Improvements District

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

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

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the county clerk and recorder and shall be deemed to run with the land.

MODEL

IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. ____

Name of Local Government
Address

Date

Gentlemen:

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

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

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

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

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

(Lending Institution)

(Signature and Title of Official)

APPENDIX "F"

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

1. A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies with the following requirements:
 - a. Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.
 - b. One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
 - c. If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
 - d. A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended.," and unless it is exempt from subdivision review by 76- 3-201 or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder unless it meets the filing requirements for final subdivision plats specified in this rule.
2. A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
 - a. A title or title block indicating the quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".
 - b. The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.
 - c. A north arrow.
 - d. A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)
 - e. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
 - i. If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification

by the surveyor as to the reason the monuments have not been set and the date by which they will be set.

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

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

- n. The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.
 - o. The total acreage of the subdivision.
 - p. A narrative legal description of the subdivision as follows:
 - i. If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
 - ii. If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
 - iii. If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
 - iv. If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
 - q. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.
 - r. A memorandum of any oaths administered under 76-3-405, MCA.
 - s. The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
 - t. Certification by the governing body that the final subdivision plat is approved.
 - u. Space for the clerk and recorder's filing information.
3. The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:
- a. If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.

- b. If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.
- c. A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
- d. Copies of any covenants or deed restrictions relating to the subdivision.
- e. If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.
- f. A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.
- g. Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer where applicable that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.
- h. If applicable, the certificate of the examining land surveyor.
- i. If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.
- j. The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

APPENDIX G

SUBDIVISION EXEMPTION CLAIM APPLICATION FORM

MINERAL COUNTY

1. Property owner(s)

Name: _____ Phone: _____

Address: _____

Town: _____ Zip Code _____

2. Consultant/Surveyor

Name: _____ Phone: _____

Address: _____

Town: _____ Zip Code _____

3. Parcel/tract/deed description

Location: _____

Section: _____ Township: _____ Range: _____

Legal description: _____ (may attach survey if available)

Copy of most recent deed of transfer: _____ (attached _____)

Geocode: _____

4. Type of exemption

Mortgage Exemption: ____ Lending institution _____

Relocation of common boundary: ____

Family Transfer: ____ From: _____ To: _____

Agricultural use: ____

Relocation of common boundary - platted subdivision: ____ Number of lots: ____

Aggregation of lots or parcels: ____

5. Acknowledgment: I understand that the Subdivision Regulations for Mineral County and the Towns of Alberton and Superior (SRMCTAS) provides that certain divisions of land, which would otherwise constitute a subdivision, are exempt from local subdivision review unless the transaction are an attempt to evade the SRMCTAS.

SUBDIVISION EXEMPTION CLAIM APPLICATION FORM

Owner/applicant/signature _____

Date: _____

Received date: _____

Determination: _____

Approved: _____ Denied: _____

Notification date: _____

Deed(s) for family transfer(s) submitted: _____

Lending institution notice received: _____