



Missoula

C O U N T Y

Subdivision Regulations

April 11, 2024

MISSOULA COUNTY SUBDIVISION REGULATIONS

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CHAPTER 1

GENERAL PROVISIONS

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1.1 Title

These regulations shall be known and cited as the Missoula County Subdivision Regulations hereinafter referred to as “these subdivision regulations” or “these regulations.”

1.2 Authority

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

1.3 Adoption

These subdivision regulations were adopted by the Missoula County Board of County Commissioners with an effective date of April 11, 2024. Upon adoption of these regulations, all prior Missoula County Subdivision Regulations are hereby repealed. These regulations may be subsequently amended from time to time.

1.4 Jurisdiction

These regulations govern the subdivision and platting of land within the County of Missoula, Montana.

1.4.1 Three Miles of City, Rural School Districts

If a proposed subdivision lies within 3 miles of the City of Missoula, the Planning Office shall submit the subdivision application and proposed preliminary plat/plan to the appropriate city agencies for review and comment. If the proposed subdivision is located within a rural school district, the Planning Office shall submit the subdivision application and proposed preliminary plat/plan to the appropriate school district trustees for review and comment.

1.4.2 Span City Boundary

If a proposed subdivision lies partly within the City of Missoula, the preliminary plat shall be submitted to, and approved by, both the city and county governing bodies.

1.4.3 Subdivisions with Annexation

When the entire parcel proposed for subdivision is also proposed for annexation to the City of Missoula, the subdivision application shall be submitted to the City of Missoula. When only a portion of the parcel is proposed for annexation, approval of both the city and county governing bodies must be required. (See Section 5.6, Subdivisions Proposed for Annexation)

1.5 Applicability

These regulations shall apply to all subdivisions as defined in Chapter 2, Definitions, unless exempted.

1.5.1 Applicable Regulations

Subdivision review and approval, conditional approval, or denial shall be based on the regulations in effect at the time a subdivision application and preliminary plat/plan are deemed to contain sufficient information for review. If these regulations are amended prior to completion of the sufficiency review, the determination of whether the application contains sufficient information, and the subdivision review, shall be based on the amended regulations.

1.5.2 Exemptions

Several subdivisions are exempt from review pursuant to Chapter 8, Divisions of Land Exempt from Review Under MSPA.

1.6 Purpose and Intent

The purposes and intent of these regulations are to:

- 1.6.1** Promote the public health, safety, and general welfare by regulating the subdivision of land;
- 1.6.2** Prevent overcrowding of land;
- 1.6.3** Lessen congestion on the streets and highways;
- 1.6.4** Provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
- 1.6.5** Require development in harmony with the natural environment;
- 1.6.6** Promote preservation of open space;
- 1.6.7** Promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
- 1.6.8** Protect the rights of property owners; and,
- 1.6.9** Require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey; and,
- 1.6.10** Provide for phased developments.

1.7 Effect of Regulations

1.7.1 Construction Timing

No construction, development, or alteration of the site proposed for subdivision, including grading or excavation relating to improvements for a proposed subdivision, shall commence until the governing body has approved the preliminary plat/plan. Prior to approval of the preliminary plat/plan, all resources on the site shall remain unaltered, including but not limited to, historic, cultural, archeological, agricultural land, and natural resources. Riparian vegetation within a Riparian Resource area and agricultural soils shall not be damaged or removed prior to approval of the preliminary plat/plan.

1.7.2 Exempted Construction Activities

Notwithstanding *Section 1.7.1, Construction Timing*, the following activities shall be permitted provided the requisite permits and approvals are obtained:

1.7.2.1 Application Related

Work related to testing, analysis, or monitoring activities that may be required by these regulations or are relevant to the processing of the subdivision application;

1.7.2.2 Unrelated Work

Previously scheduled work that is unrelated to the proposed subdivision, such as utility maintenance or utility construction;

1.7.2.3 Residence

The construction of a single residence, related outbuildings, and the improvements that are necessary to serve the single residence which are permitted independent of an approved subdivision; and,

1.7.2.4 Approved Work

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

1.7.3 Enforcement of Unpermitted Construction Activities

Unpermitted construction, development, or site alterations not exempted above will cause subdivision applications to be deemed insufficient for failure to accurately describe the current status of the land proposed for subdivision. An amended application that describes the changed status of the land shall be submitted pursuant to *Section 5.7.17, Amended Application*, prior to further review of the subdivision application. Restoration of an altered resource may be required as a condition of approval for an amended application.

1.7.4 Transfer of Title

Except as provided for below, a final subdivision plat shall be filed for record with the Missoula County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner.

1.7.4.1 Contracts

After the preliminary plat of the 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 have been met:

A. Escrow

That under the terms of the contracts, the purchasers of lots in the proposed subdivision make all 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. No Distribution

That under the terms of the contracts and the escrow agreements, the payments made by the 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 approved and filed with the County Clerk and Recorder.

C. Refund

That the contract and escrow payments provide that if the final plat of the subdivision is not approved and filed with the County Clerk and Recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contracts.

D. Disclosure

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. Taxes

That the County Treasurer has certified that no real property taxes or assessments levied on the land to be divided are delinquent.

1.7.5 Penalty

Any person who violates any of the provisions of the Montana Subdivision and Platting Act or these regulations shall be guilty of a misdemeanor and punishable by a fine of not less than 100 dollars or more than 500 dollars or by imprisonment in the county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense.

1.8 Relationship with Laws, Regulations, Agreements, Taxes

1.8.1 Most Restrictive

If the requirements of these regulations conflict with any other requirements, ordinances, regulations, restrictions, or limitations, the more restrictive requirements or those which impose the highest standards shall control.

1.8.2 Private Agreements

It is not the intent of these regulations to interfere with, annul, or amend any private agreements, easements, or covenants that are not in conflict with these regulations.

1.8.3 Other Applicable Rules

Approval under these regulations does not exempt an application or imply approval from other applicable laws, ordinances, codes, and regulations. In addition to the requirements established herein, subdividers shall consult other laws, ordinances, codes, and regulations that may apply to the proposed subdivision. For informational purposes, subdividers are alerted of the following sources of rules that may apply to the proposed subdivision:

1.8.3.1 MCA

All applicable provisions of the Montana Code Annotated;

1.8.3.2 Regulations, Codes

The Missoula County Zoning Resolution, where applicable; International Building Codes adopted by Missoula County and/or the State of Montana; Uniform Plumbing Code; Missoula County Floodplain Regulations; National Fire Protection Association Codes (NFPA 1); agreements for the Transfer of Development Rights (TDRs); Missoula County Public Works Manual; and all other applicable regulations or resolutions of Missoula County;

1.8.3.3 CIP

Capital Improvements Program of Missoula County;

1.8.3.4 Health Code

The Missoula City-County Health Code;

1.8.3.5 MDT

Montana Department of Transportation (MDT) requirements if the subdivision or any lot contained therein abuts a highway, or a street connection to a highway, that is under the jurisdiction of MDT;

1.8.3.6 Districts

Regulations of private districts including but not limited to irrigation districts and fire districts;

1.8.3.7 Health, Safety

Public health and safety regulations, including the Missoula City-County Air Pollution Control Program and the Aquifer Protection Ordinance; and,

1.8.3.8 Taxes, Assessments

For land proposed to be subdivided, the real property taxes and assessments must be paid current before the land is divided.

1.9 Severability

If any section, subsection, sentence, clause, phrase, or word of these regulations is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of these regulations. The governing body hereby declares that it would have passed these regulations and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words have been declared invalid or unconstitutional, and if for any reason a part of these regulations should be declared invalid or unconstitutional, then all remaining provisions of these regulations will be in full force and effect.

1.10 Amendments to Regulations

Before the governing body amends these regulations it shall hold a public hearing and give public notice of its intent to amend these regulations by publishing notice of the time and place of the hearing in a newspaper of general circulation in the county not fewer than 15 calendar days nor more than 30 calendar days prior to the date of the hearing.

1.11 Permission to Enter

The governing body or its designated agency may conduct such investigations, examinations, and site evaluations as they deem necessary to verify information supplied as a requirement of these regulations. The submission of preapplication materials or a preliminary plat/plan for review shall constitute a grant of permission to enter the subject property for inspections related to the application. The permission to enter shall not include the right to enter any structures on the property. Failure to provide access to the property shall result in a rejection of the application and the subdivision plat/plan for review.

1.12 Organizational Features

1.12.1 Purpose and Intent Statements

Numerous sections of these regulations contain purpose and intent statements that describe the general context in which the regulations are to be applied and provide direction for when interpretations must be made in individual decisions. These statements do not supersede more detailed standards in these regulations.

1.12.2 Graphics

Several illustrations and flow diagrams serve as visual aids for the reader. They illustrate or diagram a general example to help explain the regulations. If an illustration or flow diagram conflicts with the text or a table of these regulations, the text or table shall govern. Text boxes are an informational aid to alert the reader of additional regulations or information that may apply to a proposed subdivision.

1.12.3 Appendices

Appendices are referenced in certain sections of these regulations that provided detailed information. These appendices are adopted herein as part of the regulations and have the full force and effect of these regulations.

CHAPTER 2

DEFINITIONS

2.1 *General Interpretation*

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this chapter. When not defined herein, the words used in these regulations shall have their common and customary meanings. When not inconsistent with the context in which a word is used, the present tense includes the future tense; 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 the use of discretion in making a decision. The phrase “used for” as applied to any land or building includes arranged for, designed for, intended for, maintained for, and for which it is occupied. The word “person” includes individual, corporation, partnership, and any incorporated or unincorporated association of persons.

2.2 *Definitions*

As used within these regulations, except where otherwise specifically defined or unless the context or subject matter clearly otherwise requires the following terms, phrases, words, and their derivations shall have the following meanings:

2.2.1 **ACCESS**

LEGAL ACCESS: That the subdivision abuts a public street or road under the jurisdiction of the city, the county, or the state. In the alternative, that the subdivider has obtained adequate and appropriate easements from a public road to the subdivision across all intervening properties.

PHYSICAL ACCESS: That a road conforming to these regulations provides vehicular access from a public road to the subdivision.

2.2.2 **ACCESS CONTROL LINE**

A line designated on a subdivision plat for the purpose of restricting or limiting vehicular access.

2.2.3 **ACCESSORY USE**

A use clearly incidental, customarily found with, and subordinate to the main use of the premises.

2.2.4 **AGRICULTURAL WATER USER FACILITIES**

Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, water supply and drainage ditches, canals, pipes, sprinkler systems, and head gates.

2.2.5 AGRICULTURE

Agriculture is defined as the use of the land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Examples of agricultural activities include, but are not limited to, cultivation and tillage of the soil; dairying; growing and harvesting of agricultural or horticultural commodities; and the raising of livestock, bees, fur-bearing animals, or poultry. Agriculture does not include gardening for personal use, keeping of house pets, kenneling, or landscaping for aesthetic purposes.

Agricultural land includes land used for agriculture or having a soil type defined by the Natural Resources Conservation Service as having agricultural importance, including prime farmland, prime farmland if irrigated, farmland of statewide importance, and farmland of local importance.

2.2.6 APPLICANT

The owner of land proposed for subdivision or the owner's legally designated representative. (See also "Subdivider")

2.2.7 BLOCK

A group of lots, tracts, or parcels organized in a grid pattern or similarly well-defined pattern with fixed boundaries.

2.2.8 BODY OF WATER, OTHER

Ponds and reservoirs greater than 4,356 square feet in area that do not support fish, and drainage systems discharging directly into streams, pond, or other surface water. Swimming pools and water bodies used solely for treating, transporting, or impounding pollutants are not considered surface water.

2.2.9 BOULEVARD

An area of public right-of-way or private easement between the edge of the street or road, whether curbed or not, and the walkway. The boulevard is landscaped primarily with grass, trees, shrubs, and other vegetation, which is intended to be kept as park-like space and a sidewalk. (See Parkway Median)

2.2.10 BUILDING

A structure, or any portion thereof, having a roof supported by walls; when separated from an adjacent building by a party wall without openings, it shall be deemed a separate building.

2.2.11 BUILDING, ACCESSORY

A detached subordinate building, excluding a guest house, mobile home, or trailer, the use of which is customarily incidental to that of the main building or to the main use of the premises, located on the same lot with the main building of use.

2.2.12 BUILDING CODE

The International Building Code as adopted by the County of Missoula and as amended from time to time.

2.2.13 BUILDING SETBACK LINE

A line establishing the minimum distance that structures may be located from lot lines and street rights-of-way.

2.2.14 BUILDING SITE

Any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

2.2.15 CERTIFICATE OF SURVEY

A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations and monuments.

2.2.16 CHIEF PLANNING OFFICER

The Direction of Planning, Development and Sustainability Planning or an authorized designee.

2.2.17 COMPREHENSIVE PLAN, MASTER PLAN, or GROWTH POLICY

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

2.2.18 CONDOMINIUM

A form of individual ownership with unrestricted right of disposal of 1 or more units in a multiple-unit project, with the land and all other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.

2.2.19 CONSERVATION EASEMENT

An easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction, any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

2.2.20 CONSTRUCTION

Any grading, excavation, cutting, or filling of material or other disturbance that results in a travel-way for motorized or non-motorized vehicles or the site for a building, structure, or landscaping. As the word “construction” relates to buildings, the common and customary meaning applies.

2.2.21 CONTIGUOUS TRACT

A parcel of land abutting another individual parcel of land. Tracts separated only by public right-of-way easements shall be construed as abutting and therefore contiguous.

2.2.22 COURTYARD

A common area, landscaped, outdoor living space surrounded by walls, fences, or structures.

2.2.23 COVENANT (RESTRICTIVE)

Written covenants, running with the land, which restrict or regulate the use of the property or the kind, character, and location of buildings or other structures which may be located thereon.

2.2.24 CUT AND FILL

The excavating of material in one place and depositing of it as fill in another place.

2.2.25 DAYS

Consecutive calendar days, unless otherwise specifically designated. Working days are days, exclusive of weekends or legal holidays.

2.2.26 DEDICATION

The deliberate appropriation of land by an owner for 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, as required by §76-3-103, MCA, as amended.

2.2.27 DEFENSIBLE SPACE

A natural or human-made area where material capable of allowing a fire to spread unchecked has been treated, removed, or modified to slow the rate and intensity of an advancing wildfire and to provide a safe working area for wildfire suppression operations to occur while protecting life and improved property.

2.2.28 DEVELOPMENT

Any man-made change to real estate or property, including buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling.

2.2.29 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 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.

2.2.30 DRAINAGE

A general term applied to the removal of surface or subsurface water from a given area either by gravity or by pumping.

2.2.31 DRAINAGE SYSTEM

The surface and subsurface system for the removal of water from the land, including both the natural elements of streams, marshes, swales, and ponds, whether of an intermittent or continuous nature, and the manufactured elements which includes culverts, ditches, channels, retention facilities, and the storm sewer system.

2.2.32 DRIVEWAY

A vehicular access to a single lot.

2.2.33 DWELLING UNIT

Any building or portion thereof providing complete, independent, and permanent living facilities for one household. The presence of a plumbed kitchen presumes the building is a dwelling unit.

2.2.34 EASEMENT

A right acquired by a public or private authority to use or control property for a designated purpose.

2.2.35 ENGINEER (PROFESSIONAL ENGINEER)

A person licensed in conformance with Title 37, Chapter 67, MCA. For the purposes of these regulations, this term is synonymous with registered engineer as used in the Montana Subdivision and Platting Act.

2.2.36 ESTABLISHED ROAD

An existing access or haul route for motorized or non-motorized vehicles that is passable under one or more of the following circumstances:

- A. As is;
- B. With clearing of windfall or small woody vegetation;
- C. With surface blading;
- D. With replacement of stream crossing structures and drainage structures that were removed to restrict access; or,
- E. With removal of constructed access barriers.

2.2.37 EXAMINING LAND SURVEYOR

The professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing, as required by §76-3-611, MCA. For the purposes of these regulations, this term is synonymous with registered land surveyor as used in the Montana Subdivision and Platting Act.

2.2.38 FIRE PROTECTION JURISDICTION

An area within legally defined boundaries with fire protection responsibilities.

2.2.39 FLOOD

The water of any watercourse or drain-way which is above the banks or outside the channel and banks of such watercourse or drain-way.

2.2.40 FLOODFRINGE

That portion of the floodplain outside the limits of a designated floodway.

2.2.41 FLOODPLAIN

The area adjoining any watercourse or drain-way which would be covered by the floodwater of a flood of 100-year frequency, as defined by the Federal Emergency Management Agency, including sheet-flood areas that receive less than 1 foot of water per occurrence and are considered "Zone Shaded X" by the Federal Emergency Management Agency.

2.2.42 FLOODPLAIN ADMINISTRATOR

The Director of Planning, Development and Sustainability or an authorized designee.

2.2.43 FLOODPLAIN REGULATIONS

Resolution No. 2019-017 of the County of Missoula, Montana, as amended.

2.2.44 FLOODWAY

The channel of any watercourse or drain-way and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of the watercourse or drain-way.

2.2.45 FUEL BREAK

A strip of land where the natural fuels have been greatly reduced or thinned.

2.2.46 GOVERNING BODY

The Board of County Commissioners of the County of Missoula, Montana, pursuant to §76-3-103(7), MCA.

2.2.47 GRADE, EXISTING

The grade or elevation of the ground surface before human alteration such as grading, grubbing, filling, or excavation. For sites that have been previously developed prior to a subdivision application, existing grading shall be the grade or elevation of the ground surface at the time of the preapplication meeting required by *Chapter 5, Procedures for Subdivision Review, Preliminary Plat, Variances, and Appeals*, unless the site has been deliberately altered to circumvent or avoid certain regulations or development restrictions.

2.2.48 GRADE, FINISHED

The grade of a site after grading and building construction, inclusive of any retaining walls, built up grade, or other changes to existing grade.

2.2.49 HAZARD

Any natural or human-created condition that presents danger to the public health, safety, or welfare.

2.2.50 HEALTH AUTHORITIES

Montana Department of Environmental Quality and/or the Missoula Public Health Department.

2.2.51 HYDROLOGY

The properties of water, including circulation and distribution, on and below the ground.

2.2.52 IMPERVIOUS SURFACE

Any surface which either prevents or retards the entry of water into the soil profile (the area from ground surface to parent material), as under natural conditions prior to development and/or a surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Surfaces which impede the natural infiltration of surface and storm water runoff are impervious. Drainage swales are not considered impervious under this definition.

2.2.53 IMPROVEMENT AGREEMENT

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

2.2.54 LOCAL SERVICES

Any and all services and related facilities that local government entities or public utilities may provide, both currently and in the future, such as motorized and non-motorized transportation facilities and systems, parking, law enforcement, fire protection, drainage structures, water, utilities, water supply, sanitary sewage disposal, solid waste disposal, electrical, internet, telephone and natural gas facilities, recreation, parks, libraries or schools.

2.2.55 LOT

A parcel, plot, or other land area created by subdivision or by a subdivision exemption.

2.2.56 LOT MEASUREMENTS

- A. Lot Depth:** The average depth of the lot.
- 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 exclusive of street, highway, alley, road, or other rights-of-way, unless otherwise expressly stated.

2.2.57 LOT TYPES AND SIZES

- A. Corner Lot:** A lot located at the intersection of two streets.
- B. Interior Lot:** A lot with frontage on only one street.
- C. Double Frontage or Through Lot:** A lot whose front and rear lot lines both abut on a street other than an alley.
- D. Large Lot:** A lot that is greater than one-half of an acre in size.
- E. Small Lot:** A lot that is one-half acre or less in size.

2.2.58 MAINTENANCE AGREEMENT

An agreement that specifies certain responsibilities for maintaining facilities when such maintenance is required to achieve and maintain compliance with these regulations. The agreement also establishes the responsible parties for the maintenance. See *Appendix B, Maintenance Agreements*.

2.2.59 MOBILE HOME

A factory assembled structure equipped with necessary service connections, made so as to be readily movable as a unit on its own running gear and designed to be used as a dwelling unit without a permanent foundation. The term "mobile home" includes forms of housing known as "trailers," "house trailers," or "trailer coaches" exceeding 8 feet in

width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, house trailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence. Mobile homes shall meet structural codes (American National Standards Institute) and fire codes (National Fire Protection Association 501) as adopted by the State of Montana.

2.2.60 MOBILE HOME LOT

A designated portion of a mobile home park designed to accommodate one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

2.2.61 MOBILE HOME PARK

A tract of land providing two or more mobile home lots for lease or rent to the general public.

2.2.62 MOBILE HOME STAND

That area of a mobile home lot within a mobile home park, which has been prepared for the placement of a mobile home.

2.2.63 MONUMENT (PERMANENT MONUMENT)

A structure of masonry, metal, or other permanent material, placed on or in the ground, which is exclusively identifiable as a monument to a survey point expressly placed for surveying reference.

2.2.64 NATURAL ENVIRONMENT

The system of physical, chemical, and biotic factors that exist within or influence a geographic area or community. These factors include, but are not limited to, geology, soils, topography, climate, surface water, groundwater, floodplain, wildlife habitat, flora and fauna, and objects or places of cultural, historic, or aesthetic significance. Natural environment also includes aesthetic, cultural and historical resources that relate to the landscape and history of an area.

2.2.65 NON-MOTORIZED FACILITIES

Improvements designed for the use, safety, and comfort of pedestrians, cyclists, equestrians, and similar forms of non-motorized transportation. Examples of non-motorized facilities include sidewalks, walkways, trails, bikeways, and related appurtenances, such as signs and ramps.

2.2.66 OPEN SPACE LAND

Any land which is provided or preserved for: (a) park or recreational purposes; (b) conservation of land or other natural resources; (c) historic or scenic purposes; or, (d) assisting in the shaping of the character, direction, and timing of community development.

2.2.67 ORDINARY HIGH WATER MARK

The stage regularly reached by a body of water at the peak fluctuation in its water level. The ordinary high water mark is generally observable as a clear, natural line impressed on the land. It may be indicated by such characteristics as terracing, changes in soil

characteristics, destruction of vegetation, absence or change of vegetation, presence or absence of litter or debris, or other similar characteristics.

2.2.68 OVERALL DEVELOPMENT PLAN

The plan of a subdivision design proposed to be subdivided in stages.

2.2.69 PARCEL

An area of land or building for which title to or possession of the land, building, or area can be sold, rented, leased, or otherwise conveyed.

2.2.70 PARKWAY MEDIAN

A parkway median is a landscaped area located in the middle of the street or road, sometimes referred to as a Boulevard Median.

2.2.71 PHASED DEVELOPMENT

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

2.2.72 PHASING PLAN

A detailed plan for final platting and development of a subdivision in two or more phases.

2.2.73 PLANNED UNIT DEVELOPMENT (PUD)

A land development project, consisting of residential clusters, industrial parks, shopping centers, or office building parks, that compose a planned mixture of land uses, built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

2.2.74 PLANNING BOARD (MISSOULA CONSOLIDATED PLANNING BOARD)

A consolidated planning board which has all the rights, duties, powers, and obligations for planning in the County and City of Missoula as provided by §76-1-106, MCA, and §76-1-305, MCA, and §76-1-401 and 402, MCA, and as otherwise authorized by the Interlocal Agreement between the City of Missoula and Missoula County, and as jointly or independently assigned by Missoula County or the City of Missoula pursuant to state-enabling legislation.

2.2.75 PLANNING OFFICE

The Missoula County Planning, Development and Sustainability Department or other office designated by the Missoula County Commission to administer the requirements set forth in the MSPA.

2.2.76 PLAT

A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, or 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 which furnishes a basis for review by the governing body as required by the MSPA.

B. Final Plat: The final drawing of the subdivision and dedication required to be prepared for the filing of records with the Missoula County Clerk and Recorder containing all elements and requirements set forth in these regulations and in the MSPA.

C. Vacated Plat: A plat which has been voided under the provisions of MCA, §76-3-305, §7-5-2501, §7-5-2502, §7-14-2616(1) and/or (2), §7-14-2617, §7-14-4114(1) and/or (2), and/or §7-14-4115.

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

2.2.77 PLATTING REPORT

A report from a title service on the condition of title to property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record issued within 30 days of the date of submission of the platting report to the County Attorney's Office, and accompanied by a guarantee of the accuracy of the report to the extent of 5,000 dollars from the title insurance agent or its underwriter.

2.2.78 PRIVATE IMPROVEMENTS

Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except that ownership and/or maintenance and repair shall be the responsibility of a private entity.

2.2.79 PUBLIC HEALTH AND SAFETY

A condition of well-being, reasonably free from danger, risk, or injury, for a community at large, or for all people, not merely for the welfare of a specific individual or a small class of persons. Conditions that relate to public health and safety include but are not limited to, flood hazards, geologic hazards, dam failures, avalanches, air quality, water quality, toxic or hazardous substance exposure, fire or wildfire hazards, proximity to high voltage power lines or high pressure gas lines, noise, air or vehicular traffic hazards, parks and recreation facilities, and threats to life, health, safety and wellness.

2.2.80 PUBLIC IMPROVEMENTS

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

2.2.81 RECREATIONAL CAMPING VEHICLE

A vehicle designed to be towed or a motorized home or pickup coach designed and constructed for human habitation, which can be operated independently or with utility connections and which is used as a temporary vacation dwelling.

2.2.82 RECREATIONAL VEHICLE PARK

A place used for public camping where persons can rent space to park individual recreational vehicles or automobiles for transient dwelling purposes.

2.2.83 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.

2.2.84 RESTING AND PASSING SPACE

A turnout from the trail, with dimensions adequate to allow trail amenities such as seating, wheelchair rest spots (minimum 5' x 5'), trash containers, landscape and/or shelter facilities, interpretive displays, etc.

2.2.85 RIGHTS-OF-WAY

Land dedicated or acquired for use as a public way.

2.2.86 RIPARIAN RESOURCE

A river, lake, stream, wet meadow, woody draw, wetland, or other body of water, the banks of these water bodies, adjoining riparian vegetation, and any designated buffer. An irrigation ditch that does not lie within a floodplain, and measures less than 3 feet in width at its widest point on the subject property, as measured from the high watermark of the ditch, is not considered a riparian resource for the purpose of these subdivision regulations. See *Appendix F, Riparian Wetland Habitat & Community Types*, for types of vegetation that may be in riparian areas.

2.2.87 ROAD

A travel-way providing access to two or more lots and of adequate width to permit the unrestricted movement of traffic.

2.2.88 ROAD AND STREET TYPES

As used in these regulations, road or street types are as follows:

- A. Alley:** A street or road used primarily for vehicular access to the rear of property which abuts a road.
- B. Arterial:** A street or road having the primary function of moving traffic and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Characteristics of an arterial are two to four lanes of traffic with limited access to abutting property.
- C. Circle:** A local street or road which closes in on itself.
- D. Collector:** A street or road having the equally important functions of moving traffic and providing access to adjacent land. Characteristics of collector streets are two traffic lanes and two parking lanes. Residential collectors generally serve only residential neighborhoods; non-residential collectors serve other land uses.
- E. Cul-De-Sac:** A street or road which terminates in a vehicular turn-around area.
- F. Dead-End Street or Road:** A street or road temporarily having only one outlet for vehicular traffic and intended to be extended in the future.
- G. Driveway:** A vehicle access to a single lot.
- H. Frontage Access (Service Road):** A local or collector street or road, usually parallel and adjacent to an arterial or major collector street or road, which provides access to abutting properties and control of traffic access to arterials or collectors.
- I. Half-Street or Road:** A portion of the width of a street or road, usually along the outside perimeter and adjacent to a subdivision, up to the right-of-way or road easement centerline.

- J. Local Streets:** A street or road having the primary function of serving abutting properties and the secondary function of moving traffic. Characteristics of local streets are two traffic lanes, one or two parking lanes, and access to abutting properties. Local streets shall be designed to discourage future use as collector streets. Residential local streets serve individual residential areas; non-residential local streets serve non-residential land uses.
- K. Loop:** A local street or road which begins and ends on the same street, generally used for access to property.
- L. On-Site Road:** A road right-of-way entirely contained within the boundaries of a subdivision.
- M. Off-Site Road:** A road right-of-way not entirely contained within the boundaries of a subdivision.
- N. Short Courts:** A short road serving 3 to 6 lots.

2.2.89 RURAL AREA

The unincorporated portion of the County that is not included in either the Lolo Water Study Area or the higher intensity land use designations from the 2019 Missoula Area Land Use Element, consisting of: Residential, Neighborhood Residential, Planned Neighborhood, Neighborhood Center, Commercial Center, Live/Make Neighborhood, Community Mixed-Use, Civic Employment Center, and Industrial Center. See *Appendix A, Urban Area*.

2.2.90 RUNOFF

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

2.2.91 SIDECASTING

The act of moving excess earthen material over the sides of a road during road maintenance operations or excavation for structural improvements.

2.2.92 SLIDE

The downhill mass movement of soil, rock, or snow resulting from failure of that material under stress.

2.2.93 SLOPE

The inclination of the surface of the land from the horizontal, prior to development.

2.2.94 STREAM

A natural watercourse of perceptible extent that has a generally sandy or rocky bottom of definite banks and that confines and conducts continuously or intermittently flowing water.

2.2.95 SUBDIVIDER

A person, firm, corporation, or other entity who causes land to be subdivided, or who proposes a subdivision of land. When used in these regulations, the term “subdivider” may also include the property purchaser on a contract for deed or its agent, or the

landowner's agent, if the landowner has provided written notification that the landowner's agent is authorized to act on the landowner's behalf.

2.2.96 SUBDIVISION

The division of land or land so divided, that creates one or more parcels containing fewer than 160 acres that cannot be described as a ¼-aliquot part of a United States Government Section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred including any re-subdivision and a condominium.

- A. Major Subdivision:** A subdivision of land in which 6 or more lots are created.
- B. Minor Subdivision:** A subdivision of land in which 5 or fewer lots are created.
- C. Small Lot Subdivision:** A subdivision in which more than half of the lots are ½-acre or less in size. Subdivisions in which exactly half of the lots are large lots and the other half are small lots shall be considered to be small lot subdivisions.
- D. Large Lot Subdivision:** A subdivision in which the size of more than half of the lots are larger than ½-acre.

2.2.97 SUBDIVISION ADMINISTRATOR

The Director of Planning, Development and Sustainability or a designated representative of the department.

2.2.98 SURVEYOR (PROFESSIONAL LAND SURVEYOR)

A person licensed in conformance with Title 37, Chapter 67, MCA, to practice surveying in the state of Montana. For the purposes of these regulations, this term is synonymous with registered land surveyor as used in the Montana Subdivision and Platting Act.

2.2.99 SWALE

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

2.2.100 TOPOGRAPHY

General term to include characteristics of the ground surface such as plains, hills, mountains, degree of relief, steepness of slope, and other physiographic features.

2.2.101 TOWNHOME, TOWNHOUSE

Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

2.2.102 TRACT OF RECORD

A 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, as stated in §76-3-103, MCA.

2.2.103 URBAN AREA

The unincorporated portion of the County that is within either the Lolo Water Study Area or the higher intensity land use designations from the 2019 Missoula Area Land Use Element, consisting of Residential, Neighborhood Residential, Planned Neighborhood, Neighborhood Center, Commercial Center, Live/Make Neighborhood, Community Mixed-Use, Civic Employment Center, and Industrial Center. See *Appendix*

A, Urban Area.

2.2.104 VICINITY SKETCH

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

2.2.105 WETLANDS

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

2.2.106 WILDLAND URBAN INTERFACE (WUI)

The line, area or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

2.2.107 WILDLIFE

A mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other animal that is native to the area and is not domesticated or tamed. The term does not include feral animals, which are animals that have escaped captivity and become wild (including dogs, cats, and Eurasian ferrets).

2.2.108 WILDLIFE HABITAT

Geographic areas containing physical or biological features essential to wildlife for feeding and forage, cover, migration, breeding, rearing, nesting, or buffers from those areas. It also includes areas essential to the conservation of species protected by the Endangered Species Act or of special interest or concern to the State of Montana. Some of the most important types of wildlife habitat in Missoula County include, but are not limited to big game winter range, grizzly bear habitat, travel corridors, bald eagle nesting sites, and riparian and wetland areas.

2.2.109 ZONING CODE

Missoula County Zoning Regulations.

CHAPTER 3

GENERAL DESIGN STANDARDS FOR ALL SUBDIVISIONS

3.1	Natural and Cultural Environment	3.7	Stormwater Management, Grading, and Erosion Control
3.2	Riparian Resource Areas	3.8	Utilities
3.3	Lots and Blocks	3.9	Solid Waste Disposal
3.4	Transportation Standards	3.10	Parks and Open Space
3.5	Fire Suppression		
3.6	Potable Water and Wastewater		

3.1 *Natural and Cultural Environment*

3.1.1 Purpose and Intent

Missoula County is known for natural and scenic resources, and it is the purpose and intent of these regulations to balance the location and design of subdivisions with the protection of these resources. Subdivisions that include hazardous land, or can be affected by a nearby hazard, can directly impact public health, safety, and welfare and also can significantly impact local services and the natural environment. It is the purpose and intent of this section to steer subdivision development to locations that avoid hazardous lands, but when such lands are subdivided, to ensure that meaningful mitigation of the hazard is incorporated into the subdivision plan to minimize risk to future residents and the overall community.

3.1.2 Character, Other Natural Features

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

3.1.2.1 Existing Conditions

New subdivisions shall be designed to preserve natural drainages and minimize impervious surfaces. Existing topsoil, trees, and natural vegetation shall be preserved to the maximum extent practical.

3.1.2.2 Preserve Cultural, Historic Features

New subdivisions shall not destroy, adversely affect, or damage known Tribal cultural sites or significant cultural or historic features identified in the Montana Antiquities Database. Cultural or historic features or sites that have not been previously identified but are discovered during the development of a subdivision shall be disclosed as part of the public record and protected. The subdivider also shall notify the Confederated Salish and Kootenai Tribes, or other tribal entities if applicable, of such discoveries.

3.1.2.3 Conform to Topography

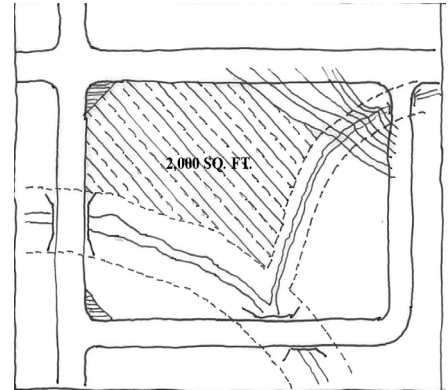
Subdivision design and development shall conform to the general landforms and topography and minimize alteration to the natural landscape.

A. Contiguous Area

All lots must contain a suitable building site consisting of at least 2,000 square feet of contiguous area that is not on a slope exceeding 25%.

B. Steep Slopes

Natural slopes in excess of 25% grade shall be deemed unsuitable for building sites unless a geotechnical analysis and an engineering plan demonstrate that development can safely occur on the slope.



3.1.2.4 Minimize Adverse Impacts

The subdivider shall design the subdivision to reasonably mitigate potentially significant adverse impacts resulting from the subdivision including, but not limited to, impacts to agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

Info Box

See Chapter 5 of the *Missoula County Growth Policy* for guidance on determining potentially significant adverse impacts.

3.1.3 Hazardous Lands

3.1.3.1 Prohibited or Mitigated Development

Development shall be prohibited from the following designated hazard areas unless the Board of County Commissioners approves mitigation that overcomes or removes the hazard.

3.1.3.2 List of Hazard Areas

- A. Wildfire;
- B. Flooding;
- C. Earthquake;
- D. Major dam failure;
- E. Landslide, slope instability;
- F. Snow avalanches or rock falls;
- G. Ground subsidence;
- H. Unsuitable soils;
- I. High groundwater;
- J. Polluted water;
- K. High-voltage lines or high-pressure gas lines;

- L. Aircraft traffic congestion;
- M. Severe toxic or hazardous waste exposure;
- N. Ice jam floods; or
- O. Other hazards, as identified.

3.1.3.3 Hazard Areas Defined

For the purposes of this section, hazard areas are defined below.

A. Wildfire Hazard: Wildfire hazard includes land that:

1. WUI Map

Is in the Wildland Urban Interface (WUI) area as delineated on the Wildland Urban Interface Map in the Missoula County Wildland Protection Plan, as amended and incorporated here by reference; and,

2. Assessment

Ranks as a moderate or higher risk of wildfire based on the assessment performed pursuant to *Appendix C, Fire Hazard Assessment*.

B. Flood Hazard

Flood hazard areas encompass the floodplain. The floodplain is the area adjoining any watercourse or drain-way that would be covered by the floodwater of a flood of 100-year frequency, as defined by the Montana Department Natural Resources and Conservation pursuant to MCA, Title 76, Chapter 5, or by Federal Emergency Management Agency. The floodplain also includes land determined by the governing body to be subject to flooding.

C. Earthquake Hazard

Land containing an earthquake fault line.

D. Major Dam Failure Hazard

An area subject to inundation in the event of a dam failure that is identified in the Missoula County Pre-disaster Mitigation Plan, whether the dam is located within Missoula County or upstream from Missoula County.

E. Landslide, Slope Instability Hazard

Land on a hillside or at the base of a hillside that is susceptible to damage from mass movements of earth material caused by sliding or gravity.

F. Snow Avalanche or Rock Fall Hazard

Land on a hillside or at the base of a hillside that is susceptible to an avalanche or falling rocks.

G. Ground Subsidence Hazard

Soils susceptible to subsidence due to abandoned mine shafts or other geological features that can cause surface depressions.

H. High Groundwater Hazard

When the soil profile, groundwater monitoring, or other information indicates that groundwater is within 10 feet of the natural ground surface. Property identified as containing FEMA-designated floodplain and/or beneath the base flood elevation is considered evidence of high groundwater.

I. Unsuitable Soils Hazard

Unsuitable soils for development as determined by the U.S. Department of Agriculture, Natural Resources Conservation Service.

J. Polluted Water Hazard

Surface or groundwater within or upstream from a proposed subdivision that has pollutants at levels higher than Montana or U.S. standards.

K. High Voltage Line or High-Pressure Gas Line Hazard

Electrical transmission lines other than distribution lines to individual end users, pressurized gas lines other than lines that carry fuel to end users, and all other pipelines that carry potentially hazardous materials including oil or ammonia.

L. Aircraft Traffic Hazard

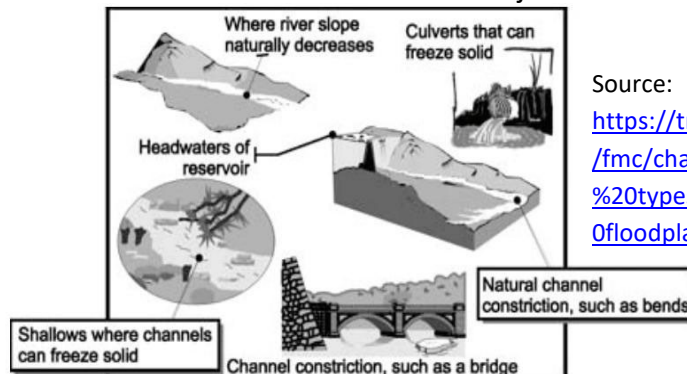
Land within an Airport Influence Area or the land that would be in such an influence area if no such area has been designated for an existing or proposed airport.

M. Toxic or Hazardous Waste Hazard

Areas within, adjacent or upstream to a proposed subdivision that contain toxic or hazardous substances that could affect the residents of the subdivision via wind, rain, stormwater runoff or a similar means of transmission.

N. Ice Jam Flood Hazard

Areas within, upstream or downstream of a proposed subdivision that can be inundated with flood waters due to an ice jam. Examples of constrictions that can cause ice jam are illustrated below.



Source:
<https://training.fema.gov/hiedu/docs/fmc/chapter%20%20-%20types%20of%20floods%20and%20floodplains.pdf>

O. Other Hazard

Other natural or human-created hazards as identified on or near the property to be subdivided.

3.1.3.4 Hazard Area Standards

All subdivisions that contain a hazard area defined in *Section 3.1.3.3., Hazard Areas Defined*, or are upstream or downstream or adjacent to a defined hazardous area when applicable, shall comply with the following standards.

A. Delineate Area

Any hazard area defined in *Section 3.1.3.3., Hazard Areas Defined* that is located within a proposed subdivision shall be delineated on the proposed subdivision plat/plan. When applicable, the description and location of any hazard area located adjacent, upstream or downstream to a proposed subdivision shall be included in the application for a proposed subdivision.

B. Prohibited Development

All development including structures, driveways, infrastructure, and utilities shall be prohibited in the defined hazard area, except where the Board of County Commissioners approves mitigation that overcomes or removes the hazardous condition pursuant to *Section 3.1.3.4.C, Mitigation*.

1. Building Envelopes

When development is prohibited in a hazard area, building envelopes and/or no-build zones shall be designed and located to prevent development in the hazard area.

2. Plat

Said building envelopes and/or no build zones shall be depicted on the preliminary plat and recorded on the supplemental or Conditions of Approval sheets.

C. Mitigation

Mitigation designed to overcome or remove a hazardous condition must be approved by the Board of County Commissioners before development can occur within a hazardous area. Examples of mitigation include but are not limited to:

1. A site-specific geotechnical evaluation and design standards for structures when the hazard is an earthquake, landslide, or unsuitable soils;
2. Steel netting designed to catch rocks when the hazard is a rock fall;
3. Compliance with *Section 3.1.3.5 Wildfire Hazard Area Standards* and *Section 3.5 Fire Suppression*;

4. Snow fencing designed to divert avalanches when the hazard is an avalanche; or,
5. Prohibited basements or limited depth of structure when the hazard is high groundwater.

D. Subdivider Proposal

The subdivider may propose and the Board of County Commissioners may approve mitigation methods that are designed to directly avoid or overcome a hazardous condition.

E. Professional

All proposed mitigation strategies shall be prepared and designed by a professional engineer or other qualified professional with expertise specific to the type of mitigation being proposed. All professionals shall be licensed or certified to work in Montana.

3.1.3.5 Wildfire Hazard Area Standards

The design and development of all subdivisions in Wildfire Hazard Areas shall comply with the following standards.

A. Fire Chimneys

Development shall be prohibited in ravines or other topological features that constitute fire chimneys and within 150 feet of the apex or top of a fire chimney.

B. Defensible Space

Defensible space shall be created within 100 feet of all subdivision roads and water supplies and water facilities that are designated for fire suppression.

1. Clearing

Within the defensible space required above:

- a. All downed woody fuel for fires shall be cleared from the ground;
- b. All trees shall be thinned to create a minimum ten-foot separation between crowns; and,
- c. Tree limbs shall be pruned to a height of 15 feet above the ground or to one-third of the live crown height, whichever is less.

2. Maintenance Agreement

A maintenance agreement shall be required that ensures the developer will maintain the defensible space until a Homeowners' Association or a similar organization is capable of assuming the maintenance responsibility. The maintenance agreement shall comply with requirements in *Appendix B, Maintenance Agreements*.

C. Fire Suppression

All subdivisions in the wildfire hazard area shall comply with *Section 3.5, Fire Suppression*.

D. Notification

Notes shall be placed on the supplemental or Conditions of Approval sheets, and when applicable, provisions shall be included in the Conditions, Covenants and Restrictions or Homeowners’ Documents and purchase and sales agreements, that notify future owners:

1. Hazard

That the subdivision is located in a wildfire hazard area;

2. Specific Feature

The location of any specific feature that may create a severe hazard, such as a fire chimney;

3. On-Going Responsibilities

Any ongoing responsibilities and obligations to maintain and fund the maintenance of defensible space and fire-fighting systems; and,

4. Information

Sources of information regarding construction techniques, landscaping, and other methods for mitigating fire hazards, including mitigation measures required to maintain a moderate or better score in accordance with *Appendix C, Fire Hazard Assessment*.

3.1.3.6 Flood Hazard Area Standards

Subdivisions containing a flood hazard area shall comply with the following standards.

A. All Subdivisions

1. Land Alteration

Any land alteration including roads, utilities, or other form of development related to a subdivision shall be prohibited in the flood hazard area.

2. Access

When the only ingress/egress is subject to flooding, access through floodwaters no more than one foot deep during the 100-year flood event must be demonstrated.

Info Box
See the Missoula County Floodplain Regulations for permitted and prohibited land uses in the floodplain and floodplain permitting requirements. https://www.missoulacounty.us/home/showdocument?id=25481
Other laws, such as the Natural Streambed and Land Preservation Act, may apply to land uses in and around floodplain areas. The Missoula Conservation District encourages developers to contact their office with questions.

3. One Mile From Zone A

If a proposed subdivision is located within one mile of a Zone A flood hazard area as identified on the Flood Insurance Rate Map for Missoula County, the subdivider shall analyze land division history for the parcel dating back to August 15, 1983, to determine if a Zone A flood hazard area had been located previously on the parent parcel. If a Zone A flood hazard area had been located on the parent parcel at any time since August 15, 1983, and the parcel was subsequently divided, a flood analysis to determine the base flood elevation may be required based on the Floodplain Administrator’s determination.

B. Major Subdivisions

1. Prohibition

The flood hazard area shall not be included within platted lots that are designated for development.

2. Allowed Uses

Flood hazard areas shall be designated for common area, open space, or agricultural uses.

3. Ownership

The flood hazard area shall be owned and managed by a Homeowners’ Association or a governmental entity.

4. Parkland

Flood hazard areas designated for common area or parkland in accordance with this section may be counted to satisfy the park and open space requirements of these regulations.

C. No Floodplain Delineation

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a stream draining an area of 5 or more square miles, and no official floodplain delineation of the stream has been made, the subdivider shall provide one of the following:

1. Floodplain Administrator Verification

The County Floodplain Administrator may require an engineered flood analysis to determine the base flood elevation and whether the proposed subdivision is in the flood hazard area or may waive the requirement for a flood analysis based on a field determination; or,

2. Evaluation

The 100-year floodplain elevation and floodplain boundaries shall be determined by an evaluation that complies with the following criteria:

a. Engineer

A professional engineer licensed to practice in Montana and experienced in floodplain studies shall perform the evaluation.

b. DNRC Review

The evaluation must be submitted to the Floodplain Management Section, Water Resources Division, and Department of Natural Resources and Conservation, for review of the information provided by the applicant to ensure that it is technically reasonable.

c. Study Contents

The evaluation must comply with the standards established in *Appendix D, Standards for Flood Hazard Evaluations*.

3. Determination of Flood Hazard

If the evaluation concludes that the proposed subdivision is subject to flooding, the flood hazard area shall be delineated on the preliminary plat/plan and the subdivision shall comply with the standards of this section.

3.1.4 Agricultural Lands

3.1.4.1 Purpose and Intent

The purpose and intent of this section is to establish subdivision regulations that work in concert with established non-regulatory strategies and mitigate the impacts of subdivision development on agriculture and agricultural water facilities. These strategies are designed for the following purposes:

A. Preserve Options

Preserve and protect agricultural land, infrastructure, and community for future generations.

B. Statutes

Comply with state statutes by addressing potential impacts subdivisions may have on agriculture and agricultural water facilities.

C. Goals

Implement goals of the Missoula County Growth Policy.

D. Land Use

Promote land use patterns that accommodate functional agricultural operations and infrastructure.

E. Development

Balance the need for functional agricultural operations with the need to accommodate residential development and growth.

F. Interests

Balance the community's collective interests with the interests of private landowners.

G. Voluntary Efforts

Support voluntary efforts to protect agricultural lands.

H. Existing Operations

Support and enhance existing agricultural operations.

3.1.4.2 Agricultural Mitigation Standards

All proposed subdivisions shall comply with the following standards:

A. Minimize Adverse Impacts

The subdivider shall design the subdivision to reasonably mitigate potentially significant adverse impacts to agriculture and agricultural water facilities resulting from the subdivision.

B. Off-site Impacts

A proposed subdivision adjacent to agricultural lands, based on maps created by the Natural Resources Conservation Service, or adjacent to an agricultural operation must comply with the following standards:

1. Runoff

Subdivisions shall be designed to prevent stormwater runoff from subdivision lots, roads, and lawn watering from draining into agricultural water facilities or onto agricultural land.

2. Notification

Provisions shall be included in the Conditions, Covenants, and Restrictions or Homeowners’ Documents and purchase and sales agreements that notify and educate future lot owners of the potential implications of living adjacent to agricultural operations which include but are not limited to: exposure to odors, dust and noise, exposure to hazards such as irrigation ditches, ponds, fencing, and livestock protection methods, and use of agricultural chemicals and farm equipment. The provisions shall also educate lot owners about the potential impacts they may have on nearby agricultural operations such as domestic animal nuisances, trespass, and traffic. The provisions may include measures to minimize the impacts of development adjacent to agricultural operations.

3.1.5 Irrigation Water, Easements, and Water Rights

3.1.5.1 Purpose and Intent

Irrigated land is critical to Missoula County and agriculture is a part of the community’s history and culture. The purpose and intent of this section is to allow the subdivision of land that does not interfere with irrigation systems and to maintain a clear record that informs lot buyers of the status of water rights.

Info Box
Subdivision applicants are encouraged to interact with local irrigation districts regarding specific requirements pertinent to those districts.

3.1.5.2 Irrigation Easements Required

Except as noted in *Section 3.1.5.3, Irrigation Easement Not Required*, the subdivider shall establish irrigation easements within the subdivision when irrigation water is conveyed through the subdivision or to lots within the subdivision.

Info Box

When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement’s validity.

A. Easement Purposes

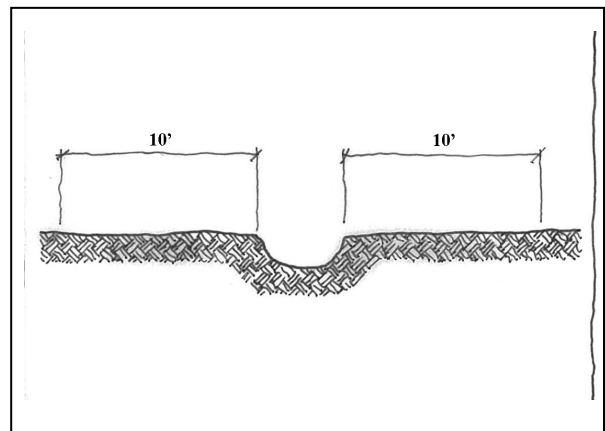
The easements shall allow the conveyance of irrigation water to persons and land legally entitled to the water pursuant to an appropriated water right or a permit from an irrigation district or other private or public entity formed to provide water rights to the subdivision lots. The easements shall allow for the construction, replacement, repair, maintenance, and inspection of the irrigation facility.

B. Location

Easements shall be in locations with appropriate topographic characteristics to convey water to the entitled destinations and accommodate unobstructed maintenance of the irrigation facility.

C. Width

Easements shall be sufficiently wide to allow the physical placement and unobstructed maintenance of open ditches or below-ground pipelines.



1. Wider Ditches

For ditches or canals at least 3 feet wide, the easement width shall be measured from the edges of the canal or ditch.

2. Narrower Ditches

For ditches or canals less than 3 feet wide, the easement shall extend 10 feet from both sides of the centerline of a proposed or existing irrigation ditch or canal.

D. Prohibit Structures, Landscaping

Easements shall prohibit the placement of structures or planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

E. Easements on Plats

The subdivider shall, unless otherwise provided under a separate written agreement or filed easement, show on the preliminary plat and dedicate on the final plat any required irrigation easements.

3.1.5.3 Irrigation Easement Not Required

The subdivider is not required to establish irrigation easements when conditions exist as described in either section A or B below:

A. Small Lot Size and Continued Assessment

The average lot size in the proposed subdivision will be 1 acre or smaller and the subdivider discloses to potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or,

B. Water Rights Removed

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.

C. Disclosure of Continued Assessment

Disclosure required in section 3.1.5.3.A shall be contained in supplemental sheets or documents and recorded with the final plat, included in agreements and legal documents for related sales transactions, including purchase and sales agreements, and in any Conditions, Covenants and Restrictions or Homeowners' Documents.

3.1.5.4 Disclosure of Water Rights Removed

Any removal of the water rights or intentions to remove water rights from the land within the subdivision shall be noted 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 intention to remove the water rights with provisions included in agreements and legal documents for related sales transactions, including purchase and sales agreements, and in any Conditions, Covenants and Restrictions or Homeowners' Documents.

3.1.5.5 Water Rights

If the proposed subdivision creates parcels with lot sizes averaging less than 5 acres, the subdivider shall address the water rights by one of the following methods:

A. Transfer to Single Entity

Reserve all or a portion of the appropriated 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; or,

B. Use Agreement

If the land to be subdivided is subject to a contract or an interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, the subdivider shall establish a landowner's water use agreement administered through a single entity that specifies the administration of the water rights and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or,

C. Sever Rights

Reserve and sever all surface water rights from the land.

3.1.5.6 Irrigation Improvements

A subdivision plat/plan that proposes to transfer water, water rights, shares, or assessment to one or more lots in the subdivision, or to an entity that will provide water to one or more of the lots, shall include an irrigation improvements plan, pursuant to *Section 7.6.13, Irrigation Improvements Plan*. Improvements in the plan shall be installed prior to filing of the final plat unless the irrigation provider approves an alternative schedule.

3.2 Riparian Resource Areas

3.2.1 Purpose and Intent

The purpose and intent of this section is to ensure that subdivisions are located and designed to protect the health, safety and welfare of residents from flooding, erosion, and inadequate drainage. It is the further intent of this section to permit the subdivision of land while protecting riparian resources in the following ways:

3.2.1.1 Diversity

Support diverse and productive aquatic and terrestrial riparian systems and the wildlife habitats these systems create.

3.2.1.2 Waterbodies

Protect the banks, shores, and waters of rivers, streams, lakes, and other water bodies.

3.2.1.3 Sediment Filters

Preserve vegetation that provides effective sediment filters that maintain water quality.

3.2.1.4 Stream Features

Preserve trees that provide shade and moderate stream temperature and eventually contribute woody debris that creates riffles, pools, and other elements of channel structure.

3.2.1.5 Floodplain

Preserve floodplain capacity to retain flood waters.

3.2.1.6 Water Quality, Quantity

Protect the public interest in the quality and quantity of surface and ground waters.

3.2.2 Applicability

This section shall apply to subdivisions that contain or abut riparian resources as defined in *Chapter 2, Definitions*.

3.2.3 Management Plan

A Riparian Resources Management Plan shall be required when a proposed subdivision contains or abuts a riparian resource area. See *Section 7.6.4, Riparian Resources Management Plan*, for the required contents of the plan.

3.2.4 Riparian Resource Area Standards

3.2.4.1 Development

Improvements, development, structures, fences, and the alteration of natural landscape and vegetation are prohibited in the riparian area unless expressly approved as part of a Riparian Resources Management Plan. Notwithstanding, restoration or enhancement of natural resources and roads pursuant to *Section 3.2.5, Road Construction*, shall be permitted.

3.2.4.2 Common Area, No Build

- A.** Major subdivisions shall be designed to include riparian resources in the subdivision common area and to preserve the area with an irrevocable covenant that prohibits further subdivision and development of the riparian resource area.
- B.** Minor subdivisions may be designed to include riparian resources in lots that are proposed for development provided the riparian areas are designated as no-build areas.

3.2.4.3 Parkland

Land area containing riparian resources may be counted to satisfy the park and open space requirements of these regulations.

3.2.5 Road Construction

Road construction in a riparian resource area shall only be allowed when there is no practical alternative route to access the subdivision or lots/units within the subdivision. Road construction allowed by this section shall comply with the following standards:

3.2.5.1 Alignment

Road alignment shall be designed to maximize use of open areas and minimize removal of vegetation. Roads shall be designed to minimize scenic impacts by avoiding areas adjacent to open water and locating below ridge crests and high points.

3.2.5.2 Soils

Roads shall be constructed on soils that are not susceptible to erosion and will avoid sedimentation and pollution runoff into water bodies.

3.2.5.3 Contours

Roads shall be designed to follow natural contours and minimize cuts and fills.

3.2.5.4 Perpendicular Crossing

Crossings of streams, lakes, wetlands, or other water bodies must occur at perpendicular angles to minimize disturbance of the riparian resources.

3.2.5.5 Sidecasting

The sidecasting of road material into a stream, lake, wetland, or other body of water during road construction or maintenance is prohibited.

3.2.5.6 Erosion Control

Effective erosion and sedimentation control practices shall be conducted during all clearing, construction, or reconstruction operations.

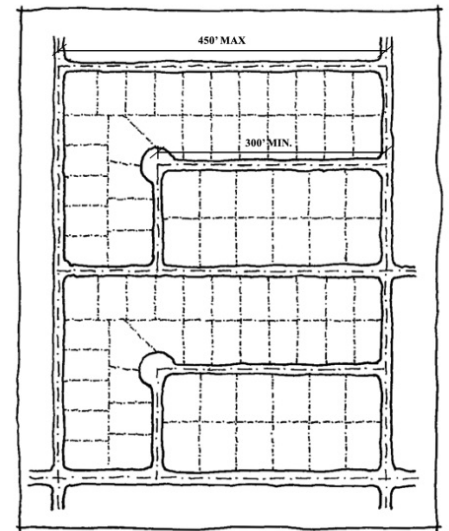
3.2.5.7 No Fill Deposits

Road fill material shall not be deposited in the riparian resources or in a location that creates adverse impacts to the riparian resources.

3.3 Lots and Blocks

3.3.1 Purpose and Intent

The purpose and intent of this section is to promote a pattern of subdivision development that enhances the overall community and fits the context in which a proposed subdivision is located. Proper design of lots and blocks ensures each platted lot will be functional with sufficient land area to accommodate the intended land use and the necessary supporting functions such as wells, septic systems, parking areas, and adequate circulation



3.3.2 Standards for Lots and Blocks

3.3.2.1 Grid Pattern

Blocks and streets shall be designed to create a block grid pattern, except where a non-grid pattern is appropriate or necessary due to natural features, topographic, or other contextual conditions, such as an established adjacent development pattern.

3.3.2.2 Block Length

Block length shall be no longer than 450 feet for small lot subdivisions.

3.3.2.3 Two-Tiered Blocks

Subdivision blocks shall be designed with two tiers of lots, except where topography or site dimensions only permits a single tier. In the case of a block with a single tier of lots, the lots shall be arranged so as to avoid through lots in accordance with *Section 3.3.2.4, No Through Lots*.

3.3.2.4 No Through Lots

Through lots are prohibited, except when they are essential to overcome specific disadvantages of topography or orientation, as determined by the governing body as a variance request.

A. Minimization of Impacts Required

When through lots are permitted by variance, the proposed subdivision shall include design elements that minimize visual impacts and safety hazards, pursuant to *Section 3.3.2.4.B, Design Elements*. Such design elements shall separate land uses from pedestrian and vehicular traffic, and mitigate visual impacts of trash receptacles, utility installations, outdoor storage, and other unsightly elements that frequently are visible when the side/rear portions of properties are viewed from roads or other public areas.

B. Design Elements

Design elements to minimize the impacts of through lots include common areas, no-build zones, setbacks, and/or easement areas designated for screening by fencing, landscaping buffers, and berms. Non-motorized facilities also may be located in these design elements. Said design elements shall be sufficiently wide to adequately accommodate the screening but in no case less than 10 feet in width. The governing body may approve another design alternative proposed by the applicant that achieves the required mitigation.

C. Maintenance Agreement

When visual screening, fencing, and/or landscaping is an approved design element, a maintenance agreement shall be required that ensures the developer will maintain the visual screening, fencing, and/or landscaping until a Homeowners' Association or a similar organization is capable of assuming the maintenance responsibility. The maintenance agreement shall comply with requirements in *Appendix B, Maintenance Agreements*.

3.3.2.5 Developable Lots

All lots in a proposed subdivision that are intended for development shall have a building site suitable for the intended land use. A subdivision may contain lots which are not intended as building lots but are necessary for other purposes.

A. No Warranty

County approval of a subdivision shall not constitute a warranty that any lot is suitable or developable for any particular use.

B. Zoning

In an area subject to zoning regulations, subdivisions shall comply with all applicable zoning standards.

3.3.2.6 Building Area

Each lot shall contain a building site large enough to accommodate the intended land use without extending development into a hazard area defined in *Section 3.1.3.3, Hazard Areas Defined*.

3.3.2.7 Boundary

No single lot shall be divided by a municipal or county boundary line.

3.3.2.8 Contiguous Lot

No single lot shall be divided by a navigable stream, alley, highway, interstate freeway, public street, or road right-of-way, including public road easements. The existence of a private easement or natural feature such as a non-navigable stream shall not constitute a subdivision that creates more than one parcel or tract divided by the private easement or natural feature.

3.3.2.9 Access

Each lot shall have access to a public or private street or road. Alleys may not be used to provide the primary access to the lot. Alleys may be required in subdivisions when the governing body determines they are necessary to accommodate service deliveries, loading, unloading, and similar vehicular movements without creating undue congestion on nearby streets.

3.3.2.10 Lot Lines

Side lot lines shall be substantially perpendicular to street or road lines and radial to curved street or road lines.

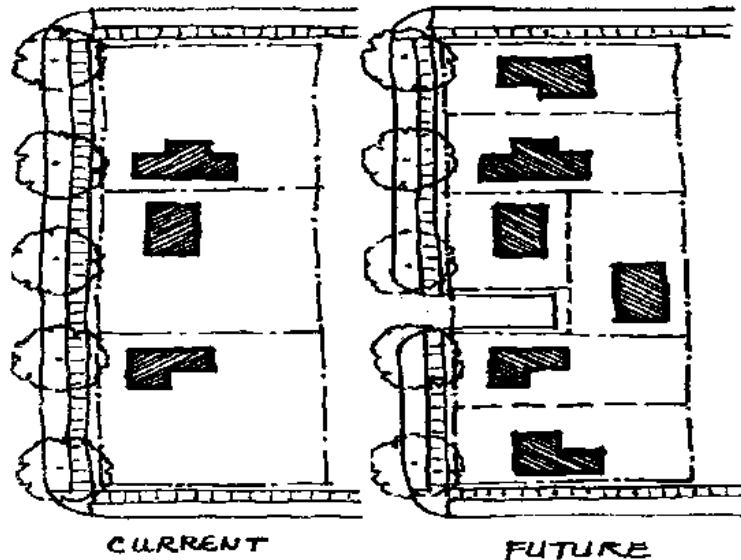
3.3.2.11 Solar Orientation

Streets in residential subdivisions should, where possible, be aligned to within 30 degrees of an east-west axis.

3.3.3 Future Development

3.3.3.1 Further Subdivision

If a subdivision is proposed within an Urban Area, as delineated in *Appendix A, Urban Area Boundaries*, and proposes a density less than allowed by an applicable zoning resolution or land use designation in a currently adopted Missoula County Growth Policy, the governing body may require the plat/plan demonstrate how the full residential density allowed for the subdivision can be accommodated in the future without interfering with the orderly design of the subdivision. Full residential density is the greater of the land use designation or the applicable zoning.



3.3.3.2 Connecting Development to Adjoining Land

All subdivisions shall be designed to maximize connectivity to adjoining subdivided lands or connectivity potential to adjoining undeveloped lands. Such connectivity shall provide road rights-of-way and easements, consistent with *Section 3.4.6.3, Through Streets, Future Extensions*, and allow for extensions of pedestrian facilities, trails, parks and open space, drainage easements, and utility easements.

3.4 Transportation Standards

3.4.1 Purpose and Intent

The purpose and intent of this section are to ensure subdivisions provide safe, logical, and efficient transportation systems that connect to the overall transportation network. Accomplishing this purpose and intent includes the following:

3.4.1.1 Design Flexibility

Provide design options that fit within the surrounding human-made and natural environment and safely accommodate all modes of transportation.

3.4.1.2 Safe Access

Create safe and adequate access to all lots in the proposed subdivision and to roads and highways within the area of the subdivision.

3.4.1.3 Connectivity

Make logical, convenient connections to existing or planned roads and trails to reduce extra trips that negatively affect air quality and increase congestion.

3.4.1.4 Air Quality

Properly design and construct roads to reduce air pollution.

3.4.1.5 Transportation Plans

Create a transportation network that is consistent with adopted transportation plans.

3.4.2 Urban and Rural Standards for Roads and Non-Motorized Facilities

These regulations establish Urban Areas within which Urban Standards for roads and non-motorized facilities shall apply and Rural Areas within which Rural Standards shall apply.

3.4.2.1 Urban Areas

It is the intent of these regulations that the Urban Areas include land that is serviceable by a community or municipal sewer or water system, and/or is able to support densities of at least two dwellings per acre. These areas are described below and shown in *Appendix A, Urban Area*.

A. Urban Area Boundaries

1. Land Use Designations

Urban standards apply to land within higher intensity land use designations from the 2019 Missoula Area Land Use Element, as amended. These consist of: Residential, Neighborhood Residential, Planned Neighborhood, Neighborhood Center, Commercial Center, Live/Make Neighborhood, Community Mixed-Use, Civic Employment Center, and Industrial Center.

2. Lolo Water and Wastewater Service Area

Urban standards apply to land within the Lolo Water Study Area, also referred to as RSID No. 901, as amended.

B. Changes to the Boundaries

The boundaries for land use designations and the Missoula and Lolo Wastewater Service Area are established and occasionally amended by the Board of County Commissioners. The applicable boundaries are those in place when a subdivision application is deemed sufficient.

C. Exceptions to Urban Standards for Residential Development

Rural standards for roads and non-motorized facilities shall apply to residential subdivisions in the Urban Area that meet all the criteria below.

1. Lot/Unit Size

The majority of the lots or units in the proposed subdivision are at least one acre in size, making further subdivision of them unpractical; and,

2. No Infrastructure Present

The extension of infrastructure to the subdivision, including community or municipal sewer and water, is not reasonably expected due to topography, remoteness, or a similar land constraint; and,

3. No Through Connection

The proposed subdivision does not provide an opportunity for a vehicular through connection to another subdivision or an area that potentially could be subdivided, avoiding the need for urban road standards.

3.4.2.2 Rural Area

It is the intent of these regulations that the Rural Area include land that is not serviceable by a community or municipal sewer or water system and is not able to support densities of two dwellings per acre or greater. All unincorporated areas of the county outside of the Urban Areas shall be the Rural Area for the purposes of these regulations.

A. Exceptions to Rural Standards

Urban standards for roads and non-motorized facilities shall apply to subdivisions in the Rural Area that meet all the criteria below.

1. Lot Size or Number of Units

The majority of the lots proposed are smaller than one acre and/or there are at least six units proposed; and,

2. Infrastructure is Present

The proposed subdivision will be served by a community or municipal sewer or water system; and,

3. Connection to Adjoining Land

The proposed subdivision provides an opportunity for a vehicular connection to adjoining subdivided lands or connectivity potential to adjoining undeveloped lands, consistent with *Section 3.3.3.2, Connecting Development to Adjoining Land.*

3.4.3 Legal Access

Legal access to the subdivision shall be provided by an established public road or perpetual access easement. An easement shall be in a legally sufficient form acceptable to the County Attorney. When a required easement is unavailable at the time of submittal of a subdivision application, the application shall include a description of how it will be obtained prior to the filing of the final plat.

Info Box
When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement’s validity.

3.4.4 Physical Access

Physical access from a public road for motorized vehicles, and in certain locations non-motorized users, shall be provided to the subdivision in accordance with the design standards of these regulations. The access also shall comply with *Section 6, Road*

Construction Standards and Section 10, Sidewalk and Non-motorized Facilities, of the Missoula County Public Works Manual, as amended.

3.4.5 Traffic Study, Off-Site Improvements

A traffic study shall be required for a subdivision that creates more than 50 residential lots/units or creates multi-family or commercial/industrial development opportunities that may lead to traffic impacts on nearby roads. Off-site road and intersection improvements may be required based on the findings of the traffic study and the recommendation of the Missoula County Public Works Director or Montana Department of Transportation. The traffic study shall comply with Section 13, Traffic Impact Analysis, of the Missoula County Public Works Manual, as amended.

3.4.6 Road Network Standards

The road network in new subdivisions shall comply with all of the following standards:

3.4.6.1 Frontage on State Arterial

When proposed subdivision lots front on an arterial, access to the lots shall not be directly from the arterial but via a limited access road or a frontage road.

3.4.6.2 Frontage On More Than One Road

When the proposed subdivision abuts more than one road, access to the lots shall be from the road of the lowest road class as defined in Table 3.4.7, Road Standards. If the abutting roads have the same classification, access shall be taken from the road with the lowest traffic volume.

3.4.6.3 Through Streets, Future Extensions

When a proposed subdivision provides an opportunity to connect the subdivision roads to an existing road network, or a future road for which plans have been approved by the governing body, or an area that potentially may be subdivided, extensions of road easements or rights-of-way may be required to enable the connection. Extended easements or rights-of-way shall not be required when through roads or future connections are not feasible due to topographic or other natural land constraint.

3.4.6.4 Turn Arouds

When a proposed subdivision contains a dead-end road, a turn-around facility designed to accommodate emergency service vehicles shall be provided. The turn-around facility shall be a cul-de-sac, T-type, or branch design. The dimensions of the turn-around shall comply with designs in the Missoula County Public Works Manual, Appendix A, Exhibit MSCD #200, as amended.

3.4.6.5 Wildland Urban Interface

Major subdivisions in the Wildland Urban Interface area shall have more than one access route providing ingress and egress to the subdivision that complies with Section 3.5.8, Subdivision Access.

3.4.7 Road Design Standards

Unless excepted in *Section 3.4.2.1.C., Exceptions to Urban Standards, Section 3.4.2.2.A., Exceptions to Rural Standards,* or *Section 3.4.7.5, Off-site Roads,* roads proposed in the Urban Area shall comply with the Urban Standards and roads proposed in the Rural Area shall comply with the Rural Standards in *Table 3.4.7, Road Standards.*

3.4.7.1 Air Stagnation Zone

Notwithstanding permitted gravel surfaces in *Table 3.4.7, Road Standards,* new roads and new driveways shall be paved when located within the Missoula County Air Stagnation Zone, as established and from time to time amended by the Board of County Commissioners.

Info Box

See the Montana Clean Air Act of 1969 and the Missoula City – County Air Pollution Control Program Resolution, Chapter 8, Sub-chapter 2. A paving permit is required.

3.4.7.2 Maximum Grade

The maximum finished grade shall be 10% for local roads, 8% for commercial/industrial roads, and 6% for collector roads, as these road classes are defined in *Table 3.4.7, Road Standards.*

3.4.7.3 Curb, Gutter, Boulevard

In the Urban Area, all roads shall be constructed with a conventional curb, gutter, and boulevard sidewalk, unless the exception to the Urban Standards is met. The dimensions of the boulevard and sidewalk shall comply with the standards in *Table 3.4.9.4, Non-Motorized Standards.*

3.4.7.4 No Parking

Any designated “No Parking” Zone on a public road shall be approved by resolution by the Board of County Commissioners.

3.4.7.5 Off-site Roads

Off-site roads providing subdivision access shall meet the following standards:

A. Emergency Access Standards

Basic emergency vehicle access shall be established and/or maintained for all off-site roads. Road maintenance and upgrades to meet standards may include, but not be limited to road widening and regrading, road construction and reconstruction, the establishment of vehicle turnouts, and regular maintenance and snow removal. Inability to meet basic emergency vehicle access standards, including ensuring access through floodwaters less than one foot deep during a 100-year flood event, or mitigating impacts of substandard off-site roadways shall preclude approval of the subdivision.

B. Roads Uniquely Attributable to the Subdivision

Off-site roads uniquely attributable to the subdivision shall meet the standards of Table 3.4.7, Road Standards.

C. Roads Not Uniquely Attributable to the Subdivision

1. Off-site roads not uniquely attributable to the subdivision shall maintain a grade not to exceed 10% and shall have a minimum 20' unobstructed drivable width and a 13'6" vertical clearance. Roads shall be composed of an all-weather surface capable of supporting emergency vehicles in all weather conditions as determined by Missoula Rural Fire District or the County Fire Inspector as appropriate.

2. Off-site roads not uniquely attributable to the subdivision may be subject to cost-sharing methods to finance construction and maintenance. These may include, but are not limited to, Rural Special Improvement Districts (RSIDs), payback provisions, and proportional cost-share agreements.

D. Right-of-Way Dedication

Off-site roads classified as, or with the potential to become Collectors, may require dedication of additional right-of-way.

E. Traffic Study

Subdivisions creating development as described in *Section 3.4.5, Traffic Study, Off-Site Improvements*, shall be subject to a traffic study pursuant to the section. If the findings of the traffic study differ from any applicable standard of *Section 3.4.7.5, Off-site Roads*, the stricter standard shall apply.

**TABLE 3.4.7
ROAD STANDARDS**

		Urban Standards							Rural Standards	
Road Class	Total Lots/Units	Right-of-Way Width	Pavement Width						Right of Way Width	Gravel or Pavement Width
			Small Lot Subdivision (½ acre or smaller)			Large Lot Subdivision (larger than ½ acre)				
			No Parking	Parking: 1 Side	Parking: 2 Sides	No Parking	Parking: 1 Side	Parking: 2 Sides		No Parking
Local / Private	2 – 5	60	20	24	30	20	24	30	40	18
Local / Public	2 – 5	60 – 80	20	24	30	20	24	30	60	24
Local	6 – 39	60 – 80	N/A	28	32	24	28	32	60	24
Minor Collector	40 – 199	60 – 80	24	N/A	32	24	N/A	32	60 – 80	26
Collector	200+	60 – 80	24	N/A	34	24	N/A	34	60 – 80	28
Commercial / Industrial	N/A	60 - 80	26	N/A	32	26	N/A	32	N/A	N/A

Notes to Accompany Table

1. Right-of-way, pavement, and gravel widths are measured in feet.
2. Pavement width does not include the width needed for bike lanes, curb and gutter, or 2-foot shoulders required for each side.
3. Gravel surface width measured as improved travel surface exclusive of ditch slopes.
4. When a range is indicated for right-of-way, the Public Works Director shall determine the specific width. This determination shall ensure sufficient width to accommodate required facilities based on: Average Daily Trips, density, inclusion of boulevards or stormwater facilities, projected vehicle types, emergency vehicle access, traffic calming techniques, bike lanes, slope, and geological constraints.
5. Minor Collector and Collector roads without parking may be subject to additional design standards as determined by the Missoula County Public Works Director.

3.4.8 Construction Standards

3.4.8.1 Drainage

Roads shall be designed to ensure proper drainage, including surface crown, culverts, curbs and gutters, drainage swales, and storm drains. Roads shall comply with *Section 9, Storm Drainage*, of the Missoula County Public Works Manual, as amended.

3.4.8.2 Slope Easements

If road construction extends outside the right-of-way or road easement, a back slope easement shall be provided.

Info Box
When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement’s validity.

3.4.9 Non-Motorized Facilities

Subdivisions shall include non-motorized transportation facilities in accordance with the standards of this section.

3.4.9.1 Urban Area Requirements

Construction of non-motorized facilities, in compliance with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards*, is required for Urban Area subdivisions. See *Appendix A, Urban Areas*.

A. Recommended Density, Less than 8 Units per Acre

1. Urban Area subdivisions with a land use designation recommending less than 8 lots/units per acre shall include either a wider sidewalk on the one side of the road serving the most lots/units, or a narrower sidewalk on both sides of the streets that are internal to the subdivision. Either alternative shall comply with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards*.
2. In areas where the land use designation recommends a density less than 8 lots/units per acre but the adopted zoning permits greater density, the subdivider shall apply the standard in *Section 3.4.9.2.B, Recommended Density, 8 Units per Acre or Greater*.

B. Recommended Density, 8 Units per Acre or Greater

1. Urban Area subdivisions with a land use designation recommending 8 units/lots per acre or greater shall include a concrete boulevard sidewalk on both sides of the streets that are internal to the subdivision in compliance with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards*.
2. In areas where the land use designation recommends a density of 8 lots/units per acre or greater but the adopted zoning requires a lower density, the subdivider may apply the standard in *Section 3.4.9.2.A, Recommended Density, Less than 8 Units per Acre*.

C. Extend Adjacent Facilities, Urban Area

When a non-motorized facility is located along the street adjacent to a proposed subdivision, the subdivider shall extend the non-motorized facility, or facilities if more than one exists, across the frontage of the subdivision. If the proposed subdivision fronts more than one street, the non-motorized facilities on each street shall be extended across the subdivision frontage.

1. Each extension shall comply with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards*.
2. Each extension shall comply with the surface materials required in *Section 3.4.9.5, Trail Construction Standards*.
3. A non-motorized facility may be constructed within the adjacent road right-of-way or easement provided that sufficient width exists to safely accommodate it. Additional right-of-way or easement shall be provided across the frontage of the subdivision if the adjacent street contains insufficient right-of-way or easement width to safely accommodate the facility.

D. Off-Road Pedestrian Trail Option, Urban Area

An off-road pedestrian trail may be constructed as an alternative to sidewalks provided that no opportunity exists to connect to a network of existing sidewalks and at least one of the following criteria is satisfied:

1. The off-road trail contributes to an area wide network of trails by connecting to existing trails or future trails for which a trails plan has been approved by the governing body; or,
2. The subdivision is large enough that a trail can create a stand-alone system.

3.4.9.2 Rural Area Requirements

A. Minor Subdivisions, Rural Area

The construction of non-motorized facilities, such as sidewalks, bike lanes, or trails is not required for minor subdivisions in the Rural Area. Minor subdivisions shall include a waiver of the right to protest the creation of an SID/RSID for future construction of sidewalks, bicycle lanes, or trails. This waiver shall comply with the requirements of *Section 6.4.5.4.B, Waive Protest*.

B. Major Subdivisions, Rural Area

1. Rural major subdivisions shall:
 - a. Construct trails pursuant to the standards established in *Table 3.4.9.4, Non-Motorized Standards*.

- b. Include a trail on at least one side of all roads internal to the proposed subdivision; and,
 - c. Locate trails along the side of the road serving the most lots/units.
 - 2. If no opportunity exists to connect to a network of existing roadside trails, an off-road pedestrian trail may be constructed in lieu of trails required above when built pursuant to the standards in *Table 3.4.9.4, Non-Motorized Standards* and *Section 3.4.9.5, Trail Construction Standards*, and when at least one of the following criteria is satisfied:
 - a. The trail contributes to an area-wide network of off-road trails by connecting to existing trails or future trails for which a trails plan has been approved by the governing body; or,
 - b. The subdivision is large enough that a trail can create a stand-alone system.
 - 3. When a non-motorized facility is located along the street adjacent to a proposed subdivision, the subdivider shall extend the non-motorized facility, or facilities if more than one exists, across the frontage of the subdivision. If the proposed subdivision fronts more than one street, the non-motorized facilities in each street shall be extended across the subdivision frontage.
 - a. Each extension shall comply with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards*.
 - b. Each extension shall comply with the surface materials required in *Section 3.4.9.5, Trail Construction Standards*.
 - c. A non-motorized facility may be constructed within the adjacent road right-of-way or easement provided that sufficient width exists to safely accommodate it. Additional right-of-way or easement shall be provided across the frontage of the subdivision if the adjacent street contains insufficient right-of-way or easement width to safely accommodate the facility.

3.4.9.3 General Design Standards

A. Continuous Access

Non-motorized transportation facilities shall be continuous and provide access to all lots within the subdivision and, where applicable, provide safe access to bus stops, schools, playgrounds, shopping areas, parks, common areas, or open space.

B. ADA

Non-motorized facilities shall be constructed to comply the Americans with Disabilities Act.

C. Raised Surface

When necessary to ensure pedestrian safety as determined by the Public Works Director, non-motorized facilities shall be raised a minimum of 6 inches above the grade of streets, drives, parking lots, and other paved areas or shall be constructed of a material, striping, or colors that are different from the adjacent pavement.

**TABLE 3.4.9.4
NON-MOTORIZED STANDARDS
IN THE URBAN AREA AND MAJOR SUBDIVISIONS IN THE RURAL AREA***

Designation Density* or Total Lots/Units	Boulevard Sidewalk		Bike Lane	Trail	
	Sidewalk Width	Boulevard Width	Lane Width	Width	Vertical Clearance
Rural: Minor Subdivision	N/A	N/A	N/A	N/A	N/A
Rural: Major Subdivision, or Urban: Less than 8/acre**	8' on 1 side or 5' on both sides	7' ¹	N/A	10' ²	8' 6"
Urban: 8/acre or greater and fewer than 40 lots/units proposed **	5' on both sides	7' ¹	N/A	10' ²	8' 6"
Urban: 8/acre or greater and 40 – 199 lots/units proposed	5' on both sides	10' ¹	6'	10' ²	8' 6"
Urban: 8/acre or greater and 200+ lots/units proposed	5' on both sides	10' ¹	6'	10' ²	8' 6"
Rural: Commercial/Industrial Minor or Major Subdivision	8' on 1 side or 5' on both sides	7' ¹	N/A	10' ²	8' 6"
Urban: Commercial/Industrial Minor or Major Subdivision	5' on both sides	7' ¹	N/A	10' ²	8' 6"

Notes to Accompany Table:

1. See Section 3.4.9.4.B, Boulevard Elimination, for criteria for eliminating the boulevard.

2. Trail widths will be reviewed per AASHTO Guideline standards.

* Refer to Appendix A, Urban Area, to determine whether a site is in the Urban Area.

** See Sections 3.4.9.1, Urban Area Requirements and 3.4.9.2, Rural Area Requirements for locations of required facilities and for exceptions when the zoning density conflicts with the land use designation.

3.4.9.4 Sidewalk Standards

A. Dimensional Standards

Sidewalks, bike lanes, and trails required by these regulations shall be constructed in compliance with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards* and *Section 10, Sidewalks and Non-motorized Facilities*, of the Missoula County Public Works Manual, as amended.

B. Boulevard Elimination

The Board of County Commissioners may eliminate the boulevard to allow a sidewalk adjacent to a curb when the modification satisfies one of the criteria below.

1. Avoids significant impacts from hillside development or cuts and fills of the natural grade; or,
2. Allows a better design or circulation pattern than could be achieved with a regularly dimensioned boulevard; or,
3. Avoids impacting the sidewalk or trees planted along the street with snow storage; or,
4. Provides an area along the outer edge of the easement or right-of-way for an essential storm drainage facility or swale.

C. Wider Sidewalk

If the Board of County Commissioners approves the elimination of the boulevard to allow a sidewalk attached to the curb based on one of the criteria of this section, the Board shall require sidewalks adjacent to streets classified as collectors or arterials to be at least 7 feet wide to maintain pedestrian safety.

D. Boulevard Landscaping, Swale

1. When approved as part of a stormwater management plan, a drainage swale may be located in the required boulevard.
2. When not needed for a drainage swale, the boulevard between the sidewalk and curb shall be planted with grass and shade trees. Shade trees shall be planted an average of 30 feet on center or less to allow smaller species closer together and located to receive a sufficient but not an excessive amount of water.

E. Materials

Sidewalks shall be constructed of concrete unless an alternative material is approved to be consistent with the subdivision design, an overall development plan, or the Missoula Active Transportation Plan.

3.4.9.5 Trail Construction Standards

Required trails shall comply with the dimensional standards in *Table 3.4.9.4, Non-Motorized Standards* and be constructed with a concrete or an asphalt surface or a comparable surface material that is durable, maintainable, and usable in year-round weather conditions.

3.5 Fire Suppression

3.5.1 Purpose and Intent

The purpose and intent of this section is to ensure that planning for new subdivisions considers the real dangers of structure fires, incorporates design features that minimize the risk to life and property from fires, and provides an adequate system for fire suppression. As this section addresses fires that start within structures and their suppression, other relevant sections of these regulations should be consulted to address the risk from fires that start outside of structures.

3.5.2 Fire Suppression Plan

An application and preliminary plat/plan for a proposed subdivision shall include a fire suppression plan that, at a minimum, designates a water source for fire suppression, ensures functional access for fire apparatus to each lot, and establishes an ongoing program for any required maintenance or inspections.

Info Box

See NFPA 1142 for additional requirements that may exceed the standards of these regulations.

3.5.3 Water Source

A subdivision shall contain at least one of the following water sources for fire suppression:

3.5.3.1 Municipal System

Connection to a municipal or community water system that provides the minimum fire flow per National Fire Protection Association (NFPA) 1142.

3.5.3.2 Storage and Hydrants

Water storage tank or cistern with attached fire hydrants provided the tank/cistern is the minimum size for the proposed use per NFPA 1142.

3.5.3.3 Rivers, Ponds

Ponds, rivers, or streams with accessible hydrants that can produce an uninterrupted minimum flow as specified by NFPA 1142. The water source shall provide the minimum flow on a year-round basis as determined by a professional engineer, hydrologist, or similarly qualified person licensed or registered to practice in Montana.

3.5.3.4 Sprinklers

Fire sprinkler systems that comply with NFPA 1142, 13, and/or 13D, as applicable. The sprinkler plans shall be certified by a fire protection engineer with a NICET Level 3 certification and licensed to practice in Montana. Sprinkler

plans shall be reviewed for approval under the County Land Use Zoning Compliance Permitting System.

3.5.4 Location

When a storage tank/cistern or natural water source provides water for fire suppression, the subdivision common area shall encompass the water source or an easement shall be recorded that allows the source to be used for fire suppression and be accessed, maintained, and repaired.

Info Box
When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement's validity.

3.5.5 Access to Water

Legal access in a form acceptable to the County Attorney and year-round physical access shall be provided to the water supply.

3.5.5.1 Width, Pull Outs

Access to the fire-fighting water source shall be of sufficient width to allow fire apparatus to pass vehicles or pull-outs separate from travel lanes shall be required to allow vehicles to pull out of the way of fire apparatus.

3.5.5.2 Access to Hydrants

The legal and physical access shall accommodate the required fire hydrant and a parking area for the fire apparatus that will connect to the hydrant. The parking area shall be at least 60 feet long, 12 feet wide, and allow traffic to pass the parked fire apparatus.

3.5.6 Maintenance Agreement

A maintenance agreement shall be required that ensures the developer will maintain the water source and the accesses to it until a Homeowners' Association or a similar organization is capable of assuming the maintenance responsibility. The maintenance agreement shall comply with requirements in *Appendix B, Maintenance Agreements*.

3.5.7 Access to Individual Lots

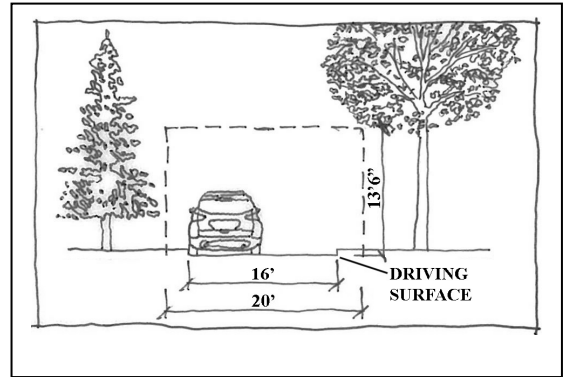
A subdivision shall provide accesses to each individual lot that complies with the standards of this section. Driving widths and standards may vary based on the requirements of the reviewing fire jurisdiction.

3.5.7.1 Minimum Width

The minimum drivable width of 16 feet shall be provided for driveways longer than 150 feet. However, if the driveway contains straight segments with clear lines of sight, the width may be reduced to 12 feet. Pull-outs separate from the travel lane may be required when necessary to allow fire apparatus to pass vehicles.

3.5.7.2 Vertical, Horizontal Clearance

In addition to the drivable width, accesses to individual lots shall provide an unobstructed vertical clearance of 13.5 feet and horizontal clearance of 20 feet.



3.5.7.3 Fire Apparatus

The individual lot access shall allow fire apparatus to park within 150 feet of all parts of the buildings on the lot. If the driveway to a lot is longer than 150 feet, a turn-around for fire apparatus shall be provided on the lot. The turn-around shall be a cul-de-sac, T-type, or branch design. The dimensions of the turn-around shall comply with designs in the Missoula County Public Works Manual, *Appendix A, Exhibit MSCD #200*, as amended.

3.5.7.4 Sub-grade

Drivable surfaces and shoulders shall include a stabilized sub-grade with all-weather surface sufficient to support emergency vehicles.

3.5.8 Subdivision Access

Major subdivisions in the Wildland Urban Interface area shall have more than one access route providing ingress and egress to the subdivision that complies with the following standards:

3.5.8.1 Escape Route

The two accesses shall be located so as to provide a legitimate alternative escape route from the subdivision in the event one access is blocked during a fire.

3.5.8.2 Legal Access

Legal access shall be provided by an established public road or a perpetual access easement. An easement shall be in a legally sufficient form acceptable to the County Attorney. When a required easement is unavailable at the time of submittal of a subdivision application, the application shall include a description of how the easement will be obtained prior to the filing of the final plat.

Info Box

When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement's validity.

3.5.8.3 Physical Access

Physical access for motorized vehicles shall be provided in accordance with the design standards of these regulations.

3.5.9 Notification

Notes shall be placed on the supplemental or Conditions of Approval sheets, and when applicable, provisions shall be included in the Conditions, Covenants, and Restrictions or Homeowners’ Documents and purchase and sales agreements that notify future owners of the following obligations and responsibilities:

3.5.9.1 Sprinklers

The requirement that fire sprinklers shall be provided in single family residences, when applicable; and,

3.5.9.2 Maintenance

A maintenance agreement approved by the authority having jurisdiction that details the ongoing maintenance and inspection responsibilities and costs for future lot owners. The agreement shall comply with the requirements in *Appendix B, Maintenance Agreements*.

3.5.10 Fire District Review

Review and approval by the fire district having jurisdiction or the designated county agent is required for the fire suppression water source, access to the water source, and accesses to the individual lots.

3.5.10.1 Annexation

Subdivisions not within a fire district or fire protection area shall annex into the appropriate fire district or fire protection area prior to final plat approval.

3.5.10.2 Response

Subdivisions not able to annex into a fire district or fire protection area shall provide evidence of structure fire response from an organized fire district or emergency services entity.

3.5.11 RSID/SID Waiver

If no community or municipal water system with the required minimum fire flow is provided, an RSID/SID waiver statement shall be required stating that at such time a community or municipal water system is available the property owner shall be required to participate in the RSID/SID. This waiver shall comply with the requirements of *Section 6.4.5.4.B, Waive Protest*.

Info Box
Check with the authority having jurisdiction for the subdivision for testing requirements and specifications for connection devices to fire hydrants, storage tanks, and other facilities. The Planning Office may be contacted to confirm the authority having jurisdiction.

3.6 Potable Water and Wastewater

3.6.1 Purpose and Intent

The purpose and intent of this section is to ensure subdivisions are designed to protect the health and safety of the future occupants of the subdivision without negatively impacting neighboring land or natural resources. This section ensures subdivisions include water systems that provide a sufficient quantity and quality of safe drinking water and well-planned wastewater systems.

3.6.2 Potable Water Required

All subdivisions shall provide a system for potable water pursuant to the standards of this section.

3.6.2.1 Adequate Source

For all subdivisions, the subdivision application and preliminary plat/plan shall demonstrate a dependable water source that provides water of acceptable quality and sufficient quantity for the subdivision.

3.6.2.2 DEQ Standards

In subdivisions containing one or more lots smaller than 20 acres and all lots containing condominiums or more than one site for RVs or mobile homes, the water supply system shall meet the minimum standards of, and be subject to approval by, the Montana Department of Environmental Quality as required by MCA, Title 76, Chapter 4, and all applicable state regulations, unless exempt from review under MCA, Title 76, Chapter 4.

3.6.2.3 Missoula Public Health Department Approval

Before final plat approval, the means for water supply must have approval by the Missoula Public Health Department and shall comply with all applicable local regulations specifically including the Missoula Public Health Code, Regulation 1 and 5, as amended, and ARM 17.36.331 and 17.36.332, regarding the quality and quantity of water.

3.6.2.4 Individual Wells

If private wells are proposed for individual lots, the layout of the lots shall include a well isolation zone with a 100-foot radius around the well. The isolation zone shall not extend onto adjoining property without the written approval of the owner of the adjoining land.

3.6.2.5 Water Rights

For any new water source, the subdivision application and/or preliminary plat/plan shall include either proof of a water right, as defined in §85-2-102(32), MCA or a letter from the Department of Natural Resources and Conservation stating that the water supply is exempt from water rights permitting requirements.

3.6.3 Wastewater System Required

All subdivisions shall provide a wastewater disposal system pursuant to the standards of this section.

3.6.3.1 Septic Systems

Each lot that is 20 acres or larger for which a septic system is proposed shall have sufficient room for at least one system and a replacement drain field.

3.6.3.2 DEQ Approval

For lots smaller than 20 acres and all subdivisions containing condominiums or more than one site for RVs or mobile homes, the sewage disposal systems shall meet the minimum standards of, and be subject to approval by, the Montana Department of Environmental Quality as required by MCA, Title 76, Chapter 4, and all applicable state regulations.

3.6.3.3 Missoula Public Health Department Approval

Before final plat approval, the means for wastewater disposal must have approval by the Missoula Public Health Department and shall comply with all applicable local regulations specifically including the Missoula Public Health Code, Regulation 1 and 5, as amended.

3.6.4 Easements

If the water source and/or wastewater disposal system is not provided on the individual lots, easements shall be recorded that allow each lot to connect to the water source and/or wastewater disposal system. The easements shall be at least 20 feet wide and allow the water source and/or means of waste disposal, delivery and/or collection pipes, pumps, and related equipment, and maintenance and repair of the water and/or wastewater system.

Info Box
When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement’s validity.

3.6.5 Connect to Public System

A proposed subdivision shall connect to a public water system or wastewater system if any part of the subdivision boundary is within 500 feet of a public system, provided the system has sufficient capacity to serve the subdivision and the managing entity of the system approves the connection, and further provided the Montana Department of Environmental Quality has not waived this requirement pursuant to ARM 17.36.328.

3.6.6 Public Service Commission

The subdivider shall provide a statement from the Montana Public Service Commission (PSC) indicating whether the water or wastewater system is subject to PSC jurisdiction.

3.6.7 Submit Comments

As part of the subdivider’s application for approval of the water and/or wastewater disposal system, the subdivider shall forward the public comments or the summary of

comments provided by the governing body pursuant to *Section 5.8.15.9, Water, Wastewater Public Comment*.

3.6.7.1 Lot Smaller than 20 Acres, Containing Condos, or RV or Mobile Home Sites

Comments shall be forwarded to the reviewing authority provided in MCA, Title 76, Chapter 4, for subdivisions that will create one or more parcels smaller than 20 acres or parcels containing condominiums or multiple sites for RVs or mobile homes; and,

3.6.7.2 Lot 20 Acres or Greater

Comments shall be forwarded to the Missoula Public Health Department for subdivisions that will create one or more parcels containing 20 acres or greater but less than 160 acres.

Info Box

Montana DEQ administers requirements for stormwater management on lots smaller than 20 acres, MCA 76, Chapter 4, Part 1.

3.6.8 Notification

Notes shall be placed on the supplemental or Conditions of Approval sheets, and when applicable, provisions shall be included in the Conditions, Covenants and Restrictions or Homeowners' Documents and purchase and sales agreements, that notify future owners of the following obligations and responsibilities:

3.6.8.1 Permits

A permit shall be obtained from the Missoula Public Health Department to install a well or septic system on an individual lot;

3.6.8.2 Costs

Any cost-sharing requirements for shared or multiple-user systems that have not yet been constructed; and,

3.6.8.3 Maintenance

A maintenance agreement for any shared or multiple-user system, which is approved by the Montana Department of Environmental Quality and Missoula Public Health Department, and which details any ongoing maintenance responsibilities and costs for future lot owners. This agreement shall comply with the requirements in *Appendix B, Maintenance Agreements*.

3.6.9 Decision

The governing body may conditionally approve or deny a proposed subdivision application based on water and wastewater concerns only if the conditional approval or denial is based on existing subdivision, zoning, floodplain, or other regulations that the governing body has the authority to enforce.

3.7 Stormwater Management, Grading, and Erosion Control

3.7.1 Purpose and Intent

The purpose and intent of this section is to ensure subdivisions are designed to protect natural features of the land and minimize negative impacts on future inhabitants of the subdivision and neighboring developments. This section establishes minimum standards to manage stormwater runoff, minimize erosion, and promote proper grading practices.

3.7.2 Plans and Reports Required

3.7.2.1 Grading and Drainage

A grading and drainage plan shall be submitted demonstrating compliance with the standards for stormwater management, grading and erosion control of these regulations, and *Section 9, Storm Drainage*, of the Missoula Public Works Manual, as amended. The plan must be reviewed for compliance with this section and the Public Works Manual and approved, approved with conditions, or denied by the Public Works Director.

3.7.2.2 Geotechnical Report

If the proposed subdivision contains areas of 25% grade or steeper that are not designated as no-build areas, the subdivision application and preliminary plat/plan shall contain a geotechnical report pursuant to *Section 7.6.3, Slope Analysis*.

3.7.3 Preserve Natural Drainage Ways

Natural drainage ways shall be preserved except for necessary road and utility crossings. These crossings shall be designed and constructed to preserve the capacity of the drainage way.

3.7.4 100-Year Event

The stormwater management system shall be designed to detain/retain a 100-year, 24-hour rain storm using the SCS Type 2 Rainfall Distribution data.

3.7.5 Post-Development Runoff Rate

Post-development runoff rate from the property shall not exceed the pre-development runoff rate.

3.7.6 Extend Storm Drain System

If the proposed subdivision will result in runoff from the site and an off-site storm drainage system exists, the on-site storm drainage system shall be connected to the existing off-site storm drainage system if the connection can be made within 500 feet, provided the off-site system has the capacity to accommodate the runoff and the managing entity of the system approves the connection.

3.7.7 Timing of Installation

Stormwater facilities shall be installed prior to or concurrent with any other subdivision improvements.

3.7.8 Easements

3.7.8.1 Stormwater

When proposed stormwater facilities will not be located in public rights-of-way or road easements, the governing body shall require the subdivider to grant easements that provide for the installation and maintenance of drainage facilities. Easements shall be provided in locations approved by the governing body and shall be sufficiently wide to achieve the above stated purpose but in no case shall they be less than 20 feet wide.

Info Box
When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement’s validity.

3.7.8.2 Cuts and Fills

The governing body shall require easements to allow cuts and fills that extend outside of a road easement or right-of-way.

3.7.9 Maintenance

A maintenance agreement shall be required that ensures the developer will maintain stormwater easements and drainage ways until a Homeowners’ Association or a similar organization is capable of assuming the maintenance responsibility. The subdivider shall obtain approval by the Montana Department of Environmental Quality for lots smaller than 20 acres and Missoula County Public Works Department that details the ongoing maintenance responsibilities and costs for future lot owners. The maintenance agreement shall comply with requirements in *Appendix B, Maintenance Agreements*.

Info Box
Several permits may be required prior to filing the final plat or commencing construction. Contact the Montana DEQ, Water Protection Bureau for information on discharge permits for stormwater if more than 1 acre disturbed, construction dewatering, and wastewater impoundments or conveyances.

3.7.10 Graded Areas

The subdivision application and preliminary plat/plan shall show proposed cut and fill areas. Graded areas shall not result in slopes steeper than 3:1 (horizontal to vertical) unless an engineer licensed to practice in the State of Montana certifies that the slope will be stable and suitable for revegetation.

3.7.11 Erosion Control

All stormwater facilities and graded areas shall be protected from erosion or silt deposition and seeded to reestablish beneficial vegetation. A revegetation plan shall be

required pursuant to *Section 17, Seeding and Weed Management*, of the Missoula County Public Works Manual, as amended.

3.7.12 Notification

Notes shall be placed on the final supplemental or Conditions of Approval sheets, and when applicable, provisions shall be included in the Conditions, Covenants and Restrictions or Homeowners' Documents and purchase and sales agreements, that notify future owners of the following obligations and responsibilities:

3.7.12.1 Maintenance: Maintaining stormwater systems or minimizing erosion control.

3.7.12.2 Grading: Obtaining grading permits prior to developing or altering a building site.

3.7.12.3 Revegetation: Replanting areas of disturbance no later than the first growing season after the ground disturbance to prevent erosion and weed invasion.

3.8 Utilities

3.8.1 Purpose and Intent

The purpose and intent of this section is to ensure new subdivisions are designed to coordinate the provision of utilities in safe locations that minimize adverse visual impacts while also meeting the needs of the service providers.

3.8.2 Definition

For the purposes of this section, utilities shall mean electricity, gas, and telecommunications, which include telephone, internet, cable television, and similar services.

3.8.3 Easements Required

Easements shall be provided for utilities in locations approved by the governing body and the applicable utility companies. Off-site easements also shall be obtained by the subdivider when necessary to extend existing utilities to the proposed subdivision. The easements shall contain sufficient width to allow the physical placement of the utilities, any minimum distances that may be required between utilities when more than one utility is co-located in the same easement, and the unobstructed use and maintenance of the utilities. The easement shall be at least 20 feet wide.

Info Box

When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement's validity.

3.8.4 Location

Easements shall be located along roads or alleys to the maximum extent practical, and when necessary may be centered on common boundaries of adjoining lots.

3.8.4.1 Existing Utilities

The actual locations of any existing utilities on the land to be subdivided shall be shown on the preliminary plat.

3.8.4.2 Co-location Plan

The subdivider shall illustrate the plan for any co-location of utilities in the same easement.

3.8.5 Underground

All public and private utilities shall be placed underground at the expense of the utility and/or subdivider when technically and economically feasible.

3.8.5.1 Technically Feasible

As used in this section, “technically feasible” means the trench through which the underground lines would run can be excavated by a conventional backhoe or trencher, with no blasting and with minimal use of jack hammers or similar equipment.

3.8.5.2 Economically Feasible

As used in this section, “economically feasible” means the underground installation cost per lot does not exceed twice the overhead installation cost per lot.

3.8.6 Stubs to Property Line

Any utility that will be installed under a paved road shall be stubbed to the edge of the road easement or right-of-way to minimize future disturbance of the pavement.

3.8.7 Easements on Plats

The subdivider shall show on the preliminary plat and dedicate on the final plat all utility easements. Unless otherwise provided under a separate filed easement, the plat shall specify the purposes of the easements and any restrictions on the use of the easements by lot owners.

Info Box
<p>The Missoula County Public Works Manual requires permits to excavate in public rights-of-way and construction specifications for utility installation.</p> <p>http://tinyurl.com/CountyPublicWorksManual</p>

3.9 Solid Waste Disposal

3.9.1 Purpose and Intent

The purpose and intent of this section is to ensure that solid waste disposal services that protect groundwater and the public health and safety are available to the occupants of new subdivisions.

3.9.2 Solid Waste Disposal Required

All subdivisions shall have a system for solid waste disposal pursuant to this section.

3.9.3 DEQ Standards

Solid waste systems shall meet the minimum standards of the Montana Department of Environmental Quality (DEQ) per ARM 17.36.309, and any other applicable state

regulations. For subdivisions with at least one lot smaller than 20 acres, the solid waste disposal plan requires approval by the DEQ.

3.9.4 Missoula City-County Health Department approval

Solid waste disposal systems shall meet applicable local regulations including the Missoula Public Health Code Regulations 3, as amended.

3.9.5 Collection Area

If the plan for solid waste disposal includes a common permanent collection site, the site shall, if practical, not front a road and shall be screened as viewed from any road.

3.9.6 Wildlife

In areas of high bear activity, solid waste shall be kept indoors until the pickup day or stored in bear-proof containers.

3.9.7 Notification

Notes shall be placed on the supplemental or Conditions of Approval sheets, and when applicable, provisions shall be included in the Conditions, Covenants, and Restrictions or homeowners' documents and purchase and sales agreements, that notify future owners of the following obligations and responsibilities:

3.9.7.1 Permits

Permits shall be obtained from the Missoula Public Health Department prior to installing facilities such as collective or commercial solid waste containers;

3.9.7.2 Cost Sharing

Any cost-sharing requirements for a common collection site or multiple-user system that has not yet been constructed; and,

3.9.7.3 Maintenance

A maintenance agreement established pursuant to *Appendix B, Maintenance Agreements*, to maintain any common collection site or multiple-user system.

3.10 Parks and Open Space

3.10.1 Purpose and Intent

This section requires park land dedication for the following purposes and intent:

3.10.1.1 Preserve Natural Environment

Preserve and protect as open space, wildlife habitat, species of special concern and their habitat, agricultural uses, historical and cultural features, scenic views, natural drainage areas and systems, and other desirable features of the natural environment, such as healthy long-lived trees, topography, significant plant communities, ground and surface water, wetlands, and riparian areas.

3.10.1.2 Passive Recreation

Provide open space areas for passive recreation.

3.10.1.3 Active Recreation

Provide active recreational areas for use by residents of the development and, where specified, the larger community.

3.10.1.4 Implement Goals

Meet the goals of the Missoula County Open Space Plan, the Active Transportation Plan, the Missoula County Parks and Trails Plan, the 2004 Master Parks and Recreation Plan for the Greater Missoula Area, and the Missoula County Pathways and Trails Plan.

3.10.1.5 Social Interaction

Provide areas for social interaction and livability.

3.10.1.6 Accessible, Functional

Arrange open space to be accessible and functional for use by the residents of the development and where specified, the larger community.

3.10.1.7 Buffer Sensitive Areas

Protect sensitive environmental features and natural areas by providing landscape buffers within open space areas.

3.10.2 Park Dedication Required

In all subdivisions not exempted in *Section 3.10.3, Parkland Exemptions*, land area shall be either dedicated or set aside for parks, trails, open space lands, or common area held by the property owners where lots or dwelling units are leased or rented, a property owners' association, a land conservation entity, or governing body.

3.10.2.1 Perpetual Use and Stewardship

Lands set aside as common area rather than dedicated to a governing body may not experience a change of use without the approval of the governing body and the property owners where lots or dwelling units are leased or rented or entities in whose name the title to the property is held. When parkland dedicated pursuant to this section is held by an entity other than a governing body, covenants, or other legal instruments must be submitted with the preliminary plat application and finalized at the time of final plat that ensures the long-term public benefit and stewardship of the land.

3.10.2.2 Wildland Urban Interface

In areas of WUI, consideration should be given to the use of open spaces and public use areas, such as parks, recreation sites, picnic areas, and trails as an effective means of providing fire protection through fuel breaks and fire protection greenbelts. A mechanism shall be provided by the subdivider to ensure continued maintenance of these areas. The use of areas for these purposes shall be balanced against the need to maintain riparian areas and habitat for species of special concern.

3.10.3 Parkland Exemptions

Parkland is not required for the following subdivisions:

3.10.3.1 Minor Subdivisions

3.10.3.2 Larger Than 5 Acres

Land proposed for subdivision into parcels larger than 5 acres.

3.10.3.3 Non-residential

Subdivision into parcels which are all non-residential.

3.10.3.4 No Lots Created

A subdivision in which lots are not created; except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums.

3.10.3.5 One Additional Parcel

A subdivision in which only one additional parcel is created.

3.10.4 Requirements Based on Acreage

Parkland dedication shall be based on the net acreage of the subdivision. Except as provided in this section, a subdivider shall dedicate to the county land or cash equal to the following:

3.10.4.1 One-half Acre or Smaller

11% of the area of the land proposed to be subdivided into lots of ½-acre or smaller.

3.10.4.2 One-half to One Acre

7.5% of the area of the land proposed to be subdivided into lots larger than ½-acre and not larger than 1 acre.

3.10.4.3 One Acre to Three Acres

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

3.10.4.4 Three Acres to Five Acres

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

3.10.5 Alternative Methods of Compliance

Giving due weight to the expressed preference of the subdivider, the governing body may, in consultation with the County Parks, Trails, and Open Lands staff, determine whether the park dedication must be a land donation, a cash donation, or a combination of both.

3.10.5.1 Parkland Based on Density Requirements

A maximum of 0.03 acres per dwelling unit when all of the land proposed to be subdivided is in an area where density requirements have been adopted through the *Growth Policy, adopted pursuant to Title 76, Chapter 1, MCA*, or through county zoning, adopted pursuant to Title 76, Chapter 2, MCA. The park requirement under this section may be based upon the community need for parks, the development densities identified, and the need to accomplish affordable in-fill development.

3.10.5.2 Cash-In-Lieu

Cash donation in-lieu of land dedication shall be equal to the fair market value of the amount of land that would have been statutorily required to be dedicated. For the purpose of these regulations, the fair market value is the value of the unsubdivided, unimproved land based upon zoning designation that will apply to the proposed subdivision (*i.e.*, the existing zoning, if the subdivision application is not accompanied by a rezoning request).

A. Appraisal

Fair market value shall be determined by a Montana state-certified general real estate appraiser (as approved under MCA, §37-54-201, *et seq.*) hired and paid for by the subdivider, a copy of which shall be provided to the governing body for calculating the cash-in-lieu donation prior to final plat approval. For purposes of this regulation, appraisals are valid if prepared within 1 year of the date of the governing body's preliminary plat approval.

B. Combination Cash, Land

When the park requirement is satisfied using a combination of land dedication and cash donation, the amount of cash donated may not exceed the proportional amount of value in the land not covered by the land dedication.

3.10.5.3 School Land Dedication

A subdivider may donate land to a school district to meet parkland dedication requirements of the MSPA. Such a donation must be accepted by the school district and authorized by the Board of County Commissioners.

3.10.5.4 Waiver

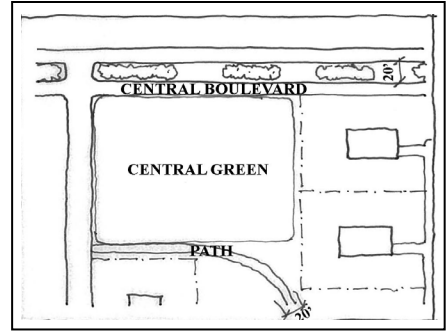
The governing body may waive the park dedication requirement if it finds the proposed plat provides long-term protection of critical wildlife habitat, or cultural, historical, and natural resources, or agricultural resources, or aesthetic values which also results in the reduction of the area proposed to be subdivided by an amount equal to or exceeding the area of dedication required by this section.

3.10.6 Park Locations

The governing body, in consultation with the subdivider and the parks and trails advisory committee, may determine suitable locations for park land.

3.10.7 Park Design Standards

Parks, open space, and common area dedication shall meet at least one of the following criteria and in addition meet the purpose and intent of section 3.10.1 and the goals of applicable adopted local plans.

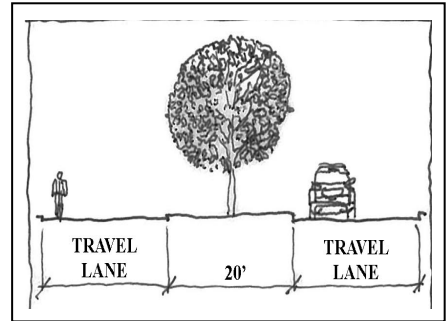


3.10.7.1 Central Green

A central green or square, which is bordered by streets or paths on at least 3 sides.

3.10.7.2 Preserve Amenity

The preservation of a physical amenity such as a meadow, a stand of trees, a wildlife corridor, a stream or other water body, an area of riparian resource, a hillside with slopes less than 25%, or some other natural feature. Lands set aside to preserve an amenity are limited to 50% of the required dedication. Applicants must demonstrate how the proposed preservation of the physical amenity meets the purpose and intent of this section as described in 3.10.1.



3.10.7.3 Active Recreation

A site for active recreation on slopes which average 3% or less. Grade standards will vary depending on the use proposed. Sites for active recreation must be adjacent to public streets on at least 50% of the park’s perimeter.

3.10.7.4 Ped/Bike Corridors

Pedestrian/bicycle greenway corridors shall count towards the required dedication if such corridor is determined to have primarily recreational or connectivity functions (up to 50% of the required dedication). The amount of dedication for greenway corridors shall be calculated by multiplying the easement width by the linear feet of the greenway corridor.

3.10.7.5 Courtyard

Courtyard, provided the courtyard shall be part of a common area dedicated to a private homeowner’s association.

3.10.7.6 Other Designs

Other parks, open space, or common area designs that meet the intent of this section and meet the goals of adopted neighborhood parks, open space, and area plans.

Info Box

Projects within the Missoula portion of the urban area are reviewed by both the Missoula County Parks Trails and Open Lands Program and Missoula City Parks and Recreation Department.

3.10.7.7 Stormwater Facilities Excluded

Stormwater retention or detention ponds that are designed to hold stormwater run-off from less than 100-year events shall not count towards the required dedication.

3.10.7.8 Parking Excluded

Parking areas for more than 5 cars and road rights-of-way which are located within the open space area, shall not count towards the minimum required open space, unless the parking is provided for the utilization of the open space.

3.10.8 Park Design Standards

The following should be considered:

3.10.8.1 Accessibility

Include, where appropriate, open space intended for recreational or public use that is easily accessible to pedestrians and meets the needs of people with disabilities and the elderly.

3.10.8.2 Natural State

Open space shall remain substantially in a natural state when it has been dedicated for preservation or conservation purposes. This section shall not restrict or prevent public trail connections using open space designations if deemed appropriate by the governing body.

3.10.8.3 Paths, Trails

Include linear parks to serve as pedestrian paths or trail systems.

3.10.8.4 Street Connection

Provide as part of the required parkland a minimum 20-foot-wide pedestrian access easements to parkland or common area from each public street that borders the parkland or common area. The governing body may require that the developer construct a trail leading into the park or common area. Pedestrian access easements on a hillside may require additional width to accommodate switchbacks for trails, etc.

Info Box
When creating an easement, Missoula County recommends consulting with legal counsel to ensure the easement’s validity.

3.10.8.5 Setbacks

Setbacks for structures and fences adjacent to the access easement shall be a minimum of 10 feet.

3.10.9 Trail Construction Standards: Parks and Common Areas

All trails within required or proposed parks and common areas shall comply with the standards in *Table 3.10.9, Trail Standards*.

TABLE 3.10.9 TRAIL STANDARDS			
	Class I Core Trail Network	Class II Neighborhood Connector	Class III Low Impact Trail
Easement Width Adjacent to Roads	10	10	N/A
Trail Easement Width ¹	20	20	20
Improved Surface ²	8 – 10 ft.	6 – 8 ft.	3 – 5 ft.
Vertical Clearance ³	8 ft. 6 in.	8 ft. 6 in.	8 ft. 6 in.
Recommended Surfaces	Asphalt, Concrete, Crushed Rock	Asphalt, Concrete, Crushed Rock	Asphalt, Concrete, Crushed Rock
Resting & Passing Space ⁴	400 ft.	600 ft.	at Trail Head
<p>Notes to Accompany Table</p> <p>¹ Hillsides may require additional width to accommodate switchbacks for trails.</p> <p>² In addition to the improved surface, a minimum of two-foot unobstructed clear space is required for safety purposes.</p> <p>³ Where equestrian users are expected, a minimum vertical clearance of 9’6” shall be used.</p> <p>⁴ Resting and passing spaces may not be necessary if the trail is limited exclusively to pedestrian use and is located in steep slopes or in areas where delicate vegetation merges onto the trail or where erosive soil conditions are present. Resting and passing space locations shall be determined by the County Parks Staff and/or the Planning Office and approved by the governing body.</p>			

CHAPTER 4

SPECIFIC STANDARDS

FOR CERTAIN SUBDIVISIONS

4.1 General

4.2 Planned Unit Development

4.3 Condominiums

4.4 Mobile Home, RV Parks

4.1 General

Missoula County contains a variety of landscapes and physical characteristics that justify site-specific flexibility in subdivision designs. Additionally, certain types of subdivisions require standards that address their special characteristics. The purpose and intent of this chapter is to enable site-specific flexibility and accommodate specific types of subdivisions. The standards in this chapter apply in addition to the general requirements in other chapters of these regulations, except when standards contradict. The more specific standard of this chapter shall govern when it contradicts a more general provision in another chapter.

4.2 Planned Unit Development

4.2.1 Purpose and Intent

The intent of this section is to encourage creative subdivision designs that are superior to the designs typically produced under these regulations. Flexibility in certain standards is provided in this section to promote mixed land uses, and clustered designs that better respond to natural site characteristics, reduce infrastructure costs, and accommodate common areas. This flexibility, however, is not intended to compromise public health and safety.

4.2.2 Qualification as a PUD Application

Before a subdivider can propose a preliminary plat/plan in accordance with this section, the Planning Office shall determine that the proposal qualifies as a PUD application.

4.2.2.1 No Guarantee

A Planning Office determination only allows the subdivision to be proposed as a PUD and does not ensure approval by the governing body.

4.2.2.2 Criteria for PUD

Based upon information submitted pursuant to *Section 4.2.3, Submittal Requirements*, the Planning Office shall determine whether the flexibility allowed in this section can reasonably lead to a design that is superior to designs allowed under the general standards of these regulations. The flexibility accomplishes a superior design when it leads to meeting at least 3 of the following criteria:

- A. Natural Resources**
Preservation of the natural characteristics of the land, including but not limited to landforms, vegetation, agricultural land, riparian resources, wildlife habitat, and streams or other bodies of water.
- B. Efficient Infrastructure**
Economical development and maintenance of streets and other public improvements.
- C. Historic, Cultural Resources**
Protection of important historic or cultural sites or structures.
- D. Dedication of Common Areas**
Dedication of common area that exceeds the minimum parkland requirements of these regulations and the basic needs of the development while providing a desired neighborhood or community benefit.
- E. Development of the Common Area for Recreational and Open Space Purposes**
Development of common areas for recreational and/or open space purposes that exceeds the minimum parkland requirements of *Section 3.10.7, Park Design Standards*.

4.2.3 Submittal Requirements

To request the opportunity to submit a PUD application, the subdivider shall provide the Planning Office with the following:

4.2.3.1 Written Request

Written request that the proposed subdivision be reviewed as a PUD including responses to the criteria in *Section 4.2.2.2, Criteria for a PUD*.

4.2.3.2 Sketch Plan

A sketch plan of the proposed subdivision containing all information requested in *Section 7.2, Preapplication Submittal Items*.

4.2.3.3 Common Areas

A description of open space, recreational facilities, roads, and other common areas and facilities proposed for common ownership.

4.2.3.4 Ownership

A description of proposed ownership of common areas and facilities within the development.

4.2.3.5 Waivers

A description of proposed waivers pursuant to *Section 4.2.5, Waivers*.

4.2.3.6 Additional Information

Additional information that the Planning Office may reasonably require to evaluate the request.

4.2.4 Applicable Zoning

When a proposed PUD is in an area subject to zoning, the development must comply with the zoning regulations.

4.2.5 Waivers

When a proposed subdivision has been designated as a PUD, standards in the following sections may be modified or waived by the governing body pursuant to the criteria of *Section 4.2.6, Criteria for Waivers*.

3.3 *Lots and Blocks*; and,

3.4 *Transportation Standards*.

4.2.6 Criteria for Waivers

Modifications or waivers are permitted when the governing body finds the proposed PUD accomplishes at least 3 of the criteria in *Section 4.2.2.2, Criteria for PUD*, in a manner that is superior to a subdivision design under the general standards of these regulations.

4.3 Condominiums

4.3.1 Purpose and Intent

The purpose and intent of this section is to allow for the alternative form of ownership provided by condominium and townhome developments. This section defines the specific procedural steps and design standards that apply to condominium and townhome developments.

4.3.2 Reviewed as Subdivision

Condominium and townhouse developments not exempt pursuant to *Section 8.6.10, Condominiums, Townhouses, and Townhomes (§76-3-201, MCA)*, shall be reviewed as either a minor or major subdivision, and all standards and procedures of *Chapter 3, General Design Standards For All Subdivisions*, *Chapter 5, Procedures For Subdivision Review, Preliminary Plat, Variances, and Appeals*, and *Chapter 6, Final Plat and Subdivision Improvement Guarantees*, apply except preliminary and final site plans shall be submitted in lieu of preliminary and final plats when lots are not created.

4.3.3 Additional Design Standards

In addition to the applicable design standards in *Chapter 3, General Design Standards For All Subdivisions*, the governing body may require the following additional design features:

4.3.3.1 Residential Storage

Storage facilities on the property of a residential condominium/townhouse development for general storage or the parking of boats, trailers, and other vehicles. An off-site location may be approved to meet this requirement when proposed by the applicant.

4.3.3.2 Buffer

Landscaping or fencing buffer between the condominium/townhouse development and adjacent properties when a residential condominium/townhouse development abuts a single-family development, or a non-residential condominium/townhouse abuts a residential development.

4.3.4 Filing Site Plan

An approved final site plan, including any supplemental sheets and documents, shall be filed with the Clerk and Recorders office.

4.3.5 MCA

Condominium and townhouse developments shall comply with all provisions of the Unit Ownership Act, MCA, Title 70, Sections 23, Parts 1 – 6.

4.4 Mobile Home, RV Parks

4.4.1 Purpose and Intent

Mobile home (MH) parks add to the diversity of housing types and provide an affordable housing option. Recreational vehicle (RV) parks accommodate short-term lodging for travelers and guests. The purpose and intent of this section is to accommodate MH and RV parks while ensuring they are safe, functional, and compatible with neighboring properties.

Info Box

If the park developer owns multiple MH's on permanent foundations and leases or rents the MH's, the development may be subject to Buildings for Lease or Rent review.

4.4.2 Site Plan

All standards and procedures of *Chapter 5, Procedures For Subdivision Review, Preliminary Plat, Variances, and Appeals*, and *Chapter 6, Final Plat and Subdivision Improvement Guarantees*, apply to MH and RV park developments except preliminary and final site plans shall be submitted in lieu of preliminary and final plats.

Info Box

It is unlawful to operate a MH or RV park without the applicable license approved by the Montana DPHHS and validated by the Missoula Public Health Department.

4.4.3 Subsequent Subdivision

If an MH or RV park is initially approved with rental spaces and at a later date the park owner proposes to sell individual spaces, a subdivision application shall be submitted for review and approval by the Governing Body before any space can be sold or conveyed.

4.4.4 DPHHS, DEQ

4.4.4.1 Standards

MH and RV parks shall comply with the standards of the Montana Department of Public Health and Human Services (DPHHS) that pertain to layout, water systems, sewage systems, and solid waste disposal.

4.4.4.2 Health, DEQ Approvals

Ground disturbance shall not occur, nor development commence for an MH or RV park until the Montana DPHHS and the Montana Department of Environmental Quality have granted approvals.

4.4.5 Zoning

When an MH or RV Park is proposed for a location that is subject to zoning, the park shall comply with the applicable zoning regulations. This may require an MH park developer to obtain a mobile home park overlay zoning designation for the property. The detailed standards of an applicable zoning regulation shall apply in instances of contradiction between this section and the zoning regulation.

4.4.6 General Standards, MH and RV Parks

MH and RV Parks shall comply with the following standards in addition to the general standards in other chapters of these regulations:

4.4.6.1 Placement of Designated Spaces

Designated spaces for MHs and RVs shall be arranged to permit the safe and practical placement and removal of MHs and RVs.

4.4.6.2 Access, ROW

Designated spaces for MHs and RVs shall be provided safe and convenient vehicular access from abutting streets or roads that complies with the transportation standards of these regulations. Notwithstanding the required right-of-way in *Section 3.4.7, Road Design Standards*, dedicated road rights-of-way or easements may not be required within an MH or RV park.

4.4.6.3 Setbacks

A. Perimeter

Designated spaces for MHs and RVs shall be setback a minimum of 20 feet from the perimeter property boundary of the park.

B. Road

Designated spaces for MHs and RVs shall be setback a minimum of 20 feet from a road. Road setbacks shall be measured from the edge of the road easement or right-of-way. Where there is no easement for an internal park road, the setback shall be measured from the outer edge of the road shoulder.

C. Additions and Accessory Structures

Any addition or accessory structures such as an attached awning or freestanding building, shall comply with the setbacks.

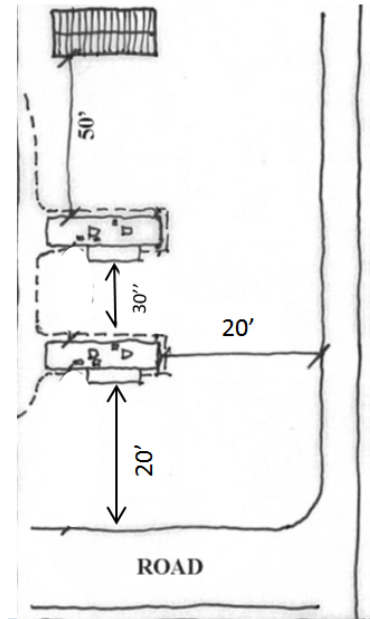
4.4.6.4 Separation

A. Designated MH and RV spaces

Designated spaces shall be located to maintain a minimum separation between mobile homes and between RVs of 30 feet. MH and RV spaces shall be separated from other structures, excluding accessory structures, by at least 50 feet.

B. Additions and Accessory Structures

Any addition such as an attached awning, shall comply with these separation requirements. Accessory structures shall be separated from MHs and RVs by at least 10 feet.



4.4.6.5 Visual Screen

A visual screen of natural vegetation or fencing shall be placed along the perimeter property line where the park abuts a neighboring development or an off-site road.

4.4.6.6 Parking

Each MH and RV space shall be large enough to accommodate at least one off-street parking space for the occupants.

4.4.6.7 Common Area, Recreation

MH and RV parks shall provide parkland equal to at least 1/9 of the area of the MH or RV park. The parkland shall comply with all other standards in *Section 3.10, Parks and Open Space*. Parkland may include community recreation buildings and facilities.

4.4.6.8 Specific Standards, MH Park Designated Spaces

Designated MH spaces shall meet the following standards:

A. Size

The size of each designated space shall be at least 3 times the total area projected to be occupied by the MH and any roofed accessory buildings and structures.

B. MH Pad

An individual pad at least 14 feet wide and 70 feet long shall be provided for each MH. Pads for doublewide MHs shall be at least 28 feet wide. These pads shall be installed by the park developer and constructed with at least 6 inches of crushed gravel over a stabilized sub-base of pit run gravel.

4.4.6.9 Boundary Markings

A survey is not required to define designated MH spaces but the corners of all spaces shall be identified with permanent ground markers prior to installation of the first MH in the park.

4.4.6.10 Storage

The governing body may require a common storage area be provided for boats, trailers, or other vehicles, which shall not be calculated as part of the required parkland. An off-site storage area may be approved if proposed by the park developer.

4.4.6.11 Guest Parking

If on-street parking is prohibited in the park, either as a rule by the park owner or a condition of approval, the governing body may require 1 paved guest parking space be provided for every 10 MH spaces.

4.4.6.12 Park Sign

A sign depicting the park layout shall be prominently located near the park entrance.

4.4.7 Park Rules

The park owner shall establish park rules that require a mobile home to be skirted and equipped with tie-downs within 60 days after a trailer is moved into the park. Tie-downs must comply with building codes.

4.4.8 Specific Standards, RV Parks

4.4.8.1 Surface Coverage

Exposed ground surfaces in RV spaces shall be paved, covered with stone or other solid material, or protected with a vegetative growth that is capable of preventing soil erosion and reducing dust.

4.4.8.2 Double Frontage

Notwithstanding the prohibition of through lots in *Section 3.3.2.4, No Through Lots*, designated RV spaces may be pull-through or double frontage spaces.

CHAPTER 5

PROCEDURES FOR

SUBDIVISION REVIEW, PRELIMINARY PLAT, VARIANCES, AND APPEALS

5.1	Purpose and Intent	5.8	General Procedures
5.2	Applicability	5.9	Adjustments to Preliminary Plats and Related Documents
5.3	Minor, Major Defined	5.10	Review Criteria, Special Restrictions on Decisions
5.4	Minor Subdivision Review	5.11	Variances
5.5	Administrative Minor Subdivision Review	5.12	Appeals of Administrative Decisions
5.6	Major Subdivision Review		
5.7	Subdivisions Proposed for Annexation		

5.1 Purpose and Intent

The purpose and intent of this chapter is to establish clear, consistent, and predictable procedures for administering these regulations. It is the further purpose and intent to require the minimum submittal requirements, early comment and collaboration regarding subdivision design concepts, and the shortest review procedures necessary to ensure applications comply with these regulations, and to provide the opportunity for all stakeholders to participate in transparent procedures.

5.2 Applicability

5.2.1 All Subdivisions

The review of all subdivisions and divisions of land not exempted in *Chapter 8, Divisions of Land Exempt From Review*, and all variances and appeals of administrative decisions related to these regulations shall comply with the procedures of this chapter.

5.2.2 Mobile Home and RV Parks

If a mobile home or recreational vehicle park is initially approved with rental spaces and at a later date, the park owner proposes to sell individual mobile home spaces or recreational vehicle spaces as lots, an application shall be resubmitted for review as a subdivision of land before any lot is offered for sale and all applicable requirements of these regulations shall apply.

5.2.3 Applicable Regulations

The review and approval, conditional approval, or denial of subdivisions and any related variances or administrative appeals shall be based on the regulations in effect at the time

a subdivision application and preliminary plat/plan is deemed to contain sufficient information for review.

5.2.4 Amended Regulations

If these regulations are amended prior to completion of the sufficiency review of a proposed subdivision, the determination of whether the application contains the required elements and sufficient information, and the review of the subdivision plat/plan and any related variance or administrative appeal, shall be based on the amended regulations.

5.3 Minor, Major Defined

5.3.1 Minor Subdivisions

Minor subdivisions, including condominiums, townhouses, mobile home and recreational vehicle parks, consist of five or fewer lots or units. Montana law identifies procedures for reviewing “first minor” and optional procedures for “subsequent minor” subdivisions. For the purpose of these regulations, all subdivisions creating 5 or fewer lots or units are considered to be and will be reviewed as minor subdivisions.

5.3.2 Minor Subdivisions, Administrative

A minor subdivision meeting the description of 5.3.1, *Minor Subdivisions* that also meets the applicability requirements of *Section 5.5.1 Administrative Minor Applicability* will be reviewed as an administrative minor subdivision.

5.3.3 Major Subdivisions

Major subdivisions, including condominiums, townhouses, mobile home and recreational vehicle parks, consist of 6 or more lots or units.

5.4 Minor Subdivision Review

5.4.1 Minor Subdivision Procedure

The review of minor subdivisions as defined in *Section 5.3.1, Minor Subdivisions*, including condominiums, mobile home and recreational vehicle parks shall include the steps listed below. (See flow diagram below for Minor Subdivision Procedure.)

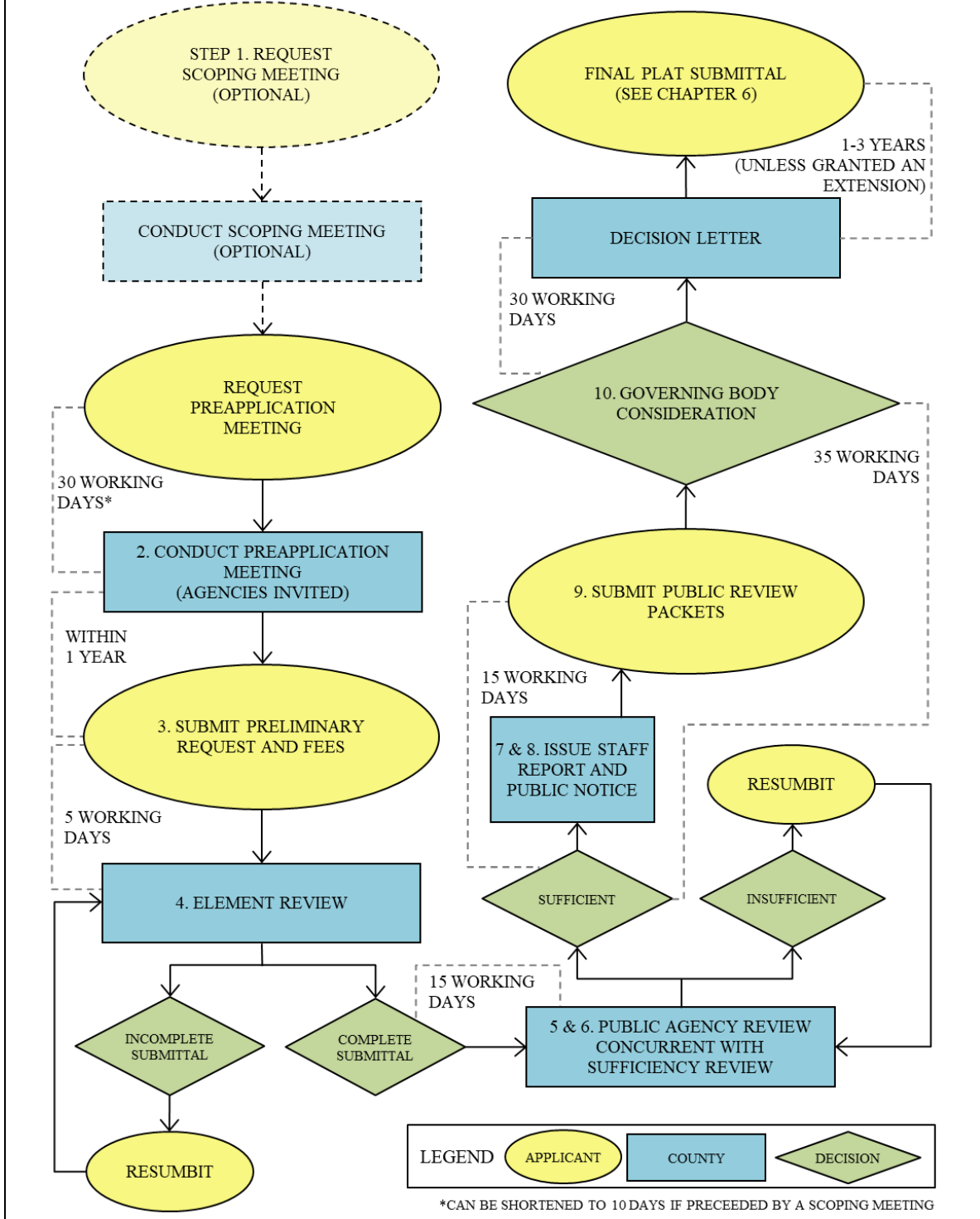
Step 1	Optional Scoping Meeting	(see Section 5.8.2)
Step 2	Preapplication Meeting	(see Section 5.8.3)
Step 3	Preliminary Submittal	(see Section 5.8.5)
Step 4	Element Review	(see Section 5.8.6)
Step 5	Public Agency Review	(see Section 5.8.7)
Step 6	Sufficiency Review	(see Section 5.8.8)
Step 7	Staff Review, Staff Report	(see Section 5.8.9)
Step 8	Public Meeting Notice	(see Section 5.8.10)
Step 9	Governing Body Submittal	(see Section 5.8.13)
Step 10	Governing Body Consideration	(see Section 5.8.15)

- | | | |
|---------|---|------------------------|
| Step 11 | Extension of Preliminary Plat, when proposed | (see Section 5.8.17) |
| Step 12 | Phased Developments, when proposed | (see Section 5.8.18) |
| Step 13 | Amended Application, when proposed | (see Section 5.8.19) |
| Step 14 | Subdivider's Preference for Mitigation, when applicable | (see Section 5.8.15.6) |
| Step 15 | Mitigation, when applicable | (see Section 5.8.15.7) |

5.4.2 General Procedures

Each procedural step listed above shall be implemented pursuant to the detailed description of the step in *Section 5.8, General Procedures*.

MINOR SUBDIVISION PROCEDURE



5.5 Administrative Minor Subdivision Review

5.5.1 Administrative Minor Applicability

The review of administrative minor subdivisions as defined in *Section 5.3.2, Minor Subdivisions, Administrative*, including condominiums, mobile home and recreational vehicle parks shall include the steps listed below. (See flow diagram below for Administrative Minor Subdivision Procedure.) Minor subdivisions meeting all of the following requirements must be processed according to the administrative minor review process:

- A. Is in an area of Missoula County that is zoned pursuant to the Missoula County Zoning Regulations effective July 1, 2022, including Legacy Districts listed in Appendix A with the exception of the Miscellaneous Legacy Districts; and
- B. Has a will-serve letter for both water and sewer service from a municipal water and/or sewer service or by a county water and/or sewer district created under §76-13-2203. MCA; and
- C. Has existing legal and physical access to each proposed lot; and
- D. Does not require a variance to any of the contents of these subdivision regulations.

5.5.2 Powers of Subdivision Administrator

The subdivision administrator shall assume all decision-making authority of the governing body on a preliminary plat referenced in this chapter except as noted in *Section 5.8.16.9. Appeals of Subdivision Administrator’s Decision*, and *Section 5.12 Appeals of Administrative Decisions*.

5.5.3 Public Meetings on Administrative Subdivisions

Except as noted in *Section 5.8.16.9, Appeals of Subdivision Administrator’s Decision* and *5.12, Appeals of Administrative Decisions*, no public meetings or public hearings referenced in this chapter will be held on a preliminary plat or a related process for an administrative minor subdivision.

5.5.4 Appeals

Any appeal of the subdivision administrator’s decision to approve, conditionally approve, or deny an administrative minor subdivision must follow the procedures in *Section 5.8.16.9, Appeals of Subdivision Administrator’s Decision*. All other appeals of decisions of a Subdivision administrator regarding an administrative minor subdivision shall follow the procedures in *Section 5.12, Appeals of Administrative Decision*.

5.5.5 Administrative Minor Subdivision Review Procedure

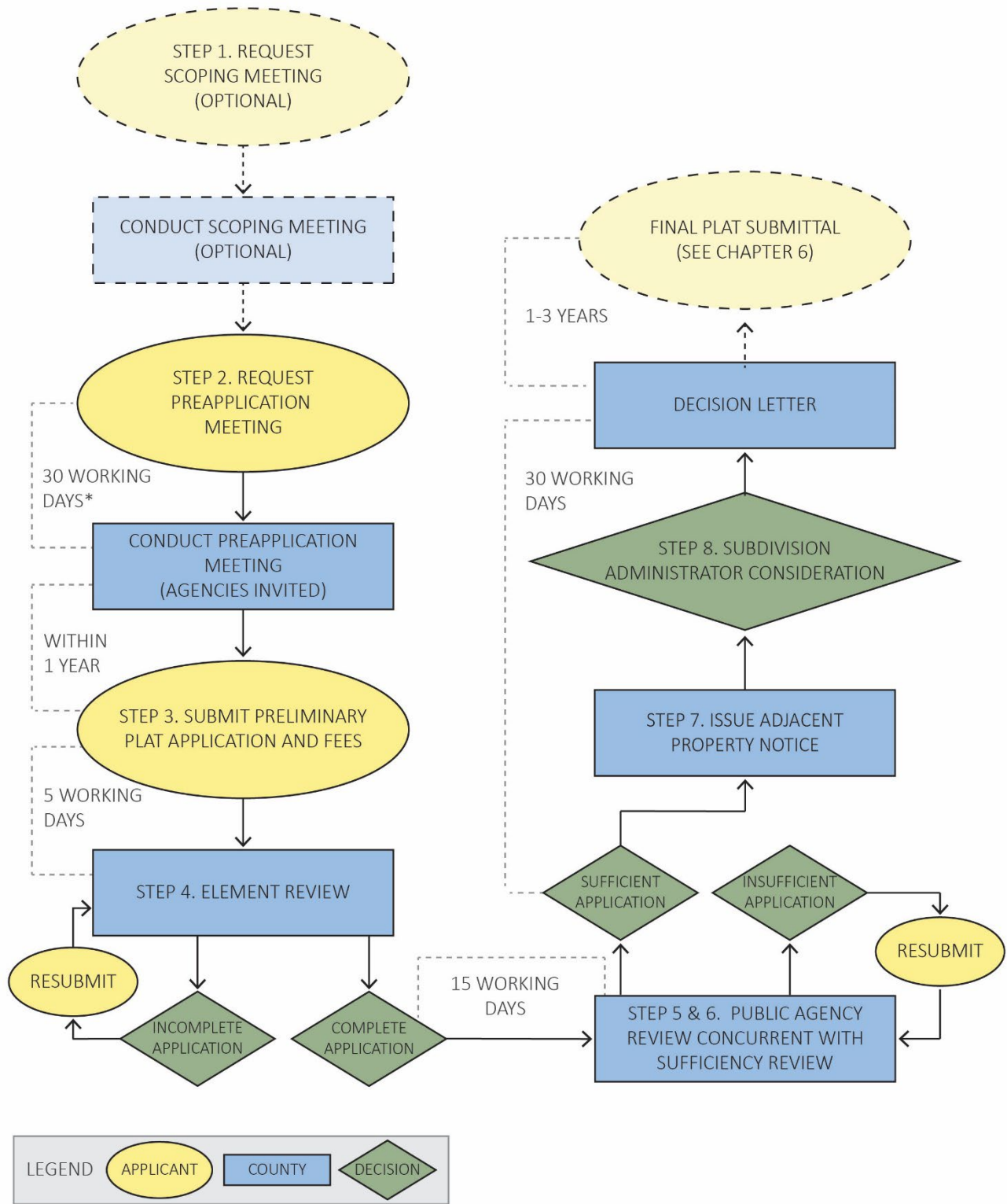
Step 1	Optional Scoping Meeting	(see Section 5.8.2)
Step 2	Preapplication Meeting	(see Section 5.8.3)
Step 3	Preliminary Submittal	(see Section 5.8.5)
Step 4	Element Review	(see Section 5.8.6)
Step 5	Public Agency Review	(see Section 5.8.7)
Step 6	Sufficiency Review	(see Section 5.8.8)

- Step 7 Adjacent Property Notification, Administrative Minor Subdivisions (see Section 5.8.11)
- Step 8 Administrative Decision, Administrative Minor Subdivision (see Section 5.8.16)
- Step 9 Extension of Preliminary Plat, when proposed (see Section 5.8.17)
- Step 10 Phased Development, when proposed (see Section 5.8.18)
- Step 11 Amend Application, when proposed (see Section 5.8.19)
- Step 12 Mitigation, when applicable (see Section 5.8.16.4)

5.5.6 General Procedures

Each procedural step listed above shall be implemented pursuant to the detailed description of the step in *Section 5.8, General Procedures* or otherwise noted in this section.

ADMINISTRATIVE MINOR SUBDIVISION PROCEDURE



5.6 Major Subdivision Review

5.6.1 Major Subdivision Procedure

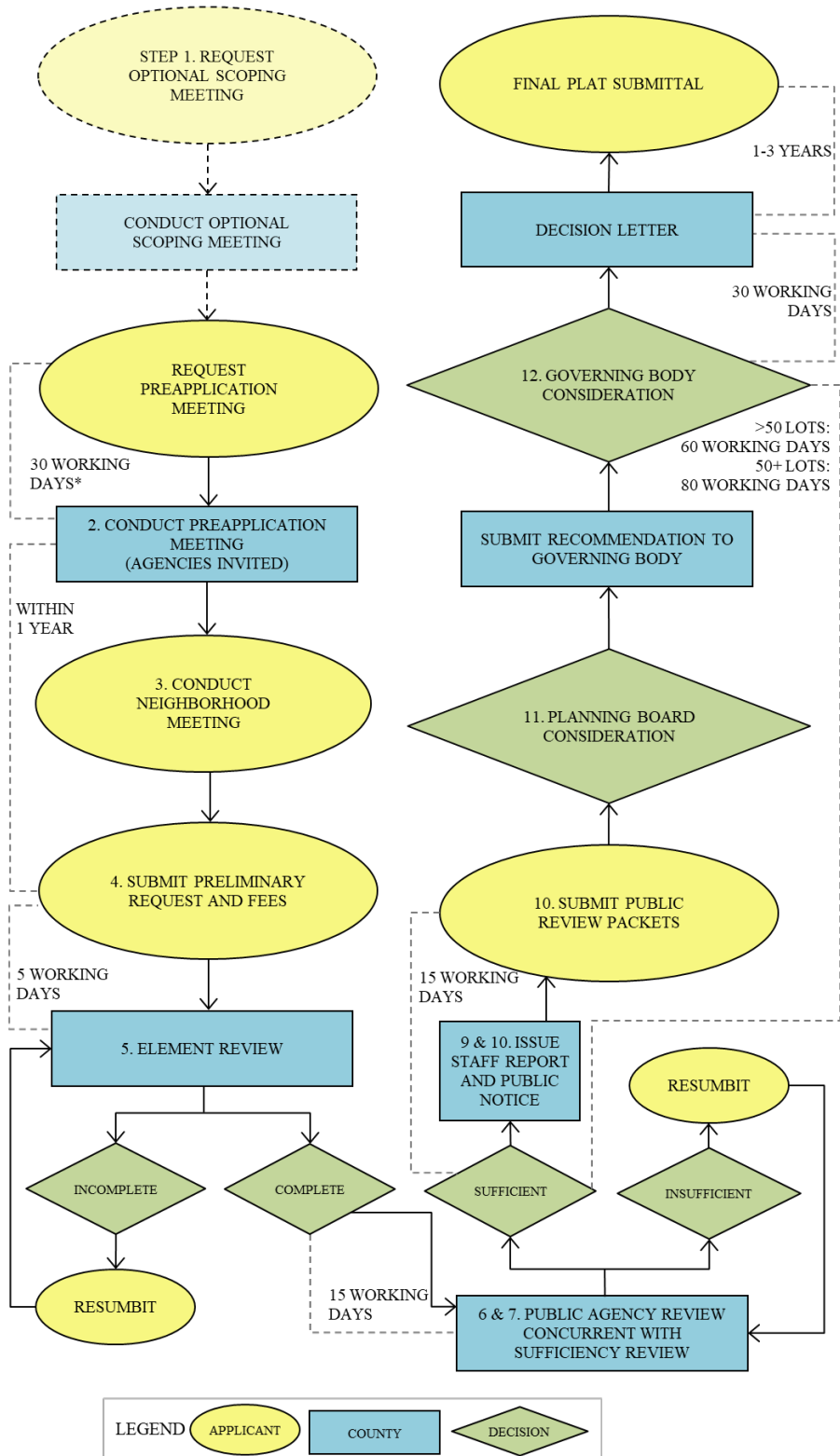
The review of major subdivisions as defined in *Section 5.3.3, Major Subdivisions*, including condominiums, mobile home and recreational vehicle parks shall include the steps listed below. (See flow diagram below for Major Subdivision Procedure.)

Step 1	Optional Scoping Meeting	(see Section 5.8.2)
Step 2	Preapplication Meeting	(see Section 5.8.3)
Step 3	Neighborhood Meeting	(see Section 5.8.4)
Step 4	Preliminary Submittal	(see Section 5.8.5)
Step 5	Element Review	(see Section 5.8.6)
Step 6	Public Agency Review	(see Section 5.8.7)
Step 7	Sufficiency Review	(see Section 5.8.8)
Step 8	Staff Review, Staff Report	(see Section 5.8.9)
Step 9	Public Hearing Notice	(see Section 5.8.12)
Step 10	Governing Body Submittal	(see Section 5.8.13)
Step 11	Planning Board Consideration	(see Section 5.8.14)
Step 12	Governing Body Consideration	(see Section 5.8.15)
Step 13	Extension of Preliminary Plat, when proposed	(see Section 5.8.17)
Step 14	Phased Development, when proposed	(see Section 5.8.18)
Step 15	Amended Application, when proposed	(see Section 5.8.19)
Step 16	Subdivider's Preference for Mitigation, when applicable	(see Section 5.8.15.6)
Step 17	Mitigation, when applicable	(see Section 5.8.15.7)

5.6.2 General Procedures

Each procedural step listed above shall be implemented pursuant to the detailed description of the step in *Section 5.8, General Procedures*.

MAJOR SUBDIVISION PROCEDURE



*CAN BE SHORTENED TO 10 DAYS IF PRECEDED BY A SCOPING MEETING

5.7 Subdivisions Proposed for Annexation

5.7.1 Applicability

The review of a subdivision that is proposed for annexation shall comply with the procedural steps in this section, in addition to the steps that are required pursuant to *Section 5.4.1, Minor Subdivision Procedure*, or *Section 5.6.1, Major Subdivision Procedure*, whichever is applicable.

5.7.2 Entire Parcel Annexed

If the entire property containing the subdivision is proposed for annexation the subdivider shall submit a subdivision application to the City of Missoula.

Info Box

State statutes prescribe a process for the city to follow that includes coordinating the reviews of the proposed annexation and the proposed subdivision.

5.7.3 Part of Parcel Annexed

If only a part of the property containing the subdivision is proposed for annexation, leaving a remaining part of a parcel of less than 160 acres in the unincorporated county, the following procedural steps shall apply.

5.7.3.1 Joint Review

The proposed subdivision shall be reviewed by both Missoula County and the City of Missoula.

5.7.3.2 Coordination

The administrator of the county subdivision regulations shall meet with city representatives to discuss the proposed subdivision and any overlapping issues and make a recommendation to both governing bodies on coordinating a joint review by the county and city.

5.7.3.3 Direction from Governing Bodies

The Missoula County Planning Director, or designee, shall meet with city officials to direct the administrators to the preferred method of coordinating a joint review, including possible joint preapplication meetings and joint meetings of the planning boards and governing bodies.

5.7.3.4 Approvals

Approval by both the county and city governing bodies is required for the subdivision to be approved. All requests for modifications to the subdivision will require approval by both the county and city governing bodies until the subdivision is entirely annexed.

5.8 General Procedures

5.8.1 Applicability

When a procedural step is required by *Section 5.4.1, Minor Subdivision Procedure*, or *Section 5.6.1, Major Subdivision Procedure*, the step shall be implemented pursuant to the detailed description of the step in this section.

5.8.2 Scoping Meeting

A subdivider may request and attend a scoping meeting for a proposed subdivision.

5.8.2.1 Initiation

The subdivider may request and attend a scoping meeting by submitting a written or emailed request. The request is encouraged to be conceptual and not include finalized lot boundaries. Required materials for a scoping meeting include sketch plan, legal description, and information on property ownership. The Planning Office may distribute conceptual sketch plans or development concepts to potential review agencies to allow them to comment and ask questions. Meeting notes taken by staff may also be distributed for comment following the scoping meeting.

5.8.2.2 Meeting

The Planning Office may distribute the digital submission to potential review agencies to allow them to comment and ask questions.

5.8.2.3 Purpose of Meeting

The scoping meeting is intended to explore various design concepts in light of development challenges and opportunities on the site in question.

5.8.3 Preapplication Meeting

A subdivider must attend a preapplication meeting for a proposed subdivision.

5.8.3.1 Initiation

The subdivider shall submit to the Planning Office a written or emailed request for a preapplication meeting prior to submitting a subdivision application. The request must include a digital submission that describes and illustrates the proposed subdivision.

5.8.3.2 Meeting

The preapplication meeting shall occur within 30 working days of the Planning Office receiving the request for a meeting and the digital submission. The Planning Office may distribute the digital submission to potential review agencies to allow them to comment and ask questions. The Planning Office shall work with review agencies to resolve any conflicting comments, prepare a comprehensive summary of the review comments, and then schedule a preapplication meeting with the subdivider.

5.8.3.3 Submittal Requirements

At the time of the request for the preapplication meeting, the subdivider shall provide the Planning Office 1 digital copy and 1 paper copy if requested by staff of the items listed in *Section 7.2, Preapplication Submittal Items* and the required fee. If the subdivision is to be phased, a preliminary phasing plan and schedule shall be submitted.

5.8.3.4 Purpose of Meeting

The review and comments by the reviewing agencies and the meeting between the Planning Office and subdivider shall accomplish the following purposes:

A. Challenges and Opportunities

A conceptual discussion of the challenges and opportunities for the proposed subdivision to accomplish the goals of the subdivider and the county.

B. Applicable Regulations

An identification, for informational purposes only, of federal, state, and local laws and regulations, and growth policy provisions that may apply to the proposed subdivision.

C. Subdivision Layout

A discussion of land constraints, regulatory restrictions, and ideas that may affect the subdivision layout and design.

D. Application Materials

An identification of the submittal items required in the subdivision application and preliminary plat/plan. This discussion will not limit the opportunity for the Planning Office or other reviewing agencies to request additional information at a later time if necessary to determine compliance with these regulations.

5.8.3.5 Review Agencies

The Planning Office shall maintain a list of public utilities, those agencies of local, state, and federal agencies, and any other entities that may be contacted for comment on the subdivision application and timeframes that the public utilities, agencies, and other entities are given to respond. The Planning Office shall provide the digital submission from the subdivider to any or all agencies on this list and request review and comments consistent with the purposes of the preapplication meeting described in *Section 5.8.3.4, Purpose of Meeting*. This list, and any neighborhood associations and/or the community council for the area containing the proposed subdivision, shall be provided to the subdivider at the time of sufficiency review.

5.8.3.6 Additional Agency

If the Planning Office contacts an agency or utility other than those identified at the preapplication meeting, the Planning Office must advise the subdivider of

the agency contacted and advise the subdivider of the estimated time period for a response from the agency.

5.8.3.7 Time Limit

A subdivision application must be submitted within 1 year after the date of the preapplication meeting.

5.8.4 Neighborhood Meeting (Major Subdivisions)

After the preapplication meeting and prior to the preliminary submittal, the subdivider shall meet with residents of the neighborhood and/or the community council for the area containing the proposed subdivision.

5.8.4.1 Posted Notices

The subdivider shall post notices of the meeting in at least 3 locations that are within 300 feet of the proposed subdivision, including locations in public rights-of-way or other locations clearly visible to the greatest number of neighborhood residents.

5.8.4.2 Mailed Notices

At least 15 working days in advance of the meeting, the subdivider shall mail notices of the meeting to the Planning Office, owners of land within 300 feet of the proposed subdivision excluding the widths of road or railroad rights-of-way and rivers, and to any landowner association and/or the community council identified by the Planning Office.

5.8.4.3 Meeting Minutes

Minutes of the meeting detailing comments and suggestions from the attendees and the applicant's responses shall be submitted to the Planning Office as part of the preliminary submittal.

5.8.5 Preliminary Submittal

After the preapplication meeting, the subdivider shall submit to the Planning Office 1 paper copy and 1 digital copy of the subdivision application and preliminary plat/plan. The submittal shall contain the items from *Section 7.4, Preliminary Plat/Plan Submittal Requirements* and required fees in accordance with the currently adopted fee schedule. If the subdivision is to be phased, the submittal shall include a phasing plan pursuant to *Section 5.8.18, Phased Developments*.

5.8.6 Element Review

Within 5 working days of receiving the subdivision application and review fee, the Planning Office shall determine whether the application contains all of the elements required by these regulations.

5.8.6.1 Written Notice

The Planning Office shall notify the subdivider of the determination with a written or emailed communication.

5.8.6.2 Missing Elements

If the Planning Office determines elements are missing from the application, the Planning Office shall identify the missing elements in a written or emailed notification to the subdivider. No further action shall be taken until the application is resubmitted with the missing elements.

5.8.6.3 Resubmittal

Once the subdivider resubmits an application that includes the previously missing elements, the Planning Office shall have 5 working days to notify the subdivider if the application contains all of the required elements.

5.8.6.4 Elements Complete

This process shall be repeated until the subdivider submits an application containing all of the elements required by these regulations as determined by the Planning Office.

5.8.6.5 Review Period

The 5-day review period commences on the first working day after the application or resubmittal is submitted to the Planning Office. The Planning Office is in compliance with this review period if the written notification is post-marked or an electronic communication is transmitted within 5 working days of the commencement of the review period.

5.8.7 Reviewing Agencies and Interested Parties

The subdivider shall distribute the digital subdivision application and preliminary plat/plan to the applicable review agencies and interested parties, and request review and comments. The request shall include a date by which the comments must be submitted to the Planning Office to be incorporated into the application review by the Planning Office. The Planning Office shall facilitate this distribution by providing a list of the applicable review agencies, any neighborhood or landowner associations or community councils for the area containing the subdivision.

5.8.7.1 Eligibility

Applications deemed complete pursuant to *Section 5.8.6.4, Elements Complete*, are eligible for sufficiency review under *Section 5.8.8, Sufficiency Review*. The Planning Office shall encourage concurrent agency and interested party review under *Section 5.8.7, Reviewing Agencies and Interested Parties*.

5.8.7.2 Comments

The Planning Office shall oversee that all comments related to the subdivision are made available to the public for review online and available in person. Neighborhood associations and community councils are encouraged to post review comments reflecting comments they have received as well.

5.8.7.3 Staff Review

The Planning Office shall work with the review agencies to integrate all review comments into a single comprehensive written summary. The written summary shall be submitted to the subdivider.

5.8.7.4 Resubmittal

The subdivider is allowed to revise the application and preliminary plat/plan in response to the review comments and resubmit the digital application to the Planning Office.

5.8.7.5 Planning Office Review

The Planning Office shall oversee the distribution of any revised digital application to the review agencies and request additional review and comment. The Planning Office also shall compare the resubmitted application and preliminary plat/plan to the written summary to determine if they conform to these regulations.

5.8.8 Sufficiency Review

Within 15 working days of concluding that all required elements have been submitted, the Planning Office shall determine whether the application contains sufficient information to review the proposed subdivision.

5.8.8.1 Written Notice

The Planning Office shall notify the subdivider of the determination with a written or emailed communication.

5.8.8.2 Insufficient Information

If the Planning Office determines that the information in the application is not sufficient to review the proposed subdivision, the Planning Office shall identify in the notification the additional information needed to correct the deficiencies.

5.8.8.3 Resubmittal

If the subdivider resubmits an application including additional information to correct the deficiencies, the Planning Office shall have 15 working days to notify the subdivider whether the application contains information sufficient to review the proposed subdivision.

5.8.8.4 Application Sufficient

This process shall be repeated until the subdivider submits an application that is deemed sufficient by the Planning Office.

5.8.8.5 Review Period

The 15-day review period commences on the first working day after the Planning Office determines the application to contain all required elements, or the first working day after resubmittal if applicable. The Planning Office is in compliance

with this review period if the written notification is post-marked or an electronic communication is transmitted within the 15-day review period.

5.8.8.6 Limitation of Sufficiency

A determination of sufficiency concludes that an application is sufficiently complete to commence review. It does not:

A. No Guarantee

Guarantee that the proposed subdivision will be approved or conditionally approved by the governing body; or,

B. Additional Information

Limit the ability of the reviewing agencies, Planning Office, Planning Board or governing body to request additional information during the review process if the information is necessary to determine compliance with these regulations.

5.8.9 Staff Review, Staff Report

Upon completing the public agency review, the Planning Office, working with other review agencies as necessary, shall evaluate the application for compliance with these regulations and prepare a staff report. The staff report shall contain the information listed below.

5.8.9.1 Recommendation

A recommendation for approval, approval with conditions, or denial of the proposed subdivision based upon these regulations and comments from review agencies. If the recommendation is for approval with conditions, the staff report shall detail the recommended conditions and/or any applicable mitigation measures.

5.8.9.2 Basis for Recommendation

A summary of the evaluation of the proposed subdivision, including compliance with the applicable regulations and submittal requirements, and recommended findings of fact and conclusions of law.

5.8.9.3 Variances

An evaluation of any requested variance, recommended findings of fact and conclusions of law, and a recommendation to approve, approve with conditions, or deny the variance.

5.8.9.4 Public Comment

Copies of any agency or public comments received by the Planning Office.

5.8.10 Public Meeting Notice (Minor Subdivisions)

After determining sufficient an application for a minor subdivision, the Planning Office shall mail or electronically transmit notices of the public meeting at which the governing body will review the proposed subdivision.

5.8.10.1 Notice Recipients

The notice shall be mailed or electronically transmitted to the subdivider, the owners of all parcels that adjoin the proposed subdivision including parcels that may be separated from the subdivision by roads, railroad rights-of-way or rivers, and to homeowner or landowner associations, community councils, or other neighborhood organizations identified by the Planning Office. The notice shall be mailed at least 15 calendar days prior to the Board of County Commissioners public meeting.

5.8.10.2 Notice Content

The notice shall indicate the timeframe for review of the application and the date, time, and location of the public meeting at which the governing body will review the application. Basic information on the proposal shall be indicated, including any variances.

5.8.11 Public Notice (Administrative Minor Subdivisions)

After determining sufficient an application for an administrative minor subdivision, the Planning Office shall transmit notices of the review of the administrative minor subdivision.

5.8.11.1 Notice Recipients

Notice by first-class mail of the pending application shall be mailed to 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.

5.8.11.2 Notice Content

The notice shall indicate the timeframe for review of the application. Basic information on the proposal shall be indicated, including the procedure to appeal the Subdivision Administrator’s decision.

5.8.12 Public Hearing Notice (Major Subdivisions)

After determining sufficient an application for a major subdivision, the Planning Office shall transmit notices of the public hearings at which the Planning Board and governing body will review the proposed subdivision. Notices shall be provided in accordance with this section.

5.8.12.1 Newspaper

A public hearing notice shall be published in a newspaper of general circulation in the county no fewer than 15 calendar days prior to both the public hearing before the Planning Board and governing body.

5.8.12.2 Certified Mail

Notice of the public hearings shall be sent by certified mail to the subdivider, owners of all parcels that adjoin the proposed subdivision including parcels that may be separated from the subdivision by roads, railroad rights-of-way, or rivers, and each purchaser who is under contract for deed of property for any such adjoining the land. Homeowner or landowner associations, community councils, or other neighborhood organizations identified by the Planning Office shall be contacted by standard mail. The notice shall be mailed at least 15 calendar days prior to the Planning Board public hearing.

5.8.12.3 Sign on Property

Notice of the public hearing shall be posted on the property at a location visible to the greatest number of people at least 15 calendar days prior to the Planning Board public hearing. A notice must be posted by the planning department in a conspicuous place on the site at least 15 working days prior to the public hearing.

5.8.12.4 Notice Content

The notice shall indicate the timeframe for review of the application and the dates, times, and location of the public hearings at which the application will be reviewed. Basic information on the proposal shall be indicated, including any variances. The notice also shall explain that public comment may be submitted in writing to the Planning Office or made in person at the public hearings before the Planning Board and/or governing body.

5.8.13 Governing Body Submittal

The subdivider shall provide one (1) hard copy and one (1) digital copy of the application to the Planning Office no more than 15 working days before the first public meeting or public hearing at which the application will be reviewed. Additional hard copies may be requested by the Planning Office if deemed necessary.

5.8.13.1 Comment Letters

The supporting materials accompanying the application shall include agency comments received and the subdivider's response to them.

5.8.14 Planning Board Consideration (Major Subdivisions)

Upon receipt from the Planning Office of an application for a subdivision and the staff report, the Planning Board shall consider the application pursuant to this section.

5.8.14.1 Staff Report

The staff report shall be provided to the subdivider and Planning Board and made available to the general public no less than 5 working days prior to the Planning Board public hearing.

5.8.14.2 Public Hearing

The Planning Board shall conduct a public hearing on the proposed major subdivision for which public notice shall be provided pursuant to *Section 5.8.12, Public Hearing Notice*.

5.8.14.3 Planning Board Consideration, Recommendation

The Planning Board shall consider the application for subdivision including any requested variance. Upon the close of the public hearing, the Planning Board shall decide upon a recommendation to approve, approve with conditions, or deny the application. The Planning Board recommendation shall be based on the review criteria and special restrictions established in *Section 5.10, Review Criteria, Special Restrictions on Decisions*, and *Section 5.11, Variances*, when variances are requested.

5.8.14.4 Submittal to Governing Body

Planning Board’s recommendation for subdivision approval, conditional approval, or denial shall be submitted to the Board of County Commissioners in writing within 10 working days of the close of the public hearing. The staff report and planning board report shall be provided to the governing body no later than 5 working days prior to the Board of County Commissioners’ meeting. The full list of materials submitted to the governing body shall be pursuant to *Section 5.8.15.2, Staff Report*, and *Section 5.8.15.3, Planning Board Report*.

5.8.15 Governing Body Consideration

Upon receipt from the Planning Office of an application for a subdivision, the staff report, and a Planning Board recommendation in the case of a major subdivision, the governing body shall consider the application pursuant to this section.

5.8.15.1 Timing of Decisions

The governing body shall reach a decision to approve, approve with conditions, or deny a subdivision application in accordance with the following time limitations.

A. Minor Subdivisions

A decision on a minor subdivision shall be made within 35 working days of the Planning Office determining the application sufficient.

B. Major Subdivision Less Than 50 Lots

A decision on a major subdivision with less than 50 lots shall be made within 60 working days of the Planning Office determining the application sufficient.

C. Major Subdivision 50 or More Lots

A decision on a major subdivision with 50 or more lots shall be made within 80 working days of the Planning Office determining the application sufficient.

D. Extensions

Notwithstanding the time limitations established by this section, the subdivider and governing body may agree to an extension of the review period not to exceed 1 year, or the governing body may extend the review period pursuant to *Section 5.8.15.5, Existence of New Information*, or *Section 5.8.19 Amended Application*.

E. Agency and Utility Review Not Delay Action

Review and comment by public agencies or utilities may not delay the governing body's decision.

5.8.15.2 Staff Report

The staff report shall be provided to the subdivider and Board of County Commissioners and made available to the general public no later than 5 calendar days prior to the Board of County Commissioners' meeting. The staff report shall be provided along with the Planning Board Report pursuant to *Section 5.8.15.3, Planning Board Report*.

5.8.15.3 Planning Board Report

Staff shall prepare a detailed summary which may include any key points of the discussion, recommendations, motions, conditions or amendments to conditions, amendments to findings and conclusions, and any additional rationale for Planning Board recommendations to be forwarded on the governing body. This summary, along with a record of Planning Board proceedings, shall be provided to the subdivider and Board of County Commissioners and made available to the general public no later than 5 calendar days prior to the Board of County Commissioners' meeting.

5.8.15.4 Public Meeting, Public Hearing

A. Minor Subdivisions

The governing body shall conduct a public meeting on a proposed minor subdivision and any related variance request, for which public notice shall be provided pursuant to *Section 5.8.10, Public Meeting Notice*.

B. Major Subdivisions

The governing body shall conduct a public hearing on the proposed major subdivision and any related variance request, for which public notice shall be provided pursuant to *Section 5.8.11, Public Notice*.

C. Variances

The governing body shall conduct a public hearing, pursuant to *Section 5.11, Variances*, to consider any variance request associated with a major subdivision.

5.8.15.5 Existence of New Information

A. Determination

The governing body shall determine whether public comments or other information presented to the governing body at a hearing on a subdivision application constitutes relevant, new information regarding a subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by either the governing body or the Planning Board hearing and has a substantial effect on the governing body's consideration of the application.

B. Determination of Relevance and Credibility

If the governing body has determined new information exists per *Section 5.8.15.5.A, Determination*, the governing body will determine whether the new information is relevant and credible based on the following criteria:

1. Relevant Information

New information or the analysis of the information is considered relevant if it is determined the information constitutes a substantial change to the design of the subdivision substantially impacting the analysis of potentially significant adverse impacts impacting the governing's body findings of facts, conclusions, and any proposed conditions.

2. Credible Information

New information or analysis of the information is considered credible if it is based on:

- A.** Physical facts or evidence; or,
- B.** Corroborated personal observations; or,
- C.** Scientific data.

C. Subsequent Public Hearing

If the governing body determines new information has been received which is relevant and credible, it shall hold a subsequent public hearing. The governing body shall conduct the hearing at its first regularly scheduled meeting for which proper public hearing notice can be provided, but in no case later than 45 working days of the determination, unless the governing body and applicant agree upon an alternative date for the hearing.

D. Notice

Notice for a subsequent public hearing shall be provided in accordance with *Section 5.8.12, Public Hearing Notice*.

E. Review Period Suspended

If a subsequent public hearing is scheduled, the review period (60 or 80 days, whichever is applicable) is suspended as of the date of the governing

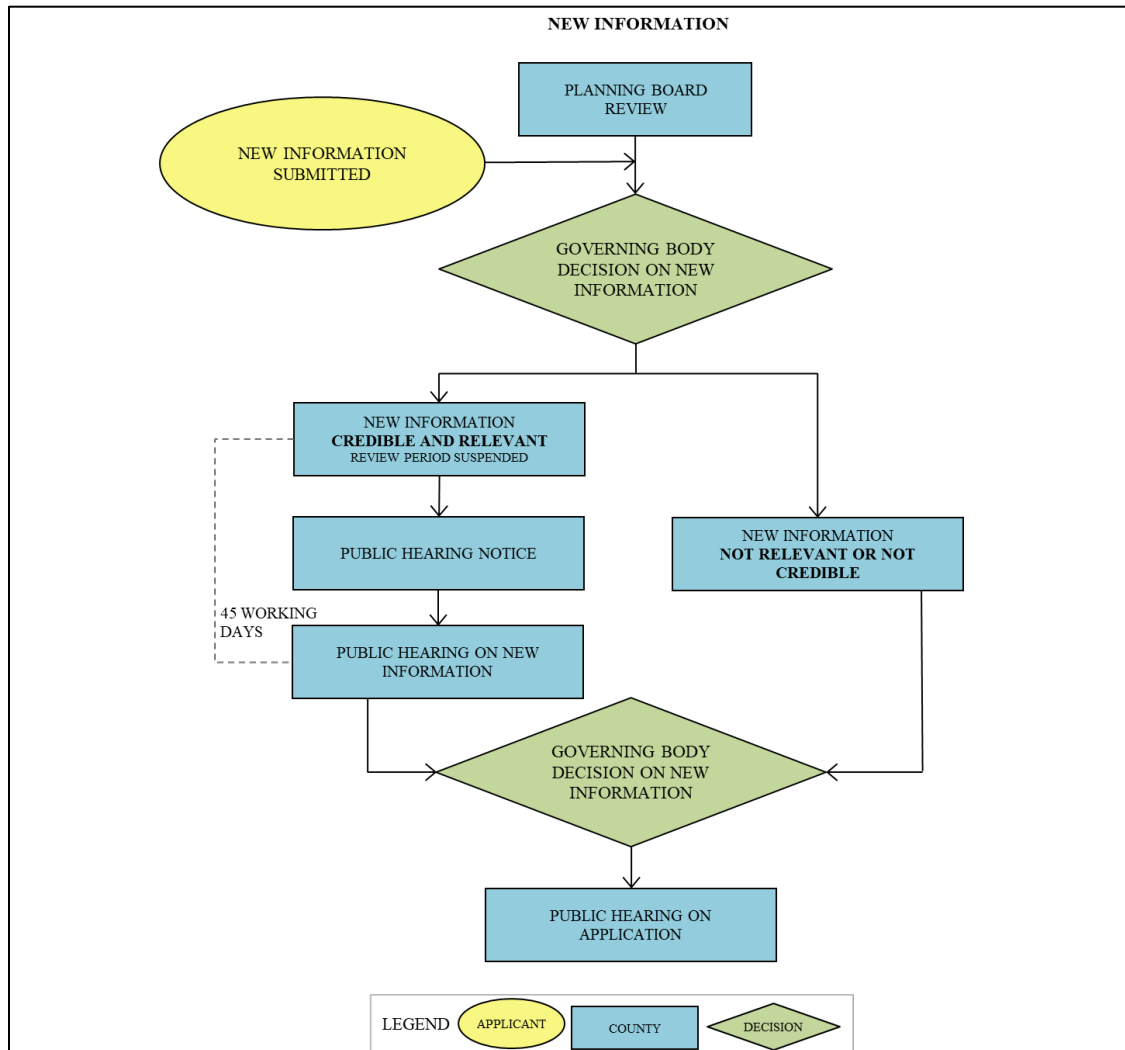
body's decision to schedule a subsequent hearing. After the subsequent hearing, the time limit of 60- or 80-working days resumes at the governing body's next scheduled public meeting for which proper notice for consideration of the subdivision application can be provided.

F. New Information

Only the new information or the analysis of the information shall be considered at a subsequent public hearing.

G. No New Information

The governing body shall not consider any additional information that is presented after the subsequent public hearing when deciding to approve, conditionally approve, or deny the proposed subdivision.



5.8.15.6 Mitigation

The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified during the

review of the subdivision application without unreasonably restricting a landowner's ability to develop the land. The governing body shall issue written findings to justify the reasonable mitigation required under this section. No mitigation measures shall be considered for an application that has been denied.

A. Considerations

The governing body shall consider whether unmitigated impacts of a proposed development are unacceptable, precluding approval of the plat/plan.

B. Subdivider's Preference for Mitigation

The subdivider may submit written comments or testimony on the public record to the governing body that respond to the Planning Board's recommendations, in the case of a major subdivision, or staff recommendations in the case of a minor subdivision. This submission may include proposals for mitigating any impacts identified in the recommendations.

C. Consultation

The governing body will consult with the subdivider and give due weight and consideration to the subdivider's expressed preference for mitigating impacts.

5.8.15.7 Governing Body Consideration, Decision

The governing body shall consider the application for subdivision, including any requested variance. After the close of the public hearing in the case of a major subdivision (and after subsequent hearing for new information, if applicable), or at the public meeting for a minor subdivision, the governing body shall decide to approve, approve with conditions, or deny the application. The decision shall be based on the review criteria and special restrictions established in *Section 5.10, Review Criteria, Special Restrictions on Decisions*, and *Section 5.11, Variances* when variances are requested.

5.8.15.8 Appeals

In accordance with [§76-3-625\(2\)](#), MCA, a party who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny a proposed preliminary plat or final subdivision plat may, within 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.

5.8.15.9 Water, Wastewater Public Comment

The governing body shall collect any public comments regarding water and wastewater information and submit them, or a summary of them, to the subdivider within 30 calendar days of granting approval or conditional approval of the subdivision application and preliminary plat/plan.

5.8.15.10 Decision Letter

Upon reaching a decision the governing body shall provide the subdivider a letter and any supporting materials within 30 working days of the decision. The letter shall include the following information:

A. Decision

The decision to approve, approve with conditions, or deny the subdivision, dated and with appropriate signature of the governing body;

B. Conditions

Any conditions of approval for the preliminary plat/plan that shall be satisfied before the final plat may be approved;

C. Time Period

The effective time period of the preliminary plat/plan approval of 3 calendar years from the date of the governing body decision and any requirements for possible extensions;

D. Variances

The decision to approve, approve with conditions, or deny any requested variances, and a statement describing the facts and conclusions upon which the decision is based;

E. Findings

Findings of fact and conclusions that weigh the review criteria in *Section 5.10, Review Criteria, Special Restrictions on Decisions*;

F. Basis for Denial, Conditions

The facts and conclusions, documents, testimony, or other materials that the governing body relied on to deny the application or impose conditions, when applicable;

G. Regulations

Identification of the regulations and statutes that were relied upon to deny the application or impose conditions, when applicable; and,

H. Appeals

Information on the appeal process for denial or imposition of conditions.

5.8.15.11 Effect of Decision

A. Effective Period of Preliminary Plat

Preliminary plat/plan approval shall be in effect for 3 years. This effective period may be extended pursuant to *Section 5.8.17, Extension of Preliminary Plat*, or a phasing plan amendment is approved pursuant to *Section 5.8.18, Phased Developments*.

B. No New Conditions

After the application and preliminary plat/plan are approved, the Board of County Commissioners may not impose new conditions as a prerequisite to final plat approval, unless addressing new information or changed impacts when a request is reviewed pursuant to *Section 5.8.18, Phased Development* or *Section 5.9.5, Adjustment Procedure*.

C. Withdraw Decision

The Board of County Commissioners may withdraw approval of an application and preliminary plat/plan if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is false or misleading.

5.8.15.12 Appeal

A decision of the governing body denying or approving a proposed subdivision plat/plan may be appealed to the district court within 30 calendar days from the date the written decision in accordance with the provisions of §76-3-625, MCA.

5.8.16 Subdivision Administrator Consideration of Administrative Minor Subdivisions

After determining an application sufficient for an administrative minor subdivision, the Subdivision administrator shall consider the application pursuant to this section.

5.8.16.1 Timing of Decisions

The Subdivision administrator shall reach a decision to approve, approve with conditions, or deny the administrative minor subdivision with the following time limitations.

A. Decision

A decision on an administrative minor subdivision shall be made within 30 working days of the Planning Office determining the application sufficient.

B. Extensions

Notwithstanding the time limitations established by this section, the subdivider and Subdivision administrator may agree to an extension of the review period not to exceed 1 year.

C. Agency and Utility Review Not Delay Action

Review and comment by public agencies or utilities may not delay the Subdivision Administrator's decision.

5.8.16.2 Staff Report

Upon completing the public agency review, the Planning Office, working with other review agencies as necessary, shall evaluate the application for compliance with these regulations and prepare a staff report. The staff report shall contain the information listed below:

A. Recommendation

A recommendation for approval, approval with conditions, or denial of the proposed subdivision based upon these regulations and comments from review agencies. If the recommendation is for approval with conditions, the staff report shall detail the recommended conditions and/or any applicable mitigation.

B. Basis for Recommendation

A summary of the evaluation of the proposed subdivision, including compliance with the applicable regulations and submittal requirements and recommended findings of fact and conclusions of law.

C. Public Comment

Copies of any agency or public comments received by the Planning Office.

5.8.16.3 Existence of New Information

A. Determination

The subdivision administrator shall determine whether public comments on a subdivision application constitute:

1. Reasonable Opportunity

Information or an analysis of information that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or,

2. Never Considered

New information that has never been submitted as evidence or considered by which the subdivision application was considered.

B. Determination of Relevance and Credibility

If the subdivision administrator has determined new information exists per *Section 5.8.16.3.A.2, Never Considered*, the subdivision administrator will determine whether the new information is relevant and credible based on the following criteria:

1. Relevant Information

New information or the analysis of the information is considered relevant if it may impact the findings and conclusions the governing body will rely upon to make a final decision on the proposed subdivision.

2. Credible Information

New information or analysis of the information is considered credible if it is based on the following:

- a. Physical facts or evidence; or,

- b. Corroborated personal observations; or,
- c. Scientific data.

C. Effect of New Information

If the subdivision administrator determines new information has been received that is relevant and credible, it shall consider the information in their decision to approve, conditionally approve, or deny the proposed subdivision.

5.8.16.4 Mitigation

The subdivision administrator may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified during the review of the subdivision application without unreasonably restricting a landowner's ability to develop the land. The subdivision administrator shall issue written findings to justify the reasonable mitigation required under this section. No mitigation measures shall be considered for an application that has been denied.

A. Considerations

The subdivision administrator shall consider whether unmitigated impacts of a proposed development are unacceptable, precluding approval of the plat/plan.

B. Subdivider's Preference for Mitigation

The subdivider's preference for mitigation of an administrative minor subdivision shall be addressed by an appeal of the subdivision administrator's decision described in 5.8.16.9.

5.8.16.5 Subdivision Administrator Consideration, Decision

The subdivision administrator shall consider the application for an administrative minor subdivision and shall decide to approve, approve with conditions, or deny the application based on the review criteria and special restrictions established in *Section 5.10, Review Criteria, Special Restrictions on Decisions*.

5.8.16.6 Water, Wastewater Public Comment

If required, the subdivision administrator shall collect any public comments regarding water and wastewater information and submit them, or a summary of them, to the subdivider within 30 calendar days of granting approval or conditional approval of the subdivision application and preliminary plat/plan.

5.8.16.7 Decision Letter

Within 30 working days of the Planning Office determining the application sufficient, the subdivision administrator shall provide the subdivider a letter and any supporting materials of the decision. The letter shall include the following information:

A. Decision

The decision to approve, approve with conditions, or deny the subdivision, dated and with the appropriate signature of the subdivision administrator;

B. Conditions

Any conditions of approval for the preliminary plat/plan that shall be satisfied before the final plat may be approved;

C. Time Period

The effective time period of the preliminary plat/plan approval of 3 calendar years from the date of the governing body's decision and any requirements for possible extensions;

D. Findings

Findings of fact and conclusions that weigh the review criteria in *Section 5.10, Review Criteria, Special Restrictions on Decisions*;

E. Basis for Denial, Conditions

The facts and conclusions, documents, testimony, or other materials that the subdivision administrator relied on to deny the application or impose conditions, when applicable;

F. Regulations

Identification of the regulations and statutes that were relied on to deny the application or impose conditions, when applicable; and,

G. Appeals

Information on the appeal process for denial or imposition of conditions.

5.8.16.8 Effect of Decision

The effect of the subdivision administrator's decision shall follow procedures in *Section 5.8.15.11, Effect of Decision*.

5.8.16.9 Appeals of Subdivision Administrator's Decision

If a party identified in §76-3-625(3) MCA objects to a subdivision administrator's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request in writing that the subdivision administrator forward the application to the governing body. The governing body shall sustain the subdivision administrator's decision based on the record as a whole unless the decision is arbitrary, capricious, or unlawful. The governing body has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination. Appeals of a governing body's decision to approve,

conditionally approve, or deny a proposed preliminary plat for an administrative minor subdivision shall be in accordance with *Section 5.8.15.12, Appeal*.

5.8.17 Extension of Preliminary Plat Approval

When a subdivider requests an extension beyond the original three-year effective period of an approved preliminary plat/plan established in *Section 5.8.15.11.A, Effective Period of Preliminary Plat* it shall not be extended beyond 6 years from the original date of plat/plan approval.

5.8.17.1 Applicability

All subdivisions without a phasing plan that request an extension shall be subject to this section.

A. Preliminary Plat Approval prior to November 4, 2016

Subdivisions approved prior to November 4, 2016, the effective date of a previous regulation update shall use that date as the adjusted approval date, from which the maximum extension shall be determined.

B. Extensions for Phased Developments

Phasing schedules are not subject to this section but may be extended or modified in accordance with *Section 5.8.18.5, Phasing Plan Extensions*, or *Section 5.8.18.7, Modifications to Phase Boundaries or Filing Sequence*.

5.8.17.2 Written Request

The subdivider shall submit a written request to extend the effective period prior to the expiration of the preliminary plat/plan approval. The counting of days toward expiration shall be stayed until the governing body's decision pursuant to *Section 5.8.17.4, Decision*. The request shall demonstrate compliance with the criteria in *Section 5.8.17.3, Criteria*.

5.8.17.3 Criteria

The governing body shall decide to approve or deny the requested extension based on the following criteria provided by the applicant:

A. Changed Circumstances

Circumstances affecting the timing of final plat/plan submittal and/or review have changed and are beyond the control of the subdivider;

B. Meet New Deadline

The subdivider can meet the new deadline despite the changed circumstances;

C. Commissioners' Decision

All aspects of the governing body's decision on the preliminary plat/plan, including the findings of fact, conclusions, and conditions will continue to be valid if the extension is granted;

D. No Change

No significant changes in the general area of the subdivision have occurred, or are expected to occur within the extension period, that would change the evaluation of the preliminary plat/plan; and,

E. Facilities

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted if the extension is granted.

5.8.17.4 Decision

The Board of County Commissioners shall approve or deny a request for an extension within a mutually agreed-upon timeline and only consider facts pertinent to the extension of time before a final plat is filed.

5.8.17.5 Void

If the final plat has not been submitted and no extension has been requested before the expiration of the preliminary plat/plan approval, the preliminary plat/plan shall be considered void.

5.8.18 Phased Developments

An application for a subdivision plat/plan may include a phasing plan in which final plats will be submitted in phases. Each phase of the subdivision shall require a separate final plat. There is no opportunity to request a phasing plan after a subdivision has obtained preliminary plat/plan approval.

5.8.18.1 Applicability

Requests pursuant to *Section 5.8.18, Phased Developments* shall apply to all subdivisions, regardless of the approval date.

The appropriate review process is determined by whether the preliminary approval date lands before May 8, 2017, or on/after May 8, 2017, the effective date of [§76-3-617, MCA](#).

5.8.18.2 Phasing Plans shall include:

A. Map

A phasing map shall delineate each phase and designate specific lots and improvements included in each phase. The phasing map shall include the entire land area included in the preliminary plat/plan.

B. Schedule

The map shall include a legend that identifies the sequential order and the projected schedule for filing the final plat for each phase.

5.8.18.3 Criteria

The review and approval, approval with conditions, or denial of a phasing plan shall be based on the following criteria provided by the applicant:

A. Comply with Regulations

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

B. Functional

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater, and other infrastructure and service delivery independent of and without reliance on a future or subsequent phase;

C. Incremental Completion

Required improvements for all prior phases shall be completed or secured with a financial guarantee before the commencement of any improvements in a later phase.

D. Facilities

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.

Info Box

Plans, including but not limited to construction plans, are approved by Missoula County Public Works for compliance with those rules, regulations, and specifications in place at the time of review. Plan updates may be required at the time a final plat is filed in order to maintain compliance and address

**Table 5.8.18
Public Process After Preliminary Approval**

	Legal Ad		Adjacent Property Notice	Agency Comment	Governing Body	Potential for New Conditions
	Minor (0-5 lots)	Major (6+ lots)	Minor or Major	Minor or Major	Minor or Major	Minor or Major
Preliminary Plat Extension, Section 5.8.17				✓	✓	
Phasing Plan Extension, Section 5.8.18.4				✓	✓	✓
Modifications to Phase Boundaries or Filing Sequence, Section 5.8.18.7				✓	✓	✓
Adjustments Procedure Sections 5.9		✓	✓	✓	✓	✓

Note to Accompany Table:
These processes can happen independently of or in conjunction with, one another. For more details about the public process required for preliminary plat and related document adjustments, see *Section 5.9*.

5.8.18.4 Phasing Plan Extension

A. Length of Extensions

A mutually agreed-upon extension for the phases within a preliminarily approved phased development shall be at least 1 year, but not more than 3 years, from the date of the request.

B. Extensions for Multiple Phases

No phase may be extended beyond 3 years from the date of the request.

C. Compliance

Extension requests shall comply with *Section 5.8.18.5, Maximum Extension Schedules* and, if applicable, *Section 5.8.18.7, Modifications to Phase Boundaries or Filing Sequence*.

5.8.18.5 Maximum Extension Schedule

When multiple extensions are requested pursuant to *Section 5.8.18.4, Phasing Plan Extension*, preliminary approval shall not be extended beyond the appropriate extension schedule below.

A. Subdivisions Approved Before May 8, 2017

Subdivisions approved prior to November 4, 2016, the effective date of a previous regulation update shall use that date as the adjusted approval date, from which the maximum extension schedule shall be determined.

1. Minor Subdivisions, 1-5 Lots/Units

The final plat for all phases of minor subdivision shall be recorded within 9 years of approval of the subdivision.

2. Major Subdivisions, 6 – 20 Lots/Units

The final plat for all phases of a subdivision with between 6 and 20 lots or units shall be recorded within 12 years of approval of the subdivision.

3. Major Subdivisions, 21 – 49 Lots/Units

The final plat for all phases of a subdivision with between 21 and 49 lots or units shall be recorded within 18 years of approval of the subdivision.

4. Major Subdivisions, 50 Lots/Units or More

The final plat for all phases of a subdivision with 50 or more in the subdivision shall be recorded within 21 years of approval of the subdivision.

B. Subdivisions Approved On or After May 8, 2017

The final plat for all phases of a subdivision must be submitted for review and approved, conditionally approved, or denied within 20 years of the date of preliminary plat approval by the governing body.

5.8.18.6 Criteria, Phased Development Extensions

The review and approval, approval with conditions, or denial of a phasing plan extension shall be based on the following criteria provided by the applicant:

A. Comply with Regulations

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

B. Meet New Deadline

The subdivider can meet the new deadline despite the changed circumstances;

C. Commissioners' Decision

All aspects of the governing body's decision on the preliminary plat/plan, including the findings of fact, conclusions, and conditions will continue to be valid if the extension is granted;

Info Box

Plans, including but not limited to construction plans, are approved by Missoula County Public Works for compliance with those rules, regulations, and specifications in place at the time of review. Plan updates may be required at the time a final plat is filed in order to maintain compliance and address infrastructure needs and use.

D. Functional

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater, and other infrastructure and service delivery independent of and without reliance on a future or subsequent phase;

E. Incremental Completion

Required improvements for all prior phases shall be completed or secured with a financial guarantee before the commencement of any improvements in a later phase.

F. No Change

No significant changes in the general area of the subdivision are expected to occur within the time period of the phases that would change or alter the evaluation of the preliminary plat/plan; and, including but not limited to original subdivision findings of fact, and testimony or supporting documentation for those findings; and,

G. Facilities

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.

5.8.18.7 Modifications to Phase Boundaries or Filing Sequence

Modifications to previously approved phase boundaries or the sequence for filing final plats shall require review by the governing body.

A. Procedure for Phased Developments Approved before May 8, 2017

1. Public Meeting

Proposed modifications shall be acted on by the Board of County Commissioners at a regularly scheduled public meeting. Agency comments on proposals may be requested by the Planning Office.

2. Decision

The Board of County Commissioners shall approve, approve with conditional, or deny a modification request within a mutually agreed-upon timeline and only consider facts pertinent to the modification request before a final plat is filed.

B. Procedure for Phased Developments Approved on or After May 8, 2017

1. Applicability

This section applies to modifications to phase boundaries or modifications to the filing sequence when the modification affects a phase proposed to be platted more than five years from the date of preliminary plat approval. Modifications to a phase proposed to be platted less than five years from the date of preliminary plat approval follow the procedures for phased developments approved before May 8, 2017.

2. Written Notice

The subdivider shall provide written notice to the Planning Office that describes the request and addresses the criteria in *Section 5.8.18.7.C Criteria, Modification*, summarizes the primary criteria impacts, as described in *Section 5.10.2.11, Impacts [...]* and *Appendix E, Review Criteria* including any changed impacts and information regarding new potentially significant adverse impacts for the phase or phases.

3. Submittal Timing

The written notice shall be submitted to the Planning Office at least 90 calendar days prior to the final plat deadline of an affected phase. The counting of days toward preliminary plat expiration shall be stayed until the governing body's decision pursuant to *Section 6.2.5.5, Written Statement/Governing Body Decision*.

4. Hearing Timing

The governing body shall hold a public hearing within 30 working days of receiving the written notice from the subdivider in accordance with [§76-3-617, MCA](#).

5. Hearing Content/New Conditions

The governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases. The governing body may impose necessary, additional conditions only if it determines based on a review of the primary criteria that the existing conditions of approval are inadequate to mitigate the potentially significant impacts identified during the original review based on changed circumstances.

6. Decision

The Board of County Commissioners shall approve, approve with conditions, or deny a modification request and only consider facts pertinent to the modification request before a final plat is filed.

7. Written Findings

The governing body shall issue supplemental written findings of fact no more than 20 working days after the hearing. The written statement shall document any changed primary review criteria impacts or information regarding new significant adverse impacts, and any necessary additional conditions to mitigate adverse impacts.

C. Criteria, Modifications

Requests to modify phase boundaries or the filing sequence for an approved phasing plan shall be based on the following criteria provided by the applicant:

1. Comply with Regulations

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall comply with these regulations;

2. Commissioners’ Decision

All aspects of the governing body’s decision on the preliminary plat/plan, including the findings of fact, conclusions, and conditions will continue to be valid if an extension is granted;

3. Functional

The first phase, and each subsequent phase when evaluated in conjunction with the prior phase(s), shall contain fully functional systems of access, non-motorized facilities, stormwater management, fire suppression, potable water, wastewater, and other infrastructure

Info Box
Plans, including but not limited to construction plans, are approved by Missoula County Public Works for compliance with those rules, regulations, and specifications in place at the time of review. Plan updates may be required at the time a final plat is filed in order to maintain compliance and address infrastructure needs and use.

and service delivery independent of and without reliance on a future or subsequent phase;

4. Incremental Completion

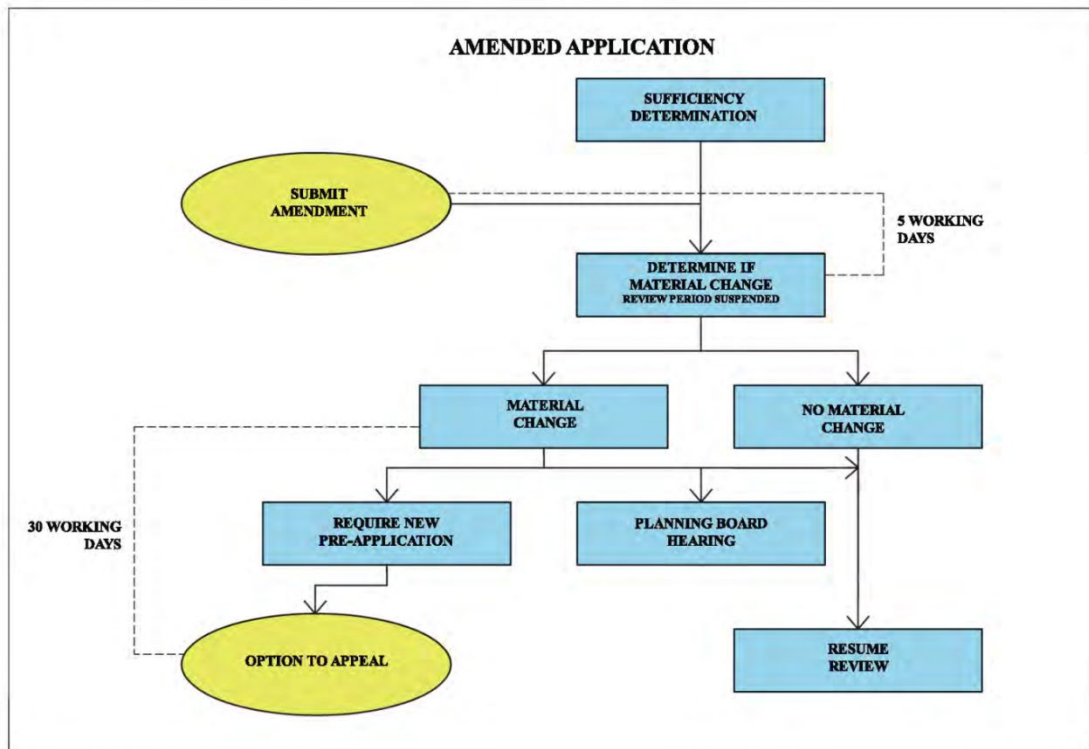
Required improvements for all prior phases shall be completed or secured with a financial guarantee before the commencement of any improvements in a later phase, pursuant to *Section 6.4, Provisions for Public and Private Improvements and Maintenance*.

5. No Change

No significant changes in the general area of the subdivision are expected to occur within the time period of the phases that would change alter the evaluation of the preliminary plat/plan; and, including but not limited to original subdivision findings of fact, and testimony or supporting documentation for those findings; and,

6. Facilities

The planning and provision of public facilities and services in the area of the subdivision will not be disrupted by the timing of the phases.



5.8.19 Amended Application

If the subdivider changes the subdivision application or preliminary plat/plan after the Planning Office made a determination of sufficiency but before a public hearing with the Planning Board for major subdivisions or public meetings with the governing body for minor subdivisions, the subdivider shall submit the amended application to the Planning Office for review.

5.8.19.1 Material Determination

Within 5 working days of receiving the amended application or preliminary plat/plan, the Planning Office shall determine whether the changes to the subdivision application or preliminary plat/plan are material.

5.8.19.2 Material Determination

Within 5 working days of receiving the amended application or preliminary plat/plan, the Planning Office shall determine whether the changes to the subdivision application or preliminary plat/plan are material.

5.8.19.3 New Material Effect on Administrative Minor Subdivision

Amendments to an application for an administrative minor subdivision shall not result in the application no longer meeting the applicability requirements in Section 5.5.1, *Applicability* or the original administrative minor application must be withdrawn, and a new application for a minor subdivision in Section 5.4, *Minor Subdivision* must be submitted.

5.8.19.4 Review Suspended

The review period shall be suspended while the Planning Office considers whether the changes to the subdivision application or preliminary plat/plan are material.

5.8.19.5 Not Material

If the Planning Office determines the changes are not material, the review period resumes on the date of the determination, and the Planning Office shall notify the subdivider of the decision by mail or electronic transmittal.

5.8.19.6 Material

If the Planning Office determines the changes are material, it may either require the subdivider to schedule a new pre-application meeting and resubmit a new subdivision application or schedule a new public hearing with the Planning Board for a major subdivision, or proceed with the review period, based upon the significance of the changes. Changes to the following features of a preliminary plat/plan, although not an exhaustive list, may be considered material changes:

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

5.8.19.7 Appeal

A subdivider whose subdivision application and preliminary plat/plan has been deemed by the Planning Office to be materially changed may appeal the decision pursuant to *Section 5.12, Appeals of Administrative Decisions*.

5.9 Adjustments to Preliminary Plats and Related Documents

5.9.1 Purpose and Intent

The purpose and intent of this section is to accommodate the modest changes to supplemental plans, documents, or boundary lines of an approved preliminary plat/plan or the conditions of approval of a preliminary plat/plan. The changes become necessary and practical as a result of changing conditions in the community or the neighborhood of the subdivision, or new information. It is the intent that these changes maintain the intent of the previous approval.

5.9.2 Preliminary Plat/Plan Adjustment Defined

A preliminary plat/plan adjustment grants minor relief from conditions of approval or facilitates minor changes to the details of an approved preliminary plat/plan when the nature of the adjustment and the absence of an impact on neighboring properties or the community warrant a process for submittal, review, and a decision by the governing body.

5.9.3 Applicability

Any adjustment requested pursuant to *Subsection 5.9.2, Preliminary Plat/Plan Adjustment Defined*, is subject to this section, including all subdivisions approved prior to the effective date. Adjustments may be approved for the following elements of an approved preliminary plat/plan pursuant to this section:

5.9.3.1 Conditions/Plans

Conditions of subdivision approval and approved plans.

5.9.3.2 Supplemental Sheets, Documents

Information on supplemental sheets or documents.

5.9.3.3 Approval Sheets

Conditions of Approval sheets.

5.9.3.4 CCR

Approved or filed covenants, conditions and restrictions.

5.9.3.5 Boundaries

Boundary lines for lots, easements, rights-of-way.

5.9.4 Criteria

Preliminary plat/plan adjustments shall comply with the following criteria:

5.9.4.1 Minor Nature

The preliminary plat/plan adjustment is minor when viewed in the context of the neighborhood and overall community, and its effect is generally limited to the subdivision.

5.9.4.2 Comply with Regulations

The preliminary plat/plan adjustment shall not cause the approved subdivision to fall into noncompliance with these regulations or any other applicable law, regulation, or code.

5.9.4.3 Protections

The preliminary plat/plan adjustment will not reduce the protections or safeguards provided by these regulations, including but not limited to protection of natural resources, neighboring properties, and the overall community.

5.9.4.4 No Impacts

The preliminary plat/plan adjustment shall not create any new impact or increase a previously recognized and mitigated impact on the neighboring land or the overall community.

5.9.4.5 Growth Policy

The preliminary plat/plan adjustment shall not cause the approved subdivision to become inconsistent with the currently adopted *Missoula County Growth Policy*.

5.9.4.6 Consistent with Findings

The preliminary plat/plan adjustment shall be fundamentally consistent with the findings of fact and conclusions of law adopted for the preliminary plat/plan, except in certain situations where the circumstances giving rise to the adjustment justify revised findings and conclusions of law.

5.9.4.7 Not Incremental

The preliminary plat/plan adjustment is not part of a series of such adjustments and variances for the same subdivision, nor is it the first in a potential series of adjustments and variances.

5.9.4.8 Changes to Subdivided Area

The requested adjustment stems from environmental or contextual changes to the area since preliminary plat approval.

5.9.4.9 Economic Changes

Economic changes since recording of the plat may not be considered under this section.

5.9.4.10 Administrative Minor Subdivisions

The preliminary plat amendment of a subdivision approved as an administrative minor subdivision cannot change the subdivision layout, design, or conditions of approval so it no longer meets the applicability requirements for an Administrative Minor Subdivision in section 5.5.1, *Applicability*.

5.9.5 Adjustment Procedure

5.9.5.1 Initiation

The subdivider shall submit to the Planning Office a written or emailed request for a preliminary plat/plan adjustment. The request must include a digital submission that describes and illustrates the proposed adjustment.

5.9.5.2 Scoping Meeting

The Planning Office shall schedule a scoping meeting with the subdivider per *section 5.8.2, Scoping Meeting*. The purpose of the meeting is to identify the submittal materials that will be needed to determine compliance with this section.

5.9.5.3 Submittal

After the scoping meeting, the subdivider shall submit to the Planning Office 1 paper copy and 1 digital copy of the materials identified in the scoping meeting.

5.9.5.4 Agency Comment and Staff Review

The Planning Office may distribute the requested adjustment to public agencies for review and comment, if applicable, and then perform a review and prepare a staff report pursuant to *Section 5.8.9, Staff Review, Staff Report*.

5.9.5.5 Public Meeting

Proposed amendments to filed subdivisions shall be subject to a public meeting before the Board of County Commissioners. A legal ad is required for amendments to major subdivisions.

5.9.5.6 Governing Body Consideration, Decision

Upon receipt from the Planning Office of a subdivider's request for a preliminary plat/plan adjustment and the staff report, the governing body shall

consider the requested adjustment. After the close of the public meeting, the governing body shall decide to approve, approve with conditions, or deny the requested adjustment.

5.9.5.7 Written Statement

A written statement of the decision shall be placed in the records of the governing body and forwarded to the subdivider and Planning Office. If the requested adjustment is denied, the written statement shall include the reasons for the decision, evidence on which the decision is based, and a description of the process to appeal the decision.

5.10 Review Criteria, Special Restrictions on Decisions

5.10.1 General Considerations

The governing body’s decision to approve, conditionally approve, or deny a proposed subdivision shall be based on review of the subdivision application, preliminary plat/plan in the case of a proposed final plat, these regulations, the MSPA, any applicable environmental assessment, public comments, Planning Board recommendation in the case of a major subdivision, staff report, and other information that may be submitted in relation to the subdivision.

5.10.2 Review Criteria

In addition to the general considerations in *Section 5.10.1, General Considerations*, the governing body’s decision to approve, conditionally approve, or deny a proposed subdivision shall be based on the review criteria in this section.

5.10.2.2 Subdivision Regulations

The subdivision regulations in effect at the time the application is determined to contain sufficient information for review, including but not limited to *Chapter 3, General Design Standards for All Subdivisions*, and *Chapter 4, Specific Standards for Certain Subdivisions*.

5.10.2.3 Zoning

Any zoning applicable to the land proposed for subdivision.

5.10.2.4 Other Regulations

Other regulations applicable to the land proposed for subdivision, including but are not limited to ARMs for sanitation and water supply, public health regulations, and floodplain regulations.

5.10.2.5 Adopted Plans

Adopted plans, such as the growth policy, transportation plans, capital improvements plans, pre-disaster mitigation plans, or community wildfire

protection plans. Because plans are not regulatory, no variance for non-conformance with a plan shall be required, nor can denial or a condition of approval be based solely on plan conformance.

5.10.2.6 Survey Requirements

Survey requirements established in Part 4 of the MSPA and the ARMs for final plats.

5.10.2.7 Legal and Physical Access

The provision of legal and physical access to each lot within the proposed subdivision.

5.10.2.8 Utility Easement

The provision of easements within the proposed subdivision or off-site for planned utilities.

5.10.2.9 Improvements

The approval and installation of improvements required before final plat approval or the required assurances and guarantees for any improvements that will be required after final plat approval.

5.10.2.10 Extending Capital Facilities

Extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains.

5.10.2.11 Impacts to Agriculture, Agricultural Water User Facilities, Local Services, Natural Environment, Wildlife, Wildlife Habitat, and Public Health and Safety

Any identified adverse impacts to agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety, and appropriate mitigation. Administrative minor subdivisions and minor subdivisions located in areas with zoning regulations that address these impacts shall be exempt from this subdivision provision

5.10.3 Special Restrictions on Decisions

The governing body's decisions on proposed subdivisions shall comply with the following restrictions.

5.10.3.1 Capital Facilities for Education

Costs of constructing or extending capital facilities related to education shall not be imposed on the subdivider.

5.10.3.2 Water and Sanitation Concerns

Conditional approval or denial based on water or sanitation concerns can be imposed only when based on existing subdivision, zoning, or other regulations for which the governing body has the authority to enforce.

5.10.3.3 SID/RSID Waivers

A required waiver of the right to protest the creation of a Special Improvement District (SID) or Rural Special Improvement District (RSID) shall specify the capital improvement to which the waiver applies. Furthermore, a waiver shall be valid for no longer than 20 years from the date the final plat is filed with the County Clerk and Recorder.

5.10.3.4 Encroachments

Subdivision approval shall not be granted if any feature or improvement of the subdivision, including well isolation zones for wells proposed on the subdivision lots, will encroach onto adjoining private property unless the encroachment is authorized under the Montana Sanitation in Subdivisions Act and the owner of the adjoining property provides permission.

5.10.3.5 Governmental Agency Comments

Conditional approval or denial of a subdivision shall not cite comments or opinions from a state or federal governmental entity on wildlife, wildlife habitat, or the natural environment unless the governmental entity provides scientific information or a published study that supports the comments or opinions.

5.10.3.6 Education or Wildland Urban Interface

Denial of a subdivision shall not be based solely on projected impacts to educational services or a proposed location in a wildland urban interface area as defined in §76-13-145, MCA.

5.10.3.7 Failure of Agency to Respond

Denial of a proposed subdivision shall not be based on a failure of an agency to review or comment on the proposed subdivision.

5.11 Variances

5.11.1 Findings

The governing body may grant a variance from these regulations upon making all of the required findings of this section.

5.11.1.1 Undue Hardship

Strict compliance with these regulations will cause undue hardship for the applicant. Undue hardship must exist due to the physical surroundings, particular shape, or topographical conditions of the subject property. Costs or financial considerations shall not be the sole reason for determining an undue hardship.

5.11.1.2 No Threat

The granting of the variance does not result in a threat to the public safety, health, or welfare, and is not injurious to persons or property.

5.11.1.3 Unique Conditions

The conditions upon which the variance is based are unique to the subject property and are not applicable generally to other property.

5.11.1.4 No Violation

The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution or conflict with the Missoula County Growth Policy.

5.11.1.5 Public Cost

The variance will not cause an increase in public costs.

5.11.1.6 Not Created by Applicant

The hardship has not been created by the applicant or the applicant's agent.

5.11.2 Procedure

5.11.2.1 Submittal

When requesting a variance, the subdivider shall identify each standard of these regulations for which a variance is sought. The subdivider also shall submit a response to each of the required findings listed in *Section 5.11.1, Findings* for each variance requested.

5.11.2.2 Consolidation of Applications

When practical an application for a variance may be processed concurrently with the application for the proposed subdivision. However, the vote on the requested variance shall be a separate vote from the vote on the proposed subdivision application and plat/plan.

5.11.2.3 Public Hearing

The governing body shall conduct a public hearing on a variance application associated with a major subdivision for which public notice shall be provided pursuant to *Section 5.8.12, Public Hearing Notice*. No public hearing is required for a variance associated with a minor subdivision.

5.11.2.4 Decision, Conditions

Upon the close of the public hearing in the case of a major subdivision, or at the public meeting for a minor subdivision, the governing body shall decide to approve or deny the requested variance. In approving a variance, the governing body may attach conditions to achieve the purpose and intent of the regulation that is varied.

5.12 Appeals of Administrative Decisions

Final decisions of the Planning Office or other county employee in the administration of these regulations may be appealed by an aggrieved person or agency to the Board of County Commissioners. For the purposes of this section, an aggrieved person or agency shall be either a person or agency that has submitted the application or has been adversely affected by a decision on an application.

5.12.1 Applicability

For the purposes of this section, final decisions are written decisions on the following matters: determinations on the applicability of exemptions; conclusions on element or sufficiency review; approvals or denials of plans for grading, drainage, revegetation; the processing of amended applications, and decisions on major and minor plat errors. Decisions that are incorporated into recommendations to the governing body are not final decisions that can be appealed.

5.12.2 Procedure

Appeals shall be filed and acted upon in accordance with the following procedures.

5.12.2.1 Submittal

The appeal shall be in writing and submitted to the Planning Office within 30 working days of the written decision.

5.12.2.2 Contents of Appeal

The appeal shall include a description of the decision prompting the appeal, the date of the decision, the basis of the appeal, and all other supporting materials the appellant considers relevant to the appeal.

5.12.2.3 Assemble Record

Upon receipt of the appeal, the Planning Office, or other county employee whose decision is being appealed shall assemble the record related to the appeal, including but not limited to the initial application materials and documents, meeting notes, and correspondence. The record and the appellant's submittal shall be forwarded to the Board of County Commissioners.

5.12.2.4 Public Meeting

The Board of County Commissioners shall hold a public meeting on the appeal within 30 working days of the appellant's submittal to the Planning Office. At the public meeting, the appellant or appellant's agent may state the grounds for the appeal and provide any information the appellant considers relevant to the appeal. The county employee whose decision is being appealed, or any other county employee, may provide information as well.

5.12.2.5 Decision

The Board of County Commissioners shall affirm, affirm with conditions, or reverse the decision being appealed.

5.12.2.6 Timing

The Board of County Commissioners shall decide on the appeal within 30 working days of the close of the public meeting on the appeal.

5.12.3 Suspension of Proceedings

An appeal shall suspend the review of the application until the Board of County Commissioners has acted upon the appeal, and the applicant's filing of the appeal constitutes the applicant's written consent to extend all applicable deadlines for the number of days of the suspension.

CHAPTER 6

FINAL PLAT AND SUBDIVISION IMPROVEMENT GUARANTEES

- | | | | |
|-----|---|-----|--|
| 6.1 | Purpose and Intent | 6.5 | Vacating Recorded Plats |
| 6.2 | Final Plat | 6.6 | Error Correction Procedure |
| 6.3 | Final Plats – Commencement of Each Phase (Approved On or After May 8, 2017) | 6.7 | Adjustments to Filed Plats and Related Documents |
| 6.4 | Provisions for Public and Private Improvements and Maintenance | | |

6.1 Purpose and Intent

It is the purpose and intent of this chapter to create a clear and consistent record of divisions of land and any amendments that may occur to subdivision plats, and supplemental plans and documents. It is further the purpose and intent of this chapter is to establish distinctions between subdivision plats and the supplemental sheets and documents that regularly accompany plats. This chapter creates criteria and procedures for approving amendments to plats and supplemental plans and documents. It also is the purpose and intent of this chapter to ensure the timely construction and installation of infrastructure and other improvements.

6.2 Final Plat

6.2.1 Applicability

The submittal, review, alteration, and vacation of all final plats, Condition of Approval sheets, and supplemental plans and documents shall comply with the standards of this section. The standards of this section also apply in certain circumstances when final plans are required, in lieu of final plats, for condominium, and mobile home or RV parks. See Section 6.3, Final Plats – Commencement of Each Phase (Approved On or After May 8, 2017).

6.2.2 Submittal

A final plat shall be submitted to Missoula County that includes the plat, Condition of Approval sheets and supplemental documents required in Section 7.5, Final Plat Submittal Requirements, and any additional items required by the preliminary plat/plan conditions of approval. Submittal items shall document compliance with all conditions of preliminary plat/plan approval.

6.2.2.1 Plats

Final plats are the drawings that show the creation of lots, parcels, blocks, streets, alleys, and other elements of a subdivision, pursuant to the definition in *Chapter 2, Definitions*.

6.2.2.2 Condition of Approval Sheets and Supplemental Documents

Condition of Approval Sheets and other supplemental documents that regularly accompany plats contain planning related information, such as overlay maps of natural resources, plans and specifications for facilities and improvements, and other information related to conditions of approval. Examples of supplemental documents that regularly accompany plats include homeowners' association documents; Conditions, Covenants, and Restrictions; various agreements required by these regulations for the maintenance and/or construction of facilities and improvements, bonding or financial securities, and similar documents. See *Table 7.5, Final Plat/Plan Submittal Requirements* for more information.

6.2.2.3 Remaining Tract – Phased Developments

The remaining portion of the subdivision parent parcel shall be filed as a survey with the recording of each phase. A note shall be filed as part of the survey pursuant to *Section 7.7.1, Remaining Lots – Phased Developments*.

6.2.2.4 Final Plat Checklist

The materials necessary for the completion of a final plat checklist in conformance with Missoula County Resolution 2020-025, as amended, shall be enclosed with the plat and related supplemental information.

6.2.3 Information Required for Final Plats

Final plats shall be submitted to Missoula County for review of required information pursuant to *Section 6.2.2, Submittal*. Before the final plat is accepted for review, the applicant shall pay a final plat review fee as established by the governing body. Within 20 working days of the submittal, the Planning Office shall determine if the final plat, including any accompanying Condition of Approval sheets, supplemental documents, and completed final plat checklist, as amended, has the required information to initiate final plat review. The subdivider or subdivider's agent and the Planning Office may mutually agree to extend this review period.

6.2.3.1 Written Notice

The Planning Office shall notify the subdivider of the determination by written or digital communication.

6.2.3.2 Missing Information

If the Planning Office determines information is missing from the final plat submittal the Planning Office shall identify the missing information in a written or digital notification to the subdivider. No further action shall be taken until the application is resubmitted with the missing information.

6.2.3.3 Resubmittal

Once the subdivider resubmits a final plat submittal that includes the previously missing information, the Planning Office shall have 20 working days to notify the subdivider if the submittal contains all the required information. The Planning Office may review subsequent submissions of the final plat only for information found to be deficient during the original review.

6.2.3.4 Process Complete

This process shall be repeated until the subdivider submits an application containing all of the information required by these regulations, as determined by the Planning Office.

6.2.3.5 Review Period, Governing Body

The governing body shall review and approve or deny within 20 working days any final plat deemed to have required information pursuant to *Section 6.2.4, Final Plat Review*. The subdivider or the subdivider's agent and the Planning Office may mutually agree to extend this review period.

6.2.4 Final Plat Review

The Planning Office shall review the final plat for substantive compliance with the approved preliminary plat. If the Planning Office determines that there is a material change in the final plat from what was approved as a preliminary plat or determines that there are conditions which have not been met, the Planning Office shall require that a new final plat application be submitted.

6.2.4.1 Minor Deviations

The planning director shall forward the final plat, Condition of Approval sheets, and any supplemental sheets and documents even if there are minor and immaterial deviations from the preliminary plat/plan. The planning director may give consideration to minor changes that encourage environmental and public health and safety improvements. Deviations shall be deemed minor and immaterial if they comply with the following criteria:

- A.** Maintain the number of lots and basic configuration of lots;
- B.** Maintain road and pathway layouts;
- C.** Maintain the basic plans for water and wastewater;
- D.** Do not significantly alter easement provisions;
- E.** Maintain designated primary and secondary accesses;

- F. Maintain consistency with the Missoula County Growth Policy and other adopted county plans;
- G. Maintain compliance with these regulations;
- H. Preserve the intent and effect of all conditions of the preliminary plat/plan approval;
- I. Maintain the protections and safeguards provided by these regulations; and,
- J. Avoid a new impact or an increase of a previously recognized and mitigated impact on neighboring land or the overall community.

6.2.4.2 Material Change

If the Planning Office determines that the final plat, Condition of Approval sheets, or other supplemental documents contain material changes from the approved preliminary plat/plan or determines that a condition of approval has not been fully met, a new final plat submission shall be required.

6.2.4.3 Appeal

The determination of the Planning Office may be appealed to the Board of County Commissioners pursuant to *Section 5.12, Appeals of Administrative Decisions*.

6.2.4.4 Review Agencies

In addition to the Planning Office review for compliance, the final plat, Conditions of Approval sheets, and the supplemental documents shall be reviewed by departments subject to the final plat checklist, Resolution 2020-025, as amended.

Info Box
<p>Outside agencies may be involved in review of elements related to the final plat, depending upon conditions of subdivision approval. See Missoula County Resolution 2020-025 for review responsibilities of county departments:</p>

6.2.4.5 Surveyor

The county’s examining land surveyor shall review final plats and certificates of survey for errors and omissions in calculations or drafting before the governing body’s approval. Any necessary corrections shall be completed before the plat is recorded with the Missoula County Clerk and Recorder. A certificate shall be placed on the plat for the examining land surveyor’s signature verifying the review for technical completeness. Minor Affidavits of Corrections can be addressed in accordance with *Section 6.6.2, Minor Errors*, before or after the examining land surveyor has signed.

6.2.5 Governing Body Decision

The governing body shall review and approve the final plat, including any supplemental sheets and supplemental documents if they conform to the approved preliminary plat/plan as conditioned and the county treasurer certifies that all tax assessments have been paid.

6.2.5.1 Minor Deviations

The governing body may approve a final plat and the supplemental sheets and documents if there are minor and immaterial deviations that comply with the criteria in *Section 6.2.4.1, Minor Deviations*.

6.2.5.2 Additional Conditions

The governing body may not impose additional conditions as a prerequisite to final plat approval if the final plat has been submitted prior to the deadline for the submittal and the previously approved preliminary plat/plan is valid.

6.2.5.3 Denial

The governing body shall deny approval of a final plat if it determines the plat and any supplemental sheets and information do not conform to the approved preliminary plat/plan or it determines a condition of preliminary plat/plan approval is not fulfilled. This denial and any resubmittal does not extend the time for which a preliminary plat/plan approval is effective or the time by which a final plat shall be approved.

6.2.5.4 Withdraw Approval

The governing body may withdraw approval or disapproval of a preliminary plat if it determines that the information provided and upon which such decision was based is false or inaccurate.

6.2.5.5 Written Statement

If the final plat is disapproved or a decision is withdrawn, the written statement shall include the reasons for the decision, evidence on which the decision is based, and a description of the process to appeal the decision.

6.2.6 Final Plat Filing Deadline

An approved final plat, Condition of Approval sheet, and any supplemental documents, including all extension approval letters, shall be filed within 180 calendar days of the governing body's approval. Final plat approval shall be void if the plat is not filed within 180 days of approval.

6.2.7 Filing Extension, Less Than 1 Year

Notwithstanding *Section 6.2.6, Final Plat Filing Deadline* and apart from the extension process described in Chapter 5, a subdivider may request and the governing body may grant an extension to the filing deadline provided the reason for the extension is beyond the subdivider's control and the governing body determines that the plat will be filed according to an agreed upon extension.

6.2.7.1 Written Request

The subdivider shall submit to the Planning Office a written request for the extension that includes the reason for the extension. The request shall be submitted at least 10 working days prior to the filing deadline.

6.2.7.2 Maximum Extension

The governing body may extend the filing period for no more than 180 calendar days. The governing body may grant one additional extension for no more than 180 calendar days.

6.2.7.3 Stay

The counting of days toward the filing deadline shall be stayed until the governing body acts on the request.

6.2.7.4 Examples

Examples of acceptable circumstances include but are not limited to the following:

A. Temporary Constraints

Temporary delay by a governmental agency in the installation or construction of public improvements.

B. Funding Delay

Time requirements in the formation or operation of an SID/RSID or bond measure.

6.2.8 Effects of Approval

6.2.8.1 Dedications

Final plat approval shall constitute acceptance of dedicated lands, and the certification of the governing body shall include acceptance language, if applicable. In specific instances, land dedications may be required by specific resolution of the governing body that is referenced in a note on the final plat.

6.2.8.2 Transfers

A final plat must be filed with the Missoula County Clerk and Recorder before title to any land in the subdivision can be sold or transferred, except as exempted in *Section 1.7.4, Transfer of Title*.

6.2.8.3 Changes After Filing

After the final plat is recorded, the governing body may approve changes to the final plat, Condition of Approval sheet, and supplemental documents pursuant to *Section 6.7, Adjustments to Filed Plats and Related Documents*.

6.3 Final Plats More than 5 years from Preliminary Approval – Commencement of Each Phase (Approved on or After May 8, 2017)

This section applies to any phase of an approved phased subdivision submitted for final plat approval more than five years after the date of preliminary plat which was approved on or after May 8, 2017. For any phase of an approved phased subdivision submitted for final plat approval less than five years from the date of preliminary plat, which was approved on or after May 8, 2017, the final plat shall follow the process in *section 6.2, Final Plats*. Final plats for each phase shall be filed sequentially in accordance with the approved phasing plan. All phases subject to this section require review at a public hearing by the governing body. This hearing shall follow preliminary plat approval and must precede final plat approval for each phase. Phased subdivisions subject to this section shall be subject to the following:

6.3.1 Written Notice

The subdivider shall provide written notice to the Planning Office that describes the request and summarizes the primary criteria impacts, as described in Appendix E, *Review Criteria*, including any changed impacts and information regarding new potentially significant adverse impacts for the phase or phases.

6.3.2 Submittal Timing

The written notice shall be submitted to the Planning Office at least 60 working days prior to the final plat deadline of an affected phase. The counting of days toward preliminary plat expiration shall be stayed until the governing body's decision pursuant to *Section 6.2.5, Governing Body Decision*.

6.3.3 Hearing Timing

The governing body shall hold a public hearing within 30 working days after receipt of the written notice from the subdivider in accordance with [§76-3-617, MCA](#).

6.3.4 New Conditions

The governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases. The governing body may amend or impose additional conditions of approval only if it determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances.

6.3.5 Decision

The governing body shall approve, approve with conditions, or deny a modification request and only consider facts pertinent to the modification request before a final plat is filed.

6.3.6 Written Findings

The governing body shall issue supplemental written findings of fact no more than 20 working days after the hearing. The written statement shall document any changed primary review criteria impacts or information regarding new significant adverse impacts, and any necessary additional conditions to mitigate adverse impacts.

6.3.7 Submittal of Approved Phases

After review under *Section 6.3, Final Plats - Commencement of Each Phase*, final plats shall be submitted to the Planning Office pursuant to *Section 6.2.3, Information Required for Final Plats*.

6.4 Provisions for Public and Private Improvements and Maintenance

6.4.1 Payment for Extension of Public Improvements

The governing body may require a subdivider to physically extend, or pay for part or all of the costs to extend, public capital facilities to a subdivision where the facilities are necessary for public health and safety. Public facilities required of the subdivider must be directly attributable to the subdivision.

6.4.1.1 Type of Facilities

Facilities that may be required for public health and safety include but are not limited to motorized and non-motorized transportation facilities, sewer lines, water supply lines, fire suppression facilities, and storm drains.

6.4.1.2 Pay Back Provision

If the subdivider is required to overbuild public capital facilities for the benefit of other subdivisions or landowners, either immediately or in the future, the county may approve a pay-back provision in which the subdivider will be reimbursed from assessments of, or payments from, other users of the facilities. The reimbursement shall approximate the costs attributed to the overbuild that exceeds the needed capacity for the subdivision.

6.4.2 Private Improvements

The subdivider shall construct all improvements within and along the frontage of the proposed subdivision that are required by these regulations.

6.4.3 Timing of Improvements

6.4.3.1 Before Final Plat

Approved construction plans and/or installation of certain improvements the governing body determines to be necessary for public health and safety may be required before final plat approval. These improvements may be off-site of the proposed subdivision, requiring their extension to the subdivision, and/or within the subdivision.

6.4.3.2 Commence Within 2 Years

Substantial installation or construction of public and private improvements not required before final plat approval shall commence within 2 years of final plat approval. The installation or construction shall continue on a timely schedule to completion.

6.4.3.3 County Action

Failure to begin substantial construction within 2 years of final plat approval, or failure to continue construction to a timely completion, shall constitute grounds for the governing body to act against the subdivider’s Subdivision Improvements Agreement and Financial Guarantee.

6.4.4 Subdivision Improvements Agreement

The subdivider shall enter into a Subdivision Improvements Agreement with the governing body that details the construction schedule of all private and/or public facilities and improvements required by these regulations or by a condition of approval. This Agreement shall be accompanied with a financial guarantee as identified in this section if the final plat will be filed before improvements are completed. (See *Section 7.7.4, Subdivision Improvements Agreement*, for required content in this Agreement).

6.4.5 Alternative Guarantee Methods

When a financial guarantee is required, the subdivider shall propose and the governing body may approve 1 or a combination of more than 1 of the following guarantee methods.

6.4.5.1 Private or Public Escrow Agreements

The subdivider deposits cash, a note, bond, or some other instrument readily convertible into cash with the county or with a financial institution approved by the governing body in an account payable to the county.

A. Amount

The amount of the deposit shall cover 125% of the cost of installing or constructing any incomplete private and/or public improvements. The amount shall be increased 3% for each year of a multi-year construction

schedule to offset inflation. The account shall be subject to an agreement between the subdivider and the financial institution and the county.

B. Release

The agreement shall include a provision to release funds to the subdivider as the improvements are completed and approved by the county, if applicable. The agreement must specify that funds cannot be released without the governing body's approval.

C. Property of County

The agreement must specify that the funds become the property of the county for the purpose of completing the improvements if the subdivider fails to complete the improvements within the approved construction schedule.

D. Associated Costs

The subdivider shall bear all costs associated with providing the guarantee.

6.4.5.2 Irrevocable Letter of Credit

The subdivider secures a letter of credit from a financial institution.

A. Amount

The amount of the credit must be sufficient to cover 125% of the costs of installing or constructing any incomplete private and public improvements. The amount shall be increased 3% for each year of a multi-year construction schedule to offset inflation.

B. Creditor's Pledge

The letter must pledge that the creditor will pay the costs of improvements should the subdivider default and that the credit cannot be revoked without the governing body's approval.

C. Funds to County

The letter must state that the funds guaranteed will be automatically turned over to the county if the improvements are not installed in accordance with the approved construction schedule.

D. Associated Costs

The subdivider shall bear all costs associated with providing the guarantee.

6.4.5.3 Bonds

The subdivider provides a surety bond to guarantee the funds to complete private and/or public improvements, subject to any requirements of the bonding company.

A. Amount

The bond shall be payable to the county and shall be in an amount sufficient to cover 125% of the costs of installing or constructing any incomplete private or public improvements. The amount shall be increased 3% for each year of a multi-year construction schedule to offset inflation.

B. Completion

The bond shall remain in effect until the improvements have been completed and approved by the county.

C. Associated Costs

The subdivider shall bear all costs associated with the providing the guarantee.

6.4.5.4 Special Improvement Districts

The governing body may agree to sell bonds or by some other means raise the funds necessary to finance public capital improvements until costs can be recovered through assessments against lot purchasers in the subdivision. To establish this type of guarantee, the subdivider and owners of the property to be subdivided must include in the Subdivision Improvements Agreement the following specifications.

A. No Transfer

No property will be sold, rented, or leased until a special improvement district is formed and the subdivider and owners will allow the governing body to create a SID/RSID for the property without protest.

B. Waive Protest

Each property owner within the subdivision waives the right to protest the creation of a SID/RSID for capital improvement projects, and the governing body shall identify the specific capital improvements for which protest is waived. A waiver of a right to protest shall expire 20 years after the date the final plat is filed with the Missoula County Clerk and Recorder unless the governing body approves an earlier date.

6.4.5.5 Encumbrance Upon Real Property

The subdivider encumbers as collateral lots within the subdivision or other real property owned by the subdivider.

A. Value

The value of the collateral shall be enough to cover 125% of the costs of installing or constructing any incomplete private and/or public improvements. The value shall be increased 3% for each year of a multi-year construction schedule to offset inflation.

B. Appraisal

The value of the collateral shall be determined by an appraisal completed within 6 months prior to final plat approval by an appraiser licensed to practice in the State of Montana.

C. No Encumbrances

Real property will be acceptable as collateral if the subdivider owns the property free and clear of all encumbrances.

D. 80% Equity

The estimated amount of the improvements guarantee is no greater than 80% of the subdividers' equity in the property.

E. Beneficiary

If appropriate, the subdivider shall prepare the Improvements Guarantee Agreement and a Montana Trust Indenture naming Missoula County as the beneficiary.

F. Waive Incremental Increase

The subdivider must provide a waiver of any right to incremental release of the security unless multiple parcels are provided as security.

G. Associated Costs

The subdivider shall bear all costs associated with providing the guarantee.

6.4.6 Incremental Payment or Guarantee Plan

The governing body may agree to incremental payments or incremental guarantees when the increments correspond with a phased construction schedule.

6.4.7 Release of Money or Property Held Under Guarantee

As improvements are completed, the subdivider may apply to the governing body for release of part of the financial guarantee or collateral. Upon completion of all private and/or public improvements, all financial guarantees and collateral shall be released to the subdivider.

6.4.7.1 Inspections

Prior to the release of any financial guarantee or collateral, the improvements for which the release is requested shall be inspected and approved by the county for compliance with approved plans and specification.

6.4.7.2 List Deficiencies

If the governing body determines that any of the improvements are not constructed in substantial compliance with specifications, the subdivider shall be provided a list of specific deficiencies and the governing body shall be entitled to withhold guaranteed funds or collateral sufficient to ensure compliance.

6.4.7.3 Withdraw Funds

If the governing body determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, or has reason to believe that the subdivider cannot complete the improvements, the governing body may withdraw funds from the financial guarantee or collateral in an amount sufficient to construct the improvements in accordance with the specifications contained in the conditions of subdivision approval.

6.4.8 Provisions for Maintaining New Roads

The subdivider may be required to establish an SID/RSID to provide for adequate maintenance of all roads established in an approved subdivision.

6.4.8.1 Plat Note

A statement shall be included on the subdivision plat or Condition of Approval sheet stating that acceptance of a deed for a lot within the subdivision shall constitute the assent of the owners to any future SID/RSID, based on benefit, for upgrading and/or maintaining the streets within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening and drainage facilities. The acceptance of a deed may be used in lieu of their signatures on an SID/RSID petition.

6.4.8.2 Developer Responsibility

If required to establish a SID/RSID, the developer shall maintain the new roads until the SID/RSID is capable of maintaining the roads. A written agreement shall document this responsibility and describe the method to transfer the maintenance responsibility to the SID/RSID or Homeowner's Association and the acceptance of the responsibility.

6.4.9 Warranty of Improvements

The subdivider shall provide a 1-year warranty for all private and/or public improvements required by these regulations and any conditions of subdivision approval. The warranty must commence at the time the improvements are accepted by the County.

6.5 Vacating Recorded Plats

To remove or vacate a plat from the county land records, the following procedure must be used:

6.5.1 Petition

A petition for vacating a plat must be presented to the governing body specifically identifying the plat to be vacated and stating that petitioners are the owners of all land in the plat to be vacated and that no rights of any person have intervened since the plat was filed which would be adversely affected by the cancellation or annulment of the plat.

6.5.2 Public Hearing

The governing body must hold a public hearing on the plat vacation.

6.5.3 Public Notice

Public notice of the hearing must be given by posting in 3 public places and publishing in a newspaper of the general circulation in the county at least 1 week prior to the hearing on the petition. Notice of the public hearing also shall be delivered by certified mail to everyone with an interest in the subdivision to be vacated, including the landowners and mortgage holders.

6.5.4 Decision

The governing body's decision to approve or deny the petition for plat vacation shall be based on public interest factors, including those that are relevant to vacating public roads. The governing body shall consider the following in making its decision:

6.5.4.1 Pattern of Platting

The pattern of any platted lots in the area and how the requested vacation may affect these lots;

6.5.4.2 Original ROW

The manner in which any right-of-way to be vacated was originally dedicated, granted or conveyed;

6.5.4.3 Reasons

The reasons stated in the petition requesting the vacation; and,

6.5.4.4 Neighbor Agreement

Any agreement between the adjacent property owners regarding the use of the vacated area.

6.5.5 Streets, Alleys

A decision to vacate a subdivision shall designate to which properties land previously platted as streets and alleys must revert and that interior streets may pass to the adjoining landowners, with each adjoining landowner taking title to the center of the street.

6.6 Error Correction Procedure

Final plats and certificates of survey shall be reviewed by the Examining Land Surveyor for errors and omissions in calculations or drafting before the plat is recorded with the Missoula County Clerk and Recorder. Any errors on the plat or the certificate of survey shall be resolved pursuant to this section.

6.6.1 Classification of Errors

The Examining Land Surveyor shall determine if any errors are minor or major errors.

6.6.2 Minor Errors

Minor errors may include but are not limited to:

6.6.2.1 Typographical and spelling errors or transpositions;

6.6.2.2 Incorrect seals;

6.6.2.3 Incorrect dates;

6.6.2.4 Monumentation incorrectly noted, drawn, or missing;

6.6.2.5 Incorrect or missing interior bearing(s) and/or dimensions(s) on the drawing;

6.6.2.6 Missing or incorrectly displayed arrows or symbols;

6.6.2.7 Street name changes;

6.6.2.8 Title of plat already in use; and,

6.6.2.9 Other items of a similar nature as determined by the Examining Land Surveyor.

6.6.3 Review Procedure for Correcting Minor Errors

Corrections of minor errors may be approved by the Examining Land Surveyor.

6.6.3.1 Affidavit

An Affidavit of Correction shall be prepared, signed, and sealed by a professional land surveyor on forms recorded with the Office of the Missoula County Clerk and Recorder.

6.6.3.2 Fees

Property owners who may petition the county for a correction of a filed subdivision plat shall pay all direct and related costs incurred by the county to process the correction, including filing fees according to the currently adopted fee schedule.

6.6.4 Major Errors

Major errors may include but are not limited to:

6.6.4.1 Legal Description

Additions to or deletions from the legal description of dedicatory language that are not typographical in nature;

6.6.4.2 Incorrect Certificates

Incorrect certificates or signatures;

6.6.4.3 Missing Certificates

Missing certificates, seals, or signature blocks; and,

6.6.4.4 Similar Items

Other items of a similar nature as determined by the Examining Land Surveyor and the Planning Office.

6.6.5 Review Procedure for Correcting Major Errors

Major errors shall be reviewed by the Examining Land Surveyor and the Planning Office.

6.6.5.1 Corrected Plat

All corrected plats shall be reviewed in accordance with in *Section 6.2.4, Final Plat Review*.

6.6.5.2 Fees

The property owners petitioning for the amendment or correction of a filed subdivision plat shall pay all related direct costs incurred by the county, including filing fees according to the currently adopted fee schedule.

6.6.6 Appeal

The Examining Land Surveyor’s decision may be appealed to the Board of County Commissioners pursuant to *Section 5.12, Appeals of Administrative Decisions*.

6.7 Adjustments to Filed Plats and Related Documents

6.7.1 Purpose and Intent

The purpose and intent of this section are to accommodate the modest changes to plat elements, supplemental plans/documents that accompany a filed plat, or the conditions of approval of a filed plat. The changes become necessary and practical as a result of changing conditions in the community or the neighborhood of the subdivision, or new information. It is the intent that these changes maintain the intent of the previous approval.

6.7.2 Adjustment Defined

An adjustment grants minor relief from conditions of approval or facilitates minor changes to the details of a filed plat when the nature of the adjustment and the absence of an impact on neighboring properties or the community warrant a process for submittal, review, and a decision by the governing body.

6.7.3 Applicability

Any adjustment requested pursuant to *Subsection 6.7.2, Adjustment Defined*, is subject to this section. Adjustments may be approved for the following elements of a filed plat pursuant to this section:

6.7.3.1 Plat Elements

Elements of filed plats.

6.7.3.2 Conditions
Conditions of subdivision approval.

6.7.3.3 Supplement Sheets, Documents
Information on supplemental sheets or documents.

6.7.3.4 Approval Sheets
Conditions of Approval sheets.

6.7.3.5 CCR
Filed covenants, conditions and restrictions.

6.7.4 Criteria
Filed plat adjustments shall comply with the following criteria:

6.7.4.1 Minor Nature
The adjustment is minor when viewed in the context of the neighborhood and overall community, and its effect is generally limited to the subdivision.

6.7.4.2 Comply with Regulations
The adjustment shall not cause the approved subdivision to fall into noncompliance with these regulations or any other applicable law, regulation, or code.

6.7.4.3 Protections
The adjustment will not reduce the protections or safeguards provided by these regulations, including but not limited to the protection of natural resources, neighboring properties, and the overall community.

6.7.4.4 No Impacts
The adjustment shall not create any new impact or the increase of a previously recognized and mitigated impact on the neighboring land or the overall community.

6.7.4.5 Growth Policy
The adjustment shall not cause the approved subdivision to become inconsistent with the currently adopted *Missoula County Growth Policy*.

6.7.4.6 Consistent with Findings
The adjustment shall be fundamentally consistent with the findings of fact and conclusions of law adopted for the filed plat, except in certain situations where

Info Box

Many covenant provisions are unrelated to subdivision approval by the Board of County Commissioners and are not subject to this process. These sections of the covenants may be amended without governing body approval. Check the “amendments” section of the covenants.

the circumstances giving rise to the adjustment justify revised findings and conclusions of law.

6.7.4.7 Not Incremental

The requested adjustment is not part of a series of such adjustments and variances for the same subdivision, nor is it the first in a potential series of adjustments and variances.

6.7.4.8 Changes to Subdivided Area

The requested adjustment stems from environmental or contextual changes to the area proposed for subdivision since the recording of the plat.

6.7.4.9 Economic Changes

Economic changes since the recording of the plat may not be considered under this section.

6.7.4.10 Administrative Minor Subdivision

The requested adjustment of an approved final plat of an administrative minor subdivision shall not result in the subdivision being out of compliance with *Section 5.5.1, Applicability*.

6.7.5 Procedure

6.7.5.1 Initiation

The subdivider shall submit to the Planning Office a written or emailed request for a filed plat adjustment. The request must include a digital submission that describes and illustrates the proposed adjustment.

6.7.5.2 Pre-submittal Meeting

The Planning Office shall schedule a pre-submittal meeting with the subdivider within 10 working days of receipt of the request. The purpose of the meeting is to identify the submittal materials that will be needed to determine compliance with this section.

6.7.5.3 Submittal

After the pre-submittal meeting, the subdivider shall submit to the Planning Office 1 paper copy and 1 digital copy of the materials identified in the pre-submittal meeting.

6.7.5.4 Agency Comment and Staff Review

The Planning Office may distribute the requested adjustment to public agencies for review and comment, if applicable, and then perform a review and prepare a staff report pursuant to *Section 5.8.9, Staff Review, Staff Report*.

6.7.5.5 Public Meeting and Notice

Proposed adjustments to subdivisions shall be subject to a public meeting before the Board of County Commissioners. A legal ad is required for adjustment to major subdivisions.

6.7.5.6 Governing Body Consideration, Decision

Upon receipt from the Planning Office of a subdivider’s request for an adjustment, the staff report, and a Planning Board recommendation in the case of a major subdivision, the governing body shall consider the requested adjustment. After the close of the public hearing in the case of a major subdivision, or at the public meeting for a minor subdivision, the governing body shall decide to approve, approve with conditions, or deny the requested adjustment.

6.7.5.7 Written Statement

A written statement of the decision shall be placed in the records of the governing body and forwarded to the subdivider and Planning Office. If the requested adjustment is denied, the written statement shall include the reasons for the decision, evidence on which the decision is based, and a description of the process to appeal the decision.

6.7.6 Record Documents

Any recorded documents that are modified by an adjustment shall be revised and then filed with the Clerk and Recorder within 180 calendar days of the governing body’s approval. The approved adjustment shall be void if the applicable documents are not filed within 180 days of approval.

CHAPTER 7

GENERAL SUBMITTAL REQUIREMENTS

7.1	Purpose and Intent	7.5	Final Plat Submittal Requirements
7.2	Preapplication Submittal Items	7.6	Description of Preliminary Plat/Plan Submittal Requirements
7.3	Licenses, Certifications	7.7	Description of Final Plat Submittal Requirements
7.4	Preliminary Plat/Plan Submittal Requirements		

7.1 Purpose and Intent

Applicants proposing a subdivision, mobile home park, recreational vehicle park, townhouse or condominium development, must submit sufficient information to allow reviewers and the public to identify possible impacts and determine if the proposal complies with applicable laws and regulations. The purpose and intent of this chapter is to establish minimum submittal requirements that generally are required for various types of development proposed under these regulations. The further intent is to require only the submittal items that are necessary to properly review the proposed development without unnecessarily burdening the applicant with excessive requirements. In addition to the general requirements of this chapter, additional submittal items may be required in other chapters of these regulations for specific types of applications. For purposes of this chapter, the term subdivision includes proposed developments of mobile home and recreational vehicle parks, townhomes, and condominiums.

7.2 Preapplication Submittal Items

At the time of the written request for the preapplication meeting and accompanying fee, the subdivider shall provide the Planning Office with the following general information.

7.2.1 Current Status

A preliminary sketch plan drawn to scale showing information on the current status of the site, including:

- 7.2.1.1** Location;
- 7.2.1.2** Approximate tract and lot boundaries of existing tracts of record;
- 7.2.1.3** Description of general terrain;
- 7.2.1.4** Natural features (*e.g.*, lakes, streams, and riparian vegetation);
- 7.2.1.5** Existing structures and improvements;
- 7.2.1.6** Approximate location of existing utility lines and facilities;
- 7.2.1.7** Approximate location of existing easements and rights-of-way; and,
- 7.2.1.8** Parks and open space.

7.2.2 Proposal

A preliminary sketch plan drawn to scale of the proposed subdivision including:

- 7.2.2.1** Approximate tract and lot boundaries;
- 7.2.2.2** Building/lot layout;
- 7.2.2.3** Proposed access;
- 7.2.2.4** Proposed public improvements;
- 7.2.2.5** General location of proposed utility lines and facilities;
- 7.2.2.6** Approximate location of easements and rights-of-way; and,
- 7.2.2.7** Parks and open space, if applicable.

7.2.3 General Information

General maps and information including:

- 7.2.3.1** A brief narrative of the subdivision;
- 7.2.3.2** Zoning map with site identified, if applicable;
- 7.2.3.3** Land use map from the adopted Growth Policy with site identified;
- 7.2.3.4** Floodplain map with site identified, if applicable;
- 7.2.3.5** Vicinity sketch showing adjacent uses with site identified;
- 7.2.3.6** Topographic map with site identified; and,
- 7.2.3.7** Aerial photograph with site identified, if available.

7.3 Licenses, Certifications

A professional land surveyor licensed to practice in the State of Montana shall prepare the preliminary and final plats. If the application includes engineering plans, reports, and specifications, these items shall be prepared by a professional engineer licensed to practice in the State of Montana. Other studies and analyses required by these regulations, such as geotechnical and hydrological studies, shall be prepared by professionals with the applicable licenses and certifications and authorized to practice in the State of Montana.

7.4 Preliminary Plat/Plan Submittal Requirements

For all applications for preliminary plat/plan, mobile home park, recreational vehicle park, townhome, or condominium development, the Planning Office shall consult the reviewing agencies and then identify applicable submittal requirements from the items listed in *Table 7.4, Preliminary Plat/Plan Submittal Requirements*. The Planning Office shall require only items necessary to determine compliance with these regulations and to evaluate impacts of a proposed subdivision. The subdivider shall include in the application all items so identified by the Planning Office. During the review of a preliminary plat/plan application, the Planning Office and other reviewing agencies may require additional submittal items if necessary to determine compliance with these regulations.

**Table 7.4
Preliminary Plat/Plan Submittal Requirements**

Submittal Item	
7.4.1 Preliminary Plat	Boundary
	Lot layout
	Existing and proposed easements, ROW
	Content required by ARM 24.183.1107
	Surveyor certification
7.4.2 General Information	Supplemental documents
	Completed application
	Review fee
	Certification of ownership (see 7.6.1)
	Tract of record, evidence of legal existence of property
	Description of proposed, current land use
	Legal description, township/range, section/quarter section, principal meridian
	Preliminary title report, all recorded documents pertaining to property
	Neighborhood meeting information for major subdivisions
	Draft CCR, deed restrictions
	Mobile Home Park rules
	Information about adjacent land (see 7.6.2)
	Supplemental sheets
	N/A
	7.4.3 Subdivision Plan
Elevations, benchmarks, 2 ft. intervals <10%, 5 ft. intervals =>10%; Slope analysis when >25% (see 7.6.3)	
Water surface elevation of 100-year flood	
Riparian resources management plan (see 7.6.4)	
Storm water calculations, description of storm water plan	
Subdivision gross and net acres, size of lots	
Calculations of required parkland dedication for major subdivisions	
Fire Suppression Plan (see 3.5.2)	
Draft HOA documents creating association (see 7.6.6)	
Landscape plantings, quantities	
Supplemental sheets	
Vicinity map with subdivision perimeter boundary	
Locations of section corners, subdivision corners	
Topographic map	
Floodplain	
Water bodies	

**Table 7.4
Preliminary Plat/Plan Submittal Requirements**

Submittal Item	
7.4.3 Subdivision Plan (cont.)	Existing and proposed buildings, structures, improvements
	Grading and drainage plan (see 7.6.5)
	Locations, dimensions of easements, ROW
	Irrigation assessment disclosure statement
	Lots and blocks, numbered, dimensions
	Parks, open space, areas dedicated to public use
	Subdivision common areas, common facilities
	Landscaping, street plantings
7.4.4 County Plans, Policies (see 7.6.7)	Supplemental documents
	Documented compliance with land use designation, Growth Policy, applicable zoning, other adopted county plans
	Supplemental sheets
	N/A
7.4.5 State Statute (see 7.6.9)	Supplemental documents
	Environmental assessment, required for major subdivisions (see 7.6.8)
	Cultural and historic resources assessment
	Wildlife-human interaction assessment
	Written responses to MSPA 608(3) criteria (Administrative minor subdivision's exempt)
	Mitigation of agricultural impacts (see 3.1.4.2)
	Proposed mitigation of subdivision impacts
	Supplemental sheets
	N/A
7.4.6 Hazardous Lands	Supplemental documents
	Fire hazard Evaluation
	Flood Hazard Evaluation (see 7.6.10.2)
	Evaluation of flooding with dam failure
	Geotechnical report
	Groundwater mitigation plan (see 3.1.3.H and 7.6.12.8)
	Report detailing hazard
	Written report detailing flooding from ice jam
	Supplemental sheets
	WUI Map
	Floodplain Map
	Map of earthquake fault lines
	Dam failure map

	Map showing land instability
Table 7.4	
Preliminary Plat/Plan Submittal Requirements	
Submittal Item	
7.4.6 Hazardous Lands (cont.)	Avalanche, rock fall map
	Ground subsidence/unstable soils map
	Polluted, toxic, hazardous locations map
	Airport flight pattern map
	Ice jam flood map
7.4.7 Motorized, Nonmotorized Facilities	Supplemental documents
	Documentation of legal access (7.6.11)
	Traffic study for > 50 residential lots/units, MF/Commercial/Industrial
	Supplemental sheets
	Conceptual motorized and nonmotorized facilities design plan prepared by a professional licensed in the State of Montana
	Legal, Physical access
	Existing, proposed easements, ROW
	Turn around dimensions, cross-sections
	Road profile
	Bus stops
7.4.8 Irrigation Improvements (see 7.6.13)	Supplemental documents
	Irrigation ditches and other facilities
	Rights and responsibilities of parties
	Assessment and maintenance procedures
	Supplemental sheets
	N/A
7.4.9 Utilities, Infrastructure	Supplemental documents
	Approximate location of nearest sanitary and storm sewers
	Approximate location of water mains and location fire hydrants within 500'
	Supplemental sheets
	Existing, proposed easements and ROW
	Existing, proposed utilities, infrastructure on site
Locations nearest utilities, infrastructure off-site	
7.4.10 Water, Sanitation (see 7.6.12)	Supplemental documents
	Descriptions of water supply and wastewater systems
	Description of solid waste plan
	Evidence of water availability, well logs, test results, hydrologists reports
	Evidence of water quality

	Proof of water right or letter from DNRC stating the project is exempt
Table 7.4	
Preliminary Plat/Plan Submittal Requirements	
Submittal Item	
7.4.10 Water, Sanitation (cont.)	Evidence of suitability of on-site wastewater systems, soil profile, separation to limiting layer, separation to ground water
	Groundwater impact analysis
	Supplemental sheets
	Water features
	Wells, wastewater systems in relation to lot layout
	Public facilities
Solid waste	

7.5 Final Plat Submittal Requirements

The Planning Office shall consult with the reviewing agencies and then identify applicable submittal requirements for a final plat application from the items listed in *Table 7.5, Final Plat Submittal Requirements*. The Planning Office shall require only items necessary to determine compliance with these regulations and the conditions of approval of the preliminary plat/plan. The subdivider shall include in the application all items so identified by the Planning Office. During the review of a final plat application, the Planning Office and other reviewing agencies may identify additional submittal items if necessary to determine compliance with these regulations and the conditions of approval.

**TABLE 7.5
FINAL PLAT SUBMITTAL REQUIREMENTS**

Final Plat

Boundary	Content required by ARM 24.183.1107
Lot layout	Surveyor certification
Existing and proposed easements, ROW	Utility easements statement (see 7.7.2)
Certification of ownership	Certificate of completed improvements
Landowner’s certification statements as applicable	Treasurer certificate (see 7.7.6)
Statement that federal, state, local plans, policies, regulations and/or conditions of approval may limit use of the property	Statement that buyers should obtain and review all sheets of the plat and all documents related to the subdivision and contact the planning office to learn of any limitations on the use of the property
Waive right to protest SID/RSID	Legal description, township/range, section/quarter section, principal meridian
Statement specifying improvements that have been completed and the improvements that are incomplete but will be completed and the financial security that is in place	Content required by MCA 76-3-402, 403 and 406

Supplemental Documents

All applicable fees	Completed application
Title abstract (see 7.7.3)	Articles of Incorporation/Bylaws
Subdivision Improvements Agreement (see 7.7.3)	HOA documents (see 7.7.5)
Access or encroachment permit	Private improvements
DEQ certificate of approval of water and sanitation systems – lots <20 acres	Documentation of adequate water supply and area for septic and replacement septic systems for lots =>20 acres
Notices to lot purchasers (see 7.7.8)	Approved engineer's estimate and financial security for uncompleted improvements
Covenants or deed restrictions	Certification of parks and common areas (see 7.7.7)
Documentation of conformance to conditions	Plans for all improvements including approved construction plans
Road maintenance agreement	Specifications, as built drawings, reports, PE certification
Final Plat Checklist, per Resolution 2020-025	Irrigation assessment disclosure statement

Conditions of Approval Sheet

Other information as required by approval conditions of preliminary plat/plan and in accordance with ARM 24.183.1107(4)

7.6 Description of Preliminary Plat/Plan Submittal Requirements

Several submittal requirements listed in *Table 7.4, Preliminary Plat/Plan Submittal Requirements*, are described in this section.

7.6.1 Certificate of Ownership

Certification that either the applicant is the owner of the property or the owner authorizes the applicant to submit the application.

7.6.2 Adjacent Land

The following information regarding adjacent land must be provided:

7.6.2.1 Subdivisions

The names of platted subdivisions and numbers of certificates of survey previously recorded;

7.6.2.2 Ownership

The ownership of lands adjacent to the subdivision and to any access road leading from an existing public right-of-way to the boundary of the proposed subdivision;

7.6.2.3 Improvements Locations

Location of any buildings, railroads, power lines, towers, water and/or sewer lines, roads, and other improvements; and,

7.6.2.4 Intervening ROW

Lands separated from the exterior boundary of the subdivision by public or private rights-of-way are deemed to be adjacent for the purpose of this requirement.

7.6.3 Slope Analysis

If the proposed subdivision includes slopes of 25% grade or steeper, unless such areas are designated as “no build/no alteration” areas, the subdivider shall provide a report prepared by a professional engineer licensed to practice in Montana that includes the following:

7.6.3.1 Slope Map

A slope map with vertical contour intervals of 2 feet where the average slope is less than 10% and vertical contour intervals of 5 feet where the average slope is 10% or greater;

7.6.3.2 Soil Data

Data describing the nature, distribution, and strength of existing soils;

7.6.3.3 Geology, Hydrology

A description of the geology and hydrology of the site;

7.6.3.4 Grading

Conclusions and recommendations for grading procedures;

7.6.3.5 Plans

Plans or design for any proposed corrective or mitigation measures; and,

7.6.3.6 Recommendation

Opinions and recommendations regarding the adequacy of building sites proposed to be developed.

7.6.4 Riparian Resources Management Plan

When riparian or wetland resources exist on the property, a Riparian Resources Management Plan shall include, but not be limited to the following:

7.6.4.1 Map

A map of the riparian resource area including vegetative cover types referenced in Appendix F;

7.6.4.2 Proposed Access

Existing and proposed accesses to or through the riparian resource area;

7.6.4.3 Proposed Use

Proposed low-impact use of the area;

7.6.4.4 Mitigation

Planned mitigation of impacts from all proposed uses, including a mitigation plan outlining how the area of riparian resource will be restored or enhanced. The plan shall include, at a minimum, the following:

- A. Alteration, Enhancement, and Restoration Plan;
- B. Planting Plan;
- C. Streambank Stabilization Plan; and,
- D. Low-impact Grazing Plan

7.6.4.5 Buffers

Planned buffer to mitigate development adjacent to areas of riparian resources.

7.6.4.6 Maintenance

A maintenance and monitoring plan, including weed management, outlining how the area of riparian resource will be maintained after occupancy of the subdivision.

7.6.5 Grading, Drainage Plan

A grading and drainage plan shall be submitted with the preliminary plat/plan. See Section 9 of the Public Works Manual for requirements.

7.6.6 HOA Documents

If the subdivision will contain common property that will be deeded to a property owners' association, the subdivider shall provide draft covenants, conditions and restrictions (CCR) that will govern the subdivision. These CCRs shall, at a minimum:

7.6.6.1 Association Formed

Form and operationalize the property owners' association before lots or condominium units are sold;

7.6.6.2 Responsibilities

Assign responsibility to the association to maintain liability insurance, pay local taxes, and maintain the common property and any facilities on the property;

7.6.6.3 Mandatory Membership

Require mandatory membership in the association for each lot or condominium unit buyer and any subsequent buyer upon resale of the lot or unit;

7.6.6.4 Perpetual Restrictions

Establish perpetual restrictions that apply to the common property in the subdivision;

7.6.6.5 Maintenance Program

Establish a regular maintenance program for all common property that may include but not be limited to private roads, parks, buildings, drainage facilities, and other common facilities;

7.6.6.6 Assessments

Establish assessment procedures by which each property owner shall pay a pro rata share of association costs and further establish that any unpaid assessments can become a lien on the property;

7.6.6.7 Revise Assessments

Establish the method by which the association may adjust the assessment to meet changing needs and costs;

7.6.6.8 Enforcement

Provide a method to enforce the restrictions and receive and process complaints; and,

7.6.6.9 Governing Body Permission

Require governing body approval before the association can be dissolved or the CCR modified.

7.6.7 County Plans, Policies, Zoning

A written description of how the proposed subdivision is consistent with the current land use designation of the property, the Missoula County Growth Policy, and where applicable, local zoning regulations.

7.6.8 Environmental Assessment

An environmental assessment shall comply with the requirements outlined in §76-3-603, MCA, as verified with the completion of the Primary Review Criteria Report that is further described in the Subdivision Application Form and Appendix E, Review Criteria.

7.6.9 MSPA Review Criteria

Written responses to the review criteria in §76-3-608 (3), MCA, including a description of the probable impacts resulting from the proposed subdivision.

7.6.10 Hazardous Land Assessment

An application for a proposed subdivision that contains a defined hazard within the subdivision boundaries, or is located adjacent, upstream, or downstream to a hazard, when applicable, shall include the supplemental information described below for the applicable hazard, unless the Planning Office determines a submittal requirement is not necessary to determine compliance or identify or mitigate an impact.

7.6.10.1 Wildfire Hazard

See Appendix C, Fire Hazard Assessment, for requirements of the assessment if the subject property is delineated on the Wildland Urban Interface Map in the Missoula County Wildfire Protection Plan. The completed Assessment shall be accompanied by the development agreements and/or covenants that contain the information required in Section 3.1.3.5, Wildfire Hazard Area Standards.

7.6.10.2 Flood Hazard

- A. See Appendix D, Standards for Flood Hazard Evaluations, for requirements for the evaluation.
- B. If a proposed subdivision is located within one mile of a Zone A flood hazard area as identified on the Flood Insurance Rate Map for Missoula County, the subdivider shall analyze land division history for the parcel dating back to August 15, 1983, to determine if a Zone A flood hazard area had been previously located on the parent parcel. If a Zone A flood hazard area had been located on the parent parcel at any time since August 15, 1983, and the parcel was subsequently divided, a flood analysis to determine the base flood elevation shall be required.

7.6.10.3 Earthquake Hazard

A map of any known earthquake fault line within or near the proposed subdivision.

7.6.10.4 Major Dam Failure Hazard

A map showing the location of any major upstream dam that is identified in the Missoula County Pre-disaster Plan and its relation to the proposed subdivision. An evaluation, prepared by a hydrologist or an engineer licensed to practice in the State of Montana, also shall be submitted that details any area of flooding that may occur within the proposed subdivision in the event of a dam failure.

7.6.10.5 Landslide, Slope Instability

Where the potential for landslide or slope instability exists within or adjacent to the proposed subdivision, a map and report prepared by a geotechnical engineer, licensed to practice in the State of Montana, shall be submitted indicating the locations, character, and extent of all areas subject to landslides or slope instability.

7.6.10.6 Snow Avalanche, Rock Fall Hazard

A map of known avalanche or rock fall areas within or adjacent to the proposed subdivision.

7.6.10.7 Ground Subsidence Hazard

A map and description of any known areas within or adjacent to the proposed subdivision that are prone to land subsidence including existing or previous mining operations.

7.6.10.8 Unsuitable Soils Hazard

A soils map for the area within the proposed subdivision, maintained by Natural Resource Conservation Service, and an NRCS analysis of the soil suitability for development. When evidence of high groundwater or unstable soils is present, the developer shall provide a groundwater drainage mitigation plan prepared by a professional engineer licensed to practice in the State of Montana. The plan shall include, but not be limited to methods that prevent the migration of groundwater through trenches for water and sewer lines and drainage facilities.

7.6.10.9 High Groundwater Hazard

A soil profile, groundwater monitoring, or other information showing the distance between the level of groundwater and the natural ground surface. When evidence of high groundwater, groundwater that is within 10 feet of the natural ground surface, is present, the developer shall submit plans to mitigate the high groundwater prepared by a professional engineer licensed to practice in the State of Montana.

7.6.10.10 Polluted Water or Toxic/Hazardous Substances Hazards

A map showing the location of any polluted water or toxic/hazardous substances that are within, adjacent to, or up gradient to the proposed subdivision, and their relation to the subdivision. A report also shall be submitted detailing the hazardous conditions and their risks to future residents in the proposed subdivision.

7.6.10.11 High Voltage Line, High Pressure Gas Line

A map and written description of any high voltage power line, high pressure gas line, or any other pipeline that carries potentially hazardous materials, excluding lines to individual end users, within or adjacent to the proposed subdivision.

7.6.10.12 Aircraft Traffic Hazard

A map showing the Airport Influence Area and its relation to the proposed subdivision.

7.6.10.13 Toxic or Hazardous Waste Hazard

A map and written description of areas within, adjacent to, or upstream of a proposed subdivision that contains toxic or hazardous substances.

7.6.10.14 Ice Jam Flood Hazard

A map and a written description detailing any areas subject to ice jams that may result in flooding within the proposed subdivision. The map shall show the area of potential ice jam in relation to the proposed subdivision.

7.6.10.15 Other Hazard

A map and a written description detailing other natural or human-created hazards as identified on or near the property to be subdivided.

7.6.11 Legal Access

Documentation shall demonstrate that perpetual legal access to the proposed subdivision exists, or will be provided before the final plat is filed. Documentation may include, but not be limited to, easements, agreements, or access permits. The documentation shall be in a legally sufficient form acceptable to the County Attorney. When access is unavailable at the time of preliminary plat/plan submittal, the application shall include a description of how perpetual legal access will be obtained prior to the filing of the final plat.

7.6.12 Water, Sanitation

Pursuant to §76-3-622, MCA, subdividers must provide the following water and sanitation information for any new subdivision that will include a new water supply system or new wastewater facilities.

7.6.12.1 Map

A map or plan that shows the following:

A. Water Features

Floodplain, surface water features, springs, and irrigation ditches located in and within 100 feet of the proposed subdivision.

B. Wells, Wastewater

Existing and previously approved wells and wastewater treatment systems within the proposed subdivision. For parcels smaller than 20 acres, the map shall show proposed water wells, wastewater treatment systems, and mixing zones.

C. Representative Drain Field

The representative drain field site used for the soil profile description.

D. Public Facilities

Public water and sewer facilities located within 500 feet of the subdivision.

7.6.12.2 System Descriptions

A description of the proposed systems for water supply, stormwater, solid waste disposal, and wastewater treatment, including whether the water supply and wastewater treatment systems are individual, shared, multiple-user, or public as those systems are defined in rules published by the Department of Environmental Quality.

7.6.12.3 Lot Layout

The conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the Department of Environmental Quality pursuant to §76-4-104, MCA.

7.6.12.4 On Site Evidence

Evidence of land suitability for new on site wastewater treatment systems that, at a minimum, includes:

A. Soil Profile

A soil profile description from a representative drain field site that complies with standards published by the Department of Environmental Quality;

B. Limiting Layer Separation

A demonstration that the soil profile contains a minimum of 4 feet of vertical separation between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting soil layer; and,

C. Ground Water Separation

When the soil profile or other information indicates that groundwater is within 7 feet of the natural ground surface, evidence that the groundwater will not be less than the minimum vertical separation of 4 feet from the bottom of the permeable surface of the proposed wastewater treatment system.

7.6.12.5 Water Availability

For new water supply systems, except when cisterns are proposed, evidence of adequate water availability based on 1 or more of the following:

A. Well Logs

Data from well logs or testing of on site or nearby wells;

B. Reports

Information contained in published hydro-geological reports; or,

C. DEQ Rules

As otherwise specified by rules adopted by the Department of Environmental Quality pursuant to §76-4-104, MCA.

7.6.12.6 Water Quality

Evidence of sufficient water quality in accordance with rules adopted by the Department of Environmental Quality pursuant to §76-4-104, MCA.

7.6.12.7 Groundwater Impact Analysis

Preliminary analysis of potential impacts to groundwater quality from new wastewater treatment systems, using as guidance rules adopted by the Board of Environmental Review pursuant to §75-5-301, MCA, and §75-5-303, MCA, related to standard mixing zones for groundwater, source specific mixing zones, and non-significant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis, the subdivider may perform a complete non-degradation analysis in the same manner as is required for an application that is reviewed under MCA, Title 76, Chapter 4.

7.6.12.8 Groundwater Mitigation

When evidence of high groundwater or unstable soils is present, the subdivider shall provide a groundwater drainage mitigation plan prepared by a professional engineer licensed to practice in the State of Montana. The plan shall include, but not be limited to methods that prevent the migration of groundwater through trenches for water and sewer lines and drainage facilities.

7.6.13 Irrigation Improvements Plan

An irrigation improvements plan is required when irrigation water, water rights, shares, or assessments are to be transferred to 1 or more lots within the subdivision, or to an entity responsible for providing water to 1 or more lots. The plan shall show irrigation ditches or other facilities that convey water, and identify the rights and responsibilities of landowners within the subdivision and any irrigation facility owner. The plan also shall establish methods to collect funds for repair and maintenance costs of the facilities. The plan preparer shall be experienced in irrigation delivery systems.

7.7 Description of Final Plat Submittal Requirements

Several submittal requirements listed in *Table 7.5, Final Plat Submittal Requirements*, are described in this section.

7.7.1 Remaining Lots – Phased Developments

A survey of any remaining lots shall be submitted upon the filing of a subdivision phase.

7.7.2 Utility Easements

In addition to showing the location of the utility easement(s), the final plat shall include the following statement:

“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.”

7.7.3 Title Abstract

A certificate of a title abstracter shall show the names of the owners of record of the land to be subdivided and the names of lien-holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien-holders or claimants of record against the land.

7.7.4 Subdivision Improvements Agreement

A certification by the subdivider that all or part of required public improvements have been installed and/or that a Subdivision Improvements Agreement exists securing the future construction of any incomplete public improvements. Further, a certification that financial guarantees ensures that all incomplete improvements will be designed and built according to the approved plans and specifications.

7.7.5 HOA Documents

Where appropriate, a copy of the Property Owners’ Association Articles of Incorporation, together with proof of filing with the Secretary of State and the Bylaws. The property

owners' association documents, covenants, conditions and restrictions referred to above shall bear the certification of the attorney who prepared or reviewed them and that such attorney is licensed to practice law in the State of Montana. Further, the documents shall contain the applicable provisions upon which plat approval was based or conditioned and that the provisions do not conflict.

7.7.6 Treasurer Certificate

Certification by the County Treasurer that all taxes and fees levied and assessed against the property have been paid.

7.7.7 Certification of Parks and Common Areas

Certificate of dedication of parkland to the public or common area to the property owners' association in perpetuity or of cash payment in lieu of dedication.

7.7.8 Notice to Lot Purchasers

7.7.8.1 Private Road Statement

Where private roads are proposed, each plat and instrument of conveyance shall contain the following statement:

"The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property owners' association and that Missoula County is in no way obligated to perform such maintenance or upkeep."

7.7.8.2 Waive Right to Protest

Where appropriate, and subject to the requirements of *Section 6.4.5.4.B, Waive Protest*, a statement on the plat and on each instrument of conveyance indicating that the purchasers of any lots in the subdivision will be required to waive the right to protest the creation of a SID/RSID. Subject to the requirements of *Section 6.4.5.4.B, Waive Protest*, a statement shall be included on the subdivision plat that acceptance of a deed for a lot within the subdivision shall constitute the assent of the owners to a future SID/RSID, based on benefit, for specified future improvements and maintenance, including but not limited to paving, curbs and gutters, the installation of non-motorized facilities, street widening, and drainage facilities.

7.7.8.3 Irrigation Assessment Disclosure

If the water rights have been removed or the average lot size in the proposed subdivision will be 1 acre or less the subdivider shall disclose to 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. A disclosure statement shall be contained in supplemental sheets or documents and recorded with the final plat, included in agreements and legal documents for related sales transactions, including

purchase and sales agreements, and in any Conditions, Covenants and Restrictions or Homeowners' Documents.

7.7.9 City Standards

Notwithstanding the road standards in these regulations, the Public Works Director may approve alternative road standards when the City of Missoula has verified intent to annex a proposed subdivision or enter into a contract to provide sewer service.

CHAPTER 8

DIVISIONS OF LAND EXEMPT FROM REVIEW UNDER MSPA

8.1	Purpose and Intent	8.5	Exemptions, Generally
8.2	Definitions	8.6	Exempt Divisions of Land
8.3	Authority	8.7	General Submittal Requirements
8.4	General Evasion Criteria	8.8	Procedures

8.1 Purpose and Intent

Subdivision exemptions are intended to relieve landowners from the requirements of local review when the division of land either creates no additional building sites (*e.g.*, agricultural exemption or boundary line relocation) or creates so few building sites that minimal impact results. The likelihood that land development problems will occur greatly increases when building sites are created without public review and are further divided without local review. The purpose of exemptions is not to provide a means of creating building sites without subdivision review but rather to accommodate the exceptional circumstances when plenary subdivision review is unnecessary. The Commission has the authority and duty to evaluate and determine from all circumstances whether the proposed division of land is based on an intent to evade subdivision review. The proper use of an exemption will not conflict with the purposes of the Montana Subdivision and Platting Act (MSPA) outlined in *Section 1.6* of these regulations or the Montana Sanitation in Subdivision Act (MSIS).

8.2 Definitions

The following definitions shall apply to divisions of land exempt from subdivision review. Where definitions are not listed herein, those contained in the MSPA and Chapter 2 of these regulations apply:

8.2.1 Agriculture

The use of land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Examples include, but are not limited to, cultivation and tillage of the soil; dairying; the raising of livestock, poultry, bees, fur-bearing animals, or biological control insects; timber and wildlife management areas; and the growing and harvesting of fruits, vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown or produced for commercial purposes. This definition specifically excludes gardening for personal use, keeping house pets, kenneling, landscaping for aesthetic purposes, and residential, commercial, and industrial uses, including the commercial processing of agricultural products. This definition is not construed to exclude ancillary or accessory uses or improvements necessary or related to the function of a bona fide agricultural operation.

8.2.2 Agricultural Building

A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor shall it be a place used by the public.

8.2.3 MSPA

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

8.2.4 Original tract

A tract of land held in single and undivided ownership, as indicated by the official records filed with the Missoula County Clerk and Recorder, from which land is divided through the approval of subdivision exemption.

8.2.5 Rebuttable presumption

An assumption taken to be true unless evidence to the contrary is presented that would lead a reasonable person to logically conclude that the presumption is no longer valid.

8.2.6 Regulations

Missoula County Subdivision Regulations.

8.2.7 Remaining tract

The tract of land that “remains” after another tract has been segregated from an original tract.

8.3 Authority

The authority in the MSPA for divisions as exemptions from subdivision is as follows:

- Title 76, Chapter 3, Part 2, MCA, identifies specific exemptions from subdivision review;
- §76-3-201(6), and §76-3-207(4), MCA, authorize the governing body to examine divisions of land to determine if the exemption is being used properly;
- §76-3-201(6) and §76-3-207(4), MCA, authorize the governing body to establish fees for review, not to exceed \$400;
- §76-3-504(1)(p), MCA, requires the local subdivision regulations to establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions is an attempt to evade the requirements of the MSPA; and,
- §76-3-504(1)(p), MCA, requires the regulations to include an appeals process to the governing body if the reviewing authority is not the governing body.

8.4 General Evasion Criteria

The following criteria shall be used when evaluating claimed exemptions under §76-3-201 and §76-3-207, MCA, to determine if the request is an evasion of these regulations or the MSPA. Exemptions not subject to these criteria include Condominiums, Townhouses, and Townhomes (§76-3-203, MCA), Airport Land (§76-3-205(1), MCA), and State-Owned Lands (§76-3-205(2), MCA). Specific exemptions listed in *Section 8.6, Exempt Divisions of Land*, may have additional review criteria in the form of rebuttable presumptions that also apply. These general evasion criteria and specific rebuttable presumptions are guides for the evaluation of evasion and should be used to determine from all circumstances whether the proposed division of land is based on an intent to evade subdivision review. They are not conclusive, and there is no specified threshold that will necessarily result in a determination of evasion. When a preponderance of evidence results in a conclusion that a proposed division by exemption is an attempt to evade the Missoula County Subdivision Regulations or the MSPA, the exemption may be denied. (See *State ex rel. Dreher v. Fuller, 50 St. Rptr 454, 1993.*)

8.4.1 Nature of Claimant's Business

Is the claimant in the business of construction or dividing, developing, or selling land?

8.4.2 Prior History of the Tract

- A. Was the original tract transferred to the claimant within the past two years?
- B. Has the proposed division for this tract been previously denied under review of the MSPA or any other exemption?
- C. Has the property been the subject of a scoping or pre-application meeting for subdivision prior to application for exemption?

8.4.3 Past Use of Exemptions

- A. Has the claimant engaged in prior exempt transactions involving the original tract or other tracts?
- B. Is there a pattern of exempt transactions used by the claimant or the claimant's immediate family, and/or other entities having any business, economic, ownership or other relationship with the claimant that will result in the equivalent of a subdivision without local government review?

8.4.4 Proposed Configuration of New Tracts

- A. Will the exemption result in a pattern of development equivalent to a subdivision without local government review? A pattern of development may be evidenced by:
 1. A division by exemption that affects or results in 6 or more tracts, each less than 160 acres divided from the original tract.
 2. An overall development plan which appears equivalent to a subdivision with characteristics such as common roads, utility easements, restrictive covenants, deed restrictions, shared parks and/or open space, or common marketing or promotional plan.
 3. A division that fits with a previously established pattern of land divisions or land transfers evidenced by:
 - a. the exempted tracts are contiguous to platted lots where common roads are shared or the exempted tracts share a common road with nearby platted lots;

- b. the new tract(s) have similar shape or size to adjacent or nearby platted lots;
- c. the exempted tracts are being created by the same landowner who created the platted lots;

8.4.5 Intended Use of the Tract(s)

- A. Is the reason stated for the exemption contrary to the documentation submitted with the application?
- B. Is the requested exemption unsuitable for the intended use or purpose of the division?
- C. Could the division be accomplished by a different exemption that would be more appropriate for the intended use?
- D. Does the proposed division violate applicable zoning regulations?
- E. Does the proposed division violate applicable floodplain regulations or create access/building sites within a flood hazard area, including within a mile of a Zone “A” designated floodplain?
- F. Does the proposed division violate subdivision approval, deed restrictions, and/or covenants that may exist on the property?
- G. Is the proposed division incompatible with the Growth Policy?

8.4.6 Violations

- A. Is the exemption in violation of statutes, case law, administrative rules, or Attorney General opinions?
- B. Will the division result in violation of federal, state or local regulations?
- C. Are there existing violations on the property that will be made worse or left unremedied by the proposed division?

8.4.7 Significant Impacts

The exemption would cause significant impacts relative to subdivision review criteria that would likely lead to the imposition of significant conditions of approval, or denial, of an equivalent subdivision proposal.

8.4.8 Intent to Evade

The information provided by the claimant or surrounding circumstances indicates the exemption is being used to evade the MSPA and these regulations.

8.4.9 Any Other Relevant Circumstances

8.5 Exemptions, Generally

- A. The regulations contained in this chapter (Chapter 8 *Divisions of Land Exempt from Review Under MSPA*) apply to all exemptions approved by Missoula County, including those approved prior to November 4, 2016, excepting the following sections which shall not apply to exemptions approved prior to November 4, 2016:
 1. *Section 8.4, General Evasion Criteria;*
 2. *Subsection 8.6.14 Family Transfer* - subsections 8.6.14.1 D. and E. only, related to two-year holding period for family transfers;

3. All Rebuttable Presumptions and Documents Required for Application listed under each exemption type;
 4. *Section 8.7, General Submittal Requirements;*
 5. *Section 8.8.1 Exemption Application Review Process; and,*
 6. *Subsection 8.8.6.11 Statements on Recording Documents* – subsections D. and E. only
- B. Montana law allows for the division of land that is exempt from subdivision review, under certain circumstances. The MSPA lists these exemptions in Title 76, Chapter 3, Part 2, MCA, and includes the following general categories of exemptions:

- | | |
|---|---|
| 8.5.1 Court-Ordered Division | 8.5.10 Condominiums,
Townhouses, and
Townhomes |
| 8.5.2 Mortgage Security | 8.5.11 Airport Land |
| 8.5.3 Severed Interest | 8.5.12 State-owned Lands |
| 8.5.4 Cemetery Lot | 8.5.13 Boundary Line Relocation |
| 8.5.5 Reservation of Life Estate | 8.5.14 Family Transfer |
| 8.5.6 Agricultural Lease | 8.5.15 Agricultural Covenant |
| 8.5.7 Federal or Tribal Land | 8.5.16 Aggregation |
| 8.5.8 Right-of-way | |
| 8.5.9 Utility Site | |

8.6 Exempt Divisions of Land

Exemptions listed in this section are exempt from subdivision review under the Missoula County Subdivision Regulations and the MSPA. Exemptions listed in §76-3-201, MCA, and §76-3-207, MCA, are subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*. All other exemptions listed in MCA, Title 76, Chapter 3, Part 2, except for those found in Sections 201 and 207, are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

- A. Missoula County shall consider the general evasion criteria in *Section 8.4, General Evasion Criteria* when applicable, general requirements, and rebuttable presumptions relative to the applicable exemption when evaluating the claimed exemption.
- B. The claimant shall submit the required documentation relative to the specific claimed exemption, in addition to the general submittal requirements outlined in *Section 8.7, General Submittal Requirements*.
- C. When a rebuttable presumption is declared in these regulations, the presumption may be overcome by the claimant with evidence contrary to the presumption.
- D. If the County concludes that the evidence overcomes the presumption and that, from all the circumstances, the exemption is justified, the exemption may be approved.
- E. If the County concludes that the presumption is not overcome and that, from all the circumstances, the exemption is not justified, the exemption may be denied.

8.6.1 Court Ordered Division (§76-3-201(1)(a), MCA)

A division of land created by order of any court of record in the State of Montana 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 this state, pursuant to the law of eminent domain, found in Title 70, Chapter 30, MCA.

8.6.1.1 General Requirements

- A. Divisions exempt under §76-3-201(1)(a), MCA, include land divided for transfer to a public agency capable of acquiring the property through eminent domain but, due to an agreement among the parties, eminent domain or a court order is not necessary.
- B. In accordance with §76-3-201(2), MCA, the court shall notify the governing body or designated agent of the pending division and allow the County to present written comment on the division addressing the general evasion criteria and rebuttable presumptions.

8.6.1.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if it appears from the affidavit and supporting documentation that the parties are not *bona fide* adverse parties and that the division is a result of an agreement between the parties for the purpose of evading the MSPA.

8.6.1.3 Required Documentation for Application

- A. A copy of the court order and the proposed division.
- B. In the case of an agreement between a landowner and a public agency with the authority to declare eminent domain, a statement from the agency documenting the agency's plans for acquiring the tract and the authority for eminent domain, and the written agreement between the parties.

8.6.1.4 Recording

- A. Transfer documents including deeds changing ownership and/or correcting legal descriptions must accompany the recording of the division.
- B. A copy of the court order shall be filed with the Clerk and Recorder prior to the survey and/or filed concurrently with the survey.

8.6.2 Mortgage Security (§76-3-201(1)(b) and §76-3-201(3), MCA)

A division of land creating a parcel of any size to provide security for mortgages, reverse mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or as security for refinancing debt secured by real property.

8.6.2.1 General Requirements

- A. A mortgage tract may only be conveyed to a licensed financial or lending institution from which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the mortgage tract to any other entity subjects the division of land to the requirements of these regulations and the MSPA. If the mortgage, lien, or trust indenture is satisfied, and the mortgage tract is not conveyed, the survey and the legal description for that same mortgage tract may be used again, without review, by the same party for a subsequent mortgage, lien, or trust indenture.
- B. Use of this exemption shall not create a permanent tract unless the financial institution which holds the mortgage, lien, or trust indenture forecloses upon the property, and the tract is then conveyed in foreclosure proceedings.
- C. The remaining land created by use of this exemption may not be conveyed independently of the mortgaged tract unless it is approved under these regulations as a subdivision or becomes a tract pursuant to a foreclosure of the mortgage, lien, or trust indenture.
- D. If a parcel of land was divided pursuant to this section and one of the parcels created by the division was conveyed by the landowners to another party without foreclosure prior to October 1, 2003, the conveyance of the mortgage tract or remaining parcel is not subject to the requirements of this chapter, pursuant to §76-2-201(4), MCA.

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If the mortgage, lien, or trust indenture, is satisfied, and the mortgage tract is not conveyed, the survey and legal description for that same mortgage tract may be used again, without review, by the same party for a subsequent mortgage, lien, or trust indenture.

In cases of foreclosure, if a claimant proposes to reuse a previous mortgage survey for a subsequent mortgage exemption, Missoula County will record the foreclosure deed only if the foreclosure was completed by an institutional lender.

8.6.2.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The mortgagee, lien holder, or beneficiary is not a lending institution registered to do business in the State of Montana.
- B. The division of land is created for the purpose of conveyance to any entity other than 1) the financial or lending institution to which the mortgage, lien,

or trust indenture was given, or 2) a purchaser upon foreclosure of the mortgage, lien, or trust indenture.

- C. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract.
- D. The financing is for construction or improvements on land other than the exempted new parcel.
- E. There is more than one construction mortgage, lien, or trust indenture that would create more than one new mortgage parcel on the original tract.
- F. The division, by its location or configuration, would result in more than two tracts created from the original tract if foreclosure of the security occurs and permanent tracts are created.
- G. The claimant has made prior use of the mortgage security exemption and previously conveyed either the security parcel or the remaining tract separately outside of a foreclosure process.
- H. The claimant has engaged in similar prior transfers using the original tract or other tracts.

8.6.2.3 Required Documentation for Application

A. Institution Statement

A signed, notarized statement from the lending institution certifying the following:

- 1. That the lending institution is registered to do business in the State of Montana;
- 2. That the interest is being created only to secure a mortgage, lien, or trust indenture for the purposes of construction, improvements to the land being divided, or refinancing; and,
- 3. That the creation of the exempted parcel is necessary to secure a loan for construction or improvements on the exempted parcel.

B. Landowner Statement

A signed, notarized statement from the landowner(s) certifying the following:

- 1. That landowners will retain title to the entire tract of record unless and until such time as the mortgage exemption parcel is foreclosed upon;
- 2. That transfer of ownership of the separate mortgage tract will only occur upon foreclosure;
- 3. That the landowner will not transfer ownership of the remaining portion unless the mortgage exemption parcel has been foreclosed upon, or the landowner has submitted a subdivision application and received final plat approval for the subdivision of the mortgage exemption parcel and the remaining portion; and,
- 4. That the purpose of the mortgage, lien, or trust indenture is for construction, or improvements to the land being divided, or refinancing.

8.6.2.4 Recording

- A. The certificate of survey owner’s certification or the mortgage instrument to be recorded with the Missoula County Clerk and Recorder shall include the following statement:

“This legal description is for the purpose of providing security for a mortgage, lien or trust indenture. It may only be used in an instrument of conveyance in the event of foreclosure proceedings instituted by the lending institution for whom the exemption was granted (or an allowable successor/lender as outlined in the Missoula County Subdivision Regulations), at which point the description is a valid recording reference. Use of this exemption does not by itself create a tract of record.”

- B. The Institution Statement required in *Section 8.6.2.3 A*, the Landowner Statement required in *Section 8.6.2.3 B*, shall be recorded at the same time as the instrument(s) creating the security parcel.
- C. Once the loan for construction mortgage, lien, or trust indenture has been satisfied, the exemption is no longer applicable. Thus, the boundaries delineating the exempt parcel are extinguished, and the acreage previously identified reverts back into the acreage of the original tract. This shall be accomplished by including a statement on the security instrument and subsequent release that the security parcel does not exist as a transferable tract of record unless foreclosed upon, as outlined in *Section 8.6.2.4 A*.

8.6.3 Severed Interest (§76-3-201(1)(c), MCA)

A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property.

8.6.3.1 General Requirements

There are no general requirements that apply to the severed interest exemption.

8.6.3.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the severed interest exemption.

8.6.3.3 Required Documentation for Application

A signed, notarized statement from the landowner(s) that demonstrates that there is no division of the surface ownership creating new tracts.

8.6.3.4 Recording

- A. The landowner shall submit a survey or any other division document to be recorded with the Missoula County Clerk and Recorder establishing the severed interest of subsurface rights from the surface ownership.
- B. The Landowner Statement required in *Section 8.6.3.3*, and instruments creating the severed interest shall be recorded with the Clerk and Recorder at the same time as the deed or certificate of survey.

8.6.4 Cemetery Lot (§76-3-201(1)(d), MCA)

A division of land that creates a cemetery lot to be used for burial of human remains.

8.6.4.1 General Requirements

- A. New burial plots shall be at least 100 feet from any well, body of water, or agricultural land.
- B. Floodplain regulations prohibit burial of human remains in the designated floodplain; therefore, burial plots shall be located outside of the designated floodplain.

8.6.4.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The lot is not restricted to cemetery use only for the burial of human remains.
- B. The cemetery lot is large enough to accommodate other uses.
- C. There is already a cemetery lot on the original tract.

8.6.4.3 Required Documentation for Application

A graphic depiction or proposed certificate of survey of the proposed division which clearly identifies the new tract(s) intended for cemetery use.

8.6.4.4 Recording

- A. The division document or survey to be recorded must include a statement that limits the use of the proposed tract exclusively to a cemetery for the burial of human remains, and permanently restricts agricultural use on the new cemetery tract.
- B. The division document or survey to be recorded must include the statement, "Floodplain regulations prohibit burial of human remains in the designated floodplain."

8.6.5 Reservation of Life Estate (§76-3-201(1)(e), MCA)

A division of land creating a tract by the reservation of a life estate as described in MCA, Title 70, Chapter 15. This division is used when a person sells property but reserves the right to live on the property until death, at which time the property reverts to the purchaser.

8.6.5.1 General Requirements

The life estate must qualify as a life estate under provisions of Title 70, Chapter 15, MCA.

8.6.5.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if the reserved life estate does not include the entire tract of record.

8.6.5.3 Required Documentation for Application

There is no additional required documentation for the reservation of life estate exemption.

8.6.5.4 Recording

Once the property reverts to the purchaser, the exemption is no longer applicable. Thus, the boundaries delineating the exempt parcel are extinguished, and the acreage previously identified reverts back into the acreage of the original tract. This shall be accomplished by including a statement on the instrument reserving the life estate and subsequent release that the life estate parcel does not exist as a transferable tract of record.

8.6.6 Agricultural Lease (§76-3-201(1)(f), MCA)

A division of land creating a parcel by lease or rent for agricultural purposes.

8.6.6.1 General Requirements

- A. Only agricultural buildings are permitted on tracts created through the agricultural lease exemption.
- B. Water cannot be used on the property for anything other than agricultural use.

8.6.6.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The division is created for the purpose of conveyance.
- B. The intended use of the parcel is for other than the rent or lease for agricultural purposes.
- C. A building that does not meet the definition of an agricultural building exists on or is proposed for the agricultural lease parcel created by this exemption.
- D. Facilities for water supply, wastewater disposal, and/or solid waste disposal exist on or are proposed for the agricultural lease parcel created by this exemption.

8.6.6.3 Required Documentation for Application

- A. A graphic depiction or proposed certificate of survey of the proposed division which clearly identifies the new parcel intended for agricultural lease or rent.
- B. A signed, notarized statement from the landowner(s) that limits the use of the proposed parcel exclusively to agricultural lease or rent only.

8.6.6.4 Recording

If a lease, memorandum of lease, or similar document is recorded, it must include a statement that limits the use of the proposed parcel exclusively to agricultural purposes.

8.6.7 Federal or Tribal Lands (§76-3-201(1)(g), MCA)

A division of federal or tribal lands or other lands over which the state has no jurisdiction.

8.6.7.1 General Requirements

The land subject to the claimed exemption must be located outside of the state's jurisdiction.

8.6.7.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the federal or tribal lands exemption.

8.6.7.3 Required Documentation for Application

There is no additional required documentation for the federal or tribal lands exemption.

8.6.8 Rights-of-way (§76-3-201(1)(h), MCA)

A division of land creating a parcel for a public right-of-way.

8.6.8.1 General Requirements

- A. A subsequent change in land use to something other than the approved right-of-way shall be subject to the requirements of the MSPA.
- B. Construction on a right-of-way exempt parcel shall be restricted to only those structures necessary for the right-of-way.

8.6.8.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the right-of-way exemption.

8.6.8.3 Required Documentation for Application

- A. Landowner approval or proof of eminent domain authority by the entity acquiring or accepting the right-of-way.
- B. A signed, notarized statement from the grantee:
 - 1. Stating the purpose of the right-of-way; and,
 - 2. Acknowledging, under §76-3-201, MCA, that any subsequent change in use to residential, commercial, or industrial subjects the division to review under the MSPA.

8.6.8.4 Recording

The document or survey to be recorded must include a notarized statement from the grantee accepting the right-of-way, stating the purpose of the right-of-way, and limiting the use of the proposed exempt parcel exclusively to right-of-way purposes.

8.6.9 Utility Site (§76-3-201(1)(h), MCA)

A division of land creating a parcel for a utility site meeting the definition in §76-3-103(13), MCA.

8.6.9.1 General Requirements

- A. A subsequent change in land use to something other than the approved utility site shall be subject to the requirements of the MSPA.
- B. The entity for which a utility site is created must meet the definition of a public utility per §76-3-103(14), MCA.
- C. Construction on a utility site lot shall be restricted to only those structures necessary for the utility use.

8.6.9.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the utility site exemption.

8.6.9.3 Required Documentation for Application

- A. Documentation that the utility utilizing the site meets the definition of public utility in §76-3-103(14), MCA.
- B. Landowner agreement to lease or convey the land to a qualifying utility or proof of eminent domain authority by the utility utilizing the utility lot.
- C. A signed, notarized statement from the utility:
 - 1. Stating the purpose of the utility site; and,
 - 2. Acknowledging, under §76-3-201, MCA, that any subsequent change in use to residential, commercial, or industrial subjects the division to review under the MSPA.

8.6.9.4 Recording

The document or survey to be recorded must include a notarized statement from the utility accepting the utility site, stating the purpose of the site, and limiting the use of the proposed exempt parcel exclusively to a public utility as defined in §76-3-103(13), MCA.

8.6.10 Condominiums, Townhouses, and Townhomes (§76-3-203, MCA)

A division of land for the construction of condominiums, townhomes, or townhouses, as defined in §70-23-102, MCA, the “Unit Ownership Act,” provided they are constructed on land previously subdivided after July 1, 1973, in compliance with these regulations and Title 76, Chapter 3, Parts 5 and 6, MCA.

8.6.10.1 General Requirements

- A. Land for condominiums, townhouses, and townhomes are exempt from review under MSPA if:
 - 1. They are constructed on land previously subdivided in compliance with the MSPA; and,
 - a. The subdivision approval expressly contemplated the construction of the condominium, townhouses, and/or townhomes, and the approved subdivision complies with the parkland dedication requirements contained in §76-3-621, MCA; or,
 - b. The condominium, townhome, or townhouse proposal conforms to applicable zoning regulations.
- B. The site layout of the condominium, townhouse, or townhome development shall not be different from the site layout contemplated in the approved subdivision, unless the property is zoned and the site layout conforms to zoning regulations.
- C. The proposed development must comply with the requirements for unit ownership under Title 70, Chapter 23, MCA.
- D. The documents establishing the division shall be recorded with the “Declaration of Unit Ownership” and all accompanying materials, as approved by the Missoula County Clerk and Recorder, and as required for declarations per §70-23-301, MCA.

- E. The proposal must comply with applicable zoning and floodplain regulations.
- F. The documents establishing the condominium division shall cite the exemption under §76-3-203, MCA.
- G. Condominium, townhouse, and townhome exemptions are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

8.6.10.2 Required Documentation for Application

- A. Evidence that the tract to be divided exists as a tract of record subdivided in compliance with the subdivision regulations and Title 76, Parts 5 and 6, MCA, and the legal description of the tract of record.
 - 1. A copy of the filed plat or final plan approval documenting the land proposed for this exemption was approved as a subdivision that contemplated condominiums, townhomes, and/or townhouses and evidence of compliance with parkland dedication requirements; or,
 - 2. Evidence of compliance with applicable zoning regulations.
- B. Proposed site development plan.
- C. The declaration of condominium or townhouse ownership to be recorded with the Missoula County Clerk and Recorder.

8.6.10.3 Recording

- A. Certification from the local government that the condominiums or townhomes are exempt from review pursuant to this chapter, certification from the appropriate agency that the condominiums or townhomes are compliant with the Sanitation in Subdivision Act, certification from the Missoula County Clerk and Recorder that due and payable taxes have been paid and that the name is distinct from other projects in Missoula County, and certification from the Treasurer that assessed and levied taxes have been paid. Documentation submitted to the other agencies of State or local government to obtain such certifications must match any documentation submitted for recording.
- B. The Declaration under the Unit Ownership Act containing all information required thereunder, Bylaws, certifications listed in *Section 8.6.10.3 A*, and final approved site plan of the condominiums, townhomes, or townhouses.

8.6.11 Airport Land (§76-3-205(1), MCA)

A division of land created by lease or rent that is contiguous to airport-related land owned by a city, county, state, or a municipal or regional airport authority.

8.6.11.1 General Requirements

- A. The lease or rent parcel shall be for onsite weather or air navigation facilities, the manufacture, maintenance, and/or storage of aircraft, or air-carrier related activities.
- B. The proposed parcel must be contiguous to airport-related land and must be owned by a city, county, state, or a municipal or regional airport authority.

- C. The proposal must comply with applicable zoning regulations. If the original tract is non-conforming to the zoning, the division may not result in increased non-conformity.
- D. Airport land exemptions are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

8.6.11.2 Required Documentation for Application

- A. A map showing the location related to airport lands and uses, and current ownership including but not limited to land owned by the city, county, state, or a municipal or regional airport authority.
- B. A tentative agreement between the lessee and the managing entity of the airport to lease or rent the proposed parcel for a use that is permitted by this exemption.

8.6.11.3 Recording

- A. The document or survey to be recorded must include a statement that limits the use of the proposed parcel exclusively to lease or rent only for onsite weather or air navigation facilities, the manufacture, maintenance, and/or storage of aircraft, or air-carrier related activities.
- B. A signed, notarized agreement between the lessee and the managing entity of the airport to lease or rent the exempt parcel for a use permitted by this exemption.

8.6.12 State-owned Lands (§76-3-205(2), MCA)

A division of vacant state-owned land, except for divisions after July 1, 1974, that create a second or subsequent parcel for sale, rent, or lease for residential purposes.

8.6.12.1 General Requirements

- A. The land proposed for conveyance must be owned by the state and may not contain a residential dwelling.
- B. The proposal must comply with applicable zoning regulations. If the original tract is non-conforming to the zoning, the division may not result in increased non-conformity.
- C. State-owned land exemptions are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

8.6.12.2 Required Documentation for Application

Documentation or a certified statement that there has been no previous division under the MSPA.

8.6.12.3 Recording

Documentation or a certified statement that there has been no previous division under the MSPA.

8.6.13 Relocation of Common Boundaries (§76-3-207(1)(a), (d), and (e), MCA)

A division of land that redesigns or rearranges the boundaries of tracts of record but does not result in an increase in the total number of lots and/or tracts.

8.6.13.1 Outside of Platted Subdivisions

A division of land that adjusts the boundary line between adjoining tracts of record outside of platted subdivision(s), pursuant to §76-3-207(1)(a), MCA.

8.6.13.2 Within Platted Subdivisions

A division of land that adjusts the boundary line between five or fewer adjoining tracts of record within platted subdivision(s), pursuant to §76-3-207(1)(d), MCA.

8.6.13.3 Between a Single Lot Within a Platted Subdivision and Adjoining Land Outside of the Platted Subdivision

A division of land that adjusts the boundary line between a single lot within a platted subdivision and adjoining land outside of platted subdivision(s), pursuant to §76-3-207(1)(e), MCA.

8.6.13.4 General Requirements

- A. The relocation of common boundary lines shall not create any additional tracts of record.
- B. All tracts shall comply with applicable local zoning regulations after the relocation of boundaries. If the original tract is nonconforming to the zoning, the division may not result in increased nonconformity.
- C. Any restriction or requirement that was placed on the original tract prior to the boundary relocation shall continue to apply to that portion of the property after the boundary relocation.
- D. If a relocation of common boundaries within platted subdivisions adjusts boundary lines between more than five lots, the governing body shall review the proposed division, and if

Info Box

Divisions of land that create tracts 160 acres or greater are not subject to subdivision or exemption review; divisions of land that create tracts less than 160 acres must be reviewed by the governing body as a subdivision or subdivision exemption.

By their nature, boundary line relocations move boundaries between a static number of tracts, in some cases resulting in tracts 160 acres or greater where they did not exist prior to the relocation. This creates an opportunity to later divide off 160 acres or greater without review. If the tract is less than 320 acres, any further division would always result in at least one tract less than 160 acres, and, therefore, subject to subdivision or exemption review. In this case, the opportunity to create more tracts without review does not exist because one tract will always be less than 160 acres.

If, however, a boundary line relocation proposes to create tracts 320 acres or greater, this creates the opportunity to divide that tract into two or more tracts without any review. Rebuttable presumption C. in Section 8.6.13.5 allows the subdivision administrator or governing body to determine if creating a tract of 320 acres or greater would constitute an evasion, since tracts 320 acres or greater could be divided into two tracts without governing body review, resulting in more tracts than existed originally.

approved, the division may be shown on a single amended plat in accordance with *Section 8.8.6.7*.

8.6.13.5 Rebuttable Presumption(s)

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The documentation submitted in the application does not support the stated purpose of the boundary line relocation.
- B. The division would result in the permanent creation of one or more *additional* lots, tracts, or parcels, less than 160 acres.
- C. The boundary line relocation would create a tract(s) that could be further divided without subdivision review or subdivision exemption review. (See Info Box.)

8.6.13.6 Required Documentation for Application

There is no additional required documentation for the boundary line relocation exemption.

8.6.13.7 Recording

- A. Deed(s) correcting previously recorded deed(s) with the legal description for newly created tracts of record.
- B. The certificate of survey must bear the signatures of all landowners whose parcels are changed.
- C. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the division must include any certification that would have been included on the survey.

8.6.14 Family Transfer / Gift or Sale to Immediate Family Member (§76-3-207(1)(b), MCA)

A single gift or sale of tracts to a member of the landowner's immediate family, as defined in §76-3-103(8), MCA, as the landowner's spouse, children by blood or adoption, or parents.

8.6.14.1 General Requirements

- A. This exemption may not be used when the land is owned by non-corporeal legal entities such as corporations, companies, partnerships, and trusts.
- B. Transfers of land as a gift or sale to an immediate family member may be approved once for each eligible family member, provided the division is not an evasion of the MSPA.
- C. The tracts created by this exemption may not be transferred or sold within two years of the date of County Commissioner approval of the exemption, unless otherwise approved through an *Appeals and Exceptions* process as outlined in *Section 8.8.7*.
- D. Except to correct or revise boundaries of family transfers between the same grantor and grantee, the use of the family transfer exemption is prohibited

on tracts that were previously approved as a family transfer tract within the past two years.

- E. All remaining tracts shall comply with all applicable local zoning regulations. Exempted tracts five acres in size or greater may deviate from the minimum lot sizes in local zoning regulations but must meet all other applicable zoning regulations. The determination that an exempted tract is not an evasion of subdivision is not a determination that the tract is zoning compliant for building purposes and is not a determination that the tract is buildable. The filing of any plat or survey that further exacerbates an existing zoning non-conformity or creates tracts in violation of Missoula County Zoning Regulations is prohibited.
- F. All proposed exempted and remaining tracts in a platted subdivision must be in compliance with existing conditions of approval of that subdivision. Existing conditions of approval of a platted subdivision shall continue to apply to all exempted and remaining tracts.

8.6.14.2 Rebuttable Presumption(s)

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. A transfer of a tract of land by one family member to another is followed by an attempted use of this exemption on the same tract.
- B. The remaining tract is intended to be sold so as to finance construction on a tract gifted and transferred to a recipient.
- C. The division appears to be made for the purpose of speculation by the landowner or for resale for the benefit of the landowner by using the grantee as a “straw person.” This may be indicated if the grantor and/or recipient own other tracts of land in Missoula County or it is evident that the receiving family members do not intend to reside on the family transferred tract(s).
- D. The remaining tract or the transferred tracts are marketed for non-family related development purposes where benefit to family members appears to be secondary to development purposes.
- E. There is no clear intent declared on the occupancy or use of the transferred tracts by receiving family members.
- F. The proposed division is on a tract that was previously created through use of a family transfer exemption, mortgage security exemption, or occasional sale exemption, or has received preliminary plat approval.

8.6.14.3 Required Documentation for Application

A signed, notarized statement from the landowner(s) listing the name and relationship of the person(s) who will receive the land from this division and verifying that this division will not result in more than one gift or sale of a tract to any member of the landowner’s immediate family in the county.

8.6.14.4 Recording

- A. Any survey, amended plat, or document showing the creation of new tracts of land pursuant to this exemption shall be accompanied by:
 - 1. Corrected deed(s) stating the previous property description is now to be described as the newly created tract(s) of record; and,
 - 2. Deeds transferring interest in the tract(s) being created.
- B. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the division must include any certification that would have been included on the survey.
- C. A family transfer in a platted subdivision must be filed as an amended plat.
- D. All deed(s), including corrected deed(s), and, if applicable, the survey to be recorded shall include a statement that prohibits the transfer or sale of family transfer tract(s) within two years of the date of governing body approval of the tract(s) by exemption, unless such tracts are approved by the governing body for sale or transfer prior to the expiration of the two-year holding period. The recordation of an instrument of conveyance of a tract created by family gift or sale within two years of the date of governing body approval may be subject to refusal of the Clerk and Recorder, or to the filing of a court action to set aside the land transfer.
- E. A certificate of survey for a family transfer may include more than one exempt tracts, provided all tracts meet the criteria and requirements of this chapter.
- F. The grantor and recipient(s) must match the original approval, unless otherwise approved through an *Appeals and Exceptions* process as outlined in *Section 8.8.7*.

8.6.15 Agricultural Use Only with Covenant (§76-3-207(1)(c), MCA)

Parcels located outside of a platted subdivision where the landowner gifts, sells, or enters into an agreement for the purchase and/or sale of a portion thereof to be used exclusively for agricultural purposes.

8.6.15.1 General Requirements

- A. The parcel involved in a division of land by agricultural exemption must be outside of a platted subdivision.
- B. The parties to the transaction by gift, sale, or agreement must enter into a covenant running with the land that the land will be used exclusively for agricultural purposes as defined in *Section 8.2.1*, revocable only by mutual consent of the governing body and the landowner in accordance with *Section 8.6.15.5 B, Agricultural Covenant, Removal*.
- C. Only agricultural buildings as defined in *Section 8.2.2*, are permitted on tracts created through the agricultural covenant exemption.
- D. Water cannot be used on the property for anything other than agricultural use.

- E. All tracts shall comply with applicable local zoning regulations. The filing of any plat or survey that further exacerbates an existing zoning non-conformity or creates tracts in violation of Missoula County Zoning Regulations is prohibited.

8.6.15.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The intended use of the tract is for other than agricultural purposes.
- B. A building that does not meet the definition of an agricultural building exists on or is proposed for the agricultural covenant tract created by this exemption.
- C. Facilities for water supply, wastewater disposal, and/or solid waste disposal exist on or are proposed for the agricultural covenant tract created by this exemption.

8.6.15.3 Required Documentation for Application

- A. A graphic depiction or proposed certificate of survey of the proposed division which clearly identifies the new tract intended for agricultural use.
- B. A signed, notarized statement from the landowner(s), to be used as a basis for the covenant language on the survey or division document, limiting the use of the proposed tract exclusively to agricultural use and verifying that only agricultural buildings exist or will be built on the new tract.

8.6.15.4 Recording

- A. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the division must include any certification that would have been included on the survey.
- B. The certificate of survey must show or contain a signed and acknowledged recitation of the agricultural covenant in its entirety.

8.6.15.5 Agricultural Covenant

A. Application

1. The claimant and County must enter into a covenant, which runs with the land and is revocable only by mutual consent of the governing body and the landowner, stating that the divided land will be used exclusively for agricultural purposes.
2. The covenant must be signed by the landowner, the Missoula County Commissioners, and where applicable, all parties to the gift, sale, or agreement to buy/sell, and recorded at the office of the Missoula County Clerk and Recorder.

B. Removal

1. Removal of the agricultural covenant requires approval of the division of land through subdivision review; or,

2. The Board of County Commissioners may, in its discretion, approve the removal of the agricultural covenant without subdivision review if:
 - a. The original lot lines are restored through aggregation of the covenanted tract prior to, or in conjunction with, the lifting of the agricultural covenant; or,
 - b. The proposed lifting of the covenant is for a government entity seeking to use the tract for public purposes.
3. Lifting of an agricultural covenant shall be recorded at the office of the Missoula County Clerk and Recorder.

8.6.16 Aggregation of Lots (§76-3-207(1)(f), MCA)

The aggregation of tracts or lots when a certificate of survey or subdivision plat eliminates the boundaries of the original tracts and establishes the boundaries of a larger aggregate tract.

8.6.16.1 General Requirements

- A. The aggregation shall not create any additional lots, tracts, or parcels.
- B. All tracts shall comply with applicable local zoning regulations after the aggregation. If the original tract is non-conforming to the zoning, the aggregation may not result in increased non-conformity.
- C. Any restriction or requirement that was placed on the original tract prior to the aggregation shall continue to apply to that portion of the property after the aggregation.

8.6.16.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the aggregation exemption.

8.6.16.3 Required Documentation for Application

There is no additional required documentation for the aggregation exemption.

8.6.16.4 Recording

- A. Correction deed(s) stating the previous property description is now to be described as the newly created tract(s) of record.
- B. The certificate of survey must bear the signatures of all landowners whose parcels are changed.
- C. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the aggregation must include any certification that would have been included on the survey.

8.7 General Submittal Requirements

To divide land by use of an exemption from subdivision review, the claimant shall submit the following subdivision exemption application materials to the subdivision administrator. Condo and Townhome, Airport Land, and State-owned Lands exemptions are not required to pay the review fee listed in *Section 8.7.1.8*.

- 8.7.1** To apply for a subdivision exemption, submit one electronic or hard copy all items listed below. Information submitted in other formats or in insufficient quantity may incur additional charges for copying, scanning, or distribution.
 - 8.7.1.1** The application form, with all applicable sections completed.
 - 8.7.1.2** Evidence of entitlement to the claimed exemption in the form of a notarized affidavit signed by at least one landowner of each tract involved in the exemption application, and where applicable the landowner's agent.
 - A. When a tract of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms property owner, landowner, and owner mean the seller of the tract under the contract-for-deed (ARM 24.183.1104).
 - B. The affidavit must verify that the information submitted in the application is true and correct.
 - 8.7.1.3** Evidence verified by the County Surveyor that the tract(s) to be divided or revised exists as a tract or tracts of record (see *Section 8.8.5, Evidence of Existing Tract of Record*).
 - A. Attach copies of all deeds, contracts, restrictions and covenants related to the property recorded within the past two years.
 - B. The subdivision administrator shall examine the documents referenced as evidence and may confer with other County departments to verify that the division does not create a new tract subject to review as a subdivision.
 - C. If it is determined that the evidence insufficiently demonstrates that no new tract is created requiring subdivision review, the subdivision administrator shall notify the individual or agent acting on behalf of the individual that the application may not be accepted until the required documentation is submitted.
 - 8.7.1.4** Vicinity map, with the location of the property that is the subject of the exemption clearly identified.
 - 8.7.1.5** If available, a draft survey of the proposed division. For divisions of land where no survey will be recorded, attach a copy of the proposed deed(s) for exchange of ownership, if applicable.
 - 8.7.1.6** Schematic sketches of the original parcel(s) before and after the division, showing the locations and uses of all structures. If the land proposed for division is zoned, the schematic sketch shall indicate distances between structures and proposed new property lines and any other information to demonstrate compliance with the zoning district regulations.

- 8.7.1.7** Documentation as outlined in Sections A-C below that the division will not create a tract(s) entirely within a flood hazard area which is intended for construction of roads, utilities, or other development, or any other land alteration such as grading or filling.
- A. If a proposed exempt tract(s) is located within one mile of a Zone “A” designated floodplain as identified on the Flood Insurance Rate Map for Missoula County, the claimant shall analyze the land division history of the original tract dating back to August 15, 1983, to determine if a Zone “A” designated floodplain had been located on a parent parcel of an original tract.
 - B. If a Zone “A” designated floodplain had been located on a parent parcel of an original tract at any time since August 15, 1983, the County Floodplain Administrator may require an engineered flood analysis to determine the base flood elevation or may waive the requirement for a flood analysis based on a field determination.
 - C. In lieu of an engineered flood analysis showing that the division will not create tract(s) entirely within a flood hazard area, the claimant may instead include the statement as shown in *Section 8.8.6.11.D.* on the survey, or in the absence of a recorded survey, the claimant shall submit a notarized statement as shown in *Section 8.8.6.11.D.* to be recorded with any division document and/or instruments of conveyance.
- 8.7.1.8** Review fee.
- 8.7.1.9** Additional documentation may be required for specific exemptions found in *Section 8.6, Exempt Divisions of Land*, under the heading “Required Documentation for Application.”
- 8.7.1.10** Any other documentation necessary to complete subdivision exemption review.

8.8 Procedures

A request for use of an exemption from subdivision review must comply with the procedures contained in this section.

8.8.1 Exemption Application Review Process

The sequential steps in the exemption application review process are as follows:

- 8.8.1.1** The claimant may contact the subdivision administrator to assess if the division appears to qualify as an exemption from subdivision review. The subdivision administrator may issue an advisory opinion only, and the opinion creates no commitment on behalf of the local officials when the documents requesting the proposed land division are submitted for formal review. The claimant should be prepared at this time to identify the legal tract of record proposed for division (see *Section 8.8.5, Evidence of Existing Tract of Record*).
- 8.8.1.2** It is the claimant’s responsibility to contact the Department of Environmental Quality (DEQ) reviewer or local sanitarian as applicable. Claimants are advised to consult with the appropriate sanitation reviewer prior to making application for

a subdivision exemption. Separate application forms and materials may be required for review by DEQ and/or the local sanitarian.

- 8.8.1.3** The subdivision administrator shall review the application materials to determine if all required information has been submitted. Once the application has been reviewed to determine if the required information has been submitted in the exemption application, the application will be reviewed and completed within 20 working days. If incomplete, the subdivision administrator will provide information in writing to the claimant on any needed corrections and/or additional materials needed. If applicable, the claimant shall resubmit documents with corrections.
- 8.8.1.4** Court-ordered exemptions are acted upon by the court having jurisdiction, after notifying the governing body or designated agent of the pending division and allowing the County to present written comment on the division. All other exemptions are reviewed administratively by the subdivision administrator, in coordination with other associated agencies, with the following exceptions, which shall be reviewed by the governing body:
- A. Family Transfer,
 - B. Boundary Line Relocation(s) and/or Aggregation within a platted subdivision that affects six or more lots,
 - C. Agricultural Exemption with Covenant,
 - D. Agricultural Covenant Lifting, and,
 - E. Any other applications deemed appropriate for governing body review by the subdivision administrator.
- 8.8.1.5** The subdivision administrator shall notify the landowner of the date and time of governing body consideration of the exemption application. The claimant or agent must appear personally or online at the hearing. The claimant has the burden of proof by a preponderance of the evidence.
- 8.8.1.6** Exemption review includes a check for compliance with the criteria in these regulations, the MSPA, the Administrative Rules of Montana (ARMs), and coordinated review by other associated agencies, including, but not limited to, the Examining Land Surveyor, Environmental Health, Clerk and Recorder, Treasurer, County Attorney's Office, Tribal agencies, County Floodplain Administrator, and/or County Public Works.
- 8.8.1.7** If the exemption application is approved, the subdivision administrator or governing body will send written notice to the claimant, with copies to the governing body and all other applicable agencies, including tribal agencies when exemptions are approved on the reservation.
- 8.8.1.8** If a survey is required or desired, the claimant must hire a Professional Land Surveyor, licensed in the State of Montana, to prepare a survey. If a survey is not required and not desired, the claimant prepares the written division or transfer documents necessary for the division. Private legal review of the documents is recommended.

- 8.8.1.9** The claimant shall submit the final documents for recording to the County Clerk and Recorder, including all information required to be recorded with the division document.
- 8.8.1.10** If the proposed use of the exemption is denied, the subdivision administrator shall identify the reasons in writing to the claimant. The claimant may appeal the subdivision administrator's or governing body's decision as outlined in *Section 8.8.7, Appeals and Exceptions*.

8.8.2 Other Agency Review of Exempted Divisions

- 8.8.2.1** Divisions of land exempted from the Montana Subdivision and Platting Act are still subject to requirements of other agencies and applicable regulations. These requirements may restrict the use of the divided land or preclude the filing of the document creating the division. Laws and regulations that may restrict or preclude division and/or development include, but are not limited to, zoning, floodplain regulations, fire codes, access, building codes, etc.
- 8.8.2.2** For any division or merger of real property, all assessed and levied taxes, even if not due at the time of recording, must be paid in full before recording. The landowner must present the County Treasurer's certification that all taxes, fees, and special assessments that have been levied and assessed are paid in full prior to recording.
- 8.8.2.3** Since the County is not reviewing subdivision exemptions for adequate access, approval of an exemption does not guarantee adequate physical and legal access by all vehicles in all weather.
- 8.8.2.4** All divisions reviewed as exemptions under these regulations are subject to the Montana Department of Environmental Quality (DEQ) review, unless shown to be exempt from review under Title 76, Chapter 4.
- 8.8.2.5** The Clerk and Recorder is prohibited from filing a division that does not meet the sanitation requirements of §76-4-122(2), MCA. The landowner is responsible for obtaining the sanitation approvals necessary for a division of land to be filed with the Clerk and Recorder.
- 8.8.2.6** Divisions of land that are exempt from subdivision review are not reviewed for compliance with floodplain regulations. Nonetheless, creating exempt tract(s) entirely within a flood hazard area which are intended to be altered by construction of roads, utilities, or other development, or any other land alteration such as grading or filling, may be deemed evasion and therefore denied. In order to avoid creating exempt tracts that require land alteration in the floodplain, an exempt division of land is subject to an evaluation of impacts at the time of exemption application review relative to the flood hazard area, including an assessment in areas where the proposed exempt tract(s) is within one mile of a Zone "A" designated floodplain.

8.8.3 Exemption Approval Period

- 8.8.3.1** An approval of a subdivision exemption is valid for a period of three years. If an extension has not been requested and granted, the division may not be recorded after the approval period has expired.
- 8.8.3.2** Any existing and outstanding approval letters issued prior to the adoption of these regulations for exemptions authorized by Montana state law shall automatically be deemed to expire three calendar years after the original effective date of these regulations (November 4, 2016).
- 8.8.3.3** Upon the written request of the applicant submitted 10 working days prior to the expiration of the original approval period, the subdivision administrator or governing body may grant one one-year extension of the approval period, including exemptions approved prior to November 4, 2016.
- 8.8.3.4** Notification of approval of the exemption to the claimant shall include the approval period of the exemption and the expiration date.

8.8.4 Remaining Tracts

- 8.8.4.1** A remaining tract can be less than 160 acres if it has been created by the use of exemption found in Title 76, Chapter 3, Part 2, MCA.
- 8.8.4.2** Only one remaining tract can be established in the exemption division process.
- 8.8.4.3** A remaining tract of land created through the use of a valid statutory exemption is a tract of record and shall be identified as a separate parcel.
- 8.8.4.4** If an exemption by certificate of survey is used and the remaining tract is less than 160 acres or cannot be described as an aliquot part, the remaining tract is a separate tract which must be surveyed, unless it is exempt per *Section 8.8.6.3*.
- 8.8.4.5** When reviewing exemption applications, the subdivision administrator shall determine whether the claimant has provided sufficient evidence to rebut the presumption of evasion with respect to the proposed remaining tract. If the subdivision administrator or governing body finds that evasion is evident, the exemption request may be denied.

8.8.5 Evidence of Existing Tract of Record

- 8.8.5.1** The Clerk and Recorder may not record any instrument that purports to transfer title unless the instrument of transfer is accompanied by evidence that the tract exists as a tract of record, as defined in §76-3-103, MCA, and has been surveyed as applicable. As required by §76-3-302, MCA, the evidence shall consist of:
- A. An instrument of transfer describing the parcel or tract by reference to a filed certificate of survey or subdivision plat;
 - B. Documentation that the parcel is in a location in which the state does not have jurisdiction;
 - C. Previously recorded documents verifying the parcel existed as a tract of record before July 1, 1973; or,
 - D. Documents that, if recorded, would verify the parcel existed as a tract of record before July 1, 1973.

- 8.8.5.2** As established by the Montana Attorney General (47 Op. Att’y Gen. No. 10), a US government lot or an aliquot part of a US government section is not a tract of record simply because its description appears in a deed on file. The clerk may not record any instrument that purports to transfer title to an aliquot part of a US government section or to a government lot, unless accompanied by:
- A. Reference to recorded documents that verify the parcel existed as a tract of record on July 1, 1973; or,
 - B. Reference to recorded documents that verify the parcel was segregated and individually conveyed after July 1, 1973, but which was exempted by applicable provisions of the MSPA, as amended.

8.8.6 Recording: Survey, Division Document, Instrument of Transfer

- 8.8.6.1** Only divisions exempted under §76-3-207, MCA, require compliance with the survey requirements of §76-3-401, *et. seq.*, MCA. All other exemptions described in Part 2 of the MSPA do not require a survey, but in some cases surveys may be submitted voluntarily.
- 8.8.6.2** Any certificate of survey, regardless of whether it is required or voluntary, must comply with the Uniform Standards for Certificates of Survey, as found in the Administrative Rules of Montana (ARMs). The Examining Land Surveyor shall review all surveys for compliance with the ARMs.
- 8.8.6.3** All divisions of land other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed.
- 8.8.6.4** A U.S. government lot in its entirety does not require a survey; smaller parcels within a government lot require a survey.
- 8.8.6.5** The MSPA review requirements only apply to the conveyance of tracts that were created after the effective date of the MSPA, July 1, 1973. (35 Op. Att’y Gen. 55 (1973)). Therefore, in accordance with §76-3-206, MCA, any parcel that was owned under single or undivided ownership on July 1, 1973, requires no survey. (See also 47 Op. Att’y Gen. No. 10).
- 8.8.6.6** The instrument of transfer of land which is acquired for state highways may refer by parcel and project number to the state highway plans which have been recorded in compliance with §60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.
- 8.8.6.7** The Clerk and Recorder shall permit the filing of multiple approved exemptions on a single amended plat or survey, as long as all requirements are met.
- 8.8.6.8** For any exemption requiring that the landowner enter into a covenant running with the land, the certificate of survey or document creating the division must include a signed and acknowledged copy of the covenant.

8.8.6.9 All exemptions creating conveyable tracts must be accompanied at the time of recording with appropriate deed(s) transferring newly created tracts of record or, in the case where the grantor and grantee are the same, correcting previously recorded deed(s) with the legal description for newly created tracts of record.

8.8.6.10 If an exemption request is approved, the transfer and/or recording documents must substantially comply with the exemption application and affidavit as approved by the governing body or the subdivision administrator. Minor changes may be approved by the subdivision administrator which are deemed necessary and practical as long as the change is found to be minor in nature and not an evasion of the MSPA. Appeals of the subdivision administrator's determination of whether a change is minor in nature may be made in accordance with *Section 8.8.7, Appeals and Exceptions*.

8.8.6.11 Statements on Recording Documents

All surveys, division documents, and instruments of conveyance must include the following statements.

- A. *"This division of land was not reviewed for adequate legal and physical access, and the tracts that are created herein may be unsuitable for the purposes of providing appropriate access for services, such as fire protection, school busing, ambulance, and road maintenance. Consequently, landowners should expect that such services may not be provided. This approval does not obligate Missoula County to provide road maintenance, dust abatement, or any other services."*
- B. *"This division of land was not reviewed for installation of utilities, compliance with zoning, floodplain, or availability of public services."*
- C. *"A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas."*
- D. For approved exemptions waiving the submittal requirement for a Zone "A" flood analysis as required in *Section 8.7.1.7*, the following statement shall be included in the owner's certification on all surveys, division documents, and/or instruments of conveyance.
"Development, including but not limited to grading, filling, mining, storage, and construction of roads, utilities, and structures, may not occur on this tract(s) unless an engineered flood analysis has determined that the location of proposed development is located outside of a flood hazard area."
- E. For approved family transfers, the following statement shall be included on all surveys, division documents, and/or instruments of conveyance:
"Any parcel of land created by the family transfer exemption may not be transferred or sold to someone other than the approved family member within two years of the date of approval by the County Commissioners,

unless otherwise approved through an Appeals & Exceptions process. The County Commissioners approved this Family Transfer on (approval date)."

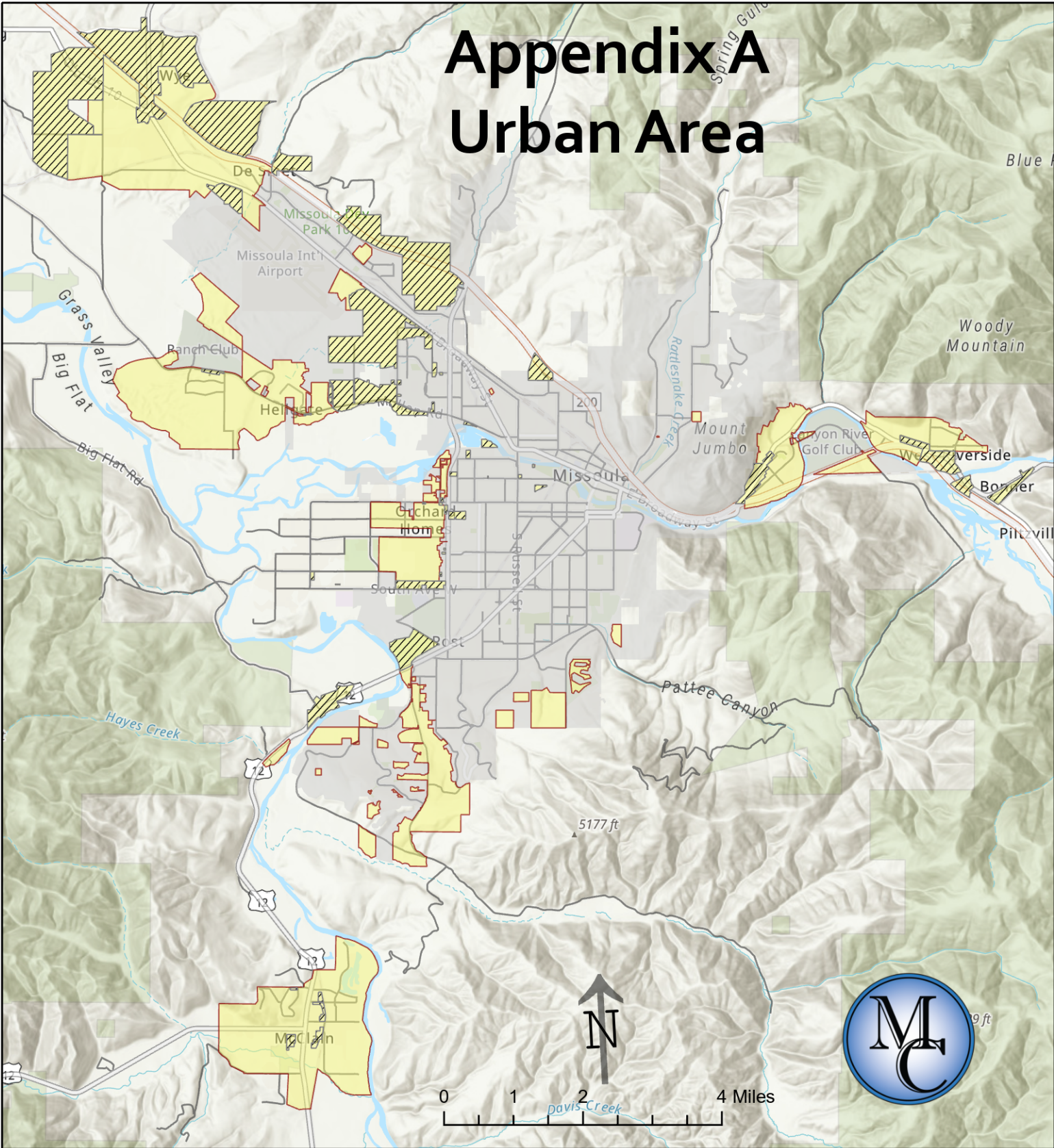
8.8.7 Appeals and Exceptions




- 8.8.7.1** Any landowner whose proposed use of an exemption has been denied by the subdivision administrator may appeal the decision in writing to the governing body.
- A. Appeals of decisions by the subdivision administrator shall follow the applicable procedure outlined in *Section 5.11, Appeals of Administrative Decisions*.
 - B. The landowner may submit additional evidence to demonstrate eligibility for the claimed exemption and/or that the use of the exemption is not intended to evade the MSPA.
 - C. The governing body shall notify the landowner of the date and time of their review of the appeal.
 - D. The governing body's appeal decision shall be submitted in writing to the landowner. If the governing body decision is to authorize the use of the exemption, the survey or deed must be recorded with the written authorization of the governing body.
 - E. If the landowner proposing to use an exemption chooses not to appeal a denial or if, upon appeal, the governing body or court of jurisdiction affirms that the landowner is not eligible for the claimed exemption, the landowner may submit a subdivision application for the proposed division of land.
 - F. Appeals of decisions by the governing body rejecting a claim for an exemption from the subdivision regulations may be appealed to the District Court.
- 8.8.7.2** Any landowner who received approval for a family transfer exemption may request the following exceptions:
- A. **Revision of Grantor and/or Recipient of Family Transfer Tract(s)**
 - 1. Requests to revise the approved grantor and/or recipient of a family transfer tract(s) may be approved administratively by the subdivision administrator in the following situations:
 - a. In the event of grantor(s)' death after family transfer approval, the grantor(s)' estate requests to distribute family transfer tracts to approved recipients.
 - b. New recipients may not be added without a new exemption review; however, approved recipients may swap approved tracts.
 - B. **Variance to Two-Year Holding Period for Family Transfer Tract(s)**
 - 1. Requests for variances to the time limitation for sale of family transfer tract(s) shall follow the applicable procedures outlined in *Section 5.12, Appeals of Administrative Decisions*.
 - 2. The landowner shall submit evidence of exceptional circumstances warranting approval of the request to sell or transfer a family transfer

tract prior to the two years required to hold the property, as required in *Section 8.6.14.1 D*.

- a. Circumstances that may warrant approval of a waiver of the time limitation on the sale of a family transfer tract may include involuntary transfers due to foreclosure, death, judicial sale, condemnation, or bankruptcy. Other instances where a waiver of the time limitation may be approved by the governing body include, but are not limited to, estate planning (*e.g.*, transferring the tract into or out of a trust), documented financial hardship, divorce, and adding additional owners to the deed.
3. The governing body may use its discretion to determine if exceptional circumstances exist that warrant an exception to the two-year holding period for a family transfer tract.
4. If an exception is approved by the County Commissioners that authorizes transfer or sale of the exempt tract to a separate owner and allows the original recipient to be removed from the title, the two-year time limitation shall be deemed expired. If the original recipient remains a titled landowner to the property, the two-year holding period shall not expire unless and until the original recipient no longer holds title to the tract, as approved by the Board of County Commissioners.
5. The governing body shall notify the landowner of the date and time of their review of the exception request.
6. The governing body's decision on the exception shall be submitted in writing to the landowner and shall be recorded along with the instrument of conveyance.

Appendix A Urban Area



-  Urban Area Higher Intensity Land Use Designations
-  Land Use Designations of 8 Units per Acre or Greater
-  City of Missoula

This map was created by Missoula County Community and Planning Services staff in November 2019. All property lines and boundaries are approximate. The information on this map is for reference only. No reliance should be placed on the completeness or accuracy of information without first consulting original records and personally verifying the accuracy of any and all information displayed on this map.

Bsemap Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodastystrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community
 Other Sources: Missoula County - City Limits, Land Use Designations, Lolo RSID901 Study Area Boundary, Roads

APPENDIX B

MAINTENANCE AGREEMENTS

When a maintenance agreement is required by these regulations, the agreement shall include, but not be limited to, the following information as is applicable:

1. A detailed description of the maintenance responsibilities to be performed.
2. The principal party having responsibility for the assured maintenance, including the responsible party during the time the subdivision facilities will be under the control of the subdivider, and the responsible party during any time that will precede the formation of a homeowners' association or similar entity, when subdivision facilities are no longer under the control of the subdivider, and the responsible party to which the responsibility will be permanently assigned.
3. A general schedule and/or frequency for performing the maintenance responsibilities.
4. A method for assessing owners within a subdivision who must fund the maintenance, or the identification of another funding mechanism, if necessary.
5. An assurance that the developer will perform the maintenance until such time as a homeowners' association or similar entity is able to assume the responsibilities.
6. The method by which the developer will transfer the maintenance responsibilities to the association or other entity and the process by which the association accepts the responsibilities.
7. The provision of a surety in the amount of 125% of the cost of performing the maintenance for one year.
8. The identification of any approvals or permits that may be required by these regulations or state regulations. Such approvals may include, but not be limited to, approval by the fire authority having jurisdiction pertaining to fire suppression facilities, or Montana DEQ for water and wastewater facilities.
9. An authorization for Missoula County to use the surety and/or to other legal mechanisms to perform the maintenance in the event of non-performance by the developer and/or responsibility entity.
10. A prohibition of amending or extinguishing the agreement without the prior approval of the Board of County Commissioners.

In addition to the maintenance agreement including the information listed in this Appendix, the agreement shall be incorporated into the Conditions, Covenants, and Restrictions (CCR) for the subdivision, if any, or be recorded as an individual document in the absence of CCR.

APPENDIX C

FIRE HAZARD ASSESSMENT

A.	Subdivision Design	Points	
1	Ingress/Egress		
	Two or more primary roads available to each lot for ingress/egress	1 _____	
	Two or more primary roads in the subdivision	2 _____	
	One road	3 _____	
	One-way road in, one-way road out	5 _____	
	2	Width of Primary Road	
		20 feet or more	1 _____
		Less than 20 feet	3 _____
	3	Accessibility	
		Road grade 5% or less	1 _____
		Road grade more than 5%	3 _____
	4	Secondary Road Terminus	
		Loop roads, cul-de-sacs with an outside turning radius of 45 feet or greater	1 _____
		Cul-de-sac turnaround	
		Dead-end roads 200 feet or less in length	3 _____
Dead-end roads greater than 200 feet in length		5 _____	
5	Street Signs		
	Present	1 _____	
	Not present	3 _____	
B.	Vegetation	Points+	
1	Fuel Hazard (see photos for reference)		
	Low	1 _____	
	Moderate	10 _____	
	High	20 _____	
	2	Treated Space	
		70% or more of site treated	1 _____
		30% or more, but less than 70% of site, treated	10 _____
Less than 30% of site treated		20 _____	
C.	Topography	Points+	
	8% grade or less	1 _____	
	More than 8% grade, but less than 20% grade	4 _____	
	20% grade or more, but less than 30% grade	7 _____	
	30% grade or more	10 _____	

D.	Roofing Material		Points
		Class A Fire Rated	1 _____
		Class B Fire Rated	5 _____
		Class C Fire Rated	10 _____
		Non-rated	20 _____
E.	Fire Protection-Water Source		Points
		500 GPM hydrant within 1,000 feet	1 _____
		Hydrant farther than 1,000 feet or draft site	2 _____
		Water source 20 min. or less, round trip	5 _____
		Water source farther than 20 min., and 45 min. or less, round trip	7 _____
		Water source farther than 45 min., round trip	10 _____
F.	Existing Building Construction Materials		Points
		Noncombustible siding/deck	1 _____
		Noncombustible siding/combustible deck	5 _____
		Combustible siding and deck	10 _____
G.	Utilities (gas and/or electric)		Points
		All underground utilities	1 _____
		One underground, one above ground	3 _____
		All aboveground	5 _____
Total for Subdivision			_____
	Moderate Hazard		40 - 59
	High Hazard		60 - 74
	Extreme Hazard		75+

+Point assessments for fuel hazard, treated space, and topography to be filled out by the County Fire Inspector, the Authority Having Jurisdiction (AHJ), or a designated representative.

Initials certifying that the point totals for fuel hazard, treated space, and topography were filled out by the County Fire Inspector, the AHJ, or a designated representative: _____

Fire Hazard Assessment Ratings

LOW –

Characteristics of a Low Fuel Hazard rating would include little to no woody debris on the ground level. Grass components would be less than 2 feet tall, irrigated, grazed or cut regularly. Intermittent trees may be present, but no ladder fuels may be present within 20 feet of the ground and crown spacing of greater than 20 feet must exist. Wildland fires that originate on Low Fuel Hazard parcels should have little to no chance of forming a flaming front and spreading rapidly. The potential for an ember shower originating on adjacent forested lands is a consistent possibility throughout Missoula County. In areas of Low Fuel Hazard ratings, the result of an ember shower would result in small spot fires with no spread potential. The effects of slope should be minimal to fire risk due to the sparse nature of the fuels. In general, Low Fuel Hazard areas should have little to no probability of wildland fires starting or spreading.



MODERATE –

Characteristics of a Moderate Fuel Hazard would include some accumulation of woody debris and duff on the ground level. Grass and Brush fuels present at the surface level would produce flame lengths between 2 and 4 feet, resulting in a rapidly moving flame front under high to extreme fire conditions. If trees are present, the ladder fuels could lead to group torching, but not support a running crown fire. Trees may be thick in places but breaks in crown spacing should be wide enough to prevent fire spread independent of the ground fire. The impact from an ember shower originating on adjacent forested lands would result in spot fires that may grow and spread. The effects of slope would be significant in Moderate Fuel Hazard areas, resulting in convective heat that may make it dangerous to responders. In general, Moderate Fuel hazard areas would be susceptible to wildland fire, with initial attack efforts having a high probability of successful and safe suppression efforts.



HIGH –

Characteristics of a High Fuel Hazard would include a heavy accumulation of woody debris on the ground level. Grass and brush fuels are contiguous and would result in flame lengths above 4 feet, resulting in a rapidly moving flame front with a high probability of spotting. If trees are present, ladder fuels would result in torching and have the potential to spread through the canopy independently. The impact from an ember shower originating on adjacent forested lands would result in spot fires that would grow and spread rapidly, producing further spotting and suppression difficulties. The effects of slope would be extreme in High Hazard fuel areas, resulting in convective heat columns that would be dangerous to first responders, produce rapid fire growth and spotting. In general, High Fuel Hazard areas would be highly susceptible to wildland fire starts with a low probability of initial attack efforts being successful.



APPENDIX D

STANDARDS FOR FLOOD HAZARD EVALUATION

When a Flood Hazard Evaluation is required, the following information shall be included in the study.

1. Certification by a professional engineer licensed to practice in Montana.
2. An overall plan view or project map drawn to scale with vertical elevations and horizontal distances showing the following:
 - a. watercourse;
 - b. floodplain boundaries;
 - c. location of the proposed subdivision;
 - d. contours;
 - e. cross sections of the watercourse;
 - f. bridges and other contractions in the floodplain; and,
 - g. USGS gauging stations, if any.
3. The locations and elevation of any temporary benchmarks established within the proposed subdivision and referenced to mean sea level with appropriate elevation adjustment.
4. Cross-sectional information including the following items.
 - a. Elevations and stations at points that represent significant breaks in ground slope and changes in the hydraulic characteristics of the floodplain (*i.e.*, points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.
 - b. Each cross-section must cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (*i.e.*, approximately perpendicular to the contour lines). Occasionally, wide floodplains require a dogleg alignment to be perpendicular to the anticipated flow lines. Shots should be taken at the edge of water and measurements taken (if elevation shots cannot be taken) to determine the channel bottom shape. Cross-sections must be accurately located on a USGS 7-½ minute quad sheet.
 - c. The number of cross-sections needed and the distance between them will vary depending on the site, slope of the watercourse, slope of the channel, and the

hydraulic characteristics of the reach. A minimum of four cross-sections is required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography. Photogrammetric methods may be used in lieu of cross-sections when approved by the floodplain administrator.

5. Descriptions and sketches of bridges within the reach, showing unobstructed waterway openings and elevations.
6. Elevation of the water surface is to be determined by survey as part of each valley cross-section.
7. Engineering reports of computer computations, calculations, and assumptions that may include:
 - a. Research of published hydrology or calculations showing how hydrology was derived;
 - b. Input files in hard copy and digital files; and,
 - c. Output files in digital form only.

APPENDIX E

REVIEW CRITERIA

Subdivisions in the State of Montana must undergo review for the primary criteria in §76-3-608(3), MCA. The following illustrates what may be included under each criterion, and is not meant to be exhaustive or conclusive. As this is an informational appendix, other standards, including but not limited to the Subdivision and Platting Act and the body of the Missoula County Subdivision Regulations, should be sought out for reference.

1. Agriculture

Proposed subdivisions or associated improvements located on or adjacent to agricultural land may be considered to have an impact on agriculture.

2. Agricultural Water User Facilities

Proposed subdivisions encountering the following may be determined to have impacts on agriculture:

- a. Located on land with agricultural water user facilities or adjoining an agricultural water use facility;
- b. Involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities;
- c. Proposed subdivisions or associated improvements that will alter access for maintenance of agricultural water user facilities; and,
- d. Proposed subdivisions or associated improvements that will alter the movement or availability of water.

3. Local Services

Proposed subdivisions that are close in proximity to current services, and do not appreciably decrease the level of local service to current residents, and do not increase the costs of providing services are considered to have a minimal impact on local services. Local services that will be evaluated for impact include, but are not limited to: traffic, road and non-motorized facilities, utilities, water supply, sewage and solid waste disposal, schools, and emergency services.

4. Natural, Cultural Environment

Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, rivers, streams, lakes, wetlands, or other natural surface waters, high water table, designated groundwater re-charge areas, with evidence of soil limitations, with slopes greater than 25%, adjacent to public lands, or on land with historical, cultural, archeological, or paleontological features may be considered to have an impact on the natural environment.

5. Wildlife

Proposed subdivisions or associated improvements considered to have an adverse impact on wildlife may include those which are:

- a. Proposed in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface;
- b. Proposed in an area with rare, threatened, or endangered species, as identified by state or federal agencies;
- c. Proposed on or adjacent to land identified by state or federal agencies as critical habitat; and,
- d. Proposed in locations that would interfere with known important or critical wildlife corridors.

6. Wildlife Habitat

Proposed subdivisions or associated improvements considered to have an adverse impact on wildlife habitat may include those which are:

- a. Proposed in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface;
- b. Proposed in an area with rare, threatened, or endangered species, as identified by state or federal agencies;
- c. Proposed on or adjacent to land identified by state or federal agencies as critical habitat; and,
- d. Proposed in locations that would interfere with known important or critical wildlife corridors.

7. Public Health and Safety

All subdivisions must be designed so that they do not adversely impact public health and safety or that such adverse impacts have been avoided or mitigated to the maximum extent possible. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding; fire or wildfire hazards; rock falls or landslides; unstable soils; steep slopes and other natural hazards; high voltage lines or high-pressure gas lines; and air or vehicular traffic safety hazards.

APPENDIX F

RIPARIAN AND WETLAND HABITAT & COMMUNITY TYPES

Coniferous Tree Types

- Grand fir/lady fem H.T.
- Subalpine fir/bluejoint reedgrass (bluejoint reed grass Phase)
- Subalpine fir/bluejoint reedgrass (Canby's licorice root Phase)
- Subalpine fir/bluejoint reedgrass (dwarf huckleberry Phase)
- Subalpine fir/sweetscented bedstraw H.T.
- Subalpine fir/labrador tea (bluejoint reedgrass Phase)
- Subalpine fir/Labrador tea (Labrador tea Phase)
- Subalpine fir/devil's club (fool's huckleberry Phase)
- Subalpine fir/clasping-leafed twisted stalk (clasping-leafed twisted stalk Phase)
- Rocky Mountain juniper/red osier dogwood H.T.
- Spruce/bluejoint reedgrass C.T.
- Spruce/red osier dogwood H.T.
- Spruce/field horsetail H. T.
- Spruce/sweet-scented bedstraw H.T.
- Ponderosa pine/red osier dogwood H. T.
- Douglas fir/red osier dogwood H.T.
- Western red cedar/lady fem (lady fem Phase)
- Western red cedar/oak fem H.T.
- Western red cedar/devil's club H.T.
- Western hemlock/oak fem H.T.

Deciduous Tree Habitat Type

- Russian olive C.T. (non-upland)
- Quaking aspen/bluejoint reedgrass H.T.
- Quaking aspen/red osier dogwood H.T.
- Quaking aspen/western sweet-cicely H.T.
- Quaking aspen/kentucky bluegrass C.T.
- Black cottonwood/red osier dogwood C.T.
- Black cottonwood/ Herbaceous C.T.
- Black cottonwood/recent alluvial bar C.T.
- Black cottonwood/ western snowberry

Willow Shrub Habitat Types

- Bebb willow C.T.
- Drummond willow/bluejoint reedgrass H.T.
- Drummond willow/beaked sedge H.T.
- Drummond willow C.T.
- Sandbar willow C.T.
- Geyer's willow/bluejoint reedgrass H.T.
- Geyer's willow/breaked sedge H.T.
- Geyer's willow C.T.
- Whiplash willow C.T.

Non-Willow Shrub Habitat Types

- Mountain alder C.T.
- Sitka alder C.T.
- Bog birch/beaked sedge H.T.
- Water birch C.T.
- Red osier dogwood C.T.
- Succulent hawthorn C.T.
- Small leafed laurel/Holm's Rocky Mountain sedge H.T.
- Shrubby cinquefoil/tufted hairgrass H.T.
- Woods rose C.T.
- Douglas' spirea C.T.
- Western snowberry C.T.

Sedge Habitat Types

- Water sedge (water sedge Phase)
- Slender sedge H.T.
- Mud sedge H.T.
- Nebraska sedge H.T.
- Beaked sedge H.T. (water sedge phase)
- Beaked sedge H.T. (beaked sedge Phase)
- Beaked sedge H.T. (tufted hairgrass Phase)
- Holm's Rocky Mountain sedge H.T.

- Short beaked sedge H.T.

Non-sedge Habitat Types

- Redtop C.T.
- Smooth brome C.T.
- Bluejoint reedgrass H.T.
- Tufted hairgrass H.T.
- Common spikesedge H.T.
- Few-flowered Spikebrush H.T.
- Water horsetail H.T.
- Northern mannagrass H.T.
- Baltic rush H.T.
- Canary reed H.T.
- Common reed H.T.
- Fowl bluegrass C.T.
- Kentucky bluegrass C.T.
- Hardstem bulrush H.T.
- Arrowleaf groundsel C.T.
- Common Cattail H.T.

For additional information on site types, classification, function, and areas of riparian resource, see: *The Classification and Management of Riparian and Wetland Sites in Montana, 1992 (1994-1995 update in press)*. Montana Riparian Association, Montana Forest and Conservation Experiment Station, School of Forestry. University of Montana, Missoula, Montana 59812.