

I. GENERAL PROVISIONS

I.A. Title

These regulations will be known and may be cited as “The Lake County Subdivision Regulations” (LCSR) hereinafter referred to as “these regulations.”

I.B. Authority

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

I.C. Effective Date, Applicability

These regulations take effect immediately upon being adopted by resolution. Thereafter, they apply to all new subdivision proposals and subdivision exemption requests.

I.D. Purpose

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

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

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

9. The avoidance of subdivisions which would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services that would necessitate an excessive expenditure of public funds for the supply of services.
10. The manner and form of making and filing of any plat for subdivided lands.
11. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.
12. Implementation in accordance with Lake County Growth Policy, the Lake County Density Regulations and other local community zoning districts under the jurisdiction of Lake County.

I.E. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the Board of County Commissioners of Lake County, Montana (the governing body).

I.F. Severability

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

I.G. Amendment of Regulations

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

I.H. Transfers of Title

After the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met (76-3-303, MCA):

1. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
2. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the Lake County Clerk and Recorder;
3. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the Lake County Clerk and Recorder within two years of the

preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;

4. 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 Lake County Clerk and Recorder, title to the property cannot be transferred in any manner;” and
5. That the Lake County treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

I.I. Enforcement

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

I.J. Construction Timing

Upon submittal of a pre-application for subdivision, the subdivider shall not engage in construction of subdivision related improvements prior to approval of the preliminary plat application. The subdivision administrator, planning board and governing body are not bound to accept or approve any on-site improvements that exist prior to a submittal of a subdivision application and preliminary plat for review. Lake County shall not be responsible if improvements have to be eradicated, moved or rebuilt due to a subdivider making property improvements prior to and/or not in accordance with conditions of preliminary approval. In addition, section 76-4-121, MCA, regulates construction activities within subdivisions.

I.K. General Interpretation

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

I.L. Responsibility for Interpretation

In the event that any question arises concerning any provision or the application of any provision of these regulations, the Planning Director, in consultation with the Lake County Attorney’s Office as may be necessary, shall be responsible for such interpretation and shall look to the overall intent of these regulations for guidance. The Planning Director shall provide such interpretations in writing to the applicant upon request and keep a permanent record of said interpretations.

The responsibility for interpretation shall not be construed as overriding the responsibilities given to any commission, board, or official named in other parts of these regulations.

I.M. Conflicts Within These Regulations and With Other Regulations

A more specific provision of these regulations shall be followed in lieu of a more general provision that may be more lenient than or in conflict with the more specific provision.

These regulations supplement all other regulations. Where they are at variance with other laws, regulations, ordinances, or resolutions, unless otherwise expressly stated, the more restrictive requirements generally apply. However, where these regulations conflict with zoning regulations, the zoning regulations apply, regardless of which is stricter. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes and development codes.

I.N. Delegation of Authority

Whenever a provision in these regulations requires an elected official, department supervisor or some other employee to do some act or perform some duty, it is to be construed to authorize that individual to designate, delegate and authorize professional-level subordinates to perform the required act or duty unless the terms of the provision, section or the Montana Subdivision and Platting Act specify otherwise.

I.O. Computation of Time

When a time period is specified in these regulations, the first day shall be the day after the event that triggers the time clock to start. For example, if an action is to be taken within 35 working days of the date an application is deemed to be sufficient for review, the time clock starts on the first business day after the date the application is deemed sufficient.

I.P. Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense as per 76-3-105, MCA.

II. GENERAL PROCEDURES

II.A. Permission to Enter

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

II.B. Pre-application Process

Prior to submittal of a subdivision application, the subdivider shall submit a complete pre-application form, appropriate fee and the information listed below to the Lake County Planning Department. Within 30 days of receiving the complete pre-application form, fee and information listed below, the subdivision administrator, acting as the authorized agent of the governing body to review subdivisions, and the subdivider and/or his or her agent(s) shall meet either in person or by telephone to discuss the proposed subdivision.

1. Information Required With Pre-Application Form:

- a. One or more sketch(es) of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch(es) may be freehand and drawn directly on a print of a topographic map of the area at a scale that is adequate to clearly show the pertinent features of the property. The subdivision administrator shall return the application if it is determined the sketch(es) are not at a scale that is adequate for review. The sketch(es) must include the following:
 - i. North arrow and scale bar;
 - ii. Location, including the identification of roads used to access the site;
 - iii. Approximate boundaries of existing and proposed tracts;
 - iv. Description of the general terrain (topographic contours);
 - v. Natural features on the land, including steep slopes ($\geq 20\%$), forests, meadows, potential wetlands, watercourses, springs and water bodies;
 - vi. Existing structures and improvements including driveways, wells, irrigation facilities and drainfields;
 - vii. Existing and proposed utility lines and facilities serving the area to be subdivided;
 - viii. Existing and proposed easements and rights-of-way;

- ix. Whether the land is assessed by the Flathead Irrigation Project, whether the land is flood or sprinkler irrigated, and all irrigation facilities such as on- or off-site delivery points and turnouts that serve the property, ditches, headgates, culverts, buried delivery lines and pumps.
 - x. Proposed public and private improvements such as roads, water systems, wastewater treatment systems, parks, open space, etc.
- b. Documentation of the project to include the following:
- i. Legal Description
 - ii. Ownership information, such as a deed, option to buy or buy-sell agreement, including the signature of the owner of record on the pre-application form;
 - iii. Existing conservation easements;
 - iv. Existing covenants or deed restrictions;
 - v. Water rights;
 - vi. Any special improvement districts;
 - vii. A description, including drawings if necessary, of if, and how irrigation water would be provided to the proposed tracts;
 - viii. The nearest location and distance of public water and/or sewer services if within 1,000 feet of the subdivision; and
 - ix. Any other pertinent information that will be helpful in the review of the proposed project such as potential building sites, water and sewer services, access points, road construction standards, etc.
2. At the pre-application meeting:
- a. The subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision and review process including, but not limited to, zoning regulations and floodplain regulations;
 - b. The subdivision administrator shall provide the subdivider with a list of public utilities, those local, state and federal agencies, and any other entities, such as a homeowners association, that may have an interest in the subdivision that the subdivider will be required to contact prior to submitting a subdivision application and that the subdivision administrator may also contact. All public utilities, agencies, and other entities shall be provided a minimum of 30 days after initial contact to respond to the subdivider pursuant to Section II.C.

If, during the course of the subdivision review, the subdivision administrator contacts a public utility, agency or other entity that was not included on the list originally

made available to the subdivider, the subdivision administrator shall notify the subdivider of the contact and timeframe for response.

- c. Within 10 days of the pre-application meeting the subdivision administrator may provide the subdivider with a pre-application response letter providing more detail regarding the information discussed at the pre-application meeting and the information that must be submitted for a preliminary plat application to be deemed complete and sufficient for review. This does not limit the ability of the subdivision administrator to request additional information at a later time that will enable the subdivision administrator to determine whether the application is sufficient for review or to answer questions that emerge during the review process.
3. Unless the subdivider submits a subdivision application and preliminary plat within one year of the pre-application meeting, the subdivider must re-submit a complete pre-application form, appropriate fee and the information as required in this section prior to submitting the subdivision application. The subdivision administrator has the discretion to extend this time period for one additional year if it is determined that the information contained in the pre-application response would be the same based on site and area specific conditions and the regulations in effect at the time of the request.

II.C. Required Public Agency, Service Provider and Utility Contacts

Prior to submitting a subdivision application and preliminary plat, the subdivider or his/her agents shall contact by certified mail each of the utilities, agencies and other entities cited at the pre-application meeting and/or in the pre-application response letter, and request that they provide a review of the proposal. The subdivider shall supply each of the listed entities with a copy of the preliminary plat and a vicinity map with the size, scale and clarity sufficient for the entity representative to clearly understand the location and nature of the proposal. When the subdivider contacts each entity, it shall also supply information about the subdivision that is pertinent to the purpose and mission of that entity in order for it to provide an educated response. For example, the subdivider should supply the local fire protection authority with proposed road grades, widths, construction standards, vegetation reduction measures, water supply, fire-related covenants, conditions and restrictions and other applicable information.

Each entity shall be notified of the response deadline to respond in writing to the subdivider's request for review, which shall be a minimum of 30 days. The subdivider may not submit the subdivision application and preliminary plat to Lake County prior to the conclusion of this 30-day period. This 30-day time period does not preclude the entity from responding at a later date. If the entity response indicates the information provided by the subdivider was insufficient to evaluate the proposal, the subdivider must provide the requested additional information and allow the entity an additional 30 days to review the proposal before a subdivision application may be submitted. Entities may request a review fee not to exceed the amount adopted in a fee schedule adopted by the Board of County Commissioners.

A copy of the certified mail receipts and all correspondence sent to the entity, including the plat, vicinity map, cover letter, additional information, and all correspondence received from the entity is required to be submitted along with the subdivision application and preliminary plat.

II.D. Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the Lake County Planning Department three¹ copies of a preliminary plat application for review. The following informational topics and materials are intended to be a comprehensive list of the items that the subdivider may be required to submit to the Lake County Planning Department for review and show on the preliminary plat. The actual list of information for each subdivision proposal will be determined by the subdivision administrator during the pre-application review based on project-specific and area-specific conditions.

Information That May Be Required to be Included In A Subdivision Application

1. A completed Lake County Subdivision Application form signed by the subdivider and the property owner;
2. Review fee;
3. Vicinity map that may include directions to the site;
4. Sanitation information to include water, sewer, solid waste and stormwater as required in 76-3-622, MCA;
5. Overall development plan if development is proposed in phases;
6. Copies of certified mailing receipts and all correspondence with the public utilities, local, state and federal agencies and any other entities identified during the pre-application meeting;
7. Title Abstract (or Title Report);
8. Lienholders' acknowledgement of subdivision;
9. Documentation of legal and physical access to the subdivision and each proposed lot;
10. Copies of existing easements, including those for agricultural water user facilities;
11. Names and addresses of all adjoining property owners;
12. Typical proposed road cross section and preliminary road plans and profile;
13. Existing approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
14. Description of proposed easements;
15. Existing water rights;
16. Description of the proposed disposition of water rights;
17. Proposal to meet the parkland dedication requirement including preliminary calculations or waiver request;
18. Environmental assessment and/or summary of probable impacts in compliance with state law and these regulations;
19. Traffic impact study;
20. Fire risk rating analysis and fire prevention and control plan;
21. Weed management and re-vegetation plan;
22. Irrigation water distribution plan;
23. Dust control plan
24. Landscaping and maintenance plan;
25. Existing irrigation users association documents or other irrigation agreements;
26. Proposed irrigation users association documents;

¹Four copies of the preliminary plat application must be submitted if the proposed subdivision lies within one mile of a third class city or town or within two miles of a second-class city or within three miles of a first class city due to the requirement for the county governing body to submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the subdivider must submit three copies of the preliminary plat application to Lake County as well as the number required by the city or town.

27. Existing covenants and deed restrictions;
28. Proposed covenants, conditions and restrictions;
29. FIRM or FEMA panel map and letter identifying floodplain status;
30. Draft subdivision improvements agreement, if proposed;
31. Variance request (subdivision) or approval (zoning);
32. Flood hazard evaluation;
33. Buffer management plan;
34. Cultural Assessment form;
35. Draft declarations or agreements for all proposed or existing shared infrastructure (roads, water and/or wastewater treatment systems, garbage collection facilities, etc.);
36. Grading and drainage plan that addresses tree retention and vegetation management;
37. Description of all public and private improvements;
38. Engineered plans for public and private improvements;
39. Site development plans;
40. Information necessary to demonstrate compliance with zoning regulations;
41. Declaration of Unit Ownership, bylaws and floor plans for condominium units;
42. Erosion and sediment control plan;
43. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials;
44. Wildlife assessment and impact analysis on and in the vicinity of the subject property;
45. Geotechnical soils analysis and development suitability study;
46. Such additional relevant information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the review of the subdivision proposal; and
47. Any other submittal requirements of these regulations that does not appear on this list.

Please note the subdivision administrator may require proposed items such building sites, drainfields and road approach to be staked in the field. Staking shall be maintained by the subdivider throughout the preliminary plat review process.

Information That May Be Required to be Included On The Preliminary Plat, Site Plan or a Preliminary Plat Supplement

Note: The plat must be drawn to scale on 18-inch by 24-inch paper for first minor subdivisions creating one additional lot and 24-inch by 36-inch paper for all other subdivisions. The plat may consist of one or more sheets.

1. A standard title block and information to include scale bar, north arrow, and date of preparation.
2. A name for the subdivision (names cannot be duplicated; First Minor Subdivisions creating one additional lot shall be named “SP-___”);
3. The exterior boundaries of the tract and the approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
4. A metes and bounds or other legal description, or notation of previously recorded certificate of surveys or subdivision plats;
5. All lots and blocks, designated by numbers and/or letters;
6. The proposed lot boundaries;
7. The gross and net acreage of each lot;
8. All existing and proposed streets, alleys, avenues, roads and highways on, adjacent to, and serving the property, and the width of the rights-of-way, grades and curvature of

- each, existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to arterial or collector highways;
9. The location, boundaries, dimensions and areas of any parks, common grounds, or other grounds dedicated for public or private use;
 10. The portions of each lot with slopes greater than 30% (or 25% if required by the local zoning regulations);
 11. Buildable areas including the portions of a buildable area from 25% to 30% slope.
 12. Proposed property line setbacks or any setbacks required by the applicable zoning regulations;
 13. Topographic ground contours at required intervals or as appropriate to easily identify grades;
 14. All surface waters, to include irrigation water, on the property and within 100-feet of the exterior boundaries of the subdivision;
 15. All federally recognized wetlands on the property and within 100-feet of the exterior boundaries of the subdivision;
 16. All known wetlands on the property and within 100-feet of the exterior boundaries of the subdivision as well as the sources of information upon which this is based (National Wetlands Inventory, CSKT Natural Resources Department, etc.)
 17. The location of all 100-year flood plains;
 18. Structural setbacks and vegetated buffers along wetlands and waterways;
 19. The location of all existing and proposed fences, lighting, signage, sidewalks, paths, storage areas, and other existing or proposed man-made improvements;
 20. The locations and types of all existing and proposed traffic control devices and directional signs;
 21. Existing and proposed landscape buffers;
 22. Any proposed or existing “no build zones” and/or building envelopes;
 23. Any existing and proposed utilities located on or adjacent to the property including:
 - a. The approximate location, size and depth of water mains, sanitary and storm sewers, and fire hydrants.
 - b. The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the property;
 - c. The approximate location of gas, electric and telephone lines, and streetlights.
 24. The locations and identity of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways, including descriptions of their width and purpose;
 25. The location of any existing or proposed easements for existing or proposed utility services to the proposed lots;
 26. The proposed driveways and approaches serving each lot;
 27. A building site on each proposed lot;
 28. The location of existing and/or potential buildings/building sites, structures and other improvements;
 29. Proposed locations of all stormwater management infrastructure;
 30. All existing and proposed primary and 100% replacement drainfields on the property and within 100-feet of the exterior boundaries of the subdivision;
 31. Locations of the soils test pits for data submitted with the subdivision application;
 32. All proposed or existing wells on the property and within 100-feet of the exterior boundaries of the subdivision;
 33. Such additional relevant information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the review of the subdivision proposal; and
 34. Any other requirements of these regulations that does not appear on this list.

II.E. Third Party Specialized Review

When a subdivision is proposed to create more than 100 residential lots/units, or when any subdivision would create an average daily traffic of more than 1,000 vehicle trips per day, or when warranted at anytime during the application and preliminary plat review process due to conflicting opinions of qualified professionals, the subdivision administrator, planning board or governing body may require a private third party to evaluate one or more specific portions of the subdivision application. The third party must have expertise in the subject of concern, such as traffic, wildlife, fire protection, emergency services, etc.

When third party specialized review is required, the subdivision administrator shall provide a list of contractors who are deemed to be qualified to conduct the review as well as the scope of work to be performed. This scope of work may be modified by written agreement of both the subdivision administrator and the subdivider.

In order to proceed, the subdivider must grant written permission to the subdivision administrator to solicit third party proposals to accomplish the agreed upon scope of work. Once permission is received, the subdivision administrator shall seek proposals from the qualified contractors within 15 days and allow the contractors 30 days to respond. If the contractors do not respond, the subdivision administrator and the subdivider shall decide on other qualified contractors who could perform the work and seek bids from them.

The successful contractor shall be chosen by the subdivision administrator and subdivider in a written agreement. Once the contractor is selected, Lake County shall enter into a contract with the contractor within 30 days. The contract must state that all work shall be performed within 60 days of the initiation of the contract. The subdivider shall pay all costs of the contractor's work and the contract administration to Lake County and Lake County shall pay the contractor for services performed under the contract.

The subdivision administrator shall typically inform the subdivider of this requirement at the pre-application meeting and in the pre-application letter. However, when third party review is required at a time other than the pre-application stage, the review period will be suspended when the subdivision administrator notifies the subdivider in writing of the need for third party review. The review period will be reinstated the working day after the report of the third party professional is received by the subdivision administrator. When third party review is required at the pre-application stage, the subdivider may submit the preliminary plat application 60 days after contract initiation.

II.F. Subdivision Review Process

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

1. Element (Completeness) Review
 - a. Within 5 working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by sections II.C-E. and shall give written notice to the subdivider of the determination of the subdivision administrator.

- i. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
 - ii. The subdivider may correct the deficiencies and resubmit the application or submit additional information to the subdivision administrator, as appropriate.
 - iii. If the subdivider corrects the deficiencies and resubmits the application or submits additional information, the subdivision administrator shall have 5 working days to notify the subdivider whether the application contains all the required materials.
 - iv. This process shall be repeated until the subdivider submits all the required materials or the application is withdrawn.
 - b. At the discretion of the subdivision administrator, it may become necessary during this process to return the application copies in their entirety to the subdivider and request entirely new application copies.
2. Sufficiency Review
 - a. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection 1. above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.
 - i. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in her/his notification and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
 - ii. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
 - iii. If the subdivider corrects the deficiencies, the subdivision administrator shall have 15 working days to notify the subdivider whether the required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
 - iv. This process shall be repeated until the subdivider submits detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.
 - b. At the discretion of the subdivision administrator, it may become necessary during this process to return the applications in their entirety to the subdivider and request entirely new application copies.

- c. A determination that an application contains sufficient information for review as provided in this subsection does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.
- d. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the Montana Department of Environmental Quality (DEQ) from requiring additional sanitation information as part of the DEQ review of water and sanitation information.

3. Applicable Regulations

Pursuant to 76-3-604(9), MCA review and approval, conditional approval or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review. If regulations change between preliminary approval and final approval, the regulations in effect when the application was deemed to be sufficient shall be used for evaluating compliance with any approval conditions and agreements.

II.G. Variances

The governing body may grant variances from the Design and Improvement Standards of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

1. Variance Procedure

The subdivider shall include with the submission of the preliminary plat application a written statement and supporting evidence describing and justifying the requested variance in consideration of the criteria listed in subsection 2, below. The requested variance will be reviewed at a public hearing pursuant to 76-3-506. Approval or denial of the variance will occur as a separate action prior to a motion for approval, approval with conditions or denial of a preliminary plat application. When a variance is recommended for approval or granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based. A minor subdivision as provided for in 76-3-609 (2) and Chapter IV of this regulation is not subject to the public hearing requirement.

2. Variance Statement of Facts

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

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

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

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

II.H. Public Hearings

When a public hearing is required by state law for subdivision review, the Lake County Planning Board and the Board of Commissioners shall hold a public hearing on the preliminary plat proposal. Public hearings required for subdivision amendment requests and final plat applications shall be held as defined in these regulations.

II.I. Notice of Public Hearings

Notice of the time and date of each hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.

At least 15 days prior to the date of each hearing, notice of the hearing shall be given by certified mail to the subdivider, the landowner if different from the subdivider, each landowner 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.

II.J. Municipality and School District Notice

1. If a proposed subdivision lies within one mile of a third class city or town or within two miles of a second-class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.
2. When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality will combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.
3. If a proposed subdivision is located in a rural school district, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

II.K. Restrictive Covenants and Conditions of Plat Approval, Content and Enforcement by Governing Body

1. The governing body may require certain restrictive covenants and/or conditions of plat approval governing the use and development of land within the subdivision. Such covenants shall be set forth in a separate heading identifying them as plat approval covenants, and indicating: “These covenant(s) may not be repealed or amended without prior written consent of the Board of Lake County Commissioners.” Such conditions of plat approval may also be placed on or attached to the final plat or appear in a plat supplement and enforced through the Building Notification Permit process (Section II.T.)
2. The governing body may require that all restrictive covenants it has required as a condition of plat approval contain the following language: “The Board of Lake County Commissioners is a party to this restrictive covenant and may enforce its terms.”
3. If common property is to be deeded to a property owners’ association, or physical improvements are common to all lots within the subdivision, the covenants and by-laws which govern the subdivision must, at a minimum, provide for:
 - a. The formation of a property owners’ association concurrently with the filing of the final subdivision plat. The property owners’ association Articles of Incorporation shall be filed with the Secretary of State’s office. The property owners’ association bylaws shall be recorded with the Lake County Clerk and Recorder’s Office;
 - b. A requirement that each property owner be a member of the association. Purchasers of property may also be required to sign a waiver of right to protest the formation of a district to maintain improvements;
 - c. The perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
 - d. A requirement for payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
 - e. A requirement for placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
 - f. A provision to allow adjustment of assessments to meet changing needs;
 - g. A means of enforcing the covenants, and of receiving and processing complaints;
 - h. The transition of control of the association from the Declarant to the homeowners;
 - i. The dissolution of the association and modification of the covenants and restrictions after obtaining the governing body’s approval of the change; and
 - j. The regular maintenance of roads, parks, buildings, drainage facilities, and other subdivision facilities controlled by the association.
4. When a proposed subdivision is subject to existing covenants, deed restrictions or any other restrictions filed in the records of the Clerk and Recorder’s Office that the

governing body has the right to enforce, all lots shall conform to the restrictions. The governing body reserves the right to notify and seek comment from landowners or other association that is party to the covenants, deed restrictions or other restrictions prior to taking action on a preliminary plat application.

II.L. Appeals

1. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
2. A party identified in subsection 4. below, who is aggrieved by a decision of the governing body to approve, conditionally approve or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
3. For the purposes of this section, aggrieved means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.
4. The following parties may appeal under the provisions above:
 - a. The subdivider;
 - b. A landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - c. The county commissioners of the county where the subdivision is proposed;
 - d. One of the following municipalities:
 - i. A city of the first class as described in 7-1-4111, MCA if a subdivision is proposed within 3 miles of its limits;
 - ii. A city of the second class, as described in 7-1-4111, MCA if a subdivision is proposed within 2 miles of its limits;
 - iii. A city of the third class, as described in 7-1-4111, MCA if a subdivision is proposed within 1 mile of its limits.

II.M. Final Plat Contents

1. Final Plat Contents

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required

modifications and comply with all conditions imposed at the time of preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats (Appendix A or as adopted through a change to the Administrative Rules of Montana). Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the preliminary approval.

2. Final Plat Initial Review--Check Print Review

The subdivider shall submit to the Lake County Planning Department a fee and a draft final plat (check print) for review by the subdivision administrator, Lake County Environmental Health Department and Lake County Examining Land Surveyor. The Examining Land Surveyor shall review the plat for errors and omissions in calculation or drafting. After review, the Lake County Planning Department shall return the draft final plat to the subdivider with requested modifications to be made prior to final plat application submittal (if applicable). When the survey data shown on the plat meet the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

II.N. Amending Approved Preliminary Plats Before Final Plat Approval

1. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes, all supporting documents and required fee to the subdivision administrator for review. All changes will be reviewed pursuant to these regulations, as applicable.
 - a. Within 30 working days of receiving the proposed changes, the subdivision administrator shall review the changes to determine whether they would cause the preliminary plat to become out of compliance with the applicable zoning, subdivision regulations, growth policy or would be likely to have a negative impact on any of the primary review criteria specified in 76-3-608, MCA, or if the changes are material.² If at any time within the 30-day period the subdivision administrator determines the materials submitted are not adequate for review, the subdivider shall be notified and the 30-working day review period is suspended until the requested information is obtained. If the subdivision administrator finds the changes would meet any of the conditions in Subsection 2 of this section, the changes may be deemed material.
 - b. If the subdivision administrator determines the changes are material, the subdivision administrator shall notify the subdivider within 10-working days of making the determination as to what information and additional fees will be necessary to review the modifications. When the subdivider has submitted the required information, the subdivision administrator shall conduct element and sufficiency reviews as described in Chapter II.F. When the information is determined to be sufficient for review, a 35-working day review period shall begin. During this period the subdivision administrator shall prepare a report detailing the proposed changes and making a recommendation based on compliance with the subdivision regulations, growth

² Definition: MATERIAL (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria (76-3-608 [3][a], MCA), bringing the proposal out of conformance with the Lake County Growth Policy, zoning or subdivision regulations, or impacting the public's opportunity to provide meaningful comment.

policy, zoning regulations, and other appropriate documents. As applicable, the Planning Board and Board of Commissioners shall hold a properly noticed public hearing.

- c. If the subdivision administrator determines the changes are not material, the subdivision administrator shall notify the subdivider of the determination and the date of governing body review. The governing body shall make a decision to approve, conditionally approve or deny the changes at a properly noticed public meeting.
2. The following changes, although not an exhaustive list, may be considered material:
 - a. Lot re-configuration or increase or decrease in the number of lots;
 - b. Road layout change(s);
 - c. Modified water and/or septic proposals;
 - d. Configuration of park land or open spaces;
 - e. Easement provisions;
 - f. Designated access;
 - g. Proposed covenants that would impact compliance with the subdivision regulations, zoning regulations, the primary review criteria (76-3-608, MCA);
 - h. Proposed changes to conditions of approval; or
 - i. Proposed change in land use.
 3. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 10 working days. The subdivider may request a meeting with the Board of Commissioners, and may submit additional evidence to show that the changes to the preliminary plat are not material.
 4. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public meeting in order to determine if the condition may be waived or amended.

II.O. Final Plat Application Submittal

1. A completed final plat application form (see Administrative Materials E) and all supplementary documents must be submitted to the subdivision administrator at least 60 days prior to the expiration of preliminary plat approval period. The submittal shall include, as applicable:
 - a. The final plat application form;

- b. The final plat review fee;
 - c. A signed statement and supporting documentation from the subdivider or designated agent describing how each condition of approval has been satisfied; (Administrative Note: Certain restrictive covenants and conditions of plat approval may be carried out over time (see Section II.K.) and may be enforced through the Building Notification Permit process (Section II.T.) and through ongoing compliance monitoring.)
 - d. A title report or abstract dated no less than 30 days prior to the date of submittal that shows the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record;
 - e. A signed, dated and notarized statement from each landowner, if different from the subdivider, and each lien holder or claimant of record consenting to the platting of the subdivision dated no less than 30 days prior to the date of submittal;
 - f. The original certification document from the Montana Department of Environmental Quality or Lake County Environmental Health Department that contains the approved plans and specifications for sanitary facilities serving the subdivision;
 - g. A signed, stamped certification from an engineer licensed in the State of Montana that the applicable improvements associated with the subdivision have been constructed in accordance with the requirements of the Lake County Subdivision Regulations and the Montana Department of Environmental Quality;
 - h. A Certificate of Completion of Public Improvements signed by the landowner indicating which subdivision improvements have been installed;
 - i. A Certificate of Roadway Dedication for the roadways signed by the landowner (Section X.I.9);
 - j. All homeowner association documents including a copy of the articles of incorporation filed with the secretary of state, and the original document signed by the landowner which contains the homeowner association bylaws, subdivision covenants, and/or other declarations or restrictions made by the subdivider;
 - k. A copy of the approved state highway permits when a new road or driveway will intersect with a state highway;
 - l. A subdivision improvements guarantee and supporting documentation securing the future construction for all incomplete improvements to be installed (if applicable);
 - m. Two 18" x 24" (for first minor subdivisions creating one additional lot) or two 24" x 36" (for all other subdivisions) original final plats on mylar material signed by the subdivider and notarized, completed in accordance with the Uniform Standards for Final Subdivisions Plats.
2. Review by Subdivision Administrator
- a. The subdivision administrator shall review the final plat and all accompanying information to ascertain that all conditions and requirements for final plat approval

have been met. The subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application, fee, supporting documentation and original copies of the final plat have been received. Final plat applications will not be considered complete by the subdivision administrator until all applicable conditions of preliminary approval have been satisfied or a subdivision improvements agreement has been submitted. Once the subdivision administrator has found that all conditions and requirements for final plat approval have been met, he/she shall notify the governing body of such and forward the documents to the governing body for final review pursuant to section II.Q.

- b. If the subdivision administrator determines that the final plat materially differs from the approved or conditionally approved preliminary plat, the applicant shall be required to follow the procedure described in the section II.N., above.

II.P. Subdivision Improvements Agreement

Prior to approval of the final plat, the subdivider shall have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements (76-3-507, MCA).

If the subdivider chooses to enter into a subdivision improvements agreement the remaining improvements shall be guaranteed through performance bond, joint certificate of deposit or other reasonable security that has been approved by the governing body. The subdivider shall provide three competitive bids for the cost of installation of the improvements that describes the scope of work, a time frame to complete the work that matches the terms of the agreement, and costs related to each of the items to be covered by the agreement, including all engineering and project management costs. Lake County shall only enter into a public improvements agreement if the subdivider has demonstrated that 50% or more of the total costs of installing the required improvements has been expended and approval has been obtained for the sanitary facilities and any other infrastructure requiring state or local agency review. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid and must be approved by the governing body. All agreements shall be created for no longer than an 18-month period.

As an alternative to the bid requirement above and in order to form the basis for the 125% cost amount, the subdivider may submit an itemized estimate from the contractor(s) who has been or is performing the subdivision improvements work, and evidence that the contract for the remaining improvements is transferable to Lake County at the governing body's discretion. This estimate must be supported in writing by the licensed engineer who is or has been overseeing the installation of improvements. Lake County reserves the right to request all necessary information to determine the completeness and accuracy of the estimate, and may hire a contractor to review the estimate at the subdivider's expense.

Development of the lots, including but not limited to construction or placement of structures and improvements, shall be prohibited until all identified improvements related to public health and safety including but not limited to, access, sanitary and fire fighting facilities, have been installed and certified by a licensed engineer and/or approved by the appropriate review authority (e.g., fire district for an emergency water supply), as applicable. The items determined to be related to public health and safety shall be identified in the improvements agreement and language regarding development restrictions shall be included into all applicable transfer documents until the terms of the agreement are satisfied. A model

subdivision improvements agreement is provided in the Administrative Materials section of these regulations.

As the public improvements are installed, the subdivider shall provide a letter to the governing body indicating such, and including a copy of the engineered plans, as applicable. The subdivider's engineer shall be required to certify that all public improvements have been installed in conformance with the required and/or approved plans and specifications. The governing body shall review and, at the request of the subdivider, certify all public improvements have been installed in conformance with the plans and specifications for the purpose of reduction in financial security only. Prior to the release of the guarantee, the engineer's certification, stamped in accordance with their licensing provisions, shall be filed in the clerk and recorder's office with reference to the final subdivision plat.

II.Q. Final Plat Approval

1. Approval by the Governing Body

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

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

2. Inaccurate or incomplete Information

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

II.R. Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided below. The Lake County Clerk and Recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The Clerk and Recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats in Appendix A.

II.S. Amending Filed Plats

1. Changes that will substantially alter the contents of the original subdivision application, do not comply with the conditions of preliminary plat approval, that will modify the approved use of land within the subdivision, or will materially alter any portion of a filed plat, its land divisions or improvements must be reviewed and approved by the governing body. Any alteration which increases the number of lots, modifies six or more lots, abandons or alters a public road right-of-way or parkland dedication or that is determined by the subdivision administrator to have the potential to negatively impact one or more of the primary review criteria for subdivisions must be reviewed and approved by the governing body using the procedure described in Amending Approved Preliminary Plats Before Final Plat Approval (Section II.N.), above.
2. The governing body reserves the right to require a current abstract of title for the subject property and may not approve an amended final plat without the written consent of the owners and lien holders of all lots which will be modified by the proposed amendment.
3. The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in the Design and Improvement Standards of these regulations or with local zoning regulations unless the governing body or the Lake County Board of Adjustment, as applicable, issues a written variance from the adopted standards.
4. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Montana Uniform Standards for Monumentation, and Final Subdivision Plats in Appendix A.

II.T. Building Notification Permits

1. As a condition of preliminary plat approval the governing body may require that a Building Notification Permit be obtained from the Lake County Planning Department prior to the construction of any residential, agricultural, industrial or commercial structure on any lot that is created through the subdivision review and platting process (i.e., 76-3-501 through 76-3-511, MCA and 76-3-601 through 76-3-625, MCA), including the construction of condominium units and subdivisions created by rent or lease.
2. Building Notification Permits are intended to ensure compliance with the provisions of subdivision applications and conditions of preliminary approval. Issues that may be addressed by Building Notification Permits include, but are not limited to, the location, type, size, use and design of structures, required building setbacks, parking areas, buffers,

the location of driveways and other related items that impact the built and natural environment and public health and safety.

3. Prior to construction, the lot owner or her/his designated agent shall submit a complete Building Notification Permit application form, the appropriate fee and the required supplementary documents to the subdivision administrator for review. When the subdivision administrator determines the permit application is complete, she/he will evaluate the request for compliance with the applicable requirements, and if approved, issue a Building Notification Permit to the landowner.
4. Failure to secure a Building Notification Permit when required may subject the lot owner to enforcement action pursuant to Section I.P., Violation and Penalties, of these regulations.

III. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

III.A. Purpose

The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3, MCA. Subdivision regulations, must, at a minimum, establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207, MCA, is an attempt to evade plenary subdivision review. The County Commissioners recognize that the likelihood of land development problems greatly increases when building sites are created without public review and are further divided without public review. It is in the best interest of Lake County to establish requirements for any proposed use of any exemption found in Part 2, Title 76, Chapter 3, MCA.

III.B. General Review Procedure and Requirements for all Exemptions Provided in 76-3-201 and 76-3-207, MCA

1. Any person wishing to utilize an exemption under this section shall submit to the subdivision administrator four sets of the following materials:
 - a. A completed application, as shown in Administrative Materials A, for a Subdivision Exemption form signed by all property owners;
 - i. For purposes of 76-3-207 and 201, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)
 - b. A site plan (or draft certificate of survey) of the proposed project that includes the information required on the application;
 - c. An ownership and encumbrance report prepared by a licensed title agency;
 - d. All documentation in support of the sanitation exemption (if applicable);
 - e. Copies of any existing or proposed deed restrictions or other property limitations;
 - f. Copies of any existing permits for the development on the property (zoning conformance, floodplain, sanitation, etc.); and
 - g. A fee that has been established by the governing body.
2. The subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., county attorney, sanitarian, treasurer, and clerk and recorder) as appropriate. The subdivision administrator and governing body’s agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

3. The designated agents of the governing body shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.
4. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for the purposes of evading the Act. A "pattern of development" occurs whenever 3 or more parcels of less than 160 acres have been created from the original tract by use of an exemption, regardless of ownership, (i.e. two exempt parcels and a remaining parcel) since July 1, 1974.
5. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section.
6. Within 30 working days of receipt of the information in subsection 1. above, the subdivision administrator shall make a written notice of the determination of the designated agents of the governing body regarding whether the use of the exemption complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations. If it is determined that the use of the exemption is intended to evade the purposes of the MSPA, the notice shall explain the reasons for the determination. If it is determined that the use of the exemption is in compliance, the site plan (or draft survey) shall be returned with an authorization for use of the exemption and notification of any required modifications or notes to be included or considered by the property owner and/or their project surveyor and sanitation consultants.
7. Any person whose proposed use of an exemption has been denied by the designated agents because the use of the exemption raised a rebuttable presumption established by these regulations that the use of the exemption is an attempt to evade the Act, may appeal the agents' decision to the County Commissioners as defined in III.F.
8. After the subdivision administrator or County Commissioners (as applicable) has notified the applicant that the proposed use of an exemption is approved, the project surveyor shall submit a draft survey (check print) and appropriate fee to the Lake County Planning Department for review by the Lake County Examining Land Surveyor, provided the requested exemption requires a survey or the applicant wishes to file and record a survey.
9. After review by the Lake County Examining Land Surveyor, provided the requested exemption requires a survey or the applicant wishes to file and record a survey, the Lake County Planning Department shall return the draft survey to the project surveyor with notification of any required modifications. The project surveyor shall address the requirements, and within 6 months of the date of the survey the surveyor or property owner may submit a final survey and all applicable documents to the Lake County Planning Department for filing in accordance with all applicable rules, regulations and requirements.

10. When an exemption as provided in 76-3-201 and 76-3-207, MCA is being claimed, the authorization for use of the exemption issued by the governing body shall be submitted to the Lake County Clerk and Recorder at the time of recordation.
11. When a person is approved for use of an exemption but is exempted from surveying requirements AND chooses not to file a survey, the conveyance document must state the parcel(s) was created through the use of an exemption, listing the specific exemption utilized, and that, as a result of the use of the exemption, the parcel(s) was exempt from local subdivision review.

III.C. Specific Provisions for Divisions of Land Exempt from Review under 76-3-201, MCA

The governing body or its designated agents will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The requirements of these regulations and the MSPA may not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

1. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

Any person seeking an exemption through an order of a court shall move the court to issue notice to the governing body pursuant to 76-3-201. The person seeking the exemption shall further ensure that, along with notice of the proposed division, the Lake County Attorney's Office is provided with evidence of entitlement to the exemption. The County Attorney shall cause the documents to be reviewed by the designated agents of the governing body and submit comment to the court.

2. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.

- a. Statement of Intent:

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

- b. This exemption applies:

- i. To a division of land of any size;

- ii. If the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations;
- iii. To a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.

c. Use of Exemption

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

- i. The claimant is purchasing a larger tract through financing or a contract for deed from a lending institution (and thus does not hold title) and;
- ii. A lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a construction loan.

d. Required Materials

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

- i. A statement of how many interests within the original tract will be created by use of the exemption;
- ii. The deed, trust indenture or mortgage for the exempted interest which states that the interest is being created only to secure a construction mortgage, lien or trust indenture and that the original tract reverts to its former status upon satisfaction of the mortgage;
- iii. A statement explaining who will have title to and possession of the balance of the original parcel if title to the exempted interest is conveyed upon foreclosure; and
- iv. A signed, notarized statement from a licensed financial institution that the creation of the parcel is necessary to secure a loan and they will not finance the entirety of the existing tract;
- v. If the landowner chooses to submit a survey for use with the mortgage exemption, the survey must also indicate that the original tract reverts to its former status upon satisfaction of the mortgage.

e. Rebuttable Presumptions

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

- i. It will create more than one new building site;
 - ii. The financing is not for construction or improvements on the exempted parcel, or for re-financing;
 - iii. The person named in the statement explaining who would have possession of the balance of the original parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction;
 - iv. Title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
 - v. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
 - vi. It appears that the principal reason the interest is being created is to create an additional building site and using the interest to secure a loan is a secondary purpose; or
 - vii. The division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.
3. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
 4. A division of land creates cemetery lots;
 5. A division of land is created by the reservation of a life estate;
 6. A division of land is created by lease or rental for farming and agricultural purposes;
 7. A division of land is in a location over which the state does not have jurisdiction; or
 8. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

III.D. Specific Provisions for Divisions or Aggregations of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations under 76-3-207, MCA

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

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

a. Statement of Intent

The intended purpose of this exemption is to allow a change in the location of a boundary line between adjoining properties outside of a platted subdivision.

b. Required Information

A Certificate of survey, or instrument of conveyance that states the exemption from surveying requirements under 76-4-401, claiming this exemption must clearly distinguish between the existing boundary location and the new boundary. On a Certificate of Survey, this must be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) must be included on a certificate of survey or in a conveyance document.

At the time of filing, certificates of survey showing the relocation of common boundary lines must be accompanied by any information required for sanitation compliance, and a quit claim or warranty deed or recordable agreement from the property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

c. Use of Exemption

The proper use of the exemption for relocating common boundary lines is to remove or modify the boundary line(s) between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land. For example, a proper use of this exemption is to start with two parcels and end with two parcels.

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

a. Statement of Intent

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

b. Required Information:

- i. Applicants that wish to use the exemption for gift or sale to immediate family member shall be required to meet with the designated agents of the governing body to discuss the use of the exemption. This meeting shall occur within 30 working days of application submittal and the written notice provisions set forth

in item 6 of Section B of Chapter III shall occur 30 days from the meeting date instead of the application date.

- ii. A certificate of survey, or instrument of conveyance that states the exemption from surveying requirements under 76-4-401, that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance [ARM 24.183.1104(1)(f)]. Also, the certificate of survey must be accompanied by a deed or other conveying document, and any information required for sanitation compliance.

c. Use of Exemption

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

d. Rebuttable Presumptions

- i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
- ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
- iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
- iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.
- v. A division being sought for the purpose of speculation by the grantor or for resale for the benefit of the grantor by using the grantee as a "straw person" is presumed to be adopted for the purpose of evading the MSPA and these regulations.

e. Conveyance Limitation

The governing body or its designated agents shall require that once the tract(s) of land created through the use of this exemption is conveyed to the intended immediate family member(s), that /those tract(s) of land and the parcel retained by the landowner shall not be conveyed to another party for a period of up to five years.

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

a. Statement of Intent

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

b. Required Information

A certificate of survey, or instrument of conveyance that states the exemption from surveying requirements under 76-4-401, that uses this exemption to create a parcel for agricultural use only shall require a covenant running with the land in accordance with 76-3-207(1)(c), MCA. A signed and acknowledged recitation of the covenant shall be placed on the face of the survey, [ARM 24.183.1104(f)(iii)] and the certificate of survey or instrument of conveyance must be accompanied by a separate, recordable document reciting the covenant, and any information required for Sanitation compliance.

c. Use of Exemption

- i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision.
- iii. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

d. Rebuttable Presumptions

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

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

- ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
 - iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.
4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]

a. Statement of Intent

- i. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.
- ii. If a change is proposed to be made to a platted subdivision which would result in an increase in the number of lots or rearrangement of six or more lots, this constitutes a new subdivision that must be reviewed according to these regulations and the preliminary plat must be titled an amended plat.

b. Required Information

In Lake County boundary relocation that involves lots in a platted subdivision are required to be shown on an Amended Subdivision Plat for recordation purposes and not a Certificate of Survey. In the case where a project includes land outside of a platted subdivision being adjusted with land inside a platted subdivision, showing the amended land outside of the platted subdivision on an amended subdivision plat does not subject the land to any requirement of the subdivision final plat approval.

c. Use of Exemption

Relocations of common boundaries for five or fewer lots within a platted subdivision, or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision are allowed because no additional parcels are created. Subdivision review is typically not necessary because the relocation does not create any additional division of land.

A survey claiming this exemption must clearly distinguish between the existing boundary location and the new boundary by representing the existing boundary with a dashed line and the new boundary with a solid line. At the time of filing, the survey must be accompanied by any information required for sanitation compliance, and a quitclaim or warranty deed or recordable agreement from the property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

d. Rebuttable presumption

- i. If the resulting lots are inconsistent with the subdivision's approval and/or the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

5. Aggregation of Lots [76-3-207(1)(f), MCA]

a. Statement of Intent

The intended purpose of this exemption is to allow the elimination of a boundary line between adjoining properties and the creation of a new legal description.

A certificate of survey, amended subdivision plat, or instrument of conveyance that shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established with a new legal description. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

b. Required Information

A certificate of survey, amended subdivision plat or instrument of conveyance that claims this exemption must clearly state the purpose is to declare the owner's intention that the tracts be merged, and the survey must assign a legal description that describes the larger aggregate parcel. A certificate of survey or subdivision plat must show the existing boundary with a dashed line and state that the boundaries of the original parcels have been expunged. At the time of filing, certificates of survey showing the aggregation of lots must be accompanied by any information required for sanitation compliance and a quit claim or warranty deed or recordable agreement from the property owners for the newly described parcel.

c. Use of Exemption

An aggregation of lots is allowed because no additional parcels are created. Subdivision review is not necessary because the aggregation does not create any additional division of land.

6. Remaining Parcels of Land

a. Statement of Intent

The balance of the original tract that is left following the segregation of other parcels from the tract created by the following exemptions from the MSPA are remaining parcels of land that must be identified as a parcel, lot or tract and given a new legal description:

- i. Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family.
- ii. Divisions made outside of platted subdivisions by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes.

These parcels must be surveyed by or under the supervision of a registered land surveyor in compliance with state law unless the parcel can be described as 1/32 or larger aliquot part of a United States government section or a United States government lot.

A landowner creating a remaining parcel of land must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel and building plans for a structure to be built by or for the landowner.

Subdivisions of a tract of record are required to include all proposed lots as part of the subdivision unless a lot is 160 acres or greater in size.

The Certificate of survey or instrument of conveyance creating a remaining parcel of land under this section is required to be accompanied by any information required for Sanitation compliance.

III.E Divisions of Land Which May be Exempt from Subdivision Review or Surveying Requirements

1. Generally condominiums are subject to review as subdivisions as described in Chapter VI of this document, but under certain circumstances they may be exempt from review pursuant to 76-3-203 MCA. To use the exemption, the Declaration of Unit Ownership must include an exhibit containing certification from the applicable local government that the condominiums are exempt from review under 76-3-203, MCA. *See* 70-23-301, MCA. Only the local governing body has the authority to determine whether a division of land is exempt from subdivision review. The act of recording a condominium declaration does not establish the declaration's validity simply because the clerk and recorder's office accepted and recorded it.

To obtain local government certification that the condominiums are exempt from review as a subdivision, the proposal shall be reviewed for compliance with the following by the subdivision administrator:

- a. The condominiums are constructed on land subdivided in compliance with these regulations and Parts 5 and 6 of the MSPA or on lots within incorporated cities and towns, and:
 - i. The approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621, MCA, are complied with; or

- ii. The condominium proposal is in conformance with applicable zoning regulations when local zoning regulations are in effect.
 - b. The reviewing agent of the governing body for review of a proposed use of the condominium exemption under 76-3-203, MCA, shall be the subdivision administrator.
 - c. The person seeking the use of the exemption shall submit evidence of and an affidavit affirming entitlement to the exemption to the subdivision administrator. Within 30 working days of the receipt of the affidavit and evidence, the subdivision administrator shall render a decision certifying or denying the use of the exemption.
 - d. If the subdivision administrator denies the use of the exemption, the person seeking the use of the exemption may appeal the decision of the subdivision administrator to the County Commissioners under Section III.F. of these regulations.
2. Generally, subdivisions created by rent or lease are exempt from the surveying and platting requirements of the MSPA and these regulations, but must be submitted for review and approved by the governing body as described in these regulations before portions may be rented or leased.
 - a. When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the requirements of MSPA, or these regulations;
 - b. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA, or these regulations.
3. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
4. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
5. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
6. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. 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. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the

state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)].

III.F Appeals

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

III.G Identification Codes

To assist in the implementation of this review process and to monitor those divisions of land by exemption which are located outside a platted subdivision, the Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these regulations:

CO ... Court Order [76-3-201(1)(a), MCA]
ME ... Mortgage Exemption [76-3-201(1)(b), MCA]
MS ... Subsurface Ownership Interest [76-3-201(1)(c)],
Cemetery Lot [76-3-201(1)(d), MCA],
Life Estate [76-3-201(1)(e), MCA],
Lease for Agricultural Purpose [76-3-201(1)(f), MCA],
Other exemptions listed in 76-3-205 MCA & 76-3-209 MCA
NJ ... Location of no State jurisdiction [76-3-201(1)(g), MCA],
UT ... Utility Exemption [76-3-201 (1)(h)],
RB ... Relocation of Common Boundary [76-3-207(1)(a & e), MCA],
FT ... Family Transfer [76-3-207(1)(b), MCA],
AE ... Agricultural Exemption [76-3-207(1)(c), MCA],
OS ... Occasional Sale (used prior to April 6, 1993),
AL ... Aggregation of Lots [76-3-207(1)(f), MCA]

RT ... Retracement of an existing Tract that provides other material evidence not appearing on any map filed with the county clerk and recorder, reveals a material discrepancy in the map, discloses evidence to suggest alternate location of lines or points, or establishes one or more lines not shown on a recorded map [(76-3-404(1), MCA),

IV. REVIEW PROCEDURES FOR MINOR SUBDIVISIONS

Subdivisions containing five or fewer parcels shall be reviewed as set forth in this section. First minor subdivisions shall be reviewed pursuant to Chapter IV and subsequent minor subdivisions shall be reviewed as major subdivisions pursuant to Chapter V. All processes and requirements set forth in Section II, General Procedures, apply to this section.

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

1. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application and preliminary plat containing the materials identified in Section II and in the pre-application meeting (and pre-application response letter, if applicable) and
2. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record.

IV.B. First Minor Subdivision Exceptions

The following requirements do not apply to first minor subdivisions:

1. Preparation of an environmental assessment;
2. Parkland dedication;
3. Public hearing; and
4. Review of the subdivision for impacts based on the criteria contained in 76-3-608(3)(a) MCA (agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety) *if* the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that specifically state they were created to address the impacts defined in 76-3-608 (3)(a) MCA.

IV.C. First Minor Subdivision Review Process

1. Time Period for Approval, Conditional Approval, or Denial:

Within 35 working days of the subdivision administrator determining the subdivision application and preliminary plat submittal (subdivision application) to be sufficient for review, as per Chapter II.F. of these regulations, the governing body shall approve, conditionally approve or deny the proposed subdivision, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the working day after the subdivision administrator mails written notice to the subdivider and/or the subdivider's agent that the subdivision application is sufficient for review.

2. Public Agency, Service Provider and Utility Review:

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 35-working day review period. The subdivision administrator will make all agency and service provider comments available

to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

3. Subdivider/Adjacent Landowner Notification:

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

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

IV.D. First Minor Subdivision Report, Consideration and Recommendation

As per 76-1-107(2), MCA, the Lake County Planning Board delegates to the subdivision administrator its responsibility to advise the governing body on all proposed first minor subdivisions.

1. Subdivision Administrator Report:

After the subdivision application is deemed to have all the required elements and contain detailed supporting information that is sufficient to allow for review, the subdivision administrator shall prepare a report for consideration by the governing body. The report shall include:

- a. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
- b. A description of any variance requests as well as the pertinent the facts and conditions relating to the request;
- c. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
- d. All public and agency comment received; and
- e. Any other information deemed pertinent by the subdivision administrator.

2. Consideration-Standards

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

- a. These regulations, including but not limited to, the Design and Improvement standards of these regulations;
- b. Applicable zoning regulations;
- c. Other applicable regulations; and
- d. The MSPA, including but not limited to the following impacts based on the criteria contained in 76-3-608(3)(a), as discussed in the Lake County Growth Policy:
 - i. Impact on agriculture;
 - ii. Impact on agricultural water user facilities;
 - iii. Impact on local services;
 - iv. Impact on the natural environment, including historical features;
 - v. Impact on wildlife;
 - vi. Impact on wildlife habitat; and
 - vii. Impact on public health and safety.

3. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application, the subdivision administrator shall consider, without limitation, the following (as applicable):

- a. The subdivision application and preliminary plat;
- b. The summary of probable impacts discussed in 2.d, above;
- c. Proposed mitigation;
- d. The Lake County Growth Policy;
- e. Development density as it relates to potentially significant adverse impacts identified during the review process;
- f. Information and testimony provided by potentially impacted parties, and
- g. Any additional information authorized by law.

4. Sanitation Information

The subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The subdivision administrator shall forward all comments regarding water and sanitation to the governing body.

5. No less than 10 working days prior to the expiration of the 35-working day review period, the subdivision administrator shall submit the report, proposed findings of fact and recommendation to the subdivider and the governing body.

IV.E. Subdivider's Preference for Mitigation

1. No later than five working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the subdivision administrator's recommendations, as well as any proposed mitigation measures not already discussed with the subdivision administrator.
2. The governing body shall consider all of this information and make findings whether or not the newly proposed mitigation measures should be considered material based on the criteria described in First Minor Subdivisions – Amended Applications, below.
3. If the governing body determines the newly proposed mitigation measures to be material, the governing body shall either not consider the mitigation proposal or direct the subdivider to follow the procedures provided for under Section IV.G.
4. In any case, the governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation. [76-3-608(5)(b), MCA].

IV.F. First Minor Subdivision Governing Body Decision and Documentation

1. Prerequisites to Approval

The governing body will consider the preliminary plat application at a regularly scheduled meeting for which notice has been posted at least 2 working days prior to the meeting. At the meeting the public may provide testimony. The governing body shall not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- a. Provides easements within and to the proposed subdivision for the location and installation of any planned utilities;
- b. Provides legal and physical access the subdivision and to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- c. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as

provided by Section II.P. Subdivision Improvements Agreement, of these regulations;

- d. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights, have been considered and will be accomplished before the final plat is submitted; and
- e. Assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements have been considered and will be accomplished before the final plat is submitted.

2. Consideration – Standards

In approving, conditionally approving, or denying a first minor subdivision application, preliminary plat and proposed mitigation, the governing body shall consider subsection 1 above and whether the proposed subdivision complies with:

- a. These regulations;
- b. Applicable zoning regulations;
- c. Other applicable regulations; and
- d. The MSPA, including but not limited to the following impacts based on the criteria contained in 76-3-608(3)(a), as discussed in the Lake County Growth Policy:
 - i. impact on agriculture;
 - ii. impact on agricultural water user facilities;
 - iii. impact on local services;
 - iv. impact on the natural environment, including historical features;
 - v. impact on wildlife;
 - vi. wildlife habitat; and
 - vii. impact on public health and safety.

3. Consideration – Evidence

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

- a. The subdivision application and preliminary plat;
- b. The summary of probable impacts discussed in 2.d, above;
- c. Proposed mitigation;

- d. The Lake County Growth Policy;
- e. The proposed development density as it relates to potentially significant adverse impacts identified during the review process;
- f. The subdivision administrator's staff report and recommendations;
- g. Information and testimony provided by potentially impacted parties; and
- h. Any additional information authorized by law.

When considering the above and making its decision, the governing body is not obliged to accept a subdivider's proposal for a given number of units on any particular site. The threat of a lawsuit or monetary damages paid as a result of a lawsuit shall not be a basis to approve or deny a subdivision.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public meeting when making its decision to approve, conditionally approve, or deny the proposed subdivision.

4. Water and Sanitation-Special Rules

- a. Lots within a subdivision may not be approved unless all proposed, new or replacement well isolation zones and drainfield mixing zones are confined to the subdivision property or it is demonstrated that offsite easements have been obtained, unless the lots are exempt from state or local sanitation review.
- b. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application or information submitted during public review indicated the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- c. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ prior to final plat filing. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
- d. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.
- e. The subdivision administrator shall collect public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

- f. The subdivider shall, as part of the subdivider's application for sanitation approval, obtain and forward the comments or a summary provided by the governing body to the:
 - i. Reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; or
 - ii. Local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.
5. Documentation of Governing Body Decision
- a. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
 - b. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a written decision within 30 working days, with the appropriate signature, and make the letter available to the public. The letter shall:
 - i. Contain information regarding the appeal process for the denial or imposition of conditions;
 - ii. Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - iii. Provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;
 - iv. Provide the conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved; and
 - v. Set forth the time limit for final approval, pursuant to subsection 6 below.
6. Subdivision Applications and Preliminary Plat Approval Period
- a. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for three calendar years.
 - i. At least 90 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for no more than one additional year. (76-3-610 MCA) The subdivider's written request should demonstrate reasonable progress has been made toward the completion of any conditions and explain why an extension is appropriate.

- ii. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to 76-3-507 MCA, and as provided for in Section II.P.
- b. After the application and preliminary plat are approved or conditionally approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required, or if modifications to the preliminary plat are proposed by the subdivider.
- c. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate or incomplete.

IV.G. First Minor Subdivisions – Amended Applications

- 1. If the subdivider changes the subdivision application or preliminary plat after the sufficiency determination but before the governing body makes its decision, the subdivider shall submit the amended information to the subdivision administrator for review and a letter agreeing to the suspension of the 35 working-day review period.
 - a. Within 10 working days of receiving the amended information, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in subsection 2 below.
 - b. The 35-working day review period is suspended while the subdivision administrator considers the amended information.
 - c. If the subdivision administrator determines the changes are not material, the 35-working day review period resumes the working day after the subdivision administrator mails notice of the decision to the subdivider.
 - d. If the subdivision administrator determines the changes are material, within 5 days of notification, the subdivider must submit a letter agreeing to the cancellation of the 35-working day review period if the subdivider wishes the changes to be considered. Within 15 days of the determination, the subdivision administrator shall send an addendum (or update) to the original pre-application response letter reflecting the changes and requesting the information and fees needed to review the amended proposal. Upon the subdivision administrator's determination the amended subdivision application is complete and sufficient for review as outlined in Chapter II of these regulations, the First Minor Subdivision Review process shall begin as detailed in this Chapter. In extreme cases, where three or more of the changes listed in subsection 2. below are proposed, the subdivision administrator may require the subdivider to submit a new pre-application and begin the subdivision review process from the beginning.
- 2. The following changes, although not an exhaustive list, may be considered material:
 - a. Lot configuration, increase or decrease in the number of lots;

- b. Road layout change(s);
 - c. Modified water and/or septic proposals;
 - d. Configuration of park land or open spaces;
 - e. Easement provisions;
 - f. Proposed change in land use;
 - g. Proposed covenants that would impact compliance with these subdivision regulations, zoning regulations, the primary review criteria (76-3-608, MCA); or
 - h. Designated access.
3. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body within 5 working days of receiving the determination. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material subject to the following:
- a. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period;
 - a. The 35-working day review period is suspended until the governing body decision on the appeal is made;
 - b. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the provisions of subsection 1. (above) take effect; and
 - d. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35-working day review period resumes on the day following the decision.

IV.H. First Minor Subdivision Final Plat

The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Chapter II.M, Final Plat Contents.

IV.I. Subsequent Minor Subdivisions

A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed as major subdivisions (Chapter V). All the requirements and procedures of Chapter V of these regulations must be followed for subsequent minor subdivisions.

V. REVIEW PROCEDURES FOR MAJOR SUBDIVISIONS

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA and these regulations. All processes and requirements set forth in Section II, General Procedures, apply to this section.

V.A. Subdivision Application and Preliminary Plat Submittal

1. The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application, environmental assessment compliant with 76-3-603 MCA and these regulations (Administrative Materials C), a preliminary plat and supplementary materials identified in Section II and in the pre-application meeting (and in the pre-application response letter, if applicable).

V.B. Major Subdivision Review Process

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

Within 60 working days, or 80 working days if the proposed subdivision contains 50 or more lots, of the subdivision administrator determining the subdivision application and preliminary plat submittal (subdivision application) to be sufficient for review as per Chapter II, the governing body shall approve, conditionally approve or deny the proposal according to the terms of these regulations unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to these regulations. The review period begins the working day after the subdivision administrator mails written notice to the subdivider and/or the subdivider's agent in writing that the subdivision application and preliminary plat submittal is sufficient for review.

2. Public Agency, Service Provider and Utility Review

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

V.C. Public Hearings and Notices – In General

1. Public Hearings

- a. The planning board shall hold a public hearing on all major and subsequent minor subdivision applications.
- b. In cases where the subdivision administrator determines there is sufficient time and Planning Department staff resources the planning board may also hold an introductory meeting on the subdivision application in the interest of due process and

in order to give the subdivider feedback on the application. The meeting shall be conducted in the same manner as a public hearing although the public notification requirements (subsection 2., below) do not apply, except the subdivider shall be given notice by standard mail at least 15 days prior to the meeting. This does not prohibit the subdivision administrator from giving notice of the meeting to other parties as described in subsection 2. below.

- c. The governing body shall hold a public hearing on all major or subsequent minor subdivision applications.

2. Notice

- a. The subdivision administrator shall give notice of the time, date and location of any public hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
- b. At least 15 days prior to the date of each public hearing, notice of the hearing shall be given by certified mail to the subdivider, the landowner if different from the subdivider, each landowner 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. At the discretion of the subdivision administrator, she/he may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include, but are not limited to, those landowners who share a private road, irrigation facilities (delivery point, ditch, etc.), are within 150 feet of the subject property, across a watercourse, etc. Discretionary notices are not required to be sent by certified mail.
- c. At least 15 days prior to the date of the public hearing, the subdivider shall post a minimum of one notice at a conspicuous place on the site of the proposed subdivision. This notice shall be printed on laminated orange paper no smaller than 11" x 17" in size and be clearly visible from the most heavily traveled way(s) adjoining the property and include the information listed in subsection d. below. It is the subdivider's obligation to maintain this information on the property until a determination has been made on the preliminary plat application.
- d. At a minimum all notices shall include a general description of the property location, the legal description of the property, the number of lots or units proposed, the type of land use(s) proposed, a description of any variances requested, notification of where more information may be obtained, and the time, date and location of the hearing.

V.D. Public Hearing, Consideration and Recommendation

1. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, notice has been provided as described above and the subdivision administrator has prepared a staff report, the planning board shall hold a public hearing on the subdivision application. The report to the planning board shall include:

- a. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
- b. A description of any variance requests as well as the pertinent facts and conditions relating to the request;
- c. All public and agency comment received by the administrator. As a matter of practice all comments and documents regarding the subdivision shall be submitted in writing to the subdivision administrator prior to the public hearing on the subdivision to be made part of the staff report to the planning board. However, all comments and documents, which are presented directly to the planning board at the public meeting, shall be included in the public record;
- d. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
- e. Any other information deemed pertinent by the subdivision administrator.

2. Recommendation

a. Consideration-Standards

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

- i. These regulations:
- ii. Applicable zoning regulations;
- iii. The MSPA, including but not limited to the following impacts, as discussed in the Lake County Growth Policy:
 - a. Impact on agriculture;
 - b. Impact on agricultural water user facilities;
 - c. Impact on local services;
 - d. Impact on the natural environment, including historical features;
 - e. Impact on wildlife;
 - f. Impact on wildlife habitat; and
 - g. Impact on public health and safety; and
- iv. Other applicable regulations.

b. Consideration-Evidence

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

- i. The subdivision application and preliminary plat;
- ii. The environmental assessment;
- iii. The summary of the probable impacts discussed in section a.iii, above;
- iv. Development density as it relates to potentially significant adverse impacts identified during the review process;
- v. Proposed mitigation;
- vi. The Lake County Growth Policy;
- vii. Information and testimony provided by potentially impacted parties at or before the public hearing;
- viii. The subdivision administrator's staff report and recommendation; and
- ix. Any additional information authorized by law.

c. Sanitation Information

The subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The subdivision administrator shall forward all comments regarding water and sanitation to the governing body.

d. Written Recommendation

Within 10 working days after the public hearing, the subdivision administrator, working on behalf and with the consent of the planning board, shall submit the following, in writing, to the subdivider and the governing body:

- i. Planning board recommended findings of fact based on the evidence listed in subsection b, above that discuss and consider the subdivision's compliance with and impact on the standards contained in the documents listed in subsection a, above;
- ii. A recommendation for approval or denial of any requested variances;
- iii. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
- iii. Information and testimony provided by potentially impacted parties at or before the public hearing; and

- iv. Any other information deemed pertinent by the subdivision administrator.

V.E. Subdivider's Preference for Mitigation

1. No later than five (5) working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the subdivision administrator and/or planning board.
2. As described in V.F., below, the governing body shall consider all of this information and make findings whether or not the newly proposed mitigation measures should be considered material based on the criteria described in section V.I., Amended Applications.
3. If the governing body determines the newly proposed mitigation measures to be material, the governing body shall either not consider the mitigation proposal or direct the subdivider to follow the procedures provided for under Section V.I.
4. If newly proposed mitigation measures are determined not material, the governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation prior to making a decision. [76-3-608(5)(b), MCA].

V.F. Governing Body Public Hearing

1. After the planning board makes its recommendation, the governing body shall hold a public hearing on the subdivision application.
2. As a matter of practice all comments and documents regarding the subdivision shall be submitted in writing to the subdivision administrator prior to or at the planning board public hearing on the subdivision to be made a part of the record. However, if comments and documents are presented directly to the governing body at a public hearing, the proceedings shall not be voided, unless as provided below.
3. The governing body shall determine whether subdivider or public comments and/or documents presented for consideration at public hearing constitute either:
 - a. Information or analysis of information that was presented at the planning board's public hearing on the subdivision application that the public has had a reasonable opportunity to examine and comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - b. New information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall proceed as set forth in subsection 4 below.
4. If the governing body determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the

subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections 5 and 6 below.

- a. If the governing body determines the information or analysis of information is either not relevant or not credible, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - b. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall schedule or direct the subdivision administrator to schedule a subsequent public hearing pursuant to Section V.G. below; and
 - c. At the subsequent hearing the planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
5. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
 6. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - a. Physical facts or evidence;
 - b. Supported personal observations;
 - c. Evidence provided by a person with professional competency in the subject matter; or
 - d. Scientific data supported by documentation.

V.G. Subsequent Public Hearing

1. If a subsequent public hearing is held, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. The planning board shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
 - a. The subdivision administrator shall give notice of the time, date and location of the public hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
 - b. At least 15 days prior to the date of each hearing, notice of the hearing shall be given by certified mail to the subdivider, the landowner if different from the subdivider, each landowner 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.

- c. At least 15 days prior to the date of the public hearing before the planning board, the subdivider shall update the on-site notices of the proposed subdivision to reflect the new information and hearing schedule. The notices must be maintained in compliance with Section V.C.
2. At a minimum all notices shall include a general description of the property location, the legal description of the property, the number of lots or units proposed, the type of land use(s) proposed, a description of any variances requested, notification of where more information may be obtained, and the time, date and location of the hearing.
3. If a subsequent public hearing is held, the 60 or 80-working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60 or 80-working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

V.H. Governing Body Decision and Documentation

1. Prerequisites to Approval

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

- a. Provides easements for the location and installation of any planned utilities, both on and off site;
- b. Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- c. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided in Section II.P., Subdivision Improvements Agreement, of these regulations;
- d. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights have been considered and will be accomplished before the final plat is filed;
- e. Assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements have been considered and will be accomplished before the final plat is filed; and
- f. Provides for the appropriate park dedication or cash-in-lieu.

2. Consideration-Standards

In approving, conditionally approving, or denying a subdivision application, preliminary plat and proposed mitigation, the governing body shall consider subsection 1 (above), and whether the proposed subdivision complies with:

- a. These regulations;
- b. Applicable zoning regulations;
- c. Other applicable regulations; and
- d. The MSPA, including but not limited to the following impacts, as defined in the Lake County Growth Policy:
 - i. Impact on agriculture
 - ii. Impact on agricultural water user facilities
 - iii. Impact on local services
 - iv. Impact on the natural environment, including historical features
 - v. Impact on wildlife;
 - vi. Impact on wildlife habitat; and
 - vii. Impact on public health and safety

3. Consideration-Evidence

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

- a. The subdivision application and preliminary plat;
- b. The environmental assessment;
- c. The summary of probable impacts discussed in 2.d, above;
- d. The proposed development density as it relates to potentially significant adverse impacts identified during the review process;
- e. Proposed mitigation;
- f. The Lake County Growth Policy;
- g. Information and testimony provided by potentially impacted parties at or before the public hearing;
- h. Subdivision administrator's staff report and recommendation;
- i. Planning board recommendation; and

- j. Any additional information authorized by law.

When considering the above and making its decision, the governing body is not obliged to accept a subdivider's proposal for a given number of units on any particular site. The threat of a lawsuit or monetary damages paid as a result of a lawsuit shall not be a basis to approve or deny a subdivision.

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

4. Sanitation-Special Rules

- a. Lots within a subdivision may not be approved unless all proposed new well isolation zones and drainfield mixing zones are confined to the subdivision property or it is demonstrated that offsite easements have been obtained, unless the lots are exempted from state or local sanitation review.
- b. Sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- c. For a proposed subdivision that will create one or more parcels containing less than 20 acres (excluding public rights-of-way), the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed unless a valid exemption is shown on the final plat as per Title 76, Chapter 4, MCA.
- d. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.
- e. The subdivision administrator shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
- f. The subdivider shall, as part of the subdivider's application for sanitation approval, obtain and forward the comments or a summary provided by the governing body to the:

- i. Reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres (excluding public rights-of-way); and
- ii. Local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

5. Documentation of Governing Body Decision

- a. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.
- b. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a written decision within 30 working days of the oral decision, with the appropriate signature, and make the letter available to the public. The letter shall:
 - i. Contain information regarding the appeal process for the denial or imposition of conditions;
 - ii. Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - iii. Provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;
 - iv. Provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved; and
 - v. Set forth the time limit for approval, pursuant to subsection (6) below.

6. Subdivision Application and Preliminary Plat Approval Period

- a. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for three calendar years.
 - i. At least 90 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year. The subdivider's written request should demonstrate reasonable progress has been made toward the completion of any conditions and explain why an extension is appropriate.
 - ii. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, according to 76-3-507 MCA, and as provided for in Section II.P.

- b. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required, or unless modifications to the preliminary plat or conditions of approval are proposed by the subdivider.
- c. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

V.I. Amended Applications

1. After Sufficient Application Determination and Before the Planning Board Public Hearing

If the planning board holds an introductory meeting on a subdivision application and at the meeting the planning board requests clarification, reconsideration or additional information from the subdivider that would not be material pursuant to these regulations, local zoning regulations, or state law, the subdivider may submit the requested information, supporting documents, and all amendments necessary to the application materials to the subdivision administrator no more than 5 working days after the introductory meeting without penalty. The subdivider may choose not to submit any additional information.

If the subdivider submits the information requested by the planning board after more than 5 working days, or changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to Section II but before the planning board public hearing, the subdivider shall submit the amended application or additional materials to the subdivision administrator for review, and a letter agreeing to the suspension of the review period.

- a. Within 5 working days of receiving the additional or modified information, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection 3 below.
- b. The 60 or 80-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
- c. If the subdivision administrator determines the changes are not material, the review period resumes the working day after the subdivision administrator mails notice of the decision to the subdivider.
- d. If the subdivision administrator determines the changes are material, within 5 days of notification, the subdivider must submit a letter agreeing to the cancellation of the 60 or 80-working day review period if the subdivider wishes the changes to be considered. Within 15 days of the determination, the subdivision administrator shall send an addendum (or update) to the original pre-application response letter reflecting the changes and requesting the information and fees needed to review the amended proposal. Upon the subdivision administrator's determination the amended subdivision application is complete and sufficient for review as outlined in Chapter

II. of these regulations, the Major Subdivision Review process shall begin as detailed in this Chapter. In extreme cases, where three or more of the changes are proposed that qualify as material in subsection 5, below, the subdivision administrator may require the subdivider to submit a new pre-application and begin the subdivision review process from the beginning.

2. After the Planning Board Hearing But Before the Governing Body Hearing

Except as provided in the section titled “Subdivider’s Preference for Mitigation” above, if the subdivider submits additional or modified information after the planning board’s hearing but before the governing body’s hearing:

- a. Within 5 working days of receiving the additional or modified information, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material pursuant to subsection 3. below.
- b. The 60 or 80-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.
- c. If the subdivision administrator determines the changes are not material, the 60 or 80-working day review period resumes ~~when~~ the day after the subdivision administrator mails notice of the decision to the subdivider.
- d. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
 - i. Require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of all or a portion of a new application fee; or
 - ii. Schedule a new planning board hearing to take comment on the modified or additional information. Public notice shall be published, mailed and posted and a supplemental staff report shall be prepared to address the changes to the original application.
- e. If a new planning board hearing is held, the 60 or 80-working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.

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

- a. Lot re-configuration increase or decrease in the number of lots;
- b. Road layout changes;
- c. Modified water and/or septic proposals;

- d. Configuration of park land or open spaces;
 - e. Easement provisions;
 - f. Proposed change in land use;
 - g. Proposed covenants that would impact compliance with the subdivision regulations, zoning regulations, the primary review criteria (76-3-608, MCA); or
 - h. Designated access.
4. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body within 5 working days of receiving the determination. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material subject to the following:
- a. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 60 or 80-working day review period;
 - b. The 60 or 80-working day review period is suspended until the governing body decision on the appeal is made;
 - b. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to subsection 2.d above; and
 - c. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 60 or 80-working day review period resumes as of the date of the decision.

V.J. Major Final Plats

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

VI. CONDOMINIUM SUBDIVISIONS

VI.A General Review Provisions for Condominium Subdivisions

1. A condominium subdivision must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-902, MCA. A declaration pursuant to 70-23-301 or a preliminary declaration pursuant to 70-23-302 shall be recorded to create the condominium subdivision.
2. Pursuant to 70-23-301, MCA, a declaration must contain an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203, MCA or have been approved following review under Title 76, chapter 3, parts 5 and 6.
 - a. Unless exempted pursuant to section 76-3-203, MCA, all condominium subdivisions are subdivisions subject to the terms of the MSPA and these regulations.
 - b. All exempted condominium proposals are subject to local review for compliance with 76-3-203, MCA as described in Chapter III of these regulations.
3. Pursuant to 70-23-304, MCA, before a declaration may be recorded in the county in which the property is located, it must be approved by the department of revenue. A declaration must be approved unless:
 - a. The name does not comply with 70-23-303, MCA; and
 - b. All taxes and assessments due and payable have not been paid.
4. Condominium subdivisions will be reviewed under the procedures described in Chapter II, General Procedures, and Chapter IV, Minor Subdivisions, or Chapter V, Major Subdivisions, as may be appropriate, except that the subdivider shall submit site plans and floor plans, as described in this chapter, rather than a plat.
5. Condominium subdivisions must comply with applicable zoning.

VI.B. Design Standards for Condominium Subdivisions

1. Condominium subdivisions must comply with applicable standards contained in Chapter X, Design and Improvement Standards. In addition to the applicable standards the following information is also required:
 - a. A declaration of unit ownership that complies with Title 70, Chapter 23 MCA “Unit Ownership Act – Condominiums.” The declaration must contain:
 - i. A description of the land, whether leased or in fee simple, on which the building is located or is to be located;
 - ii. The name by which the property will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

- iii. The unit designation, location, approximate area of each unit, and any other data necessary for proper identification;
 - iv. A description of the general common elements and the percentage of the interest of each unit owner in the common elements;
 - v. A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;
 - vi. A statement of the use for which the building and each of the units is intended;
 - vii. The name of a person to receive service of process in the cases provided in 70-23-901, MCA and the residence or place of business of the person which must be within the county in which the property is located;
 - viii. An exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6 MCA; and
 - ix. Any other details regarding the property that the person executing the declaration considers desirable.
- b. A site plan as described in 70-23-306, MCA and subsection VI.C. of this chapter.
 - c. All floor plans as described in 70-23-306, MCA. Floor plans shall be submitted for each floor proposed showing the layout of each unit, the unit designation, dimensions of each unit and location, as well as the common areas to which each has access.
 - d. Bylaws to govern the administration of the property in compliance with 70-23-308, MCA. The bylaws must provide for:
 - i. The election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of the directors, and whether or not the board may engage the services of a manager or managing agent;
 - ii. The method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102, MCA, that constitutes a quorum;
 - iii. The election of a presiding officer, a secretary, and a treasurer;
 - iv. The maintenance, upkeep, and repair of the common elements and payment for those expenses, including the method of approving payment vouchers;
 - v. The employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

- vi. The manner of collecting from the unit owners their share of the common expenses;
 - vii. The method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;
 - viii. Restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of the unit owners' respective units and of the common elements by the several unit owners;
 - ix. The method of amending the bylaws subject to 70-23-307, MCA.
2. Condominium subdivisions must contain a multiple-unit building or buildings, where the units are individually owned, and the land on which the buildings sit is one parcel owned in common by the unit owners. These developments do not include stand-alone, individual residential units or buildings, RV or mobile home sites, docks, or boat slips.
 3. All buildings that contain units must have a direct exit to a public street or highway or to a private parking area accessible by emergency service providers which leads to a public street or highway.
 4. Condominium subdivisions may contain general common elements and limited common elements as designated in the declaration of unit ownership. General common elements are elements for the use of all units, and limited common elements are those elements reserved for the use of a certain unit or number of units to the exclusion of the other units. Common elements typically include infrastructure such as roofing, siding, water and sewer pipes, electrical and telephone lines, etc. that are part of the building that contains the units. Limited common elements typically include patio or deck area outside of the unit, storage area outside of the unit, common hallways, etc.
 5. The governing body may require provision for:
 - a. Off street parking in proximity to the unit served for the unit owners and their guests;
 - b. An area for storage or parking of boats, trailers, or other recreational vehicles;
 - c. Landscaping and/or fencing to serve as a buffer between the development and adjacent properties and roads. In all cases a strip of landscaped land at least 20 feet in width shall be maintained along exterior property lines;
 - d. Street lighting;
 - e. Sidewalks or paths;
 - f. Curbs, gutters, snow removal and storage;
 - g. A centralized location for postal service distribution and solid waste collection;
 - h. Open space and recreation areas for the use of residents. When required, the open space and recreation area shall contain a minimum area of 400 usable square feet per

each unit. Recreation areas may include community recreation buildings and facilities but in no case shall the area(s) amount to less than 10% of the required area; and

- i. A second ingress/egress to the property containing the condominiums to facilitate traffic and the provision of emergency services;
6. If the condominium subdivision contains access to private or public slips that would accommodate a recreational boat with installed toilet facilities, the subdivision shall include provisions for pump-out services that are adequate to support both portable toilets and holding tanks, and signage reminding boaters that it is illegal under federal law to discharge untreated sewage in inland waters shall be erected at the lake access. The declaration of unit ownership shall require the association to maintain this wastewater system and signage.
 7. All units created and approved through condominium subdivision as defined in this Chapter are subject to Governing Body review and approval prior to removal of the property from the Unit Ownership Act.

VI.C. Site Plan Standards

1. Site Plans must be drawn to scale on a 24-inch by 36-inch sheet of paper and be completed by a registered architect, registered professional engineer, or registered professional land surveyor and include:
 - a. North arrow;
 - b. Name of qualified registered professional and registration number;
 - c. Name of landowners;
 - d. Name of the condominium project;
 - e. Legal description, which includes the boundaries of the tract of record on which the building(s) is (are) or will be located;
 - f. Location of the general common elements and the land area associated with each, including but not limited to:
 - i. The buildings housing the units, land on which the buildings are located, open space, parking areas, outside storage areas, sidewalks and private roads, etc. for use by all owners as identified in the declaration;
 - ii. Utilities, water supply system, wastewater treatment system, and stormwater infrastructure, etc. for use by all owners as identified in the declaration;
 - iii. Other elements for common use of all owners such as fire protection infrastructure, post office delivery locations, etc. for use by all owners as identified in the declaration.
 - g. Location of the limited common elements to include but not limited to:

- i. Utilities, water supply system, wastewater treatment systems for the exclusive use of fewer than all of the unit owners;
- ii. Any open space, patio or deck area, parking areas, storage spaces and other areas or improvements that are designated in the declaration for the exclusive use of the owners of one or more specified units within the development with the area associated with each.

VI.D. Final Review Process

1. Except as provided in this chapter, condominium developments shall be submitted and reviewed in accordance with the appropriate requirements contained in Chapter II regarding Final Plat submittal.
2. Two Mylar copies of a site plan that conforms to the conditions set forth in the preliminary subdivision approval and is certified as accurate by a qualified registered professional shall be filed or recorded with the final subdivision documents which at a minimum include:
 - a. Certification of the governing body of subdivision approval;
 - b. Certification of the county treasurer that all real property taxes and special assessments have been paid;
 - c. Certification of the Montana Department of Revenue that no other property in the county is using the same or similar name and that all taxes and assessments due and payable have been paid;
 - d. Certificate of a title abstractor and consent to the condominium subdivision from all lien holders and claimants of record;
 - e. Original DEQ approval statement;
 - f. The Declaration of Condominium Ownership that covers all applicable tracts of record and all units in the subdivision;
 - g. All floor plans must be recorded with the Declaration of Unit Ownership as described in 70-23-306, MCA.
 - h. The signed Bylaws of the Condominium Association;
 - i. Certificate of Subdivision Approval signed by the governing body; and
 - j. Certificate of public improvements signed by a registered engineer and the landowner as applicable.

VII. REVIEW PROCEDURE FOR SUBDIVISIONS CREATED BY RENT OR LEASE

VII.A. Definition

A subdivision created by rent or lease, including mobile home/manufactured home parks, recreational vehicle parks, single family or commercial units or campgrounds, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common).

VII.B. General Review, and Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes

1. Subdivisions for Lease or Rent, Generally

- a. Land subdivision created by rent or lease will be reviewed under the procedures described in Chapter IV, Minor Subdivisions, or Chapter V, Major Subdivisions, as may be appropriate, except that the subdivider shall submit a final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Chapter II.
- b. Land subdivisions created by rent or lease are subject to the applicable Design and Improvement Standards contained in Chapter X, unless otherwise indicated herein.
- c. Site plans, not plats, are submitted to the subdivision administrator for review. The site plan shows spaces, not lots.
- d. The plan must comply with applicable zoning.

2. Mobile/Manufactured Homes

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

3. Recreational Camping Vehicles

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

VII.C. Procedures for Review

1. Review and Approval

Subdivisions which will provide multiple spaces for mobile homes/manufactured homes and/or recreational camping vehicles and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. However, these subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased.

a. Submittal

After completing the pre-application process described in Chapter II, the subdivider shall submit a completed application in accordance with Chapter II, and a plan of the proposed development, conforming to the requirements for preliminary plats.

b. Review

The procedure used to review subdivisions for rent or lease will depend on the number of spaces or rental units within the proposed subdivision. Proposed subdivisions containing five or fewer spaces or rental units must be reviewed pursuant to Chapter IV of these regulations. Proposed subdivisions containing six or more spaces or rental units must be reviewed pursuant to Chapter V of these regulations. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plans must show the space or rental unit layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

2. Improvements

The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or its agents may inspect all required improvements in order to assure conformance with the approved construction plans and specifications. The governing body may require a sufficiently qualified third party, such as an engineer licensed in the State of Montana, to certify improvements have been built in conformance with the approved construction plans and specifications at the expense of the subdivider.

3. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats in Chapter II and Appendix A. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. Upon filing, the approved plan and associated documents shall be maintained in the Office of the Lake County Clerk and Recorder. The following elements shall be filed with the subject property upon final plan approval:

- a. The two Mylar copies of a site plan that conforms to the conditions set forth in the preliminary subdivision approval and is certified as accurate by a qualified registered professional;
- b. Certification of the county treasurer that all real property taxes and special assessments have been paid;
- c. Certificate of a title abstractor and consent to the subdivision from all lien holders and claimants of record;
- d. Original DEQ approval statement;

- e. Certificate of Subdivision Approval signed by the governing body; and
 - f. Certificate of public improvements signed by a registered engineer and the landowner as applicable.
4. DPHHS License

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

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

1. Design Standards

Subdivisions created by rent or lease must comply with the provisions of Chapter X, Design and Improvement Standards, except as described herein.

2. Additional Provisions

The governing body may require provision for:

- a. Storage facilities on the lot or in compounds located within a reasonable distance;
- b. Central area for storage or parking of boats, trailers, or other recreational vehicles;
- c. Landscaping and/or fencing to serve as a buffer between the development and adjacent properties and roads. In all cases a strip of landscaped land at least 20 feet in width shall be maintained along exterior property lines;
- d. An off-street area for mail delivery and school children to wait for a bus;
- e. Street lighting;
- f. Sidewalks or paths;
- g. Curbs, gutters, snow removal and storage;
- h. Management provisions for infrastructure;
- i. Centralized solid waste collection;
- j. Open space and recreation areas for the use of residents with a minimum area of 400 usable square feet per each mobile or manufactured home or recreational vehicle space. Common recreation areas may include community recreation

buildings and facilities but in no case shall the area(s) amount to less than 10% of the subject property;

- k. Second access to facilitate traffic and the provision of emergency services; and
- l. If the subdivision will have private or public slips that would accommodate recreational boats with installed toilet facilities, the subdivision shall include pump out services that are adequate to support both portable toilets and holding tanks, and signage reminding boaters that it is illegal under federal law to discharge untreated sewage in inland waters.

The subdivision administrator may require the subdivider to address the above subjects in the subdivision application and on the site plan as applicable.

VII.E. Mobile/Manufactured Home Park Standards

- 1. Mobile/Manufactured Home Spaces
 - a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
 - b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
 - c. The mobile/manufactured home pad must be located at least 10 feet from the street that serves it.
 - d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
 - e. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
 - f. The governing body may require that the mobile/manufactured home pad be improved to provide adequate support for the placement of the mobile home including base and sub-base materials.
 - g. All mobile/manufactured home pads shall be equipped with tie-downs.
 - h. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
 - i. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.
 - j. A minimum of two off-street parking spaces at least 9 feet by 20 feet in size must be provided on or adjacent to each mobile/manufactured home space. The driveway

must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of 10 feet wide.

- k. One guest parking space must be provided for each 4 mobile/manufactured home spaces. Each parking space must be at least 9' x 20'. Group parking may be provided.
- l. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans.
- m. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

2. Roads

Roads within a mobile/manufactured home park must meet the standards specified in Chapter X, unless as otherwise provided in this Chapter.

- a. Roads must be designed to allow safe placement and removal of mobile homes.
- b. Streets must be designed to provide safe access to public roads, safe traffic circulation and parking and to allow safe and practical placement and removal of homes.
- c. One-way roads must have at least a 15-foot wide driving surface; two-way roads must have at least a 24-foot wide driving surface.

3. Electrical Systems

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

4. Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981 or most current version) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981 or most current version).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.

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

VII.F. Recreational Vehicle Park Standards

1. Standards

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces by residents, visitors and emergency service personnel.
- b. Roads shall meet the requirements of subsection VII-E-2, above, except that a recreational vehicle park having more than 50 spaces shall have two or more places of access and no parking for other than emergency purposes shall be allowed on the roads within a recreational vehicle park. Roads must be designed to allow safe placement and removal of recreational vehicles the sites are proposed to accommodate.
- c. Recreational vehicles, including bump outs and all attached extensions including decks, overhangs, etc. must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- d. Recreational vehicles are prohibited from construction of attached extensions that create additional enclosed living space.
- e. No recreational vehicle space may be located less than 25 feet from the public or private roadway that provides access to the park, and 15 feet from an interior private road surface.
- f. Each recreational vehicle space shall be at least 1,500 square feet in area, and at least 30 feet in width and have at a minimum a compacted gravel surface at least 10 feet in width and 40 feet in depth.
- g. When a recreational vehicle park is proposed to be utilized by recreational vehicles that require special moving permits for transport or the recreational vehicles are intended to be placed on the property for a period greater than 30-days rather than monthly, weekly or daily transient use, the RV park subdivision shall meet the standards required for mobile home parks.
- h. Landscaped buffers shall have a density of at least one tree planted per 250 square feet of landscaped area. There shall be at least one shrub planted per 50 square feet of landscaped area.
- i. Required plantings shall be a mix of shade and evergreen trees and shrubs to provide variable height screening, a variety of plantings, and seasonal color.
- j. Existing trees shall be preserved to the extent possible.

- k. Business signs advertising the recreational vehicle park may be displayed on the property as follows:
 - i. Detached signs shall not exceed 32 square feet in sign area or extend more than 15 feet in height above the average natural ground level at the site. One detached sign per recreational vehicle park is allowed.
 - ii. Signs attached to a place of business shall not exceed 32 square feet in sign area or extend more than 30 feet in height above the average natural ground level at the site. One attached sign per recreational vehicle park is allowed.
 - iii. Signs shall be designed and constructed of materials and colors that blend with the surrounding natural environment but also maintain visual clarity to convey their message to the public.
 - iv. Signs shall not be internally lit or contain flashing lights. Any lighting shall be reflected towards the signage or diffused as to not create a traffic hazard or public nuisance.

2. Density

Unless otherwise regulated by zoning regulations, the density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

VIII.PLANNED UNIT DEVELOPMENTS

VIII.A. Purpose

The purpose of this Chapter is to provide flexibility in applying certain subdivision standards, allowing the subdivider creativity in subdivision design using a concept which clusters development to promote the efficient provision of services and the preservation and enhancement of open space and other natural resource or cultural features. The planned unit development (PUD) concept supports the planned development for either a single land use such as residential, or for a harmonious combination of land uses, such as a mixture of residential and commercial. Section 76-3-103(10), MCA defines a planned unit development as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.”

VIII.B. General Review for a Subdivision with PUD Designation

1. PUDs must comply with the standards contained in Chapter X., Design and Improvement Standards. However, the governing body may modify the standards contained in Chapter X. Section G. Lots, Section H. Blocks, Section L., Landscaping, Section M., Urban Residential Subdivisions, Section P., Commercial Subdivisions (minimum development requirements only), Section I. Access and Transportation, and Section AA, Park Land Dedication. Such modifications will be considered upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space and adequately addresses the criteria in Section VIII.C, below as determined by the governing body. In such cases, no application for a variance under Chapter II of these regulations is necessary.
2. If the governing Body designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with the requirements and procedures contained in the following Chapters:
 - a. Chapter II. General Procedures
 - b. Chapter V. Major Subdivisions

VIII.C Criteria for PUD Designation

1. Before designating the subdivision a PUD, the governing body shall determine that the PUD promotes the clustering of individual building sites, conforms to the definition and intent of this section, and accomplishes at least four of the following purposes:
 - a. Preserve, to the maximum extent possible, the natural characteristics of the land including topography, vegetation, streams, and other bodies of water;
 - b. Provides economies in the provision of public services, roads and other public improvements;
 - c. Preserves productive agricultural lands, important wildlife habitat, important historic sites or structures, or other significant natural resources or open space;

- d. Provides for dedication and development of common open space for recreational purposes;
- e. Provides developed facilities for recreational purposes;
- f. Encourages a complementary mixture of uses, developed in accordance with an approved plan, that protects adjacent properties; and
- g. Encourages infill development, traditional neighborhood development, affordable housing, low impact, energy efficient and innovative projects.

VIII.D PUD Designation Review Process

1. General Provisions

The subdivider and subdivision administrator shall follow the pre-application, completeness and sufficiency procedures and requirements of Chapter II, General Procedures. The list of information provided VIII.E. shall be substituted for the list of information that may be included in a preliminary plat application in Chapter II for a PUD, although the subdivision administrator may request any of the information listed in Chapter II that is deemed necessary to adequately review the proposal.

2. Public Notification and Public Hearing

The planning board shall review the PUD at a public hearing. The subdivision administrator shall issue a notice of the public hearing by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivision administrator shall notify the subdivider, each adjoining property owner, and any existing property owners association potentially affected by the project as determined by the subdivision administrator, of the meeting in writing not less than fifteen (15) days prior to the meeting. At the discretion of the subdivision administrator, she/he may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include, but are not limited to, those landowners who share a private road, irrigation facilities (delivery point, ditch, etc.), are within 150 feet of the subject property across a watercourse, etc.

VIII.E. PUD Designation Submittal Requirements

- 1. To obtain designation of a subdivision as a PUD, the subdivider shall submit to the subdivision administrator the following with the fees required for review:
 - a. A written request that the plan of the proposed subdivision be reviewed as a PUD;
 - b. A site plan showing the proposed location and use of lots and structures and, if appropriate, the location and number of parking spaces;
 - c. A sketch plan of the proposed subdivision containing all information requested in the pre-application section of these regulations;

- d. A description of open space, recreational facilities, roads, and other facilities proposed to be under common ownership and how the proposal complies with Chapter X.AA.5;
- e. A schedule for completion of improvements;
- f. Proposed restrictive covenants;
- g. A description of proposed form of property ownership within the development;
- h. A description of current land uses on and surrounding the subject property;
- i. A description of the project's compliance with zoning;
- j. A statement describing measures to be taken to assure permanence and maintenance of open space and other facilities to be held in common ownership;
- k. A schedule showing street and utility improvement completion dates;
- l. A description of all proposed variations from the requirements and provisions of the Chapter X, Design Standards, required by these regulations which addresses how the variations would not cause the subdivision to have a negative impact to the primary review criteria as defined in 76-3-608(3) a, c, & d), MCA;
- m. A vicinity map;
- n. A topographical map with contour intervals sufficiently detailed to evaluate the topography of the site (may also be on site plan).
- o. Any additional information listed in Chapter II that is deemed necessary to adequately review the proposal.
- p. A statement of how the proposed PUD would accomplish at least four of the following purposes:
 - i. Preserve to the maximum extent possible, the natural characteristics of the land including topography, vegetation, streams, and other bodies of water.
 - ii. Provide economies in the provision of roads and other public improvements.
 - iii. Preserves productive agricultural lands, important wildlife habitat, important historic sites or structures, or other significant natural resources or open space.
 - iv. Provides for dedication and development of common open space for recreational purposes;
 - v. Provides development facilities for recreational purposes;
 - vii. Encourages a complementary mixture of uses, developed in accordance with an approved plan, that protects adjacent properties; and

viii..Encourages infill development, traditional neighborhood development, affordable housing, low impact, energy efficient and innovative projects.

VIII.F. PUD Designation Report, Consideration and Decision

1. The subdivision administrator shall prepare a report detailing the PUD information and proposed site plan for planning board review in advance of the public hearing. The report shall consider the following:
 - a. Any modifications to the Design and Improvement Standards in Chapter X (listed above). The proposed and location of all streets, lots and blocks shall be reviewed in regard to their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.
 - b. Any modifications to Parkland Dedication Requirements in Chapter X and the proposals ability to comply with Chapter X.AA.5. The open space must be owned by a property owners' association; and/or dedicated to public use, if acceptable to the governing body.
 - c. Whether and to what extent the proposal fulfills the purposes and complies with the criteria listed in Subsection VIII.C, above.
2. In providing a written recommendation of approval, conditional approval or denial of the request to the planning board, the subdivision administrator shall base the recommendation on the criteria described subsection VIII.C above.
3. The planning board shall review the PUD information and proposed site plan at a public hearing, consider the subdivision administrator's recommendation and all other pertinent information provided, including any public comment, and make findings of fact and a recommendation to the governing body as to whether the PUD should be approved, conditionally approved or denied.
4. Within 20 working days of the public hearing the subdivision administrator shall notice the subdivider of the date and time of the public hearing at which the governing body will review the proposal and the recommendation of the planning board and make a final decision on the proposal for PUD designation.

VIII.G. Governing Body Decision and Documentation

1. Notification of Subdivider
In rendering a decision to approve, conditionally approve or deny the proposed PUD designation request, the governing body shall issue written findings of fact that discuss and weigh the proposal's compliance with this Chapter. The governing body shall send a letter of it's decision as to whether the proposal has or has not been designated a PUD to the subdivider with the appropriate signature within 30 days of rendering its decision.
2. If the governing body designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with all

conditions of the governing body approval as well as the requirements and procedures contained in the following Chapters, as applicable:

- II. General Procedures;
 - V. Review Procedure for Major Subdivision;
 - VI. Condominium Subdivisions;
 - VII. Review Procedure For Subdivisions Created By Rent Or Lease; and
 - X. Design and Improvement Standards;
3. Designation is not Approval

Designation as a PUD does not constitute approval of the specific details or modifications proposed by the plan.

IX. OVERALL DEVELOPMENT PLAN FOR PHASED SUBDIVISIONS

IX.A. Purpose

An overall development plan (ODP) is intended to promote a coordinated land development and/or conservation plan for one or more tracts of record under the same ownership or multiple owners under a common development scheme. The ODP is a single plan proposed in multiple phases over an extended period of time. An ODP is conceptual in nature and does not include the level of detail found in a preliminary plat application. It is intended to provide neighboring landowners, public agencies and private service providers knowledge of upcoming development so they can plan for the future. At the pre-application meeting, a subdivider proposing to subdivide only a portion of contiguous land under single ownership can expect the subdivision administrator to inquire as to the future development plans for the rest of the property.

IX.B. Procedures

1. When Required

- a. An ODP shall be required in conjunction with any subdivision application when only a portion of contiguous land under single ownership is proposed for subdivision, but may be used when multiple property owners would like to develop land under a common scheme, or for a large scale subdivision that may occur in multiple phases.
- b. The ODP shall be prepared and submitted to the subdivision administrator for review by the planning board and governing body. The subdivider may choose to submit the overall development plan either prior to submitting a preliminary plat application or at the same time. When the overall development plan is submitted prior to a preliminary plat application, the plan shall be submitted at least thirty (30) working days prior to the planning board meeting at which it will be discussed.

2. Exception

- a. If a subdivider has no plans for further development and no history of proposing successive minor subdivisions, the subdivision application package may simply contain a letter stating there are no plans for further development of the remaining property. Such a letter must be signed by the landowner.
- b. When an exception is claimed no further subdivision applications for the land under consideration will be accepted for the property for a period of five years unless a successful appeal is made to the governing body where a hardship relating to health, education, property loss or similar circumstances is demonstrated.

3. Information required

The ODP submittal shall contain the following elements:

- a. A conceptual site plan for the total property depicting the location of each phase, the density of each phase, the location of legal and physical access to each phase, the general location of water supply, wastewater treatment and stormwater management facilities in each phase, all current and future roads, the general location of all

proposed utilities provided to each phase, the location of any areas of proposed parkland/open space/agricultural/forest land, and the location any natural features such as water ways, areas of steep slopes and/or wetlands.

- b. A brief description of each proposed phase that includes the general lot size, the type of land use/ownership, and the overall density, a timeline for the anticipated platting and development of each phase, a description of the type and specification requirements for the water supply, wastewater treatment and stormwater management facilities in each phase, a description of the legal and physical access proposed to serve each phase including the roadway type, design standards, easements required, etc., a description of any proposed recreational facilities or parkland improvements to serve each phase and the timeframe in which they will be developed, a description of the measures that will be taken to protect any natural features on the property, and a description of all common infrastructure and how it will be maintained.
- c. A topographical map with contour intervals sufficiently detailed to evaluate the topography of the site (may also be on site plan).
- d. A vicinity map.
- e. A description of current land uses on and surrounding the subject property.
- f. A description of the project's compliance with zoning.
- g. A description of any anticipated variance requests and reasons for the requests.
- h. An environmental assessment on the entire tract, where the overall development plan anticipates subdivision phases involving the creation of six or more total lots. Note: If, within a 10-year period of submitting the overall development plan, the subdivider submits one or more subdivision application, all or part of the environmental assessment requirement pertaining to the individual subdivision application(s) may be waived by the subdivision administrator prior to the subdivision application submission. The subdivision administrator may also require the environmental assessment to be updated or expanded.
- i. A current list of adjacent landowners.
- j. Additional relevant information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the review of the overall development plan.
- k. Evidence that the agencies and service providers identified by the subdivision administrator during the pre-application process have received a copy of ODP, vicinity map and environmental assessment, and were given at least 30 days to provide comment, and copies of any comment obtained from the agencies and service providers.
- l. A public facilities improvement plan showing which improvements will be completed with each phase, and demonstration that each phase will be able to meet the requirements of these regulations in a stand-alone manner or in combination with phases that have already received preliminary or final plat approval.

4. Review Process

a. Pre-application, Completeness and Sufficiency

The subdivider and subdivision administrator shall follow the pre-application, completeness and sufficiency procedures and requirements of Chapter II, General Procedures. The list of information provided in subsection IX-B.3 above shall be substituted for the list of information that may be included in a preliminary plat application in Chapter II for an ODP, although the subdivision administrator may request any of the information listed in Chapter II that is deemed necessary to adequately review the proposal.

b. Public Notification and Public Hearing

- i. The planning board shall review the overall development plan at a public hearing.
- ii. The subdivision administrator shall issue a notice of the public hearing by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the meeting.
- iii. The subdivision administrator shall notify the subdivider, each adjoining property owner, and any existing property owners association potentially affected by the project as determined by the subdivision administrator, of the meeting in writing not less than fifteen (15) days prior to the meeting. At the discretion of the subdivision administrator, she/he may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include, but are not limited to, those landowners who share a private road, irrigation facilities (delivery point, ditch, etc.), are within 150 feet of the subject property across a watercourse, etc.
- iv. The subdivision administrator shall distribute a project notification letter to any municipality located within two (2) miles of the subject tract.

c. Subdivision Administrator Review

The subdivision administrator shall review the ODP for its compliance with these regulations, the applicable zoning, the subdivision review criteria outlined 76-3-608, MCA, the Lake County Growth Policy and other applicable regulations. The subdivision administrator shall provide a written recommendation to the Planning Board in advance of its hearing to review the ODP.

d. Planning Board Review and Recommendation

The planning board shall review the ODP in light of the criteria described above, consider all other pertinent information provided, including any public comment, and make findings of fact and a recommendation to the governing body as to whether the overall development plan should be approved, conditionally approved or denied. The planning board's recommendation on the overall development plan should be made separate from and prior to its recommendation on any proposed subdivision

associated with the plan, although the reviews may occur simultaneously. The planning board's recommendation(s) shall be submitted to the governing body in writing.

e. Governing Body Review and Decision

The governing body shall review the ODP and consider all other pertinent information provided, at a regularly scheduled public hearing. The subdivider shall receive prior written notice of the meeting and of the planning board's recommendation. The governing body shall approve, conditionally approve or deny the ODP before taking action on any preliminary plat application associated with the overall development plan. In order to approve or conditionally approve an ODP, the governing body must find the plan to be in compliance with the review criteria described in 4.c above. The governing body shall provide written notification to the subdivider of its decision on the ODP, along with any plan amendments, conditions of approval, findings of fact and the reasons supporting its decision.

f. Denial

If the governing body denies the ODP, any subdivision plat based on the plan cannot be approved.

5. Life of Overall Development Plan

Once accepted, an ODP remains in effect for ten years. An approval allows the subdivider to submit preliminary plat applications for review of each phase in compliance with the subdivision regulations in effect at the time a preliminary plat application is deemed sufficient by the subdivision administrator. Approval of an ODP does not guarantee preliminary plat approval and all preliminary plats and applications must conform to all applicable regulations. The subdivider can seek plan amendment and/or provide an updated environmental assessment as a part of any subsequent subdivision process which undergoes planning board review in compliance with this section.

X. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the governing body must comply with the provisions of this Chapter, except where granted a variance pursuant to Chapter II.G, Variances, or where other standards are indicated in Chapter VII, Subdivisions Created by Rent or Lease, or authorized in Chapter VIII, Planned Unit Developments. The governing body may not grant variances from the provisions of Chapter X.D, Floodplain Provisions.

X.A. Conformance with Regulations

The design and development of a subdivision shall conform with adopted growth policies, zoning regulations and other resolutions and regulations.

X.B. Natural Environment

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

X.C. Lands Unsuitable for Subdivision

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards, requirements for excessive expenditure of public funds, or which may be detrimental to the public health, safety or welfare of the general public shall not be subdivided for building or residential purposes unless the hazards or public detriments are eliminated or will be overcome by appropriate design, infrastructure completion and/or other construction techniques and mitigation measures. The governing body shall identify through the subdivision review process potential hazards such as flooding, landslides, steep terrain in excess of 30 percent slope, high potential for wildfire, high voltage lines, high pressure gas lines, rock falls, snow avalanches, subsidence, high water table, polluted or non-potable water, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure, and any potential environmental degradation.

X.D. Floodplain Provisions

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

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

The subdivider shall be responsible to solicit comment from DNRC and if required obtain a floodplain delineation for the subject property reviewed and approved by the Lake County Floodplain Administrator which shall be submitted to the subdivision administrator along with the preliminary plat application.

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

X.E. Responsibility for Improvements

All improvements required by this Chapter X shall be designed, installed and paid for by the subdivider unless otherwise specified.

X.F. Improvement Design

Engineering and survey plans, specifications, and reports required in connection with public and private improvements associated with a proposed subdivision shall be prepared by a professional engineer licensed in the state of Montana, a registered land surveyor, and/or a registered sanitarian in accordance with the MSPA and these regulations. The governing body may require the subdivider to engage the services of other licensed or otherwise qualified professionals in order to prepare impact reports, design specification, etc. necessary to provide evidence in support of other subdivision elements.

X.G. Lots

1. Design:

- a. Each lot shall contain one or more buildable area to support the proposed use of the property and conform to health department regulations, applicable zoning regulations and these regulations. For each lot containing a slope $\geq 20\%$, at least one buildable area shall be shown on the preliminary plat. The following are characteristics of a buildable area:
 - i. A buildable area shall be existing, undisturbed terrain that is at least 50 x 50 feet in size on ≤ 30 percent slope. Note: In zoning districts where the maximum slope requirement for a building site is less than 30 percent, the zoning district-specific standard shall prevail;
 - ii. A buildable area shall be accessible by a 12-foot wide driveway with a maximum grade of 12%, and a maximum 5 percent slope for the initial 20 feet from the primary access road to the lot;
 - iii. An area on a lot may only be considered buildable where groundwater is greater than 4 feet from the surface;
 - iv. A buildable area shall be located outside of all building setbacks required by zoning.

If any portion of the buildable area exceeds 20% slope, contour elevations with a maximum of 2-foot intervals shall be shown on the preliminary plat for that area. Where high groundwater is evident or suspected in the area, the subdivision administrator may request soil profiles to demonstrate depth to groundwater and/or a geotechnical soils analysis and development suitability study.

Building envelopes, which are defined as designated areas where any and all building construction shall occur on the lot and outside of which any and all building construction is prohibited, may be required to be shown on the preliminary and final plats when: the lot size is less than 1 acre; the lot contains steep slopes and/or wetlands; the subdivision occurs in significant or crucial wildlife habitat; and/or when other limitations exist. The purpose of the building envelope requirement is to minimize the subdivision's potential impacts on the primary review criteria defined in 76-3-608 MCA and in the Lake County Growth Policy and to demonstrate compliance with all adopted regulations. After preliminary plat review and approval, building envelopes may be required to be shown either on the final plat (or site plan), or on a building envelope plan filed with the final plat (or site plan) and referenced on the plat (or site plan).

For both minor and major subdivisions, where building envelopes are required as a condition of preliminary plat approval, a building envelope change will require review under the appropriate amendment process described in Chapter II.N. or II.S. of these regulations.

- b. Any building site that exceeds 25 percent in average slope shall be required to undergo a geotechnical soils analysis and development suitability study conducted by a licensed professional engineer prior to final plat approval. The soils analysis must demonstrate that development of the building site is feasible and would pose no significant geological hazard to the lot or to neighboring properties. The geotechnical analysis shall be filed along with the final plat and all construction on the lot shall comply with the recommendations of the analysis. In the event the geotechnical engineer determines the lot to be unbuildable, that lot shall be consolidated into the adjoining parcels or designated as open space on the final plat.
- c. Wetlands and natural drainages shall not be included as part of any designated building site unless the subdivider demonstrates that the impact to the wetland or drainage can be mitigated pursuant to applicable law and not cause a negative impact to the natural environment or to the subdivision infrastructure or create a potential nuisance for future lot owners.
- d. Corner lots shall be designed to have sufficient width to permit appropriate building setbacks from both roads and to provide acceptable visibility for traffic safety.
- e. Lot width, shape and orientation shall be appropriate for the location and contemplated use of the subdivision.
- f. Lots may be created that are not intended for building (e.g., a park or a utility lot for a community wastewater treatment system.) In these cases, the preliminary and final plats shall clearly designate the intended purpose of the lot.

- g. No lot may be divided by a municipal or county boundary line.
- h. No lot may be divided by a public or private road or alley, right-of-way or access easement.
- i. No lot may be divided by a public or private utility easement, including irrigation related easements, unless the subdivision application demonstrates that the easement will not limit access to all portions of the property, and that the easement will not interfere with development on the designated building site.
- j. Side lot lines shall be at substantially right angles to straight road lines and radial to curved road lines.
- k. No lot shall have an average depth greater than four times its average width.
- l. A stream, creek, or other surface water drainage shall not divide a lot unless both sides of the parcel are provided access sufficient to support the intended purpose (i.e., direct road access to both sides of the water body or a vehicle crossing may be developed with the appropriate permit).
- m. Through lots and double front lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation, and a no access area is designated along the entirety of one of the lot frontage boundaries.
- n. Flag lots are prohibited.
- o. Unless validly exempted, all lots less than 160 acres in size are required to undergo subdivision review.

2. Lot Access

- a. Each lot must abut and have legal and physical vehicle access to a public or private street or road, which is constructed to an adequate standard to serve the intended use of the lot and is located within an easement of appropriate width. Alleys shall not be used to provide the primary access to a lot unless specifically authorized as a part of an approved subdivision plan.
- b. When a lot fronts on more than one road, legal and physical access shall be provided on the road with the lowest functional classification or use unless otherwise specifically authorized by the governing body.
- c. When two adjoining lots abut a collector or arterial road and when the lots are proposed to access directly onto the road, a common driveway easement of thirty by thirty feet shall be located on the common boundary and a no access area shall be designated on the remainder of the lot frontage (see figure X.1 below). However, if the individual accesses for each of the lots would be more than six hundred feet apart, and the subdivider provides an effective mechanism within the subdivision proposal ensuring that this minimum distance shall be obtained, this requirement shall be waived. This requirement may also be applied to development along local roads where fast moving traffic, topography or many road accesses along a small stretch of

road make consolidation of access points beneficial to protect the public health, safety and general welfare. Individual accesses on this type of local road may be permitted when the minimum distance between access points is greater than 200 feet.

- d. All direct driveway access onto a collector or arterial roads shall only be considered when it is demonstrated by the subdivider that no other reasonable alternative exists. Existing approach permits do not preclude this requirement.

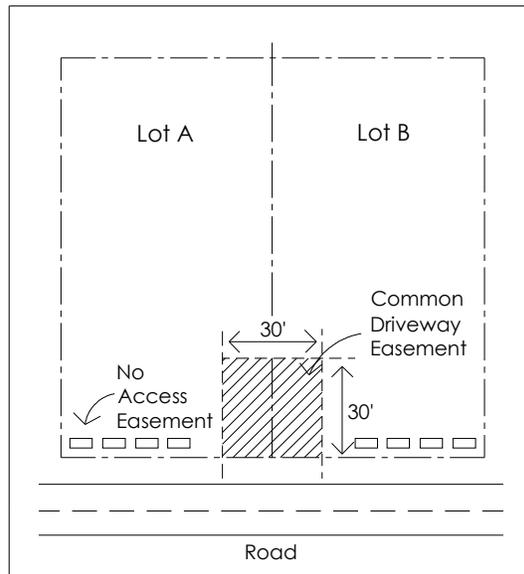


Figure X.1

- e. All proposed building sites and building envelopes shall be able to be accessed by a minimum 12-foot wide driveway with a maximum 12 percent slope and a maximum 5 percent slope for the initial 20 feet from the primary access road to the lot. All future driveway access shall be required to comply with these standards.
- f. When a subdivision with more than two lots fronts on a road classified as a collector or arterial, all lots within the subdivision shall access off of a road internal to the subdivision or another road with a lesser classification, and access shall be prohibited on the other road(s) by a no access easement shown on the face of the plat, which can only be removed by approval of the governing body through an amended subdivision process.
- g. A lot must access directly on to a road under the jurisdiction of the state, county, city or town. Other roads may be used when it is demonstrated that there is a proper easement and shared use agreement to ensure continued legal and physical access.
- h. No subdivision access roadway or private driveway shall cross wetlands or natural drainages unless the subdivider demonstrates that the impact to the wetland or drainage can be mitigated pursuant to applicable law, and not cause a negative impact to the natural environment, or the subdivision infrastructure, or create a potential nuisance for future lot owners.

X.H. Blocks

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

X.I. Access and Transportation

1. Roads, General

The arrangement, type, extent, width, grade, and location of all roads must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them. Roads shall be laid out whenever possible to avoid environmentally sensitive areas such as wetlands, significant wildlife habitat, riparian areas and prime farmland. Mitigation may be required.

2. Engineered Plans Required

Preliminary road plans stamped by an engineer licensed in the State of Montana are required to be submitted along with a preliminary plat application when a road grade, sight distance or road curvature variance is requested, and/or when a subdivision road is proposed to cross a slope $\geq 15\%$. Such plans shall include grades, curvature, cross sections, cut and fill information and soil stabilization plans for the impacted road section.

3. Engineer's Certification Required

Prior to final plat filing, all subdivision roads shall be certified as having been built according to the standards in this chapter by an engineer licensed in the State of Montana.

4. Relationship to Unsubdivided Areas

When a proposed subdivision adjoins land that, in the estimation of the governing body, is likely to be subdivided in the future and has the ability to efficiently connect existing, currently separate roads, the subdivider shall provide one or more easement for the logical continuation of the subdivision road(s) and utilities to the adjacent land. This requirement shall not apply when access is otherwise available in a manner adequate to provide for the future convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and provision of utilities. This requirement may be waived by the governing body when one of the following criteria is met:

- a. Topography or other physical conditions would make it impractical to provide access to adjacent unsubdivided land.
- b. When the adjoining unsubdivided land is under public ownership, is subject to a conservation easement, deed restriction, or some other situation exists where the future subdivision and development of that land is unlikely.

When access to unsubdivided land is required to be provided via privately maintained roads, the subdivider shall develop a road maintenance agreement with the intent that it be expanded to require the future users of the road extension to be responsible for a proportional share of maintenance and improvement responsibilities and costs. The subdivider may also develop a Latecomers Agreement (Administrative Materials P) to recoup a proportional share of the costs associated with extending infrastructure.

5. Relationship to Subdivided Areas

The subdivider shall arrange the subdivision roads for their continuation to adjacent subdivided land (land or parcels created through the subdivision platting process) when continuation is deemed necessary by the governing body for the convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and provision of utilities.

When access to subdivided land is required to be provided via privately maintained roads, the subdivider may develop a road maintenance agreement with the intent that it be expanded to require the future users of the road extension to be responsible for a proportional share of maintenance and improvement responsibilities and costs. The subdivider may also develop a Latecomers Agreement to recoup a proportional share of the costs associated with extending infrastructure.

6. Subdivisions Abutting or Containing Major Traffic Corridors

Where a subdivision abuts or contains an existing or proposed arterial or collector road, the subdivider may be required to provide additional right-of-way, frontage road, no-access easement, landscaped buffer, building envelopes, common driveways or other such treatment as may be necessary for protection of residential properties, to limit the unnecessary future expenditure of public funds and to provide separation of local and through traffic.

7. Multiple Accesses Required

The governing body shall require multiple accesses when the length of the primary access serving the subdivision off a single access point exceeds 1,500 feet in length in rural areas, 750 feet in urban areas, or where the primary access road serves 15 or more lots or units. The second access must connect to a connector road that is publicly maintained or privately maintained where the proper easements and user agreements exist to ensure legal and physical access in perpetuity. In urban areas, the second access shall meet primary access road standards. In rural areas, the second access shall either meet primary or secondary road standards, at the discretion of the governing body, depending on the terrain, vegetation, natural features, development density and character in the area of the subdivision. Figure X.2 depicts an example of this access requirement.

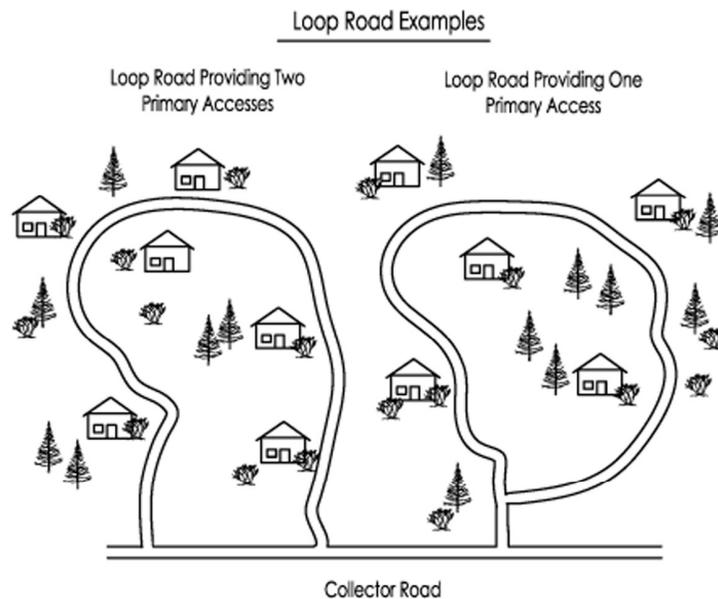


Figure X.2

The governing body may require additional accesses in any subdivision based on potential threats to public health and safety based on the criteria contained in these regulations, compliance with the Lake County Growth Policy and/or based on consultation with public safety experts including but not limited to local, state and federal fire protection authorities, police and emergency medical personnel.

8. Traffic Impact Study Required

Where a subdivision or subsequent subdivision is anticipated to generate 300 or more vehicle trips per day the subdivider shall submit along with the preliminary plat application a traffic impact study to gauge the impacts of development on transportation facilities, safety and traffic flow. For the purposes of these regulations single-family detached housing will be assumed to generate an average daily traffic (ADT) of 10 vehicle trips. The ADT of other land uses will be gauged using the most current volume of the Institute of Traffic Engineers Trip Generation Manual.

- a. Preparation A professional engineer or transportation planner must prepare the traffic impact study.
- b. Meeting required The subdivider and traffic impact study preparer must meet with the subdivision administrator, either in person or via telephone, prior to performing the study to discuss the scope of the study in order to ensure the study will be sufficient for subdivision review.
- c. Form and content The traffic impact study must be in written form along with supporting maps and other appropriate information. At a minimum, the report must include the following elements:
 - i. Purpose and goals;
 - ii. A description of the site and the study area, which shall extend to the most logical collector or arterial road based on trip distribution patterns;
 - iii. Existing traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, significant land uses, crash data, intersection evaluations, roadway capacity, conditions of roads leading to the subdivision and other relevant information;
 - iv. Anticipated traffic circulation conditions and patterns including road geometrics, traffic counts, trip distribution, significant land uses, crash data, intersection evaluations, roadway capacity and other relevant information;
 - v. Anticipated effects of the subdivision on the existing road network; and
 - vi. Recommendations and alternatives to alleviate the negative effects (if any).

9. Title to and Maintenance of Roadways

- a. All new subdivision roads shall be dedicated for public use and privately maintained.
- b. Where there is a new subdivision road, the following statement shall appear on the final subdivision plat:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, water or sewer service, mail and package delivery, public schooling, law enforcement, fire protection and emergency medical services the right

to joint use of an easement for the provision of services and facilities including the right to travel on subdivision roadways as well as 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 an access and/or utility easement to have and to hold forever.”

- c. Subdivisions with a new road shall include a road maintenance declaration that shall be filed concurrent with or prior to the final plat. The declaration shall only contain items related to road maintenance, and include the following:
 - i. A description of the parcels subject to the agreement;
 - ii. A description of the road(s) and appurtenant pedestrian and bicycle facilities that are subject to the agreement;
 - iii. That the agreement is binding on any person having an interest in a parcel that is subject to the agreement;
 - iv. That any party providing public utilities, mail and package delivery, public schooling and emergency and public safety services shall have an easement over the road for such utilities and services;
 - v. That decisions to undertake any road, bicycle or pedestrian facility maintenance and improvements are the responsibility of the owners of the parcels subject to the agreement, and such decisions shall be based on a majority vote of the parties to the agreement;
 - vi. A description of who is eligible to cast a vote and the number of votes per parcel;
 - vii. A description of how the costs of maintenance will be assessed (equally or disproportionately) against the parties to the agreement;
 - viii. A description of how the amount will be assessed in the event a party subdivides a parcel subject to the agreement;
 - ix. A description of how the amount will be assessed in the event outside parties (owners of lots outside of the subdivision) may be required to use the road and pedestrian and bicycle facilities;
 - x. In the event that an assessment becomes delinquent, the assessment and interest and the cost of collection shall become a continuing lien on the parcel;
 - xi. The agreement is perpetual and cannot be rescinded unless the county, state or a municipality agrees to maintain the roadway and/or pedestrian and bicycle facilities described in the agreement;
 - xii. Maintenance shall include dust control, stormwater facilities, traffic control devices, snow removal, ordinary upkeep, reconstruction and pedestrian and bicycle facility installation, as applicable; and

xiii. The agreement may be amended, but only with the consent of the County Commissioners;

10. Encroachment Permits

The subdivider shall be required to obtain encroachment permits for subdivision roads to access to public roads and state highways prior to road construction. In some instances the subdivider may also be required to obtain encroachment permits and construct driveway approaches prior to final plat approval where necessary to ensure proper placement related to public health and safety.

11. Road Names

Names of new roads aligned with existing roads must be the same as those of the existing roads. Proposed road names must comply with adopted Lake County policy. The subdivider shall be required to obtain road names for new roads prior to final plat approval.

12. Road and Traffic Control Devices

The subdivider shall install traffic control devices in accordance with the current Manual on Uniform Traffic Control Devices adopted by the Montana Department of Transportation prior to final plat approval unless included in an approved subdivision improvements agreement.

13. Physical Addresses

Prior to final plat approval, the subdivider shall submit the appropriate fee and application to the Lake County Planning Department and have both the approach location and centerline of all subdivision roadways located via Lake County's Global Positioning System so that physical addresses may be granted to lot owners upon development.

14. Rights-of-Way and Easements

- a. Width: Rights-of-way and easements shall be provided as specified in this chapter.
- b. Use: Rights-of-way and public access and utility easements may be used for roads, common driveways, sidewalks, pedestrian and bicycle paths, snow storage, stormwater management, irrigation facilities and utilities including water supply, wastewater treatment and disposal, telephone, television, power, gas and other public and private infrastructure.
- c. Cut and Fill Easements: Where a cut or fill area of a road is outside of the normal right-of-way or easement, a slope easement of sufficient width shall be required to allow maintenance of the cut or fill area.
- d. Off-Site Easements: Where access from a public road to the subdivision will cross other properties, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of this chapter and may also be required to participate in a road maintenance agreement. Such easements must be granted in perpetuity by each

property owner in a signed and notarized document and be recorded prior to or concurrent with final plat filing.

- e. Easement Reference: The location of any road easements used to access the subdivision must be shown on the preliminary plat or on a supplemental map. The existence of easements providing legal access to the subdivision shall be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.
- f. Location: All subdivision roads shall be located within easements as opposed to stand-alone tracts of record.

15. Substandard County Roads Leading to a Subdivision

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

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

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

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

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

Example

Current ADT on Market Road	300
Projected ADT increase from subdivision	<u>+ 150</u>
Total current and projected ADT	450

$150 \div 450 = .33$. Therefore, the subdivider is responsible for 33% of the cost of bringing Market Road up to Lake County standards.

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

Where a subdivision is accessed by a substandard County-maintained road(s), as a condition of plat approval the governing body may require the future lot owners to waive their right to protest the formation of a Rural Improvement District related to access and drainage improvements that will benefit the future owners.

16. Substandard Privately Maintained Roads

Where a subdivision is accessed by a substandard non-County-maintained road(s), the subdivider shall make all improvements that are necessary to bring that road(s) up to County standards over its relevant length to the subdivision and shall be required to enter into a maintenance agreement so that the road is maintained over time.

17. Paving Requirements

- a. All primary access internal subdivision roads shall contain an asphalt, double chip-seal, or other all season hard surface when the subdivision is accessed from an asphalt, chip-sealed, or other all season hard surfaced roadway.
- b. When a gravel road is to access onto an asphalt road, the first 50 feet of the adjacent roadway shall be asphalt to prevent gravel from degrading the pavement.
- c. All primary access internal subdivision roads that serve six or more residential lots or units, as well as those serving any number of units in commercial, industrial or mixed use subdivisions, shall contain an asphalt, double chip-sealed, or other approved all season hard surfacing.
- d. When a subdivision is accessed off of a non-asphalt or non-chip-sealed road that, after buildout of the subdivision, is projected to have an ADT of 400 or more, the subdivider shall be required to asphalt or double chip-seal the road leading to the subdivision using the methodology provided in Subsection 15, Substandard County-Maintained Roads Leading to a Subdivision or Subsection 16, Substandard Privately Maintained Roads.

18. Latecomers Agreement Authorized

For improvements that a subdivider constructs beyond those that are directly attributable to the subdivision, including those used to access other unsubdivided or subdivided lands, the subdivider may request a latecomers agreement in order to provide a mechanism for reimbursement for a portion of the costs the subdivider incurs which are not directly attributable to impacts caused by the subdivision. Payback funds would be exacted from

future subdividers and others who directly benefit from the capital improvements. (See Administrative Materials “P” for a sample latecomers agreement.)

19. Intersections

- a. No more than two roads shall intersect at one point.
- b. Roads shall intersect at right angles +/- 10 degrees.
- c. Two roads meeting a third shall be offset at least 125 feet for local roads and 300 feet for collector and arterial roads. (Figure X.3)

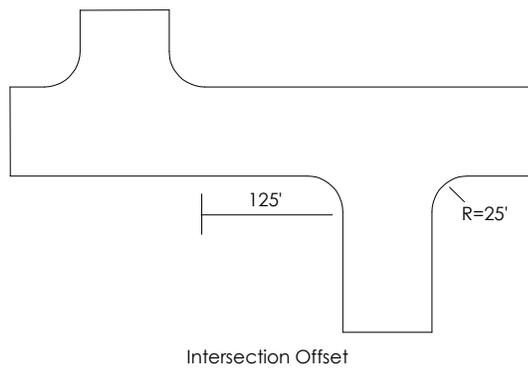


Figure X.3

- d. Intersections of local roads and driveways with arterials shall be kept to a minimum.
- e. Road intersection design shall provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual roadways. Minimum sight distances shall be in accordance with Table 1 and Figure X.4 for approaches onto public and private roads. Sight distances onto state highways shall meet the requirements of the Montana Department of Transportation.

Table 1
Minimum Sight Distance at Intersections for Design Speed or Actual Speed Limit
(whichever is greater)

Design Speed	15 MPH	20 MPH	25 MPH	30 MPH	35 MPH	40 MPH	45 MPH
Min. Sight Distance (ft)	125	150	150	220	275	330	395

Source: A Policy on Geometric Design of Highways and Streets, AASHTO 2004

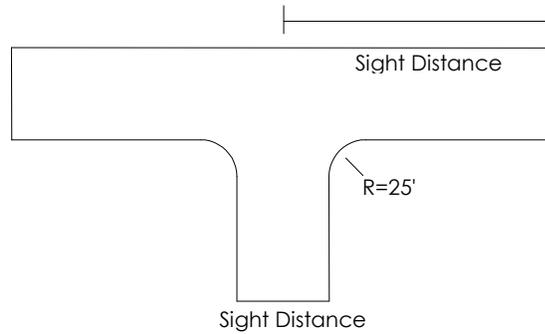


Figure X.4

- f. Road and driveway intersections on local roads within 150 feet of a hilltop are prohibited. Road and driveway intersections on arterial and collector roads within 300 feet of a hilltop are prohibited.
- g. The grade of an approach (road or driveway) shall not exceed 5 percent within 20 feet of an intersection (unless state owned, in which case state standards prevail).
- h. The minimum driving surface width at road intersections shall be 35 feet for approaches onto collector and arterial roads (unless state owned, where state standards prevail) and 30 feet for approaches onto local roads. Driveways that serve one residential unit and are not anticipated to be expanded may have a width of 18 feet at the intersection.

20. Roads Ending in Turnarounds

- a. The maximum length of a road ending in a turnaround is 1,500 feet for a rural area, 750 feet for an urban area before a second primary access is required. For the purposes of these regulations, “rural” shall be defined as an area where lots or units within the subdivision and adjacent property along the primary access road(s) average 1 acre or more; an urban area is where lots or units within the subdivision average less than 1 acre, and/or within a designated Community Growth Area.
- b. Where a road terminates, either a cul-de-sac, T-type turnaround, Modified T-type turnaround shall be provided at the road ending. (See Figures X.5 and X.6)
- c. The turnaround road shall be measured along the centerline of the road beginning the center of the nearest intersection with a primary access road that contains more than one access onto a collector road and ending at the center point of the turnaround.
- d. Half roads are prohibited except: where essential to the development of the subdivision; where the governing body is assured that it will be possible to require the dedication and construction of the other half of the road when the adjoining property is subdivided; and where a temporary turnaround is installed within the subdivision in accordance with these regulations except for paving. Wherever an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within such tract.

- e. The minimum improved driving surface radius for a cul-de-sac is 50 feet with at least an additional five feet of right-of-way or easement surrounding the driving surface. (See Figure X.5)
- f. The minimum backup length of the “T” or Modified “T” turnaround is 35 feet. Each turnaround has two backup lengths. (See Figure X.6)
- g. The minimum width of the “T” or Modified “T” ends shall meet the standard of the roadway which it serves (20-24 feet). (See Figure X.6)
- h. The minimum outside curve radius of the “T” or Modified “T” is 25 feet. (See Figure X.6)
- i. Alternate designs may be approved if designed and built in accordance with the most current edition of *A Policy on Geometric Design of Highways and Streets* by the American Association of State Highway Transportation Officials (AASHTO) and when approved by the local fire protection authority.

Figure X.5

Cul-de-sac

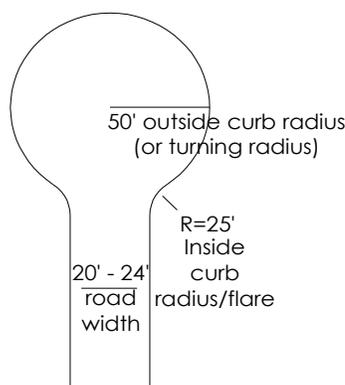
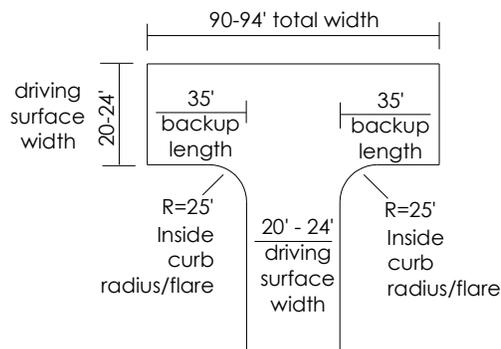
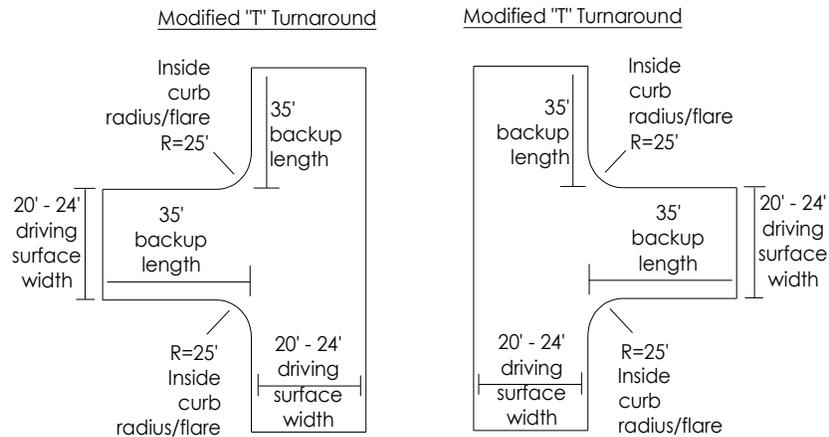


Figure X.6

"T" Turn Around





21. Non-motorized Transportation

a. General

- i. Pedestrian and/or bicycle routes are required where determined necessary by the governing body to provide circulation or safe access to schools, playgrounds, shopping, adjoining neighborhoods, transportation and other community facilities or for the continuation of existing, planned or reasonably anticipated routes.
- ii. When required, non-motorized transportation facilities must be continuous and provide access to all lots within a subdivision and provide access to adjoining developments unless exempted by these regulations or the governing body.
- iii. All commercial subdivisions located within designated Community Growth Areas shall provide pedestrian and/or bicycle facilities on at least one side of all roads that serve the subdivision.
- iv. In residential areas, pedestrian facilities shall be separate from the traveled roadway by an area at least 6 feet in width.
- v. Bicycle facilities may be located along internal subdivision roads. Such facilities shall be a minimum of 8 feet wide and striped to separate the path from traffic. This may necessitate additional easement or right-of-way over and above the standard width.
- vi. When adjacent to a trail system, the subdivider shall continue that trail system across the subject property. When adjacent to a sidewalk, the subdivider shall continue that sidewalk across the subject property.
- vii. Bridges along non-motorized routes must be of the same width as the route.
- viii. The subdivider must provide a means for the non-motorized facilities to be maintained in perpetuity.

b. Easements and Rights-of-Way

- i. Pedestrian and/or bicycle easements or rights-of-way shall be a minimum of 14 feet wide when separate from roads and on gentle terrain and shall be wider when necessitated by terrain or other features.
- ii. Easements and rights-of-way for pedestrian and/or bicycle routes shall be kept clear and open and must not be obstructed with fences, structures, utility pedestals or other above-ground utilities that obstruct use of the easement.

c. Off-Street Pedestrian and Bicycle Facilities (Trails)

Trails shall be a minimum of 10 feet wide with 8 feet, 6 inches of vertical clearance. Trails shall consist of a minimum 2 inches of hot mix asphalt over a minimum compacted base of 18 inches of 3-inch minus gravel. The compacted base shall extend at least 2 inches beyond the asphalt surface on both sides of the trail. The maximum grade shall not exceed 8% with landings spaced as per ADA guidelines. The standard cross slope shall be 2%.

d. Sidewalks

The minimum width for concrete sidewalks is 5 feet on local streets and 7 feet on collectors and arterials, exclusive of the curb. Sidewalks shall have a minimum 4-inch concrete thickness and be installed over a minimum of 4 inches of compacted ¾-inch minus base course that extends at least 2 inches beyond the concrete surface. Sidewalks shall have a maximum grade of 8% and landings shall be provided at regular intervals as per the current ADA guidelines. The standard cross slope shall be 2%. Expansion joints shall be placed every 5 feet. Cluster mailboxes and other obstructions must be placed either separate from or adjoining the sidewalk but shall not obstruct travel along the sidewalk.

22. Primary Access Subdivision Roads

All primary access subdivision roads shall be designed according to these regulations for the purposes of safe travel and durable construction. See Tables 2 - 5 for minimum standards. Design speeds shall be proposed as part of the subdivision application unless already established and shall depend upon environmental and site-specific terrain conditions.

Table 2

Primary Access, Local, Subdivision Road Design Standards

Design Speed	Minimum Stopping Sight Distance	Minimum Centerline Curve Radius*
15 MPH	80 FT	75
20 MPH	115 FT	100
25 MPH	155 FT	154
30 MPH	200 FT	250
35 MPH	250 FT	371
40 MPH	305 FT	533
45 MPH +	360 FT	711

*At a minimum all roads (primary and secondary) shall be designed with curves capable of being negotiated by the largest fire truck used by the fire district in which the subdivision is located.

Table 3

Maximum Grade for Design Speed

Design Speed	15 MPH	20 MPH	25 MPH	30 MPH	35 MPH	40 MPH	45 MPH
Maximum Grade	10%	10%	10%	9%	8%	8%	7%

Table 4

Other Specifications for Two-Way Primary Access Rural Subdivision Roads

Minimum right-of-way width	60 feet*
Cross slope drainage	1.5-3%
Number of travel lanes**	2
Minimum vertical clearance	14.5 feet

*Additional right-of-way may be necessary for pedestrian/bicycle facilities, cut and fill slopes, utilities, etc.

**All collector and arterial roads shall be striped according to the Manual on Uniform Traffic Control Devices.

Table 5

**Minimum Width of Driving Surface for Specified Design Speed and Volume
(does not include parking curbs or gutters)**

Design Speed	ADT (feet)			
	<400	400-1,500	1,500-2,000	2,000+
15 MPH	20*	20*	20*	22*
20 MPH	20*	20*	22	24
25 MPH	20*	20*	22	24
30 MPH	20*	20*	22	24
35 MPH	20*	20*	22	24
40 MPH	20*	20*	22	24
45 MPH +	20*	22	22	24

*An additional two feet of driving surface is required for collectors.

23. Additional Requirements

- a. All roads serving <400 ADT shall have a minimum two-foot graded shoulder on each side. The shoulder(s) may, at the discretion of the governing body, be required to be paved when part of a parking lane.
- b. All roads serving >400 ADT shall have a minimum four-foot graded shoulder on each side, which may or may not be paved as per the discretion of the governing body, except for roads in mountainous terrain serving 400-600 ADT where two-foot shoulders may, at the discretion of the governing body, be permitted.
- c. Roads that can be reasonably expected to serve additional ADT in the future may, at the discretion of the governing body, be required to be built at the time of initial construction to a width appropriate to safely allow the anticipated future traffic. For such improvements the developer and the governing body may choose to enter into a latecomers agreement.
- d. When the residential density is $\geq 8,712$ square feet per lot or unit, exclusive of access and utility easements, eight-foot wide parking lanes are required on one or more side of a subdivision road. Whether parking lanes are required on one or two sides of a road depends on if there is adequate area on the lots for driveways and garages and the intensity of the proposed development. Parking lanes may coincide with shoulders and gutters. On-street parking is not permitted on arterial roadways.

24. Road Construction Specifications (also see figure X.7)

- a. All roadways shall be constructed in compliance with Tables 2-5 of this Chapter.
- b. Subgrades, General: Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Material below subgrade elevations in cuts shall not be loosened during the progress of work. No excavation shall be made below subgrade except to remove spongy material, vegetative matter or other unsuitable material. Separation fabric may be required in wet areas and where the road is constructed on silt/clay subgrade. Any excavation below subgrade shall be replaced with satisfactory fill material or base course material and compacted in place to 95% of the maximum dry density as determined by AASHTO T99. Subgrades must be approved by an engineer licensed in the state of Montana as complying with these or stricter standards.
- c. Sub Base Tolerance: All sub base gravel material shall have a tolerance of 5% by volume up to the next specified gradation (5" for 4" maximum size). All oversized material shall not be allowed in the top 6" and shall be removed from the roadway section.
- d. Sub Base Construction Standards: The gravel base course shall consist of hard, durable stone, gravel or other similar materials mixed or blended with sand, stone dust or other binding or filler materials providing a uniform mixture and compacted into a dense and well-bonded base. Oversize stones, rocks and boulders shall be screened out. Oversize material of acceptable quality may be crushed and used in the base material. The material shall be placed in uniform thickness a minimum of 12 finished, compacted inches of pit run a maximum of 4 inches in diameter. The base

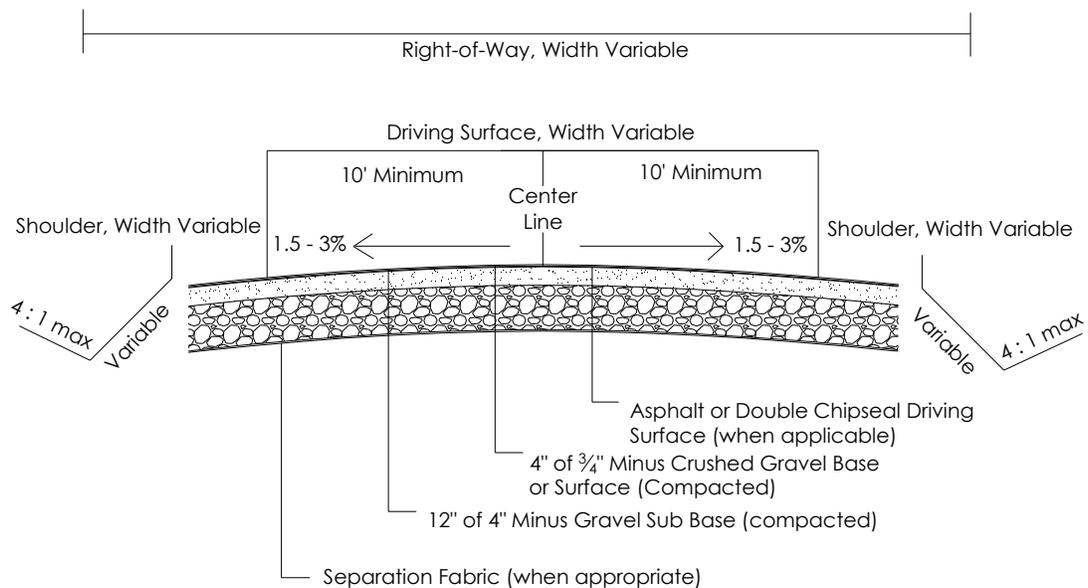
course shall be compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed to facilitate compaction and bonding of the material, it shall be applied. The subgrade shall be finished within a tolerance of 3/4 of an inch measured as a vertical ordinate from the face of a 10-foot straight edge.

- e. Base and Surface Gravel Tolerance: All base and surface gravel material shall have a tolerance of 5% by volume up to the next specified gradation (1" for 3/4" maximum size). All oversized material shall not be allowed in the top 2" and shall be removed from the roadway section.
- f. Base and Surface Gravel Construction Standard: The gravel shall consist of both fine and coarse fragments of hard, durable, crushed stone or crushed gravel blended with sand, finely crushed stone, crusher screenings or other similar materials. The material shall be placed in uniform thickness with a minimum compacted depth of 4 inches of 3/4 inch minus crushed gravel compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed to facilitate compaction and bonding of the material, it shall be applied.
- g. Dust suppressant, double chip sealing, asphalt or other all season hard surfacing may be required by the governing body as specified in this chapter.
- h. Double Chip Seal Standard:
 - i. MC250 oil or an equivalent approved by the governing body is laid on top of the crushed gravel surface at a rate of 0.45 gallons per square yard.
 - ii. A layer of 1/2 inch crushed rock is laid at a rate of 45 pounds per square yard.
 - iii. The surface is compacted via roller.
 - iv. Repeat steps 1-3.
- i. Finished asphalt surfaces shall be 4 inches thick constructed in accordance with Montana Public Works Standards.
- j. Roads, driveways and intersections shall be designed to drain water from the driving surface and shall be made with a cross slope drainage between 1.5-3%.
- k. Roads and driveways shall be designed to have a minimum vertical clearance of at least 14.5 feet.
- l. Reseeding. Reseeding of disturbed slopes shall be performed as follows when required under an approved Noxious Weed Management Plan.
 - i. Hydraulic seeding via recognized industry standard shall be implemented when slopes are greater than 3:1 or seedbed is difficult to seed.
 - ii. Seed mixture, fertilizer description and mulch shall be approved by the Lake County Weed District prior to application and shall be certified as free of noxious weeds.

- iii. Topsoil shall be loose, friable, loamy and free of excess acid and alkali, sod, gravel, subsoil or material that would form a poor seedbed.
- iv. Seeding shall be performed when ambient temperature and moisture are favorable to germination and plant growth in the first spring or fall following final slope disturbance.
- v. The seeded area shall be maintained until seed is firmly established.
- vi. Seeded areas that fail to germinate shall be re-seeded and, where necessary, additional topsoil, fertilizer and/or other steps shall be taken to ensure germination.
- m. The subdivider and her/his agents shall take proper precautions to insure the protection of utility lines, culverts, irrigation systems, mailboxes and any other public or private facilities which may be encountered during construction or reconstruction of all roads. The subdivider shall be responsible for all repair, replacement, restoration and loss of services, which may result from damage caused during construction.
- n. The subdivider may be required to acquire and demonstrate timely implementation of a Stormwater Pollution Prevention Plan Permit obtainable from the Montana Department of Environmental Quality as a condition of final plat approval.

Figure X.7

Typical Road Cross Section
Primary Access Roadway



25. Dust Control Plan Required

- a. Along with a preliminary plat application the subdivider shall submit a plan to control dust during and after construction and development activities. The plan shall identify:
 - i. All potential sources of dust including roads leading to the subdivision, onsite soil disturbance, specific construction activities including roads, utilities, homes, and driveways, onsite soil storage piles and other sources.
 - ii. Specific methods to be used to control dust during and after construction that may include watering, chemical applications, covering soil piles, reseeding, mulching and paving.
- b. The governing body may require the subdivider to control dust during road, utility and unit construction and may also require the subdivider and/or future land or unit owners to provide dust suppression during and after construction on gravel roads leading to the subdivision.

26. Secondary (Emergency) Access Roads

- a. Secondary access roads function as emergency ingress/egress to a subdivision. These roads shall connect to other publicly or privately maintained roads but are not intended to serve as primary access or carry daily traffic.
- b. Secondary access roads shall meet the following standards:
 - i. Minimum driving surface as wide as the required primary access roadway;
 - ii. Minimum centerline curve radius of 75 feet;
 - iii. Maximum grade of 12%;
 - iv. Minimum right-of-way of 40 feet;
 - v. The surface must be improved with an all-weather surface of asphalt, chip-seal or gravel and the road must be capable of supporting vehicles weighing 20 tons.
- c. Secondary access easements located within the subdivision shall be shown on the face of the preliminary and final plat. Secondary access easements located outside of the subdivision shall be a permanent, recorded easement.
- d. The applicant shall provide a road maintenance agreement or declaration that includes the provisions described in Section X.I.9. above for all secondary access roads.
- e. In forested areas the subdivider shall be required to clear or thin vegetation within the easement or right-of-way and the road maintenance agreement shall include this as a duty of the lot owner association.

- f. A loop road with one access point (see figure X.2) does not qualify as providing a secondary access.
- g. Secondary access ways must not be open to general vehicular travel and must be provided with removable bollards, gates or other means approved by the local emergency service providers to restrict general vehicular access. Emergency access ways may serve as pedestrian and bicycle pathways.

27. Bridges and Culverts

- a. Bridges and Culverts of adequate size must be provided and installed by the subdivider where drainage channels intersect any road right-of-way or road easement.
- b. All culverts must extend at least one foot across the entire width of the base of the fill; the amount of backfill to be placed over the culvert and the culvert's drainage capacity must be determined by a registered engineer or other qualified party.
- c. Bridges and Culverts shall be as wide as the roads or driveways they connect.
- e. Bridges and Culverts shall be designed to support at least 20 tons and have a vertical clearance of at least 14.5 feet.
- f. The subdivider shall grant or obtain easements (as necessary) to prevent encroachment or disruption of drainage ways or facilities crossed by a Bridge or Culvert. All drainage easements must be drawn on the plat and reference the easement.
- g. The subdivider shall provide for the regular maintenance of any bridge or culverts used by more than one party.

28. Alleys

Alleys provide access to the side or rear of individual land parcels and are characterized by a narrow right-of-way. They are required in urban areas as necessary, for example to continue existing development patterns, when a water or sewer authority desires separation between infrastructure, or when an public service entity or agency desires access to the rear of the lot, etc.

- a. Alley rights-of-way or easements shall be at least 20 feet wide with a minimum 14-foot driving surface in residential areas.
- b. Alley rights-of-way shall be 30 feet with a minimum 20-foot driving surface in mixed use, commercial and industrial areas.
- c. Alleys shall be constructed to the minimum standards required for secondary access roads unless determined otherwise through public agency comment or a traffic impact study.
- d. Alleys shall be aligned parallel to, or concentric with, the street property lines.

- e. Both ends of alleys shall be connected to streets or to other alleys unless specifically authorized as a part of an approved subdivision plan.
- f. Alleys may not be used to provide the primary access to a lot.

29. One Way and Boulevard Street Standards.

One way and boulevard streets are permitted to be used as primary access roads as a part of residential, commercial and mixed use subdivisions when the following standards, as applicable, are met:

- a. Each travel lane shall contain a minimum driving surface width of 12 feet.
- b. The streets are adequately signed to convey the appropriate traffic circulation pattern to the traveling public.
- c. At the discretion of the governing body and depending on the land use(s), character and density of the subdivision, one or both sides of each travel lane shall include a separated pedestrian and/or bicycle facility meeting the non-motorized transportation requirements of these regulations.
- d. The green space between travel lanes on boulevard streets shall be a minimum of 6 feet wide and landscaped as provided below.
- e. Curbs and gutters, landscaping, and on-street parking may be required by the governing body.
- f. Right-of-way width shall be sized appropriately to contain the roadway, utilities, pedestrian and/or bicycle facilities and potentially on-street parking and shall be a minimum of 33 feet in width per road direction for one-way roads.

X.J. Development Adjacent to Arterial Roadways

An overall design plan complying with these standards shall be submitted with the preliminary plat for review. Any standards that are not immediately met shall be conditions of subdivision approval and shall be shown on the face of the final plat and incorporated into the covenants, conditions and restrictions requiring future owners to comply with the following standards:

1. All buildings on parcels adjacent to an arterial roadway must be set back a minimum of 100 feet from the property line(s) adjacent to the arterial roadway. The minimum setback line must be placed on the face of the final plat;
2. Every site must be fully developed with improvements or landscaping as required in these regulations except for any area reserved for future development, which shall be mowed and kept free of noxious weeds;
3. When a subdivision proposes to create two or more lots fronts on an arterial roadway, the governing body may require access to be along a shared driveway pursuant to X.G.2.c., or an internal subdivision roadway.

X.K. Drainage Facilities

1. The subdivider shall provide suitable stormwater drainage facilities, including retention and detention structures in accordance with the specifications of the Montana Department of Environmental Quality.
2. The design of swales, storm sewers, curbs and gutters shall take into account the character of the area, density of development, sensitive environmental features and adjoining properties. When located within a designated Community Growth Area and based on the character of the area and site specific issues, the governing body may require stormwater to be retained underground.
3. The drainage design must use best management practices appropriate for the geography, soils, vegetative cover and other site-specific factors. These practices include, but are not limited to protective vegetative cover, retention ponds, storm drain inlet protection, building setbacks, construction phasing to limit exposed soil and grading.
4. The subdivider shall provide along with the preliminary plat application the stormwater management information required in 76-3-622, Montana Code Annotated.
5. The subdivider shall record with the Lake County Clerk & Recorder, either prior to or concurrently with the final plat, stormwater management plans that have been approved by the Lake County Environmental Health Department and/or the Montana Department of Environmental Quality.
6. Facilities for the management of stormwater runoff from roads, pathways and other common or public improvements shall be installed prior to final plat filing unless included in an approved subdivision improvements agreement.
7. Facilities for the management of stormwater runoff from homes or other structures may be installed prior to final plat, after final plat filing as part of an approved subdivision improvements agreement or at the time of development of each lot as per the discretion of the governing body.
8. Facilities for the collection of stormwater runoff must be installed prior to or concurrent with any other improvements that will contribute to runoff and be designed to divert surface water away from disturbed areas. All stormwater facilities must be protected from erosion or silt deposition during construction of both public and private improvements.
9. Where drainage swales are used to divert surface waters, they shall be vegetated to control erosion and weed invasion. Drainage swales must be designed to minimize their visibility and be angled along the contours of a slope.
10. Natural drainage ways must be preserved except for necessary crossings in which the capacity of existing drainage ways must be preserved. Drainage ways must remain clear and open and must not be obstructed with fences, structures, etc. Lots must be arranged to preserve and maintain these drainage channels.

11. All required drainage structures shall be certified as having been installed according to the approved specifications by a registered engineer prior to final plat filing unless included in an approved subdivision improvements agreement.
12. The subdivider shall obtain all required permits related to stream and wetland crossings and disturbance and submit copies of the permits to the Lake County Planning Department prior to or concurrent with final plat approval.
13. Culverts of adequate size must be provided and installed by the subdivider where drainage channels intersect any road right-of-way or road easement.
14. All culverts must extend at least one foot across the entire width of the base of the fill; the amount of backfill to be placed over the culvert and the culvert's drainage capacity must be determined by a registered engineer or other qualified party.
15. Stream and drainage crossings shall be as wide as the roads or driveways they connect.
16. Drainage shall not discharge into any sanitary sewer facility.
17. The subdivider shall grant or obtain easements (as necessary) to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat. Easements for surface storm drainage must remain clear and open and not be obstructed with fences, structures, etc.
18. The subdivider shall provide for the regular maintenance of the drainage system.
19. Roadside swales shall not exceed a slope of 4:1 and shall be well rounded.

X.L. Landscaping

1. Plantings may be required for buffering, screening, or soil erosion protection and are subject to final approval by the governing body.
2. Applications for major subdivisions within Community Growth Area as defined on the Lake County Density Map and Regulations, and all subdivisions along arterials shall include an overall landscaping and maintenance plan which complies with these standards and which is subject to review and approval by the governing body.
3. When required, landscaping and irrigation shall be installed prior to final plat approval or covered under an approved subdivision improvements agreement along with documents showing the required improvements to be filed along with the final plat. The governing body has the option to require all required landscaping to be installed by the subdivider prior to final plat approval.
4. When required by subsection 2 above, the following landscaping standards must be met:
 - i. A planting screen easement, a minimum of 15 feet wide, must be provided along all roadways.

- ii. Within the planting screen easement, landscaping must contain living groundcover, grasses, trees, and shrubs as set forth in this section and may contain rockwork, berms, post and rail or similar fencing and other attractive features. The planting screen easements may also include approved paths, trails and ingress/egress points.
- iii. Landscaping that is native to the area and limits water use is encouraged.
- iv. A minimum of one 2-inch caliper tree (based on American Standards for Nursery Stock) and one vertically branching 5-gallon shrub must be planted for every 30 feet of frontage along all roadways. Placement of trees and shrubs is not specified in order to provide flexibility and creativity by the subdivider. Existing vegetation within the planting screen easement may be used to satisfy this requirement.
- v. If the landscape design incorporates plants that require seasonal watering, an automatic, underground irrigation system, with backflow prevention, shall be installed by the subdivider and maintenance provisions shall be incorporated into the covenants, conditions and restrictions or similar documents.
- vi. Placement of trees and irrigation systems shall consider the location of overhead and underground utilities.
- v. Existing healthy trees and vegetation must be identified and preserved to the maximum extent practical.

X.M. Urban Residential Subdivisions

These provisions apply to all subdivisions that create lots or units at a development density of 1 unit per acre or greater, or any subdivision within a Community Growth Area as defined on the Lake County Density Map and Regulations.

- 1. Parking
 - a. When the residential density is $\geq 8,712$ square feet per lot or unit, exclusive of access and utility easements, eight-foot wide parking lanes are required on one or more side of a subdivision road at the discretion of the governing body. Whether parking lanes are required on one or two sides of a road depends on if there is adequate area on the lots for driveways and garages and the intensity of the proposed development.
 - b. Parking lanes may coincide with shoulders and gutters. In any case, on-street parking is not permitted on arterial roadways.
 - c. Each residential lot or unit shall have area for at least two parking spaces.
- 2. Snow Removal and Storage
 - a. Adequate area for snow removal and storage shall be provided.
- 3. Stormwater
 - a. In addition to the requirements of subsection X.K, stormwater that results from individual lot development may be required to be retained underground and

stormwater that results from public improvements may be required to be collected and retained in dedicated stormwater retention areas instead of in roadside ditches.

4. Lighting
 - a. Street lighting is required when necessary to protect public safety as determined by the governing body.
 - b. All nighttime outdoor lighting shall be downward pointed and side shielded to prevent glare from leaving the site.
5. Dry utilities
 - a. Dry water and/or sewer utilities shall be installed with the capacity to allow the subdivision to connect to public water and/or sewer facilities in the future when a subdivision is located within a designated Community Growth Area and is located within 500 feet of a public water and/or sewer facility but the subdivision will not be required to connect to those services.
 - b. Dry utilities shall be designed and stamped by a licensed engineer.
 - c. As-built drawings shall be provided to the Lake County Planning Department and the public water and/or sewer authority.
 - d. The future residents shall waive their right to protest connection to the public water and/or sewer services.
6. Setbacks
 - a. The closest extension of any single-family residential dwelling (eave, deck, etc.) shall be spaced a minimum of 5 feet from a property line. This distance may be increased at the request of the local fire department.
7. Curbs and gutters
 - a. Curbs and gutters may be required where needed for access control, drainage control, pedestrian or traffic safety, where on-street parking exists, or to continue an existing pattern of development.

X.N. Mail Delivery

1. All subdivisions shall include a proposal for mail service that must be reviewed and approved by the local postmaster prior to final plat filing.
2. In cases where delivery to the subdivision is available, the subdivider shall provide an off-street mailbox facility in compliance with the standards established by the United States Postal Service.

X.O. School Bus Service

1. All preliminary plat applications shall include a proposal for school bus service that must be reviewed and approved by the local school district administrator prior to final plat filing.
2. In cases where school bus service is available to the subdivision, the subdivider shall provide an off-street area for school children to wait for the school bus and shall provide an area for parents to park and wait for their children with a size suitable to accommodate the anticipated needs of the future residents.

X.P. Commercial Subdivisions

A commercial subdivision is any division of land where ~~one~~ two or more of the parcels to be created will be used other than primarily for residential or agricultural purposes.

1. A preliminary plat application that will create lots for commercial purposes shall explicitly state the commercial uses contemplated, and require a Building Notification Permit pursuant to Chapter II for construction and the change of use on any commercial lot. If a use is proposed that was not expressly permitted by the original subdivision approval, the use shall require additional governing body review pursuant to Chapter II.
2. Traffic Impact Studies. The subdivider shall provide a traffic impact study for all commercial subdivisions that are anticipated to generate an ADT of 300 or more based on the latest edition of *Trip Generation* by the Institute of Transportation Engineers.
3. Loading, Parking and Driveways, Plans Required. Plans for all loading, parking and driveway loading facilities shall be submitted for review of compliance with the following requirements. Such plans must show the location and size of loading areas, the number of parking spaces and arrangements of parking aisles, location of access points onto adjacent streets, provisions for vehicular and pedestrian circulation, location of sidewalks and curbs on or adjacent to the property, utilities, locations of signs, storm drainage facilities and location and type of lighting facilities. A copy of such plans must also be submitted to the fire department with jurisdiction to serve the development for review of emergency service access.
4. Minimum development requirements include:
 - a. One properly signed freight loading area per 10,000 square feet of gross commercial floor area for commercial land uses requiring regular product deliveries. The loading area must be at least 10 feet wide and 25 feet long.
 - b. Continuous curb cuts are prohibited.
 - c. Driveways must be at least 125 feet from other accesses or intersections or as permitted by the Montana Department of Transportation on state controlled roadways.
 - d. An adequate number of off-street parking spaces is required to accommodate employees, visitors and residents. Plans submitted with the preliminary plat application must include information sources used to determine the number of

parking spaces such as the most current edition of *Parking Generation* by the Institute of Transportation Engineers or a standard adopted by another governing body that is representative of the proposal. The proposal may include shared parking where proposed land uses have peak parking demands at different times of the day.

- e. All required parking spaces shall be at least 9 feet in width and 18 feet in length. Parking spaces must be provided for the physically handicapped according to the Americans with Disabilities Act including the number, size, location and labeling requirements.
- f. The pattern of circulation within each parking area shall provide for safe and efficient access to the designated parking spaces, protect pedestrians moving through the parking areas, and facilitate safe and convenient access.
- g. Aisle widths within each parking area shall be:
 - 24-feet for two-way circulation and 90-degree angle parking,
 - 18-feet for one-way* circulation and 60-degree angle parking,
 - 15-feet for one way* circulation and 45-degree angle parking, *or*
 - 13-feet for one-way* circulation and 30-degree angle parking.

*Where one-way circulation is used, directional signs shall be installed at all access points to the parking area.
- h. Parking areas must be located within reasonable walking distance to the buildings they are designed to serve, and safe pedestrian access shall be developed around or through all parking and loading areas.
- i. There must be adequate ingress and egress from all parking spaces to ensure ease of mobility, ample clearance, access for emergency services and pedestrians.

5. Pedestrian Facilities

- a. Commercial and mixed use subdivisions shall provide concrete sidewalks or paved pathways on both sides of streets within the subdivision that link to existing or anticipated sidewalks on contiguous properties.
- b. Sidewalks shall be a minimum 5 feet wide, exclusive of the curb, and made of concrete.

6. Design Standards

- a. An overall design plan complying with the following standards must be submitted for review by the governing body.
- b. Buildings shall not exceed 50 feet in average height. All buildings over 30 feet in average height shall be required to install fire sprinklers unless this requirement is waived by the local fire district;
- c. Each lot is limited to one free standing on-premise sign with a sign area of no greater than 150 square feet and a maximum height of 20 feet to the top of the sign structure within a designated Community Growth Area, and a sign area of no greater than 64 square feet and a maximum height of 14 feet to the top of the sign structure

elsewhere. Any freestanding signs must be on the subject property, must be out of the public or private road right-of-way or easement, and must not obstruct traffic visibility. The sign cannot be internally lit or contain flashing or moving lights. Any lighting must be pointed towards the signage or diffused so as to not create a traffic hazard or public nuisance.

- d. Each building shall be limited to 35% of the visible building surface area from the primary access roadway not exceeding 35% of two sides of the building structure. The square footage may be divided and allocated to more than one wall sign.
- e. Every site shall be fully developed with improvements or landscaping as required in these standards except for any area reserved for future development, which may be landscaped upon development. However, areas left for future development shall be mowed and kept free of noxious weeds.
- f. Except for products sold on the premises, general outdoor storage shall be fully screened from public view and from adjoining properties by buildings, landscape buffers, screening fences or walls. Trash receptacles must be effectively screened from public view by an enclosure such as a wall, fence or plantings.
- g. Storage of all business, servicing, manufacturing or processing of materials, goods or products must be conducted within completely enclosed buildings. Storage of materials outdoors may be permitted but must be effectively screened as described above.
- h. Parking lots and public walkways must be lighted at night. Lighting fixtures must be so spaced and so equipped as to provide adequate levels of illumination throughout the development for the safe movement of vehicles and pedestrians. Lighting fixtures shall be downward pointed and side shielded to prevent glare from leaving the site.
- i. Landscaping.
 - i. Purpose and intent. The purpose and intent of this section are to: separate and buffer incompatible development; promote visual quality, shade and beauty; and reduce stormwater generation by requiring landscaping in commercial subdivisions.
 - ii. Applicability. The landscaping requirements in this subsection apply to all new commercial subdivisions. A landscaping plan shall be submitted and landscaping shall be installed in accordance with this section and be reviewed by the governing body for compliance with the purpose and intent of this section.
 - iii. Definitions.

Berm means a mound of earth 2 to 6 feet in height, planted with vegetative groundcover, with a slope not exceeding one foot of rise for each two feet of run.

Landscaping is defined as any living plant material of the following combination: ground cover or grass, flowers, ornamental plants, shrubs, vines, hedges and trees. Native vegetation should be used to the extent possible.

Groundcover means plants of species that reach a maximum height of not more than 17 inches upon maturity, in combination with natural mulch, including rock, installed in a manner so as to form a continuous cover over the ground.

Shrubs are self-supporting woody deciduous or evergreen species, which have a minimum height of 24 inches upon maturity.

- iv. Area to be Landscaped. Landscaping is required for all areas not covered by structures, driveways, parking areas, patios and walkways.
- v. Required Amount of Landscaping. At least 15% of the total lot area must be landscaped. Landscaping provided as part of a landscaped perimeter or interior parking lot landscaping may count toward the minimum 15% requirement.
- vi. Landscaped Perimeters. All lot boundaries must be landscaped except for access locations.
- vii. Lot boundaries adjacent to a public or private road.

All lot boundaries adjacent to a road must be planted with a minimum 10-foot wide landscaped perimeter extending along and contiguous to the property line in a manner which creates a visual buffer.

The landscaped perimeter must be planted with trees, shrubs and grass and vegetative ground cover and may be bermed.

Landscaped perimeters must have a density of at least one tree planted per 500 square feet of landscaped area. There must be at least one shrub planted per 100 square feet of landscaped area.

Required plantings should include a mixture and variety of native trees and shrubs of variable heights. Trees must be distributed along the entire length of the buffer zone but may be grouped to provide a natural look.

See Section x. below for tree and shrub specifications.

- viii. Lot boundaries not adjacent to a public or private road.

Lot boundaries not adjacent to a public street must be landscaped in a manner which provides a visual buffer.

Buffers may be created through combinations of landscaping, berms, walls, fences and rockwork. When walls or fences are used, as part of a buffer, the minimum height is 5 feet and the maximum height is 8 feet. (see also Section X.J.5)

Landscaped buffers must have density of at least one tree planted per 750 square feet of landscaped area. There must be at least one shrub planted per 200 square feet of landscaped area.

Required plantings should include a mixture and variety of native trees and shrubs of variable heights. Trees must be distributed along the entire length of the buffer zone but may be grouped to provide a natural look.

See Section x. below for tree and shrub specifications.

- ix. **Parking Lot Landscaping.** Any parking lot containing at least 8 parking spaces must be landscaped. The landscaping must cover a minimum of 10% of the total area to be paved.

Parking lot landscaping must be in the form of interior landscaped islands. To be considered an interior landscaped island, at least two sides of the landscaped area must be bordered by a paved surface. Landscaped islands must be protected by curbs, curb stoppers, fences or raised planters.

Interior islands must be planted with ground cover and contain at least one deciduous or evergreen tree per 150 square feet of landscaped island area, with a minimum of one deciduous or evergreen tree per island.

- x. **Planting and Berming Specifications.**
 - i. **Density requirements.** When determining the required number of trees and shrubs, round up to the next required number when at least 50% of the square footage requirement is reached.
 - ii. **Tree size.** The minimum caliper size of deciduous tree at planting must be 1 1/2 inches measures at 6 inches above grade, and the minimum height must be 8 feet. There is no minimum caliper for evergreen trees at planting, however, the minimum height of an evergreen tree at planting must be 6 feet.
 - iii. **Tree separation from turf.** All trees must be separated from turf by a minimum 4-foot diameter area that must be edged. The area inside the edging must be covered with natural mulch that may include rock.
 - iv. **Shrub size.** The minimum height of shrubs required at the time of planting for landscaped perimeters and buffers is two feet. Shrubs used in parking lot islands have a minimum height at planting of one foot.
 - vi. **Irrigation Requirements.** If the landscaping incorporates vegetation that requires seasonal watering, automatic irrigation systems, with back flow prevention, must be provided to maintain healthy landscaping.

X.Q. Development Standards for Subdivisions Containing Areas of Steep Slopes

In addition to the requirements of Section X.G.1., the following requirements apply to all subdivisions containing sustained slopes of 100 feet or longer that average $\geq 20\%$.

- 1. An erosion and sedimentation control plan shall be prepared by a registered engineer and submitted along with the preliminary plat application. Soil disturbance for subdivision improvements shall not occur until the plan has been approved by the governing body

and implemented on site. The plan must contain the following information and, upon review, the subdivision administrator may request additional information.

- a. A topographic map, using an interval approved by the subdivision administrator, of the area to be subdivided. Lots, soils types, areas to be disturbed by roads, driveways, and lot development, existing vegetation, location of surface water and building sites shall be clearly shown on the plan map.
 - b. The location of inlets for drainage structures and a description of measures that will be taken to protect them from sedimentation.
 - c. A description of protection measures for long-term slope stability must be included. Finished slopes are to be protected with vegetative cover, riprap or other means.
 - d. Specific citations and sources of information used to develop the plan.
2. In addition to permanent provisions, temporary erosion and sediment control measures may be required during construction of subdivision improvements and development on individual lots.
 3. The subdivision administrator may require a drawing or other simulation of the subdivision that demonstrates how the subdivision will visually impact the area.
 4. The governing body may require standards for roof pitch, roof color or setbacks from steep slopes be shown on the final plat and included as conditions or plat approval that may be enforced by Lake County.

X.R. Fire Protection

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

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

X.S. Fire Protection in the Wildland Urban Interface (WUI)

1. Identification of the WUI. The subdivider must complete and submit with the preliminary plat application the Fire Risk Rating Form (Administrative Materials) for all proposed subdivisions in the Wildland Urban Interface. An authorized representative of the local fire district, Lake County Office of Emergency Management, DNRC, Tribal Division of Fire Management or Flathead National Forest must sign the complete Fire Risk Rating form prior to submittal.

2. When the proposed subdivision falls within the category of moderate or greater risk, the following design standards shall apply:

a. Roads:

- i. For all subdivisions with a risk rating of moderate risk or greater, at least two accesses must be provided to assure more than one escape route for residents and access route by fire fighting vehicles.
- ii. Where the risk rating is moderate risk or lower, one primary and one secondary access road may be permitted. Where the Fire Risk Rating is high risk or greater, at least two primary access roads shall be provided.
- iii. Where the Fire Risk Rating is high risk or greater, roads ending in a turnaround shall not exceed 600 feet; the minimum driving surface radius of a cul-de-sac cannot be reduced by variance and "T" turnarounds shall be prohibited.
- iv. Where the Fire Risk Rating is high risk or greater, the maximum road grade is 10% and cannot be increased by a variance.
- v. Where the Fire Risk Rating is high risk or greater, primary access roads shall contain two driving lanes at least 12 feet wide each; 8-foot wide zones on both sides of the primary roads shall be cleared of vegetation other than groundcover, and 10-foot wide zones outside of the cleared zones will be thinned.
- vi. All drainage crossings shall be built of non-flammable materials and be designed and constructed to support a minimum of 20 tons or the heaviest piece of loaded fire fighting apparatus available to the local fire district, whichever is greater, and have an overhead clearance of at least 14.5 feet.
- vii. Where gates are used, they shall be located a minimum of 30 feet from the public right-of-way and shall not open outward. Gate openings shall provide a clear opening of not less than 2 feet wider than the traveled way.
- viii. Fire protection authority personnel shall be supplied with combinations, keys or similar means to open locking devices on gates.
- ix. In the WUI, the minimum centerline curve radius on any roadway shall be 100 feet.

b. Minimum Lot Size.

Where the Fire Risk Rating is Moderate Risk or greater, minimum lot sizes will be determined according to average slope and predominant vegetation type on the site as follows:

Table 6

Minimum Lot Size (Acres)		
Average Slope Within the Subdivision	Open Grass, Lightly Forested Meadows	Moderately to Heavily Forested and Brushy
0-10%	1 acre	3 acres
10-20%	2 acres	5 acres
20-30%	3 acres	10 acres
30+%	5 acres	Not Permitted

c. Building Sites.

Where the Fire Risk Rating is Moderate Risk or greater, buildings must be spaced at least 60 feet apart and at least 30 feet from all property lines. All lots with an average slope between 20-30% shall have a building site (envelope) designated on the final plat that cannot be varied without governing body consent pursuant to the amendment process defined in Chapter II. Building sites are prohibited on slopes greater than 30% and at the apex of "fire chimneys. For the purposes of this section, a building is defined as any structure with a roof used for any purpose, not including a structure of less than 25 square feet that is built to protect infrastructure used to supply water.

d. Buffers.

Open space, parkland and recreation areas (including green belts, riding or hiking trails) may be required to be designed to separate residences and other buildings from densely forested areas where appropriate.

3. Water Supply

When deemed necessary by the local fire district and required by the governing body, the subdivider shall provide a water system that may be used for fighting fire within the subdivision as follows.

- a. The water system may be located within the subdivision or within 5 road miles of the subdivision, as deemed appropriate by governing body in consultation with the local fire protection authority.
- b. The water system shall have a minimum flow rate deemed appropriate by the governing body in consultation with the local fire protection authority.
- c. The water system shall be connected to a community or public water supply and hydrant system meeting the minimum requirements of the local fire protection authority and the Montana Department of Environmental Quality; or

Shall consist of one or more cistern, pond or reservoir with pump, attachments, well, float and alarm as necessary, placed at an appropriate location(s), which has:

- i. A minimum capacity of 2,500 gallons for 1 dwelling unit.

- ii. A minimum capacity of 2,000 gallons per unit for 2 to 5 dwelling units.
 - iii. A minimum capacity of 10,000 gallons plus 200 gallons for each unit over 5 dwelling units.
- d. Where a water supply is requested by the local fire district, a preliminary plat application shall include a draft easement on the preliminary plat to ensure access to the water supply. A proposal for maintenance shall also be submitted where the maintenance costs are borne by the lot owners and annual inspection is required, preferably conducted by the fire protection authority and paid for by the lot owners. Final platting shall require that legal easements for access are created, and shall not occur without an approved and recorded maintenance agreement.
 - e. For commercial or industrial land uses, a water supply with the capacity, pressure and other parameters deemed appropriate by the Uniform Fire Code or similar, professionally accepted resource shall be provided.
 - f. In cases where a local fire protection authority is in greater need of equipment than water supply, or in the estimation of the local fire district, a combination of equipment and water supply would be most effective to serve the future residents of the subdivision, the governing body may require the subdivider to donate a sum less than or equal to the cost of providing the entire water supply system to the fire district based on estimates submitted by at least three licensed professional engineers and/or fire protection consultants. When a donation is accepted, the local fire protection district shall purchase the stated or similar equipment within 10 years of final plat filing or shall refund the donation to the subdivider upon written request.
4. Vegetation Treatment and Other Best Management Practices
- a. As a condition of preliminary plat approval, the subdivider may be required to thin vegetation on the site in the locations and amount determined through consultation with the local or other recognized fire protection authority, professional forester or wildfire consultant in order to reduce the risk of the future residents to wildfire.
 - b. The subdivider may be required to adopt “Firewise” type covenants, conditions and restrictions for the subdivision prior to or upon final plat approval. Such covenants would typically include roofing materials, defensible space requirements, prominent display of house numbers, etc. and may be placed on the final plat and enforced by the governing body.
5. Fire Prevention and Control Plan.
- a. A Fire Prevention and Control Plan that is approved by the local fire protection authority is required with the submittal of any application for preliminary plat approval within the WUI and must include the following items:
 - i. An analysis of the wildfire hazards on and in the vicinity of the site, as influenced by existing vegetation, land uses in the vicinity of the subdivision and topography.

- ii. A map showing the areas that are to be cleared of dead, dying or severely diseased vegetation pursuant to the comments obtained from the local fire protection authority or similarly qualified professional.
 - iii. A map of areas that are to be thinned to reduce the interlocking canopy of trees and down, woody debris pursuant to the comments obtained from the local fire protection authority or similarly qualified professional.
 - iv. Identification of roads, driveways, emergency access routes and drainage crossings with proposed specifications indicating their capacity sufficient for emergency vehicle access and fire suppression activities.
 - v. Accurate drawings indicating the slopes and dimensions for all roads, driveways and proposed emergency access routes.
 - vi. A discussion of the resources available to fight fire within the subdivision and actions to be taken by the subdivider to provide the appropriate level of resources.
 - vii. A draft water supply maintenance agreement that meets the requirements of Section X.X.3.e. above when applicable.
- b. Implementation of Fire Prevention and Control Plan.

The Fire Prevention and Control Plan must be implemented before final plat approval. An authorized representative of the local fire protection authority must inspect and provide written notice of approval of the implementation measures of the plan prior to final plat filing. Ongoing items, such as fuels management and water supply maintenance, are the responsibility of the future lot owners.

X.T. Water Supply Systems

1. The subdivider shall provide along with the preliminary plat application the water supply information required in 76-3-622, MCA.
2. The governing body shall not approve the final plat of a subdivision containing lots of less than 20 acres in size unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, 76-4-101 *et seq.*, MCA.
3. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the Montana Sanitation in Subdivision Act (76-4-101 *et seq.*, MCA) and design standards adopted by the Montana DEQ and the associated Administrative Rules of Montana (ARM). By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
4. If the lots are 20 acres or greater in size, the subdivider shall demonstrate that there is an adequate water source on each lot prior to final plat approval as per 76-3-622, MCA.

5. Any community or public water supply system must provide adequate and accessible water for fire protection unless otherwise agreed to by the local fire protection authority and/or the governing body. Fire hydrant spacing and other specifications shall be determined by the governing body in consultation with the local fire protection authority, water district and Montana DEQ as applicable.

X.U. Wastewater Treatment Systems

1. The subdivider shall provide along with the preliminary plat application the wastewater treatment information required in 76-3-622, MCA.
2. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of wastewater from each lot in the subdivision must comply with the Montana Sanitation in Subdivision Act (76-4-101 *et seq.*, MCA) and the design standards adopted by the DEQ and contained in the associated ARM. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
3. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the governing body may approve the final plat.
4. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot in order to obtain final plat approval as per 76-3-622, MCA. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.

X.V. Solid Waste

1. The subdivider shall provide along with the preliminary plat application the solid waste disposal information required in 76-3-622, MCA.
2. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposal must comply with the standards adopted by the DEQ and contained in ARM 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
3. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA.
4. For subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres, the proposed method of storing and disposing of solid waste generated

within the subdivision must comply with the local environmental health department regulations.

5. The subdivider shall assure that provisions for collection and disposal of solid waste meet the regulations and minimum standards of the DEQ and the Lake County Environmental Health Department, as applicable. The means for solid waste collection and disposal is subject to approval by the governing body.

X.W. Utilities

1. Utilities shall be installed to each lot by the subdivider prior to final plat filing unless part of an approved subdivision improvements agreement or otherwise approved by the governing body.
2. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
3. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a road right-of-way or easement, must be located between the roadway and the right-of-way line to simplify location and repair of lines.
4. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
5. Utility easements located between adjoining lots must be centered on lot lines. If utilities are placed in the street, they must be located between the roadway and the right-of-way line except where street crossings are necessary.
6. Utility easements must be 15 feet wide unless otherwise specified by a utility company or governing body or a part of a standard access and utility easement (e.g., 60 feet wide for a typical primary access roadway).
7. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy or permission to use the right-of-way must be obtained from the governing body, or local or state highway department. When a utility is to be located within an existing, private right-of-way or easement, permission to use the right-of-way or easement shall be secured prior to construction.
8. Where existing utilities abut or are separated from proposed subdivision lots by a public or private right-of-way or easement, future lot owners may extend the utilities underground upon lot development from the existing services when determined appropriate by the governing body in consultation with the utility company.
9. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat, when applicable:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, 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."

X.X. Irrigation Easements

Note: For the purposes of interpreting these regulations, irrigated land within the Flathead Irrigation Project (FIP) generally does not include surface water rights for irrigation using FIP water and facilities. The owners of such properties are generally charged annual operation and maintenance assessments.

1. Except as noted in subsection 2, below, the subdivider shall establish within the subdivision irrigation ditch easements that:
 - a. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of ditches or pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriation water right or water use permit or an operation and maintenance assessment of an irrigation district or other private or public entity formed to provide for the use of the water on the subdivision lots;
 - b. Are a sufficient distance from the centerline of the ditch or buried conveyance line to allow for construction, repair, maintenance, and inspection of the ditch or line; and
 - c. Prohibit the placement of structures or the planting of vegetation other than grass within the ditch or buried conveyance line easement without the written permission of the ditch owner or the irrigation water users identified in a water use agreement or irrigation plan.
2. The subdivider need not establish irrigation easements as provided above if:
 - a. The average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - b. The water rights have been removed from the property, the property has been reclassified and the operation and maintenance assessment has been removed from the property, or the process has been initiated to either remove the water rights or reclassify the land and remove the operation and maintenance assessment, as the case may be, and;
 - c. The fact the water rights have been or will be removed or that the property has been reclassified and the operation and maintenance assessment has been or will be removed from the land is denoted on the preliminary plat.
3. The subdivider shall show on the preliminary and final plat, and file and record with the county clerk and recorder, easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and

legal rights. A minimum width of 20 feet is required on each side of the bank of an irrigation canal and/or ditch for maintenance purposes.

All subdivisions which contain Flathead Irrigation Project (FIP) infrastructure shall include a reference to the applicable Code of Federal Regulations, as well as the following language on the final plat: The subdivider hereby dedicates easements of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance for all infrastructure pertinent to the FIP's irrigation system, including but not limited to canals, laterals and other irrigation works.

X.Y. Disposition of Water Rights and Irrigation Related Operation and Maintenance Assessments

The subdivider shall submit evidence with the final plat that the subdivider has:

1. Reserved all or a portion of the appropriated water rights or operation and maintenance assessments for the land classified as irrigated, transferred those water rights or operation and maintenance assessments to a single entity for use by landowners within the subdivision who have a legal right to use the water, and reserved and severed any remaining surface water rights or operation and maintenance assessments from the land;
2. Established, either prior to or concurrent with final plat filing, an irrigation plan and water use agreement administered through a single entity when the land to be subdivided is subject to a contract or interest or assessed operation and maintenance costs in a public or private entity formed to provide for the use of a water right or water on the subdivision lots. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
3. Reserved and severed all surface water rights or reclassified the land and severed all operation and maintenance assessments from the land proposed for subdivision.

X.Z. Irrigation Plan

1. When irrigation water rights or operation and maintenance assessments are to be transferred to one or more of the lots within a subdivision, the subdivider must design an irrigation delivery system. An irrigation plan, as described in this section, shall be prepared and submitted along with the preliminary plat application. The irrigation plan shall only include irrigation related information. All improvements specified in the approved irrigation plan shall be installed prior to final plat filing unless bonded for under an approved subdivision improvements agreement.
2. The plan and support documentation shall be prepared by a person with a working knowledge of irrigation water delivery systems and approved by the governing body or its designated agents. In addition, the proposed plan shall be prepared in consultation with one or more of the following: The Flathead Irrigation Project (FIP), Joint Board of Control, Montana Department of Natural Resources and Conservation, USDA Natural Resources Conservation Service or similar agency.
3. Prior to submitting the plan to Lake County and when the property is under the jurisdiction of the FIP, the subdivider shall complete and submit to the FIP or the

Coordinated Management Entity (CME) a *Request for Comment on Land to be Subdivided* (or other form used by the FIP or CME) a draft irrigation plan and supplementary information along with a review fee to be determined by the FIP or CME. The reviewing authority shall have 30 days to review the plan. If the reviewing authority does not respond within that period the subdivider may submit the preliminary plat application for review.

4. The subdivider shall modify the draft irrigation plan based on comments from the reviewing authority and submit the modified plan to the reviewing authority for a second review prior to or concurrent with submitting the modified plan with the preliminary plat application.
5. The subdivider shall submit all correspondence between herself/himself and the reviewing authority including but not limited to completed forms, plans, and attachments along with the preliminary plat application.
6. The plan shall be prepared according to the following format:
 - a. The page size shall be the same as required for a preliminary plat.
 - b. The plan shall be legible and show all of the required information.
 - c. The plan shall be prepared at the same scale as the preliminary plat.
7. The plan shall include the following elements:
 - a. The location of all existing and proposed diversion points, delivery points, ditches, pipes, pumps, heads and associated easements.
 - b. The means to share in the cost of operating, managing and maintaining those elements of the delivery system held in common, such as an irrigators association.
 - c. The specific irrigated area in the subdivision and on each lot.
 - d. The percentage of each lot that is proposed to be sprinkler irrigated and the percentage that is proposed to be flood irrigated.
 - e. A mechanism to collect wastewater (tailings) so as to not negatively impact any properties within and outside of the subdivision.
 - f. A mechanism to ensure that drainfields and homesites will be avoided.
 - g. A statement that all FIP ditches may be maintained by personnel from FIP.
 - h. Any lot resulting from the subdivision that is not an original FIP tract must have a piped, pressurized system capable of sprinkler application of the irrigation water.
 - i. A statement from the FIP that they will provide water to the designated delivery point.
8. Minimum Required Structural Setbacks

- a. 100 feet from primary canals unless otherwise approved by FIP.
 - b. 50 feet from all ditches, laterals and water lines.
9. The approved irrigation plan and all related information such as irrigation water users association documents shall be filed with the FIP or other irrigation water management body as well as the Lake County Clerk & Recorder prior to or concurrent with the filing of the final plat.
 10. Any major change in an approved irrigation plan, such as reclassification of the property to remove the operation and maintenance assessment, prior to final plat approval shall require a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body relied upon in making its decision on the subdivision.
 11. When property is proposed to be reclassified to remove the operation and maintenance assessment as a component of the preliminary plat application, reclassification shall be accomplished prior to final plat approval and documentation of such shall be submitted along with the final plat application.

X.AA. Park Land Dedication – Cash in Lieu – Waivers -- Administration

1. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 - a. 11% of the area of the land proposed to be subdivided into lots of one-half acre or smaller;
 - b. 7.5% of the area of the land proposed to be subdivided into lots larger than one-half acre and not larger than one acre;
 - c. 5% of the area of the land proposed to be subdivided into lots larger than one acre and not larger than three acres; and
 - d. 2.5% of the area of the land proposed to be subdivided into lots larger than three acres and not larger than five acres.
2. The parkland dedication requirements of these regulations shall be applied to all major subdivisions (including second or subsequent minor subdivisions that are reviewed as major subdivisions), and all minor subdivisions located in designated Community Growth Areas.
3. A park dedication is not required for:
 - a. Subdivision lots larger than five acres;
 - b. Nonresidential subdivision lots;

- c. Subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums;
 - d. A subdivision in which only one additional lot is created; or
 - e. First minor subdivisions that are not located in designated Community Growth Areas.
4. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
 5. The governing body will waive the park dedication requirement if it determines that:
 - a. The preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection 1; or
 - b. The proposed subdivision provides a conservation easement or other means for long-term management and protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection 1;
 - c. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections 5 (a) and (b) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection 1; or
 - d. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection 1.
 6. The local governing body may waive the park dedication requirement if:
 - a. The subdivider provides land outside the subdivision that affords long-term protections, through a conservation easement or other means, of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
 - b. The area of land to be subject to long-term protection, as provided in subsection (6)(a), equals or exceeds the area of dedication required under subsection 1.

7. Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection 1 to a school district, adequate to be used for school facilities or buildings.
8. The governing body will administer funds dedicated to the public under this section in accordance with 76-3-621, MCA.
9. The use and maintenance provisions of all private parkland dedication within a subdivision shall be included in a legal document to be recorded with the subdivision.
10. For the purposes of this park dedication requirement, "cash donation" means the fair market value of the unsubdivided, unimproved land.

X.BB. Noxious Weeds

1. A proposed subdivision shall include along with the preliminary plat application evidence addressing the property's existing and future compliance of the Lake County Noxious Weed Management Plan and Montana County Noxious Weed Law.
2. Prior to preliminary plat application submittal the subdivider shall:
 - a. Submit a site assessment form and fees to the Lake County Weed District for review and comment;
 - b. Develop a Noxious Weed Management Form and Agreement that addresses the comment of the Lake County Weed District. At a minimum, the plan will consist of two phases:
 - i. Phase I, actions taken by the subdivider to control existing weeds identified during the site evaluation during the next appropriate season. Severely infested properties (50% infested or as determined by the Weed District) shall require immediate treatment prior to soil disturbance for subdivision improvements;
 - ii. Phase II, actions taken by the subdivider to control weeds during and after site disturbance related to infrastructure installation required for final plat approval. The plan shall be in effect for four years, or until the final subdivision plat has been recorded, or until the follow-up inspections have been completed, whichever is longest.
3. Prior to the final plat filing the subdivider shall:
 - a. Create a final Lake County Weed District approved Noxious Weed Management Form and Agreement that consists of actions the future lot owners will take when they develop the lots, as well as provisions for regular maintenance over time.
 - b. Have the final Noxious Weed Management Form and Agreement approved by the Lake County Weed Board and pay any required fees to allow follow-up inspections. A copy of the original form shall include the signature of the property owner and Weed District Supervisor and be filed along with the final plat.

- c. Demonstrate compliance with applicable noxious weed management requirements in cases where deemed necessary by the governing body and/or the Lake County Weed Board due to an existing infestation of noxious weeds on the subject property.

X.CC. Perimeter Fence Requirements

1. When a proposed subdivision is located in an area used for grazing of livestock, the subdivider may be required to ensure the perimeter boundaries of the subdivision are fenced to the standards set forth in 81-4-101, MCA. The governing body may require a four-wire fence when barbed wire is used based on the characteristics of animals under consideration.
2. When a proposed subdivision is found to have a high likelihood of creating a significant visual impact on surrounding property owners and/or travelers on abutting arterial roadways through the adoption of findings of fact, the subdivider may be required to fence all or a portion of the subdivision to create a visual buffer.
3. When a proposed subdivision is located in an area of significant wildlife habitat, the subdivider shall be required to incorporate wildlife friendly fencing provisions into covenants, conditions and restrictions that regulate future land use and development.
4. When a proposed subdivision contains or abuts a natural or manmade hazard, and where the hazard can be mitigated by installing a fence, the governing body may require the subdivider to install a fence intended to protect public health and safety and provide a means to maintain the fence so long as the hazard exists.

X.DD. Structural Setbacks and Vegetative Buffers Along Water Bodies.

The following provisions apply to all subdivisions which contain or are contiguous with or directly adjoin all or a portion of a lake, pond, perennial or intermittent stream, creek, river or wetland, hereafter collectively referred to as water bodies. For the purposes of this section, a structure is defined as any building with a roof used for any purposes, except for a structure of less than 25 square feet that is built to protect infrastructure used to supply water.

1. As set forth below, a structural setback and a vegetative buffer are required in the platting and development of all subdivisions. The required structural setback and vegetative buffer shall be depicted on the preliminary and final plats.
2. The structural setback and buffer widths shall be measured on a horizontal plane from the mean annual high water mark of a water body for a stream, pond or lake, and from the outward extent of ordinary wetland vegetation (cattails, bulrushes, sedges, etc.) for wetlands. Where the extent of ordinary wetland vegetation is not easily discernable, a wetland delineation performed by a certified professional may be required as a condition of preliminary plat approval.
3. The structural setback and vegetative buffers provided herein may be increased by the governing body when deemed necessary to mitigate the impact of the proposed development on fish and wildlife habitat and water quality. Site specific conditions that may prompt an increase in the width of setbacks and buffers include but are not limited to:
 - a. One or more slope >25% in the immediate vicinity of the water body;

- b. A lack of vegetation within the required setback and buffer area;
 - c. The land use surrounding the water body is intensive, such as crop production or urban development.
 - d. The presence of significant wildlife habitat and species of concern that utilize the setback and buffer areas;
 - e. The presence of 100-year floodplain that extends farther than the required setback area. In such cases, all structures shall be located outside of the 100-year floodplain, and
 - f. Soil type
4. Where zoning district specific setbacks, vegetative buffers and/or other regulations exist, the zoning district specific requirements shall prevail. This section shall not be interpreted to supersede the Lake County Lakeshore Protection Regulations.
 5. Setback requirements for irrigation waterways are covered elsewhere in these regulations. Ephemeral streams or channels shall be addressed in the stormwater drainage plans for each subdivision proposal. However, large, well-defined ephemeral drainages within subdivisions shall be protected with no build zone easements in order to provide for storm water management and wildlife habitat.
 6. Where buffer disturbance is necessary for subdivision development, the developer shall submit a copy of all permits along with the final plat application.
 7. Any request for variance intended to decrease the minimum buffer and structural setback distance requirements shall include comment from public agency personnel having jurisdiction over the water body, and shall be evaluated under the criteria listed in Subsection 3a-f above in addition to the variance criteria in Chapter II.

**Table 7
Minimum Structural Setback and Vegetative Buffer Requirements**

Water Body Type	Minimum Required Structural Setback	Minimum Required Vegetative Buffer
Streams and Lakes	150 feet	100 feet
Wetlands and Ponds	100 feet	50 feet

8. All disturbances of the setback and vegetative buffer areas during subdivision and homesite development shall be kept to the minimum necessary to access and reasonably develop the site. For example, road crossings shall be minimized to the greatest extent possible while still allowing for access to all parts of the property.
9. All disturbances of the setback and vegetative buffer areas will incorporate necessary measures to limit channelization and erosion.

10. All disturbances to the setback and vegetative buffer areas shall be detailed in the erosion and sediment control, stormwater and/or grading and drainage plans that are submitted along with the preliminary plat application. The plans shall demonstrate that all stormwater created from work within the buffer will be collected and managed in a manner to have an insignificant impact on water quality.
11. Within the vegetative buffer area, the following land uses and activities are prohibited:
 - a. The erection of one or more structures. Existing structures may be maintained but shall not be expanded or replaced.
 - b. Roads, road easements, road rights-of-way and driveways that are parallel to the water body.
 - c. Communication towers.
 - d. Soil and vegetation disturbance other than that necessary to: control noxious weeds; reduce accumulated fuels related to fire protection; for fencing; for vegetation planting not to include lawns and gardens; for stream or wetlands restoration and enhancement; to provide access, including public or private pedestrian and bicycle pathways and boat ramp access; for vehicle crossings, which shall be limited to the maximum extent possible; to install irrigation related infrastructure; and for the maintenance of pre-existing parking lots, streets, trails, homes, outbuildings and other impervious surfaces located inside the required buffer area.
 - e. Pesticide and/or herbicide use, unless approved for use in riparian environments.
 - f. The construction of impervious surfaces except those related to access or as described above.
 - g. Activities conducted without a permit when required by a state, local or federal agency with management jurisdiction.
12. Nothing in this section shall prohibit repairs or improvements to existing roads, ditches or utilities, bank maintenance, stream stabilization or enhancement measures otherwise allowable under state and federal law.
13. The terms of this section shall be incorporated into a document entitled *Buffer Management Plan for the Protection of Surface Water Quality*, which shall be created and recorded with the final plat. The plan shall state that the plan is in effect so long as the subdivision lots exist, and the governing body required the plan in order to reduce potential impact to the natural environment and for the subdivision to comply with the subdivision plat approval. Language requiring governing body review and approval prior to any modifications to the plan shall also be included.

X.EE. Wildlife

1. At the pre-application meeting the subdivision administrator shall inform the subdivider whether a wildlife assessment and impact analysis as defined in Subsection 5, will be required as a portion of the preliminary plat application. This determination shall be made by using maps obtained from the Montana Department of Fish, Wildlife and Parks,

Montana Natural Heritage Program, U.S. Fish & Wildlife Service, Confederated Salish & Kootenai Tribes and other sources, as well as any additional information from agency personnel, as well as the subdivision size and potential impacts to wildlife and wildlife habitat. If, after the subdivision application and preliminary plat is submitted, the subdivision administrator determines that a wildlife assessment and impact analysis is required to sufficiently review the application, it can be required.

2. For every subdivision, the subdivider is responsible for identifying major species of wildlife and wildlife habitat types on and in the vicinity of the property proposed for subdivision in the subdivision application. Maps showing wildlife distribution and habitat for various species may be obtained from the Montana Department of Fish, Wildlife and Parks, Montana Natural Heritage Program, U.S. Fish & Wildlife Service, Confederated Salish & Kootenai Tribes and other sources. The subdivider shall contact these sources to obtain the most up-to-date maps and information available. The subdivider shall use this information as a guide in making a determination of whether or not the subdivision is located within or near significant wildlife habitat and submit this information with the subdivision application. The subdivision administrator may also request maps and information to determine habitat type and significance from Tribal or other agency personnel at any time.

Within the boundaries of the Flathead Indian Reservation, the Confederated Salish & Kootenai Tribal (CSKT) Wildlife and Fisheries Management Programs shall be the primary source of information on wildlife and wildlife habitat types on and in the vicinity of the property proposed for subdivision. If the project lies within the Reservation boundary, the subdivision administrator shall require the subdivider to provide a statement from CSKT Wildlife and Fisheries Management Programs regarding the wildlife and habitat types on and in the vicinity of the subdivision pursuant to the procedures defined in Chapter II.C.

3. When a proposed subdivision is located in significant wildlife habitat the subdivider shall clearly describe measures intended to mitigate potential impacts to wildlife and wildlife habitat and to lessen the potential for human-wildlife interaction and conflict. Such measures may include but are not limited to the clustering of lots in conjunction with a large area of functional habitat as protected open space, providing large lot sizes, a prohibition against further subdivision, structural building setbacks and vegetative buffers around crucial habitat, no-build zones, designated building envelopes and the adoption of wildlife friendly covenants, conditions and restrictions that are designed to mitigate impacts to the wildlife species specific to the subdivision. Lake County may require special design and development standards such as these to mitigate anticipated impacts.
4. When cluster development is proposed as a means to mitigate impacts to wildlife, the designated open space(s) shall be designed to connect with open spaces of adjacent lands wherever possible in order to provide landscape connections that promote wildlife movement and minimize habitat fragmentation.
5. When required, the wildlife assessment and impact analysis shall be submitted as a report under separate cover from the environmental assessment and shall be written by a professional wildlife biologist, with consultation from CSKT staff if the subject property is on the Flathead Reservation, or the applicable agency if the subdivision is off the Reservation. At a minimum the report shall have the following components:

- a. A description of the subdivision;
 - b. A description of existing habitats, wildlife occurrence and wildlife use on and in the vicinity of the subdivision;
 - c. An analysis of the potential impacts the subdivision would be likely to generate;
 - d. Recommendations for mitigating the impact of the subdivision on wildlife and wildlife habitat during and after construction;
 - e. The author's qualifications; and
 - f. A statement from CSKT Wildlife and Fisheries Management Programs (on the Reservation), or Montana Fish, Wildlife and Parks or U.S. Fish and Wildlife Service agency personnel (off the Reservation) regarding the content of the plan.
6. Lake County reserves the right to require third party review of the wildlife assessment and impact analysis as defined in Chapter II.G, except for the purposes of this Section the standard is reduced to a subdivision that is proposed to create more than 35 residential lots/living units or when any subdivision would create an average daily traffic of more than 350 vehicle trips per day.
 7. Best management practices for living with wildlife are included in the Administrative Materials section of these regulations. Lake County may require such best management practices to be shown on the final plat.

X.FF. Grading And Drainage Plans

A grading and drainage plan is required for all subdivisions where one acre or more of disturbance will occur from the installation of subdivision improvements (i.e., roads, utilities, stormwater facilities), where lots average less than one acre in size, and when deemed necessary by the subdivision administrator to address impacts to the natural environment.

1. All grading and drainage plans shall, at a minimum, include the following:
 - a. Existing features.
 - i. A drainage area map showing topography of the entire drainage basin(s) contributing to the site. The scale of the map shall be no smaller than 1 inch = 200 feet for drainage areas up to five hundred (500) acres. A topographic map of appropriate scale shall be provided for larger areas upstream from the design area. The drainage map is to show total acreage of the site and the acreage of all drainage areas contributing to the site.
 - ii. A site plan having a scale no smaller than 1 inch = 100 feet and existing contour intervals of not more than five (5) feet. The plan shall show topographic features such as highways, utilities, natural watercourses, existing drainage facilities and structures, adjacent property lines, north arrow, scale, and vicinity map. The site plan is to also show the limits of the adopted 100-year flood plain on the site and any critical environmental areas such as streams, lakes, ponds, irrigation canals and ditches, natural drainages, springs, and wetlands. Predominant soil types as well as the nature and extent of existing trees and other vegetation shall also be shown on the plan. Pertinent information such as existing and proposed wells,

waterlines, sewer infrastructures, buildings, and excavated and filled areas must also be shown as applicable.

- b. Proposed alterations to the site.
 - i. A plan drawing that shows the limits of clearing and grading, cuts and fills, and planned final contours. Contour intervals shall not exceed two feet for proposed disturbed areas. The plan shall identify the phasing of the grading, showing the area(s) to be denuded and the maximum time those areas will remain disturbed (not to exceed the lesser of thirty (30) working days or one hundred twenty (120) calendar days after completion of the work). The plan shall show areas to be used for storage of topsoil and excavated subsoil and plans for access to the site. The plan shall also show vegetation that is planned to be preserved.
 - ii. A final site plan showing the location or relocation of all utilities, planned streets, roads, driveways, parking lots, buildings, and structures, and all permanent storm water management and soil/slope stabilization facilities.
 - c. Temporary erosion and sediment control measures during active construction.
 - i. Drawings shall be provided showing types of measures and facilities needed and the location of those measures and facilities with dimensional details. All permanent deviations in overland flow drainage patterns and the location of ingress and egress points with the planned protection provisions are to be indicated.
 - d. Permanent erosion and sediment control measures for long-term protection.
 - i. Drawings shall be provided showing types of measures and facilities needed and the location of those measures and facilities with dimensional details. All permanent deviations in overland flow drainage patterns are to be indicated.
 - ii. The plan shall address measures to be taken to retain and add trees and manage vegetation over time.
2. As a condition of preliminary plat approval, the governing body may require a copy of an approved Stormwater Pollution Prevention Plan Permit, 310 permit, 404 permit or other applicable water quality protection permit issued by a government agency.

X.GG. Historical and Cultural Resources

The design and development of a subdivision must account for all historical and cultural resources. Each preliminary plat application shall include the following:

1. Affected areas. The application shall describe and locate on a plat overlay or sketch map any known or suspected historic or cultural resources which may be affected by the proposed subdivision, including but not limited to paleontological or archeological sites, structures, or objects.
2. Protective Measures. The application shall describe any plans to protect such resources.

3. Narrative. The application shall discuss the impact of the proposed development on any historic features and the need for an inventory, study and/or preservation with the State Historic Preservation Office or Confederated Salish & Kootenai Tribes as appropriate. The subdivider shall provide a written statement outlining any recommendations of the SHPO or CSKT and addressing any plans for inventory, study and/or preservation and mitigation planned to overcome any potentially adverse impacts.

XI. DEFINITIONS

ABUT (ADJOIN): To physically touch or border upon; or to share a common property line.

ACCESS (LEGAL, PHYSICAL and EMERGENCY):

- a. Legal access means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has or is proposed to dedicate the easement for public use or for private use specific to the proposed subdivision.
- b. Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.
- c. Emergency access means an ingress and egress route with adequate legal and physical access as well as ongoing maintenance necessary to support emergency service providers and other vehicles during an emergency situation.

ADJOINING LANDOWNER (IMMEDIATELY ADJOINING OR ADJACENT PROPERTY OWNER): The owner of record of a Lot of land that is contiguous, at any point, and land that is separated from the Lot by a road, watercourse or deeded right-of-way.

AFFORDABLE HOUSING: Housing where the occupant is paying no more than 30% of the median income for the county for gross housing costs including utility costs, rent or mortgage, taxes and insurance.

AGRICULTURE: The historic or current use of land for the production, keeping or maintenance, for sale, lease or personal use, of plants, animals useful to man, including but not limited to: forages and sod crops, grains and seed crops, dairy animals and products, livestock of all kinds, bees and apiary products, trees and forest products and fruits of all kinds. This does not include land used for mineral extraction.

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

ALiquot PART: An equal division of a Government Section as described by the “Manual for the Survey of the Public Lands of the US.”

APPROACH: The point where a residential driveway meets a public road or where a newly created access road intersects an existing public road.

AVERAGE DAILY TRAFFIC (ADT): The average number of vehicles crossing a specific point on a roadway during a 24-hour period. The projected or estimated ADT for a subdivision shall be based on the most representative land use(s) described in the manual entitled “Trip Generation” (latest edition) published by the Institute of Transportation Engineers.

BASE FLOOD: A flood having a one percent chance of being equaled or exceeded in any given year. A base flood is the same as a 100-year flood or a flood of 100-year frequency.

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

BUFFER (LANDSCAPED): An area of land adjacent to roads, trails, waterways and/or recreation sites where disturbances of vegetation are not permitted or are limited by a use agreement, easement, deed restriction or similar document. Landscaped buffers are intended to separate and partially obstruct the view between land uses, block noise, serve as a visually attractive boundary, or all three.

BUFFER (VEGETATED): An area of vegetated land generally located on the waterward side of impervious surfaces where disturbances of vegetation are not allowed or are limited by a use agreement, easement, deed restriction or similar document. Vegetated buffers are meant to protect water resources by stabilizing stream banks, minimizing soil erosion, helping to control water temperature and exclude noxious weeds, and intercepting nonpoint source pollution from surface and stormwater runoff. Vegetated buffers enhance wildlife habitat, scenic resources and recreational resources. Mowed lawns are not considered vegetated buffers. Introduction or preservation of exotic, noxious and/or invasive vegetation should be avoided. Vegetation typically consists of trees, shrubs, forbs and perennial grasses with at least 50% of the species mixture native to the area.

BUILDABLE AREA: That portion of a lot which is outside of any required building setbacks, has a slope of less than 30 percent (or 25 percent where required by locally specific zoning regulations), is free from wetlands, is outside of a 100-year floodplain and upon which a building may be lawfully constructed.

BUILDING ENVELOPE: Designated areas where any and all building construction shall occur on the lot where any and all building construction may occur on outside of which any and all building construction is prohibited.

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. [76-3-103(1), MCA].

CISTERN: A water storage tank which is generally buried below frost level.

CITY OF THE FIRST CLASS: A municipality with a population of 10,000 or more.

CITY OF THE SECOND CLASS: A municipality with a population of less than 10,000 and more than 5,000.

CITY OF THE THIRD CLASS: A municipality with a population of less than 5,000 and more than 1,000.

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

COMMERCIAL: Enterprises involving wholesale trade, retail trade, professional services and/or personal services.

CONDOMINIUM: The ownership in common with others of a parcel of land and certain parts of a building together with individual ownership in fee of a particular unit or apartment in such building.

CONSERVATION EASEMENT: The grant of a property right or interest from the property owner to a unit of government or a nonprofit conservation organization stipulating that the described land shall remain in perpetuity (or defined time period) in its natural and open state, precluding future or additional development (with the exception of any allowable structures or facilities).

COVENANT (RESTRICTIVE COVENANT): An agreement, or restriction, in writing of two or more parties by which any of the parties pledges to the other that something is done or shall be done with regard to the use of real property.

- a. **Property owners association covenants:** Those agreements created in conjunction with a property owners association. Such covenants outline the powers and duties of the association, including maintenance and repair of common areas and/or shared infrastructure, enforcement of use and building design restrictions, and establishment and collection of assessments.
- b. **Plat approval covenants:** Those covenants required by the governing body as a condition of plat approval. Such covenants may outline a wide range of development restrictions such as fire protection measures, wildlife protection measures and agricultural protection measures. Plat approval covenants are enforceable by the governing body.

CURB or CURVE RADIUS: The radius of the circular arc formed by the object being measured. (ie. centerline of a roadway driving surface, edge curb of driving surface at intersection, etc).

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

DEED RESTRICTION: A restriction on the use of a lot or Lot of land that is set forth in the deed and recorded with the Lake County Clerk & Recorder. A deed restriction is binding on subsequent owners.

DEFENSIBLE SPACE: An area surrounding a building or roadway where measures are taken to reduce the chances of a fire spreading to or from the building and to reduce the threat to life and/or property from fire. Typical measures include tree thinning and removal of other flammable debris and fuel.

DENSITY: The average number of residential, commercial or industrial units per acre. Density is distinct from minimum lot size.

DEQ: The Montana Department of Environmental Quality.

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

DRIVEWAY: A vehicular accessway that is constructed and maintained to provide physical access to the primary dwelling unit or building site on one lot.

DRY HYDRANT: A pipe that leads to a water source, but has no pressure of its own. Firefighters attach fire hoses to dry hydrants and draft water from the water source to supply water apparatus and pumps. The portion of the piping that perpetually contains water must be below frost level.

DWELLING UNIT: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation facilities for use solely by one family. All rooms comprising a dwelling unit shall have access through an interior door to other parts of the dwelling unit.

EASEMENT: An interest in land owned by another that entitles its holder, who can be a person, governmental entity or other, to a specific limited use. An easement may also limit the landowner's right of use of the land.

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

ENVIRONMENTAL ASSESSMENT (EA): A document that, when required, accompanies a subdivision application and must include:

- a. A description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision; and
- b. A summary of the probable impacts of the proposed subdivision based on criteria described in 76-3-608, MCA; and
- c. A community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, road maintenance, water sewerage and solid waste facilities, and fire and police protection; and
- d. Additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501, MCA, as may be required by the governing body.

EXAMINING LAND SURVEYOR: A registered land surveyor appointed by the governing body to review surveys and plats.

FAÇADE: That portion of any exterior elevation on the building extending from grade to the top of the parapet, wall or eaves and the entire width of the building elevation.

FEMA: Federal Emergency Management Agency.

FINDING OF FACT: A written conclusion or determination based on evidence made in support of a decision.

FIRM: A flood insurance rate map on which the FEMA has delineated both the 100-year floodplain and the risk premium zones.

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

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

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

FLOODWAY: The channel of a watercourse or drainage and those portions of the adjacent overbank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (1/2) foot.

GOVERNING BODY: The governing authority of a county, city, town or consolidated local government organized pursuant to law. In the case of Lake County, the Board of Lake County Commissioners is the governing body.

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

HEIGHT (AVERAGE BUILDING HEIGHT): The average building height of a structure is computed by determining the average of the sum of the highest points on each major side of a structure. For the purposes of determining average building height, all structures shall have a maximum of four major sides. The highest point of a side shall be measured from the top of the highest component on that side to the average ground elevation on that side. The highest point shall not include typical extensions above a roofline such as chimneys or antennae. The ground elevation shall be measured from the lower of (1) the grade prior to construction or (2) the grade after construction, exclusive of filling, berming, mounding or excavating.

HISTORICAL AND CULTURAL RESOURCE: Any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American or Tribal history, architecture, archaeology, biology, or anthropology. This term includes fossilized plants and animals of a geological nature, as well as historical records, art, historical places, sites, and monuments, which are rare and critical to scientific research or has a potential to address specific research questions.

HOMEOWNERS (OR PROPERTY OWNERS) ASSOCIATION: A private, nonprofit corporation of homeowners or property owners, established according to state law for the purpose of owning, operating and maintaining various common properties.

IMMEDIATE FAMILY: A spouse, children by blood or adoption, and parents.

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.

LAKE: A body of standing water and the area within its lakeshore, including adjacent wetlands, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least six months in a year of average precipitation of such averages are determined by the United States Geological Survey, not used exclusively for

agricultural purposes, and navigable by canoes and small boats. The lakes within Lake County are Flathead Lake, Swan Lake and Lake Mary Ronan.

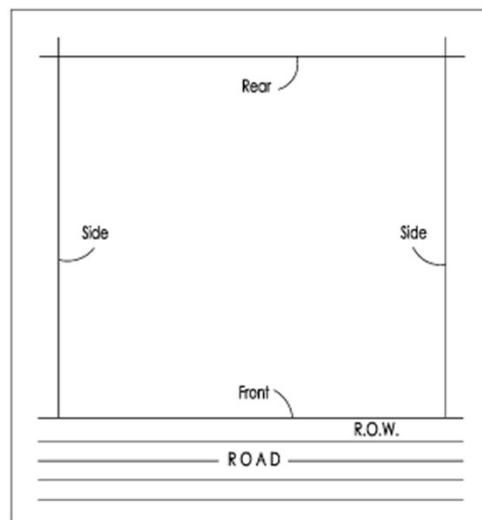
LANDOWNER: All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a lot for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of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

LOCAL SERVICES: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens. These services include, but are not limited to, law enforcement, fire protection, water supply, recreation, streets and roads, parks, libraries, schools, wastewater, electrical and telephone service and solid waste collection and disposal.

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

LOT LINE: A line dividing one lot from another lot or from a street or alley. (See Figure XI.1)

Figure XI.1, Lot Lines



- a. **Front Lot Line:** A lot line described for each of the following types of lots: on an interior lot, the lot line abutting a street; or, on a corner lot, the shorter lot line abutting a street; or, on a through lot, the lot line abutting the street providing the primary access to the lot; or on a flag lot, the interior lot line most parallel to and nearest the street from which access is obtained.
- b. **Rear Lot Line:** A lot line that does not intersect a front lot line that is most distant from and most closely parallel to the front lot line.
- c. **Side Lot Line:** A line not a front or a rear lot line.

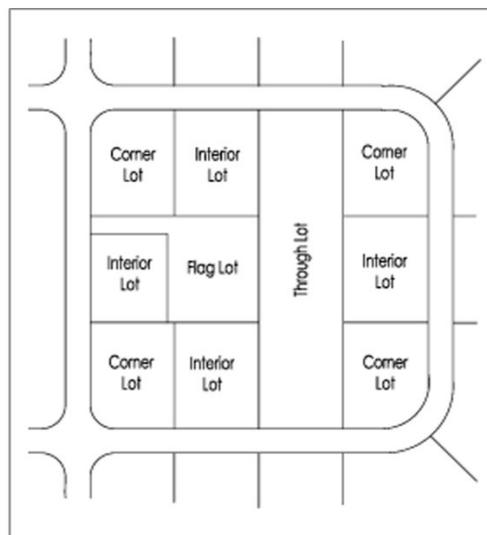
LOT MEASUREMENT:

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

LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two roads or a lot located at a bend in a road so that it is abutted on two sides by the road (see Figure XI.2).
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot: A lot with a narrow extension whose only purpose is providing access to the main body of the lot and avoidance of road construction requirements.
- e. Irregular: A lot whose opposing property lines are generally not parallel, such as a pie-shaped lot on a cul-de-sac or where the side property lines are not parallel to each other.

Figure XI.2, Lot Types



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

MATERIAL (as in a material change to an application or plat): Significant, substantially altering the proposal or having an impact on any of the primary review criteria, bringing the proposal out of conformance with the Lake County Growth Policy, zoning or subdivision regulations, or impacting the public's opportunity to provide meaningful comment.

MEAN ANNUAL HIGH WATER MARK: The average of the highest elevation of a water body in each of at least five consecutive years, excluding any high levels caused by erratic or unusual weather or hydrologic conditions. The highest elevation caused by operation of a dam or other impoundment counts towards the establishment of the mean annual high water elevation. When the mean annual high water mark cannot be readily determined, the governing body may permit the high water mark to be a mutually agreed upon line that impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area waterward of this line may include distinctive marks such as those caused by erosion, prevention of terrestrial vegetation or other distinct vegetation pattern, discoloration, etc.

MINOR SUBDIVISION: A subdivision that creates five or fewer lots.

MITIGATE: To eliminate or make the reasonably expected impacts of a subdivision less severe.

MIXED USE: Development designed to encourage a diversity of compatible land uses, which include a mixture of two or more of the following uses: residential, office, retail, recreational, light industrial or other miscellaneous uses.

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

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

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

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

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

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

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

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

NO BUILD ZONE: An area in which no building or structure may be constructed or otherwise placed.

NO INGRESS/EGRESS ZONE: An area across which permanent vehicular access is prohibited.

OPEN SPACE: Land that is essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the enjoyment of owners and occupants of land adjoining or neighboring such open space. This includes land that is intended to be preserved due to significant natural resources, wildlife habitat, viewsheds, irrigated or prime agricultural land and other similar features. This does not include land used for mineral extraction.

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

PARK: Land that is specifically dedicated for outdoor recreational purposes for use by residents in a subdivision or the general public. The land is typically free of structures but may contain historic structures, recreational or community facilities.

PARK DEDICATION: Land set aside by the subdivider for park purposes.

PARK DEDICATION, CASH IN LIEU: A cash payment that is equal to the assessed value of the land that would have been dedicated for park purposes.

PARK MODEL: A recreational vehicle built on a single chassis, mounted on wheels, and designed to facilitate movement from time to time but not intended to be towed on a regular basis. A park model is designed to provide recreational seasonal or temporary living quarters which may be connected to utilities necessary for operation of installed fixtures and appliances. Such units that are greater than 320 square feet in size when in set-up mode may be dual labeled by the manufacturer as both a park trailer recreational vehicle and a manufactured home.

PERSON: Any individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

PLANNED UNIT DEVELOPMENT (P.U.D.): 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 [76-3-103 (10), MCA].

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

PLANNING DEPARTMENT: The Lake County Planning Department.

PLAT: A graphical representation of a subdivision showing the division of land into lots, Lots, blocks, streets, alleys, and other divisions and dedications. When a subdivision created by rent or lease is proposed, the word plat can be used interchangeably with the term site plan.

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA.
- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
- c. Site Plan: The final drawing of a property containing a subdivision for rent or lease or condominium subdivision required to be prepared for recording with the county clerk and recorder containing all the elements set forth in these regulations, or as required by the preliminary subdivision approval.
- d. Amended Plat: The final drawing of any change to a filed platted subdivision, or any lots within a filed platted subdivision.
- e. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.

POND: An inland body of water smaller than a lake.

PRELIMINARY PLAT APPLICATION (SUBDIVISION APPLICATION): An application form, preliminary plat, environmental assessment (if applicable), required water and sanitation information and other information described in these regulations necessary for the representatives of Lake County to review the subdivision proposal.

PRIME FARMLAND: As defined by the United States Department of Agriculture, the land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

PRIME FORESTLAND: As defined by the United States Department of Agriculture, those timberlands that have soil and moisture capable of producing wood at the rate of 85 cubic feet or more per acre per year in natural stands and are not in urban or built up areas or water.

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

PRIVATE ROAD: A road is private if its right-of-way has neither been dedicated nor acquired for public use, is not considered prescriptive for use by the general public by the governing body, and is not maintained by Lake County. A private road may be open to use by the general public or public access may be restricted, but the governing body has no maintenance responsibility.

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

PUBLIC HEARING: The official hearing at which a subdivision application is considered and the public is invited to provide testimony. The procedure follows the steps described in Chapter 7 of the Lake County Growth Policy. Public notice shall be provided as required by 76-3-605, MCA.

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

PUBLIC MEETING: A meeting open to the public at which a subdivision application is considered and the public is invited to provide testimony. The procedure follows the steps described in Chapter 7 of the Lake County Growth Policy although the public notice requirements of 76-3-605, MCA do not apply.

PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use, or it is considered prescriptive for use by the general public by the governing body, and is maintained by Lake County.

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

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

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

REMAINDER: That portion of an original tract that is left following the segregation of other parcels from the original tract when created through a family transfer or agricultural exemption as provided for by 76-3-207, MCA. In order to claim a remainder a landowner must provide evidence that the parcel is not intended for transfer. A remainder is considered a lot in a subdivision and will be reviewed as a part of a subdivision proposal unless segregated from the development parcel via exemption.

RIPARIAN AREA: The area which lies between channels of flowing water and uplands, and which serves several functions, including water storage and aquifer recharge, filtering of chemical and organic wastes, sediment trapping, bank building and maintenance, flow energy dissipation and primary biotic production and wildlife habitat.

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

ROAD: A vehicular accessway, located within an easement or right-of-way, constructed and maintained to provide legal and physical access to more than one lot.

ROAD MAINTENANCE AGREEMENT: A written instrument recorded with the County Clerk and Recorder that defines how a private road will be maintained in perpetuity, or until such time and the County, State or other public body accepts it as a public road, and the rights and obligations of the parties to the agreement.

ROAD TYPES: For purposes of these regulations, road and street types are defined as follows:

- a. **Alley:** A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by a road that is at a minimum classified as a primary access road.
- b. **Arterial:** A road or street having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
- c. **Collector:** A road or street having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
- d. **Cul-de-sac Road:** A road having only one outlet terminating in a vehicle turnaround area. The length of a cul-de-sac road shall be measured from the centerline of the intersecting street to the center of the cul-de-sac (This sentence to be moved to the design standards when they are written).
- e. **Emergency Service Road:** A road that allows limited ingress or egress and emergency access to a subdivision. Emergency service roads connect the subdivision primary access road to one or more other roads and are built to a standard to ensure use by service providers and the public under emergency conditions. Emergency service roads are not intended to carry daily traffic.
- f. **Frontage Road:** A local or collector road, usually parallel and adjacent to an arterial or major collector road which provides access to abutting properties and controls traffic access to arterials or collectors.
- g. **Half-Street:** A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- h. **Local Road:** A road or street having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
- i. **Loop:** A local street which begins and ends on the same street, generally used for access to properties and resembles a horseshoe.
- j. **Primary Access Road:** The principal way of approach to provide ingress or egress to a property or subdivision.

RURAL (OR SPECIAL) IMPROVEMENT DISTRICT: An established area in an unincorporated area of Lake County that is created by the Governing Body pursuant to Title 7, Chapter 12, Part 21, MCA for the express purpose of levying a special tax to pay for public improvements/maintenance for the benefit of those within the district.

SLOPE: The degree of deviation of a surface from horizontal measured from the natural grade. For the purposes of these regulations, slope is expressed in percent and may be averaged across a specific, limited area or physical feature such as a road or segment of road, a building site (or buildable area), a building envelope, lot or an entire subdivision.

To calculate the average slope of an area of interest, slope calculations shall use the smallest contour interval available or as required by the reviewing agency (typically 5 feet or less, depending on the size of the area and level of accuracy required). The average slope may be calculated using the following formula:

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of an area (%)

I = Contour interval of map in feet

L = Total length of the contour lines within the area (feet)

A = Area in acres

0.0023 = Constant which converts square feet into acres.

When requested by the subdivision administrator, the subdivider shall provide the necessary information demonstrating accurate slope calculations. Applications may include an alternate method of slope calculation for consideration based on the peculiarities of the site when the calculations are prepared by a registered surveyor, licensed engineer or other qualified professional. The methods of calculation must be rational and may include information such as weighted average, slope mapping or other field based techniques. Alternate methods of slope calculations are subject to acceptance by the subdivision administrator.

SETBACK: The minimum distance by which any building or structure must be separated from a road, property line, easement or other identified physical, conceptual or biologic object. Setback and buffer distances are measured on a horizontal plane from foundation walls, and all extensions of the house including eaves, attached decks, walkways over 5 feet in width and patios.

SPECIES OF CONCERN: Species whose survival is at risk or potentially at risk due to rarity, restricted distribution, habitat loss and/or other factors. The term also encompasses species that have a special designation by organizations or Federal or State land management agencies including the Bureau of Land Management and U.S. Forest Service Special Status and Watch Species and U.S. Fish and Wildlife Service Threatened, Endangered and Candidate species.

STORMWATER: The accumulation and flow of water from a precipitation event, including snowmelt, that runs off surfaces rather than absorbing into the soil.

STRAW PERSON: A third party used as a temporary transferee of real property, under the guise of a family transfer exemption request, when the genuine intent of the proponent is to create a parcel for resale or land speculation purposes.

STREAM TYPES: For the purposes of these regulations, stream types are defined as follows:

- a. **Ephemeral:** An ephemeral stream flows only for hours or days following a major rainfall or snow melt event. Ephemeral streams or channels are generally described as drainages in these regulations and are distinct from intermittent streams.
- b. **Intermittent:** An intermittent stream ceases to flow for weeks or months each year.
- c. **Perennial:** A perennial stream has a continuous flow in parts of its bed all year round during years of normal rainfall.

SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the subdivision administrator is provided written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

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

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

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

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

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

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

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

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

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

VARIANCE: Relief from a regulation standard where strict enforcement of the standard would create a hardship upon the landowner.

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

VIEWSHED: A visually prominent area seen from common public observation areas. Visually prominent areas include skylines, ridgelines, bluffs, rock outcroppings, peaks and surface water. Common observation points include public roads, navigable waterways and public lands.

WATER BODY: Man-made and natural water features including rivers, streams, creeks irrigation ditches, lakes and ponds. This term also includes any natural, river, creek, drainage, waterway, gully, ravine or wash in which water flows either continuously or intermittently and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow.

WETLANDS: Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. When making a wetland determination, the environmental characteristics used are vegetation, soil, and hydrology. Greater than 50% of the vegetation present must be considered hydrophytic. Hydric soil must be present. The hydrology requirement is satisfied when an area is saturated within 12 inches of the surface at some time during the growing season of the prevalent vegetation. Unless an area has been altered or is a rare natural situation, wetland indicators of all three characteristics must be present during some portion of the growing season for an area to be a wetland.

WILDLAND URBAN INTERFACE: Where humans and their development meet or intermix with wildland vegetation on one or more sides of a proposed subdivision.

WILDLAND VEGETATION: Uncultivated land covered by forest, brush or grass. Wildland vegetation does not include lands that are fallow or grazed on an annual or greater basis.

WILDLIFE: All birds, mammals, amphibians, reptiles and fish that are not domesticated or tamed.

WILDLIFE HABITAT: Land and water that provides food and shelter for wildlife. For the purposes of these regulations, wildlife habitat can be broken into the following types:

- a. **Crucial Habitat:** Places containing resources such as food, water, cover and shelter, that contribute to survival and reproduction of wildlife, and are necessary to prevent unacceptable declines, or facilitate future recovery of wildlife populations, especially federally-listed or proposed endangered and threatened species. Two types of crucial habitat include:
 1. **Important Wildlife Movement Corridors:** Crucial habitats that provide connectivity over different time scales (seasonal or longer), between areas used by animal and plant species. Such corridors can exist within unfragmented landscapes, or connect naturally or artificially

fragmented habitats, and serve to maintain or increase the essential genetic and demographic connection of populations.

2. **Winter Range:** That part of the overall range where concentrations of wildlife occur between October and April.
- b. **Significant Wildlife Habitat:** Includes crucial habitat and also summer range, aquatic habitat, including riparian areas, wetlands and other surface water bodies, breeding and rearing areas, waterfowl and upland bird production areas, and habitat for other species of concern.

APPENDIX A

**UNIFORM STANDARDS FOR MONUMENTATION,
CERTIFICATES OF SURVEY, AND FINAL SUBDIVISION PLATS**

24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

1. The following standards govern the monumentation of land surveys:
 - a. The terms "monument" and "permanent monument" as used in these regulations mean any structure of masonry, metal or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
 - b. All metal monuments must be at least one-half inch in diameter and 18 inches in length with a cap not less than 1 inch in diameter marked in a permanent manner with the license number of the surveyor in charge of the survey and either the name of the surveyor or the company employing the surveyor. Metal monuments marking a public land survey corner as described in 70-22-101, MCA, must be at least 24 inches long and 5/8 inch in diameter with an appropriately stamped metal cap at least 2 inches in diameter. A monument marking a public land survey corner may also consist of a cap as described in this rule set firmly in concrete.
 - c. Before a subdivision plat or certificate of survey may be filed for record the surveyor shall confirm the location of as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.
 - d. The surveyor shall set all monuments prior to the filing of a plat or certificate of survey except those monuments that will be disturbed by the installation of improvements or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.
 - i. If during the later monumentation of the corners of a plat or certificate of survey that were not monumented before the plat or certificate was filed, the surveyor finds that it is necessary to set a reference monument to a corner, the surveyor shall prepare and file an amended certificate of survey or subdivision plat.
 - ii. The failure of the surveyor to set the monuments by the date certified on the record of survey will be deemed a violation of these rules.
 - e. The surveyor shall set monuments at the following locations:
 - i. At each corner and angle point of all lots, blocks and parcels of land created by the survey.

- ii. At every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey.
 - iii. At every point of curve, point of tangency, point of reversed curve, point of compounded curve and point of intersection on each road right-of-way line created by the survey.
 - iv. At the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.
- f. If the placement of a required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument. This monument has the same status as other monuments of record if its location is properly shown. If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat.

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

1. A certificate of survey may not be filed by a county clerk and recorder unless it complies with the following requirements:
 - a. A certificate of survey must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 ½ inch margin on the binding side.
 - b. One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
 - c. If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
 - d. A certificate of survey must show or contain on its face or on separate sheets referred to on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
 - i. A title or title block including the quarter-section, section, township, range, principal meridian and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision" or any title other than "Certificate of Survey."
 - ii. The name(s) of the person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.
 - iii. The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.
 - iv. A north arrow.

- v. A scale bar. (The scale must be sufficient to legibly represent the required information and data.)
- vi. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
 - A. If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to which they will be set.
 - B. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).
- vii. The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the survey.
- viii. Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- ix. The bearings, distances and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
 - A. The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.
 - B. For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- x. Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.
- xi. Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- xii. A narrative legal description of the parcel surveyed as follows:
 - A. If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.

- B. If the survey depicts the retracement or division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.
 - C. If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the parcel surveyed.
 - D. If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.
 - E. The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel.
- xiii. Except as provided by (1)(f)(iv), all parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.
- xiv. The location of any easement that will be created by reference to the certificate of survey.
- xv. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3- 625, MCA) and the regulations adopted under that Act.
- xvi. A memorandum of any oaths administered under 76-3-405, MCA.
- xvii. Space for the county clerk and recorder's filing information.
- e. Certificates of survey that do not represent a division of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must bear a statement as to their purpose and must meet applicable requirements of this rule for form and content.
 - f. Procedures for divisions of land exempted from public review as subdivisions. Certificates of survey for divisions of land meeting the criteria set out in 76-3-207, MCA, must meet the following requirements:
 - i. A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.

- ii. If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.
- iii. If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
- iv. If a certificate of survey invokes the exemption for the relocation of common boundary lines:
 - A. The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);
 - B. The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;
 - C. If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.
- v. A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.
- vi. If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.
- vii. For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.
- g. Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205 and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

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

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

- ii. If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
 - iii. If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
 - iv. If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
 - q. The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.
 - r. A memorandum of any oaths administered under 76-3-405, MCA.
 - s. The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
 - t. Certification by the governing body that the final subdivision plat is approved.
 - u. Space for the clerk and recorder's filing information.
3. The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:
- a. If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.
 - b. If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.
 - c. A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
 - d. Copies of any covenants or deed restrictions relating to the subdivision.
 - e. If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.

- f. A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.
- g. Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer where applicable that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.
- h. If applicable, the certificate of the examining land surveyor.
- i. If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.
- j. The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.