

Chapter 28

SUBDIVISION REGULATION

Sec. 28-1. Adoption by reference.

There is adopted by reference those certain "Amended Subdivision Regulation of the City of Livingston" which regulations are attached as Exhibit "A" to the original ordinance codified in this Section and found on file. (Ord. 1285, 4/21/75; Ord. 1650, 4/18/90; Ord. 1784, 9/19/94; Ord. 1982, 3/5/07; Ord. 1995, 12/17/07)

Sec. 28-2. Copy on file.

A true and correct copy of said Subdivision Regulation of the City of Livingston shall at all times be on file and of record in the office of the City of Livingston as a part of the ordinances of the City. (Ord. 1285, 4/21/75)

**CITY OF LIVINGSTON
SUBDIVISION
REGULATIONS**



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DEFINITIONS

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

AGRICULTURE: The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticulture crops that are raised, grown, or produced for commercial purposes.

AGRICULTURAL WATER USER FACILITIES: Any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

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

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

CLUSTER DEVELOPMENT: A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].

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

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

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].

DEQ: The Montana Department of Environmental Quality.

DEVELOPMENT REVIEW COMMITTEE: The City committee, established by resolution and consisting of the various department heads, charged with reviewing development proposals and making recommendations to the City Manager.

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].

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

EASEMENT: Authorization by a property owner for another to use all or a portion of the owner's property for a specified purpose.

ENGINEER (REGISTERED PROFESSIONAL ENGINEER): A person licensed in conformance with the Montana Professional Engineers' Registration Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.

FIRST MINOR SUBDIVISION: A proposed minor subdivision of a tract of record that has not been subdivided or created by a subdivision under these regulations, or has not resulted from a tract of record that has had more than five parcels created from that tract of record since July 1, 1973. [Mont. Code Ann. § 76-3-609(2)].

FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.

FLOOD OF 100 YEAR FREQUENCY: A flood magnitude expected to recur on the average of once every 100 years, or a flood magnitude which has a one percent chance of occurring in any given year.

FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency.

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.

GOVERNING BODY: The governing authority of a county, city, town, or consolidated local government organized pursuant to law.

GROWTH POLICY: A comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to Title 76, MCA, on or after October 1, 1999.

LOCAL SERVICES: All services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

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

LOT MEASUREMENT:

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the front lot line.

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

LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.

MAJOR SUBDIVISION: A subdivision which does not qualify for review as a minor subdivision and is not otherwise exempt from review.

MINOR SUBDIVISION: A subdivision that creates five (5) or fewer lots from a tract of record.

MOBILE HOME: A detached residential dwelling unit, which may consist of two (2) or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

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

MOBILE HOME PARK: A tract of land that provides or will provide spaces for two (2) or more mobile homes.

MOBILE HOME PAD: That area of a mobile home space which has been prepared for the placement of a mobile home.

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.

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

NATURAL ENVIRONMENT: The physical conditions that exist within a given area.

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

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

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

PLANNING DEPARTMENT: The City Planning Director or any designee of the Planning Director who is charged with administering the subdivision review process.

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.

PUBLIC HEALTH AND SAFETY: A condition of well being wherein risk of injury to the community at large is minimized.

PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public.

PUBLIC ROAD OR STREET: A road or street which has been dedicated for public use.

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

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

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

STATE: The State of Montana.

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

- a. **Alley:** A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.

- b. **Arterial:** A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two (2) to four (4) lanes of moving traffic and should provide only limited access to abutting property.
- c. **Collector:** A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two (2) moving traffic lanes and up to two (2) 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 (2) moving lanes of traffic, up to two (2) 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.

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" also includes the subdivider's agent, if the subdivider has provided the Planning Department written notification that the subdivider's agent is authorized to act on the subdivider's behalf and to receive notices regarding local government decisions concerning the subdivision.

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

SUBSEQUENT MINOR SUBDIVISION: Any subdivision of five (5) or fewer parcels that is not a first minor subdivision.

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

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

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

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].

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.

WILDLIFE: Those animals that are not domesticated or tamed.

WILDLIFE HABITAT: The physical surroundings required for the existence of wildlife.

I. GENERAL PROVISIONS

I-A. Title

These regulations will be known and may be cited as "The Subdivision Regulations of the City of Livingston, MT;" hereinafter referred to as "these regulations."

I-B. Authority

Authorization for these regulations is contained in the MSPA. (Title 76, Chapter 3, MCA.).

I-C. Purpose

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

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

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The provision of proper physical and legal road access, including obtaining of necessary easements.
5. The provision of adequate open spaces for travel, light, air, and recreation.
6. The provision of adequate transportation, water, drainage, and sanitary facilities.
7. The avoidance or minimizing of congestion.

8. The avoidance of subdivisions which would involve unnecessary environmental degradation.
9. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services.
10. The avoidance of excessive expenditure of public funds for the supply of public services.
11. The manner and form of making and filing of any plat for subdivided lands.
12. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions.

I-D. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of the City of Livingston.

If a proposed subdivision lies within one mile of a third class city or town or within two (2) miles of a second-class city or within three (3) miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

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

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

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

I-E. Severability

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

II. GENERAL PROCEDURES

II-A-1. Construction Timing

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

II-A-2. Transfers of Title

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two (2) years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;"
- e. That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
- f. A copy of the contracts and escrow agreement described above must be submitted to the Planning Department.

II-A-3. Permission to Enter

The governing body or its designated agent(s) or agency may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider. The submission of a subdivision application constitutes a grant of permission by the subdivider to enter the subject property.

II-A-4. Appeals

- a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- b. A party identified in subsection (c) 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 thirty (30) days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- c. The following parties may appeal under the provisions of subsection (b) above:
 - i. the subdivider;
 - ii. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - iii. the county commissioners of the county where the subdivision is proposed; and
 - iv. (A) a first-class municipality as described in 7-1-4111, if a subdivision is proposed within three (3) miles of its limits;

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

(C) a third-class municipality, as described in 7-1-4111, if a subdivision is proposed within two (2) miles of its limits.
- d. For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal or legal interest, as distinguished from a general interest, who has been or is likely to be specifically and injuriously affected by the decision.

III. MAJOR SUBDIVISIONS

III-A. Review and Approval Procedures for Major Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six (6) or more lots, or subdivisions of five (5) or fewer lots that do not otherwise qualify for review as minor subdivisions under 76-3-609, MCA and these regulations.

III-A-1. Pre-application Process

- a. Prior to submittal of the subdivision application, the subdivider shall request a pre-application meeting with the Development Review Committee. The meeting shall occur within thirty (30) days after the subdivider submits a written request for the meeting to the Planning Department.
- b. At the time of the pre-application meeting request, the subdivider shall provide the Development Review Committee with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:
 - (i) Information on the current status of the site, including:
 - (A) location;
 - (B) approximate tract and lot boundaries of existing tracts of record;
 - (C) description of general terrain;
 - (D) natural features;
 - (E) existing structures and improvements;
 - (F) existing utility lines and facilities; and
 - (G) existing easements and rights of way.
 - (ii) Information on the proposed subdivision, including:
 - (A) tract and lot boundaries;
 - (B) proposed public improvements;
 - (C) location of utility lines and facilities;

- (D) easements and rights of way; and
 - (E) parks and open space.
- c. At the pre-application meeting:
- (i) The Development Review Committee shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;
 - (ii) The Development Review Committee shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision and that may be contacted for comment on the subdivision application. The Development Review Committee shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond.
 - (iii) The Development Review Committee shall identify particular additional information the Committee anticipates will be required for review of the subdivision application pursuant to Section III-B-2. This does not limit the ability of the City to request additional information at a later time.
- d. Unless the subdivider submits the subdivision application as provided in Section III-B-1 of these regulations within 180 working days of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

III-B. Subdivision Applications

III-B-1. Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the Planning Department a subdivision application containing the following materials:
- (i) two (2) copies of the completed Preliminary Plat Application form (see Appendix A) and supplements required by Appendix B.
 - (ii) the required review fee as stated in the Fee Schedule in Section X;
 - (iii) three (3) copies of the preliminary plat of the proposed subdivision which:
 - (A) contains the information required for preliminary plats; and
 - (B) conforms to the Design and Improvement Standards set forth in Section VI of these regulations;

- (iv) a summary of probable impacts, pursuant to Section III-B-6, including any mitigation of impacts;
- (v) proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and
- (vi) such additional relevant and reasonable information as identified by the Development Review Committee during the pre-application meeting pursuant to Section III-A-1(c)(iii) that is pertinent to the required elements of this Section.

III-B-2. Review Process

a. Local Government to Perform Element and Sufficiency Review

The local government shall be the entity to complete element and sufficiency review even if the subdivider has applied to the DEQ first pursuant to 76-4-129, MCA.

b. Element Review

- (i) Within five (5) working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable materials required by Section III-B-1 of these regulations and shall give written notice to the subdivider of the Department's determination.
 - (A) If the Planning Department determines that elements are missing from the application, those elements shall be identified in the notification and the Department shall take no further action on the application until the missing elements are submitted.
 - (B) The subdivider may correct the deficiencies and resubmit the application.
 - (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (b)(i)(B) above, the Planning Department shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required.

- (D) This process shall be repeated until the subdivider submits an application containing all the materials required by Section III-B-1.

c. Sufficiency Review

- (i) Within fifteen (15) working days after the Planning Department notifies the subdivider that the application contains all of the required elements as provided in subsection (b), the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of the MSPA and these regulations and shall give written notification to the subdivider of the Department's determination.
 - (A) If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the notification shall identify the insufficient information and the Department shall take no further action on the application until the material is resubmitted.
 - (B) The subdivider may correct the deficiencies and resubmit the application.
 - (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the Planning Department shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.
 - (D) This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of the MSPA and these regulations.
- (ii) A determination that an application contains sufficient information for review as provided in this subsection (c) 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 Department, Planning Board, or the governing body to request additional information during the review process.

(iii) A determination of sufficiency by the Planning Department 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.

d. Applicable Regulations

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

e. Time Period for Approval, Conditional Approval, or Denial

Within sixty (60) working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section III-B-6 of these regulations, unless the subdivider and the Department agree to an extension or suspension of the review period. The review period of sixty (60) working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the Planning Department sends the notice to the subdivider.

f. 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 sixty (60) working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department 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 Department shall notify the subdivider of the contact and the timeframe for response.

III-B-3. Public Hearings and Notices –In General

a. Hearings

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

b. Notice

- (i) Notice of the times and dates of the hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing.
- (ii) At least fifteen (15) days prior to the date of the hearing, notice of the hearing shall be given by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- (iii) The Planning Board may require the notices be posted at conspicuous places on the site of the proposed subdivision.

III-B-4. Planning Board Hearing, Consideration and Recommendation

a. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, the Planning Board shall hold a public hearing on the subdivision application.

b. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application, the Planning Board shall base its recommendation on compliance of the subdivision application with the following:

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

c. Consideration-Evidence

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

- (i) the subdivision application and preliminary plat;
- (ii) the environmental assessment;
- (iii) discussion of probable impacts;
- (iv) an officially adopted growth policy;
- (v) the public hearing;
- (vi) planning staff report and recommendation; and
- (vii) any additional information authorized by law.

d. Recommendation

Within ten (10) working days after the public hearing, the Planning Board shall submit the following in writing to the subdivider and the governing body:

- (i) recommended findings of fact based on the evidence in subsection (c) above that discuss and weigh the subdivision's compliance with and impact on subsection (b) of these regulations; and
- (ii) a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.

e. Water and Sanitation Information

The Planning Board or planning staff shall collect public comment regarding water and sanitation information pertaining to the subdivision. The Planning Board shall forward all comments regarding water and sanitation to the governing body.

III-B-5. Subdivider's Preference for Mitigation

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

III-B-6. Governing Body Decision and Documentation

a. **Prerequisites to Approval**

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

- (i) provides easements for the location and installation of any planned utilities;
- (ii) provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- (iii) assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section III-C-5 of these regulations; and
- (iv) complies with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights as follows:

If the proposed subdivision will create lots averaging less than five (5) acres in size, pursuant to 76-3-504(1)(j), MCA, the subdivider shall:

- (A) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever 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 the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- (C) reserve and sever all surface water rights from the land.

Note: When comment or information is presented to the governing body at a meeting where it is considering a proposed subdivision, the governing body shall determine whether such comment constitutes 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

New relevant and credible information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall direct the planning board to schedule a subsequent public hearing for consideration of 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..

When held, subsequent hearings must occur within forty-five (45) days of the order by the governing body. Subsequent hearings shall be subject to the same notice requirements as original public hearings and shall be limited in scope to the new information not yet considered.

The ordering of a subsequent hearing shall suspend the sixty (60) day review period until the next meeting of the governing body at which the subdivision application may legally be considered.

b. Consideration-Standards

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

- (i) these regulations, including, but not limited to, the design standards set forth in Section VI;
- (ii) applicable zoning regulations;
- (iii) other applicable regulations; and
- (iv) the MSPA, including but not limited to the following factors that are representative of, but not an exhaustive list of impacts on the criteria identified in 76-3-608(3)(a), MCA:

(A) Impacts on agriculture

Agriculture is defined as the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes.

- (1) Would the subdivision remove agricultural or timberlands with significant existing or potential production capacity?

- (2) Would the subdivision remove from production agricultural lands that are critical to the area's agricultural operations?
- (3) Would the subdivision create significant conflict with nearby agricultural operations (e.g. creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds, applying pesticides or would the subdivision generate nuisance complaints due to nearby agricultural operations)?

(B) Impact on agricultural water user facilities

Agricultural water user facilities are defined as any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

- (1) Would the subdivision create a significant conflict with agricultural water user facilities (e.g. creating problems for operating and maintaining irrigation systems or creating nuisance complaints due to safety concerns, noise, etc.)?

(C) Impact on local services

Local services are defined as all services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

- (1) What additional or expanded public services and facilities would be demanded to serve this subdivision?
 - a. What additional costs would result for services such as streets, law enforcement, parks and recreation, fire protection, water, sewer and solid waste, schools and busing (including additional personnel, equipment, construction and maintenance costs)?
 - b. Who would bear these costs?
 - c. Can the service providers meet the additional costs given legal and other constraints?
- (2) Would the subdivision allow existing services, through expanded use, to operate more efficiently or make the installation or improvement of services feasible?

- (3) What are the present tax revenues received from the unsubdivided land by the County, City and Schools?
- (4) What would be the approximate revenues received by each above taxing authority when the subdivision is improved and built upon?
- (5) Would new taxes generated from the subdivision cover additional public costs?
- (6) Would any special improvement districts be created which would obligate the City fiscally or administratively?

(D) Impact on natural environment

The natural environment is defined as the physical conditions that exist within a given area.

- (1) How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features, and visual features within the subdivision or on adjacent lands?
 - a. Would any streambanks be altered, streams rechanneled or any surface water contaminated from run-off carrying sedimentation or other pollutants?
 - b. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?
 - c. Would construction of streets or building sites result in excessive cuts and fills on steep slopes or cause erosion on unstable soils?
 - d. Would significant vegetation be removed causing soil erosion or bank instability?
 - e. Would significant historical or archaeological features be damaged or destroyed by the subdivision?
 - f. Would the subdivision be subject to natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes?

(E) Impacts on wildlife and habitat

Wildlife and wildlife habitat are defined as living things that are neither human nor domesticated and the physical surroundings required for their existence.

- (1) How would the subdivision affect critical wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands or other important habitat?**
- (2) How would pets or human activity affect wildlife?**

(F) Impacts on public health and safety

Public health and safety is defined as a condition of well being wherein risk of injury to the community at large is minimized.

- (1) Would the subdivision be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, high-pressure gas lines, or adjacent industrial uses?**
- (2) What existing uses may be subject to complaints from residents of the subdivision?**
- (3) What public health or safety hazards, such as dangerous traffic or fire conditions, would be created by the subdivision?**

c. Consideration-Evidence

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

- (i) the subdivision application and preliminary plat;**
- (ii) the environmental assessment;**
- (iii) the statement of probable impacts and mitigation;**
- (iv) an officially adopted growth policy;**
- (v) comments, evidence and discussions at the public hearing;**
- (vi) planning staff report and recommendations;**

- (vii) Planning Board recommendation; and
- (viii) any additional information authorized by law.

d. Water and Sanitation-Special Rules

- (i) The governing body may conditionally approve or deny a proposed subdivision application as a result of the water and sanitation information provided in Section III-B-1(a)(i) or public comment received pursuant to subsection (iv) below and Section III-B-4(e) on the water and sanitation information *only if* the conditional approval or denial is based on existing subdivision, zoning or other regulations that the governing body has the authority to enforce.
- (ii) For a proposed subdivision that will create one or more parcels containing less than twenty (20) acres, the governing body may require approval by the DEQ as a condition of approval of the final plat.
- (iii) For a proposed subdivision that will create one or more parcels containing twenty (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.
- (iv) The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) days after conditional approval or approval of the subdivision application and preliminary plat.
- (v) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - (A) reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than twenty (20) acres; and
 - (B) local health department or board of health for proposed subdivisions that will create one or more parcels containing twenty (20) acres or more and less than one-hundred-sixty (160) acres.

e. Documentation of Governing Body Decision

- (i) In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written Findings of

Fact that discuss and weigh the proposed subdivision's compliance with subsection (a) above and impact on the standards set forth in subsection (b) above.

- (ii) When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - (A) contain information regarding the appeal process for the denial or imposition of conditions;
 - (B) identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - (C) provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - (D) provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

f. Subdivision Application and Preliminary Plat Approval Period

- (i) Approval or conditional approval of a preliminary plat shall be in effect for two (2) calendar years from the date the subdivider is notified of the governing body action.
 - (A) At the end of this period, the governing body may, at the request of the subdivider, extend its approval for a period of one year.
 - (B) The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section III-C-5.
- (ii) After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
- (iii) The governing body may withdraw approval of an application and preliminary plat if it determines that information provided by the

subdivider, and upon which the approval or conditional approval was based, is inaccurate.

III-B-7. Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat after the Planning Department makes a determination of sufficiency pursuant to Section III-B-2(c) but before the Planning Board hearing, the subdivider shall submit the amended application to the Planning Department for review.
 - (i) Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.
 - (ii) The sixty (60) working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.
 - (iii) If the Planning Department determines the changes are not material, the sixty (60) working day review period resumes when the Planning Department mails notice of the decision to the subdivider.
 - (iv) If the Planning Department determines the changes are material, the Department 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 sixty (60) working day review period.

- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body review, the subdivider shall submit the amended application or preliminary plat to the Planning Department.
 - (i) Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.
 - (ii) The sixty (60) working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.
 - (iii) If the Planning Department determines the changes are not material, the sixty (60) working day review period resumes when the Department mails notice of the decision to the subdivider.
 - (iv) If the Planning Department determines the changes are material, the Department shall:

- (A) schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the new Planning Board hearing shall be provided as set forth in Section III-B-3. A supplemental staff report shall be prepared to address the changes to the original application.
 - (B) the subdivider will be assessed an additional fee for rehearing (See Section X-A.)
- (v) When a new Planning Board hearing is held pursuant to subsection (b)(iv)(A) above, the sixty (60) working day review period is suspended until ten (10) working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii) above.
- d. The following changes, although not an exhaustive list, may be considered material:
 - (i) configuration or number of lots;
 - (ii) road layout;
 - (iii) water and/or sewer proposals;
 - (iv) configuration of park land or open spaces;
 - (v) easement provisions; and
 - (vi) designated access.
- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planning Department 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 sixty (60) working day review period is suspended until the governing body decision on the appeal is made.
 - (ii) If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall order that the subdivision

application be scheduled for rehearing in front of the Planning Board pursuant to subsection (b)(iv)(A).

- (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 sixty (60) working day review period resumes as of the date of the decision.
- (iv) By appealing the decision of the Planning Department, the subdivider agrees to suspension of the sixty (60) working day review period provided in subsection (i) above.

III-C. Final Plats

III-C-1. Final Plat Submittal

The final plat must be submitted to the Planning Department before the expiration of the subdivision application and preliminary plat approval period described in Section III-B-6 (f). An application for final plat approval (see form, Appendix C), the final plat, and the appropriate review fee, if any, must be submitted to the Planning Department for review and approval of the governing body.

III-C-2. Final Plat Contents

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

III-C-3. Final Plat Review

a. **Final Plat Submittal**

The final plat and all supplementary documents shall be submitted to the Planning Department at least thirty (30) working days prior to the expiration of preliminary plat approval or an extension thereto, and no less than ten (10) working days prior to the date the final plat is presented to the governing body for approval. The submittal shall include, as applicable:

- (i) a final plat application;
- (ii) the appropriate fee;

- (iii) all required information;
- (iv) county and/or city attorney approvals; and
- (v) a written explanation of how each of the conditions of the preliminary plat approval has been satisfied.

b. Review by Development Review Committee

The Development Review Committee shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The Development Review Committee will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete until all conditions of preliminary approval have been satisfied.

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

III-C-4. Restrictive Covenants – Approval and Content

- a. If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
 - (i) Formation of a property owners' association concurrently with the filing of the final subdivision plat;
 - (ii) Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
 - (iii) Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
 - (iv) Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
 - (v) Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
 - (vi) Adjustment of assessments to meet changing needs;

- (vii) Means of enforcing the covenants, and of receiving and processing complaints;
- (viii) Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
- (ix) Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

III-C-5. Public Improvements Agreement; Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements (76-3-507, MCA). (Appendix D.)

III-C-6. Final Plat Approval

a. Approval by the Governing Body

The governing body shall examine every final subdivision plat and within thirty (30) working days of its submission to the Development Review Committee shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations or deny it pursuant to (ii) below.

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

b. Final Plat Substantially Different

If the final plat differs substantially from the approved preliminary plat, the governing body shall return the final plat to the Development Review Committee for additional review.

c. Inaccurate Information

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

III-C-7. Final Plat Filing

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

III-D. Amending Filed Plats

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six (6) or more lots, or abandons a public dedicated road right-of-way must be reviewed and approved by the governing body.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners (or lenders) of all lots that will be modified by the proposed amendment.
- c. The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in 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 X-B, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats.

IV. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

Subdivisions containing five (5) or fewer parcels shall be reviewed as set forth in this Section IV.

First minor subdivisions shall be reviewed pursuant to Section IV-A and subsequent minor subdivisions shall be reviewed pursuant to Section IV-B.

IV-A. First Minor Subdivision Review

IV-A-1. Pre-application Process

- a. Prior to submittal of the subdivision application, the subdivider shall request a pre-application meeting with the Planning Department. The meeting shall occur within thirty (30) days after the subdivider submits a written request for the meeting.
- b. At the time of the pre-application meeting request, the subdivider shall provide the Planning Department with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:
 - (i) Information on the current status of the site, including:
 - (A) location;
 - (B) approximate tract and lot boundaries of existing tracts of record;
 - (C) description of general terrain;
 - (D) natural features;
 - (E) existing structures and improvements;
 - (F) existing utility lines and facilities; and
 - (G) existing easements and rights of way.
 - (ii) Information on the proposed subdivision, including:
 - (A) tract and lot boundaries;
 - (B) proposed public improvements;
 - (C) location of utility lines and facilities;
 - (D) easements and rights of way; and
 - (E) parks and open space.
- c. At the pre-application meeting:

- (i) the Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;
 - (ii) the Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision and that may be contacted for comment on the subdivision application. The Planning Department shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
 - (iii) the Planning Department shall identify particular additional information the Department anticipates will be required for review of the subdivision application pursuant to Section IV-A-5. This does not limit the ability of the Planning Department to request additional information at a later time.
- d. Unless the subdivider submits the subdivision application as provided in Section IV-A-2 of these regulations within one-hundred-eighty (180) working days of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

IV-A-2. First Minor Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application containing the following materials:
- (i) two (2) copies of the completed Preliminary Plat Application form (see Appendix A), and supplements required by Appendix B;
 - (ii) the required review fee as stated in the Fee Schedule in Section X;
 - (iii) three (3) copies of the preliminary plat of the proposed minor subdivision which:
 - (A) contains the information and supplements required by Appendix A and Appendix B; and
 - (B) conforms to the Design and Improvement Standards set forth in Section VI of these regulations
 - (iv) sufficient evidence demonstrating that the subdivision will be the first minor subdivision from a tract of record;
 - (v) a summary of probable impacts, pursuant to Section IV-A-8, including any mitigation of impacts;

- (vi) proof that the subdivider has submitted for review copies of the subdivision application to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and
- (vii) such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting pursuant to Section IV-A-1(c)(iii) that is pertinent to the required elements of this Section.

IV-A-3. First Minor Subdivision Plat Form and Contents

For a first minor subdivision, the subdivider shall submit a preliminary plat that conforms to the Montana Uniform Standards for Monumentation, and Subdivision Plats. The subdivider must also submit the supplements required for preliminary plats described in Appendix A and B of these regulations. The minor subdivision plat must conform to the design standards set forth in Section VI of these regulations.

IV-A-4. First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions:

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

IV-A-5. First Minor Subdivision Review Process

a. **Local Government to Perform Element and Sufficiency Review**

The local government shall be the entity to complete element and sufficiency review even if the subdivider has applied to the DEQ first pursuant to 76-4-129, MCA.

b. **Element Review**

- (i) Within five (5) working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable materials required by Section IV-A-2,

including Appendix A and Appendix B of these regulations, as applicable, and shall give written notice to the subdivider of the Department's determination.

- (A) If the Planning Department determines that elements are missing from the application, the Department shall identify those elements in the notification and no further action shall be taken on the application until the missing elements are submitted.
- (B) The subdivider may correct the deficiencies and resubmit the application.
- (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the Planning Department shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required by Section IV-A-2 and by Appendix A and Appendix B of these regulations, as applicable.
- (D) This process shall be repeated until the subdivider submits an application containing all the materials required by Section IV-A-2, including Appendix A and Appendix B, as applicable.

c. Sufficiency Review

- (i) Within fifteen (15) working days after the reviewing agent or agency notifies the subdivider that the application contains all of the required elements as provided in subsection (b), the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of the MSPA and these regulations and give written notification, to the subdivider of this determination.
 - (A) If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the Department shall identify the insufficient information in its notification and no further action shall be taken on the application until the material is resubmitted.
 - (B) The subdivider may correct the deficiencies and resubmit the application.
 - (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the Planning Department shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required

elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.

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

(ii) A determination that an application contains sufficient information for review as provided in this subsection (c) 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 Department, Planning Board, or the governing body to request additional information during the review process.

(iii) A determination of sufficiency by the Planning Department 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.

d. Applicable Regulations

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

e. Time Period for Approval, Conditional Approval, or Denial

Within thirty-five (35) working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the Planning Department agree to an extension or suspension of the review period, not to exceed one year. The review period of thirty-five (35) working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the reviewing agent or agency sends the notice to the subdivider.

f. 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 thirty-five (35) working day review period. The governing body will make these comments available to

the subdivider and to the general public upon request. If, during the review of the application, the Planning Department 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 Department shall notify the subdivider of the contact and the timeframe for response.

IV-A-6. First Minor Planning Board Consideration and Recommendation

a. **Consideration-Standards**

In recommending approval, conditional approval, or denial of the subdivision application, the Planning Board shall base its recommendation on compliance of the subdivision application with the following:

- (i) these regulations, including but not limited to the design standards set forth in Section VI;
- (ii) applicable zoning regulations;
- (iii) the MSPA, including but not limited to 76-3-608(3), MCA, as delineated in Section IV-A-8(a) and (b) of these regulations; and
- (iv) other applicable regulations.

b. **Consideration-Evidence**

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

- (i) the subdivision application and preliminary plat;
- (ii) discussion of probable impacts;
- (iii) an officially adopted growth policy;
- (iv) planning staff report and recommendation; and
- (v) any additional information authorized by law.

c. **Recommendation**

Within ten (10) working days of the meeting at which the governing body is to consider the subdivision application and preliminary plat, the Planning Board shall submit the following in writing to the subdivider and the governing body:

- (i) recommended findings of fact based on the evidence in subsection (b) above that discuss and weigh the subdivisions compliance with and impact on subsection (a) of these regulations; and
- (ii) a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.

d. Water and Sanitation Information

The Planning Board or planning staff shall collect public comment regarding water and sanitation information pertaining to the subdivision. The Planning Board shall forward all comments regarding water and sanitation to the governing body.

IV-A-7. Subdivider's Preference for Mitigation

No later than ten (10) days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body the subdivider's comments on and responses to the Planning Board's recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the Planning Board's recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences [76-3-608(5)(b), MCA].

IV-A-8. First Minor Subdivision Governing Body Decision and Documentation

a. Prerequisites to Approval

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

- (i) provides easements for the location and installation of any planned utilities;
- (ii) provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- (iii) assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section III-C-5 of these regulations; and
- (iv) complies with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights as follows:

If the proposed subdivision will create lots averaging less than five (5) acres in size, pursuant to 76-3-504(1)(j), MCA, the subdivider shall:

- (A) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever 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 the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- (C) reserve and sever all surface water rights from the land.

b. Consideration - Standards

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

- (i) these regulations, including but not limited to, the design standards set forth in Section VI;
- (ii) applicable zoning regulations;
- (iii) other applicable regulations; and
- (iv) the MSPA, including but not limited to the following factors that are representative of, but not an exhaustive list of impacts on the criteria identified in 76-3-608(3)(a), MCA:

(A) Impacts on agriculture

Agriculture is defined as the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes.

- (1) Would the subdivision remove agricultural or timberlands with significant existing or potential production capacity?

- (2) Would the subdivision remove from production agricultural lands that are critical to the area's agricultural operations?
- (3) Would the subdivision create significant conflict with nearby agricultural operations (e.g. creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds, applying pesticides or would the subdivision generate nuisance complaints due to nearby agricultural operations)?

(B) Impact on agricultural water user facilities

Agricultural water user facilities are defined as any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

- (1) Would the subdivision create a significant conflict with agricultural water user facilities (e.g. creating problems for operating and maintaining irrigation systems or creating nuisance complaints due to safety concerns, noise, etc.)?

(C) Impact on local services

Local services are defined as all services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

- (1) What additional or expanded public services and facilities would be demanded to serve this subdivision?
 - a. What additional costs would result for services such as streets, law enforcement, parks and recreation, fire protection, water, sewer and solid waste, schools and busing (including additional personnel, equipment, construction and maintenance costs)?
 - b. Who would bear these costs?
 - c. Can the service providers meet the additional costs given legal and other constraints?
- (2) Would the subdivision allow existing services, through expanded use, to operate more efficiently or make the installation or improvement of services feasible?
- (3) What are the present tax revenues received from the unsubdivided land by the County, City and Schools?

- (4) What would be the approximate revenues received by each above taxing authority when the subdivision is improved and built upon?
- (5) Would new taxes generated from the subdivision cover additional public costs?
- (6) Would any special improvement districts be created which would obligate the City fiscally or administratively?

(D) Impact on natural environment

The natural environment is defined as the physical conditions that exist within a given area.

- (1) How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features, and visual features within the subdivision or on adjacent lands?
 - g. Would any streambanks be altered, streams rechanneled or any surface water contaminated from run-off carrying sedimentation or other pollutants?
 - h. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?
 - i. Would construction of streets or building sites result in excessive cuts and fills on steep slopes or cause erosion on unstable soils?
 - j. Would significant vegetation be removed causing soil erosion or bank instability?
 - k. Would significant historical or archaeological features be damaged or destroyed by the subdivision?
 - l. Would the subdivision be subject to natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes?

(E) Impacts on wildlife and habitat

Wildlife and wildlife habitat are defined as living things that are neither human nor domesticated and the physical surroundings required for their existence.

- (1) How would the subdivision affect critical wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands or other important habitat?
- (2) How would pets or human activity affect wildlife?
- (F) Impacts on public health and safety

Public health and safety is defined as a condition of well being wherein risk of injury to the community at large is minimized.

- (1) Would the subdivision be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, high-pressure gas lines, or adjacent industrial uses?
- (2) What existing uses may be subject to complaints from residents of the subdivision?
- (3) What public health or safety hazards, such as dangerous traffic or fire conditions, would be created by the subdivision?

c. Consideration - Evidence

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

- (i) the subdivision application and preliminary plat;
- (ii) the statement of probable impacts and mitigation;
- (iii) an officially adopted growth policy;
- (iv) planning staff report and recommendations;
- (v) Planning Board recommendation; and
- (vi) any additional information authorized by law.

d. Water and Sanitation-Special Rules

- (i) The governing body may conditionally approve or deny a proposed subdivision application as a result of the water and sanitation information provided in Section IV-A-2(a)(iii)(A) or public comment received pursuant to subsection (iv) below and Section IV-A-8(d) on the water and sanitation information only if the conditional approval or denial is based

on existing subdivision, zoning or other regulations that the governing body has the authority to enforce.

- (ii) For a proposed subdivision that will create one or more parcels containing less than twenty (20) acres, the governing body may require approval by the DEQ as a condition of approval of the final plat.
- (iii) For a proposed subdivision that will create one or more parcels containing twenty (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 drainfield for each lot.
- (iv) The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) days after conditional approval or approval of the subdivision application and preliminary plat.
- (iv) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - (A) reviewing authority provided in Montana Code Annotated, Title 76, Chapter 4, for subdivisions that will create one or more parcels containing less than twenty (20) acres; and
 - (B) local health department or board of health for proposed subdivisions that will create one or more parcels containing twenty (20) acres or more and less than one-hundred-sixty (160) acres.

e. Documentation of Governing Body Decision

- (i) In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written Findings of Fact that discuss and weigh the proposed subdivision's compliance with (a) and impact on the standards set forth in subsection (b) above.
- (ii) When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - (A) contain information regarding the appeal process for the denial or imposition of conditions;

- (B) identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
- (C) provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
- (D) provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

f. **Subdivision Application and Preliminary Plat Approval Period**

- (i) The governing body must establish the term of the approval or conditional approval of the subdivision application and preliminary plat, which must be at least one but not more than three (3) calendar years.
 - (A) At the end of this period the governing body may, at the request of the subdivider, extend its approval for a period of one year.
 - (B) The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section IV-A-10.
- (ii) After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
- (iii) The governing body may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

IV-A-9. First Minor Subdivisions – Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the Planning Department for review.
 - (i) Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.

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

- (iii) If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the thirty-five (35) working day review period resumes as of the date of the decision.
- (iv) By appealing the decision of the Planning Department, the subdivider agrees to suspension of the thirty-five (35) working day review period provided in subsection (d)(i) above.

IV-A-10. First Minor Subdivision Final Plat

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section III-C, Final Plat.

IV-B. Subsequent Minor Subdivisions

Subsequent minor subdivisions shall be reviewed as major subdivisions. All the requirements and procedures of Section III of these regulations must be followed for subsequent minor subdivisions.

V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

V-A. Purpose

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the MSPA.

V-B. Divisions of Land Entirely Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the requirements of these regulations and the MSPA do not apply unless otherwise specifically provided when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30;
 - (i) Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.

- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- d. A division of land creates cemetery lots;
- e. A division of land is created by the reservation of a life estate;
- f. A division of land is created by lease or rental for farming and agricultural purposes;
- g. A division of land is in a location over which the state does not have jurisdiction;
- h. A division of land is created for public rights-of-way or public utility sites.

V-C. Specific Exemptions

- a. Condominiums are constructed on land divided in compliance with these regulations and the MSPA provided that:
 - (i) The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or
 - (ii) The condominium proposal is in conformance with applicable zoning regulations.
- 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;
- 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 provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities;
- d. A division of state-owned land 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. Deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.

V-D. Specific Exemptions 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 Chapter 2. A division of land may not be made under this Section unless the County Treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent. The Clerk shall notify the Planning Department of any land division described in this Section or 76-3-207(1), MCA.

V-D-1. Exemption as a Gift or Sale to a Member of the Immediate Family

a. **Statement of Intent**

The intention of this exemption is to allow a landowner to convey one parcel to each member of his or her immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.

- (i) The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.

b. **Required Information**

Filing of any certificate of survey (or recording of an instrument of conveyance) that would use 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. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. **Use of Exemption**

One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under 76-3-207(1)(b), MCA, and these regulations. However, the use of the exemption may not create more than one new parcel per exemption.

d. **Rebuttable Presumptions**

- (i) Any proposed use of the family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act.
- (ii) The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

V-D-2. Exemption to Provide Security for Construction Mortgages, Liens, or Trust Indentures

a. **Statement of Intent.**

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

b. **Use of Exemption**

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

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

c. **Required Materials**

When this exemption is to be used, the landowner must submit to the clerk and recorder:

- (i) a statement of how many parcels within the original tract will be created by use of the exemption;
- (ii) the deed, trust indenture or mortgage for the exempt parcel (which states that the tract of land is being created only to secure a construction mortgage, lien or trust indenture);

- (iii) a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted parcel is conveyed; and
- (iv) a signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

d. Rebuttable Presumptions

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

- (i) it will create more than one new building site;
- (ii) the financing is not for construction on the exempted parcel;
- (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 parcel will not be initially obtained by the lending institution if foreclosure occurs;
- (v) it appears that the principal reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose;
- (vi) if the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.

V-D-3. Exemption for Agricultural Purposes

a. Statement of Intent

The intention of this exemption is to allow a landowner to create a parcel without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings will be built on it.

b. Use of Exemption

"Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, and specifically excludes residential structures and facilities for commercially processing agricultural products.

Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.

c. Rebuttable Presumptions

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

- (i) The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the county commissioners and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the county commissioners.
- (ii) The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings will be built on it.
- (iii) Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- (iv) 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.

V-D-4. Relocation of Common Boundary

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 two parcels and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review.

b. Required Information

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification must be included on the certificate of survey.

c. Use of Exemption

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

d. Rebuttable Presumptions

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

V-E. Procedures and Review of Subdivision Exemptions

V-E-1. Submittal

Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Planning Department (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.

V-E-2. Review

When a claimed exemption is submitted to the Planning Department, the Department shall cause the documents to be reviewed. The Planning Department shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- a. Landowners or their agents are encouraged to meet with the Planning Department to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.
- b. Within five (5) working days of submittal the Planning Department shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.
- c. If the Planning Department finds that the proposed use of the exemption complies with the statutes and these criteria, the Department shall notify and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the Planning Department finds that the proposed use of the exemption does not comply with the statutes and these criteria, the Department shall advise the clerk and recorder to not file or record the documents, and the clerk shall return the materials to the landowner.

- d. The Planning Department, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-E-3. Appeals.

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

V-E-4. Non-Rebuttable Presumption for Patterns of Development

Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be deemed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever three (3) or more parcels of less than 160 acres with common covenants or facilities have been divided from the original tract by the same party or related parties.

V-E-5. Identification Codes

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

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

VI. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the governing body must comply with the provisions of this Section, except where granted a variance pursuant to Section X-B, Variances. The governing body may not grant variances from the provisions of Section VI-A-4, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to Sections VII, VIII, and IX of these regulations.

VI-A. General Standards

VI-A-1. Conformance with Zoning

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

VI-A-2. Natural Environment

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

VI-A-3. Lands Unsuitable for Subdivision

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

VI-A-4. Floodplain Provisions

Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not

be subdivided for building or residential purposes or other uses that may increase flood hazards.

VI-A-5. Improvement Design

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

VI-A-6. Lots

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

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

VI-A-7. Blocks

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,600 feet.

- c. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.

VI-A-8. Streets and Roads

a. Design

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

- (x) Intersections. The following requirements apply to intersections:
 - (A) Streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
 - (B) Two (2) streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
 - (C) No more than two (2) streets may intersect at one point.
 - (D) Intersections of local streets with major arterials or highways must be avoided.
 - (E) Intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
 - (F) Hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
 - (G) The grade of approaches to major highways may not exceed five percent.
- (xi) Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.

b. Improvements

- (i) All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations using materials approved by the governing body.
- (ii) Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the governing body.

- (iii) Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- (iv) Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1.

Easements must be granted by each property owner in a signed and notarized document. (Appendix E contains a model road access easement). The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

- (v) Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.
- (vi) Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.
- (vii) Alleys, designed in accordance with Table 1, shall be provided in all residential subdivisions. Alleys will also be the preferred method for providing utility and garbage pick-up access in non-residential subdivisions.
- (viii) Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- (ix) When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

TABLE 1: Street Design Standards for Subdivisions

1. Right-of-way width	64 ft.
2. Minimum roadway width	
a. Curbs, back to back	38 ft.
b. Alleys	20 ft.
c. Boulevards	8 ft.
d. Sidewalks	5 ft.
3. Maximum grade less than 100 ft.	10 %
4. Maximum grade more than 100 ft.	8 %
5. Approaches onto Public Roads	
a. minimum sight distance	200 ft.
b. maximum grade for 20'	5%
6. Turning radius	50 ft.
7. Cul-de-sacs/Turnarounds	
a. maximum road length	1000 ft.
b. cul-de-sac: minimum outside right-of-way radius	45 ft.
c. cul-de-sac: minimum outside roadway radius	40 ft.
d. "T" turnaround: backup lengths (2 required)	30 ft. each
8. Bridges	
a. curb-to-curb widths	same as roadway
b. design load capacity	20 tons
c. vertical clearance	15ft.

VI-A-9. Drainage Facilities

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

VI-A-10. Water Supply Systems

- a. For subdivisions that will create one or more parcels containing less than twenty (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.
- b. The governing body may not approve the final plat of a subdivision containing lots of less than twenty (20) acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.

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

VI-A-11. Sewage Treatment Systems

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

VI-A-12. Solid Waste

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

VI-A-13. Utilities

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

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

VI-A-14. Water Course and Irrigation Easements

- a. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements that:


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

VI-A-15. Disposition of Water Rights

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

VI-A-16. Park Land Dedication – Cash in Lieu – Waivers – Administration

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 - (i) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - (ii) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
 - (iii) 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three (3) acres; and
 - (iv) 2.5% of the area of the land proposed to be subdivided into parcels larger than three (3) acres and not larger than five (5) acres.
- b. ~~A park dedication is not required for:~~ 
 - (i) ~~minor subdivisions;~~
 - (ii) ~~subdivision lots larger than five (5) acres;~~
 - (iii) ~~nonresidential subdivision lots;~~

Insert revised Sec VI-A-16.b-h

ORDINANCE NO. 2069

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING THE CITY'S SUBDIVISION REGULATIONS AS ADOPTED BY ORDINANCE 1982 AND CODIFIED IN CHAPTER 28 OF THE LIVINGSTON MUNICIPAL CODE, BY MODIFYING THE PARKLAND DEDICATION REQUIREMENTS.

WHEREAS, 76-3-621 MCA establishes the requirements for the dedication of parkland or cash- in-lieu thereof in subdivisions; and

WHEREAS, the City Commission believes that clarifying the acceptable types of and standards for parkland dedication is in the best interest of the community.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Livingston, Montana, that Ordinance 1982, as codified in Chapter 28 of the Livingston Municipal Code, be and the same is hereby amended with deletion struck through and additions shaded, as follows:

SECTION 1

Section VI-A-16 Parkland Dedication – Cash in-lieu- Waivers- Administration

Section VI-A-16. a. - Unchanged

Sec. VI-A-16. b. – Standards for parkland dedication.

1. Parks and Open Space Types and Standards: Parks, open space, and common area dedication shall meet at least one of the following criteria:
 - a. Provides for the preservation of a physical amenity such as a meadow, a stand of trees, significant wildlife habitat or a wildlife corridor, a scenic hillside with slopes less than 25%, a stream or significant water body, an area of riparian resource or some other natural feature that the governing body determines is significant enough for parkland dedication. Open space shall be managed to remain in a near natural state when it has been dedicated for preservation or conservation purposes, and managed for weeds and public safety concerns such as wild

- land fire and hazard trees. Public trail connections are permitted if deemed appropriate by the governing body; or
- b. Provides a site for active recreation and public gathering (neighborhood park), which shall substantially conform to the following standards:
 - i. Five acres or greater in size unless the opportunity for this size is not feasible or required;
 - ii. Centrally located within the proposed subdivision or adjacent to other planned or existing park or open space;
 - iii. Adjacent to public streets on at least 50% of the park's perimeter;
 - iv. Accessible to bicycle and pedestrian trails where possible; and
 - v. At least 50% of the park shall have 2% or less slope to accommodate playing fields; or
 - c. Establishes a pedestrian/bicycle greenway corridor if such corridor is determined by the Parks Department to have a primarily recreational and/or commuter function; or
 - d. Creates a courtyard of less than ½ acre, provided the courtyard shall be part of a common area dedicated to a private homeowner's association; or
 - e. Provides for other parks, open space, or common area designs which meet the intent of this section and meet the goals of the City Growth Policy and other applicable area plans.
2. Unless the governing body determines otherwise, the following areas within a subdivision will not count toward the parkland dedication:
 - a. Hillside over 25% slope;
 - b. Areas of riparian resource and adjacent buffers associated with irrigation or roadside ditches;
 - c. Monument entry areas and central landscaped boulevards;
 - d. Storm water retention or detention ponds that are designed to hold storm water runoff from less than 100 year events;
 - e. Public utility easement.
 3. Provide as part of the required parkland, twenty (20) foot wide, pedestrian access easement to parkland or common area from public streets. Pedestrian access easements on hillsides may require additional width to accommodate switchbacks for trails, etc. Setbacks for structures other than fences adjacent to the access easement shall be a minimum of ten (10) feet. The governing body may require that the developer construct a trail leading into the park or common area.

Section VI-A-16 b. thru f. – Re-letter to c. thru g.

Section VI-A-16 g. h.

For the purposes of this park dedication requirement:

- a. “cash donation” means the fair market value of the unsubdivided, unimproved land
- b. Fair market value must be determined by a Montana State certified general real estate appraiser (as provided under MCA 37-54-201 et seq) hired and paid for by the subdivider. For the purposes of this regulation, appraisals are valid if prepared within six (6) months of the date of submittal of an application for final subdivision approval.
- c. “dwelling unit” means a residential structure in which a person or persons reside.

VI-A-17. Fire Protection

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

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

VI-A-18. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard

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

- a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan must include the following items:
 - (i) an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
 - (ii) a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;
 - (iii) a map of the areas that are to be thinned to reduce the interlocking canopy of trees;
 - (iv) the identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.
- c. At least two (2) entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of twenty (20) tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.
- d. Building sites may not be located on slopes greater than twenty-five (25) percent or at the apex of "fire chimneys" (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. The Fire Prevention and Control Plan must be implemented before the governing body will approve the final plat, and will be considered part of the subdivider's obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the fire chief has given written notice to the Planning Board or Planning Department that the Plan has been completed as approved by the Planning Board.

- f. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A property owners' association must be formed and designated to enforce the covenants, conditions, and restrictions.
- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by local fire protection authority. *

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

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

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

VII-A. Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes

VII-A-1. Recreational Camping Vehicles -- Definition

Developments which are subject to subdivision review because they will provide two (2) or more spaces for recreational camping vehicles will be reviewed under Section VII-E Recreational Vehicle Park Standards, below. For purposes of these regulations the term "recreational camping vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle. The term includes but is not limited to travel trailers, camping trailers, truck campers, and motor homes.

VII-A-2. Mobile Homes – Definition

Developments which are subject to subdivision review because they will provide two (2) or more spaces for mobile homes will be reviewed under Section VII-D Mobile Home Park Standards, below. For purposes of these regulations the term “mobile home” means a detached residential dwelling unit, which may consist of two (2) or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

- a. Land subdivision created by rent or lease will be reviewed under the procedures described in Section III, Major Subdivisions, or Section IV, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat.
- b. Land subdivisions created by rent or lease are subject to the applicable design and improvement standards contained in Section VI, Design and Improvement Standards.

VII-B. Procedures for Review

VII-B-1. Definition

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

VII-B-2. Review and Approval

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. These subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased. The subdivider shall submit a completed application form and a plan of the proposed development. The procedure used to review subdivisions for rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six (6) or more spaces must be reviewed pursuant to Section III of these regulations. Proposed subdivisions containing five (5) or fewer spaces must be reviewed pursuant to Section IV of these regulations. The subdivider shall submit to the governing body the preliminary plans, profiles, tentative grades, and specifications for proposed

improvements. The plan must show the lot layout and the proposed location of the mobile home, recreational vehicle, or other unit on the lot.

VII-B-3. Improvements

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

VII-B-4. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats contained in Appendix A and Appendix B. The subdivider shall submit the plan to the Planning Department. The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the office of the Planning Department.

VII-B-5. DPHHS License

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

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

VII-C-1. Design Standards

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

VII-C-2. Additional Provisions

The governing body may require provision for:

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

- d. an off-street area for mail delivery; and
- e. street lighting.

VII-D. Mobile Home Park Standards

VII-D-1. Mobile Home Spaces

- a. Mobile home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- b. All mobile homes must be located at least twenty (25) feet from any property boundary line abutting upon a public street or highway right-of-way and at least fifteen (15) feet from other boundary lines of the park.
- c. The mobile home pad must be located at least ten (10) feet from the street that serves it.
- d. The size of the mobile home pad must be suitable for the general market to be served and must fit the dimensions of mobile homes anticipated.
- e. A mobile home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- f. The governing body may require that the mobile home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
- g. No mobile home or its attached structures, such as awnings and carports, may be located within twenty (20) feet of any other mobile home or its attached structures.
- h. No detached structure, such as a storage shed, may be located within five (5) feet of any mobile home or its attached structures.
- i. A minimum of two (2) off-street parking spaces must be provided on or adjacent to each mobile home space. The driveway must be located to allow for convenient access to the mobile home, and be a minimum of 10 feet wide.
- j. One guest parking space must be provided for each ten (10) mobile home spaces. Group parking may be provided.
- k. The limits of each mobile home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved

plans. Precise engineering of space limits is not required either on the plans or on the ground.

1. Each mobile home must be skirted within thirty (30) days after it is moved to a space within the mobile home park. The skirting must be of a fire-resistant material similar to that of the mobile home exterior.

VII-D-2. Streets

Streets within a mobile home park must meet the design standards specified in Section VI-A-8 Streets and Roads. Streets must be designed to allow safe placement and removal of mobile homes.

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile home park must be designed to provide safe traffic circulation and parking.

VII-D-3. Electrical Systems

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

VII-D-4. Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction.
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- c. Each mobile home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

VII-E. Recreational Vehicle Park Standards

VII-E-1. Recreational Vehicle Spaces

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

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

VIII. CONDOMINIUMS

VIII-A. Procedures

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

VIII-A-1. Review Where Land Will Not be Divided

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section VII, Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Section III-C-5 Public Improvements Agreement; Guaranty.

VIII-A-2. Condominium Subdivisions Involving Land Divisions

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

III-A Review and Approval Procedures for Major Subdivisions

III-C Final Plats.

VIII-B. Standards

VIII-B-1. Design Standards

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

VIII-B-2. Unit Ownership Act

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

IX. CLUSTER DEVELOPMENT

IX-A. Cluster Development, Option I

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

IX-B. Cluster Development, Option II

- a. The following apply to cluster developments created under this option:
- (i) The development must preserve an area of open space that is at least as large as the area that will be developed.
 - (ii) The proposal must provide a mechanism for the maintenance of the open space in perpetuity. The open space may be dedicated to a homeowners' association for the purpose of maintenance, and may be used for agricultural or other purposes that enhance the preserved area.

(iii) Unless the subdivision will be served by a community sewer or water system, each lot in the cluster must be a minimum of one acre in size.

(iv) Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.

b. Park dedication requirements are waived for clustered subdivisions created under this section.

X. ADMINISTRATIVE PROVISIONS

X-A. Fee Schedule

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

Minor Subdivisions

Preliminary Plat	\$600.00 plus \$20 per lot
Final Plat/Summary review	\$400.00
Subsequent Minor	\$800.00 plus \$40 per lot

Major Subdivisions

Preliminary Plat	\$800.00 plus \$40 per lot
Final Plat	\$400.00 plus \$20 per lot

Subdivision by Rent or Lease and Condominiums

Preliminary Review (five or fewer units)	\$600.00 plus \$20 per unit
Final Review	\$400.00

Preliminary Review (over five units)	\$800.00 plus \$20 per unit
Final Review	\$400.00 plus \$20 per unit

X-B. Variances

X-B-1. Variances Authorized

The governing body may grant variances from Section VI, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and

would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

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

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

X-B-2. Variances from Floodway Provisions Not Authorized

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

X-B-3. Procedure

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

X-B-4. Conditions

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

X-B-5. Statement of Facts

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

X-C. Amendment of Regulations

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

X-D. Administration

X-D-1. Enforcement

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

X-D-2. Violation and Penalties

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

X-D-3. Appeals

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

APPENDIX A

PRELIMINARY PLAT APPLICATION FORM

Date _____

1. Name of Subdivision _____
2. Location: _____ ¼ Section _____ Township _____ Range _____
For Amended Plats: Lot(s) _____ Block(s) _____ Subdivision _____

3. Name, address and telephone number of subdivider and owners of record:

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

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

OFFICIAL USE ONLY
DATE RECEIVED: _____

6. Project Description and proposed land use:

7. Proposed Improvements: All subdivisions subject to the City of Livingston Subdivision Regulations will be required to install, or guarantee installation of, municipal sewer and water utilities as well as paved streets, curbs, gutters sidewalks and street lights.

8. A completed List of Submittal Material must be attached to this Application.

I do hereby depose and say that all of the above statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the City of Livingston for approval of the Preliminary plat of _____ subdivision.

Owner of Record

Subdivider (if different than owner)

APPENDIX B

LIST OF SUBMITTAL MATERIAL
(Based on City of Livingston Subdivision Regulations)

PRELIMINARY PLAT

The following materials shall be submitted with all applications for Preliminary Plat approval:

- | | <u>Attached (Check)</u> |
|---|-------------------------|
| 1. Three (3) copies of the preliminary plat in 24" x 36" format. | _____ |
| 2. Eight (8) copies of the preliminary plat in 11" x 17" format. | _____
_____ |
| 3. The required review fee. | _____ |
| 4. A vicinity sketch showing conditions on adjacent land including: | _____ |
| a. Approximate locations, size and depth of existing or proposed sanitary and storm sewers, water mains, fire hydrants, gas, electric, telephone lines and streetlights. | _____ |
| b. Ownership of lands immediately adjacent the subdivision and all public and private streets leading to the subdivision. | _____ |
| c. Locations of buildings, structures, power lines and other improvements and nearby land uses. | _____ |
| d. The existing zoning of the subdivision and of adjacent lands within 500 feet. | _____ |
| 5. A complete grading and drainage plan designed to handle runoff from a 10 year, 6 hour storm and containing the following: | _____ |
| a. Location and details, accurately dimensioned, of all existing and proposed drainage structures to include courses, elevations, grades and cross sections of streets, bridges, ditches, culverts, retention areas and other drainage improvement. | _____ |

- a. Ground contours with intervals of 2 feet where the average slope is under 10% and 5 feet where average slope is 10% or greater. _____
 - b. Information describing the ultimate destinations of storm water from the subdivision and the effect of the runoff on down-slope drainage structures. _____
 - c. Describe construction procedures, slope protection and reseeding methods to minimize erosion. _____
6. A list of the proposed subdivision improvements shall be submitted and shall include the following items:
- a. Provide design specifications for all streets and alleys. Include information on all drainage structures, street signs, sidewalks, and street lights. _____
 - b. Indicate the solid waste collection and disposal facilities proposed for the subdivision. _____
 - c. Show fire hydrant locations and spacing. _____
 - d. Describe all utilities to be installed and which entities will be providing the services. _____
 - e. Indicate parkland to be dedicated or amount of cash-in-lieu of land to be donated, if applicable. _____
 - f. Indicate how mail delivery will be handled within the subdivision. _____
7. Overall Development Plan: When a tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating the intent for the entire development. The preliminary plat submission and other supplements must include the entire development and be in compliance with the procedures and standards contained in the Livingston Subdivision Regulations. Plat review will be based on the overall development. _____

APPENDIX C

SAMPLE FORMS AND CERTIFICATES

Final Plat Approval Application Form

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

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

Certificate Stating Facts Authorizing the Governing Body to Waive Park Dedication Under the Five Acre, Single Family Dwelling Exemption

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

Final Plat Approval Application Form

Date _____

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

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

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

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

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

Subdivider

FOR OFFICIAL USE ONLY

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

Certificate of Completion of Public Improvements Agreement
(To be submitted with application for approval of final subdivision plat)

CERTIFICATE OF COMPLETION

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

Signature of Subdivider

Date

Signature of Professional Engineer

Date

Registration No. _____

Address (Engineers Seal)

Certificate of Surveyor – Final Plat

State of Montana)
) ss.
County of _____)

I, (Name of Surveyor), a Professional Land Surveyor, do hereby certify that I have performed the survey shown on the attached plat of (Name of Subdivision); that such survey was made on (Date of Survey); that said survey is true and complete as shown and that the monuments found and set are of the character and occupy the positions shown thereon.

Dated this _____ day of _____, 20 ____.

(Seal)

(Signature of Surveyor)
Registration No. _____
(Address)

Certificate of Dedication – Final Plat

(I) (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets and alleys, as shown by the plat hereto annexed, the following described land in (City and County if in Unincorporated Area), to-wit:

(Exterior boundary description of area contained in plat and total acreage)

The above described tract of land is to be known and designated as (Name of Subdivision), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever.

Dated this _____ day of _____, 20 ____.

(Acknowledged and notarized signatures of all record owners of platted property)

Consent to Dedication by Encumbrances, If Any

(I) (We), the undersigned encumbrancer(s), do hereby join in and consent to the annexed plat and release (my) (our) respective liens, claims and encumbrances as to any portion of said lands shown on such plat as being dedicated to the use of the public forever.

Dated this _____ day of _____, 20 ____.

(Acknowledged and notarized signatures of all encumbrancers of record)

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

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

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

(Seal)

(Signature of Clerk)

Certificate Stating Facts Authorizing the Governing Body to Waive Park Dedication Under the Five Acre, Single Family Dwelling Exemption of the Montana Subdivision and Platting Act.

(Name of Subdivider), referred to herein as the subdivider, hereby certifies that all of the parcels within (Name of Subdivision) contain five acres or more and that the Subdivider will enter into a covenant to run with the land and revocable only by mutual consent of the owners of the parcels in question and the governing body of (Name of City or County), that the parcels in the subdivision will never be subdivided into parcels of less than five acres and that only single family dwellings and associated outbuildings will be constructed on any single lot or parcel within the boundaries of the subdivision. A copy of this covenant is attached hereto:

(Date)

(Notarized Signature of Subdivider)

Certificate of Examining Land Surveyor Where Required – Final Plat

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

Dated this _____ day of _____, 20 ____.

(Signature)
(Name of Surveyor)
Registration No. _____
(City or County)

Certificate of County Treasurer

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

(legal description of land)

Dated this _____ day of _____, 20 ____.

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

Certificate of Final Plat Approval – City

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

by (Signature of City or Town Clerk) (Signature of Mayor)
Clerk Mayor

Certificate of Filing by Clerk and Recorder

STATE OF MONTANA)
) ss.
County of _____)

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

(Signature of Clerk and Recorder)

County Clerk and Recorder, _____ County, Montana

APPENDIX D

SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

The parties to this Subdivision Improvements Agreement ("this agreement") are _____ ("the subdivider") and _____ ("the City").

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

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

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

Subdivider's Obligations

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

8. **Compliance with Law:** The Subdivider will comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

City's Obligations

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

Other Provisions

13. **Events of Default:** The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:
- a. failure to complete construction of the improvements within two years of final subdivision plat approval;
 - b. failure to remedy the defective construction of any improvement within the remedy period;
 - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
 - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.

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

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

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

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

Dated this ___ day of _____, 20__.

City Official

Subdivider

ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

The subdivider shall provide one or more of the following financial security guarantees in the amount of 100 percent of the estimated total cost of installing all required improvements.

1. Letter of Credit

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

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

2. Escrow Account

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

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

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

3. Property Escrow

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

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

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

4. Sequential Development

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

5. Surety Performance Bond

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

6. Special Improvements District

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

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

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

MODEL

IRREVOCABLE LETTER OF CREDIT

Letter of Credit No. _____

Name of Local Government
Address

Date

Gentlemen:

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

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

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

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

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

(Lending Institution)

(Signature and Title of Official)

