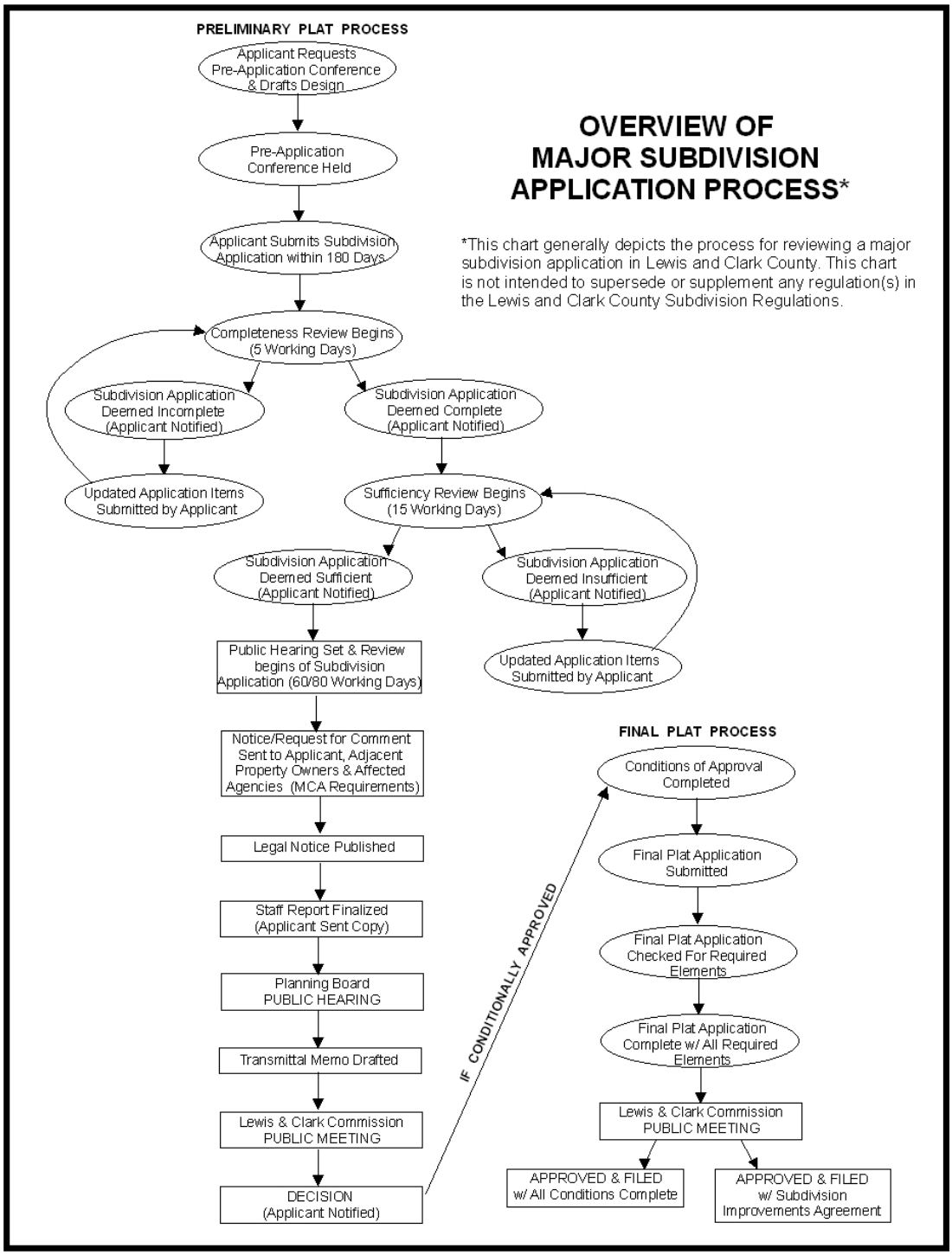
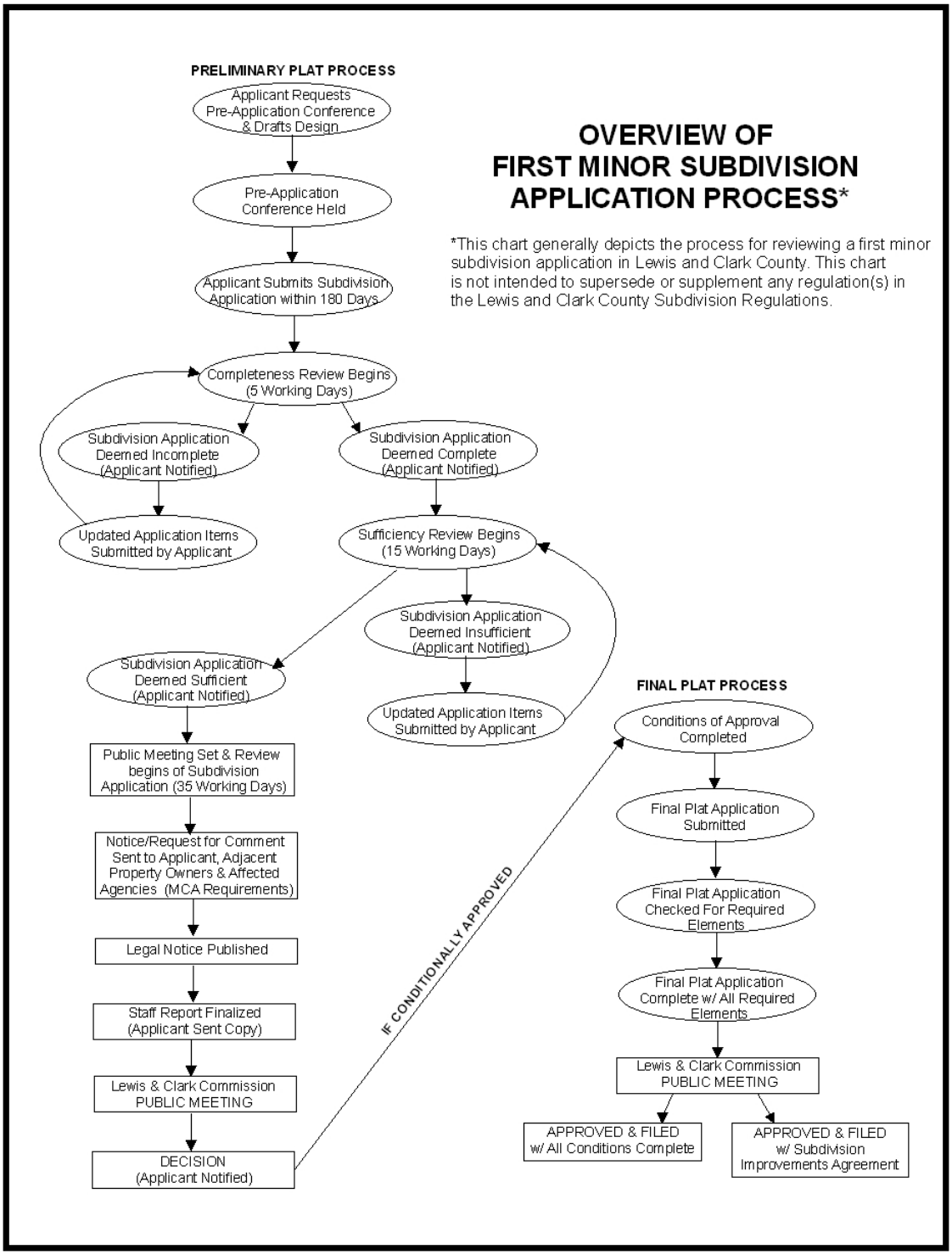
III. PROCEDURES FOR SUBDIVISIONS

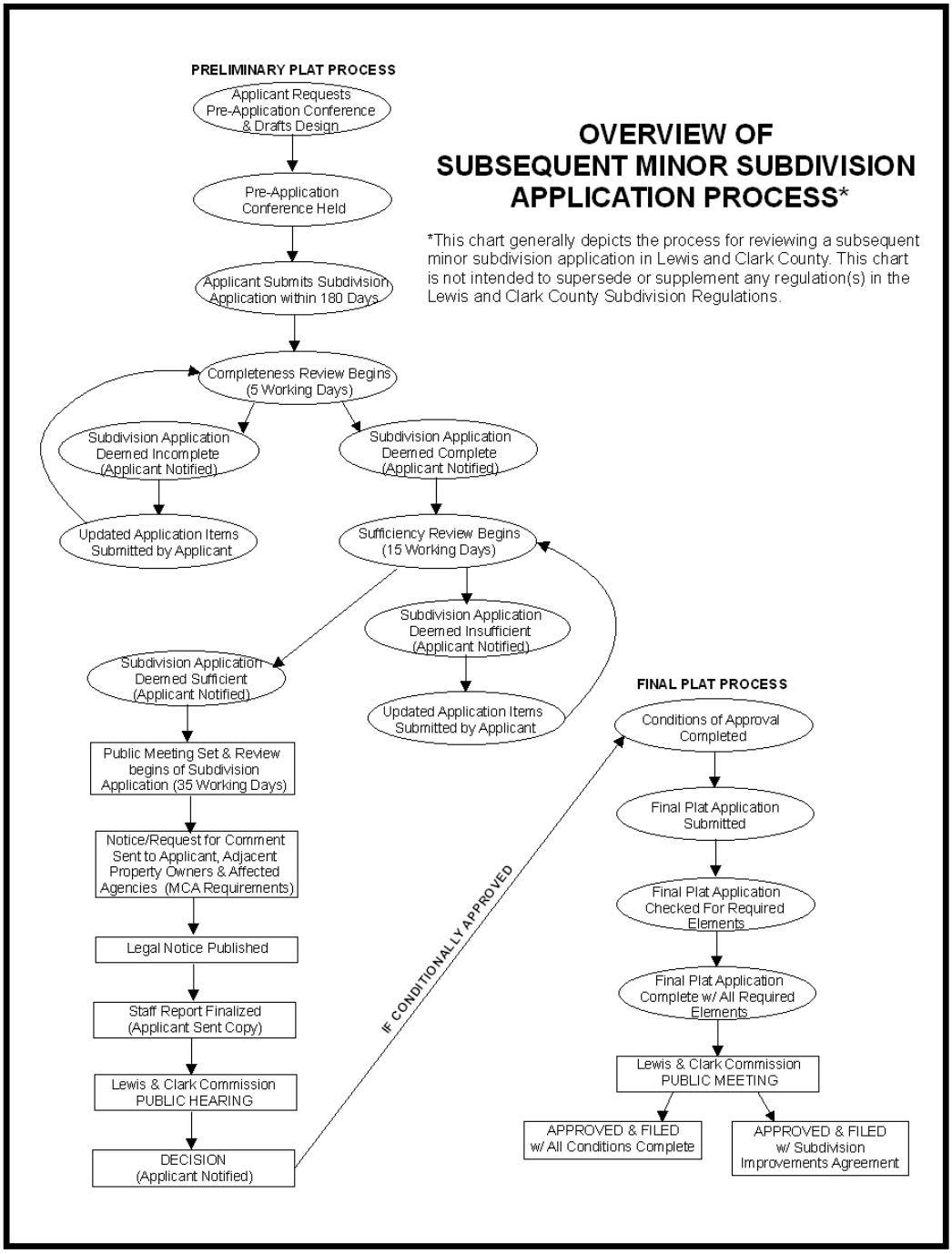
Overview of Major Subdivision Review Process



Overview of First Minor Subdivision Review Process



Overview of Subsequent Minor Subdivision Review Process



A. Introduction

1. Major Subdivisions

Major subdivisions are considered to be those divisions of property that include six or more parcels, and that otherwise meet the definitions in Title 76-Chapter 3, MCA.

2. Minor Subdivisions

If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision or has not resulted from a tract of record that has more than five parcels created from that tract of record under Sections 76-3-201 or 76-3-207, MCA since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record.

The following requirements shall not apply to first minor subdivisions:

a. the completion of an environmental assessment;

b. Parts II, and III of the Montana Department of Environmental Quality/Local Government Joint Application Form;

c. a public hearing; and

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

3. Subsequent Minor Subdivisions

As provided in Section 76-3-609 (3) and (4), MCA, any minor subdivision that is not a first minor subdivision from a tract of record as provided in subsection 2 above is a subsequent minor subdivision and must meet all review requirements for a major subdivision except for review by the Planning Board and the time frame for review and decision.

4. Review Criteria for Subdivisions

a. All subdivisions must be designed by the applicant to avoid or mitigate any significant adverse impacts on:

- agriculture;
- agricultural water users;
- local services;

- natural environment;
- wildlife;
- wildlife habitat; and
- public health, safety and general welfare.

b. All subdivision applications must also be in compliance with:

- survey requirements of the Montana Subdivision and Platting Act;
- these local Subdivision Regulations; and,
- the review procedures contained in these Subdivision Regulations.

c. All subdivisions must provide easements within and to the subdivision for the location and installation of any planned utilities.

d. All subdivisions must provide legal and physical access to each parcel within the subdivision with notation of that access on the plat and any instrument of transfer concerning each parcel.

B. Subdivision Application Review Process

The preliminary plat is a to-scale drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements that furnish a basis of review by the governing body. Appendix B outlines the requirements for a preliminary plat and the subdivision application.

As described below, the process leading to a decision on the subdivision application and preliminary plat includes pre-application meetings with staff; review by planning staff, Planning Board members, and the County Commission; and opportunities for public review and comment.

1. Pre-application Procedures

The applicant (who may be the subdivider or, with the subdivider's written permission, the subdivider's agent) shall contact the Community Development and Planning Department to schedule a meeting with County planning and Environmental Health staff. The pre-application meeting shall take place prior to submitting the required subdivision application. The pre-application conference shall take place not more than thirty (30) calendar days from the date that the Community Development and Planning Department receives a complete submittal package from the Applicant. This meeting is required and must be held not more than one hundred eighty (180) calendar days prior to submittal of a subdivision application.

The purpose of this meeting is to identify the state laws, local regulations, and the applicable goals and objectives of the Lewis and Clark County Growth Policy that may apply to the subdivision review process, including, but not limited to: zoning regulations, floodplain regulations, and other applicable regulations. The planning staff may notify the applicant of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality.

The applicant shall provide a to-scale sketch plan of the proposed subdivision for review and discussion. The sketch plan may be a freehand sketch made directly on a print of a topographic map. The sketch plan shall be legibly drawn; show the layout of proposed features in relation to existing site conditions, and the scale dimensions shall be noted on the sketch.

The sketch plan shall include pertinent information such as the following:

a) approximate tract and lot boundaries of existing tracts of record, with scale dimensions noted;
b) location of easements, existing rights-of-way, proposed county roads, conservation easements, utilities, parks and open spaces; and
c) a description of general terrain, natural features (including water bodies, floodplains, geologic hazards and soil types), existing structures and improvements, and proposed public improvements.

The applicant shall provide documentation of:

a) ownership information, such as a deed, option to buy or buy-sell agreement; including permission to subdivide;
b) water rights, including location of agricultural water facilities;
c) any applicable rural or special improvement districts
d) existing zoning, covenants or development regulations standards,
e) rights of first refusal for the property; and
f) the most recent certificate of survey or subdivision plat or deed on file with the Clerk and Recorder's Office.

The Applicant shall receive a list of public utilities, local, state, and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment on the subdivision application. The Applicant shall be notified about the time frames that public utilities, agencies, and other entities are given to respond.

The Applicant shall be notified of any particular additional information that may be required for review of the subdivision application. This does not limit the ability of the planning staff to request additional information at a later time.

2. Subdivision Application Submissions and Distribution

The applicant shall submit for review and approval a subdivision application and preliminary plat of the proposed subdivision that conforms to the requirements of these regulations. The preliminary plat and subdivision application shall be prepared in compliance with the requirements listed in Appendix B, and conform to design and improvement of these regulations, including the fire standards in Appendix K and the road standards contained in the Lewis and Clark County Public Works Manual.

If any design features or improvements do not conform with/to these standards, the applicant shall submit a written request for variances with the preliminary plat subdivision application, pursuant to the process in these regulations.

The applicant shall submit a written expressed preference for fulfilling the requirement for parkland dedication or cash donation with the preliminary plat subdivision application, as stipulated in these regulations (see Chapter XI for more details).

The applicant may set forth in the preliminary plat subdivision application a plan for phased development, including filing of the final plat in a phased manner.

The planning staff will review the application materials and determine the completeness and sufficiency of the application. The planning staff has five (5) working days to determine whether the application is complete and shall give written notice to the applicant or, with the applicant's written permission, the applicant's agent of the planning staff's determination of completeness. If elements are missing from the application, planning staff shall identify those elements in the written notification. The applicant must provide all missing elements before the completeness review process will restart from the beginning.

Within fifteen (15) working days after the applicant has been notified in writing that the application contains all the required elements, planning staff shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow review of the proposed subdivision, and shall give written notification to the

applicant or, with the applicant's written permission, the applicant's agent of the determination by staff. If planning staff determines that information in the application is not adequate for review of the proposed subdivision, the insufficiencies of the application shall be identified in the written notification. The applicant must provide all necessary information required in the sufficiency notification letter before the sufficiency review process will restart from the beginning.

A sixty (60) working day review period for major subdivision applications with forty-nine (49) or less lots commences on the first working day after planning staff determines that the subdivision application is complete and sufficient. An eighty (80) working day review period for major subdivision applications with fifty (50) or more lots commences on the first working day after planning staff determines that the subdivision application is complete and sufficient.

A thirty-five (35) working day review period for minor subdivisions and subsequent minor subdivisions commences on the first working day after planning staff determines that the subdivision application is complete and sufficient.

The review period may be extended or suspended based on the applicant's written concurrence or request. The applicant may verbally concur or request an extension or suspension before the governing body during a public meeting. An extension or suspension of the review period shall not exceed one (1) year from the date of request or concurrence.

A determination that an application is complete and/or contains sufficient information for review does not ensure the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agency or the governing body to request additional information.

A determination of sufficiency by the planning staff does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

After Planning staff has determined the application is complete and sufficient, copies of the subdivision application will be distributed for review to local entities, having a substantial interest in proposed subdivisions, including (but not be limited to) the following:

- Fire, school, and conservation districts;
- Law enforcement, road, and sanitarian/health departments; utilities;
- The United States Forest Service, Bureau of Land Management, and Natural Resources Conservation Service;

- State agencies such as Montana Fish, Wildlife & Parks, the Department of Natural Resources and Conservation, Department of Environmental Quality, and Department of Transportation; and/or
- Other appropriate bodies.

The distribution list may vary, depending on the nature and location of the subdivision proposal.

Review of complete and sufficient applications by other organizations shall not delay the governing body's action beyond the working day limits for major, minor, and subsequent minor subdivisions. Any review comments shall be made available to the applicant. Any review comments shall be made available to any member of the public upon request. If, during the review of the application, the planning staff contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, planning staff shall notify the applicant of the contact and the timeframe for response.

The planning staff will review the application and any comments received from other organizations and the public. Findings and the rationale behind them shall be incorporated into a staff report with draft conditions of approval needed to mitigate impacts on review criteria and/or to comply with subdivision requirements, and identification of any impacts on the review criteria that cannot be mitigated and warrant denial of the subdivision application. Copies of the staff report will be sent to the applicant, to the Planning Board for major subdivisions, and to the governing body.

3. Permission to Enter

By submitting a subdivision application for review, the applicant agrees that the governing body or its designated agent(s) or any affected governmental agency identified during the pre-application meeting may conduct investigations, examinations, and site evaluations deemed necessary to verify information supplied by the applicant as a requirement of these regulations, to post notice, or to adequately evaluate the proposal, and to subsequently monitor compliance with any conditions if the preliminary plat is conditionally approved. The submission of pre-application materials or a preliminary plat subdivision application for review shall constitute permission for the governing body, its agents, and affected agencies to enter the subject property.

In order to facilitate site investigations, the applicant shall establish visible flagging on the property, located at a minimum on property boundary corners and the entrance intersections of main access roads. This flagging

must be established at the time of submittal of the preliminary plat subdivision application.

4. Exemptions from Environmental Assessment, Public Hearing, and Review under Some Subdivision Review Criteria

Subdivisions located in the Urban Growth Area of the Helena Valley Area Plan that meet the requirements of this section qualify for certain exemptions from the requirements of these regulations.

The Helena Valley Area Plan provides for expedited reviews of a subdivision that satisfies all of the following criteria (Section 76-3-616(2), MCA):

a. The proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of Section 76-1-601(4)(c), MCA for an infrastructure plan; and,

b. The proposed subdivision is entirely within an area subject to zoning adopted pursuant to Sections 76-2-203 or 76-2-304, MCA that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of Section 76-1-601(4)(c), MCA; and

c. The subdivision proposal includes a description, using maps and text, of future public facilities and services that are necessary to efficiently serve the projected development.

Subdivisions located in such areas shall not be required to comply with the following requirements:

e. Submit an environmental assessment;

f. Undergo a public hearing; or

g. Be subject to review for potential impacts on the criteria listed in Section III. A. 4 of these regulations and Section 76-3-608 (3)(a), MCA.

5. Amended Subdivision Applications

If the applicant makes a change to the subdivision application or preliminary plat after the Planning Department has deemed the application

complete and sufficient, the applicant shall provide to the Planning Department a written request to amend the application or preliminary plat and to suspend the review period. If the Applicant fails to submit a valid written request, the Planning Department, the Planning Board, or the governing body will not review the changed subdivision application or preliminary plat.

The Planning Department will determine whether the change is a substantial change and notify the applicant in writing of that determination within five (5) working days after receiving the written request.

If the change is deemed substantial and the applicant wishes to go forward with the changes, the Applicant shall complete the following:

1) Attend a new pre-application conference;
2) Submit a new application to the Planning Department; and
3) Pay all required fees for the new application.

If the original application is not withdrawn, review of the original application will continue and a new working day review period will commence.

If the change is deemed not to be substantial, a new working day review period commences on the first working day after the Planning Department notifies the Applicant in writing of that determination. By requesting to amend an application or preliminary plat, the applicant consents to the restarting of the working day review period from the beginning.

The following changes, although not an exclusive list, may be considered substantial:

a) reconfiguration or number of lots;
b) lot uses and or layouts;
c) road layout;
d) Traffic Impact Study;
e) storm water drainage;
f) water and wastewater treatment proposals;
g) parkland and open space;
h) easements; and
i) access.

The applicant whose subdivision application or preliminary plat has been deemed by planning staff to be substantially changed may appeal the decision to the governing body by written notice within five working days of receiving the determination letter from the Planning Department. The applicant must appeal in writing and request a public meeting before the

governing body. The applicant shall include evidence to show that the changes to the subdivision application are not substantial with their written request.

If the governing body determines the changes are not substantial, a new working day review period commences on the first working day after the governing body makes their decision. By requesting to amend an application or preliminary plat, the applicant consents to the restarting of the working day period from the beginning.

6. Planning Board Public Hearing for Major Subdivisions

For major subdivisions, after planning staff accepts a subdivision application as complete and sufficient, the Planning Board shall hold a public hearing on the application.

Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) calendar days prior to the date of the hearing. The applicant and each property owner of record immediately adjoining the land included in a plat shall be notified of the hearing by certified or registered mail, not less than fifteen (15) calendar days prior to the date of the hearing.

For subdivisions that involve non-residential uses, all property owners within five hundred (500) feet of the project property boundary shall be sent a notice by first class mail.

The planning staff shall post notice of the hearing at a conspicuous place on the boundary of the proposed subdivision.

When a hearing is held by the Planning Board, the Board shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the plat.

The Planning Board shall establish rules for conducting public hearings on subdivision applications, which may include limiting the length of the public hearing or the length of individual public and applicant testimony during the hearing. Submission of written comments by agencies and individuals prior to the Planning Board hearing is encouraged. This recommendation must be submitted to the governing body in writing not later than ten (10) working days after the public hearing. A copy of this recommendation shall also be provided to the applicant when it is submitted to the governing body.

7. Planning Board Recommendation for Subdivision Application Approval or Denial

For major subdivisions the Planning Board shall:

a. Consider the following:

1) relevant evidence relating to the public health safety, and general welfare, including the subdivision application and preliminary plat, environmental assessment, staff report, discussion of probable impacts, information provided at public hearing(s) and other related documents;

2) any officially adopted growth policy or plan for the area involved;

3) the review criteria as stated in Chapter III. section B.10.; and

4) whether the subdivision application conforms to the provisions of:

a) the Montana Subdivision and Platting Act, including but not limited to Section 76-3-608(3), MCA;

b) these regulations;

c) applicable zoning regulations and/or officially adopted plans for the area involved; and

d) other regulations in effect in the area of the proposed subdivision.

b. Within ten (10) working days after the public hearing, submit in writing, to the governing body the following:

1) its findings regarding the items under Section 7a. above;

2) recommended findings of fact which consider the review criteria pursuant to Section 76-3-608, MCA; and

3) a recommendation for approval, conditional approval, or denial of the plat. A copy of this recommendation, findings of facts and conclusions of law shall also be provided to the applicant when it is submitted to the governing body. If the Planning Board recommends denial of a subdivision, the recommendation shall include the reasons for denial, the findings of facts and conclusions of law.

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

d. No later than two (2) working days before the public meeting at which the governing body is to consider the subdivision application and preliminary plat, the applicant is encouraged to submit in writing to Planning staff the applicant's comments on and responses to the planning board's recommendations. The governing body will consult with the applicant and will give due weight and consideration to the applicant's preference.

8. Subsequent Public Hearings on New Evidence Provided After the Planning Board Hearing

The applicant is permitted to submit to planning staff written comments in which the applicant comments on and responds to the recommendations of the Planning Board. Provided that such comments and responses do not constitute new evidence, this written response is permissible and will not require the governing body to determine if a subsequent public hearing is needed.

In the event that the governing body receives written documentation or oral comments from the applicant or other interested parties after the Planning Board has held the public hearing, the governing body shall determine whether public comments or documents presented to the governing body at a public meeting constitute:

(a) information or analysis of information that was presented at a public hearing that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; OR

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either

the planning board, the governing body or its agent or agency at a public hearing during which the subdivision application was considered.

If the governing body determines that the comments or documents from the applicant or other interested parties constitute new evidence 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 may:

(a) approve, conditionally approve, or deny the proposed subdivision application without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; OR

(b) schedule or direct its agent or agency to schedule a subsequent public hearing before the Planning Board for consideration of only the new 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.

If the governing body determines new information was submitted, it must remand the subdivision back to the Planning Board to hold a subsequent public hearing. The Planning Board must hold the hearing within forty-five (45) calendar days of the governing body's determination that new information was submitted. Only new information or analysis of information shall be considered at the subsequent public hearing. The governing body may require the applicant pay additional fees to cover the costs associated with providing notice of the subsequent public hearing.

The governing body shall provide notice of the subsequent hearing as follows:

1. Notice of the time and date of the subsequent hearing shall be published in the newspaper not less than fifteen (15) calendar days prior to the date of the subsequent hearing.

2. At least fifteen (15) calendar days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified or registered mail to the applicant, and each adjoining property owners. For subdivisions that involve non-residential uses, all property owners within five hundred (500 ft.) feet of the project property boundary shall be sent a notice by first class mail.

3. The governing body may require the notice be posted at a conspicuous place on the site of the proposed subdivision application.

If the subsequent Planning Board public hearing is held, the review period is suspended as of the date of the governing body's decision to hold a subsequent hearing. The review period resumes at the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the public meeting when making its decision to approve, conditionally approve, or deny the proposed subdivision.

9. Governing Body Meeting on a Minor Subdivision Application

The governing body shall hold a public meeting on a proposed minor subdivision. Notice of the time, date, and location of the meeting shall be given not less than fifteen (15) calendar days prior to the date of the meeting by publication in a newspaper of general circulation in the county and by first class mail to the applicant and each property owner of record immediately adjoining the land included in the subdivision application. The planning staff shall post notice of the public meeting on the boundary of the proposed subdivision. For subdivisions that involve non-residential uses, all property owners within five hundred (500 ft.) feet of the project property boundary shall be sent a notice by first class mail. The planning staff shall post notice of the public meeting on the boundary of the proposed subdivision.

10. Subsequent Public Meetings on New Evidence Provided after the Public Meeting on a Minor Subdivision.

In the event that the governing body receives written documentation or oral comments after the public meeting, the governing body shall determine whether public comments or documents constitute:

(a) information or analysis of information that was presented at a public meeting that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a public meeting during

which the subdivision application was considered.

If the governing body determines that the public comments or documents constitute new information, the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision application without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule an additional public meeting for consideration of only the new 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.

If the governing body decides to hold a public meeting for consideration of the new information, it must be held within fifteen (15) calendar days of the governing body's determination to schedule the public meeting. Only the new information or analysis of the new information shall be considered at the public meeting.

The governing body shall provide notice of the public meeting as follows:

1. The governing body shall give notice of the specific time and place of the additional public meeting on the public record at the time it makes its determination that new information has been submitted.

2. The agenda for the public meeting shall be posted in accordance with Lewis and Clark County's "Resolution to Establish Regular Meeting Dates of the Lewis and Clark County Commission and to Describe Procedures for Public Participation."

If an additional public meeting is held, the working day review period is suspended as of the date of the governing body's decision to hold the additional meeting. The working day review period resumes at the governing body's next scheduled public meeting for which proper notice can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the meeting when making its decision to approve, conditionally approve, or deny the proposed subdivision application.

11. Governing Body Hearing on Subsequent Minor Subdivision Application

The governing body shall hold a public hearing on the proposed subsequent minor subdivision. Notice of the time, date and location of the public hearing shall be given not less than fifteen (15) calendar days prior to the date of the hearing by publication in a newspaper of general circulation in the county and by certified or registered mail to the applicant and each property owner of record immediately adjoining the land included in the subdivision application. For subdivisions that involve non-residential uses, all property owners within five hundred (500 ft.) feet of the project property boundary shall be sent a notice by first class mail. The planning staff shall post notice of the public hearing on the boundary of the proposed subdivision.

12. Subsequent Public Hearings on New Evidence Provided after the Public Hearing on a Subsequent Minor Subdivision

In the event that the governing body receives written documentation or oral comments after the public hearing, the governing body shall determine whether public comments or documents presented to the governing body at a public meeting constitute:

(a) information or analysis of information that was presented at a public hearing that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a public meeting during which the subdivision application was considered.

If the governing body determines that the public comments or documents constitute new evidence, the governing body may:

(a) approve, conditionally approve, or deny the proposed subdivision application without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or

(b) schedule or direct its agent or agency to schedule a public hearing for consideration of only the new 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.

If the governing body decides to hold a public hearing, it must be held within forty-five (45) calendar days of the governing body's determination to schedule the public hearing. Only new information or analysis of information shall be considered at the public hearing. The governing body may require the applicant pay additional fees to cover the costs associated with providing notice of the subsequent public hearing.

The governing body shall provide notice of the public hearing as follows:

1. Notice of the time and date of the hearing shall be published in the newspaper not less than fifteen (15) calendar days prior to the date of the public hearing;

2. At least fifteen (15) calendar days prior to the date of the public hearing, notice of the hearing shall be given by certified mail to the applicant, and each adjoining property owners;

3. The governing body may require the notice be posted at a conspicuous place on the site of the proposed subdivision application.

If the public hearing is held, the working day review period is suspended as of the date of the governing body's decision to hold a hearing. The working day review period resumes at the governing body's next scheduled public hearing for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

13. Governing Body Action on Subdivision Application

The proposed subdivision will be considered at a regularly scheduled meeting of the governing body. Notice of the time, date and location of the public meeting shall be given not less than fifteen (15) calendar days prior to the date of the meeting by publication in a newspaper of general circulation in the county and by certified or registered mail to the applicant and each property owner of record immediately adjoining the land included in the subdivision application. The planning staff shall post notice of the public meeting on the boundary of the proposed subdivision.

The basis for the governing body's decision to approve, conditionally approve, or deny a subdivision shall be whether the development of the subdivision would meet the requirements of the Montana Subdivision and Platting Act, and these local subdivision regulations, based on the following:

a. relevant evidence relating to the public health, safety, and general welfare, including the subdivision application, preliminary plat, and supplements;

b. environmental assessment (for subsequent minor and major subdivisions);

c. Planning Board recommendation (for major subdivisions);

d. the statement of probable impacts and mitigation;

e. an officially adopted growth policy;

f. comments, evidence and discussions at the public hearing(s) or public meeting(s), staff report, recommendations, and related information; and

g. any additional information authorized by law.

The governing body shall issue written findings of fact that weigh the following criteria, as defined in Section 76-3-608(3), MCA:

a. impacts on agriculture and agricultural water user facilities as defined in the Growth Policy;

b. impacts on local services as defined in the Growth Policy;

c. impacts on the natural environment as defined in the Growth Policy;

d. impacts on wildlife as defined in the Growth Policy;

e. impacts on wildlife habitat as defined in the Growth Policy;

f. impacts on the public health, safety, and general welfare as defined in the Growth Policy;

g. compliance with the survey requirements of the Montana Subdivision and Platting Act (MSPA) and these regulations;

h. compliance with these regulations and review procedures;

i. provision of easements within and to the proposed subdivision for the location and installation of any planned utilities;

j. provision of legal and physical access to each parcel within the subdivision, and the notation of that access on the applicable plat and any instrument of transfer concerning the parcel; and

k consistency with applicable zoning or other regulations in effect and/or any officially adopted growth policy for the area involved.

Montana statute allows exemptions for certain subdivisions as described in Section 76-3-616, MCA. As discussed in Chapter IX, certain exemptions are also available through the cluster development provisions described in Section 76-3-509, MCA.

If the governing body fails to approve, conditionally approve, or deny the subdivision application within the working day review period under section III.B.2, the governing body shall pay to the subdivider a financial penalty of fifty ($50) dollars per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body approves, conditionally approves, or denies the subdivision application. The financial penalty does not apply if the review period is extended or suspended.

If the governing body approves, conditionally approves or denies the subdivision application, it shall inform the applicant of the decision in writing within thirty (30) working days following the decision. The letter shall include a copy of the plat and shall state the reason(s) for denial or enumerating the conditions of approval. The written decision shall include:

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

2) identification of the regulations and statutes relied upon in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

3) the facts and conclusions the governing body relied upon in their decision and reference documents, testimony, or other materials that form the basis of the decision;

4) the conditions of preliminary plat approval that must be satisfied before the final plat may be approved; and

5) the duration of the approval period of the subdivision application.

As detailed in Section 76-3-608, MCA, the governing body may require the applicant to design the subdivision (or provide other measures) to reasonably minimize potentially significant adverse impacts identified during the review. When requiring mitigation, the governing body shall consult with the applicant, and give due weight and consideration to their expressed preferences. Such requirements must be justified by the written findings of the governing body. The written statements to the applicant detailing the circumstances of the subdivision denial or condition imposition must include the reason for the denial or condition imposition, the evidence that justifies the denial or condition imposition, and information regarding the appeal process for the denial or condition imposition.

The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the applicant within thirty (30) calendar days after conditional approval or approval of the subdivision application and preliminary plat. The applicant shall as part of the applicant's application for sanitation approval, forward the comments or the summary provided by the governing body to the reviewing authority of the application.

The governing body may withdraw approval of a plat if it determines that information provided by the applicant, and upon which the decision was based, is inaccurate.

14. Subdivision Application Approval Period

Upon approving or conditionally approving a subdivision application, the governing body shall provide the applicant with a dated and signed statement of approval. This approval shall be in force for not more than three (3) calendar years or less than one (1) calendar year. At the end of this period the governing body may, at the request of the applicant, extend its approval for a mutually agreed-upon period of time. Any mutually agreed upon extension must be in writing and dated and signed by the members of the governing body and the applicant or applicant’s agent.

Except as provided in Section 76-3-507, MCA, after the subdivision application and preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in Section 76-3-610(1), MCA. Approval of the subdivision application and preliminary plat does not constitute approval of the subdivision final plat.

15. Process for Modifying the Conditions of Approval, Approval Statement, or Preliminary Plat for a Subdivision Application

If proposed modifications to the subdivision application's conditions of approval, approval statement, or preliminary plat are substantial, the entire application must be resubmitted and go through the entire subdivision review process again, including payment of fees, staff review, Planning Board hearing and BOCC's meeting. The Director of Community Development and Planning or his or her designee shall make a determination whether the proposed modification is substantial. If the subdivider disagrees with the Director's determination the subdivider can make a written appeal to the BOCC. The following modifications, although not an exclusive list, may be considered substantial if they affect the findings of the BOCC of compliance with the subdivision standards and approval criteria:

a. reconfiguration or number of lots;
b. lot uses and or layouts;
c. road layout;
d. storm water drainage;
e. water and wastewater treatment proposals;
f. fire protection proposals;
g. parkland and open space;
h. easements; and
i. access.

Changes to the conditions of approval, approval statement, or preliminary plat that will not substantially change the original approval in terms of the findings of the BOCC of compliance with the subdivision standards and approval criteria, may be submitted to the BOCC for review and approval. Notice of the application for approval of changes to the preliminary approval conditions shall be published per public notice requirements and with notification of adjacent property owners as provided in Section b. below.

a. Action Item One (Optional for Applicant)

1) The subdivider may send a letter to the BOCC asking that it consider modifying specific condition(s) of approval, preliminary plat, or modify the approval statement.

2) At a public meeting, the BOCC will make a determination as to whether the subdivider's request warrants consideration. In order to warrant consideration, the subdivider should make a reasonable argument in writing describing why the terms of subdivision application approval should be modified, stating the following:

   - What circumstances have changed?
   - How will the applicant(s) benefit from the changes?
   - What impacts (both positive and negative) will there be on neighbors, the public in general, and the surrounding environment?

3) This process step allows the subdivider to obtain an initial indication of the acceptability of requested modifications prior to paying the required application fee and preparing documentation in support of desired changes.

b. Action Item Two

1) The subdivider may apply directly to the BOCC for consideration of modifications of the preliminary approval conditions subject to the following requirements.

2) The subdivider must submit the appropriate fee to the Planning Department and additional information as required by the BOCC. Once the application fee is paid and, if applicable, the additional information is submitted, public notice must be given in accordance with Chapter III.B.6 (major subdivisions), Chapter III.B.9 (minor subdivisions), or Chapter III.B.11 (subsequent minor subdivisions) and a public hearing (for major and subsequent minor subdivisions) or public meeting (for minor subdivisions) before the BOCC on the matter will be held.

3) A staff report and recommendations will be completed, based upon the analysis of all the evidence provided by the subdivider and/or available to staff.

4) The BOCC (not the Planning Board) holds a public hearing or public meeting on the request per subsection 2) above. At that hearing, the staff report and recommendations will be presented and the subdivider will have the opportunity to make a presentation. The public will have an opportunity to provide testimony or comment on the proposed modification.

5) After the public hearing or public meeting, the BOCC shall make a final decision.

6) A letter outlining the BOCC's decision and rationale shall be sent to the subdivider.

16. Construction Timing

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until he or she obtains from the governing body preliminary approval of the proposed subdivision plat, and

Prior to construction of any public improvements, and after receiving preliminary approval, County Planning must review and approve all plans for public improvements required to be submitted by the subdivider, and the subdivider must obtain all necessary permits, which may include but are not limited to: a weed management plan, approach permits, encroachment permits, water rights for public water systems, and floodplain development permits, as well as any permits required by state and federal agencies.

17. Inspections and Certification

Upon subdivision application approval, the county will prepare a list of work for which inspection and certification is needed. All public improvements must be inspected and certified, as meeting the applicable standard and meeting the approved design plan(s), if applicable by an engineer registered in the State of Montana. The applicant is responsible for the costs of inspections and certifications.

18. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After the subdivision application 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:

a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the State of Montana; and

b. That under the terms of the contracts and escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder; and

c. That the contracts and escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the subdivision application approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract; and

d. That the contracts contain the following language: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;" and

e. That the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

C. Final Plat Review Process

1. Final Plat Contents

The final plat submitted for approval shall conform in all major respects to the preliminary plat previously reviewed and approved by the governing body, and shall incorporate all modifications required in its review.

The final plat shall comply with the Montana Uniform Standards for Final Subdivision Plats.

2. Final Plat Application

An application for final plat review (available at the County Planning Department), together with three (3) 11" x 17" paper copies of the final plat and supplements, shall be submitted to the Planning. A final plat must be submitted before the expiration of the subdivision application approval period, or extension thereof. No final plat application shall be accepted, processed nor any action on a final plat be scheduled until a complete application and fee, and copies of the final plat have been received. A final plat application will not be considered complete until all conditions of preliminary approval have been satisfied.

The planning staff will review the final plat application materials and determine the completeness and sufficiency of the application. The planning staff has five (5) working days to determine whether the application contains all of the listed information found in Appendix D of these regulations and information required to verify compliance with the preliminary approval conditions and shall give written notice to the applicant or, with the applicant's written permission, the applicant's agent of the planning staff's determination of completeness. If information is missing from the application, planning staff shall identify the needed information in the written notification. The applicant must provide all missing information before the completeness review process will restart from the beginning.

Within fifteen (15) working days after the applicant has been notified in writing that the final plat application contains all the required elements, planning staff shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow review of the final plat, and shall give written notification to the applicant or, with the applicant's written permission, the applicant's agent of the determination by staff. If planning staff determines that information in the application is not adequate for review of the final plat, the insufficiencies of the application shall be identified in the written notification. The applicant must provide all insufficient information before the sufficiency review process will restart from the beginning.

A thirty-five (35) working day review period for final plat reviews commences on the first working day after planning staff determines that the final plat application is complete and sufficient.

The final plat may constitute only that portion or phase of the approved preliminary plat the subdivider wishes to file, provided that such portion conforms to all requirements of these regulations and is approved by the governing body in writing. Improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the

improvements incurred in a prior increment must be satisfied before development of future increments (see Standards for Final Plats, Appendix D).

The final plat must have a certification by the County Treasurer that all taxes and special assessments assessed and levied (currently due or delinquent) are paid on the land proposed for subdivision.

3. Final Plat Review

The final plat will be reviewed by the Planning Department and the survey review committee to ascertain that all conditions and requirements for final plat approval have been met. Any significant change to the final plat may require the applicant request a modification of conditions of approval from the governing body.

All public improvements must be inspected and certified, as meeting the applicable standard and the approved design plans, by an engineer registered in the State of Montana.

The governing body requires that all final plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. The subdivider shall bear the cost of this review. When the survey data shown on the plat meet the requirements set forth by the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation and Final Subdivision Plats, the examining land surveyor shall so certify on the plat. No land surveyor having a financial or personal interest in a plat shall act as an examining land surveyor in regard to that plat.

The subdivider shall make any corrections or revisions to the final plat as noted by the planning staff and/or the examining land surveyor. Then one (1) opaque mylar copy, one (1) reproducible mylar copy, one (1) paper copy, and one (1) digital copy, when available, of the final plat shall be prepared and submitted to the Planning Department.

The governing body will provide for the review of the abstract or certificate of title of the land in question by the County Attorney. The subdivider shall bear the cost of these documents.

4. Guarantee of Public Improvements

As a condition of approval of the final plat, the subdivider shall have installed all required improvements, or shall enter into a subdivision improvements agreement guaranteeing the construction and installation of any remaining improvements that are not needed for public safety and

occupancy of buildings (e.g., final paving, chip sealing, erosion controls). No final plat shall be approved, and no construction or placement of structures on the lots shall occur until engineered plans have been approved for the following improvements related to public health and safety: roads except for paving, multi-user and public water and wastewater treatment systems, other utilities, street identification signs, traffic control signs, address plaques, and fire-fighting facilities, and these improvements have been installed in accordance to the approved plans. Methods for guaranteeing public improvements and the procedures and requirements for securing the guarantees are provided in Appendix E of these regulations.

5. Final Plat Approval or Denial

The governing body shall examine the subdivision final plat and shall approve or deny the plat within thirty-five (35) working days after the applicant has submitted a complete and sufficient final plat application and has demonstratively met all of the conditions of approval set forth in the preliminary subdivision approval.

The subdivision final plat shall conform in all major respects to the subdivision application and preliminary plat previously reviewed and approved by the governing body, and shall incorporate all modifications required to comply with preliminary approval conditions.

The governing body shall approve a subdivision final plat if it conforms to the approved subdivision application and preliminary plat, and if the applicant has met all required modifications or conditions, and met or exceeded all standards and requirements of these regulations. Approval shall be certified by the governing body on the face of the final plat.

If the subdivision final plat is denied, the reasons for denial shall be stated in the records of the governing body, and a copy shall be sent to the applicant. The governing body shall return the opaque mylar copy, the reproducible copy, and digital, when available, to the applicant within ten (10) working days of the action. The applicant may then make the necessary corrections and resubmit the final plat for approval.

The governing body may withdraw approval of a plat if it determines that information provided by the subdivider, and upon which such decision was based, is inaccurate.

6. Final Plat Filing

The subdivider shall file the opaque mylar copy, the reproducible copy and digital copy, when available, of the approved final plat with the County

Clerk and Recorder with the developer paying the filing and recording fees. After approval, the plat shall not be altered in any manner either before or after filing.

The County Clerk and Recorder shall refuse to accept any plat for record that fails to have approval in proper form and shall file approved plats only if they are accompanied by the documents specified in Appendix D, Standards for Final Subdivision Plats.

7. Property Owners' Association

If a common property is to be deeded to a property owners' association, that association shall be incorporated under the applicable laws of the State of Montana and the articles of incorporation and by-laws shall be filed with the Clerk and Recorder.