LINCOLN COUNTY SUBDIVISION REGULATIONS

Prepared to comply with the
Montana Subdivision and Platting Act

Amended January 20, 2010
Amended November 4, 2015
Amended July 8, 2020
Amended May 27, 2026 (Resolution 2026-14)

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I. GENERAL PROVISIONS

I-A. Title

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

I-B. Authority

Authorization for these regulations is contained in the Montana Subdivision and Platting Act, herein after referred to as the MSPA. [Title 76, Chapter 3, MCA.].

I-C. Purpose

These regulations are intended to comply with the MSPA and are created to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development to minimize costs to local citizens by promoting 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. The word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

I-C. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of Lincoln County and governing bodies of incorporated areas.

If a proposed subdivision lies within one mile of a third-class city or town or within two miles of a second-class city or within three miles of a first-class city (as defined by MCA 7-1-4111), the County must submit the preliminary plat to the city or town (or designated agent) for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to and approved by, both the city or town and the County governing bodies.

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

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

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

I-D. Enforcement

The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval in proper form. 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.

I-E. Transfer of title

Except as provided in 76-3-303, MCA, 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. However, 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):

1. Under the terms of the contracts the purchasers of lots in the proposed subdivision make 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. 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;

3. 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;

4. 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."*

5. 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

A copy of the contracts and escrow agreement described above must be submitted to the Planning Staff. The purchase price may be blacked out.

I-F Violations

Any person, firm, corporation, or other entity that violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine or by imprisonment or by both, pursuant to provisions of MCA 76-3-105. 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.

I-G. Appeals

a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary, capricious or unlawful within 180 days of the final action, decision, order or adoption of a regulation [MCA 76-3-625].

b. A party identified in Subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the 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. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

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

d. The following parties may appeal under the provisions of these regulations above in Subsection (b):

   i. the subdivider;

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

   iii. the county commissioners of the county where the subdivision is proposed; and

   iv. one of the following municipalities:

      A. a first-class municipality as described in Section 7-1-4111, MCA, if a subdivision is proposed within 3 miles of its limits;

      B. a second-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 2 miles of its limits;

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

I-H. 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.

I-I. 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.

II. PRELIMINARY PLAT PROCESS

The following tables summarize the preliminary plat process for minor, subsequent minor and major subdivisions:

TABLE 1. **SUMMARY PROCEDURE FOR (FIRST) MINOR SUBDIVISION REVIEW**

STEP	PROCESS	STAFF TIMELINE
1	Pre-Application meeting between subdivider and Lincoln County Planning staff.	Within thirty (30) days of receipt of pre-application request and materials.
2	Element Review: Subdivider submits a complete subdivision application of 1 paper copy and 1 digital copy to the Planning Staff for element review within 180 days of pre-application meeting (otherwise a new pre-application meeting is required). *Written letter from staff*	Maximum five (5**) working days** after the date of submittal.
3	Sufficiency Review: After all elements of the application are determined to be contained within the application, the subdivider submits the application to Planning staff for Sufficiency Review. Reviewing agencies, appropriate neighborhood organizations, and other entities identified by the planning office will be contacted for comment by Planning staff. *Written letter from staff*	Maximum fifteen (15) **working days** after Element Review is approved.
4	Governing Body Review: After the subdivision application is deemed sufficient, the Planning Staff prepares a subdivision report for Governing Body review.	Maximum thirty-five (35) **working days** after determination of sufficiency.
5	Planning Staff Report.	
6	Governing Body Public Meeting and Decision.	
7	Written Decision	Within thirty (30) **working days** of Governing Body action

TABLE 2. **SUMMARY PROCEDURE FOR SUBSEQUENT MINOR SUBDIVISION REVIEW**[1]

STEP	PROCESS	STAFF TIMELINE
1	Pre-Application meeting between subdivider and Lincoln County Planning staff.	Within thirty (30) days of receipt of pre-application request and materials.
2	Element Review: Subdivider submits a complete subdivision application of 1 paper copy and 1 digital copy to the Planning Staff for element review within 180 days of pre-application meeting (otherwise a new pre- application meeting is required). *Written letter from staff*	Maximum five (5) **working days** after the date of submittal.
3	Sufficiency Review: After all elements of the application are determined to be contained within the application, the subdivider submits the application to Planning staff for Sufficiency Review. Reviewing agencies, appropriate neighborhood organizations, and other entities identified by the planning office will be contacted for comment by Planning staff, including adjacent property owners. *Written letter from staff*	Maximum fifteen (15) **working days** after Element Review is approved.
4	Governing Body Review: After the subdivision application is deemed sufficient, the Planning Staff prepares a subdivision report for governing body review.	Maximum forty-five (45) **working days** after determination of sufficiency.
5	Planning Staff Report.	
6	Governing Body Review and Decision.	
7	Written Decision	Within thirty (30) **working days** of Governing Body action

[1] Note – if it becomes evident that a subdivider repeatedly proposes minor subdivisions within or adjacent to the same original parcel, any new subsequent minors will be reviewed as a major subdivision.

TABLE 3. **SUMMARY PROCEDURE FOR MAJOR SUBDIVISION REVIEW**

STEP	PROCESS	STAFF TIMELINE
1	Pre-Application meeting between subdivider and Lincoln County Planning staff.	Within thirty (30) days of receipt of pre-application request and materials.
2	Element Review: Subdivider submits a complete subdivision application of 1 paper copy and 1 digital copy to the Planning Staff for element review within 180 days of pre-application meeting (otherwise a new pre- application meeting is required). *Written letter from staff*	Maximum five (5) **working days** after the date of submittal.
3	Sufficiency Review: After all elements of the application are determined to be contained within the application, the subdivider submits the application to Planning staff for Sufficiency Review. Reviewing agencies, appropriate neighborhood organizations, and other entities identified by the planning office will be contacted for comment by Planning staff. *Written letter from staff*	Maximum fifteen (15) **working days** after Element Review is approved.
4	Governing Body Review: After the subdivision application is deemed sufficient, the subdivider submits twelve (12) copies of the complete application and supporting materials to the planning office for governing body review.	Maximum sixty (60) **working days** for subdivisions of 6-49 lots; eighty (80) **working days** for subdivisions of 50 lots or more (M.C.A. 76-3-604(4)) after determination of sufficiency.
5	Planning Staff Report.	
6	Planning Board Review – Public Meeting	
7	Governing Body Public Hearing and Decision.	
8	Written Decision	Within thirty (30) **working days** of Governing Body action

II-A Pre-Application Process

1. Prior to submittal of a subdivision application, the subdivider shall provide a completed Pre-Application Form for a pre-application meeting with the Planning Staff. The meeting shall occur within 30 days after the Planning Staff receives the completed form.
2. The Pre-Application Form shall include the following information (which can be combined into a single exhibit if space permits and all items can be easily identified):
    a. An Existing Conditions Map drawn to a scale of 1 inch to 200 feet or larger showing information on the current status of the site, including:
        i. Location;
        ii. Approximate boundaries of existing parcels of record;
        iii. Topographic lines;
        iv. Natural features, e.g., lakes, streams, and riparian vegetation;
        v. Existing structures and improvements;
        vi. Approximate location of existing utility lines and facilities;
        vii. Approximate location of existing easements and rights-of-way; and
        viii. Parks and open space.
    b. A preliminary drawing at a scale of 1 inch to 200 feet or larger showing information on the proposed subdivision including:
        i. Approximate lot boundaries;
        ii. Building/lot layout (phased developments must include this data for each phase);
        iii. Proposed access, including approximate location of easements and rights-of-way;
        iv. Proposed public improvements;
        v. General location of proposed utility lines and facilities and;
        vi. Parks and open space, if applicable. (Phased developments must include this data for each phase)
    c. Other information including;
        i. A brief narrative of the project;
        ii. Zoning map with site identified, if applicable;
        iii. Floodplain map with site identified, if applicable;
        iv. Vicinity sketch showing adjacent uses with site identified;
        v. Most current aerial photograph with site identified.
3. At the pre-application meeting:
    a. the Planning Staff 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, Wildland Urban Interface Guidelines, access standards, Living with Wildlife guidelines, and Best Management Practices construction guidelines;

b. the Planning Staff 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 Planning Staff on the subdivision application. The Planning Staff shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and

c. the Planning Staff shall provide the subdivider with information on how to obtain a copy of the preliminary plat application forms and identify particular additional information the Planning Staff anticipates will be required for review of the subdivision application. This does not limit the ability of the Planning Staff to request additional information at a later time.

4. A subdivision application must be submitted within 180 days of this pre-application meeting or the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

II-A-2. Permission to Enter

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 to 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. This consent applies to members of the public attending a noticed public meeting for a site visit.

II-A-3. Construction

a. Timing – No construction, development or alteration of the site, including grading or excavation relating to improvements on a proposed subdivision shall proceed from the time the application has been submitted until the governing body has granted preliminary approval of the proposed subdivision plat. All historic, cultural, archaeological and natural resources on the site shall remain unaltered. Riparian vegetation and wetlands may not be damaged or removed. The following exceptions apply (NOTE: performing any work other than these can jeopardize the application and subdivision investment):

   i. Fuels reduction work and timber harvesting [NOTE: landings must be near primary access roads and not on areas that appear to be related to site preparation, i.e., grading, culvert placements, etc]; OR

   ii. Open pit mine reclamation; OR

   iii. Work related to testing, analytical or monitoring activities that may be required by these regulations or are relevant to the processing of the subdivision application, OR

   iv. Previously scheduled work, unrelated to the subdivision proposal described in the application, related to utility maintenance or utility construction, OR

   v. The construction of a single residence which would otherwise be a permitted use and the construction of any necessary improvements and closely related outbuildings that are necessary to serve the single residence, OR

   iv. Activities identified by the subdivider as being likely to occur after the subdivision application has been submitted and which have been approved in writing by the Planning Director.

b. Enforcement – Except as noted above, any construction or alteration of resources on site as described above will render a subdivision application insufficient for failure of the application to accurately describe the undeveloped condition of the land proposed for subdivision and must be addressed through submission of an amended application pursuant to Section III-A-4.c prior to further processing of the application. Restoration of any resource alteration, as described above, may be required as a condition of subdivision approval for an amended application.

II-A-4. Review Process

Upon submittal of a complete preliminary plat and subdivision application pursuant to Section IV of these regulations, the following review process begins.

[NOTE: In the event an application is not resubmitted during the Element or Sufficiency review periods within 180 days of receiving the Planning Staff's letter of deficiency, a new application and associated review fees will be required.]

a. Element Review

Planning Staff is allowed 5 working days within receipt of a subdivision application, preliminary plat and review fee to determine whether the application contains all of the applicable materials required by these regulations and shall give written notice to the subdivider of the Planning Staff's determination.

A. If elements are missing from the application, the Planning Staff shall identify those elements in the notification, and the process ceases until the missing items are submitted.

B. The subdivider may correct the deficiencies and resubmit the application within 180 days.

D. This process shall be repeated until the subdivider submits an application containing all the applicable materials required, or the application is withdrawn.

b. Sufficiency Review

i. Upon determination that all the elements are contained in the application materials, the Planning Staff is allowed 15 working days to 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 give written notice to the subdivider of the determination.

A. If the Planning Staff determines that the information in the application insufficient they shall identify specific required information in its notification, and no further action shall be taken on the application by the Planning Staff until the material is resubmitted.

B. The subdivider may correct the deficiencies and resubmit the application or withdraw the application within 180 days.

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

ii. A determination that an application contains sufficient information for review 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 Planning Staff, planning board, or the governing body to request additional information during the review process.

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

c. Amended Applications (prior to Planning Board/Governing Body)

Changes made by the subdivider in response to the Planning Staff, agencies or public comments will not force a suspension of the review period by more than ten (10) working days. However, if the subdivider makes *other* changes, the following process ensues:

i. Within five (5) working days of receiving the amended application or preliminary plat, the Planning Staff shall determine whether the changes to the subdivision application or preliminary plat are material.

ii. The review period is suspended while the Planning Staff considers whether the changes to the subdivision application or preliminary plat are material.

iii. If the Planning Staff determines the changes are not material, the review period resumes when the Planning Staff notifies the subdivider of the decision.

iv. If the Planning Staff determines the changes are material, it may either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the review period.

v. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.

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

A. Configuration or number of lots;
B. Road layout;
C. Water and/or septic proposals;
D. Configuration of park land or open spaces;
E. Easement provisions; and
F. Designated access.

d. Determination of Amended Applications – Appeal Process

A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the planning office may appeal the 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.

i. The review period is suspended until the governing body decision on the appeal is made.

ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted.

iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the review period resumes as of the date of the decision.

iv. By appealing the decision of the planning office, the subdivider agrees to suspension of the review period.

e. Applicable Regulations
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, and conditional approval or denial shall be based on those regulations in effect at the time the application has been determined sufficient.

f. Statutory Deadlines – Governing Body Decision
Once the Planning Staff has given notice to the subdivider that the application is determined to be sufficient for review, the review period for minor or major subdivisions begins (see tables above). Notification constitutes the date when the Planning Staff sends notice to the subdivider.

g. 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- or 60- or 80-working day review period. These comments will be available to the subdivider and to the general public.. If, during the review of the application, the Planning Staff 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 Planning Staff shall notify the subdivider of the contact and the timeframe for response

h. Subdivider's Preference for Mitigation
No later than ten (10) days before the meeting or hearing at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body comments on and responses to the planning board or staff recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

i. Mitigation of Impacts

i. The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review process without unreasonably restricting a landowner's ability to develop the land. The governing body may not require a set-aside of land or monetary contribution for the loss of agricultural soils. The governing body shall issue written findings to justify the reasonable mitigation required under this section.

ii. If a condition of subdivision approval is required that future property owners waive their right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects, the specific capital improvements for which protest is being waived must be identified. A waiver of a right to protest may not be valid for more than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

iii. The governing body shall consider the following in determining the appropriate mitigation:

A. Whether unmitigated impacts of a proposed development are unacceptable, precluding approval of the plat.

B. The expressed preference of the subdivider.

iii. Although a governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, it may require mitigation of impacts created by the subdivision.

j. Governing Body Decision and Documentation

i. Prerequisites to Approval:

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

A. Provides easements for the location and installation of any planned utilities;

B. 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;

C. Assures that all required public improvements will be installed before final plat approval, or that such installation after final plat approval will be guaranteed as provided by these Regulations; and

D. Will comply with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights.

ii. Consideration – Standards

In approving, conditionally approving or denying a subdivision application and preliminary plat, the governing body and/or planning board shall consider whether the proposed subdivision complies with:

A. These regulations;
B. Any other applicable regulations; and
C. The Montana Subdivision and Platting Act Primary Review Criteria:

1. Impact on agriculture, excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils;
2. Impact on agricultural water user facilities;
3. Impact on local services;
4. Impact on natural environment;
5. Impacts on wildlife;
6. Impacts on wildlife habitat; and
7. Impacts on public health and safety.

iii. Consideration – Evidence

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

A. The subdivision application and preliminary plat;

B. The Primary Review Criteria Report (EA), when applicable;

C. The Summary of Probable Impacts and Mitigation;

D. The Lincoln County Growth Policy, including Neighborhood Plans;

E. Comments, evidence and discussions at the public hearing(s);

F. The planning staff report and recommendation;

G. Planning Board recommendation; and

H. Water and sanitation information provided or public comment received regarding the water and sanitation information only if the conditional approval or denial is based on existing subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.

For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This 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.

I. Any additional information authorized by law.

The governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface.

iv. Documentation of Governing Body Decision

In rendering its decision to approve, conditionally approve or deny the proposed subdivision, the governing body shall:

A. Issue written Findings of Fact that discuss and weigh the proposed subdivision's compliance with subsection (ii) and (iii) above; and

B. Send the subdivider a letter, with the appropriate signature, incorporating the following:

1. information regarding the appeal process for the denial or imposition of conditions;

2. 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. the facts and conclusions that the governing body relied on in making its decision and reference documents, testimony or other materials that form the basis of the decision;

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

5. Include public comment related to water and sanitation issues.

6. If the governing body conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in Section ii.c. above that forms the basis for the condition.

II-A-5. Governing Body Hearing

a. The governing body shall hold a duly noticed public hearing to review the subdivision application, staff and applicable Planning Board recommendations.

b. All comments and documents regarding the subdivision shall be submitted to the Planning Staff, rather than to the governing body directly, to be forwarded to the governing body.

c. The governing body shall determine whether public comments or documents presented for consideration at the governing body's review constitute either:

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

   ii. *new* information or analysis of information that has never been submitted as evidence or considered by the planning board at a meeting on the subdivision application, in which case the governing body shall proceed as set forth in subsection (d) below.

d. If the governing body determines that public comments or other information presented at the hearing constitute relevant, new information regarding the subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by the governing body or its agents or agency and has a substantial effect on the governing body's consideration of the application, the governing body shall make a determination pursuant to subsections (e) and (f) below.

   i. If the governing body determines the information or analysis of information is either *not* relevant or *not* credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or

   ii. If the governing body determines the new information or analysis of information *is* relevant and credible, then the governing body shall schedule a subsequent public hearing.

   iii. At the subsequent hearing the governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

e. New information or analysis of information is relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

f. New information or analysis of information is credible if it is based on one or more of the following:

   i. physical facts or evidence;

   ii. documented personal observations, e.g. photographs;

   iii. evidence provided by a person with professional competency in the subject matter, e.g. professional engineer, doctorate; or

   iv. documented and submitted scientific data.

II-A-6. Subsequent Public Hearing

a. 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 governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

   i. The governing body shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearings.

   ii. At least 15 days prior to the dates of the hearings, the Planning Staff shall give notices of the hearings by certified mail to the subdivider.

   iii. At least 15 days prior to the dates of the hearings, the Planning Staff shall give notices of the hearings by certified mail to, 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.

b. If a subsequent public hearing is held, the 60 or 80-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 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.

II-A-7. Approval Period - Subdivision Application and Preliminary Plat.

a. Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be for 3 calendar years.

   i. At least 30 days prior to the expiration of the preliminary plat approval the governing body may, at the request of the subdivider, extend its approval for 1 calendar year.

   ii. The governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-610 M.C.A.

b. 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.

c. Upon written request from the subdivider with a valid explanation, clarification, modification, or elimination of conditions may be made provided they are consistent with the original intent of the findings of facts for the subdivision.

d. 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.

II-A-8. Extension of Preliminary Plat Approval Period

Extensions to the preliminary plat approval may be granted at the end of the preliminary approval period according to the following:

   i. The extension request must be made by the subdivider in writing at least 30 days prior to the expiration of the preliminary plat.

   ii. All requests must provide responses to the following criteria and include any supporting documentation:

      A. Progress to date in completing or demonstrating good faith efforts to satisfy the required conditions of approval.

      B. Duration of the required extension.

      C. Explanation of the ability of the subdivider to meet the required conditions within the requested extension period.

   iii. Any mutually agreed-upon extension must be issued in writing and signed by the governing body and the subdivider or agent and may not be for more than two years for each extension.

   iv. The governing body may not issue more than 3 extensions.

II-A-9. Amended Applications – post governing body decision (condition amendments)

Changes to the preliminary plat approval may be granted after the preliminary plat has been approved according to the following:

   i. The request must be made by the subdivider to the Planning Staff in writing at least 90 days prior to the expiration of the preliminary plat.

   ii. All requests must provide a detailed explanation of why the changes are necessary and include any supporting documentation. (Examples of justification for changes

include reduction in number of lots due to cost or other limitations; modifying certain conditions because final analysis proved different than preliminary, i.e., locations of utilities or approaches, etc.)

iii. The changes shall not materially affect the original preliminary plat approval and Findings of Facts.

iv. Planning Staff must provide a synopsis of the requested changes and determination of their effect on the primary review criteria.

v. New conditions may be imposed as a result of any requested changes.

vi. The governing body must hold a duly noticed public hearing in accordance with 76-3-605(3), MCA.

vii. Upon approval, an amendment to the original Findings of Fact shall be issued and distributed to the subdivider

II-B. Planned Unit Developments

The intent of this section is to provide flexibility in certain subdivision standards, allowing the subdivider creativity in subdivision design using a concept which clusters development, so that the cost of installing and maintaining roads, water and sewer lines, and utility services is minimized while open space, the natural terrain including natural drainages and vegetation, and unique natural features are preserved to the maximum extent possible. Section 76-3-103(10), MCA defines a planned unit development (PUD) as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.” The PUD concept promotes the planning of land to allow for an individual use such as residential, or for a harmonious combination such as a mixture of residential and commercial uses.

1. Procedures - If the governing body designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures compliant with the provisions of these regulations, except as outlined below. To obtain designation of a subdivision as a PUD, the subdivider shall submit to the planning office the following:

   a. A written request that the plan of the proposed subdivision be reviewed as a PUD;

   b. A layout plan showing the proposed location and use of lots and structures and, if appropriate, the location and number of parking spaces;

   c. A sketch plan of the proposed subdivision containing all information requested in Section III-A, Pre-application Procedures;

   d. A description of open space, recreational facilities, roads, and other facilities proposed to be under common ownership;

   e. Proposed restrictive covenants, if any;

   f. A description of proposed form of property ownership within the development;

   g. A statement describing measures to be taken to assure permanence and maintenance of open space and other facilities to be held in common ownership;

   h. A schedule showing street and utility improvement completion dates;

i. A description of all proposed variations from the requirements and provisions of Section VI: Subdivision Design Standards; and

j. Any additional information that the Planning Department may reasonably require.

2. Criteria for Designation – The Planning Department shall review the information and proposed plan and, before designating the subdivision a PUD, shall determine that the development plan promotes the clustering of individual building sites, conforms to the definition and intent of this section, and accomplishes at least four of the following:

   a. Preserves, to the maximum extent possible, the natural characteristics of the land, including topography, vegetation, and streams or other bodies of water;

   b. Provides for economical development of streets and other public improvements;

   c. Protects important wildlife habitat or important historic sites or structures, and preserves productive agricultural land, open space, or riparian areas;

   d. Provides for dedication and development of common open space for recreational purposes;

   e. Provides developed facilities for recreational purposes.

II-C Phased Development – Additional Requirements

1. A subdivider applying for phased development review shall submit an overall phased development preliminary plat on which independent platted phases must be depicted. The phased development application must contain the information required pursuant to these regulations for all phases and a schedule for when the subdivider plans to submit each phase of the development for review.

2. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

3. The governing body may approve phased developments that extend beyond 3 years, but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

4. For any phase submitted for final plat approval *within* 5 years from the preliminary approval date, no further public hearing is required and final plat approval shall be in accordance with these regulations.

5. For any phase submitted for final plat approval *more than* 5 years from the preliminary approval date, the subdivider shall provide written notice to the governing body not less than 90 calendar days (an not more than 1 year) of submitting the final plat application and the governing body shall hold a public hearing with 30 working days after receipt of the notice.

   a. At the public hearing, the governing body shall determine whether changed circumstances justify amending any conditions of approval; and may *only* amend or add new conditions if it determines (based on a review of the primary criteria) that

existing conditions of approval are inadequate to mitigate the potential significant adverse impacts based said changed circumstances.

b. Notwithstanding the provisions of **76-3-610**(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing.

c. Any additional conditions must be met before final plat approval for each particular phase and the approval in accordance with **76-3-611** is in force for not more than 3 calendar years or less than 1 calendar year within the 20-year timeframe.

III. PRELIMINARY PLAT SUBMITTAL REQUIREMENTS

Along with the requisite fees, the following information shall be submitted for preliminary plat review.

A. Completed Subdivision Application

B. Preliminary Plat clearly labeled “Preliminary Plat” conforming to the following:

1. Format: one (1) standard format (24x36 with 1 ½ inch margin on binding side); and one reduced to 11x17. Each sheet of the preliminary plat shall be numbered and the total number of sheets noted.
2. Identifying Information
   a. Subdivision/Development name
   b. Legal description
   c. North arrow
   d. Scale bar
   e. Names of owner(s) of record and sub-divider(s)
   f. Date preliminary plat was drawn
3. Survey Information
   a. Exterior boundaries of the property to be subdivided with: approximate location of all section or legal subdivision corners pertinent to the subdivision clearly identified.
   b. Approximate dimensions and area of each lot. Lots and blocks shall be designated by number and area, as applicable.
   c. All streets, alleys, avenues, roads, and highways including proposed street names.
   d. Parks, common areas, and other areas dedicated for public use with dimensions identified.
   e. Total gross area of the subdivision and total net area of lots.
   f. Ground elevations of the subject property, including elevations and benchmarks. Contour intervals shall be vertical intervals of two feet where the average slope of the subdivision is less than 10% and at intervals of five feet where the average slope of the subdivision is 10% or greater.
   g. Access easements (l existing and proposed, private and public) with widths identified and descriptions of purposes.
   h. Utility easements (existing and proposed) with widths identified and descriptions of purposes.
   i. Irrigation easements (existing and/or proposed).
   j. Proposed locations of all intersections, driveway approaches and other access points in relation to existing and proposed roads.
   k. Identified hazard areas shall be prominently shown on the subdivision plat and in other records of conveyance.
   l. Any “No-Build-No Alteration” areas.

m. The area of the subdivision within the FEMA-designated floodway and/or flood fringe, if applicable.

C. Project Summary fully describing existing site conditions and project proposal.

D. Primary Review Criteria Questionnaire (Environmental and Community Assessment) pursuant to MCA 76-3-603 & 608(3) and a report describing the probable impacts resulting from the proposed subdivision and proposed mitigation for each criteria listed below:

NOTE: *First minor subdivisions must provide a Summary of Probable Impacts, which can be incorporated into the Project Summary, for each of the criteria*

1. Agriculture: Demonstrate that the subdivision proposal will have no adverse impacts on agriculture; or identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts.
2. Agricultural Water User Facilities: In areas where agricultural water user facilities exist on the subject property or adjoin the property, identify the agricultural water user, describe any proposed changes to the agricultural water use and describe alterations to the availability of water.
3. Local Services: Identify the services and evaluate the impacts on those services including transportation elements, utilities, water supply, sewage disposal, solid waste disposal, schools, emergency services, and information pertaining to residential units and taxation.
4. Natural Environment: Identify the resources and evaluate the impacts on those resources including adjacent public lands, cultural resources, hydrological characteristics, soil characteristics and vegetative cover types.
5. Wildlife: Identify species of fish and wildlife which use the area to be affected by the proposed subdivision and describe measures to minimize or mitigate conflicts between residents and wildlife.
6. Wildlife Habitat: Habitat consists of an animal's home or range that includes food, water, shelter (or cover), and space in order for them to survive. Identify any known critical or key wildlife areas and travel corridors. Describe any proposed measures to protect or enhance wildlife habitat or to minimize degradation of habitat.
7. Public Health and Safety: Demonstrate that the proposed subdivision will not have adverse impact on conditions that relate to the public health and safety including emergency services; environmental health; flooding, rock falls or landslides, unstable soils, steep slopes, wildfire and other natural hazards, high voltage lines or high pressure gas lines; on-site or nearby off-site land uses that create a nuisance (e.g. noise, dust, smoke, unpleasant odors), and air or vehicular traffic safety hazards.

E. Supplemental Maps (some of which may be combined or the information can be included on the preliminary plat)

1. A vicinity map showing the subject property and the area within 1000 feet of it.
2. A map showing the relationship of the proposed subdivision to adjacent property and roads to include:

   a. the names of platted subdivisions and certificates of survey numbers;

b. ownership of adjacent lands, including those across public/private rights-of-way

3. An aerial photograph showing the location of the proposed subdivision and areas located within three hundred (300) feet of the subject property.
4. Survey history of the subject property
5. An Existing Conditions Map as required in Section III-A and updated to reflect any new information such as fire chimneys and other hazards, slopes over 30% or floodplain.
6. Other maps as a result of addressing the Primary Review Criteria

F. Phasing Plan (as applicable) with each phase numbered in the order they are proposed to be filed indicating the following:

1. Date each phase will be submitted for final plat review
2. Improvements to be completed with each phase
3. Amount of park land dedication required for each phase and amount provided.

G. Street and Road Plans

1. Typical cross-sections for each type of road proposed or road improvement;
2. Road profiles and cross-sections for all proposed streets and roads which have grades exceeding seven (7) percent or cuts and fills exceeding three (3) feet:
3. Grades, surface and base thickness, and width;
4. Drainage facilities
5. Street names;
6. Minimum site distances and curb radii at corners;
7. Locations and characteristics of bridges and culverts; and
8. For cul-de-sac streets, provide the widths of turn-around radii, minimum right-of-way widths at turnarounds, minimum surface widths at turnarounds, and total length.

H. Utility Plan showing infrastructure on and within five hundred (500) feet of the property including:

1. Approximate location, size and depth of nearest sewer and water mains;
2. Approximate location and size of wells and fire hydrants;
3. Approximate location of nearest electric and telephone services
4. All proposed extensions of aforementioned utilities/infrastructure

I. Water and Sanitation

Any proposal that includes more than one exempt well will not be able to proceed with review without an authorized Notice of Intent to Appropriate Groundwater from DNRC (Form 602i) or a permit to drill new wells. [NOTE: Subdivisions created before October 17, 2014 fall under the combined appropriation status and may not have eligible exempt water usage.]

1. A vicinity map or plan that shows:
    a. The location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of flood plains; surface water features; springs; irrigation ditches;
    b. Existing, previously approved and proposed water wells and wastewater treatment systems including mixing zones for the subdivision;
    c. The representative drain-field site used for the soil profile description;
    d. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities; and
    e. A scale bar

2. 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 DEQ;

3. A conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required in rules adopted by the DEQ pursuant to 76-4-104, MCA;

4. Evidence of suitability for new on-site wastewater treatment systems that, at a minimum, include:
    a. A soil profile description from a representative drain-field site identified on the vicinity map that complies with standards published by the DEQ;
    b. Demonstration that the soil profile contains a minimum of four (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 seven (7) feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance of four (4) feet.

5. For new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
    a. obtained from well logs or testing of onsite or nearby wells;
    b. obtained from information contained in published hydro-geological reports; or
    c. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104, MCA;

6. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104, MCA.

7. Preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301, MCA and 75-5-303, MCA related to standard mixing zones for ground water, source specific mixing zones, and non-significant 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, the sub-divider may perform a complete non-degradation analysis in the same manner as is required for an application that is reviewed under Title 76, Chapter 4.

J. Slope Map depicting slopes greater than 30% at a scale no smaller than 1:200.

K. Additional Material (as applicable):

1. In areas where there is potential for landslides, slope instability or high ground water, provide a report by a qualified soil or geotechnical engineer indicating the locations, character and extent of all areas subject to said hazards.
2. When evidence of high groundwater or unstable soil is present provide a groundwater drainage mitigation plan prepared by a licensed professional engineer (PE) to mitigate the problem.
3. Floodplain Analysis
4. Noxious Weed Assessment/Inventory
5. Fire Risk Assessment
6. Assessment by the Asbestos Resource Program for the Libby/Troy area.
7. Traffic Impact Analysis, if the proposed project generates 400 or more ADT on any one road based on a trip distribution analysis.
8. If access to the subdivision is across private property not owned by the subdivider, provide evidence of legal access or describe how it will be obtained prior to filing the final plat.
9. Existing covenants
10. Variance requests.
11. Letters from Service Providers that address their ability to serve the subdivision.

L. Covenants/Homeowner's Association (see Appendix G)

1. Common property is to be deeded to a property owners' association. The covenants and by-laws which govern the association must, at a minimum, provide for the:
   a. Transition of control of the association from the Declarant to the homeowners.
   b. Formation of a property owners' association and filing of Articles of Incorporation with the Secretary of State's office;
   c. 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;
   d. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
   e. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
   f. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
   g. Adjustment of assessments to meet changing needs;

h. Means of enforcing the covenants, and of receiving and processing complaints;

i. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and

j. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

2. The governing body may require that some protective covenants governing the use of land within the subdivision 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 Lincoln County Commissioners." Such provisions may include and must have a corresponding finding of fact and covenant condition:

   a. Noxious Weed Plan

   b. WUI Guidelines

   c. Visibility of Address Signs from Street

   d. Riparian Buffer

   e. Garbage containment (deterring wildlife attractants)

M. Road Maintenance Agreement

A preliminary road maintenance agreement (RMA) is required for all private roads and common accesses providing legal access to lots within the subdivision and must address the following provisions:

1. Description of the parcels that are subject to the agreement;
2. Sections of the road(s) or access locations subject to the RMA;
3. The RMA is binding to any person having an interest in a parcel subject to the RMA;
4. Any person providing public utilities may use the utility easements for such purposes;
5. Decisions to undertake any road maintenance is the responsibility of the landowners and shall be based on a majority vote (over 50%, or in accordance with the HOA provisions) of the parties to the agreement;
6. Parties eligible to cast a vote (one vote per parcel);
7. How the costs of maintenance will be assessed (equally or disproportionately) to the parties in the RMA;
8. How future divisions will be assessed;
9. In the event that an assessment becomes delinquent, the assessment and interest and the cost of collection shall become a continuing lien on the lot;
10. The RMA is perpetual and cannot be rescinded unless the county or state agrees to maintain the roadway described in the agreement;
11. Maintenance of dust control, snow removal, maintenance of storm water drainage facilities, ordinary maintenance and reconstruction if necessary. The RMA shall also include on-street parking enforcement provisions, in accordance with on-street parking provided for in the road design, because failure to enforce on-street parking may result

in the inability of emergency services providers to provide service to lots along this road(s);

12. The agreement may be amended, except that it may not be amended to be less strict or less inclusive; and

13. Notary statement.

The RMA shall be filed (prior to or concurrent with the filing of the final plat) with the Clerk & Recorder's Office as a single document and shall not include other provisions not related to road maintenance. The subdivider may choose to include the RMA in the covenants provided there is a statement that the road maintenance section cannot be amended to be less strict or less inclusive.

IV. FINAL PLAT PROCESS AND SUBMITTAL REQUIREMENTS

All final plats must be prepared by a professional land surveyor licensed to practice in the State of Montana; must conform to the preliminary plat as previously reviewed and approved by the governing body; must incorporate all required modifications; and must comply with all conditions of preliminary plat approval. Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

IV-A. Final Plat Review

1. Final Plat Check

   Prior to submitting a final plat and accompanying documentation, the subdivider shall submit a *draft* final plat for review. The final plat check submittal shall include:

   a. Two (2) copies of the final plat

   b. Surveyor closure sheets

   c. Final Plat Check fee

2. Review by Planning Staff

   a. The Planning Staff shall send a copy of the final plat, along with the closure sheets, to the Examining Land Surveyor (ELS).

   b. The Planning Staff shall review a copy of the final plat for compliance with preliminary plat approval.

   c. Upon receipt of the ELS-reviewed plat, both copies will be sent to the surveyor of record for corrections prior to final plat submittal.

3. Final Plat Submittal

   The final plat and all supplementary documents must be submitted to the Planning Staff prior to the expiration of preliminary plat approval. The complete submittal shall include, as applicable:

   a. the final plat application;

   b. the final plat review fee;

   c. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;

   d. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;

   e. certification from the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid;

   f. the DEQ or local Environmental Health Department approval;

   g. all final state or local encroachment permits,

   h. documentation that the road has been constructed based on the conditions of preliminary plat approval; or certification by the designing (or observing) PE that all road and utility improvements have been constructed in accordance with the approved plans if required

   i. all record engineering plans;

j. covenants and associated attachments;

k. Road Maintenance Agreement

l. Final Plat(s) with appropriate signatures and notarization seals including two 18” x 24” copy of the final plat.

m. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

“The undersigned hereby grants unto all public utility companies as such are defined and established by Montana Law, an easement for the purpose of construction, maintenance, repair and removal of their lines; under the areas designated on this plat as “utility easement”.

4. Review by Planning Staff

a. . Within 20 working days of receipt of a final plat, the Planning Staff shall determine whether the final plat is complete and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. If the Planning Staff determines that the final plat is not complete, the Planning Staff shall identify the final plat's defects in the notification. If the Planning Staff determines the final plat contains all the required information, the governing body shall review and approve or deny the final plat within 20 working days.

b. The final plat shall incorporate all modifications required as a result of the preliminary plat review. The governing body, however, may approve a final plat which has been modified to reflect improvements in design or changes which have occurred in the natural surroundings and environment since the time of the preliminary plat review and approval.

c. If the Planning Staff determines that the final plat differs materially from the approved or conditionally approved preliminary plat pursuant to Section III-A-4.c. Amended Applications, the applicant may be required to submit an amended application pursuant to said provisions

IV-B. Subdivision Improvements Agreement; Guaranty (see Appendix K)

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 (SIA) guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. No construction or placement of structures on the lot may occur until improvements related to public health and safety, such as roads or fire protection facilities have been installed and engineering plans have been submitted.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, real property or other acceptable form of collateral, an opinion of probable costs for the installation of the public improvements shall be prepared by a PE. The amount of the guarantee shall be calculated by multiplying 125% of the estimate. *However, in the event of volatile market conditions, the governing body may require additional contingency.* The governing body may require that a certain percentage of improvements be completed prior to entering into an SIA.

IV-C. Final Plat Approval

Approval of Final Plat.

a. The governing body shall examine each final subdivision plat and shall approve the plat only if it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter, or deny it pursuant to (ii) below:

    - 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.
    - If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

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

c. Final subdivision plats and certificates of survey shall be reviewed for errors and omissions in calculation or drafting and signed by the County ELS prior to recording with the County Clerk and Recorder pursuant to MCA 76-3-611(2)(a).

IV-D. Final Plat Filing

After it is approved, the final plat shall not be altered in any manner except as provided in II-B-8. The county clerk and recorder shall 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 shall file an approved plat only if it is accompanied by the documents specified in the Uniform Standards for Monumentation of the Administrative Rules of Montana.

IV-E. Amending Filed Plats

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 and must be reviewed and approved by the governing body. Any alteration which changes the approved use or increases the number of lots or modifies six or more lots or abandons or alters a public road right-of-way or park land dedication is subject to a review as a major subdivision per these regulations and the MCA.
2. 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.
3. The governing body may not approve an amendment that will place a lot in non-conformance with the standards contained in either:
    a. Section VI of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section VI-V, Variances.

b. Local zoning regulations unless the governing body follows the steps required by the regulations necessary to grant a variance, conditional use permit or amendment to the zoning regulations.

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 of the ARMs.

V. DESIGN AND IMPROVEMENT STANDARDS

These standards apply to subdivisions outside of incorporated areas that are not proposed for annexation. Incorporated areas and areas planned for annexation may have their own standards and/or stricter standards which must be complied with prior to subdivision approval. All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section VI-V, Variances. The governing body may not grant variances from the provisions of Section VI-D, Floodplain Provisions. Projects creating spaces for lease or rent shall comply with the Buildings for Lease or Rent Regulations.

V-A. Conformance with Regulations

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

V-B. Natural Environment

The design and development of subdivisions must., to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, and existing vegetation compatible with fire prevention measures.

V-C. Lands Unsuitable for Building Sites

The following lands are unsuitable for development:

1. 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 developed for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.

2. Slopes greater than 30%

3. Slopes for which no building site can be identified outside of fire chimneys and more than 150 feet from the apex of fire chimneys. See Table 4 for slope restrictions.

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

TABLE 4. Slope Restrictions

Grade	Restriction
>30%	No build/alteration
>25%	No septic systems
>15-25%	Engineer's soil stability report required for septic systems per ARM 17.36.322
>15%	No gravity septic systems
>9%	Maximum allowed road grade (see VI.G and Table 5
>7%	Road plan & profiles required

V-D. Floodplain Standards

Within the Special Flood Hazard Area, subdivisions including new or expansion of existing manufactured home parks, must be designed to meet the following criteria:

1. The Base Flood Elevations and boundary of the Regulated Flood Hazard area must be determined and considered during lot layout and building location design. The Base Flood Elevation(s) will need recognized by FEMA or in special circumstances by the Lincoln County Floodplain Administrator at their discretion.
2. Locations for future structures and development must be reasonably safe from flooding (44CFR 60.3(a)(4));
3. Adequate surface water drainage must be provided to reduce exposure to flood hazards; (44 CFR 60.3 (a)(4)(iii))
4. Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage; and (44 CFR 60.3(a)(4)(ii))
5. Floodplain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area. (44 CFR 60.3(b))

Special Flood Hazard Area – Land area which has been specifically identified by the Federal Emergency Management Agency as the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is useful for the purposes of identifying flood hazards by local subdivisions of government for regulatory purposes as well as use by the National Flood Insurance Program for establishing risk zones and flood insurance premium rates. The FEMA flood hazard area zone designation or flood risk potential is as illustrated on FEMA's Flood Hazard Boundary Map or Flood Insurance Rate Map.

V-E. Lots

Each lot must contain a building site that conforms to health department regulations, applicable zoning regulations and the following:

1. No lot may be divided by a municipal or county boundary line.
2. No lot may be divided by a public road, alley, right-of-way or easement.
3. Each lot shall 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.
4. Corner lots shall have driveway access off the lower classification road.
5. Corner lots must be designed to provide minimum sight distances for safe vehicular movement, based on AASHTO standards for the posted road speed.

6. No lot of less than five acres may have an average depth greater than three times its average width.
7. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
8. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography or orientation.
9. All lots must be designed such that homes may be located on the lot in accordance with Firewise standards (see www.fireadaptedkootenai.org for Living with Fire Guide).

V-F. Blocks

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.

2. Block length shall not be greater than 600 ft in urban/suburban subdivisions; or they shall match adjacent block lengths, whichever is less.

V-G. Streets and Roads

NOTE: In order to meet the standards set forth in this section, upgrades to existing roads serving proposed subdivisions may be necessary.

VI-G-1. Access

Each subdivision shall have legal and physical access via a primary access road, and all subdivision lots shall have legal and physical access. Secondary emergency access roads shall not be used to provide the primary access to a subdivision or lot:

1. A second primary access road or multiple primary access road(s) to a subdivision may be required when the proposed subdivision generates more than 400 vehicle trips per day.
2. Secondary emergency access roads shall not function now or in the future as the primary access for an existing or proposed subdivision unless upgraded to current road standards.
3. Proposed subdivisions accessed by a U.S. Forest Service or DNRC road or easement shall have written authorization from said entities for use of the subdivision at the time of final plat. This includes both primary and secondary emergency road access.
4. When a new subdivision adjoins un-subdivided land (lands or parcels not created by a filed subdivision plat) the subdivider may be required to provide rights-of-way or easements from proposed subdivision road easement to the adjacent un-subdivided property. Subsequent subdivisions using an existing subdivision road system as primary

access shall be required to pay a pro-rata share of road maintenance for the shared portion of the existing subdivision roads, and a latecomer's agreement, if applicable:

a. This requirement may be waived by the Commission when the road department finds that topography or other physical conditions would make it impractical to provide access to adjacent un-subdivided property.

b. This requirement may be waived by the Commission if the adjoining property does not require such access and is subject to a conservation easement, deed restriction or other legally restrictive covenant.

5. Subdivision roads shall be designated as public access easements and shall be shown and described as such on the face of the final plat. All subdivision roads shall be maintained by the property owners within the subdivision, unless accepted by the Commission for maintenance. The County accepts no responsibility for development or maintenance of roads. To ensure a proper maintenance mechanism is in place, an approved Road Users' Agreement (See Appendix H - Road User's Agreement) or a Property Owners' Association as part of Conditions, Covenants and Restrictions (CC&R) shall be formed (see Preliminary Plat Submittal Requirements).

V-G-2. Design

Roads must be designed to conform with standards established in Table 5 Lincoln County Road Design Standards. Certification by a PE that roads have been designed and constructed as such may be required prior to final plat approval based on site conditions such as grade, soils, length of road, number of lots, etc.

As a general guide to geometric design, applicants shall use A Policy on Geometric Design of Highways and Streets (most recent edition), also known as the "Green Book", by the American Association of State Highway Transportation Officials (AASHTO); and more specifically, the Low Volume Road Manual, which provides the basis for these standards on roads that accommodate up to 2,000 trips per day.

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

b. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association or entity approved by the governing body.

c. Residential driveways must access from the lowest classification road. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation.

d. 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.

e. Load limits must be posted on both ends of bridges

f. The alignment of all streets and roads must provide adequate sight distances.

g. 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 and dedicated to the public when the adjoining property is subdivided.

h. Intersections. The following requirements apply to intersections:

i. Streets must intersect at 90-degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.

ii. A minimum distance of 125 horizontal feet from centerlines is required between road approaches and intersections, and 50 feet between driveway approaches.

iii. No more than two streets may intersect at one point (unless roundabouts meeting AASHTO standards are incorporated into the design).

iv. The grade of approaches to major highways (US Highway 2, 93; or MT Highway 37, 56) shall be in accordance with MDT standards.

i. Road naming for proposed roads shall follow standards found in Lincoln County Resolution 2020-22 (or as required by Lincoln County Addressing Coordinator).

j. Safe and adequate pedestrian access, at least 10 feet wide, may be required where essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

k. Proposed road engineering, plans, profiles, and calculations as required may be subject to review by an independent consultant, as may be required by the governing body or Planning Staff.

l. All subdivisions shall be designed to ensure that fire apparatus have access to within 150 feet of all portions of the proposed residential building sites.

V-G-3. Improvements

Applicable road sections shall be designed according to the procedures outlined in AASHTO's 1993 Guide for Design of Pavement Structures and 1998 Supplement (or later version), and in conformance with the technical specifications of the Montana Public Works Standard Specifications. Documentation that the material conforms to these specifications is required prior to final plat approval.

a. Subdivisions resulting in more than five (5) lots with densities exceeding one (1) dwelling unit per acre or are being designed to serve commercial or public lots, are required to have surfacing and maintenance program that would eliminate or substantially reduce the potential for dust pollution in the Libby Air Quality District.

b. Streetlights may be required in subdivisions proposed within or adjacent to areas with existing street lighting. Streetlights may be required for the protection of public health

and safety. All street lighting shall be designed with downward directional lighting to minimize light pollution.

c. Street or road signs and traffic control devices must be placed at all intersections and be of non-combustible, reflective material. Traffic control devices must conform to the standards contained in the *Manual on Uniform Traffic Control Devices* available at: http://mutcd.fhwa.dot.gov/.

d. The developer may be required to provide an off-street area for cluster mailboxes based on recommendations from the local Post Office.

e. All culverts in new roads must be constructed of non-combustible materials.

V-G-4. Maintenance

All roads must be maintained by a public or private entity. If maintenance is to be by a private entity, a Forest Road Users Agreement (if Forest Service road) or a Road Maintenance Agreement (RMA) that ensures adequate and continued maintenance (dust abatement, snow removal, grading, etc.) must be filed with the final plat.

TABLE 5. **Lincoln County Road Design Standards**

DESIGN ELEMENT	STANDARD
Minimum right-of-way width*	60 ft.
Minimum driving surface [a/b]	24 ft
Shoulders	1 ft min.; 2 ft for travel speed greater than 35 mph.
Maximum grades**	9%, 4% at switchback landings (point of curvature to tangent).
Intersections [c/]	
Curvature [c/]	
Horizontal Alignment [c/]	
Vertical Alignment [c/]	
Culs-de-sac[d/]	
Maximum road length Minimum outside easement radius Minimum outside surface radius	1000 ft. May be up to 2500 ft. if emergency access provided, and with Governing Body approval. 54 ft. 48 ft.
Hammerheads	See Appendix I for approved alternatives
New bridges	
Driving widths Design load Vertical clearance	24 ft. H-20 (per AASHTO) 13.5 ft.
Center radius (switchback)	50 ft from centerline
Driveways	Serve no more than two (2) dwelling units
Maximum grade	Per Road Standards
Minimum width	20’ (14’ surface + shoulders)
Surface	8” compacted pit run
Turnouts	One (1) approximately every 400 ft measuring 14 ft (w) x 50 ft (l) or as required by emergency services, Planning Staff or governing body.
Turnaround	Required for driveways more than 150 ft in length – Hammerhead or Cul-de-Sac, per design standards above, must be within 150 ft of dwelling
Emergency Access	Same as Driveways; *Developments with more than 30 dwelling units shall provide at least one separate emergency access or egress road; or as required by FRA*

* Exceptions to 60’ easement/ROW and 24’ driving surface: Roads shall be permitted to have 40’ easement/ROW if an engineer certifies that the easement is adequate for road surface, maintenance, drainage and utilities and there is no possibility of future road extension due to a physical or political boundary such as:

i. Canyon, ravine or vertical rock wall

ii. Water body (lake stream, wetlands)

iii. Federal or state lands adjacent

NOTE: In the event of a pre-existing 40' easement, if the subdivider demonstrates through a trip distribution analysis that additional traffic created by the proposed subdivision does not warrant increased easement width to accommodate it (based on AASHTO Guidelines), a 40' easement may be allowed, provided additional surface width, drainage and other facilities can be adequately designed within it.

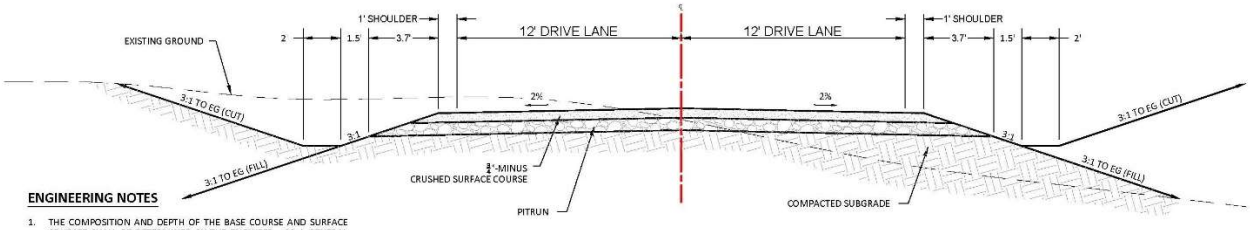
** May be allowed up to 12% in consultation with the fire jurisdiction with approval by the Governing Body*;*

a/ Each driving lane shall be 12 feet wide. Where guardrail installation is required, per AASHTO Guidelines, add 4 feet of shoulder to the driving surface of the outside lane. If parking will be permitted add 8 feet per side.

b/ All driving lanes are required to maintain a 13.5 vertical feet overhead clearance.

c/ Based on the design speed of the road (refer to AASHTO Guidelines).

d/ Developments with more than 30 dwelling units shall provide at least one separate emergency access or egress road.



ENGINEERING NOTES

1. THE COMPOSITION AND DEPTH OF THE BASE COURSE AND SURFACE COURSEE SHALL BE DETERMINED BY THE ENGINEER. AS A GENERAL GUIDE TO GEOMETRIC DESIGN, APPLICANTS SHALL USE A POLICY ON GEOMETRIC DESIGN OF HIGHWAYS AND STREETS (MOST RECENT EDITION), ALSO KNOWN AS THE 'GREEN BOOK', BY THE AMERICAN ASSOCIATION OF STATE HIGHWAY TRANSPORTATION OFFICIALS (AASHTO); AND MORE SPECIFICALLY, THE LOW VOLUME ROAD MANUAL, WHICH PROVIDES THE BASIS FOR THESE STANDARDS ON ROADS THAT ACCOMMODATE UP TO 2,000 TRIPS PER DAY.
2. SLOPES AND DITCHES ARE SHOWN FOR REFERENCE ONLY. ACTUAL SLOPES AND DITCH DIMENSIONS MAY VARY.

TYPICAL SECTION - ACCESS ROAD

V-H. Grading and Drainage

1. All drainage systems shall meet the minimum standards of the Montana DEQ, as required by M.C.A. Title 76, Chapter 4, Part 1, Circular DEQ 8 and all applicable state and local regulations. Drainage may be required for lots over 20 acres. Consultation with the sanitarian is advised.
2. Storm drainage facilities shall be installed prior to or concurrent with other improvements and be designed to divert surface water away from cut faces or sloping surfaces of a fill.

3. All storm drainage facilities shall be protected from erosion or silt deposition during construction of both public and private improvements.
4. Drainage easements shall be drawn on the plat.
5. Storm drainage facilities and any associated easements may not be encroached upon or disrupted, and shall remain free of obstructions (fences, structures, etc.).
6. Natural drainages shall be preserved and accommodated at necessary crossings to access subdivision lots. Lots shall be arranged to preserve and maintain these drainage channels.
7. Graded slopes shall be planted with a vegetative ground cover, and consistent with the Wildland Urban Interface (WUI) requirements.
8. Areas of disturbance shall be replanted no later than the first growing season to prevent erosion and weed invasion, in consultation with the Lincoln County Weed Department. Where site grading is necessary, topsoil shall be salvaged or imported to redistribute on areas to be re-vegetated.
9. Use of retention facilities within rights-of-way shall be minimized unless it significantly reduces grading or eliminates long cuts or fills.
10. A method of maintenance and designation of responsible parties must be provided for storm drainage facilities.

V-I. Fire Protection

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

1. The design of subdivisions in cooperation and with the approval of the jurisdictional Fire Protection Authority (FPA) as identified in the most current version of the Lincoln County Fire Operations Plan. In areas without an FPA, the Firesafe Council shall provide input

2. A covenant that cannot be changed without governing body approval, requiring establishment of defensible space and maintenance of defensible space per Lincoln County's Community Wildfire Protection Plan (CWPP).

3. The placement of structures to minimize the potential for flame spread and to permit adequate access for firefighting equipment.

4. The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.

5. 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.

V-I-2. Fire Risk Assessment

For unincorporated areas of Lincoln County an analysis of the wildfire hazards on the subdivision site, as influenced by existing vegetation and topography, must accompany the submission of any application for preliminary plat approval. (See Appendix F: Fire Risk Assessment [FRA])

V-I-3. Special Requirements for areas of High Fire Hazard

1. The subdivider shall provide a Fire Prevention and Control Plan, if required by the FRA, for all properties within the subdivision, including any proposed open space.

2. The intent of a Fire Prevention and Control Plan is to provide a strategy for reducing fire potential. The plan should meet the following goals:

    i. Protect life and property.

    ii. Reduce the potential for a fire on improved property from spreading into wildland fuels, and from a fire in wildland fuels from spreading into improved property or structures. This also applies to reducing the potential for a fire spreading to or from lands adjacent to the subdivision.

    iii. Provide safe working areas for emergency responders fighting fire.

3. The plan shall include:

    i. An analysis of the wildfire hazards on site as influenced by existing vegetation and topography.

ii. a map showing:

a. areas to be cleared of dead, dying, or severely diseased vegetation

b. areas to be thinned or treated for vegetative fuels management

c. powerline locations and their treatment

iii. The identification of roads, driveways and bridges that are sufficient for emergency vehicle access and fire suppression activities.

iv. Slopes of all roads and driveways must be provided.

4. Roadside Fuel Reduction shall include:

i. All areas within fifteen (15') feet of each side of the driving surface on a public street or road shall be cleared of all vegetation.

ii. A fifty (50') foot shaded fuel break along all new streets or roads within the subdivision which provide ingress or egress. The 50 feet shall be cleared of all dead and down woody debris and will be determined from the centerline of the road surface and extend on both sides of the road.

V-I-4. Gates.

1. If gates are proposed, the locations, dimensions and operations shall be reviewed by the FPA.
2. All gates shall be located such that stopped emergency vehicles do not impede the public right-of-way.
3. All gates will allow for a minimum of 14' driving surface and be clear of all obstructions.
4. Fire department personnel shall have ready access to locking mechanisms on any gate that restricts access or the gate should be constructed to "break away."

V-I-5.Water Requirements for Fire Suppression

Due to the wide variety of situations and levels of fire protection the location of each development will present a unique set of challenges. Water supply solutions shall be developed cooperatively between the developer and the FPA.

For *major* subdivisions, the subdivider has the following options:

1. If the subdivision is in a fire district or service area, the subdivider shall ensure water availability (see requirements below) and delivery is provided such that the ISO rating of the fire district or service area is maintained or improved (see the Planning Department for a current list of ratings).
2. Depending on size and impact of the proposed subdivision on the fire district or service area, the subdivider may mitigate impacts to local services with a payment-in-lieu, if approved by the FPA for structural fire protection.
3. If the subdivision is not in a fire district or service area and the fire district or service area does not want to annex the subdivision, the subdivider shall mitigate impacts to wildland fire protection with a payment-in-lieu to Lincoln County.

For *minor* subdivisions, the subdivider shall mitigate impacts to wildland fire protection with a payment-in-lieu to the fire district or service area, or Lincoln County, where neither of the other exists, unless the same developer has created multiple minor subdivisions adjacent to one another, in which case the applicant is subject to Section a. above.

All payment-in-lieu of water supply mitigation shall be held by the fire district, fire service area, or Lincoln County, for the specific purpose of structural fire protection. Payment-in-lieu amounts shall be set by the County Commissioners in consultation with the fire district or service area; may vary from district to district; and may be subject to change.

a. Water Supply Requirements
Adequate water supply shall be determined by each Authority Having Jurisdiction (AHJ) for purposes of initial attack and flame front control as follows (See Appendix M):

NOTE: In the absence of an AHJ, the Lincoln County Firesafe Council will provide recommendations for fire protection and water supply.

General guidelines are as follows:

h. One- and two-family dwellings. The required water supply for one- and two-family dwellings having a fire flow calculation area that does not exceed 3,600 square feet (334 m2) shall be 1,000 gallons per minute (63.1 L/s) for a minimum duration of 30 minutes. The required water supply for one- and two-family dwellings having a fire flow calculation area more than 3,600 square feet (334 m2) shall be 1,500 gallons per minute (95 L/s) for a minimum duration of 30 minutes.

Exception: A reduction in required flow rate of up to 50 percent is allowed where the building is provided with an approved automatic sprinkler system.

ii. Obstructions. Access to water sources required by this code shall be unobstructed at all times. The FPA shall not be deterred or hindered from gaining immediate access to water source equipment, fire protection equipment or hydrants.

iii. Identification. Water sources, draft sites, hydrants and fire protection equipment and hydrants shall be clearly identified in a manner approved by the FPA to identify location and to prevent obstruction by parking and other obstructions.

b. Water Source Requirements
Water sources shall comply with the following:

i. Man-made water sources shall have a minimum year-round water volume as determined by the adequate water supply needs in accordance with Section VI-P-5(a). This water source shall be equipped with an approved hydrant. The water level of the water source shall be maintained by rainfall, water pumped from a well, water hauled by a tanker or by seasonal high water of a stream or river. The design, construction, location, water level maintenance, access and access maintenance of man-made water sources shall be approved by the FPA.

ii. Natural water sources shall have a minimum annual water level or flow sufficient to meet the adequate water supply needs in accordance with Section VI-P-5(a). This water level or flow shall not be rendered unusable because of freezing. This water

source shall have an approved draft site with an approved hydrant. Adequate water flow and rights for access to the water source shall be ensured in a form acceptable to the FPA.

c. Delivery Methods.
Water supply may be satisfied (with approval of the FPA) using one or a combination of:

i. Pressurized Hydrants Systems.
Pressurized hydrant systems shall have a minimum usable water volume as determined by these guidelines. The water level of the water source shall be maintained by rainfall, water pumped from a well, or by seasonal high water of a stream or river. The number of hydrants, design construction, capacity, location, water level, maintenance and access shall be approved by the FPA.

ii. Draft Sites/Dry Hydrants.
Draft sites from natural water sources such as ponds and streams as approved by the FPA.

A. Whether the water source is manmade or natural, dry hydrants shall be installed at all draft sites. The design, construction, locations, access and maintenance plans for these sites should be approved by the FPA.

B. The draft site shall have emergency vehicle access from an access road constructed in accordance with the Lincoln County Subdivision Regulations.

C. Access to fire department draft sites should be designed to ensure that access roads and driveways are not obstructed. Accessibility should be provided in such a manner that responders will be able to withdraw water without having to go through extraordinary measures such as knocking down fences, etc.

iii. Manmade Storage Systems (Tanks/Cisterns).
Manmade storage systems shall have a minimum year-round water volume as determined by these guidelines. This water source should be equipped with an approved hydrant or hydrants. The level of the water source shall have a method to be maintained at its capacity. This may be accomplished by rainfall, water pumped from a well, or by seasonal high water of a stream or river. The design construction, location, water level maintenance, access and access maintenance should be approved by the FPA

d. Testing and Maintenance

Water sources, draft sites, hydrants and other fire protection equipment may be subject to periodic tests as required by the FPA.

i. All such equipment installed under the provisions of these guidelines shall be maintained in an operative condition at all times and should be repaired or replaced where defective. Additions, repairs, alterations, and servicing of such fire protection equipment and resources should be in accordance with standards approved by the FPA.

ii. Defensible space of not less than 30 feet should be provided around water tank structures, water supply pumps and pump houses. Portions of trees and other combustible vegetation within 30 feet of the facilities should be removed.

iii. Water supply facilities in the WUI dependent on electrical power to meet water supply demands should provide standby power systems to ensure that an uninterrupted water supply is provided. The standby power source should be capable of providing power for a minimum of two hours. Standby power is not suggested when the water supply facility serves no more than one single family dwelling.

e. Modifications

i. Fire flow requirements may be modified downward by the FPA for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire flow is impractical.

ii. Fire flow may be modified upward by the FPA where conditions indicate an unusual susceptibility to group fires or conflagrations. An upward modification should not be more than twice that suggested for the building or buildings under consideration.

iii. Water supply points may be developed at a single location or at several locations within the vicinity of the development. The location or locations should be determined in cooperation with the FPA in order to best support suppression activities by the FPA.

V-J. Water Supply Systems

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

c. The governing body may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA, or is exempt from same.

V-K. Sewage Treatment Systems

2. 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.

3. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the governing body can approve the final plat.

4. For subdivisions containing parcels containing 20 acres or more, the subdivider may have to demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot before the governing body may approve the final plat.

5. Groundwater monitoring may be required by the Health Department based on soil conditions, geomorphology and historical information regarding high groundwater.

V-L. Utilities

1. Electrical power service must abut and be available to each lot in the subdivision.
2. Fiber telecommunication service must abut each lot.
3. If utilities are not installed adjacent to the lots prior to the filing of the final plat, the subdivider shall either enter into a subdivision improvements agreement guaranteeing the installation of those utilities; or the subdivider shall provide the governing body with signed contracts from all pertinent utility companies guaranteeing that the utilities will be installed when residential dwelling units are constructed on the subject lots. The subdivider shall bear the cost of installing the trunk line utilities. Purchasers of individual lots shall be responsible for the installation of the utilities from the trunk line to a service destination.
4. All new utilities shall be installed underground, unless otherwise required by the specific utility, and in accordance with local utility provider requirements.
5. All utility easements shall be fifteen (15) feet wide unless otherwise specified by a utility company or governing body.
6. Certain subdivisions may be exempt from utility installation if they are created:
   a) for the express purpose of providing a recreational experience for a group or individuals that would prefer not to rely on traditional electric or telephone service to enhance their lifestyle; or
   b) in an area wherein the cost of extending or providing utilities would outweigh the costs of providing alternative energy and communication devices. Such alternative solutions may include hydroelectric, solar, or generator power instead of traditional "grid" electricity; and Citizens Band Radio, Cell Phone, and/or Satellite phone instead of traditional land line phone service.

   In these situations, the final plat and covenants shall contain the following statements:

   "Purchasers of these lots are hereby notified that certain utility services are not provided to [name of] subdivision. Furthermore, emergency service providers such as, but not limited to, fire and police departments, ambulance and medical services, snow plowing services, etc., may find it difficult to respond to incidents in or near the subdivision, and thereby are not obligated to provide their services, though they may choose to do so. However, response times may be delayed due to factors beyond their control such as, but not limited to distance, weather conditions, road conditions, etc. Purchasers are made aware that certain other risks, not expressly disclosed herein, are associated with choosing to live and or recreate in and near this subdivision.

Therefore, purchasers of these subdivision lots, do hereby and forever release the Developer, subdivider, surveyors, engineers, Lincoln County, and all other agencies and entities involved in the creation of this subdivision, and indemnify them against any possible loss, damage, claims, or liability whatsoever."

V-M. Water Course and Irrigation Easements

1. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements that:
   a. 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;
   b. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
   c. 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.
2. The subdivider need not establish irrigation easements as provided above if:
   a. the average lot size in the proposed subdivision will be one (1) 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
   b. the water rights have been removed from the land within the subdivision or that process has been initiated; and
   c. 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.
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 and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

V-N. Disposition of Water Rights

1. If a subdivision will create lots averaging less than five (5) acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:
   a. reserved all or a portion of the appropriated water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by

landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;

b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

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

V-P. Park Land Dedication

1. Except as provided below, a subdivider of a wholly residential subdivision creating more than five lots shall dedicate to the governing body a cash or land donation equal to:

   a. 11 % of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

   b. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

   c. 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

   d. 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

2. The governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or zoning regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (a) and may not exceed 0.03 acres per dwelling unit.

3. Park land must be:

   a. Owned by a property owners' association; or

   b. Dedicated to public use, if acceptable to the governing body; or

   c. A combination of the above.

4. 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. "Cash donation" is the fair market value of the unsubdivided, unimproved land.

   a. In accordance with the provisions outlined below, the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

      i. The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

A. the park, recreational area, open space, or conservation easement is within a reasonably proximity to the proposed subdivision; and

B. the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

b. The governing body may not use more than 50% of the dedicated money for park maintenance.

5. The governing body shall waive the park dedication requirement if:

a. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required;

b. the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the area of the land proposed to be subdivided, by virtue of providing long-term protection is reduced by an amount equal to or exceeding the area of the dedication required;

c. the area of the land proposed to be subdivided, by virtue of a combination of the above provisions, is reduced by an amount equal to or exceeding the area of the dedication required; or

d. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required.

6. The governing body may waive the park dedication requirement if:

a. the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

b. the area of the land to be subject to long-term protection, as provided in subsection (f)(i), equals or exceeds the area of the dedication required under subsection (a).

7. Subject to the approval of the governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation to a school district, adequate to be used for school facilities or buildings. Such dedication must meet the requirements above.

V-Q. Design Standards for Condominium Developments

Condominium developments must comply with applicable standards and review process set forth in these regulations and must comply with all provisions of the Unit Ownership Act, MCA Title 70, Chapter 23.

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 V-B Subdivision Improvements Agreement; Guaranty.

V-R. Variances

V-R-1. Variances Authorized

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

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

a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;

c. The variance will not cause a substantial increase in public costs; and

d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

V-R-2. Variances from Floodway, Weed and Fuels Reduction Provisions Not Authorized

The governing body will not grant variances for building purposes in areas located entirely within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA; or for treatment of noxious weeds or wildfire risk fuels reduction

V-R-3. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The applicant can request that the variance request be heard prior to submitting the preliminary plat application, in which case, the Planning Department will follow public noticing procedures for variances associated with major subdivisions. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

V-R-4. Conditions

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

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

V-R-5. Statement of Fact

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

VI. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

VI-A. Purpose

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

VI-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade the Montana Subdivision and Platting Act (MSPA) [76-3-201, MCA]

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

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.

Landowners or their agents are encouraged to meet with the Planning Staff to discuss whether a proposed land division or use of an exemption follows the criteria in this Section.

VI-C. Divisions of Land Exempt from the MSPA Requirements and These Regulations

The governing body will examine the divisions of land set forth in this section to determine whether the requirements of the MSPA and these regulations apply to the division. 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, in the following situations (MCA 76-3-203):

1. Condominiums. Generally, condominiums are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they constructed on land subdivided in compliance with these regulations and the MSPA;

    a. The approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements have been met; or

    b. The condominium proposal is in conformance with applicable local zoning regulations where local zoning regulations are in effect.

2. Lease or Rent. 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

a. 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;

b. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these regulations.

c. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, manufacture, maintenance, and storage of aircraft, or air carrier related activities

d. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974

e. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.

3. State Highways. 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.

4. Court Order. A division of land can be 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. Mortgage. 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.

   a. Statement of Intent
   The intended purpose of this exemption is to allow a landowner to temporarily segregate a smaller parcel from a tract of land for the express purposes of securing financing.

   b. Use of Exemption:
   This exemption only applies if the land that is divided is 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. Any other such transfer or conveyance is considered an evasion of the MSPA.

c. Required Materials
When this exemption is to be used, the landowner must submit to Planning Staff:
   i. 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);
   ii. 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
   iii. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

d. Evasion Criteria
The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA and will be subject to subdivision review if:
   i. it will create more than one new building site;
   ii. the financing is not for construction or improvements on the exempted parcel, or for re-financing;
   iii. 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;
   iv. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
   iv. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
   v. 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.

VI-D. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations

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

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

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

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

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

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

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

a. Statement of Intent – This exemption allows a landowner to convey one parcel to each member of his or her immediate family, without local subdivision review for the benefit of the grantee. 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 (any age, by blood or adoption), or parents of the grantor [76-3-103(8), MCA] and may be owned jointly with that immediate family member's spouse. 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. A deed transferring the property to the grantee must be recorded along with the Certificate of Survey.

   i. Divisions Outside Platted Subdivisions

      1. For the purposes of II-D-2.a.i, if the property is within a zoning district, each family transfer parcel shall be at least five acres in size unless the zoning district allows for smaller parcels sizes.

   ii. Divisions Inside Platted Subdivisions

      1. The division must be within a subdivision that has been approved by the Governing Body.

      2. The division must create parcels of a size allowed within the subdivision.

b. Required Information – A certificate of survey, Amended Plat (if the division is within a platted subdivision), 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)]. Also, the certificate of survey or amended plat must be accompanied by a deed or other conveying document.

c. Use of Exemption – One conveyance of a single parcel to each family member of the landowner's immediate family is eligible for exemption from subdivision review.

d. Evasion Criteria – The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA and will be subject to subdivision review if:
   i. Use of this exemption is being applied to divide a tract that was previously created using an exemption;
   ii. Use of this exemption to divide tracts that appear to have been created as part of an overall development plan with such characteristics as common roads, utility easements, protective covenants, open space or common marketing or promotional plan;
   iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption;
   iv. The grantee attempts to sell the property back to the original owner.
   v. DEQ approval will be required.

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

Divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter 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.

a. Statement of Intent – The intent of this exemption is to allow a landowner to create a parcel without local subdivision review where the parcel will be used only for production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

b. Requirements – For purposes of this exemption, the term "agricultural purposes" means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential, commercial, and industrial uses and structures, as well as any facilities for commercially or industrially processing agricultural products.

   i. The division must be located outside any platted subdivision.

   ii. The division must be exempt from sanitation review by the Department of Environmental Quality (DEQ) pursuant to Section 76-4-125 (2)(c), MCA, as a division made for purposes other than the construction of water supply or sewage and solid waste disposal facilities. This sanitation exclusion must be properly invoked by the property owner.

   iii. The landowner must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner, heirs, successors and assigns that the newly created agricultural parcel will be used exclusively for agricultural purposes as defined above. The covenant must be signed by the property owner and the governing body and acknowledge that any change in use of the newly created agricultural parcel for anything other than agricultural purposes subjects the parcel to subdivision review.

   iv. The division must meet the agricultural definition as described in the "Definitions" section of these regulations and does not include gardening for personal use, keeping of house pets, or landscaping for aesthetic purposes.

   v. A certificate of survey (or instrument of conveyance) that uses this exemption requires a covenant running with the land in accordance with Section 76-3-207

(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey (or conveyance document) [ARM 24.183.1104 (f)(iii)]. Any such certificate of survey must be accompanied by a separate, recordable document reciting the covenant (see Planning Office for form).

vi. Any change in use of the newly created agricultural parcel for anything other than agricultural purposes subjects the parcel to subdivision review. 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 through subdivision review.

c. Evasion Criteria

i. Any proposed use of agricultural exemption to divide a tract of record that was created through use of an exemption. This applies regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.

ii. Any proposed use of an agricultural exemption to divide a tract that was 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.

iii. Any proposed use of an agricultural exemption that would create more than one remaining parcel of less than 160 acres.

iv. Any circumstance where the landowner does not sufficiently demonstrate that the planned use of the exempted parcel is for agricultural purposes only.

d. Removal - Removal of the agricultural covenant according to Section 76-3-207 (1)(c), MCA; or,

i. The Board of County Commissioners may, in its discretion, approve the removal of the agricultural covenant *without subdivision review* if:

A. The original lot lines are restored through aggregation of the covenanted tract prior to, or in conjunction with, the lifting of the agricultural covenant; or,

B. The proposed lifting of the covenant is for a government or public entity seeking to use the tract for public purposes. Public purposes are defined for the purposes of this section as utility stations, airports, cemeteries, water and/or wastewater facilities.

1. The Board of County Commissioners shall determine the qualifications and purpose of the public entity, by the following:

a. will hold a public hearing as set forth in Section II-F,

b. will consider the information and evidence provided at the public hearing,

c. will issue written findings of fact based on the information and evidence within 15 working days, and.

d. will either approve or deny the removal of the agricultural covenant.

ii. An Agricultural Exemption Removal agreement lifting the agricultural covenant shall be recorded at the office of the Lincoln County Clerk and Recorder.

iii. The revocation of an Agricultural Covenant Exemption does not affect sanitary restrictions imposed under Title 76, Chapter 4, MCA.

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

a. Statement of Intent

i. The MSPA allows certain revisions of subdivisions platted since July 1, 1973, which include: relocation of common boundaries and the aggregation of 5 or fewer lots within a platted subdivision; or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.

ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or re-arranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the clerk and recorder.

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

c. Evasion Criteria – The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA and will be subject to subdivision review if

i. the resulting lots are inconsistent with the approved subdivision and the uses in it;

ii. the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions.

VI-E. Procedures and Examination of Subdivision Exemptions

VI-E-1. Submittal

A landowner(s) ("claimant" herein) claiming exemption from the requirements of the MSPA shall submit to the Planning Staff: (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 and conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)

VI-E-2. Examination

Upon submission of a claim to utilize an exemption for a division of land, the Planning Staff shall initiate an examination by the Exemption Review Committee consisting of designated agents of the governing body (e.g., county attorney, sanitarian, treasurer, and clerk and recorder) for comment on the claimed exemption. The Planning Staff and governing body agents shall examine the claimed exemption to verify that it is the proper use of it and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

a. Within 20 working days of receipt of an application containing all materials and information required by the governing body to conduct its review under these regulations, the Planning Staff shall make a written determination, using the stated Evasion Criteria for each exemption, of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.

b. If the Planning Staff finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the Planning Staff 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.

c. If the Planning Staff finds that the proposed use of the exemption does not comply with the statutes and criteria, the Planning Staff shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.

VI-E-3. Appeals

a. A claimant whose proposed use of exemption has been denied by the Planning Staff may appeal the subdivision administrator's decision to the governing body. The appeal request shall be submitted in writing to the Planning Staff within ten (10) working days. The claimant may submit additional evidence to show that the use of the exemption in question is appropriate and not intended to evade the MSPA. The Planning Staff shall submit a staff report and applicable materials to the governing body for its consideration.

b. If the governing body (at a duly noticed public meeting or public hearing held within 20 working days) concludes that the evidence and information demonstrate that the exemption is not being invoked to evade the MSPA or otherwise finds the exemption appropriate, the governing body shall authorize the use of the exemption in writing. A survey claiming such an exemption from subdivision review (or an instrument of conveyance if no survey is required), which otherwise is in proper form and approved by the Examining Land Surveyor, may be filed if it is accompanied by the written authorization of the governing body.

c. If the governing body determines that the proposed use of an exemption was for the purpose of evading the MSPA or these regulations, the claimant proposing to use the exemption may submit a subdivision application for the proposed land division.

VI-F. Identification Codes

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

CO	Court Order [76-3-201(1)(a), MCA]
ME	Mortgage Exemption [76-3-201(1)(b), MCA]
LE	Life Estate [76-3-201(1)(e), MCA]
RB	Relocation of Common Boundary [76-3-207(1)(a), MCA]
FC	Family Conveyance [76-3-207(1)(b), MCA]
AE	Agricultural Exemption [76-3-207(1)(c), MCA]
AL	Aggregation of Lots [76-3-207(e), MCA]

VII. DEFINITIONS

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular.

1. ACCESS:

    a. Legal access means that each lot in a subdivision 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. Proof of legal access can be either documented legal access from landowner(s), court judgment, or a certification of a licensed title abstractor

    b. Physical access means that the street or road conforming to the subdivision design standards which provides all weather normal vehicular access from a public street or road to each lot in the subdivision.

2. ADT: Average Daily Trips for vehicles based on the Institute of Transportation Engineers land use code.

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. AGRICULTURE: All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

5. AGRICULTURAL WATER USER FACILITIES: Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.

6. A.R.M.: Administrative Rules of Montana

7. BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries.

8. BUILDING ENVELOPE: The designated area of a lot within which a structure or structures can be built and which is depicted or described on a site plan or final subdivision plat.

9. CANYON: A deep valley with steep slopes carved from the landscape by a river or a stream.

10. CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.

11. COMBUSTIBLE: Any material that, in the form in which it is used and under conditions anticipated will ignite and burn (see Noncombustible).

12. COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY: means a comprehensive development plan, master plan, or comprehensive plan that was

adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.

13. CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.

14. COVENANT (PROTECTIVE COVENANT): A limitation contained in a deed or other document that restricts or regulates the use of real property.

15. 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].

16. DEVELOPMENT: Land use development or construction projects that involve substantial property improvement and usually a change in the land-use character within a subject property or properties. Such development generally involves using land for residential or commercial purposes.

17. DEQ: The Montana Department of Environmental Quality.

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

19. DRIVEWAY: A vehicular ingress and egress route that serves no more than two dwelling units.

20. DWELLING UNIT: Any structure or portion thereof providing complete, independent and permanent living facilities for one household.

21. EASEMENT: Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner’s property for a specified purpose.

22. ENGINEER (PROFESSIONAL ENGINEER or PE): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.

23. EVACUATION: The temporary movement of people and their possessions from locations threatened by a hazard.

24. FIRE CHIMNEY: Topographical features, usually canyons, gulches or valleys, which tend to funnel or otherwise concentrate fire toward the top of steep slopes. Fire Chimneys are generally less than ½ mile in length, have slopes of 20% or steeper, are less than 600 feet wide, and are at least 120 feet deep as measured from the bottom of the ravine to the crest of either adjacent ridge or slope.

25. FIRE FLOW: The flow rate of a water supply, measured at 20 psi (137.9 kPa) residual pressure that is available for firefighting.

26. FIRE HAZARD: A fuel complex, defined by kind, arrangement, volume, condition, and location, which determines the ease of ignition and/or resistance to fire control.

27. FIRE HYDRANT: A valved connection on a year-round water supply system having one or more outlets that is used to supply water for fire departments.

    a. PRESSURIZED HYDRANT: An arrangement of pipe permanently connected to a year- round water source with a pressurized water supply system that provides a ready means of water supply for firefighting purposes.

    b. DRY (DRAFT) HYDRANT: An arrangement of pipe permanently connected to a year- round water source other that a piped, pressurized water supply system that provides a ready means of water supply for firefighting purposes and that utilizes the drafting (suction) capability of fire department pumpers.

28. FIRE PROTECTION AGENCY (FPA): Agency having jurisdiction for residential fire protection.

29. FIRE PROTECTION FEATURE: A fire protection feature is any feature outlined in the fire prevention plan or fire protection plan, or any other features that aid in the prevention or protection from fire.

30. FIRST MINOR SUBDIVISION: A proposed subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA or will not result in a tract of record that creates more than five parcels under 160 acres in size [76-3-609(2), MCA].

31. 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].

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

33. 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].

34. 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].

35. FUELS: All combustible materials within the WUI including, but not limited to, vegetation and structures.

36. FUEL BREAK: An area, strategically located for fighting anticipated fires, where the native vegetation has been permanently modified or replaced so that fires burning into it can be more easily controlled. Fuel breaks divide fire-prone areas into smaller areas for easier fire control and to provide access for firefighting.

37. GOVERNING BODY: The governing authority of a county, city, town, or consolidated local government organized pursuant to law [76-3-103 (7), MCA].

38. HAZARD: A fuel complex defined by kind, arrangement, volume, condition, and location that determines the ease of ignition and/or of resistance to fire control.

39. IMPROVED PROPERTY: A piece of land or real estate upon which a structure has been placed, a marketable crop is growing (including timber), or other property improvement has been made.

40. 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.

41. ISO: The Insurance Service Organization collects information on municipal fire-protection efforts in communities throughout the United States. In each of those communities, ISO analyzes the relevant data using a Fire Suppression Rating Schedule (FSRS). ISO assigns a Public Protection Classification value from 1 to 10. Class 1 generally represents superior property fire protection, and Class 10 indicates that the area's fire-suppression program doesn't meet ISO's minimum criteria.

    By classifying communities' ability to suppress fires, ISO helps communities evaluate their public fire-protection services. The program provides an objective, countrywide standard that helps fire departments in planning and budgeting for facilities, equipment, and training. By securing lower fire insurance premiums for communities with better public protection, the PPC program provides incentives and rewards for communities that choose to improve their firefighting services.

42. LAND USE: The type or degree of activity occurring or intended to occur on a piece of land.

43. 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.

44. LOCAL SERVICES: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.

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

46. LOT MEASUREMENT:

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

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

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

47. LOT TYPES:

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

    b. Interior/Perimeter 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.

48. MCA: Montana Code Annotated

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

50. MINOR SUBDIVISION: A subdivision that results in five or fewer lots from a tract of land which was not originally created through subdivision.

51. 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 the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes and are transported to the site for final assembly on a permanent foundation.

52. 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.

53. 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.

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

55. NATURAL ENVIRONMENT: The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.

56. NON-COMBUSTIBLE: A material that, in the form in which it is used and under the conditions anticipated, will not aid combustion or add appreciable heat to an ambient fire.

57. OBSTRUCTIONS: Any object or collection of objects that may deter, hinder or block access.

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

59. OVERALL DEVELOPMENT PLAN: The plan of a subdivision design proposed to be subdivided in stages.

60. 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 with each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].

61. PLANNING BOARD: A planning board formed pursuant to Title 76, Chapter 1, MCA.

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

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

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

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

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

63. 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.

64. 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.

65. 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.

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

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

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

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

70. RISK: The measure of the potential and severity of adverse effects to persons or property that results from an exposure to a wildland fire (direct flames, radiant heat, or firebrands).

71. SLOPE: Upward or downward incline or slant, usually calculated as a percentage of slope (rise or fall per 100 ft (30.45m) of horizontal distance).

72. STREET OR ROAD: Any access, not including a driveway, providing access to more than two parcels and primarily intended for vehicular access.

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

a. Alley: A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.

b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.

c. Collector: A street or road having equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.

d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.

e. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.

f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.

g. Loop: A local street which begins and ends on the same street, generally used for access to properties.

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.

74. STRUCTURE: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

75. STRUCTURE PROTECTION: Protecting a structure from the threat of damage from an advancing wildland fire. This involves the use of standard wildland protection tactics, control methods, and equipment, including fire control lines and the extinguishment of spot fires near or on the structure. Protection can be provided by both the rural and/or local government fire department and the wildland fire protection agency.

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

77. SUBDIVISION: A division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. [76-3-103(18), MCA].

78. SUBDIVISION PLANNING STAFF: The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.

79. SUBSEQUENT MINOR SUBDIVISION: A proposed subdivision from a tract of record that has been subdivided or created by a subdivision under the MSPA or will result in a tract of record that creates more than five parcels under 160 acres in size.. [76-3-609(2), MCA].

80. SURVEYOR (PROFESSIONAL LAND SURVEYOR): A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

81. SURVEYOR (EXAMINING LAND SURVEYOR): A professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

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

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

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

85. TRAFFIC LANE: That portion of a roadway that provides a single lane of vehicle travel in one direction.

86. TURNAROUND: A portion of a street or road, unobstructed by parking, that allows for a safe reversal of direction for emergency equipment.

87. TURNOUT-PULLOUT: An area along the edge of a street or road that provides a space for a vehicle to safely move out of a traffic lane in order to permit the passage of emergency or other types of vehicles.

88. URBAN/SUBURBAN: Residential density greater than two (2) dwelling units per acre.

89. VALLEY: An elongated depression of the earth's surface, usually found between ranges of hills or mountains.

90. VEGETATION: Any plant, native or planted, living or dead; tree, shrub, bush, grass, flower, etc.

91. 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.

92. WILDLIFE: Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.

93. WILDLIFE HABITAT: The place or area where wildlife naturally lives or travels through.

94. WILDLAND: An area in which development is essentially nonexistent except for roads, railroads, power lines, and similar facilities.

95. WILDLAND FIRE OR WILDFIRE: An unplanned and uncontrolled fire spreading through vegetative fuels, at times involving structures.

96. WILDLAND FIRE PROTECTION: Any non-structure fire protection that occurs in the wildland with the primary responsibility of protecting natural resources and watersheds from damage. State and federal forestry or land management and some local government agencies normally provide wildland fire protection.

97. WILDLAND/URBAN INTERFACE (WUI): The presence of structures in locations in which the FPA determines that topographical features, vegetation fuel types, local weather conditions, and prevailing winds, in conjunction with structural ignitability, may result in the potential for ignition of the structures within the area from flames and firebrands of a wildland fire.