LEWIS AND CLARK COUNTY

SUBDIVISION REGULATIONS

Adopted by the

Board of County Commissioners

December 13, 2016

LEWIS AND CLARK COUNTY SUBDIVISION REGULATIONS

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I. GENERAL PROVISIONS

A. Title

These regulations shall be known and cited as "The Lewis and Clark County Subdivision Regulations," hereinafter referred to as "these regulations."

B. Authority

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

C. Purpose

These regulations provide criteria and procedures to govern the review of subdivision applications in Lewis and Clark County. These regulations are intended to comply with the provisions of the Montana Subdivision and Platting Act. In the event any of these regulations conflict with the specific requirements of the Montana Subdivision and Platting Act, the governing body shall follow the requirements of the Act, rather than the conflicting provisions in these regulations.

Land use regulations are the primary way to carry out the Growth Policy. Lewis and Clark County regulates land development and construction through a variety of technical standards resulting in permits and approvals for specific projects. To ensure County regulations are effective and warrant a high degree of public trust and confidence, regulations must be equitable, reasonable, easy to understand, and responsibly administered.

The purposes of these regulations are to promote the public health, safety, and general welfare and to provide for:

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 county road easements and public utility easements;

4. Provision of standard physical and legal road access to all lots in a subdivision, including obtaining of necessary easements;

5. The avoidance or minimization of congestion in the streets and the improvement of roads to county road standards;

6. The provision of adequate open spaces for light, air, parks, and recreation;

7. The provision of adequate transportation, potable water, drainage, and sanitary facilities;

8. The protection and rights of all citizens;

9. The avoidance of subdivisions that would involve unnecessary environmental degradation;

10. The avoidance of subdivisions that would cause danger or injury to public health, safety and general welfare by reason of natural hazard, or the lack of adequate or sufficient water, sanitation, drainage, standard access, transportation, utilities, or other public services;

11. The avoidance of subdivisions that would require an excessive expenditure of public funds for the supply of public services;

12. The manner and form of preparing and filing any plat or certificate of survey for subdivided lands;

13. The promotion of cluster development approaches that minimize costs to local citizens, and promote effective and efficient provision of public services; and

14. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all proposed plats and site plans of subdivisions covered by these provisions.

The Lewis and Clark County regulations section of the Implementation Strategy of the Lewis and Clark County Growth Policy states that Lewis and Clark County's regulation of land use should:

a. Help protect public health, safety, and general welfare;

b. Help protect consumers from fraudulent practices in land use, land sales and development;

c. Implement and be consistent with the Growth Policy and other adopted land use goals, policies and plans;

d. Be expeditious, predictable, clear, straightforward, and internally consistent;

e. Provide clear direction for timely resolution of regulatory conflict**;**

f. Be enforceable, efficiently administered, and provide appropriate incentives and penalties;

g. Be consistently and effectively enforced;

h. Create public and private benefits in an economically efficient and equitable manner;

i. Be coordinated with timely provision of necessary public facilities and services;

j. Encourage creativity and diversity in meeting County goals and policies;

k. Be coordinated with cities, special purpose districts, and other public agencies to promote compatible development standards throughout Lewis and Clark County;

l. Be responsive, understandable, and accessible to the public;

m. Provide effective and statutorily required public notice and pertinent documents for major and minor subdivisions before each public hearing or meeting. Provide reasonable opportunities for the public (especially those directly affected) to be heard and to influence decisions;

n. Treat all members of the public equally and base regulatory decisions wholly on applicable criteria and code requirements; and

o. Make development requirements readily accessible and easy to understand to the public through up-to-date codes, technical assistance materials and other relevant documents.

D. Jurisdiction and Applicability

These regulations govern the subdivision of land within the jurisdictional area of the governing body of Lewis and Clark County.

Under Montana law, land in Lewis and Clark County may not be subdivided without first being reviewed and approved by the governing body. Land use/development that constitutes "subdivision" is defined in Appendix A of these regulations.

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 subdivision application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in Section 20-9-615, MCA, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees. If a proposed subdivision lies partly within an incorporated city or town, or partly within an adjacent County, the subdivision application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies. When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. Helena is a first class city; East Helena is a third class city.

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.

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

E. Severability

Where any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid.

II. SUBDIVISION ADMINISTRATION

A. Schedule of Fees

The schedule of fees shall be posted in the county planning department. No action shall be taken on applications or appeals until all application fees have been paid in full. Applications for subdivision review shall not be accepted unless accompanied by all applicable fees.

B. Variance

1. Hardship

The governing body may grant a variance from the design and improvement standards in these regulations when strict compliance would result in undue hardship, and when it is not essential to the public welfare. Such a variance shall not have the effect of nullifying the intent and purpose of these regulations. The governing body may 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. The governing body shall not approve a variance unless it makes findings based upon the evidence in each specific case 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. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if these regulations were enforced;

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 or applicable, adopted plans.

Innovative designs that address energy conservation, transportation efficiency, affordable housing, ADA accessibility, or preservation of the natural environment which do not circumvent the purpose of these regulations may be reasons for granting of a variance by the governing

body. Costs or financial considerations are not a valid reason for granting a variance, nor are hardships that are self-imposed.

2. Procedure

The applicant shall include with the submission of the subdivision application, a variance application and a written statement describing the requested variance and the facts of hardship upon which the request for the variance is based.

The Planning Board shall hold a public hearing on each variance request for a major subdivision application. The governing body shall hold a public hearing on each variance request for a subsequent minor subdivision application. A public hearing is not required on a variance request for a first minor subdivision application.

3. Conditions

In granting variances, the governing body may impose conditions that will, in its judgment, substantially secure the objectives of these regulations.

4. Statement of Facts

When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing each variance and the facts and conditions upon which it is based.

C. Amendment of Regulations

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

D. Violations, Enforcement, Criminal Penalties, Remedies

1. Violations

Subdividing land without review and approval by the Lewis and Clark County Commission is a violation of the Montana Subdivision and Platting Act and these regulations.

2. Enforcement

a. Every final subdivision plat must be filed for record with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner (except as noted in Chapter III, section B.18 of these regulations). Subdivisions that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed must have received final approval and be filed in the Community Development and Planning office prior to rent, lease, transfer, or occupancy in any manner.

b. Lewis and Clark County will enforce these regulations and the Montana Subdivision and Platting Act.

c. The Director of Community Development and Planning (or his or her designee) shall serve as the designated agent of the governing body for the jurisdictional area. The Director shall have the authority to administer, interpret, and enforce the Montana Subdivision and Platting Act and these regulations. Decisions of the Director will be in writing, and may be appealed to the governing body within 15 working days following the decision.

d. The County Attorney may commence civil or criminal action to enjoin any violation of, or compel compliance with the provisions of the Montana Subdivision and Platting Act and these regulations. Subdividing land without review and approval by the governing body is a violation of the Montana Subdivision and platting Act and these regulations.

3. Criminal Penalties

As detailed in Section 76-3-105, MCA, any person, firm, corporation, or other entity that violates any of the provisions of the Montana Subdivision and Platting Act or these regulations shall be guilty of a misdemeanor, punishable by a fine of not less than $100.00 nor more than $500.00, 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 Montana Subdivision and Platting Act, or these regulations, shall be deemed a separate and distinct offense.

4. Remedies

The governing body may not deny or condition a subdivision approval unless it provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition impositions. The statement must include:

a. information regarding the appeal process for the denial or imposition of conditions;
b. identification of the regulations and statutes used in reaching the governing body's decision and explanation of how they apply to the decision to deny or impose conditions;
c. the facts and conclusions that the governing body relied upon in making its decision to deny or impose condition and reference documents, testimony, or other materials that form the basis of the decision, and;
d. the conditions that apply to the preliminary plat approval and that must be satisfied before final plat may be approved.

A party, who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny a proposed subdivision application and preliminary plat or final subdivision plat may, within 30 days from the date of the written decision, appeal the decision to the district court. The petition to the court must specify the grounds upon which the appeal is made.

The following parties may appeal the decision of the governing body only if aggrieved:

a. the subdivider;

b. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county, 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; and

d. (i) a first-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 3 miles of its limits;
(ii) a second-class municipality, as described in Section 7-1-4111, MCA, if a subdivision is proposed within 2 miles of its limits; and

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

A person, who has filed with the governing body an application for a subdivision under this chapter, 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 this chapter that is arbitrary or capricious.

For the purpose 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 specifically and injuriously affected by the decision.

E. Restrictive Covenants

The County may not approve a subdivision proposal that violates restrictive covenants or deed restrictions governing use of the affected property, unless the covenants are amended prior to or as part of the subdivision review process. Any change to restrictive covenants must follow the procedures outlined in the specific covenants in question. This provision pertains to both covenants put in place by the County, as well as those held by the private landowners. The property owner is responsible for supplying private covenants to the County with the subdivision application.

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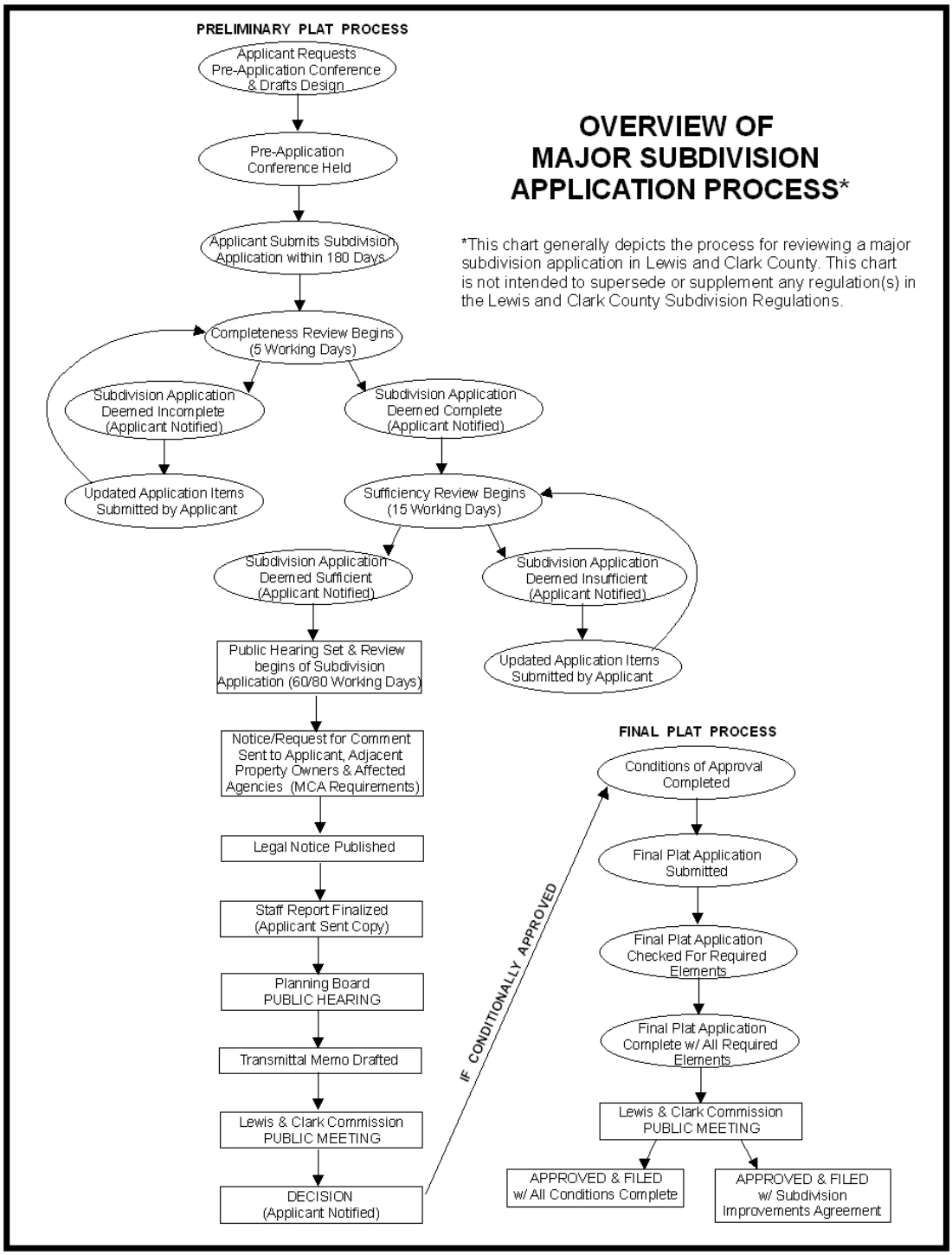
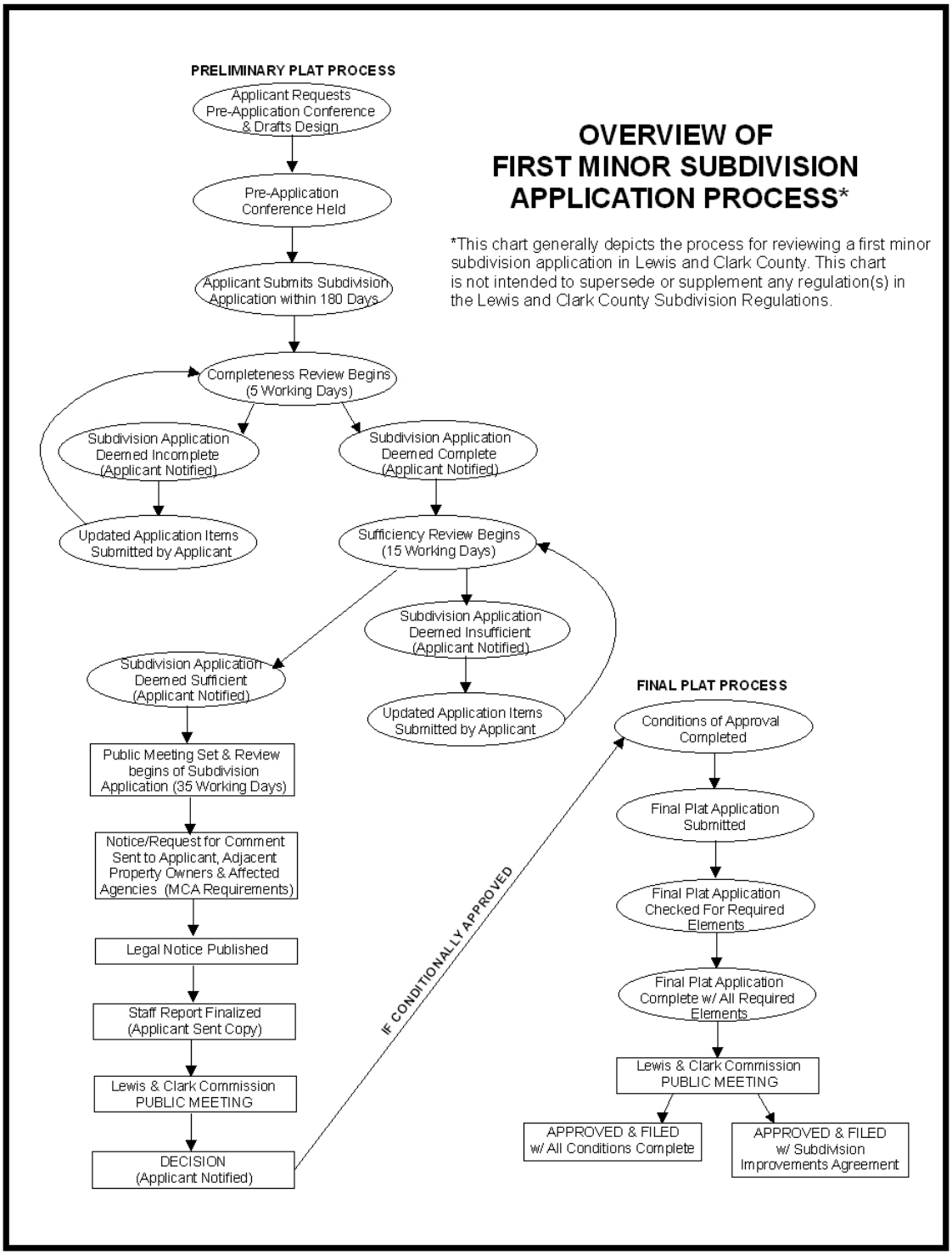
III. PROCEDURES FOR SUBDIVISIONS

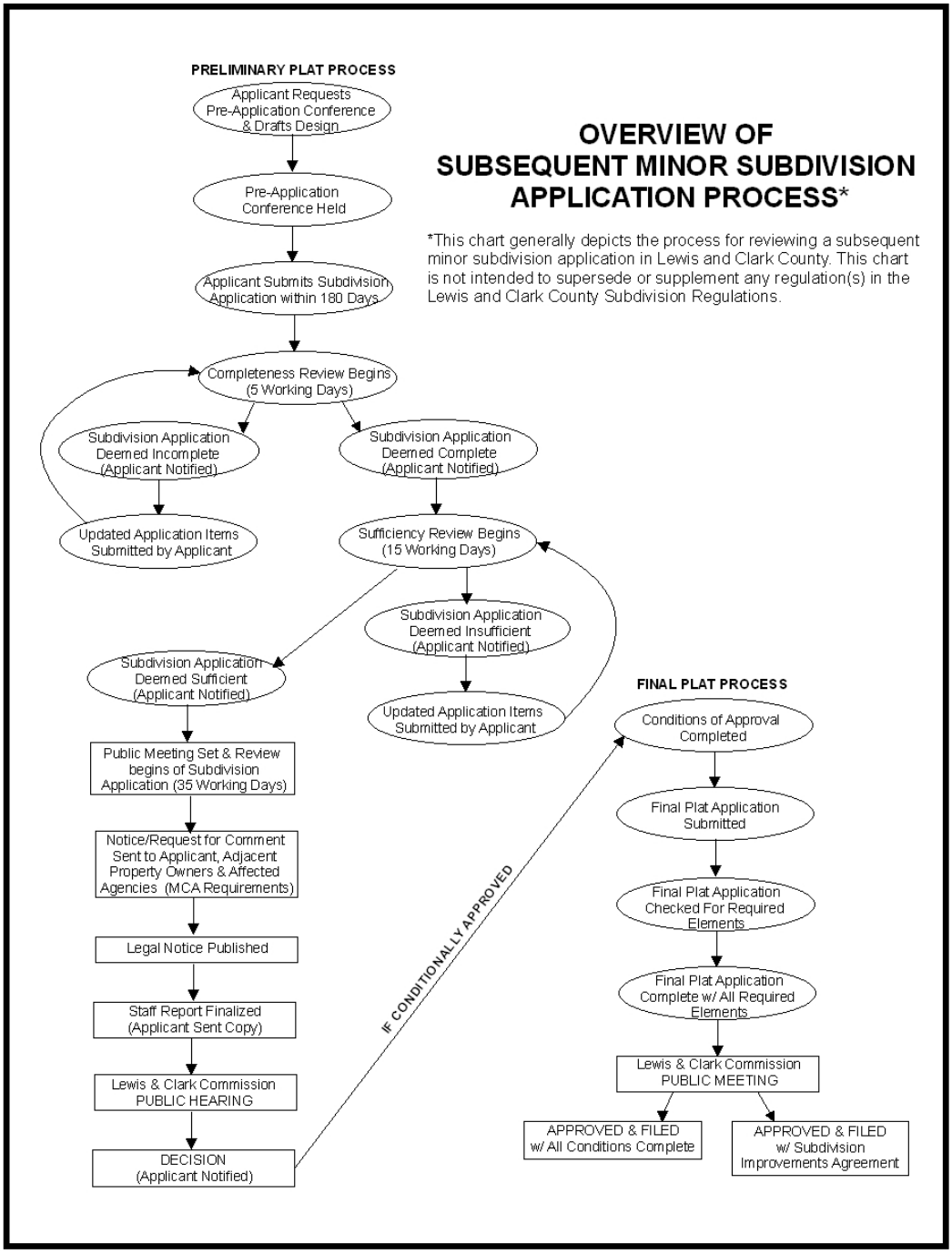
Overview of Major Subdivision Review Process



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.

IV. PROCEDURES FOR MINOR SUBDIVISIONS
(Repealed December 13, 2016 – Provisions moved to Chapter III.)

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V. CORRECTING OR AMENDING FILED FINAL PLATS

A. Correcting Filed Final Plats

Corrections of drafting or surveying errors that will not materially alter the plat (see B.1. below) shall be made by the submission of a corrected final plat for the governing body's approval. The plat shall be entitled "Corrected Plat of the (name of the subdivision) Subdivision" and the reason for the correction shall be stated on the face of the plat. The plat may be filed under the procedures for review of final plats, Chapter III, section C. of these regulations.

B. Amending Final Plats

1. Material Alterations

Changes that materially alter any portion of the filed plat, its land divisions, or improvements (as determined by the County Planning Department and/or County Attorney) shall be made by the filing of an amended plat showing all alterations. Within a platted subdivision, any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the governing body, and an amended plat must be filed with the County Clerk and Recorder.

The amended plat shall be subject to procedures for major or minor subdivisions, as is appropriate. (See Chapter III of these regulations.)

The governing body may not approve an amendment that will place the plat in non-conformance with the standards contained herein unless a public hearing or meeting is held on the plat and a written variance from the standards issued pursuant to Chapter II, section B (Variance).

The governing body may not approve an amendment unless it provides prior written notice to all affected property owners within the subdivision meeting the notice requirements for initial approval of subdivisions.

The final amended plat submitted for approval shall comply with the Standards for Final Plats (Appendix D), with the exception that the title shall include the word "Amended."

2. Exemptions for Amended Plat Review

Amended subdivision plats are subject to the appropriate procedural requirements contained in Chapter III. of these regulations, except that the relocation of common boundaries and the aggregation of lots within platted subdivisions filed with the County Clerk and recorder are exempt from approval as a subdivision where five or fewer of the original lots are affected, or where one lot within and one lot outside a subdivision are affected.

An amended plat must be prepared following the requirements of the Standards for Final Subdivision Plats (Appendix D), except that in place of the governing body's approval the landowner certifies that the approval of the governing body is not required, pursuant to Section 76-3-207(1)(d)(e), or (f), MCA.

VI. PROCEDURES FOR SUBDIVISIONS CREATED BY RENT OR LEASE

A. General Procedures

1. A subdivision created by rent or lease (such as spaces for mobile or manufactured homes (see Chapter VII) and recreational vehicles (RV) (See Chapter VIII) is any tract of land divided by renting or leasing portions thereof. It is owned, however, as one parcel under single ownership. Placement of two or more mobile or manufactured homes on a parcel with an existing residential or non-residential use constitutes a mobile or manufactured home park under DEQ regulations. Subdivisions created in this manner are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review, and approved by the governing body before portions thereof may be conveyed. As such, no final plat is required for subdivisions created by rent or lease. Preliminary approval must be based on the criteria in Chapter III, Section B.13 (a-k) of these regulations.

2. Subdivisions created by rent or lease shall comply with the appropriate procedures in Chapter III.

3. For all rental or lease subdivisions, the applicant shall submit a site plan conforming to the requirements for preliminary plats. Subdivision application forms, contents and supplements are contained in Appendix B. The preliminary site plan shall show the lot layout and the typical location of the space(s) on the lot(s). The applicant shall submit the site plan to the planning staff.

4. The governing body shall approve, conditionally approve, or deny the subdivision application site plan of a rental or lease subdivision within sixty (60) working days of a complete and sufficient application if it is a major subdivision, and within thirty-five (35) working days if it is a minor subdivision, unless the applicant requests and consents to a suspension of the review period. A suspension of the review period shall not exceed 1 year from the date of the request.

5. If the governing body approves, conditionally approves or denies the subdivision application, it shall inform the applicant of the decision in writing. The letter shall include a copy of the site plan and shall state the reason(s) for denial or enumerating the conditions of approval.

6. Before any portion of a rental or lease subdivision may be occupied or transferred, the subdivider shall have installed all required improvements. Except where deemed unnecessary by planning staff, preliminary plans, profiles, tentative grades and specifications for proposed improvements shall be certified by an engineer registered in Montana, and submitted to the governing body for its approval prior to the construction of improvements. The governing body may provide for inspection of all required improvements in order to assure conformance with the approved construction plans and specifications.

VII. GENERAL STANDARDS FOR MOBILE AND MANUFACTURED HOME PARKS

A. Overview

1. Mobile and manufactured home parks (See definition for "mobile home park" in Appendix A) created by rent or lease (except recreational vehicle parks) shall comply with the provisions of Chapter XI: Design and Improvement Standards in these regulations, unless otherwise addressed in Chapter VII, Section C. Placement of two or more mobile or manufactured homes on a parcel with an existing residential or non-residential use constitutes a mobile or manufactured home park. Such subdivisions shall also comply with all applicable rules and regulations of the Montana Department of Environmental Quality (DEQ) and the Department of Public Health and Human Services (DPHHS). These provisions also supplement applicable standards for major and minor subdivisions covered in chapter III of these regulations.

2. The governing body may require provision of:

    a. Storage facilities on the mobile home or manufactured home park or in compounds located within a reasonable distance;

    b. A central area for storage of boats, trailers, or other recreational vehicles;

    c. Landscaping to serve as a buffer between the development and adjacent properties; and/or

    d. Street lighting.

3. The governing body shall waive parkland dedication and cash donation requirements for a subdivision created by rent or lease where the subdivider agrees to develop an area of the development as park or playground in accordance with the requirements in these regulations. These areas shall be located to conveniently serve residents of the entire development. Recreation areas may include space for community recreation buildings and facilities.

4. Each mobile home shall be skirted with fire retardant materials within thirty calendar days after it is moved on to a mobile home space. The skirting shall be attached to the dwelling.

5. Any retail uses intended specifically for the convenience and service of the residents of the mobile home park shall be designed and located in such a manner to discourage use by nonresidents of the mobile home park.

6. One (1)-guest parking space for each ten (10) mobile home spaces shall be provided. Group parking is allowed.

7. Mobile home parks or trailer courts are required to be licensed by the Montana Department of Public Health and Human Services (DPHHS) prior to the governing body granting final approval of the subdivision.

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

B. Streets

1. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home space.

2. Streets shall be designed to permit safe placement and removal of mobile home units.

3. The subdivider shall not be required to reserve right-of-way in excess of the roadway width.

4. Roadways in a mobile home park shall not be dedicated to public.

5. Streets and roads in mobile home parks shall be constructed to the appropriate County design standards for local and collector roads and streets except in regard to right-of-way width. (See 3 above.)

6. Entrances to mobile home developments shall have direct connections to a public street and shall be designed to allow free movement of traffic on such adjacent public streets. No parking shall be permitted on the entrance street for a distance of 100 feet from its point of beginning.

7. Mobile home parks may utilize the planned unit development provisions in these regulations to allow the developer greater design creativity and flexibility.

C. The Manufactured/Mobile Home Space

1. Mobile home spaces shall be arranged to permit the practical placement and removal of mobile homes.

2. All mobile homes shall be located at least twenty-five (25) feet from any property boundary line abutting upon a public street or highway right-of-way, and at least fifteen (15) feet from other boundary lines of the park.

3. The mobile home stand must be located at least ten (10) feet from the street that serves it.

4. The limits of each mobile home spaces shall be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground shall be approximately the same as shown on the accepted plans. The degree of accuracy obtainable by working with a scale on the plan and then a tape on the ground is acceptable. Precise engineering of space limits is not required either on the plans or on the ground.

5. The size of the mobile home stand shall be suitable for the general market to be served and shall fit the dimensions of mobile homes anticipated.

6. The mobile home stand shall be improved to provide adequate support for the placement and tie-down of the mobile home.

7. A mobile home stand 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.

8. No mobile home or its attached structures, such as awnings or carports, may be located within twenty (20) feet of any other mobile home or its attached structures.

9. No detached structure, such as a storage shed, may be located within six (6) feet of any mobile home or its attached structures.

10. A minimum of two (2) off-street parking spaces shall be provided for each mobile home space. Parking may be in tandem. The driveway shall be located to allow for convenient access to the mobile home. The minimum driveway width shall be ten (10) feet.

D. Water Supply

All water supply systems shall meet or exceed the minimum water quality and design standards of the Montana DEQ and DPHHS. Water supply systems shall be subject to approval by the governing body, and be in accordance with the fire protection standards in these regulations.

E. Sewage Disposal

All sewage disposal systems shall meet or exceed the minimum standards of the Montana DEQ and DPHHS. Sewage disposal systems shall be subject to approval by the governing body.

F. Solid Waste

The manufactured**/**mobile home park developer shall assure that facilities for collection and disposal of solid waste are available and meet the regulations and minimum standards of the Montana DEQ and DPHHS. The means for solid waste collection and disposal shall be subject to approval by the governing body.

G. Electrical Systems

Electrical system installation within a manufactured/mobile home park shall be designed and constructed in accordance with the applicable State codes.

H. Gas Systems

Gas equipment and installations within a manufactured/mobile home park shall be designed and constructed in accordance with the applicable State codes.

1. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system shall be installed near to the point of connection to the service piping or supply connection of the liquefied petroleum gas container.

2. Each manufactured/mobile home space shall have an accessible, listed gas shutoff valve installed. Such valve shall not be located under a mobile home. Whenever the mobile home space outlet is not in use, the shutoff valve shall be plugged to prevent accidental discharge.

I. Fire Protection

Mobile homes must comply with the fire protection standards in these regulations (see Appendix K.).

VIII. GENERAL STANDARDS FOR RECREATIONAL VEHICLE PARKS

A. Overview

Recreational vehicle parks shall comply with applicable rules and regulations of the Montana Department of Environmental Quality (DEQ) and DPHHS. These provisions also supplement applicable standards for major and minor subdivisions covered in Chapter III of these regulations. Recreational vehicle parks shall comply also with the provisions of Chapter XI, DESIGN AND IMPROVEMENTS STANDARDS, unless otherwise addressed in Chapter VIII, section C.

Recreational vehicle parks are required to be licensed by the Montana Department of Public Health and Human Services (DPHHS) prior to the governing body granting final approval of the subdivision.

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

B. Streets and Recreational Vehicle Spaces

The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, and public convenience and safety, and in their relation to the proposed uses of the land to be served by such streets. All recreational vehicle spaces shall be provided with safe and convenient access from abutting streets or roads. Alignment and gradients of roads shall be adapted to topography. Exposed ground surfaces in all parts of every recreational vehicle space shall be paved, covered with stone or other solid material, or protected with a vegetative cover.

1. Intersections

    a. Intersections of recreational vehicle park streets with local streets or major arterials or highways shall be kept to a minimum. Streets serving recreational vehicle parks shall connect with arterial streets so as to not to create access on local streets. Intersections of recreational vehicle park streets with arterials or collector streets shall be designed so as to cause the least possible interference with traffic movement.

b. No more than two (2) streets may intersect at one point.

c. Streets shall intersect at right angles, except when topography dictates otherwise, and in no case shall the angle of intersection be less than sixty (60) degrees.

d. Two streets meeting a third street from opposite sides shall meet at the same point or their centerlines shall be off-set at least one hundred twenty-five (125) feet.

e. Intersection design shall provide acceptable visibility for traffic safety as dictated by the designed operating speeds of the individual roadways.

2. Culverts or bridges shall be provided by the subdivider where drainage channels intersect any street right-of-way. Where culverts are required, they shall extend at least across the entire improved width of the street and/or base of fill and be a minimum of 15 inches in diameter.

3. Plantings may be required for buffering, screening, or soil erosion protection, and are subject to approval by the governing body. Existing trees and other vegetation shall be preserved where possible. A buffering screen may be required along the perimeters of a recreational vehicle park that abuts a highway arterial or frontage access road and existing residential uses.

4. Streets and roads shall be arranged to discourage through traffic.

5. Horizontal alignment of streets shall ensure adequate sight distances.

6. Roads in recreational vehicle parks shall comply with the appropriate design standards for local roads listed, except in regard to right-of-way widths. Streets should be wide enough to accommodate the projected parking and traffic load.

7. Roads in recreational vehicle parks shall not be dedicated to public access.

C. Internal Design

1. Recreational vehicle spaces shall be arranged to facilitate placement and removal of vehicles from individual spaces.

2. Accessory facilities shall be designed and located for safe and convenient use by occupants of the park, but so as to inhibit their use by non-occupants.

3. Recreational vehicles shall be separated from each other and from other structures by at least ten (10) feet. Any accessory structures such as attached awnings shall, for purposes of this separation requirement, be considered part of the recreational vehicle.

4. The density shall not exceed 25 recreational vehicle spaces per acre of gross site area.

5. All recreational vehicles spaces shall be located at least twenty-five (25) feet from a public street or highway right-of-way.

6. The governing body may require that recreational vehicle parks located adjacent to industrial or commercial land uses provide screening such as fences or natural growth along the property boundary line separating the park from such uses.

7. The governing body shall waive parkland dedication and cash donation requirements for a recreational vehicle park subdivision where the subdivider agrees to develop an area of the development for a park or playground area. The area shall be located to conveniently serve all patrons of the recreational vehicle park. Recreation areas may include space for recreation buildings and facilities.

D. Grading and Drainage

1. The recreational vehicle park developer shall provide suitable drainage facilities for any surface run-off affecting the park. These facilities shall be located in street right-of-way or open spaces, and are subject to approval by the governing body.

2. Each culvert or other drainage facility shall be large enough to accommodate potential run-off from upstream drainage areas.

3. Drainage systems shall not discharge into any sanitary sewer facility.

4. All drainage systems shall meet the minimum regulations of the Montana DEQ and DPHHS.

E. Water Supply

All water supply systems shall meet or exceed the minimum water quality and design regulations of the Montana DEQ and DPHHS. Water supply systems shall be subject to approval by the governing body. The governing body may require that any public water supply system that is installed be designed to provide an adequate accessible water supply for fire protection purposes.

F. Sewage Disposal

All sewage disposal systems shall meet or exceed the minimum regulations of the Montana DEQ and DPHHS. The means for sewage disposal shall be subject to approval by the governing body.

G. Solid Waste

The recreational vehicle park developer shall assure that provisions for collection and disposal of waste are available and meet the minimum regulations of the Montana DEQ and DPHHS. The means for solid waste collection and disposal shall be subject to approval by the governing body.

H. Fire Protection

Each recreational park must comply with the fire protection standards in these regulations (see Appendix K).

IX. PLANNED UNIT AND CLUSTER DEVELOPMENTS

The intent of this chapter is to provide flexibility in certain subdivision standards, allowing the subdivider greater design creativity. The planned unit development (P.U.D.) and cluster concepts group development to promote economies in service provision, while providing open space, natural features, and/or community facilities for common enjoyment and use. Under this concept, lots may be smaller than in a conventional subdivision, and lots and units are concentrated in order to provide open space. The P.U.D. concept, in particular, promotes careful, integrated planning, allowing for individual or mixed uses.

A. Designation as a P.U.D.

1. The development shall be in compliance with P.U.D. provisions in local zoning regulations. Where such provisions do not exist, the proposed subdivision must be designated as a P.U.D. by the planning staff before being reviewed under this section. To obtain designation of a subdivision as a P.U.D., the applicant, before submitting a preliminary plat application, must submit to the planning staff the following:

    a. A written request that the plan of the proposed subdivision is to be reviewed as a P.U.D;

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

    c. A sketch plan of the proposed subdivision, containing all information requested in Chapter III, section B.1 (pre-application procedures);

    d. Proposed restrictive covenants, if any;

    e. Proposed forms of ownership of property within the development;

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

    g. A description of all proposed modifications from Chapter XI, (Design and Improvement Standards).

2. The planning staff shall review the proposed plan and, before designating the subdivision a P.U.D., determine that the development plan promotes the clustering of individual building sites, conforms to the definition and intent of this section, and does one or more of the following:

    a. Preserves 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 roads and other public improvements;

    c. Preserves productive agricultural land;

    d. Protects important historic sites or structures, or areas of important wildlife habitat;

    e. Provides developed facilities for recreational purposes; and/or

    f. Supports reasonable but not excessive trail development that would help sustain wildlife on the landscape as a whole.

3. The planning staff shall review the plan and within ten (10) working days of the submittal, write a letter to the applicant stating that the plan has or has not been designated a P.U.D. If the plan is disapproved, the reasons for disapproval shall be stated in the letter. If approved, the letter shall state the approval and the Applicant may submit a subdivision application to the Planning Department.

4. Designation as a P.U.D. does not constitute approval of the specific details or modifications proposed by the plan.

B. P.U.D Procedures

If the planning staff designates the development plan a P.U.D., the preliminary plat may be submitted for review under this process. The submittal shall comply with the applicable requirements contained in Chapter III of these regulations.

All common areas must be identified on the plat during the first phase of development, and developed as scheduled.

C. P.U.D Standards

1. Planned unit developments shall comply with the standards contained in Chapter XI, GENERAL DESIGN AND IMPROVEMENT STANDARDS. These standards may be modified by the governing body upon request of the applicant in cases where the plan for a P.U.D. includes provisions for efficient traffic circulation, adequate light, air and open space, and where such standards are not practical or reasonable in respect to the overall P.U.D. design.

2. In those areas where no zoning exists, the planning staff, in consultation with the applicant, shall determine the overall dwelling unit density.

3. The arrangement, type, extent, width, grade, and location of all streets shall be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.

4. The open space in any P.U.D. must be:

    a. Held in common ownership by a property owners' association; or

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

    c. A combination of "a" or "b" above. If the open space is not open to the public, it will not satisfy the parkland dedication requirement.

    The governing body may waive dedication or cash donation requirements when the applicant agrees to create a property owners' association for the proposed subdivision and the deed to the association land to be held in perpetuity for use as parks or playgrounds.

D. Cluster Development

If the governing body has adopted a growth policy that meets the requirements of Section 76-1-601, MCA the governing body may adopt regulations to promote cluster development and preserve open space, pursuant to Section 76-3-509, MCA.

1. As authorized by Section 76-3-509, MCA, the following apply to subdivisions proposed under this section:

    a. An area of open space must be preserved that is at least as large as the area that will be developed.

    b. Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.

    c. Unless the subdivision will be provided with community sewer or water, each lot in the cluster must be a minimum of one acre.

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

    e. The maximum number of parcels permissible in a cluster development is the maximum number of parcels that are authorized by the administrative rules adopted by the Montana Department of Environmental Quality under Title 76, Chapter 4, MCA.

    f. The maximum size of parcels, not designated as open space, allowed within a cluster development is five (5) acres.

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

X. CONDOMINIUMS AND TOWNHOUSES

A. Condominium Development

All condominium developments are subdivisions subject to the terms of the Montana Subdivision and Platting Act (MSPA), except those exempted by Section 76-3-203, MCA as described in paragraphs 1 and 2, below. In order to be eligible for the exemption, the condominiums must be constructed on land subdivided in compliance with the MSPA.

1. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, and any applicable park dedication requirements in Section 76-3-621, MCA, are complied with; or

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

Where no division of land is created by a condominium development, the subdivision shall be reviewed under the procedures contained in Chapter VI (Procedures for Subdivisions Created by Rent or Lease).

Where division of land takes place in a condominium development, the subdivision shall be reviewed under the procedures contained in Chapter III.

B. Townhouse Developments

All townhouse developments are subject to the procedures contained in Chapter III of these regulations.

C. Standards

1. Condominium and townhouse developments shall comply with those standards contained in Chapter XI (Design Improvement Standards), as determined by planning staff and required by the governing body.

2. Condominium and townhouse developments shall meet or exceed the minimum standards of the Montana Department of Environmental Quality and Lewis and Clark County.

3. All buildings and structures in a condominium or townhouse development shall be located at least twenty-five (25 ft.) feet from

the site boundary adjoining the right-of-way of a road or highway, and fifteen (15 ft.) feet from the other boundaries of the development site.

4. Condominium developments shall comply with all applicable provisions of the Unit Ownership Act—Condominiums, Title 70, Chapter 23, MCA, as amended.

D. Final Plans

In condominium developments where no land is subdivided, in lieu of filing of a final plat, the subdivider or developer shall submit to the planning staff three (3) copies of a final plan conforming to the requirements for preliminary plat contained in Appendix B of these regulations. The plan shall be reviewed to assure that it conforms to the approved preliminary plat and the conditions of approval. The approved final plan shall be maintained in the planning department. Where land is subdivided, final plat procedures shall apply.

E. Improvements

All required improvements shall be completed in place or an improvements guarantee provided, in accordance with Chapter III of these regulations. This must occur prior to the approval of the final plat or site plan by the governing body, and prior to the construction of any dwelling units.

XI. GENERAL DESIGN AND IMPROVEMENT STANDARDS

A. Introduction

The general design and improvement standards listed below are intended to help protect the health, safety, and general welfare of Lewis and Clark County residents, conserve natural resources, and comply with applicable state statutes.

1. All subdivisions must be designed and developed by the Applicant to provide satisfactory building sites that properly relate to topography and must 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.

2. 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.

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

4. 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.

5. All subdivisions approved by the governing body shall comply with the provisions of this chapter, except where granted a variance pursuant to Chapter II, section B.

6. Certain types of subdivisions may have additional or alternative development standards set forth in these regulations. For procedures for subdivisions created by rent, lease, or other conveyance refer to Chapter

VI. For planned unit developments refer to Chapter IX., and for condominiums and townhouses refer to Chapter X.

B. Conformance

The design and development of a subdivision shall be consistent with any applicable adopted land use controls, existing covenants, zoning ordinances, health department requirements, and other applicable, adopted resolutions, and regulations. Where no zoning regulations are in effect, maximum density and minimum lot size shall be established by the subdivider in consultation with local and state health authorities and the County Planning Department.

C. Lands Unsuitable for Development or Requiring Mitigation

The governing body may find land to be unsuitable for subdivision because of natural or human caused hazards identified during the subdivision review process. These lands must not be subdivided for building or residential purposes unless the hazards are eliminated, or will be overcome by approved design and construction techniques.

1. Examples of hazards that could render property unsuitable for subdivision or require mitigation include (but are not limited to) the following:

    a. Earthquake fault zones;
    b. Irrigation ditches and canals;
    c. Steep slopes and/or areas prone to rock falls, land slides, or avalanches;
    d. Radon/radiation;
    e. Mine tailings, contaminated soils, toxic waste, etc.;
    f. Flooding;
    g. High water table, as defined by the Sanitation in Subdivision Act;
    h. Polluted or non-potable water supplies;
    i. High voltage power lines;
    j. High pressure gas lines;
    k. Air or vehicular traffic hazards or congestion; and/or
    l. High-risk fire areas (see fire standards).

2. In addition to specific hazards, there may be cases where a subdivision proposal has potential to place unreasonable burdens on the general public because of environmental degradation**,** critical

fish and wildlife habitat, vegetation listed as rare or threatened, or other factors that may require an excessive expenditure of public funds. In other cases, a proposal may, for a variety of reasons, be detrimental to the health, safety, or general welfare of existing or future residents. In these cases, the governing body has the authority to deny a subdivision request, based on its analysis of impacts, and the inability to adequately mitigate the impacts.

3. In cases where a subdivision is proposed in areas where mining has historically occurred, the applicant must contact the Department of Environmental Quality (DEQ) for a file search of their records, to help determine the extent, nature, and impacts of the mining. The DEQ response to the file search request must be included as part of the preliminary plat application. Other related requirements are as follows:

    a. Unless specifically allowed by the DEQ (and documented through a letter), construction on top of reclaimed lands in which waste materials have been buried and capped is prohibited. In some cases, such areas could potentially be used as open space providing the mine waste repository cap is not disturbed.
    b. If the subdivision is located in areas where there are safety and/or subsidence issues associated with tunnels or mine shafts, the applicant must indicate the location and demonstrate how the potential adverse impacts of these features can be mitigated.
    c. If mining waste or other potentially hazardous materials are present or believed to occur on the property, the applicant must demonstrate how the potential hazard can be mitigated to protect human health and safety.

4. Where a subdivision is proposed next to an irrigation ditch or canal, the developer may be required to install fencing between the affected property and the ditch in order to protect children, depending on the hazard posed by the ditch. The fence must be built outside the boundary of the ditch easement, and must not cross the ditch. The property owner(s) or homeowners' association will be responsible for maintaining the fence in good condition.

5. Building sites shall be prohibited on slopes greater than thirty percent (30) and at the apex of "fire chimneys" (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes), head of draws designated high fire hazard areas, or severe fire hazard

areas. The governing body may require a minimum lot size and building envelopes for development in areas of steep slopes greater than thirty (30) percent.

6. In cases where a subdivision is proposed in areas subject to institutional controls, the developer may be required to comply with the institutional controls, e.g., *Regulations Governing Soil Displacement and Disposal in the East Helena Superfund Area in Lewis and Clark County.*

D. Floodplain Provisions

1. Land located in the floodway of a flood of 100 year frequency as defined by Title 76, Chapter 5, MCA as delineated by the Montana Department of Natural Resources and Conservation, or land deemed subject to flooding as determined by the floodplain administrator shall not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health, or property. All subdivision proposals shall be submitted to the county floodplain administrator for review.

2. All land shall not be subdivided for building or residential purposes, or be subject to other uses that may increase or aggravate flood hazards to life, health, welfare, or property, if any of the following are in effect:

   a. The land is located in the floodway of a 100-year frequency flood event or in the designated 100-year floodplain, as defined by Title 76, Chapter 5, MCA, and indicated on county-adopted 100-year floodplain/floodway maps.

   b. The land is deemed subject to flooding, as determined by the floodplain administrator.

   c. The proposal is otherwise prohibited by state or local floodplain or floodway regulations.

3. No new structure shall be located in the 100-year floodplain.

4. County staff will attempt to make applicants aware of areas where flooding is likely to occur, and provide information on how to deal with such hazards.

5. If any portion of a proposed subdivision is within 2,000 horizontal feet and less than 20 vertical feet of an intermittent or perennial stream (see Appendix A for definition) draining an area of 15

square miles or more, and no official floodplain or floodway delineation (study) of the stream has been made, the Applicant may be required to provide in detail, the calculated 100-year frequency water surface elevations and/or 100-year floodplain boundaries. This information must be compiled by a licensed professional engineer experienced in the field, and shall comply with the Standards for Flood Hazard Evaluations as contained in Appendix F of these regulations.

6. The above information (number 5) may be submitted, upon the request of the governing body, to the Floodplain Management Section, Water Resources Division, Department of Natural Resources and Conservation (DNRC) for review and concurrence. The DNRC Floodplain Management Section may review any detailed flood study or water surface profile analysis for accuracy when requested by the local Floodplain Administrator, County Sanitarian, County Planner, or governing body. The applicant shall in all cases subsequently submit the information to the County, along with any environmental assessment required for the subdivision application.

7. The governing body shall waive the above requirement (number 5) when the applicant contacts the DNRC Water Resources Division, and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area.

8. The governing body shall require mitigation measures, including but not limited to: minimum ground floor elevation for main floors of residences and prohibition against construction of basements in residences constructed in the 500-year floodplain.

E. Improvement Design

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared by a registered professional engineer or registered land surveyor (as their respective licensing laws allow), in accordance with the Montana Subdivision and Platting Act and these regulations. Certification of public improvements shall include a statement that the improvements and other elements were constructed to the approved design plans.

F. Lots

1. Each lot shall contain a satisfactory building site that is based on topography and conforms to County Health Department, zoning, and subdivision regulations.

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

3. No single lot shall be divided by a public street, road, alley, or right-of-way.

4. Each lot shall abut and have legal and physical access to a public street or road. Alleys may not be used to provide the primary means of access to a lot. A subdivision in which only lots or spaces for rent or lease are created for the location of a wireless communication facility or an off-premise sign is not required to meet the design, level of service, or maintenance requirements of Chapter XI.H.

5. Corner lots shall have driveway access to the same street or road as interior lots.

6. Lots shall be designed with sufficient non-buildable easements to provide adequate visibility for traffic safety, as determined by planning staff.

7. No lot shall have an average length greater than three times its average width.

8. Side lot lines shall be at substantially right angles to street or road lines, and radial to curved street or road lines.

9. Through or double frontage lots are prohibited except where necessary to provide separation from arterials or collector streets, or to overcome specific disadvantages of topography or orientation.

10. For parcels that have topographical or environmental constraints (e.g., rolling or hilly terrain, natural drainages, lakeshore, wetland/riparian areas, etc.), the governing body may require the designation of building sites, building envelopes, building setbacks, or building restrictions to avoid conflicts and ensure compatible development.

11. Lots shall have a minimum of 60 feet of continuous frontage onto a county road easement or right-of-way at the location where legal and physical access is to be provided.

G. Blocks

1. Blocks shall be designed to assure traffic safety and ease of traffic control and circulation, to assist in the provision of fire protection, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

2. Block length shall not be designed, unless otherwise impractical, to be more than 1,600 feet. Blocks in high density subdivisions (five or more dwelling units per acre) shall not exceed 1,200 feet in length. Unless terrain or other factors dictate to the contrary, blocks shall be at least 400 feet in length.

3. Blocks shall be wide enough to allow for two tiers of lots except where 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 the design of irregularly shaped blocks indented by cul-de-sacs.

4. Rights-of-way for pedestrian walks (not less than ten feet wide) shall be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.

5. Blocks on the preliminary plat and final plat shall be designated by letter or number in accordance with Appendix B of the County Subdivision Regulations.

H. Streets and Roads

1. Roads located within a subdivision, shall meet appropriate County design specifications in the Lewis and Clark County Public Works Manual. The appropriate road classification standard shall be determined through a traffic impact study by a professional engineer registered in the State of Montana (See Appendix B).

2. The arrangement, type, extent, width, grade, and location of all streets shall be assessed in respect to existing and planned streets, topographical conditions, public convenience and safety, and to proposed uses of the land to be served by them.

3. Adjacent and Off-Site Road Improvements:

   a. Maintaining Level of Service. The level of service (LOS), as defined by the current edition of the Highway Capacity Manual, of all roads, segments of roads, and/or intersections within the subdivision's traffic impact corridor shall not be lowered because of traffic generated by the subdivision. For the purposes of these regulations, a 'segment of road' is a section of road between one road intersection and the next closest road intersection. A segment of road does not include sections of roads outside the jurisdiction of Lewis and Clark County.

      The applicant shall be required to complete all improvements necessary to ensure that the projected LOS at full build out of the subdivision is at or above the existing LOS at the time of submission of a complete and sufficient application.

      The traffic impact corridor includes:

      1. adjacent roads (including intersections) that are impacted by the proposed subdivision;
      2. two ingress-egress routes (including intersections) for proposed major and subsequent minor subdivisions, and one ingress-egress route (including intersections) for a proposed first minor subdivision to the nearest state or federal highway/road, Helena city limits. East Helena city limits, or to the boundary of Lewis and Clark County and;
      3. off-site roads, exclusive of (1) and (2) where projected traffic from the proposed subdivision will account for at least 10 percent of the annual average daily traffic on those roads; and
      4. intersections, exclusive of (1) and (2) where projected traffic from the proposed subdivision will account for at least 5 percent of the traffic volume on any approach leg of the intersection.

   b. Payment for Other Costs Directly Attributable to the Subdivision. When any road or segment of road within the traffic impact corridor will not meet or exceed the Lewis and Clark County road standards in the Lewis and Clark County Public Works Manual at the time of full build out of the subdivision, the governing body shall require the subdivider to pay or guarantee payment of the costs of improving the road or segment of road so that it meets the standards in the Lewis and Clark County Public Works Manual. The subdivider shall be required to pay or guarantee payment of costs that reflect the

expected impacts directly attributable to the subdivision, as described below.

If an engineer, licensed in the State of Montana, certifies that a road or segment of road within a subdivision's traffic impact corridor will meet or exceed the applicable Lewis and Clark County road standards in the Lewis and Clark County Public Works Manual at full build out of the subdivision, the subdivider shall not be required to contribute to the cost of improving that road or segment of road.

c. Determining Costs Directly Attributable to the Subdivision. A Preliminary Engineering Report (PER), prepared and certified by an engineer licensed in the State of Montana shall provide estimated costs of improvements necessary to make a road or segment of road meet or exceed the Lewis and Clark County road standards in the Lewis and Clark County Public Works Manual. The PER shall describe the existing and proposed conditions within the traffic impact corridor to the extent necessary so that all components can be quantified and assigned an estimated cost. Estimated costs shall include the following:

1. estimated preliminary and final engineering costs including, but not limited to, design plans and specifications, material testing during construction, inspection and administration;
2. estimated costs of obtaining and completing necessary permits;
3. estimated surveying costs;
4. estimated right-of-way acquisition costs;
5. estimated utility relocation costs;
6. estimated costs for geotechnical and miscellaneous design related site testing and laboratory analysis;
7. estimated costs for road construction/improvements including materials, turning lanes, horizontal alignment and vertical grade adjustments, construction staking, temporary and permanent erosion control, road subgrade stabilization including geotextiles and subbase, sidewalks, curb and gutter, topsoil salvage and replacement, revegetation, weed management, traffic signals, signal timing changes, temporary traffic control, traffic control, approaches, bridges, guardrails, signage and/or pavement markings, non-motorized facilities, provisions for stormwater drainage, and contingencies to bring the facility into compliance to these regulations; and
8. estimated costs for any other items necessary to improve the road.

Estimated costs shall not be older than six months at the time of final plat application. The burden of proof for estimated costs is the

responsibility of the subdivider. Estimated costs must be prepared and certified by an engineer licensed in the State of Montana. Estimated costs shall be submitted to the County Public Works Department for review and recommendation. The governing body may, at the subdivider's expense, require a third party, designated by the governing body, to review estimated costs as described in the PER.

With preliminary approval of the subdivision application, the governing body shall determine a percentage of the costs described above by comparing projected annual average daily traffic (AADT) at full build out of the subdivision with existing AADT, which includes projected AADTs from any preliminary approved and final platted subdivisions within the County. This percentage reflects the expected impacts directly attributable to the subdivision. The percentage of costs shall be calculated for each segment of road(s) impacted using the following formula:

$$\frac{P}{(P+E)} * (100) = I$$

Where:
P = Projected AADT
E = Existing AADT
I = Percentage of Impact (the percentage of impact shall be rounded to the nearest hundredth of a percent, i.e. 36.746% is rounded to 36.75%)

d. Use of Funds. Upon receipt of funds related to estimated costs, the County shall place funds in an interest bearing reserve account, held and used by the County strictly for the impacted roads or segments of road within the subdivision's traffic impact corridor. The County shall complete the construction or improvement of all impacted roads within the traffic impact corridor in compliance with the Lewis and Clark County road standards when sufficient funds become available.

In the event an RID is subsequently created to make the same improvements that the subdivider has contributed to, under this section, the lots within the subdivision shall be considered to have already contributed to the RID.

4. Whenever physically feasible, all roads shall connect to other roads within the neighborhood or development and connect to existing or projected through streets and provide access to adjacent parcels, as part of an interconnected road network, outside of the development.

5. All streets and roads shall be designed and developed in accordance with the Greater Helena Area Transportation Plan. The developer shall develop arterials and collector roads in accordance with the transportation plan or provide and develop right-of-way for such roads in accordance with these plans.

6. All roads shall be designated as county road easements, and shall be shown and described as such on the final plat.

7. All internal roads and streets within subdivisions shall be maintained by creating and properly funding a rural improvement district.

   In all subdivisions, property owners shall sign a waiver of right to protest joining a rural improvement district. A waiver of the right to protest may not be valid for a time period longer than twenty (20) years after the date that the final subdivision plat is filed with the County Clerk and Recorder. Where a rural improvement district exists, the subdivider shall enter into said district.

   At a minimum, rural improvement districts shall provide for road maintenance, dust control, weed control, and maintenance of turnouts, traffic control signs, and drainage facilities.

8. Local roads and residential driveways shall not have direct access onto roads that are functionally classified as state highways, arterial roads or major collectors. Where there is no other reasonable alternative to a local road or residential driveway accessing a state highway, arterial road or major collector, an approach permit must be obtained from the appropriate agency (Montana Department of Transportation, City of East Helena, City of Helena, Lewis and Clark County) before approval can be granted for the proposed road or driveway.

9. Unless designed as part of an integrated road network, or identified as an important traffic corridor, or public health and safety would be enhanced by a through connection, local streets should be designed to discourage through traffic.

10. Whenever a subdivision abuts or contains an existing or proposed collector, arterial highway, or other major thoroughfare, the governing body may require the following: frontage roads; a reservation prohibiting access along certain property lines; deep lots; building setbacks; county road easements or reservations for additional right-of-way; and/or other treatment as necessary for adequate protection of residential properties, and to separate collector or arterial traffic from local traffic.

11. A dead-end street must include a cul-de-sac or hammerhead turnaround unless the dead-end road is proposed as part of a future road connection pursuant to XI.H.16 and the road connection does not serve as access to any lots in the subdivision.

    All aspects of a dead-end street shall meet the design and construction standards of Section 4 of the Lewis and Clark County Public Works Manual.

12. The county only accepts the dedication of full width county road easements unless: 1) a subdivision abuts an existing county road easement that is less than the required width, and the remaining portion of the county road easement can be dedicated within such subdivision; 2) the dedication of a partial width county road easement provides, or could provide, for interconnectivity of a road network in accordance with the Greater Helena Area Transportation Plan; and/or 3) the dedication of a partial width county road easement provides, or could provide, for the interconnectivity of roads when the adjoining property is subdivided.

13. Horizontal and vertical alignment of streets shall conform to the requirements of the Lewis and Clark County Public Works Manual.

14. Intersections shall conform to the requirements of the Lewis and Clark County Public Works Manual.

15. Each major subdivision and subsequent minor subdivision shall provide at least two different ingress-egress vehicular access routes, and provide standard legal and physical access.

    The exceptions to the requirement to provide at least two different ingress-egress vehicular access routes would be major subdivisions and subsequent minor subdivisions that meet all of the following criteria:

    - access provided by a dead end road that is seven

hundred (700 ft.) feet or less in length and the subject dead end road accesses a local, collector or arterial road that is not classified as a dead end road; and

- does not present an evident threat to public health and safety and will not inhibit evacuation of residents in the event of an emergency.

16. When county road easements are extended to exterior property boundaries within a subdivision for a future road connection as provided in Section XI.H.4, the roadway shall be constructed in accordance with the County Road Standards in the Lewis and Clark County Public Works Manual.

17. If utilities are to be installed after an access road is constructed, the subdivider shall install conduit prior to road construction per the requirements of the utility providers to ensure that utilities can be installed without disturbing the roadbed.

18. No subdivision shall be designed in such a way that prevents or inhibits public access by a gate or other method of obstruction on any road within or accessing the subdivisions.

19. Driveways. Any property accessing a county or public road must have an approach permit. The following items shall also be incorporated into design and construction:

    a. All driveway approaches shall conform to the road approach permit requirements of the Lewis and Clark County Public Works Manual.

    b. Driveway turns shall have a turning radius no less than thirty (30 ft.) feet.

    c. A driveway's traveled way, including bridges and cattle guards, shall be a minimum of twelve (12 ft.) feet in width and have a vertical clearance of at least fourteen and one-half (14.5 ft.) feet over its full width.

    d. Driveway bridges and cattle guards need to meet HS20 load rating standards.

    e. All driveway gates shall be located a minimum of thirty (30 ft.) feet from the public right-of-way and shall open inward. Gate openings shall provide a clear opening of not less than twelve (12 ft.) feet.

f. Fire department personnel shall have ready access to locking mechanisms, on any gate restricting access on a driveway.

g. Driveway rights-of-way shall be a minimum of twenty (20 ft.) feet wide to accommodate the traveled way, vegetation modification, and other local requirements.

h. Driveway grades shall be no greater than eleven (11%) percent.

i. Every dead-end driveway more than three hundred (300 ft.) feet in length shall be provided with a turnaround at the terminus having a minimum radius of fifty (50 ft.) feet to the center line or a "hammerhead-T" turnaround to provide emergency vehicles with a three-point turnaround ability.

j. Driveway access shall be located at least fifteen (15 ft.) feet from the closest edge of turnouts and shall not be located on a turnout.

k. Driveway access shall be at a location that does not conflict with the requirements of XI.F.5, XI.F.6, XI.F.10, and XI.H.10 in these regulations.

I. Improvements

1. All roads within subdivisions shall be dedicated as county roads, except within mobile home and recreational vehicle parks.

2. All roadway improvements required by the governing body, including pavement, curbs, gutters, sidewalks, driveway approaches and drainage shall be constructed in accordance with the specifications and standards prescribed in these regulations, and the Lewis and Clark County Public Works Manual, using materials approved by the governing body.

3. The subdivider must provide proof that all easements are county road easements.

4. Existing trees and other vegetation shall be preserved where possible. Plantings may be required for buffering, screening, weed control, or soil erosion protection and are subject to approval by the governing body.

5. Street light installation may be required by the governing body on all streets within the subdivision or may be included as part of the

public improvements agreement. All street lighting must be configured with a horizontal cutoff, and positioned so as to minimize any objectionable direct glare source and not create light trespass.

6. Street or road signs and traffic control devices, when appropriate, shall be placed at all intersections by the developer or included as part of the public improvements agreement. Traffic control devices and placement shall be consistent with the Manual on Uniform Traffic Control Devices, available from the County Public Works Department.

7. If subsequent subdivisions will be served by improvements (roads/streets, fire protection water supplies, storm-water drainage facilities, mailbox facilities etc.) that were installed by a previous subdivider, then the subsequent subdivider may be required to reimburse the previous subdivider for a pro-rata share of the cost of the improvement(s) if all of the following criteria are met:

   - The improvements in question meet the applicable standard; and
   - The improvements do not have to be upgraded.

8. 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, provisional permits for water supply systems, and floodplain development permits, as well as any permits required by state and federal agencies.

9. The subdivider shall provide a one-year warranty for all improvements required of the subdivision. The warranty must commence at the time the improvements are inspected and are accepted by the governing body.

10. The governing body may require a restrictive covenant on the property, waiving the right to protest a district to fund the installation and/or maintenance of capital improvements such as water supply systems, wastewater treatment systems, solid waste, parks, open space, conservation areas, roads, sidewalks, non-motorized trails, fire protection, grading and drainage, erosion and sediment control, weed control, vegetation management, mailboxes, outdoor lighting, and other utilities. The waiver of a right to protest must identify the

capital improvements for which protest is being waived. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

J. Mailbox Placement and Design

1. If mail delivery will not be to each individual lot within the subdivision, the developer shall provide an off street area for mail delivery within the subdivision, in cooperation with the United States Post Office.

   Where feasible, it is generally preferable to collect boxes in a central location, to reduce the number of stops a mail carrier must make along a road. Neighborhood delivery and collection box units shall be placed in a turnout (see below), off the main roadway.

   Mailbox locations must be indicated on the preliminary and final plats.

2. On collectors and arterials, mail delivery will occur outside the travel way. Where a turnout is used, it shall comply with the requirements for turnouts found in the Lewis and Clark County Public Works Manual. No turnout may be constructed without approval of the managing road authority. Responsibility for maintenance of the turnout shall be of the rural improvement district, if one exists or is required.

3. If several property owners are served by a local road that intersects an arterial or collector, the mailboxes shall be installed in a turnout off of the local road, rather than off the more heavily traveled arterial/collector.

4. Montana law (Section 60-6-101, MCA), states the Montana Department of Transportation has adopted rules pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal service. If any highway under the jurisdiction of the transportation commission is encroached upon by a fence, building, structure, sign, marker, mailbox, newspaper delivery box, or other obstruction, the Department of Transportation may give notice in writing to the person erecting or maintaining such encroachment requiring the same to be removed.

5. Authority to approve mailboxes rests with the U.S. Postal Service. Mailbox design and support systems shall also meet the crash test requirements of the Federal Highway Administration.

K. Street and Lot Identification

Street names and all traffic control signage shall comply with the provisions of the Lewis and Clark County Public Works Manual.

L. Grading, Drainage, and Erosion Control

1. The drainage system and facilities required for any surface run-off affecting the subdivision shall comply with the regulations of the Montana Department of Environmental Quality (DEQ) and are subject to the approval of the governing body. The intent of these regulations is to assure that proper drainage facilities are provided for runoff generated by subdivisions, and that such facilities are maintained.

2. If road construction or other surface improvements are required, the subdivider shall provide a complete grading and drainage plan with accurate dimensions, drainage courses, and elevations, showing the proposed grades of streets and drainage improvements. The plan shall be designed and certified by a registered professional engineer. The completed plan must be submitted with the final plat; preliminary information shall be supplied with the subdivision application. (See Appendix B)

3. Standards for all grading and erosion control are as follows:

    a. Grading shall not significantly increase the rate of stormwater runoff, and shall avoid the erosion of natural or constructed slopes and sediment accumulation in natural drainage channels or watercourses.

    b. Grading shall not significantly alter the natural drainage patterns.

    c. Grading shall preserve and conform to the general natural form and contours of the land surface, as much as practically possible.

    d. Grading shall be designed to preserve natural or established vegetation as much as is practically possible. The planned

revegetation shall stabilize the slope and be compatible with native vegetation. Suggested (but not required) plant material is native vegetation appropriate to adjacent plant communities in both species composition and spatial distribution patterns. It is recommended that the use of native vegetation acknowledge certain plant species' relative attractiveness to wildlife.

e. Affected site area shall be revegetated as necessary for the stabilization of disturbed surfaces, with the exception of areas covered by impervious surfaces and/or structures.

f. Grading shall allow for the most rapid possible recovery of disturbed lands to natural or introduced vegetation.

g. Any areas disturbed while installing drainage systems shall be restored and revegetated. Where necessary, topsoil shall be placed on disturbed areas prior to revegetation. The proposed restoration plan, which must include a schedule, shall be included as part of all grading and drainage plans submitted to the County.

h. The subdivider shall use the best management practices for road construction and other surface improvements to address erosion control, debris and dust abatement during construction activities.

4. Where the property is at the head of a drainage area and all natural drainage channels will be protected by perpetual drainage easements, a drainage system may be designed by the subdivider. For minor subdivisions, with the approval of the planning staff, a drainage system may be designed in consultation with the federal Natural Resources and Conservation Service (NRCS), or the Department of Natural Resources and Conservation (DNRC).

5. For all subdivisions that involve road construction or major ground disturbance, as defined by the standards of DEQ Circular No. 8, an analysis of storm water conditions shall be made by a registered professional engineer. The analysis, which shall comply with the storm drainage standards in DEQ Circular 8 (current edition), shall include:

a. Location of intermittent streams or drainage courses that are within the proposed subdivision boundaries, and a determination of their water surface elevation for a 25-year

storm occurrence. These calculations will be used to determine whether culverts and road and bridge design are adequate, and to determine building setbacks from these water bodies.

In accordance with DEQ Circular No. 8, if detention ponds or other storage facilities are included in the design, delineation of drainage areas within the subdivision, estimates of peak flows (as defined in DEQ Circular 8) generated within these drainage areas, and estimates of flow volumes is required.

b. Delineation of drainage areas outside the subdivision that flow through the subdivision, and estimates of peak flows generated within these drainage areas.

c. Volume of water contributed to the drainage area by the subdivision, pre- and post-development, based on a 10-year storm event. For flows that originate outside the subdivision, provisions for passing these flows through the subdivision without flooding home sites or drain fields (at a recurrence interval of 100 years), and without overtopping roadways (at a recurrence interval of 10 years).

d. For flows that originate within the subdivision, provisions for detaining or retaining these flows, so that the peak flow (from the 2-year, 1-hour event) that leaves the subdivision after development does not exceed the peak flow before development.

e. Where storm drainage is intended to be discharged into the ground, locations of nearby (within 200 feet) wells and drain fields that may be impacted, or a statement that there are no wells or drain fields nearby.

6. To accommodate upstream drainage, a drainage facility shall be installed, of sufficient size to accommodate existing and potential runoff from the entire upstream drainage area. The drainage system shall be designed to prolong the time of surface water concentration on the site, and retain maximum infiltration into the ground.

7. The subdivision's drainage system design shall provide for on-site storage of water in excess of historic volumes discharged from the site, based on the storm water analysis. It is suggested that

retention ponds be designed to have natural edges, using native plant materials.

8. Street curbs and gutters, swales, or protection of the natural drainage shall be required, according to the character of the area, density of development, and nature of adjoining properties. Any curbs and gutters present on adjoining properties shall be extended according to current specifications of local and state authorities. Where practicable, retention of surface water in drainage ways is encouraged. Natural drainage ways shall be preserved and used, whenever feasible. The intent is to retain water on the land (without causing flooding), and allow it to be absorbed into the soil gradually.

   Where flows permit, the drainage channels shall be designed as grassed swales, or wetlands, encouraging sheet flow.

9. Culverts or bridges of adequate size shall be provided and installed by the subdivider where drainage channels intersect any street right-of-way or easement. Minimum culvert sizes shall be eighteen (18) inches in diameter for major collectors and fifteen (15) inches in diameter for other road categories and driveways unless otherwise specified in the Lewis and Clark County Public Works Manual. All culverts shall extend at least across the entire width of the base of the fill; the amount of backfill to be placed over the culvert and the culvert's capacity shall be determined by a qualified engineer. This shall include arrangements for driveway culverts. The cost, installation, and maintenance of driveway culverts shall be the responsibility of each individual lot owner. This responsibility shall be clearly stated in the covenants.

10. Drainage facilities shall be located in street rights-of-way or in perpetual drainage easements of appropriate widths and are subject to approval by the governing body. Streets shall be designed to drain in a manner that is compatible with existing streets and natural drainage patterns.

11. Drainage systems shall not discharge into any sanitary sewer facility.

12. Where required by the governing body, perpetual easements to convey drainage shall be provided, and graphically shown on the final plat or site plan.

13. Where a subdivision is traversed by a watercourse, drainage way, channel, ditch, or stream, easements or rights-of-way may be

required to parallel the lines of such watercourse at a sufficient width to allow for maintenance or to protect natural drainage. Setbacks on each side of irrigation canals or ditches may be required for maintenance purposes.

14. Where a subdivision is traversed or bordered by an irrigation ditch, the subdivider may be required to fence or otherwise restrict access to the ditch to protect public health and safety. Determining the type of access restriction shall be based on consideration of the size of the ditch, seasons of flow, type of subdivision, other safety factors, and comments from the irrigation district or water users association, if any.

M. Water Supply Systems

1. All water supply systems (including individual wells, shared wells, multi-user, and public water supply systems) shall meet applicable regulations and design standards of the Montana Department of Environmental Quality (DEQ) and the Department of Public Health and Human Services (DPHHS), and comply with existing water rights and water rights regulations. The proposed method of supplying domestic water to each lot in the subdivision must comply with the applicable current 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.

2. The water supply system shall be subject to approval by the governing body, which may require that any proposed public water supply system provide adequate and accessible water for fire protection.

3. Where the subdivision is within the service area of a public water supply system, the subdivider shall submit plans and specifications for the proposed water system to the water district involved and DEQ, and shall obtain their approval prior to undertaking any construction to install such facilities. In cases when the proposed development is within 500 feet of an existing public system, the applicant must provide evidence that the public water supplier has been contacted and the applicant can meet the appropriate standards. If connection to an existing public system is denied, then the landowner must submit plans and specification for the proposed water systems to the County for review and approval.

4. Where the subdivision could be served by a multi-user or public water supply system in the future, the governing body may require a restrictive covenant on the property, waving the right to protest joining a district to fund the installation and/or maintenance of such a system. A waiver of the right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

5. All pump tests for ground water wells must comply with all applicable requirements and standards set by DEQ.

6. All water service connections in public and multi-user systems must be equipped with a viable water-metering device.

7. Prior to final plat approval by the governing body, subdivisions containing lots of less than 20 acres in size, 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.

8. Prior to final plat approval by the governing body, subdivisions containing lots from 20 to 160 acres in size must meet applicable local and state regulations for water supply systems. This demonstration to the BOCC is to evaluate the ability to develop lots at the platting stage and is not a guarantee that a source of water or a location for a septic system or drainfields will be available when the lots are developed.

9. For proposed subdivisions that include new water supply or wastewater facilities, the Applicant shall provide as part of the subdivision application all applicable information required under Section 76-3-622, MCA.

10. A subdivision that is served by a water supply system which will utilize more than 35 gallons per minute or 10 acre feet per year must demonstrate a sufficient water supply prior to final plat approval. If a permit to appropriate water has not been issued by Montana Department of Natural Resources and Conservation (DNRC) to serve the entire subdivision, the governing body shall require a restrictive covenant notifying future property owners that a permit to appropriate water has not been issued by DNRC.

11. Any public water supply system must provide adequate and accessible water for fire protection, unless an alternative fire-fighting water supply system is approved for use by the governing

body and recommended for use by the Fire Protection Authority Having Jurisdiction (FPAHJ).

N. Wastewater Treatment Systems

1. All sewage wastewater treatment systems shall meet the regulations and design standards of the Montana State Department of Environmental Quality, the City-County Health Department, and applicable zoning regulations. The proposed method of disposing of sewage from each lot in the subdivision must comply with the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326 or subsequent amendments as applicable. 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.

2. The means of wastewater treatment shall be subject to approval by the governing body.

3. Where the subdivision is within the service area of a public wastewater treatment system, the subdivider shall submit plans and specifications for the proposed wastewater treatment facilities to the sewer district involved and the Montana Department of Environmental Quality. The subdivider shall obtain their approval prior to undertaking any construction to install such facilities. When a subdivision is located within 500 feet of a public sewer system, the applicant must provide evidence that the public water supplier has been contacted and the applicant can meet the appropriate standards. If connection to an existing public system is denied, then the landowner must submit plans and specification for the proposed wastewater treatment systems to the County for review and approval.

4. Where the subdivision could be served by a multi-user or public wastewater treatment system in the future, the governing body may require a restrictive covenant on the property, which waives the right to protest joining a district to fund the installation and/or maintenance of such a system. A waiver of the right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

5. 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 DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act Sections 76-4-101 *et seq.*, MCA. This approval applies to the development of the lots at the time of the approval and is no guarantee that the location for a septic system will be available when the lots are actually developed.

6. In order to obtain approval from the governing body, subdivisions from 20 to 160 acres in size must meet applicable local and state regulations for wastewater treatment systems. 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 location for a septic system or drainfields will be available when the lots are developed.

7. Pursuant to Section 76-3-622, MCA, the Applicant shall provide information for new wastewater facilities.

O. Solid Waste

1. The subdivider shall assure that provisions for collection and disposal of solid waste meet the regulations of the Montana Department of Environmental Quality (DEQ). The proposed method of storing and disposing of solid waste generated within the subdivision must comply with the Administrative Rules of Montana (ARM) or applicable statute. 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 or applicable statute. The means for solid waste collection and disposal shall be subject to approval by the governing body.

2. Where the subdivision is not located within a landfill district, the governing body may require a restrictive covenant on the property that waives the right to protest joining a district to fund the collection and/or disposal of solid wastes generated by the subdivision. A waiver of the right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

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 Montana Department

of Environmental Quality or other authorized reviewing authority under the Sanitation in Subdivisions Act Sections 76-4-101 *et seq*., MCA.

4. In order to obtain approval from the governing body, subdivisions with lots ranging in size from 20 to 160 acres in size must meet applicable local and state regulations for solid waste.

P. Other Utilities

1. All new utilities must be placed underground, except where there are topographic or soil constraints, or other constraints determined by the applicable utility provider. Underground utilities, if placed in the street right-of-way, shall be located between the roadway and the right-of-way line to simplify location and repair of lines. Such underground facilities shall be installed after the street has been brought to grade and before it is surfaced, to eliminate as far as practicable the necessity for disturbing such surfacing for the connection of individual services.

2. If an overhead utility line is required or determined to be necessary, the overhead utility lines shall be located at the rear property line, where practical.

3. Utility facilities shall be designed by utility firms in cooperation with the subdivider, subject to all applicable laws, rules, and regulations of any appropriate regulatory authority having jurisdiction over such facilities.

4. If utilities are not installed adjacent to the proposed lots prior to the filing of the final plat, the subdivider shall either enter into a subdivision improvements agreement guaranteeing the installation of those utilities or the subdivider shall provide the County with signed contracts from all pertinent utility companies guaranteeing that the utilities will be installed when homes are constructed on the subject lots. The subdivider shall bear the cost of installing the trunk line utilities. Lot owners shall be responsible for the hookup of the utilities from the trunk line along the individual lot line to the residence.

5. To the extent feasible and practical, utility lines shall cross the roadway in a perpendicular manner. Utility crossings that are likely to require future servicing or expansion shall be encased or installed in conduits to permit servicing without disrupting the traffic flow or requiring open digging into the roadway surface.

6. On new construction, no utility shall be situated under any part of the pavement, except where it must cross the roadway. Utility poles, vent standpipes, and other above-ground utility features that would constitute hazards are not allowed within the roadway clear-zone.

Q. Utility Easements

1. Easements within and to the proposed subdivision shall be provided for utilities in all locations where utilities are installed and where needed for future extensions of service.

2. If required, utility easements shall be located along lot lines. If the easements are placed along the street, they shall be located between the edge of the roadway and the right-of-way line. Installation shall be as close to the right-of-way line as practicable, in order to provide a safe environment for traffic operation and preserve space for future roadway improvements or other utility installations.

3. Utility easements shall be twenty (20 ft.) feet wide unless otherwise specified by a utility company or the governing body. This may be accomplished by ten (10 ft.) foot dedications along all lot lines where they can be combined for a total of a twenty (20 ft.) feet easement along lot lines. Ten (10) foot easements along front lot lines are adequate if combined with street right-of-way. Unless otherwise specified by a utility company or the governing body, utility easements shall be designated as follows:

   a. Front: 20 feet (or when combined with a 60 foot road easement—5 feet beyond the edge of the road right-of-way).

   b. Side: 20 feet (or 10 feet when combined with 10 foot right-of-way from adjacent lot(s)).

   c. Rear: No rear lot line utility easements are required on lots less than 1 acre in size. For lots greater than an acre in size, the rear easement is 20 feet (or 10 feet when combined with a 10 foot easement from adjacent lot(s)). Utility easements may also be incorporated into dedicated alleys with right-of-ways of 24 feet or greater.

   d. Where a utility easement is to be located in an existing, dedicated right-of-way, a street opening permit must be

obtained from the governing body or the Montana Department of Transportation.

e. In addition to showing the location of the utility easement on the plat with dashed lines, the following statement shall be on the final plat:

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

f. No permanent structures may be placed on utility easements. Features such as fencing or landscaping are subject to removal for maintenance needs.

4. Ditch easements shall be provided for in accordance with Section 76-3-504, MCA.

5. The governing body may require building setbacks from high voltage transmission lines or high-pressure gas pipelines based on the recommendation of the affected utility, in order to protect public health and safety.

R. Park Land, including Open Space and Conservation Areas

1. In order to provide for the open space, conservation and recreational needs of a proposed residential development, a subdivider shall dedicate to the governing body a cash or land donation (as determined by the governing body), except as provided for in subsections 3 and 6. The amount of donation shall be equal to:

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

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

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

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

2. When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy or zoning regulations, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Such park dedication requirements are in-lieu of those for above and may not exceed 0.03 acres per dwelling unit.

3. A park dedication is not required for:

a. land proposed for subdivision into parcels larger than 5 acres;

b. subdivision into parcels that are all nonresidential;

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

d. a subdivision in which only one additional parcel is created; or

e. except as provided in Section 76-3-621(8), a first minor subdivision from a tract of record as described in Section 76-3-609(2).

4. The governing body, in consultation with the applicant and the Planning Board and/or Park Board, may determine suitable locations for parks and playgrounds. The governing body shall 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.

5. The governing body shall use the dedicated cash or land for development, acquisition, or maintenance of parks to serve the

subdivision. The use of dedicated cash must reasonably serve the subdivision and must be in accordance with adopted plans for parks, recreation, open space, and/or conservation easements. The governing body may not use more than 50% of the dedicated cash for park maintenance.

Land dedicated for park or playground purposes shall be useable for recreation and/or conservation purposes, serve residents of the entire subdivision, are of appropriate shape and size, and shall have reasonable access.

A waiver of right to protest inclusion into a parkland maintenance district will be required as a condition of approval for all subdivisions.

6. The governing body may waive the parkland dedication requirement if the subdivider meets the criteria provided in Section 76-3-621(7), MCA.

7. The term “cash donation" is the fair market value of the unsubdivided, unimproved land. The subdivider shall be responsible for providing satisfactory evidence of the fair market value. The evidence for final plat application of major and subsequent minor subdivisions shall be in the form of an appraisal of the property by a licensed real estate appraiser. The evidence for subdivision applications of major and subsequent minor subdivisions shall be in the form of a market-based analysis or an appraisal of the property by a licensed real estate appraiser. In both applications, such evidence must be less than six months old. After consideration of all pertinent evidence, the determination of fair market value shall be made by the governing body. If the subdivider and governing body are unable to agree upon the fair market value, the governing body may require the fair market value be established by an appraisal done by a licensed real estate appraiser mutually acceptable to the applicant and the governing body. The appraisal fee shall be paid by the subdivider.

8. Parkland ownership status must be specified at the time of preliminary plat approval, shown on the final plat, and conveyed to the County by means of a warranty deed(s) from the property owner(s), acceptable to the governing body, recorded with the Clerk and Recorder with the filing of the final plat.

9. All common areas must be identified on the plat during the first phase of development, and developed as scheduled.

10. The governing body may, in consultation with the subdivider and the Planning Board and/or Parks Board, accept non-motorized public access trail easements and linear parks for parkland dedication. Based on the Helena Transportation Plan, plans for non-motorized trails may require additional easement be reserved and the additional easement shall not be figured into the parkland dedication.

11. When required or proposed, all non-motorized trails shall meet the latest edition of American Association of State Highway and Transportation Officials (AASHTO) *Guide for the Development of Bicycle Facilities* design standards. By this reference the related AASHTO 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 by AASHTO.

    Design plans for non-motorized trails shall be submitted to the Lewis and Clark County Community Development and Planning and Public Works Departments for review and recommendation. The Lewis and Clark County Community Development and Planning and Public Works Departments shall approve plans prior to construction.

12. Subject to the approval of the governing body and acceptance by the school district trustees having jurisdiction, a subdivider may dedicate land as required by Chapter XI.R.1 to a school district if the land is adequate to be used for school facilities or buildings. The land is to be conveyed to the school district by means of a warranty deed(s) from the property owner(s), acceptable to the governing body and the school district trustees having jurisdiction, recorded with the Clerk and Recorder with the filing of final plat.

S. Fire Protection

All subdivisions must be designed to avoid or mitigate any significant adverse impacts on fire protection and structures are prohibited at the apex or head of draws in designated high fire hazard areas, or in severe fire hazard areas identified in the Growth Policy.

All subdivisions shall be planned, designed, constructed, and maintained in compliance with the fire protection standards described in Appendix K 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.

T. Agriculture

All subdivisions must be designed to avoid or mitigate any significant adverse impacts on agriculture, agricultural water users, or agricultural water facilities.

To mitigate impacts of residential uses in an agricultural area, the sub-divider shall provide restrictive covenants addressing agriculture-related issues that will accompany the final plat. Issues addressed in the covenants shall include the following: the presence of nearby agricultural operations (and a listing of potential impacts such as odors and noise); existence of irrigation facilities and easements; protection of existing water rights; rights of the irrigation facility operator to perform maintenance; control of domestic pets; weed management responsibilities; and other agriculture-related factors that may be present.

U. Weed Control

Pursuant to Section 7-22-2121, MCA of the County Weed Law, anyone significantly disturbing soil must submit a written weed management and re-vegetation plan to the County Weed District. The plan shall be approved and certified by the County Weed District prior to any soil disturbance. All requirements and specifications of an approved plan shall be met prior to approval of the final subdivision plat. An approved weed management plan shall remain in effect for the five-year management period, regardless of any changes in property ownership.

V. Erosion and Sediment Control

Any subdivider causing one or more acres of ground disturbance is required to contact the Department of Environmental Quality (DEQ) to obtain a Montana Pollution Discharge Elimination System (MPDES) permit. Disturbance activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of subdivision if the larger common plan will ultimately disturb one acre or more. All requirements and specifications of the permit shall be met prior to final plat approval unless the subdivider enters into a subdivision improvements agreement as described in Appendix E.

W. Waterbody Setbacks and Buffer Areas

Policy 1.8 of Issue A of the Natural Environment Issues, Goals and Policy section of the Lewis and Clark Growth Policy recommends the development of residential, and non-residential setback requirements along streams, rivers, lakes, reservoirs, minor water courses and wetlands to preserve water quality and other natural resources, viewsheds and recreational uses.

Waterbodies, watercourses, wetlands and riparian areas provide benefits to the economy, environment, and quality of living of people in the County. Among the benefits enjoyed are protection of sensitive fish and wildlife habitat, protection of valuable water recharge areas, improved surface and ground water quality, flood prevention, scenic beauty and recreational opportunities. Protection of surface water resources can be accomplished through a variety of tools, including the establishment of setback and buffer zones to encourage development away from critical water resources.

1. Definition of Key Terms

   a. Ordinary High Water Mark: For the purposes of these regulations, the ordinary high water mark is defined as the line that water 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 below the line may include (but not be limited to) deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value. A flood plain adjacent to surface waters is not considered to lie within the surface water's high water marks.

   b. Setback: The distance from the ordinary high water mark within which the structures and uses defined in 3-a below are not allowed. Setback and buffer distances are measured on a horizontal plane.

   c. Buffer: Buffer zones are not additional setback distances, but rather the portion of the setback that is designated to remain undisturbed. Buffers are areas where all natural vegetation, rocks, soil, and topography shall be maintained in their original state, or enhanced by the additional planting of native plants. The structures and uses defined under 3-a below are not permitted.

2. Applicability and Water Course Descriptions

Setbacks and buffers are horizontal distances from the ordinary high water mark, and are designated as follows (see Appendix L for a detailed listing of water bodies under each of the classifications):

Water Course Designation	Setback	Buffer
Type I	250 feet	100 feet
Type II	200 feet	75 feet
Type III	100 feet	50 feet
Type IV	50 feet	no buffer

Setback and buffer areas must be established from the boundaries of wetlands identified by the County, the Army Corps of Engineers, DEQ, U.S. Fish and Wildlife Services, DNRC or FWP. If a subdivision application reveals a potential wetland on the site then the applicant is responsible for delineating the wetland's boundaries on maps, plats, and site plans submitted as part of the subdivision application. Setback and buffers areas from wetland boundaries may not contain structures and improvements, except for those for educational or scientific purposes.

For the purposes of this section, riparian areas subject to these regulations shall include the following:

a. Parcels within 250 feet of the ordinary high water mark of type I water courses. These are defined as the Missouri River (excluding the reservoirs); Dearborn River; Sun River; and the Big Blackfoot River.

b. Parcels within 200 feet of the ordinary high water mark of type II water courses, generally defined as all main tributaries of type I water courses.

c. Parcels within 100 feet of the ordinary high water mark of type III water courses, generally defined as all tributaries of type II water courses; all intermittent streams; Missouri River Reservoirs; Lake Helena; Helena Valley Regulating Reservoir; and wetlands (as defined by the current edition of the Federal Manual for Identifying and Delineating Wetlands).

d. Parcels within 50 feet of type IV water-courses, which for these purposes are considered the Helena Valley Irrigation District canals, Prickly Pear Water Users canals, and ditches or canals specifically designed to carry storm-water or surface water.

e. Large, well-defined ephemeral drainages within subdivisions shall be protected with non-disturbance easements and 50-

foot setbacks in order to provide for storm-water retention and wildlife habitat.

f. All other water-courses, such as swales and ephemeral drainages, shall be addressed in the storm-water drainage plans for each subdivision proposal per the requirements of the Subdivision Regulations. Consulting engineers should work closely with County Planning Staff to ensure that any improvements within a subdivision or alteration of any drainage within a subdivision will provide for adequate storm-retention on-site and any for necessary setbacks. Setbacks for these drainages shall be defined by the calculated volume of storm-water in the drainage and the depth of flow based upon a 100-year storm event. An engineer registered in the State of Montana shall calculate the volume of storm-water.

3. General Provisions

a. Structures and uses prohibited under the setback and buffer standards include the following:

i. any type of building and accessory structure related to residential, commercial, and industrial uses;

ii. manufactured and prefabricated buildings or accessory structures;

iii. septic tanks and septic tank drain fields;

iv. barns, feed lots, and corrals;

v. communication towers; and

vi. roads, road easements, road rights-of-way and driveways that are within the setback and buffer area and are parallel to the watercourse.

b. All setbacks must extend to the edge of adjacent wetlands and the 100-year floodplain, if designated. In cases where identified wetlands or the 100-year flood plain extend beyond the setback, the setback width will be extended accordingly.

c. The buffer is required on 75% of the linear footage along the affected water bodies. The maximum lineal footage allowed

as part of this 25% is 100 feet. Docks, walkways, lawns or other improvements not otherwise prohibited by these regulations are allowed on the remaining 25% of the footage, which must be identified on the preliminary plat. Applicants are encouraged, however, to keep the entire shoreline in a natural state.

d. Equipment and infrastructure directly related to agricultural production (e.g., pumps, irrigation equipment, hay storage and harvesting facilities, canals, and storage sheds less than 150 square feet in floor area and under 10 feet in height) are exempt from the setback and buffer requirements.

e. Structures and infrastructure related to water-related recreation such as docks, boat ramps, fishing access sites, and boat houses are exempt from the setback and buffer requirements (providing they are in the identified 25% of the area open to such development).

f. Fencing is exempt from the setback and buffer requirements. Depending on wildlife issues that are identified, the BOCC may condition that “wildlife friendly” fencing be required (see fencing standards under Section “X” in this chapter).

g. Pre-existing parking lots, streets, trails or other impervious surfaces located inside the buffer must be quantified and excluded from being counted as part of the buffer distance.

4. Other Provisions

a. The BOCC may issue variances for nonconforming uses that would otherwise violate the setback and buffer regulations, if compliance would result in unnecessary or undue hardship to the applicant. Financial hardships or those created by the applicant are not valid reasons for a variance. Any variance granted shall be the minimum relief from these regulations necessary to allow a reasonable financial use of the property. Setback requirements may be reduced to not less than half the distance from the shoreline to the opposite property line.

b. Frontage: No minimum lot frontage is required, except that lot design shall not exceed the length-width ratio of 3:1. (In this case, the length is defined as the distance running roughly perpendicular to the shoreline, while the width is

approximately parallel to it.) No new lots abutting shorelines shall be created that do not conform to the length-width ratio or minimum setbacks. Common areas not in conformance with the 3:1 lot ratio can be considered for exemption.

c. Public trails along a stream, river, lake, or wetland may be constructed within the required buffer zones, provided they are solely for non-motorized use, and subject to the following provisions:

   i. trails shall not be constructed within 15 feet of the ordinary high water mark of a stream, river, lake, or wetland. Existing trails inside this zone will be considered to be a legal, non-conforming use;

   ii. construction of trails shall follow the natural topography to the maximum extent feasible to prevent excessive cut and fill; and

   iii. natural vegetation shall be retained to the maximum extent possible.

d. Campgrounds, R.V. parks, and marinas shall meet the setback and buffer requirements for type IV watercourses, although the setback and buffer for tent sites may be halved. Existing campgrounds, marinas, and R.V. parks that do not meet these requirements may continue as legal, non-conforming uses. However, the addition of new sites after the establishment of these regulations will be required to meet the requirements.

e. Nothing in this setback and buffer regulation shall prohibit repairs or improvements to existing roads, ditches, utilities or utility lines, bank maintenance, or stream stabilization/enhancement measures otherwise allowable under federal or state laws. The following uses or activities are authorized to occur within the setback area:

   i. a utility line;

   ii. roads, road easements, road rights-of-way and driveways that are perpendicular to the watercourse and within the setback are permitted;

   iii. an outlet for stormwater facilities;

iv. an agricultural use or activity that is not a new agricultural building or addition to an existing building;

v. an existing legal, non-conforming structure, use, or activity;

vi. an activity that is required in an approved noxious weed control plan; and/or

vii. an activity related to the planting of native vegetation.

f. Routine maintenance of existing dwellings or accessory structures would be allowed inside the setback. Expansions or improvements of up to 50% of the total square footage of the dwelling or accessory structure are permitted, provided they do not encroach any further into the setback, and meet other applicable regulations.

g. Subdivision applicants must identify a building envelope outside the setback on the sketch plan they bring to their pre-application conference. Setback and buffer boundaries must be illustrated on the preliminary and final plats.

X. Standards for Protecting Wildlife

Depending on wildlife issues raised during their review of the preliminary plat application, the BOCC may require “wildlife friendly” fencing as a condition of approval. While not applicable in all situations, hedges or other vegetative barriers are preferable from a wildlife perspective.

Y. Non-Residential Development Standards

The following apply to subdivisions that include commercial and/or industrial components:

1) All roads within non-residential areas must be paved.

2) Streets for non-residential subdivisions (and accessory parking areas) shall be connected with arterial streets, so that traffic is not generated on local streets. Intersections of parking area access with arterials or collector streets shall be designed to cause the least possible interference with traffic movement.

3) Collector streets for non-residential subdivisions shall be planned to

serve industrial areas exclusively, and shall connect to arterials or non-residential collectors. The intersections of parking area service streets with arterials or collector streets shall be at least one hundred and twenty five (125) feet apart.

4) Provisions shall be made for service access (e.g., off-street loading or unloading, and parking) that are adequate for the uses proposed. Provision of such service access shall be determined by Institute of Transportation Engineer (ITE) standards.

5) In order to reduce noise and visual impacts of non-residential developments located in, adjacent to, or near existing residential the governing body may require natural screening, fencing, or a combination of both natural screening and fencing around parking, loading, service, and outside storage areas as needed to mitigate adverse noise and visual impacts to existing adjacent or nearby residential properties. Said natural screening and fencing when required shall not interfere with safe sight distances along roadways for exiting traffic. A plan for continuous maintenance and watering of the natural screening and fencing shall be submitted with the subdivision application. The use of “xeriscaping” with plants that require minimal water is recommended.

6) See Appendix B for additional supplements for non-residential units.

Z. Outdoor Lighting Control

All outdoor lighting fixtures shall be designed and constructed in a manner to ensure that:

1. Any exterior lighting shall be arranged and directed downward to minimize illumination beyond the property lines.

2. All street lighting must be configured with a horizontal cutoff, and positioned so as to minimize any objectionable direct glare source and not create light trespass.

AA. Ridgeline and Hillside Development

1. Design Standards for the Subdivision of Hillside and Ridgeline Land

   a. Subdivision applications on hillside land shall comply with each of the following design standards:

1. Building envelopes shall be required for all proposed lots. The building envelope defines the portion of each lot within which all improvements must be located. Improvements shall include all buildings and garages. Decks, patios, terraces, retaining walls, fences, recreational facilities and site access may be located outside of the building envelope.

2. Building envelopes on ridgelines shall be sited such that the future development of the building envelope can be accomplished without breaking the natural silhouette created by the prominent ridgeline and the sky. For the purposes of these guidelines, a canopy of existing trees located on the top of a ridgeline shall be considered a part of the prominent ridgeline.

2. Review Criteria for the Subdivision of Hillside and Ridgeline Land

a. The following design criteria shall be used by the Board of County Commissioners for subdivision applications on hillside land. It shall be the burden of the applicant to demonstrate that the proposed subdivision complies with each of the following criteria, that one or more of the criteria are not applicable, or that a practical solution consistent with the purpose of this section has been achieved.

1. Building envelopes shall be sited to utilize existing vegetation and natural topography of the site in order to integrate the building with the site and to minimize the visibility of the building from existing highways (public roads).

2. Building envelopes shall be sited such that future access to the envelope can be integrated with the natural characteristics of the site in a manner that will require a minimal amount of site grading, cuts and fills, retaining walls and loss of vegetation.

BB. Water Course and Irrigation Easements

Except as noted below, the subdivider shall establish within the subdivision ditch easements that:

a. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

b. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance and inspection of the ditch; and

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

The subdivider need not establish irrigation easements as provided above if:

a. the average lot 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 event though the water may not be deliverable to the lots; or

b. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and

c. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat after removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

CC. Disposition of Water Rights

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners with the subdivision who have a legal right to the water and reserved and severed any remaining surface rights from the land; and

b. if the land to be subdivided is subject to a contractor interest in a private or public entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity, this agreement must specify how the water rights will be administered and described the rights and responsibilities of landowners with in the subdivision who have a legal right and access to water; or reserved and severed all surface water rights from the land proposed for subdivision.

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APPENDIX A:
DEFINITIONS

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this appendix. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

Words not defined below but appearing elsewhere in these regulations will carry the definition used in the latest version of the Webster's Dictionary. If a definition in this appendix conflicts with a definition referenced or found in Title 76, Chapter 3, Montana Code Annotated, the definition referenced or found in Title 76, Chapter 3, Montana Code Annotated shall control.

AADT: Annual average daily trips made by vehicles in a calendar year.

ACCESS, LEGAL: The subdivision and all lots within the subdivision access a county road easement or public right-of-way, and all necessary County or State approach permits have been obtained.

ACCESS, PHYSICAL: The subdivision and all lots within the subdivision access a county road easement or public right-of-way that meets the standards of these regulations.

ACCESSORY BUILDING OR USE: A subordinate building—or portion of the principal building—located on the same lot as the principal building, or subordinate use of land, either of which is customarily incidental to the principal building or principal use of the land.

Where a portion of an accessory building is connected to part of the principal building in a substantial manner, as by a roof, such an accessory building shall be counted as part of the principal building.

ADDRESS IDENTIFICATION NUMBERS: The posted numbers used to identify property addresses. It is important that address numbers be clearly visible for the efficient provision of delivery and emergency services.

ADT: Average daily trips made by vehicles or persons in a 24-hour period.

AGGRIEVED PARTY: 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 of the governing body to approve, conditionally approve, or disapprove a proposed subdivision plat.

ANNEXATION: The process by which land in an unincorporated area becomes part of a nearby or adjacent municipality.

APPLICANT: Any person, firm or corporation, or other entity that proposes a subdivision of land. An applicant is the subdivider or, with the subdivider's written permission, the subdivider's agent (see definition SUBDIVIDER)

APPROACH: The point where a residential driveway meets a public road, or where a local access road, for example, intersects a higher classification of public road (e.g., collector).

APPROPRIATE: An act, condition, or state that is considered suitable.

AS-BUILTS: The drawings and specifications that describe the actual layout, location, structures, materials, and systems of a building or property.

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

BOCC: Board of County Commissioners (sometimes referenced as “governing body”).

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

BUILDING SETBACK LINE: An imaginary line establishing the minimum distance that primary and accessory structures may be located from lot lines, street rights-of-way, natural drainages, or other physical or legal boundaries.

CERTIFICATE OF SURVEY (COS): A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations and parcel features. COSs are often filed as a legal document to describe land divisions that are exempt from the subdivision review process.

CLUSTER DEVELOPMENT: As defined in Section 76-3-103, MCA, “’Cluster development’ means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.”

COMMERCIAL USE: A commercial use is any business, retail trade, or service activity. Also known as: non-residential use.

COMMON AREA: Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the development.

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

CONSERVATION EASEMENT: A voluntary restriction of land use, particularly with respect to residential development. A landowner may sell or donate a conservation easement to a public or private entity.

CONSISTENCY, CONSISTENT WITH: Free from significant variation or contradiction. The courts have held that the phrase "consistent with" means "agreement with; harmonious with." The Webster Dictionary defines "consistency with" as meaning harmony, agreement when used with "with."

CONSOLIDATED CITY-COUNTY PLANNING BOARD: Also referred to as the Planning Board.

COVENANT: A written agreement (recorded with the Clerk and Recorder) of two or more parties by which any of the parties pledges himself to the others that something is done or shall be done, or sets forth provisions for the use of land.

COUNTY ROAD: Any public road or road easement that is an existing county roadway or easement, or is shown upon a plat approved by the BOCC by subdivision approval or is approved by other official action. A county road includes a public road easement, drainage facilities and utility easements.

DEDICATION: The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights which are incompatible with the full exercise and enjoyment of the use to which the property has been devoted. Acceptance of any dedications to public use is the discretion of the governing body.

DEED RESTRICTION: A land use restriction placed by a landowner on his or her property.

DEFENSIBLE SPACE: A designated area around a home or other structure the size of which is dependent on the vegetation, proximity of tree crowns, slope and distance to adjacent buildings. Within this area all weeds, dry grass, slash, flammable debris and flammable fuel is removed. This managed buffer surrounding buildings and structures is designed to reduce the chances of a fire spreading to or from the building or structures.

DENSITY: The number of dwellings or housing units per acre.

DEQ: Montana Department of Environmental Quality.

DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING: The official responsible for supervising the County Planning staff, and directly administering these regulations. The title is sometimes abbreviated to read "Director."

DIVISION OF LAND: The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the Montana Subdivision and Platting Act. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

DNRC: Montana Department of Natural Resources and Conservation.

DRAINAGE BASIN: See definition for watershed.

DRIVEWAY: A private route, typically for motor vehicles, connecting a dwelling unit and/or garage with a public road.

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

EA: Environmental Assessment.

EASEMENT: A right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the owner who holds title to the land.

EMERGENCY SERVICES: Community services such as fire protection, law enforcement, ambulance service, quick response, search and rescue, and flood and disaster relief. Emergency services are generally provided by local governments or private, nonprofit organizations.

EMINENT DOMAIN: The right of a public entity to acquire private property, for public use, by condemnation and payment of just compensation.

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

ENVIRONMENTAL ASSESSMENT (EA): An EA is a document that describes impacts on the environment as a result of a proposed action.

ENVIRONMENTAL IMPACT STATEMENT (EIS): An EIS is a document (typically longer and more detailed than an EA) that describes impacts on the environment as a result of a proposed action. It also describes impacts of alternatives as well as plans to mitigate the impacts.

EPA: U.S. Environmental Protection Agency.

EPHEMERAL STREAM: (See definition under "stream")

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

FIRST MINOR SUBDIVISION: (See Minor Subdivision, First)

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

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

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

FLOODWAY: The channel of a watercourse or drainage way and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainage way.

FWP: Montana Department of Fish, Wildlife and Parks.

GEOGRAPHIC INFORMATION SYSTEM (GIS): A method of computer mapping that enables layers of land-related information (e.g., soils, roads, waterways, buildings) to be illustrated and analyzed in various combinations. GIS maps and databases may be used to predict future conditions under different hypothetical scenarios.

GOVERNING BODY: The Board of County Commissioners, or the governing authority of any city or town organized pursuant to law.

GROWTH POLICY: As defined in Section 76-1-103, MCA, a Growth Policy means and is synonymous with a comprehensive development plan, master plan, or comprehensive plan that meets the requirements of Section 76-1-601, MCA. The 1999 Montana Legislature enacted legislation that defined Growth Policy, and made it the operative term for the types of documents mentioned above.

HOUSEHOLD: All individuals--related or unrelated--who occupy a single housing unit.

IMPACT: The effect of any direct man-made actions or indirect repercussions of man-made actions on existing social, environmental, or economic conditions.

IMPLEMENTATION STRATEGY: Specific procedures for carrying out goals and policies.

IMPROVEMENT: The addition of one or more structures or utilities on a parcel of land (see also definition for infrastructure).

INCENTIVE: A benefit offered to entice someone to do something, as opposed to a regulatory requirement.

INDUSTRIAL USE: The activities predominantly connected with manufacturing, assembling, processing, or storing of products.

INFRASTRUCTURE: Public facilities and services that typically include, roads, sewers, water, schools, police and fire buildings, libraries, hospitals, parks, trails, etc. to serve public demand and safety.

INSTITUTIONAL CONTROLS: Non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedy, e.g., *Regulations Governing Soil Displacement and Disposal in the East Helena Superfund Area in Lewis and Clark County*.

INTERMITTANT STREAM: (See definition under "stream")

LEVEL OF SERVICE (LOS): A measure describing a range of traffic conditions as defined and described in the current edition of the Highway Capacity Manual or an indicator of the extent or degree of service provided by, or proposed for, a facility or a service based on an established minimum standard (i.e. 1 patrol officer per 10,000 people).

LOCAL FIRE AUTHORITY: A local fire district, fire service area, or the county fire marshal.

LOCATION MAP: A small map showing the location of a tract of land in relation to a larger land area.

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

LOT MEASUREMENTS:

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

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

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

d. Lot Area -- The area of a lot calculated in square feet. In order to meet minimum size requirements, the lot area must be determined exclusive of streets, highways, alley, roads, or other rights-of-ways.

LOT TYPES:

a. Corner Lot: A lot located at the intersection of two streets and/or roads.
b. Interior Lot: A lot with frontage on only one street, and/or roads.
c. Through Lot: (or double fronted lot) A lot whose front and rear lines both abut on a street, and/or roads.

MAJOR SUBDIVISION: A subdivision containing six or more lots from an original tract of record.

MANUFACTURED HOUSING: 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 “mobile homes” whether or not the unit has been constructed after June 15, 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 International Residential/Building Code applicable to site built homes, and are transported to the site for final assembly on a permanent foundation.

MANUFACTURED HOME PARK: (See definition under "Mobile Home Park")

MCA: Montana Codes Annotated (State of Montana statutes).

MINOR SUBDIVISION: A subdivision that creates five or fewer lots from a tract of record where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds.

MINOR SUBDIVISION, FIRST: A tract of record proposed to be subdivided that has not been subdivided or created by a subdivision or has not resulted from a tract of record that has had more than five (5) parcels created from that tract of

record under Section 76-3-201, MCA or Section 76-3-207, MCA since July 1, 1973.

MINOR SUBDIVISION, SUBSEQUENT: Any minor subdivision that is not a first minor subdivision.

MITIGATE: To ameliorate, alleviate, or avoid to the extent reasonably feasible.

MOBILE HOME: 'Mobile home' or 'housetrailer' means a trailer or a semitrailer that is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily), and is equipped for use as a conveyance on streets and highways, or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer, but that is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services, or for any commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier." Also, see definition for "manufactured housing.

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

MOBILE HOME PARK: A tract of land providing two or more mobile home or manufactured home spaces for lease or rent to the general public.

MOBILE HOME STAND: That area of a mobile home lot that has been prepared for the placement of a mobile home.

MUNICIPALITY: An incorporated city or town.

NON-MOTORIZED TRAIL: A path physically separated from motor vehicle traffic by a space or barrier and within a highway right-of-way or within an independent right-of-way. A multi-use path is used by bicyclists, pedestrians, joggers, skaters, and other non-motorized travelers.

OCCASIONAL SALE: A previous exemption that provided for a single division of a tract of land during a period of one year. The occasional sale exemption was formerly contained in Section 76-3-207 (1)(d), MCA; it was repealed by the 1993 Legislature.

OPEN SPACE: A land or water area devoid of buildings and other physical structures except where accessory to the provision of recreation.

ORIGINAL TRACT OF RECORD: A tract of land existing as of July 1, 1973.

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

PERENNIAL STREAM: (See definition under "stream")

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

PLANNING BOARD: A city planning board, a county planning board or a joint city-county planning board as formed pursuant to Title 76, Chapter 1, MCA. In Lewis and Clark County, the formal title is the Helena—Lewis and Clark County Consolidated Planning Board (sometimes abbreviated as just "Board"). The planning board's role is advisory.

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

a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for a review by a governing body.

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 and containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. (Title 76, Chapter 3, MCA).

c. Vacated Plat: A plat that has been removed from the county record under provisions of these regulations and the Montana Subdivision and Platting Act (Title 76, Chapter 3, MCA).

d. Amended Plat: The final drawing of any change to a platted subdivision required to be filed with the clerk and recorder and containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. (Title 76, Chapter 3, MCA).

PRIME FARMLAND: As defined by the Natural Resources Conservation Service, those lands that are best suited due to physical and chemical characteristics to produce food, feed, forage, fiber, and oilseed crops. Typically, these lands have an adequate and dependable supply from precipitation or irrigation, favorable temperature and growing season, and acceptable soil acidity

and alkalinity.

PROFESSIONALLY TRAINED BIOLOGIST: An individual with a minimum of a bachelor's degree in a fisheries or wildlife-related field and professional experience in applying current biological knowledge to on-the-ground stewardship and management of the resource and its environment, or an individual meeting the requirements of a Certified Wildlife Biologist (by The Wildlife Society) or a Certified Fisheries Professional (by the American Fisheries Society).

PUBLIC HEARING: A meeting or part of a meeting held by the governing body or its agent to solicit public testimony on a subdivision application or other action of the governing body or its agent.

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

PUBLIC MEETING: A meeting held by the governing body or its agent in which public comment is taken on a subdivision application or other action by the governing body or its agent.

PUBLIC SERVICES: Services and facilities provided to the general community by government or quasi-public entities. Examples include roads and bridges, emergency services, schools and libraries, sewer and water systems, and solid waste disposal.

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. The term includes but is not limited to travel trailers, camping trailers, truck campers, and motor homes.

RECREATIONAL VEHICLE PARK: A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers or automobiles for transient dwelling 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.

REGISTERED ENGINEER: An engineer licensed to practice in the State of Montana.

REGULATION: That which is required, unless an explicit exception is made.

RESIDENTIAL USE: Any land use that provides for living space. Examples may include, single family, multifamily, special residences, and Mobile Home Park.

RID (Rural/Road Improvement District): A specially designated area in which local public improvements are made. Property owners or the County may initiate projects that are paid through special assessments. RID examples may include road improvements, sidewalks, curb, etc.

RIGHT-OF-WAY: A strip of land dedicated or acquired for use as a public way.

RIGHT-TO-FARM LAW: A Montana state law that excludes standard agricultural practices from being considered "nuisances" (see Section 27-30-101, MCA).

RIPARIAN AREA: Defined by the University of Montana's Riparian and Wetland Research Program as the "green zone" which lies between channels of flowing water and uplands, and which serves several functions, including the following: water storage and aquifer recharge; filtering of chemical and organic wastes; sediment trapping; bank building and maintenance; flow energy dissipation; and primary biotic production. Riparian areas provide important habitat for many species of wildlife.

RURAL DEVELOPMENT: Development activities that may be based on the land (e.g. agriculture, ranching and mineral extraction). Usually characterized by large lots for houses and by farm and forest activities. Areas where fewer public facilities exist, and lower infrastructure standards are typically found.

RV: Recreational Vehicle.

SERVICE AREA: The land area within which a County or other jurisdiction is committed to providing public services.

SETBACK: The horizontal distance required between the public right-of-way or property line (whichever is closest) and the building line.

SINGLE FAMILY DWELLING: A dwelling used for residential occupancy by one household.

STANDARD: Something established for use as a rule or basis of comparison in measuring quantity, quality, value, etc.

STATE: The State of Montana

STREAM: A body of running water (as a river or creek) flowing on the earth.

a. **EPHEMERAL STREAM:** A stream that flows infrequently, usually only following precipitation events or snowmelt. This would include many gullies, coulees, and draws.
b. **INTERMITTANT STREAM:** A stream that flows more often than not, but may not flow a good portion of the time in some reaches. For instance, during the late summer there may be flow in some sections of an intermittent stream, and no flow in other reaches where water seeps into the stream bottom at a higher rate.
c. **PERENNIAL STREAM:** A stream that typically flows all year for its entire length, although stretches may go dry during periods of extreme drought.

STREAM BUFFER ZONE: A portion of the stream setback that is designated to remain undisturbed. A buffer zone is not an additional setback distances. A buffer zone is an area where all natural vegetation, rocks, soil, and topography shall be maintained in their original state, or enhanced by the additional planting of native plants.

STREAM SETBACK: The horizontal distance from the ordinary high water mark within which the structures and uses defined in Chapter XI, sections W.3.a are not allowed. Setback and buffer distances are measured on a horizontal plane.

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

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

b. Arterial: a street or road having the primary function of moving traffic and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and provide limited access to abutting property.

c. Avenue: For urban areas--roads running generally east/west.

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

e. Court: Any cul-de-sac with a circle at one end, and less than 1,000' in length.

f. Cul-de-sac: A street having only one outlet for vehicular traffic and

terminating in a turn-around area.

g. Dead End Road: A road having only one outlet for vehicular traffic.

h. Driveway: A private road less than 150 feet in length that services only one residence. A private road providing access to a public road that services only one residence.

i. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

j. Half-Street: A portion of the width of a street, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.

k. Lane: A meandering roadway less than 2,500' in length.

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

m. Loop: A local street which begins and ends on the same street, generally used for access to properties, and which does not contain significant intersections along its route.

n. Place: An east/west road less than 1,000' in length.

o. Public Road: A road is public if its right-of-way has been dedicated for public use.

p. Street: For urban areas--roads running generally north/south.

q. Way: North/south road less than 1,000' in length.

SUBDIVIDER: Any person, firm or corporation who owns land to be subdivided or proposes a subdivision of land. (see definition, APPLICANT)

SUBDIVISION: A division of land or land so divided, which creates one or more parcels containing less than one hundred sixty (160) acres that cannot be described as a one-quarter aliquot part of a United States Government Section, exclusive of public roadways, in order that the title to the parcels may be sold, or otherwise transferred, and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide

multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. A subdivision comprises only those parcels containing less than one hundred sixty (160) acres that have been segregated from the tract of record. The subdivision plat must show all the parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act are exempt from the provisions of the Section 76-3-203, MCA, under certain circumstances.

SUBSEQUENT MINOR SUBDIVISION: (See Minor Subdivision, Subsequent)

SUBSIDENCE: The lowering of the earth's surface, caused by such factors as compaction, a decrease in groundwater, mining activities, or the pumping of oil.

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

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

TMDL: Total maximum daily load, used in determining water quality.

TOWNHOUSE: A type of dwelling in which individuals own their own units and hold separate title to the land beneath the unit and their own lot.

TRACT: A single parcel of land held in single and undivided ownership as shown by the official records on file in the office of the county clerk and recorder.

TRACT OF RECORD:

(a) A "tract of record" is an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using the documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) of Section 76-3-103, MCA unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.

USFWS: U.S. Fish and Wildlife Service.

USGS: U.S. Geological Survey.

UTILITIES: Facilities serving the public by means of a network of wires or pipes, and ancillary structures. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, as well as the disposal of sewage. County or consolidated city and county water or sewer districts may be defined as public utilities.

VFD: Volunteer Fire Department.

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

VIEWSHED: The landscape visible from a particular viewing point.

WATERCOURSE: A natural depression or channel that gives direction to a current of water at any time of the year. This could be a stream or gully, for example, that water flows towards and then through, in a prescribed path.

WATERSHED: When rain or snow falls on an area of land, it eventually runs down hill until it reaches a stream. The entire area over which water flows to a common point is called a watershed.

WETLANDS: Wetlands are 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.

WILDLAND/URBAN INTERFACE: Borders of forest and/or woodland areas being settled by people desiring to live in rural, wooded settings.

ZONING: A regulatory tool available to local governments to designate the location and character of various land uses.

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APPENDIX B:

SUBDIVISION APPLICATION FORM, CONTENTS, AND SUPPLEMENTS

1. Preliminary Plat Form

A legible preliminary plat or site plan shall be submitted at a scale sufficient to minimize the number of sheets while maintaining clarity and shall be on one or more sheets at least 11 X 17 inches in size. The preliminary plat must show all pertinent features of the proposed subdivision and the location of all proposed improvements. An electronic copy (*read only* PDF) must also be submitted.

2. Preliminary Plat Contents

The preliminary plat or site plan submitted for approval shall show or contain on the face of the plat or site plan or on separate sheets referenced on the face of the plat or site plan the following information. (Five blueline copies shall be provided for major or subsequent minor subdivisions, three copies for first minor subdivisions.) A current topographic map, an aerial photograph or a location map of the largest scale available, with an outline of the subdivision clearly indicated thereon may be used to provide the information required below and in Subdivision Application Supplements:

a. Name and location of the subdivision, scale, scale bar, north arrow, and date of preparation.

b. The approximate exterior boundaries of the tract and the approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary. If available, a metes and bounds or other legal description, or copy of previously recorded certificates of survey or subdivision plats, shall be submitted.

c. All lots and blocks, designated by numbers, and the approximate dimensions and area of each lot.

d. All streets, alleys, avenues, roads and highways, and the width of the right-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.

e. The approximate location, boundaries, dimensions and areas of any parks, common grounds, or other grounds dedicated for public use.

f. Any existing and proposed utilities located on or adjacent to the tract including:

1) The approximate location, size and depth of water mains, sanitary and storm sewers, and fire hydrants.
2) The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the tract.
3) The approximate location of gas, electric, cable TV, and telephone lines, and streetlights.

g. Ground contours shall be provided for the tract according to the following requirements:

Where average slope is	Contour intervals shall be
Under 10%	2 feet
(If all lots are over one acre in size, 5-foot intervals may be used.)	
Between 10% and 15%	5 feet
15% or greater	10 feet

U.S. Geological Survey data or other information may be used if it meets the foregoing interval requirements.

h. The approximate location of existing buildings, structures and improvements.

i. The approximate location and identity of all existing easements and rights-of-way of record and proposed county road and private easements and rights-of-way of record, including descriptions of their width and purpose.

3. Subdivision Application Supplements

For a major or subsequent minor subdivision, five copies of a complete subdivision application, including a copy in an electronic form (*read only* PDF) shall be supplied to the County Planning Department. For a first minor subdivision, three copies of a complete application, including a copy in an electronic form (*read only* PDF) shall be submitted to the County Planning Department.

The following shall be supplied with and considered a part of the subdivision application:

a. A vicinity map or maps and electronic copies showing conditions on adjacent land. Lands separated from the exterior boundary of the subdivision by public or private right-of-way are deemed to be adjacent for the purpose of this requirement. The map(s) shall include:

   1) The names of platted subdivisions and numbers of certificates of survey previously recorded.
   2) Any access road leading from a present public right-of-way to the boundary of the proposed subdivision.
   3) Location of any buildings, railroads, power lines, towers, roads, and other land uses.
   4) Any existing or proposed zoning.

b. When a tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating intent for the development of the remainder of the tract.

c. Copies of any existing and proposed covenants and restrictions to be included in deeds or contracts for sale.

d. If common property is to be deeded to a property owners' association, the subdivider shall submit the articles of incorporation, bylaws, and covenants and restrictions that will govern the association. These covenants and restrictions shall be in accordance with the requirements contained in Chapter III, section C.7, Property Owners' Association.

e. Preliminary grading and drainage plan with accurate dimensions, courses and elevations, showing the proposed grades of streets and drainage improvements.

f. Drafts of guarantee of public improvements, if applicable.

g. An environmental assessment shall accompany the major and subsequent minor subdivision application unless the subdivider is eligible for a valid exemption. Appendix C-1 provides the format of the assessment and questions to be addressed by the subdivider. Additional copies may be requested by the County Planning Department.

h. A summary of probable impacts of the proposed subdivision as described in Appendix C-2 shall accompany the first minor subdivision application.

i. A letter from the subdivider describing the status of mineral and water rights on the property based on his/her research of the property deed.

j. A determination of the amount of cash payment in-lieu of park dedication, if proposed. See Chapter XI, Section R. Parkland for determining cash-in-lieu of parkland.

k. Parts I, II, III of the DEQ Joint Application Form for major and subsequent minor subdivision applications. Part I of the DEQ Joint Application Form for first minor subdivision applications.

l. Submission of substantial, credible evidence that the water system and the wastewater system designs for the proposed subdivision will comply with DEQ requirements, and the evidence shall meet the requirements set forth in Section 76-3-622 MCA. (See Chapter XI.M. for requirements of this statute)

m. Each variance request, when applicable.

n. A Certificate of Title for the subject property/ies (from a title company licensed in the State of Montana) that is not older than six (6) months.

o. Detailed traffic impact study certified by an engineer, licensed in the State of Montana, based upon the current editions of Institute of Transportation Engineers (ITE) standards and the *Highway Capacity Manual* that provides for the following:

- existing traffic volumes;
- existing traffic conditions: lanes, traffic control, access control, etc.;
- projected traffic volumes (based upon ITE standards) of internal, adjacent, and off-site roads within the traffic impact corridor as described in Chapter XI.H.3;
- projected traffic distribution and assignment on adjacent, and off-site roads within the traffic impact corridor as described in Chapter XI.H.3;
- traffic analysis, including existing and projected Levels of Service (LOS) etc. of internal, adjacent, and off-site roads and intersections within the traffic impact corridor as described in Chapter XI.H.3; and

- conclusions and recommendation.

In lieu of using the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (latest edition), specific trip generation studies that have been conducted for a particular land use for the purposes of estimating peak-hour and average daily traffic trip-generating characteristics may be utilized. The Lewis and Clark County Public Works Director (or his/her designee) shall approve the use of these studies prior to their inclusion in a traffic impact analysis. A site specific trip generation study must be certified by an engineer licensed in the State of Montana.

p. Ownership information, such as deed(s), options to buy or buy-sell agreement; permission to subdivide; certificate(s) of survey

q. Any special improvement districts the proposed subdivision would be part of.

r. Existing zoning or development regulations standards and rights of first refusal for the property.

s. 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 subdivision application.

t. A fire protection plan that states how the Fire Protection Standards (Chapter XI.S and Appendix K) of the Lewis and Clark Subdivision Regulations will be addressed.

4. Additional Supplements for Non-residential Units

Applications for non-residential units shall include a list of specific non-residential activities, which would be allowed within the subdivision and any activities expressly prohibited.

Applications for non-residential units shall include a detailed scaled site plan and accompanying text showing and describing the following:

a) location, dimensions, height, and area of all structures;

b) location, dimensions, area, and plant descriptions of all landscaping features accompanied by a plan for continuous maintenance and watering of required natural screening;

c) location, dimensions, height, area, lighting, and construction of all signs (commercial and traffic control);

d) location, dimensions, and capacity of all drainage facilities;

e) location and dimensions of roadways, parking lots, road approaches, and other driveways;

f) location and number of all parking spaces, including handicapped parking (where applicable);

g) roadway and parking lot construction cross sections;

h) traffic generation estimates by each non-residential activity; and

i) preliminary water and wastewater designs to be submitted to the Montana DEQ and the City-County Health Department.

5. Presentation of Subdivision Application and Supplements

The preliminary plat or site plan, subdivision application and supplements shall be submitted in an organized format with a cover sheet, table of contents, identification tabs for each section and shall be bound in a three ring binder or with a comb binder. Five bound copies shall be submitted for major or subsequent minor subdivision applications and three bound copies shall be submitted for first minor subdivision applications**.** The Applicant shall also provide Planning Staff with a copy in an electronic form (*read only* PDF). The materials submitted in electronic format shall utilize folder and file names reflective of their content.

APPENDIX C(1):

PART 1: INFORMATION REQUIRED FOR ENVIRONMENTAL ASSESSMENT UNDER THE SUBDIVISION AND PLATTING ACT

A. General Requirements

The applicant shall provide an environmental assessment with the submittal of a major or subsequent minor subdivision application. An environmental assessment submitted with a subdivision application must be organized so that each question is presented followed by its related response. All questions must have a response. Responses which only refer the reader to other parts of a subdivision application are insufficient. Responses must identify sources utilized. If a question does not apply to the subdivision application, the response must indicate why it is not applicable.

An environmental assessment must address the following information:

1 A description of the surface and ground water, geology and soils, vegetation, and wildlife use within the area of the proposed subdivision, as described in Section C below;

2. A community impact report containing an analysis of anticipated impacts of the proposed subdivision on the community as described in Section D below; and

3. A summary of probable impacts of the proposed subdivision and how these impacts will be mitigated based on the criteria described in Section 76-3-608, MCA, as described in Section E below.

B. Exemptions

The following subdivisions shall not be required to submit an environmental assessment:

1. A first minor subdivision from a tract of record (Section 76-3-609(2), MCA).

2. 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 Section 76-2-203 or Section 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.

C. Environmental Description Contents

1. Surface Water

   a. Locate on a plat overlay or map exhibit all surface water and the delineated floodways that may impact or be impacted by the proposed subdivision including natural water systems (streams, lakes, rivers, or marshes), artificial water systems (canals, ditches, aqueducts, reservoirs, irrigation or drainage systems), and land subject to flooding.

   b. Describe all surface water that may impact or be impacted by the proposed subdivision including name, approximate size, present use, and time of year that water is present.

c. Describe the proximity of proposed improvements or infrastructure (such as buildings, wastewater treatment systems, roads) to surface water.

d. Describe any existing or proposed stream bank or shoreline alterations and/or any proposed construction or modification of lakebeds or stream channels. Provide information on the location, extent, type, and purpose of any proposed alteration.

e. Indicate which local, state or federal permits related to water or water quality have been or will be applied for and describe the reasons why these permits are required.

2. Groundwater

a. Using publically available information, provide the estimated seasonal minimum and maximum depth to the water table, dates on which these depths were determined, and the location and depth of all known aquifers that may be affected by the proposed subdivision.

b. Provide a description of any steps necessary to avoid the degradation of groundwater and groundwater recharge areas.

3. Geology, Soils and Topography

a. Using publically available information, locate on a plat overlay or map exhibit all areas with slopes greater than or equal to 30 percent and any known geologic hazards affecting the proposed subdivision which could result in property damage or personal injury due to any of the following: seismic zones rock falls or slides; land, mud or snow slides; high water table, or unstable or expansive soil conditions.

b. Explain the measures that will be taken to prevent or materially lessen the danger of future property damage or injury due to existing geologic conditions.

c. Provide a statement describing any unusual soil, topographic or geologic conditions on the property, which may limit the

capability for construction or excavation using ordinary and reasonable techniques. The statement should address conditions such as shallow bedrock, high water table, unstable or expansive soil conditions, and slope. Describe the location and amount of any cut or fill three or more feet in depth. Where cuts or fills are necessary, describe prevention of erosion and the promotion of revegetation, such as replacement of topsoil and grading.

d. Attach soil reports obtained from the United States Department of Agriculture (USDA), Natural Resource and Conservation Service (NRCS) containing the physical properties and engineering indices for each soil type, the soil limitations for sanitary facilities, building site development, and water management for each soil type. Describe any special design methods planned to overcome the soil limitations.

4. Vegetation

a. Locate on a plat overlay or map exhibit, the location of the major vegetation types such as marsh, grassland, shrub, and forest and identify plant species of concern as identified by the Montana Natural Heritage Program (MTNHP).

b. Describe measures to preserve trees and plant species of concern (as identified by the Montana Natural Heritage Program (MTNHP)) (e.g., design and location of roads, lots and open spaces).

c. Identify areas containing noxious weed growth. Describe proposed means of weed control, especially to prevent weed growth on areas disturbed by construction.

5. Wildlife

a. Describe the species of fish and wildlife, including Montana Species of Concern, that use the area affected by the proposed subdivision on a year-round, seasonal, or periodic basis. Attach a Montana Animal Species of Concern report from the Montana Natural Heritage Program. Provide field observations of

general habitat types on the property and any evidence of use by fish and wildlife.

b. Based on available fish and wildlife data and field observations, describe the potential for adverse impacts on wildlife. Provide the description to Montana Fish, Wildlife and Parks (FWP) and submit any comments from FWP as to the potential for adverse impacts, the need for more detailed analysis, or general mitigation measures for projects where a detailed analysis is not necessary.

c. Upon the recommendation of FWP of the need for more detailed analysis of wildlife impacts, the County may require an assessment by a professionally trained biologist as to whether the proposed subdivision would contribute to population decline or displacement of one or more individual fish or wildlife species. Determine if the impacts would be significantly adverse.

d. If there would be potentially significant adverse impacts, describe measures that would reasonably minimize impacts on fish and wildlife, attach any comments from Montana Fish, Wildlife & Parks (FWP) on the detailed wildlife analysis and proposed measures to reduce impacts. Explain how comments are addressed in the subdivision design or application.

6. Wildlife Habitat

a. Describe and map fish and wildlife habitat using available data. Include water bodies, wetlands, riparian areas, big game winter range, wildlife migration routes,native grassland or native shrub habitats, areas with a potentially high level of human/bear conflict, and areas where Montana Species of Concern are known or predicted to occur.

b. Based on available data, describe the potential for adverse impacts on wildlife habitat. Provide the description to FWP and submit any comments from FWP as to the potential for adverse impacts, the need for more detailed analysis, or general

mitigation measures for projects where a detailed analysis is not necessary.

c. Upon the recommendation of FWP of the need for more detailed analysis of wildlife habitat impacts, the county may require an assessment by a professionally trained biologist as to whether the proposed subdivision would contribute to the loss, fragmentation, or degradation of habitat. Determine if the impacts would be significantly adverse.

d. If there would be potentially significant adverse impacts, describe measures that would reasonably minimize impacts on fish and wildlife habitat.

D. Community Impact Report Contents

1. Agriculture and Agricultural Water User Facilities

a. Describe potential impacts the development may have on agriculture. If there will be impacts, describe how those impacts will be mitigated.

b. Describe potential impacts the development may have on agricultural water user facilities. If there will be impacts on agricultural water user facilities, describe how these impacts will be mitigated.

c. Describe the type of agriculture (if any) on the site being considered.

d. Describe the type of agriculture (if any) on adjacent properties.

e. Attach soil reports obtained from the U.S.D.A., Natural Resource and Conservation Service (NRCS) which identify soil types; soil productivity and capability class; land designation (if any) as prime farmland, or farmland of statewide or local importance; and erosion potential.

f. Describe water rights and irrigation facilities (if any), including ownership, easements, and potential safety issues such as the

possible need for fencing. The applicant must provide details about irrigation facility ownership and easements. In cases where ownership and/or water rights are unclear, the applicant must clarify them either through a letter from the local irrigation district, Department of Natural Resources and Conservation (DNRC), and/or the appropriate water judge.

g. Indicate the presence of conservation easements on any portion of the property, or adjacent property.

2. Water Supply

a. Describe how water will be provided for residential and non-residential uses and fire protection.

b. Indicate the number of gallons per day of water the proposed subdivision will require and whether the water supply is sufficient to meet the needs of the subdivision. Describe any potential impacts on existing water systems or wells within the area.

c. Based on available information, specify whether the proposed water supply satisfies the standards set forth by the Montana Department of Environmental Quality for quality, quantity and construction criteria. Unless cisterns are proposed information should be obtained from one or more of the following sources:

   i. Well logs or testing of onsite or nearby wells;

   ii. Information contained in published hydrogeological reports; or

   iii. As otherwise specified by the rules adopted by the Montana Department of Environmental Quality pursuant to Section 76-4-104, MCA.

d. If connection to an existing public or multi-user water system is proposed, identify and describe the existing system and approximate distance to the connection from the proposed subdivision, and

i Provide written evidence from the appropriate owner(s) or jurisdiction that permission to connect to that system has been obtained.

ii. Provide information regarding the capacity of the existing water system and its adequacy for serving the proposed subdivision.

iii. Provide information regarding the installation, maintenance and phasing of any existing water system.

e. If a new public or multi-user water system is proposed, identify who will install that system, and how the system will be maintained.

f. If individual water systems are proposed, describe the adequacy of supply of groundwater for individual wells or cisterns and the method used to determine adequacy.

3. Wastewater Treatment

a. Describe the proposed method of wastewater treatment.

b. Indicate the number of gallons of effluent per day that will be generated by the proposed subdivision at full occupancy, whether the proposed method of wastewater treatment is sufficient to meet the anticipated needs of the subdivision, and whether it meets the standards of the Montana Department of Environmental Quality.

c. If connection to an existing public wastewater treatment system is proposed, provide a description of the system and the approximate distance from proposed subdivision, and

i. Provide written evidence from the appropriate owner(s) or jurisdiction that permission to connect to that system has been obtained.

ii. Provide information regarding the capacity of the existing system and its adequacy for serving the proposed subdivision.

iii. Provide information regarding the installation, maintenance and phasing of any existing public wastewater treatment system.

d. If a new public or multi-user wastewater treatment system is proposed, identify who will install that system, and how the system will be maintained.

e. If individual wastewater treatment systems are proposed, describe the location and specifications of the wastewater systems.

4. Solid Waste Disposal

a. Provide evidence that there is an existing solid waste collection and disposal system available that can accommodate the anticipated additional volume.

b. If no existing collection and disposal system is available, describe the proposed method of solid waste collection and disposal.

c. Describe how the proposed system satisfies the standards set forth by the Montana Department of Environmental Quality.

5. Storm water

a. Provide calculations indicating how much storm water run-off will be generated as a result of the proposed development.

b. Provide a description of the proposed storm water collection and drainage systems that satisfy the standards set forth by Chapter XI.L.

6. Roads

a. Describe how the subdivision will provide legal and physical access.

b. Describe any required construction of new County roads or proposed improvements to existing public access roads.

c. If connections to any existing roads are proposed, identify all approach or encroachment permits that are necessary from the city, county or state.

d. If any of the individual lots is accessed directly from a state highway, arterial, or major collector street or road, explain why access was not provided by means of a frontage road or a road within the subdivision.

e. Describe the proposed closure or modification of any existing roads.

f. Describe provisions considered for dust control on roads.

g. Describe how road maintenance will be provided to meet Montana Department of Environmental Quality guidelines for prevention of water pollution and erosion.

h. Indicate who will pay the cost of installing and maintaining the roads.

i. Indicate how much daily traffic will be generated on existing roads when the subdivision is fully developed.

j. Indicate the capacity of existing and proposed roads and if they are capable of safely handling the increased traffic resulting from the proposed subdivision.

k. Describe any additional maintenance on existing roads that will be necessary due to increased traffic and who will pay the cost of maintenance.

l. Describe any potential year-round accessibility concerns for conventional automobiles and emergency services vehicles

over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision.

m. Identify the owners of any private property over which access to the subdivision will be provided and indicate whether easements for access have been obtained from those landowners.

7. Utilities

a. Identify the utility companies involved in providing electrical power, natural gas, and telephone service. Indicate extent to which these utilities will be placed underground.

b. Identify on the preliminary plat, overlay or map exhibit the locations of any planned utility easements within and to the subdivision.

c. Indicate whether the subdivision has been submitted to affected utilities for review.

d. Identify on the preliminary plat, overlay or map exhibit any existing utility lines on the property such as transmission lines, pipelines, etc. and if so, describe the impacts they may have on the proposed subdivision.

8. Emergency Services

a. Describe the emergency services available to the subdivision, including number of personnel and number of vehicles or type of facilities and road distance to facilities for:

i. Fire protection (Indicate whether the proposed subdivision is in a rural fire district or fire service area);

ii. Police protection;

iii. Ambulance service; and

iv. Medical services.

b. Indicate whether the needs of the proposed subdivision for each of the emergency services will be met by present personnel and facilities.

c. If not, describe the additional expenses necessary to make these services adequate and explain who will pay for the necessary improvements.

d. Describe any health or safety hazards on or near the subdivision, such as mining activity, high-pressure gas lines, dilapidated structures, high-voltage power lines, or irrigation ditches. Any such conditions must be accurately described and their origin and location identified.

9. Schools

a. Describe the available educational facilities that would service this subdivision.

b. Provide an estimate of the number of school children (primary and secondary) that will be generated from the proposed subdivision.

c. Provide information regarding whether increased enrollment can be accommodated by the present personnel, facilities and the existing school bus system.

10. Parks and Recreation Facilities

a. Describe any park and recreation facilities to be provided within the proposed subdivision and other recreational facilities that may serve the subdivision.

b. State how the required parkland dedication (see Chapter XI.R) will be satisfied.

11. Land Use

a. Indicate compliance with zoning encompassing all or part of the proposed subdivision. If the proposed subdivision is located near the jurisdictional area of an incorporated city or town, state whether annexation is proposed.

b. Describe how the subdivision will affect access to any public lands. Where public lands are adjacent to or near the proposed development, describe present and anticipated uses for those lands.

c. Describe land uses on adjacent land.

d. Describe any on-site or off-site land uses creating a nuisance, such as unpleasant odors, unusual noises, dust or smoke.

12. Historical, Archeological, or Cultural Features

a. Describe and locate on a copy of the preliminary plat, overlay or map exhibit, any known or possible historic, archaeological, or cultural sites that may be affected by the proposed subdivision.

b. Describe any plans to protect such sites or properties.

13. Visual Impact

a. Describe any efforts to visually blend development activities with natural surroundings.

b. Describe any efforts to prevent artificial light from illuminating beyond the property lines of the subdivision.

c. Provide information regarding revegetation after construction and any proposed landscaping to be provided along streetscapes.

E. Summary of Probable Impacts

1. Provide a summary of probable impacts of the proposed subdivision and how these impacts will be mitigated based on the following:

a. Agriculture;

b. Agricultural water user facilities;

c. Local services;

d. The natural environment;

e. Wildlife;

f. Wildlife habitat; and

g. Public health and safety.

APPENDIX C(2):

PART 2: INFORMATION REQUIRED FOR A SUMMARY OF THE PROBABLE IMPACTS OF THE PROPOSED SUBDIVISION BASED ON THE CRITERIA DESCRIBED IN SECTION 76-3-608, MCA.

A. General Requirements

Pursuant to Section 76-3-603(2), MCA the applicant must provide a summary of the probable impacts, in the order listed below, of the proposed subdivision based on the criteria described in Section 76-3-608, MCA with the submittal of a first minor subdivision application.

A summary of probable impacts must address the following information:

1. Agriculture;
2. Agricultural water user facilities;
3. Local services;
4. The natural environment;
5. Wildlife;
6. Wildlife habitat; and
7. Public health and safety.

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APPENDIX C(3):

PART 3: SUBDIVISION CHECK LIST

POSSIBLE SOURCES OF INFORMATION TO CONTACT WHEN COMPLETING AN ENVIRONMENTAL ASSESSMENT IN ACCORDANCE WITH APPENDIX C(1) AND A SUMMARY OF PROBABLE IMPACTS IN ACCORDANCE WITH APPENDIX C(2).

Local Agencies

City/County Health Department	School District
City Engineer	Fire District or Department
County Road Supervisor	Police or Sheriff's Department
Conservation District	Hospital or Ambulance Service
County Extension Service	Chamber of Commerce
Telephone, Electrical Power, Gas, and Cable Companies	Floodplain Administrator
	GIS OFFICE

State Agencies	Information	Location
Dept of Fish, Wildlife, and Parks	Fisheries, vegetation and wildlife	Helena and regional offices
Dept of Environmental Quality	Water quality	Helena
Dept of Transportation	Access to state highways traffic data maps, aerial photographs	Helena
Dept of Natural Resources and Conservation (DNRC)	Surface and ground water, floodplains, well logs, water rights, fire hazards	Helena and regional offices
Bureau of Mines and Geology	Geology, ground water, water quality well logs, topographic maps	Butte and Billings
Montana Natural Heritage Program	Vegetation and wildlife	Helena

Federal Agencies	Information	Location
Farm Service Agency	Aerial photographs	County offices
Bureau of Land Management	Vegetation, maps, topography	Billings and district offices
Forest Service	Topography, surface water, soil maps, vegetation, wildlife fire hazards, maps	Missoula regional, national forest and district offices
Geological Survey	Geology, surface and ground water, water quality, floodways, topographic maps	Helena
Natural Resources Conservation Service	Soils, surface water, flood hazards, erosion	Bozeman and County offices
Fish and Wildlife Service	Fisheries, vegetation and wildlife	Helena, Billings, Kalispell and regional offices

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APPENDIX D:

STANDARDS FOR FINAL SUBDIVISION PLATS

A. A final subdivision plat may not be approved by the governing body nor filed by the county clerk and recorder unless it complies with the following requirements:

   1. The plat complies with the requirements contained in Appendix D.B.:

   2. The plat includes a Conditions of Approval sheet(s) that complies with the requirements in Appendix D.D.; and

   3. The plat is accompanied by documents listed in Appendix D.E.

B. A plat must comply with the following requirements:

   1. Final subdivision plats shall be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and shall be 18 inches by 24 inches or 24 inches by 36 inches overall to include a ½ inch margin on all sides.

   2. Two copies on 3 mil or heavier matte stable-base polyester film or equivalent and 2 copies on 24 lb. white bond paper or equivalent opaque shall be submitted.

   3. Whenever more than one sheet must be used to accurately portray the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. Except as provided in Appendix D.D.2., all certifications must be placed on sheet number one of the plat.

   4. A survey document that results in an increase in the number of lots or modifies six or more lots on a filed plat must be entitled “amended plat of (lot block, and name of subdivision being amended)”, and unless it is exempt from subdivision review by Section 76-3-201 or 76-3-207(1)(d), (e), or (f), MCA, must meet the filing requirements for final subdivision plats specified in these regulations.

   5. The final plat submitted for approval shall show or contain the following information:

      a. A title block indicating the quarter-section(s), section, township, range, principal meridian, and county of the

subdivision. The title of the plat shall contain the words "plat" and either “subdivision" or “addition”.

b. Name(s) of the person(s) who commissioned the survey, the name(s) of the owner(s) of the land to be subdivided, if other than the person(s) commissioning the survey, the names of any adjoining plats, and the document numbers of any adjoining certificates of survey previously filed.

c. North arrow.

d. Scale bar (scale shall 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:

   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 contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set, as required by ARM 24.183.1101(1)(d).
   ii. All monuments found during the survey 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).
   iii. Witness and reference monuments must be clearly shown.

f. The location of any section corner or corners of divisions of sections the land surveyor deems to be pertinent to the survey or was used as control in the survey.

g. Basis of bearing. For purposes of these regulations, the term “basis of bearing” means the land surveyor's statement as to the origin of the bearings shown on the plat. If the basis of bearing(s) refers to two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the plat, the line marked by the two previously monumented points must be labeled "basis of bearing," and the previously filed survey document name or number must be cited in the land surveyor's statement as to the origin of the bearing(s). If the plat shows true bearings, the basis of bearing must describe the method by which these true bearings were

determined.

h. The bearings, distances, and curve data of all boundary lines and all control or pertinent lines used to determine the boundaries of the subdivision. If the subdivision is bounded by an irregular shoreline or a 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 area of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.
   ii. 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.
   iii. If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown, and each segment must at least include distance.

i. Data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves, the data must at least include radius and arc length, and either delta angle, radial bearings, or chord bearing and distance. All non-tangent points of intersection on the curve must show either bearings of radial lines or chord length and bearing. Non-tangent curves must be so labeled.

j. Lengths of all lines shall be shown to be 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. At least one record measurement reference for each line and curve, if available, must be shown.

l. All lots and blocks in the subdivision designated by number, the bearings, distances, and curve data of each lot and block, the area of each lot, and the total area of all lots. (Excepted lands must be labeled “NOT INCLUDED IN THIS SUBDIVISION" or "NOT INCLUDED IN THIS PLAT”).

m. All existing rights-of-way for streets, alleys, avenues, roads, and highways that adjoin or are within the boundaries of the subdivision; their names and widths from public record (if

ascertainable); the bearings, distances, and curve data of their adjoining boundaries. If the existing right(s)-of-way is contained within the boundaries of the subdivision, then the area of the portion of the right(s)-of-way within the subdivision shall be shown.

n. All rights -of-way for streets, alleys, avenues, roads and highways that will be created by filing of the plat; their names, widths, distances, curve data, and area.

o. Except as provided in Appendix D.B.5.m. and n., the location, bearings, distances, curve data, and areas of all parks, common areas, and all other grounds dedicated for public use.

p. The total area of the subdivision.

q. A narrative legal description of the subdivision.

i. The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:

1. If the land to be subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the narrative legal description may be the aliquot part or the government lot description of the land;
2. If the plat depicts the division of one or more parcels shown on a previously filed certificate of survey or plat, the narrative legal description may be the number of the previously filed certificate of survey or name of the previously filed plat and the parcel number of the parcel(s) previously surveyed;
3. The narrative legal description may be the metes-and-bounds description of the perimeter boundary of the subdivision; or
4. If the narrative legal description does not fall within Appendix D.B.5.q.i.1 or 2, the narrative legal description required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.

ii. When the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the subdivision surveyed, must be labeled "Point of Beginning." Alternatively, the point of beginning may be labeled "POB" if the abbreviation is defined on the plat.

r. The dated signature and seal of the registered land surveyor responsible for the survey. The affixing of the seal constitutes a certification by the surveyor that the plat has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act and the regulations adopted pursuant thereto. The land surveyor's signature and certification do not include certification of the Conditions of Approval sheet(s).

s. Memorandum of oaths administered pursuant to Section 76-3-405, MCA.

t. The dated, signed, and acknowledged consent to the subdivision of the owner of the land to be subdivided. For purposes of this regulation, when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the land under the contract-for-deed.

u. Certification by the governing body that the final subdivision plat is approved.

v. If applicable, the landowner's certificate of dedication of streets, alleys, avenues, roads, highways, parks, playground easements, or other public improvements.

w. If applicable, the landowner's statement(s) as follows:

   i. A statement that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval that may limit the use of the property, including the location, size, and use are shown on the Conditions of Approval sheet or as otherwise stated.
   ii. A statement that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat and that buyers of property are strongly encouraged to contact the Community Development and Planning Department and become informed of any limitations on the use of the property prior to closing.
   iii. A statement that all or part of the required public improvements have been installed and/or security requirements pursuant to Section 76-3-507, MCA, secure the future construction of any remaining public improvements to be installed.

x. If applicable, a certificate of the governing body accepting any dedicated land, easements, or improvements.

y. If applicable, the certificate of the examining land surveyor.

z. Space for the clerk and recorder's filing information.

aa. A minimum two-inch by four-inch blank space below the clerk and recorder's filing information for the recording numbers of the documents listed in Appendix D.E.

bb. The dollar value of cash payment in-lieu-of parkland dedication or parkland ownership status shall be shown on the final plat, if applicable.

cc. The location of utility easements shall be shown on the plat with dashed lines, in addition to the following statement: "The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing an offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

6. The land surveyor, at his or her discretion, may provide additional information on the plat regarding the survey.

C. The following certifications of final plat approval must appear on the plat or on the Conditions of Approval sheet as contained in Appendix D.D., or recorded or filed as contained in Appendix D.E.:

1. A certification by the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid and, if applicable, certification of the local health officer having jurisdiction.

D. If applicable, a sheet(s) of the plat prepared by the landowner(s) or their representative(s) depicting conformance with subdivision application approval shall be entitled "Conditions of Approval of [insert name of subdivision]" with a title block including the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town in which the subdivision is located, and shall contain:

1. Any text and/or graphic representations of requirements by the governing body for final plat approval including, but not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, or the use of particular parcels;

2. A certification statement by the landowner that the text and/or graphics shown on the Conditions of Approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied; and

3. A notation stating that the information shown is current as of the date of the certification required in Appendix D.D.2., and that changes to any land-use restrictions or encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

E. If applicable, the following documents shall accompany the final plat when submitted for review to the Community Development and Planning Department for purposes of approval by the governing body and shall be filed with the plat as specified by the clerk and recorder, and the recording or filing number(s) for each document may be written on the plat by the clerk and recorder:

1. A property title report prepared by a title company within six months of the date of final plat application submittal showing the names of the owners of record of 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.

2. Copies of any covenants or deed restrictions relating to the subdivision.

3. For lots less than 20 acres in size, exclusive of public roadways, a certification by the Montana Department of Environmental Quality (DEQ) that it has approved the plans and specifications for water supply and sanitary facilities pursuant to Section 76-4-104(2), MCA.

4. If required by the governing body, for lots of 20 acres or greater in size, written documentation that the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and replacement drainfield for each lot in accordance with Section 76-3-604(8)(b), MCA.

5. A copy of any security requirements, pursuant to Section 76-3-507, MCA, securing the future construction of any remaining public improvements to be installed.

6. Copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan, with the certification of a professional engineer that all required improvements which have been installed are in conformance with the attached plans. The governing body may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed, and file them with the Community Development and Planning Department. If the approved plans and specifications are or will be filed with the Community Development and Planning Department, then a document or a statement on the Conditions of Approval sheet states where the plans can be viewed.

7. If a street, alley, avenue, road, or highway created by the plat will intersect with a state or federal right-of-way, a copy of the access or encroachment permit.

8. Copies of articles of incorporation and by-laws for any property owners' association.

9. A letter of approval from the County Weed District, confirming that the applicant has prepared a weed control and revegetation plan for the property.

10. Written notification from the Address Coordinator that each road in the subdivision has a name approved by the Address Coordinator.

11. Written notification from the Address Coordinator that each lot on the final plat has been assigned an address by the Address Coordinator.

12. Final plat application fee.

13. Certification that the local governing body will not be required to improve or maintain any proposed private road within or providing access to the subdivision.

14. Floodplain Development Permit approved by the County Floodplain Administrator.

15. A warranty deed(s) from the property owner(s), acceptable to the governing body, and if applicable, the school district trustees having jurisdiction, that grants, bargains, sells, conveys, and confirms unto

Lewis and Clark County or a school district, land(s) dedicated to the County or school district pursuant to Section 76-3-621, MCA.

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APPENDIX E:

SUBDIVISION IMPROVEMENTS GUARANTEES

Improvements to be Completed Prior to Approval of the Final Plat:

All public improvements required under these Regulations and the conditions imposed by the BOCC at the time of approval of the subdivision application, shall be completed prior to the approval of the final plat. However, the BOCC, shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements. The following procedures and requirements shall apply:

A. Improvement Standards:

The BOCC shall specify the improvements that shall be completed after the final plat is approved. The BOCC shall specify that the improvements must be constructed to standards included in these Regulations and the other standards the BOCC may adopt. Those improvements may include all improvements that are not needed for public safety and occupancy of buildings (e.g., final paving, chip sealing, erosion controls).

B. Time Limits:

1. All public improvements shall be completed within the time schedule approved by the BOCC and stated in the subdivision improvement agreement between the subdivider and the BOCC. At the discretion of the BOCC, the subdivision improvement agreement may be extended for a specified time.

2. Where no specific time schedule is included in the subdivision improvement agreement, all public improvements shall be completed within twenty-four (24) months from the date of approval of the final plat by the BOCC.

C. Projected Costs:

The BOCC shall direct the subdivider to have plans, specifications, and the estimated costs of completing the improvements prepared by a registered professional engineer. The projected improvements cost shall be 125 percent (125%) of the current costs for completing the improvements. The BOCC, at its discretion, may require the submitted

plans, specifications and projected costs be reviewed by another registered professional engineer designated by the BOCC. The costs for such review shall be borne by the subdivider.

D. Improvement Agreement:

The subdivider shall enter into an improvements agreement with the BOCC. The improvement agreement shall include:

1. A commitment to complete the improvements within the specified time;

2. The projected costs of the improvements as approved by the BOCC;

3. A guarantee acceptable to the BOCC and in a value greater than or equal to 125 percent of the approved projected costs of the improvements and;

4. A warranty against defects in the improvements for a period of one year from the date of completion and BOCC's acceptance.

E. Improvement Guarantee:

The subdivider shall provide a financial guarantee securing the construction and installation of the improvements within the period specified in the improvement agreement. The guarantee shall be for a period sufficient to allow the County to inspect the improvements and to draw on the security if the improvements are not satisfactory. The guarantee shall have a value equal to the projected costs of completing the improvements, as stated in Section D., above. The guarantee shall specify procedures for the BOCC to obtain the funds, should the subdivider fail to satisfactorily complete the improvements, or otherwise default under the agreement. The types of guarantees acceptable to the BOCC are described in Section I., below. The method of guarantee shall be subject to approval of the BOCC.

F. Inspection and Certification:

Upon completion of required improvements, the subdivider shall file with the BOCC a statement certifying that:

1. All required improvements are complete;

2. These improvements are in compliance with the minimum standards specified by the BOCC for their construction;

3. The subdivider knows of no defects in these improvements;

4. These improvements are free and clear of any encumbrances or liens;

5. All applicable fees and surcharges have been paid.

The subdivider shall also file with the County copies of final construction plans, road profiles, as-builts, grades and specifications for improvements.

The subdivider will provide for inspection of all required public improvements by a registered professional engineer before final plat approval when installation is a condition of approval or before the BOCC releases the subdivider from the subdivision improvements agreement.

Upon completion of the inspection, the inspecting engineer shall file with the BOCC a statement either certifying that the improvements have been completed in the required manner or listing the defect in those improvements.

Should the subdivider fail to meet the requirements of this section, the BOCC may provide for such inspection and the cost shall be borne by the subdivider.

G. Reduction and Release of Guarantee:

Only after receipt of the statements detailed above in Section F, the BOCC or its designee shall release the subdivider from the subdivision improvement agreement.

The BOCC or its designee may, upon application by the subdivider, release a portion of the collateral corresponding to the value of the installed improvements.

H. Failure to Satisfactorily Complete Improvements:

If the BOCC determines that any improvements are not constructed in compliance with the specifications, it shall furnish the subdivider with a list of specific deficiencies and may withhold collateral sufficient to ensure proper completion. If the BOCC determines that the subdivider will not construct any or all improvements to required specifications, or within the time limits, it may withdraw collateral and use these funds to construct the improvements and correct any deficiencies to meet specifications. Unused portions of these funds shall be returned to the subdivider or crediting institution.

I. Acceptable Forms of Improvements Guarantees:

The subdivider shall provide one or more of the following financial security guarantees in the amount of the projected cost of installing all required improvements plus the estimated cost of inflation over the term of the guarantee as determined by county staff:

1. Escrow Account:

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

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

   (a) That the funds in the escrow account are to be held in trust until released by the BOCC and may not be used or pledged by the subdivider as security for any other obligation during that period.

   (b) That should the subdivider fail to complete the required improvements; the bank shall immediately make the funds in escrow available to the BOCC for completing these improvements.

2. Letter of Credit:

   Subject to the BOCC approval, the subdivider shall provide the Board of Commissioners with a letter of credit from a bank or other reputable institution or individual certifying the following:

   (a) That the creditor guarantees funds in an amount equal to that cost, as approved by the BOCC, of completing all required improvements;

   (b) That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the BOCC upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;

   (c) That this letter of credit may not be withdrawn or reduced in amount, until released by the BOCC.

3. Surety Performance Bond:

The bond shall be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the BOCC and countersigned by a Montana agent. The bond shall be in effect until the completed improvements are accepted by the BOCC.

4. Other Acceptable Guarantee(s).

The BOCC at its discretion may accept any other reasonable guarantee not stated herein, to ensure satisfactory completion of the improvements.

J. Sequential Development:

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

K. Rural Improvement District:

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

The subdivider, or other owners of the property involved, must also petition the BOCC to create a rural improvement district, which constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This waiver must be filed with the County Clerk and Recorder and will be deemed to run with the land and may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

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APPENDIX F:

STANDARDS AND REQUIREMENTS FOR FLOOD HAZARD EVALUATION

STANDARDS

The Applicant shall contract the services of a registered engineer to conduct a detailed water surface profile analysis (Flood Study) if the following conditions are met.

1. The local jurisdiction is enrolled in the National Flood Insurance Program (NFIP) and has in effect a local floodplain management program.

2. The proposed project is located within an approximated floodplain as shown on the FEMA Flood Insurance Rate Map (FIRM).

3. The detailed floodplain delineation is coordinated with the local floodplain administrator and/or county sanitarian.

4. The proposed project is located on property being subdivided.

REQUIREMENTS

The detailed information shall be prepared by the Applicant's registered engineer and shall include the information listed below.

1. Certification: Certification by a registered professional engineer.

2. Overall Plan View: An overall scaled plan view (project map) with identified scale for vertical and horizontal distance showing the following:
   a. watercourse
   b. floodplain boundaries
   c. location of property
   d. contours
   e. cross-sections
   f. bridges or other contractions in the floodplain.
   g. USGS gauging stations (if any).

3. Benchmark(s): The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.

4. Cross sectional information:

   a. Cross-section elevations and stations should be determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.

   b. Each cross-section shall cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Occasionally, wide floodplains require a dog-leg alignment to be perpendicular to the anticipated flow-lines. Shots should be taken at the water's edge and measurements taken (if elevation shots can not be taken) to determine the channel bottom shape. Cross sections shall be accurately located on a USGS 7 1/2 minute quad sheet.

   c. The number of cross-sections needed, and the distance between cross-sections will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections is required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography. Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.

5. Bridges: Descriptions and sketches of all bridges within the reach, showing unobstructed waterway openings and elevations.

6. Water Surface: Elevation of the water surface is to be determined by survey as part of each valley cross section.

7. Supporting Documentation: Engineering report of computer computations, calculations, and assumptions that may include:
   a. Hydrology (Research of published hydrology or calculations showing how hydrology was derived)

   b. Input Files (hardcopy and electronic copy)

   c. Output Files (hardcopy and electronic copy)

APPENDIX G:

LEWIS AND CLARK COUNTY ROAD NAMING, ROAD SIGN IDENTIFICATION AND INSTALLATION CONVENTIONS

(Repealed December 13, 2016 – Provisions moved to Public Works Manual)

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APPENDIX H:

LEWIS AND CLARK COUNTY ADDRESSING CONVENTIONS

(Repealed December 13, 2016 – Provisions moved to Public Works Manual)

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APPENDIX I

CRITERIA FOR REVIEW OF CLAIMED EXEMPTIONS FROM PROVISIONS OF SUBDIVISION AND PLATTING ACT

STATEMENT OF INTENT

The intent and purpose of this document is to provide administrative procedures for implementing Sections 76-3-201 and 207, MCA, of the Montana Subdivision and Platting Act (the Act). These procedures are designed to provide persons administering the Act criteria for evaluating the purpose of claimed exemptions, and further, to provide persons claiming an exemption opportunities for demonstrating their eligibility for such claims. The criteria set forth herein, are to be used as guidelines for evaluation of such eligibility and are not in themselves conclusive. Further, said criteria do not presume that prior uses of exemptions were unlawful.

SECTION A. APPLICATION AND INITIAL REVIEW

1. Any person (which term includes an individual, firm, association, partnership, corporation, and public agency) seeking exemption from the subdivision review requirements of the Montana Subdivision and Platting Act, Section 76-3-101 et seq., MCA (the Act), and/or the Lewis and Clark County Subdivision Regulations (the Regulations), shall apply for the exemption by furnishing evidence of entitlement to the claimed exemption to the Clerk and Recorder. Such evidence may include, but is not limited to, a certificate of survey, a completed and signed "certificate of survey exemption affidavit," and documentation of ownership. Any person going through this process must first attend a pre-application conference first.

2. A Review Committee, consisting of the Clerk and Recorder, Planning Director, and County Attorney (or their designees), shall review evidence submitted by the applicant on the basis of the criteria set forth in these regulations and in other pertinent law. Within twenty (20) working days after submission of the required documents, the Committee shall make a determination on the application or, if necessary, request additional information from the applicant. If the Committee denies the application the Committee will notify the applicant in writing of the decision, including the Committee's reasoning.

3. If the Committee determines that the applicant is eligible for the claimed exemption under these criteria and if the certificate of survey complies with all other applicable statues and regulations, the certificate of survey may be filed. The certificate of survey must be filed within two (2) years of the initial approval date, or the application must be resubmitted with the applicable fess and documentation.

4. If the Committee determines that the applicant is not eligible for the claimed exemption, it shall notify the applicant by certified mail of the reasons for the denial. The applicant shall have twenty (20) working days from the date of denial to provide the Committee any additional evidence to prove the applicant is eligible for the exemption. The Committee shall have twenty (20) working days to review any new evidence. In accordance with Section B. below, the applicant may also within twenty (20) working days from the date of denial, withdraw the application or submit to the Board a written request to appeal the decision of the Committee and to hold a hearing. An appeal request must include a copy of the Committee's written findings.

5. If the applicant provides additional evidence and the Committee reaffirms that the applicant is not eligible for an exemption, it shall notify the Board and notify the applicant by certified mail of the Committee's reasons for its determination. Thereafter, the applicant may withdraw the application or, within twenty (20) working days from the date of denial, submit to the Board, a written request to appeal the decision of the Committee and to hold a hearing. An appeal request in this instance must include a copy of the Committee’s written findings.

SECTION B. HEARING PROCEDURE

1. Upon receipt of a written request for a hearing, the Board shall set a time and place for the hearing. At least five (5) days prior to the date set for the hearing the Board shall send notice of the hearing to the applicant by certified mail.

2. At the hearing, the applicant has the burden of proof by a preponderance of the evidence and shall first present evidence. Such evidence should include response to the criteria identified as reasons for denial and any other pertinent information to demonstrate that the use of the proposed exemption would not be an evasion of the Act. The Committee shall then present its evidence. The applicant may then present rebuttal evidence. The hearing shall then be closed.

3. The Board shall approve or disapprove the proposed exemption within fifteen (15) working days of the receipt of the request for hearing unless the applicant agrees to a hearing date beyond fifteen (15) working days. The

Board shall provide written notification of its decision and the reasons therefore, to the applicant and the Clerk and Recorder.

SECTION C. GENERAL REQUIREMENTS

1. The use of any exemption set forth in Sections 76-3-201 and 76-3-207, MCA, for the purposes of evading subdivision review under the Act or the Regulations is prohibited. These exemptions are listed below:

Section 76-3-201, MCA. Exemption for certain divisions of land.

(1) order of a court, operation of law, or eminent domain;

(2) security for construction mortgages, liens, or trust indentures;

(3) interest in oil, gas, minerals, or water severed from the surface ownership of real property;

(4) cemetery lots;

(5) reservation of a life estate; and

(6) lease or rental for farming and agricultural purposes~~.~~**;**

(7) is in a location over which the state does not have jurisdiction; or

(8) is created for rights-of-way or utility sites.

Section 76-3-207, MCA. Subdivisions exempted from review but subject to survey requirements.

(1) (a) relocation of common boundary lines outside of platted subdivisions;

(b) outside of platted subdivisions a single gift or sale to a member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) relocation of common boundaries for five or fewer lots within a platted subdivision;

(e) relocation a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision; and

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) In determining whether an exemption is claimed to evade subdivision review the Committee, and when necessary, the BOCC, shall consider the specific exemption criteria and presumptions set forth in these criteria and may also consider other evidence including but not limited to:

(a) The prior history of the tract;

(b) The proposed configuration of the particular tract to adjacent tracts, if the proposed exemptions were to be granted; and,

(c) The pattern, if any, of exemptions used by the applicant and/or the applicant's immediate family, and/or other persons having any business, economic, ownership or other relationship with the applicant that has or will result in the creation of a subdivision without review by the Board.

(3) A certificate of survey for which an exemption is claimed may not be filed by the Clerk and Recorder unless it bears a certificate acknowledged by all owners of record stating that the division is exempted from review as a subdivision and quoting the applicable exemption and citing the appropriate MCA section. A certificate of survey claiming an exemption other than a gift or sale to a member of the immediate family may divide a parcel once only. Submittal of a certificate of survey to the Clerk and Recorder must be accompanied by a completed and signed Certificate of Survey Exemption Affidavit form and a Certificate of Survey Report form.

SECTION D. EXEMPTION CRITERIA

1. RELOCATION OF COMMON BOUNDARY LINES [Section 76-3-207(1)(a),(d), and/or (e), MCA]:

a. The relocation of common boundary lines exemption is used to change the location of a boundary line between adjacent parcels of record.

b. Certificates of survey showing the boundaries and areas of land, shall be accompanied by a deed transferring interest in the parcel being created, or a contract for deed or a notice of purchaser's interest. If no such document can be recorded prior to the filing of the certificate of survey, the applicant must submit an acknowledged statement from an escrow agent setting forth the location of the deed or contract being held in escrow and how long it will be held in escrow and a photocopy of the document.

c. There is a rebuttable presumption that any boundary relocation is or will be an inappropriate use of the exemption, under the Act or the Regulations, thereby making the proposed division and transfer subject to subdivision review, if after July 1, 1973:

(1) It creates a parcel of less than 160 acres which, prior to the relocation, had more than 160 acres; or

(2) It creates any additional parcel of land less than 160 acres in size; or

(3) It fits a previously established pattern of land divisions and land transfers; or

(4) It will create three or more parcels that were subdivided from the original tract; or

(5) The applicant has used exemptions to create parcels from the original tract or other tracts; or

(6) The use of the exemption is in violation of statutes, case law, administrative rules, or Attorney General opinions; or

(7) The proposed division of land has been previously denied under any other exemption.

2. EXEMPTION AS A SINGLE GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY [Section 76-3-207(1)(b), MCA]:

a. A "member of the immediate family" may include only the grantor's spouse, children by blood or adoption, and parents.

b. There is a rebuttable presumption that a division of land and

a transfer, proposed as an exempt "gift or sale to family member," is or will be an inappropriate use of the exemption under the Act and the Regulations, thereby making the proposed division and transfer subject to subdivision review, if after July 1, 1973:

(1) The original or any subsequent tract, from which the parcel created for transfer is to be segregated, was exempted from subdivision review pursuant to the exemptions listed in Section C.1.; or

(2) The parcel to be transferred is not intended for a homesite for the transferee; or

(3) The transfer could be accomplished by a "relocation of common boundary lines" under Section C.1.; or

(4) It will become one of three or more parcels that were subdivided from the original tract; or

(5) The use of the exemption is in violation of statutes, case law, administrative rules, or Attorney General opinions; or

(6) The proposed division of land fits a pattern of land divisions and land transfers; or

(7) The applicant has used exemptions to create parcels from the original tract or other tracts; or

(8) The proposed division of land has been previously denied under any other exemption; or

(9) The parent purports to act as a guardian for a minor child without a trust instrument.

(10) The grantor intends to divide land for the purpose of a gift or sale to the grantor's spouse.

3. AGRICULTURAL EXEMPTION [Section 76-3-207(1)(c), MCA]:

a. An agricultural exemption is a division of land made outside of a platted subdivision by sale or agreement to buy and sell where the parties to the transaction and the governing body

enter a covenant running with the land, revocable only by mutual consent of the governing body and the property owners, that the divided land will be used exclusively for agricultural purposes.

b. Creation, Revocation, and Retention of the Agricultural Exemption:

Creation of parcels by use of the agricultural exemption, and the subsequent revocation or retention of the agricultural covenant, shall be subject to the provisions of Resolution 1986-55, entitled "Resolution of the Board of County Commissioners Setting Forth a Policy Relating to Divisions of Land for Agricultural Purposes, Exempt From Review under the Montana Subdivision and Platting Act."

4. EXEMPTION TO PROVIDE SECURITY FOR CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES [Section 76-3-201(2), MCA]:

a. The construction mortgage exemption is used to segregate land for the purpose of providing security for construction mortgages, liens, or trust indentures.

b. There is a rebuttable presumption that a proposed use of this exemption, or a division of land by use of this exemption, is subject to subdivision review, if after July 1, 1973:

(1) The proposed division, by its location or configuration could become or create three or more parcels that were subdivided from the original tract; or

(2) The applicant has used exemptions to create parcels from the original tract or other tracts; or

(3) The proposed division of land has been previously denied under any other exemption; or

(4) Upon foreclosure of the security, three or more parcels would be created.

(5) There is no evidence of foreclosure of the mortgage, lien, or trust indenture.

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APPENDIX J:
LEWIS & CLARK COUNTY ROAD STANDARDS

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APPENDIX K:
FIRE PROTECTION STANDARDS

18-1 General

18-1.1 Scope

This section of the Lewis and Clark Subdivision regulations presents the minimum planning, construction, maintenance elements for subdivisions to provide for the protection of life and property from emergency incidents.

18-1.2 Purpose

All subdivisions shall be planned, designed, constructed, and maintained to minimize the risk of fire and to permit effective and efficient response to and mitigation of emergency incidents in order to protect persons, property, and natural resource areas.

To place structures in such a manner so as to minimize the potential for flame spread and to permit efficient access for fire fighting equipment.

18-2 Definitions

Total Square Feet Of Structure: This is the structure's footprint times the number of floors. This includes all building spaces attached to the structure.

Accessory Building or Structure: Any building or structure used incidentally to another building or structure.

Alternative: A system, condition, arrangement, material, or equipment submitted to the Fire Protection Authority Having Jurisdiction (FPAHJ) as a substitute for a code requirement.

Approved: Acceptable to the Fire Protection Authority Having Jurisdiction.

Aspect: Compass direction toward which a slope faces.

Building: Any structure used or intended for supporting any occupancy.

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

Defensible Space: A designated area around a home or other structure the size of which is dependent on the vegetation, proximity of tree crowns, slope and distance to adjacent buildings. Within this area all weeds, dry grass, slash, flammable debris and flammable fuel is removed. This managed buffer surrounding buildings and structures is designed to reduce the chances of a fire spreading to or from the building or structures; to protect life and property from wildland fire; to provide a safe working area for fire fighters protecting life and improved property.

Dry Hydrant: An arrangement of pipe permanently connected to a year around water source other than a piped, pressurized water supply system that provides a ready means of water supply for fire-fighting purposes and that utilizes the drafting (suction) capability of fire department pumpers. The point of connection between the water source and the pumper shall be approved by the FPAHJ.

Dwelling: One or multiple living units, each providing complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Multiple living units must be approved through subdivision review and approval.

Evacuation: The temporary movement of people and their possessions from locations threatened by wildland fire or other emergencies that may threaten citizens.

Fire Hydrant: A valved connection on a piped year around pressured water supply system having one or more outlets that is used to supply hose and fire department pumpers with water.

Fire Lane: A means of access or other passageway designated and identified to provide access for emergency apparatus where parking is not allowed.

Fire Protection Authority Having Jurisdiction (FPAHJ): The organization, office, or individual responsible for approving equipment, an installation, or a procedure.

Fire Resistant Landscaping: Vegetation management that removes flammable fuels from around a structure to reduce exposure to radiant heat. The flammable fuels maybe replaced with green lawn; gardens; certain individually spaced, green, ornamental shrubs; individually spaced and pruned trees; decorative rock or stone; or other non-flammable or flame resistant materials.

Fire Resistive or Fire Resistive Construction: Construction to resist the spread of fire, details of which are usually found in the applicable state fire and building codes.

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

Fuel Hazard Rating: A measure of the expected fire behavior and the difficulty of fire control in non-fire-resistive materials.

Fuel Loading: The volume of fuel in a given area generally expressed in tons per acre.

Fuel Modification: Any manipulation or removal of fuels to reduce the likelihood of ignition or the resistance to fire control.

Fuels: All combustible material within the wildland/urban interface, including vegetation and structures.

Greenbelt: An area with fire-resistive vegetation (planted or native), maintained to cause a reduction in fire intensity, and used for other than fire protection (golf course, cemetery, park, playground, mowed park, orchard, etc.).

Ground Fuels: All combustible materials such as grass, duff, loose surface litter, tree or shrub roots, rotting wood, leaves, peat, or sawdust that typically support combustion.

Hammerhead T: A roadway that provides a "T" shaped three-point turnaround for emergency equipment that is no narrower than the road that it serves.

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

Ladder Fuels: Fuels that provide vertical continuity allowing fire to carry from surface fuels into the crowns of trees or shrubs with relative ease.

Life Risk: Events, actions, or situations created by emergency incidents that have the potential to cause serious injury or death to people.

Life Safety: Actions taken to prevent the endangerment of people threatened by emergency incidents or by activities associated with the management.

Listed: Equipment, materials, or services included in a list published by an organization that is UL listed and is concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets identified standards or has been tested and found suitable for a specified purpose.

Mitigation: Action that moderates the severity of a fire hazard or risk.

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

Public Access Easement: A thoroughfare that has been dedicated for public use.

Rated Roof: A roof constructed with a "roof covering assembly" that is listed as meeting the requirements for Class A, B, or C "roof covering assembly materials."

Roadway: An open way for passage of vehicles giving access to one or more parcels. As defined in the road standards section of these regulations, there are four main classifications in Lewis and Clark County: local roads, minor collectors, major collectors, and arterials.

Setback: Distance between a structure and the closest property boundary or edge of right-of-way.

Shall: Indicates a mandatory requirement.

Should: Indicates a recommendation or that which is advised but not required.

Shoulder: Surface of a road adjacent to the traffic lane.

Slope: Upward or downward incline or slant, usually calculated as a percent of slope [rise or fall per 100 ft (30.45 m) of horizontal distance].

Street or Road Identification Signs: Any sign containing words, numbers, directions, or symbols that provides information to emergency responders.

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

Survivable Space: Characteristics of a structure to survive a wildland fire on its own that are a combination of topographical location of the building site, design, and fuel/vegetation management to limit the ignition zone around structures.

Traffic Lane: That portion of a roadway that provides a single lane of vehicle travel in one direction.

Turnaround: A portion of a roadway, unobstructed by parking, that allows for a safe reversal of direction for emergency equipment (see cul-de-sac and hammerhead T).

Vegetation Management Plan: A vegetation management plan reduces the amount of fuel available for wildland fires, reducing the probability of a rapidly spreading wildland fire. Elements of the plan include removal of slash, snags, other ground fuels, ladder fuels and dead trees, and thinning of live vegetation.

Water Supply: A source of water for fire-fighting activities.

Wildland Fire: An unplanned and uncontrolled fire spreading through vegetative fuels, at times involving structures.

Wildland/Urban Interface: An area where improved property and wildland fuels meet.

18-3 Fire Protection

18-3.1 Fire Protection Plan

An Applicant shall provide with the subdivision application a fire protection plan that states how the Fire Protection Standards of the Lewis and Clark Subdivision Regulations will be addressed.

18-3.2 Adequate Fire Protection

The presence of adequate fire fighting facilities for the site, and guidelines for determining the adequacy of fire protection can be found in Appendix K.

18-4 Water Supplies for Fire Protection

Fire protection options for new subdivisions are grouped into two categories, Class I and Class II. Each of these has a variety of options regarding water supply the applicant may select from to meet the minimum requirements. The determination of whether class I or II requirements apply is based on density, the number of lots created in the final plat, and whether or not the development is set back at least 15 feet from all property lines, as described below. In the event that the property is located in a zoning district that requires a setback of greater than 15 feet, the larger setback shall apply.

DENSITY/SETBACK	CLASS I	CLASS II
5 or more acres per dwelling unit (With or without 15 ft. setback)	20 or more lots	Less than 20 lots
1 to 4.9 acres per dwelling unit		
With 15 ft. setback	20 or more lots	Less than 20 lots
Less than 15 ft. setback	15 or more lots	Less than 15 lots
.5 to .99 acres per dwelling unit		
With 15 ft. setback	20 or more lots	Less than 20 lots
Less than 15ft. setback	5 or more lots	Less than 5 lots
.25 to .49 acres per dwelling unit		
With 15' setback	10 or more lots	Less than 10 lots
Less than 15' setback	5 or more lots	Less than 5 lots
Less than .25 acres per dwelling unit (With or without 15' setback)	5 or more lots	Less than 5 lots

At a minimum, every Class I or Class II subdivision shall be provided with a water supply, either on-site or off-site, for the purpose of fire fighting, meeting the requirements of 18-4.

18-4.1 One- and Two-family Dwellings

A. **Class II subdivisions** will provide a water supply system of sufficient volume, pressure and water distribution system to fight fire on site according to the following schedule:

1. **One- and two family dwellings**

a. 250 gpm for two hours

1) Water shall be supplied by a well and pump with required volume and minimum pressure of 20 PSI. An overhead fill may be required in order to fill tankers. The fill site must be useable year round and the FPAHJ must have legal access in perpetuity.
OR

2) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be

built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional Engineer and approved by the FPAHJ.

OR

3) 30,000-gallon storage with dry hydrant. Dry hydrant applications may be used for ponds, streams, and lakes. The system must be designed to be useable and accessible year round. All pipe must be a minimum of 6 inch diameter and the threads at the outlet must be 6 inch male NST.

B. Class I subdivisions will provide a water supply system of sufficient volume, pressure and water distribution to fight fire on site according to the following schedule:

1. One dwelling per 20 or more acres.

a. 500 gpm for one hour:

1) Water shall be supplied by a well and pump with required volume and minimum pressure of 20 PSI. An overhead fill may be required in order to fill tankers. The fill site must be useable year round and the FPAHJ must have legal access in perpetuity.

OR

2) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional Engineer and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

OR

a. 30,000 gallon storage with dry hydrant:

1) Dry hydrant applications may be used for ponds, streams, and lakes. The system must be designed to be useable and accessible year round. All pipe must be a minimum of 6 inch diameter and the threads at the outlet must be 6 inch male NST.

2. One dwelling per 5 to 19.9 acres

a. 500 GPM for two hours

1) Water shall be supplied by a well and pump with required volume and minimum pressure of 20 PSI. The fill site must be useable year round and the FPAHJ must have legal access for perpetuity.

OR

2) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional Engineer and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

3. One dwelling per 1 to 4.9 acres

a. 750 GPM for two hours

1) Water shall be supplied by a well and pump with required volume and minimum pressure of 20 PSI. The fill site must be useable year round and the FPAHJ must have legal access in perpetuity.

OR

2) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional

Engineer and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

4. One dwelling per .5 to .99 acre

a. 1000 GPM for two hours

1) Water shall be supplied by a well and pump with required volume and minimum pressure of 20 PSI. An overhead fill may be required in order to fill tankers. The fill site must be useable year round and the FPAHJ must have legal access in perpetuity.

OR

2) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional Engineer and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

5. One dwelling per .25 to .49 acre

a) 1000 gpm for two hours and

b) Fire hydrant spacing every 1000 feet (fire hydrant spacing shall be measured along a route of legal access)

1) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional Engineer and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

6. One dwelling per < .25 acre

a) 1500 gpm for two hours and

b) Fire hydrant spacing every 500 feet (fire hydrant spacing shall be measured along a route of legal access)

1) Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the required water supply. The tank must be built and installed so as to last a minimum of 30 years. The pump must be capable of delivering the required gpm at a minimum of 20 psi from an approved fire hydrant. The system shall be inspected and certified by a Professional Engineer, and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

OR

2) Water shall be supplied by a community water system. The system shall be capable of delivering the required gpm at a minimum of psi from approved fire hydrants. The system shall be inspected by a Professional Engineer, and a copy of the inspection and certification will be provided to the FPAHJ and County Planning.

18-4.2 Buildings other than One- and Two-family Dwellings.

a) Water supply and the minimum fire flow requirements shall be in accordance with the provisions of 18-4.1.

18-4.3 Maintenance

An easement for unrestricted use by the fire department, in perpetuity, of the water supply system shall be recorded and noted on the plat.

The subdivider shall establish or join a Rural Improvement District (RID) prior to final plat approval that, at a minimum, ensures continual operation, annual testing and maintenance of the water supply system and fire protection features. The FPAHJ will not be responsible for any maintenance, electricity, or any costs associated with enhancements, upgrades or other measures necessary to assure the system functions to original specifications.

The RID shall include assessments for the annual testing of the water supply system by the FPAHJ, or a subcontractor specified by the FPAHJ. The results of

the annual testing shall be provided to the FPAHJ and the benefiting property owners within the RID as soon as available.

18-4.4 Proportionate Reimbursement

If subsequent subdivisions will be served by an existing water supply, the County Commission may include reimbursement of a portion of the original water supply improvement costs as a condition of final approval of any subsequent subdivision. This reimbursement condition shall be in effect for ten (10) years from the date the County Commission directs the original subdivider to construct a water supply. Ongoing maintenance of the original water system shall be provided by an RID.

18-4.5 Reimbursement Methodology

The original subdivider may forward the total costs of improvements for the water supply to the planning department within 60 days of the completion of the improvements. If required, subsequent subdividers shall pay their proportionate reimbursement to Lewis & Clark County. The Lewis & Clark County Treasurer shall then make disbursements within 60 days of receiving reimbursement funds. Funds shall be disbursed to the original subdivider.

18-4.6 Off-Site Water Supply System

The BOCC may consider the utilization of an existing off-site water supply system under the following conditions:

1. The applicant has secured any necessary easements and/or agreements from the affected property owner(s) and/or homeowners association;

2. A rural improvement district (RID) for the maintenance of the off-site water supply system that includes the subdivision is established prior to final plat approval unless the off-site water supply is maintained by the FPAHJ or public water system that provides adequate funding to maintain the system;

3. Use of an existing off-site water supply system does not diminish the fire protection provided to the subdivision(s) it was originally built to serve or it is upgraded and/or expanded to provide volume, pressure, and distribution in accordance with these regulations for all subdivisions utilizing the system for fire protection in accordance with these Subdivision Regulations. For the purposes of determining whether fire protection will be diminished for the prior subdivision(s), an analysis shall be submitted with the subdivision application to determine what class of fire protection is needed as indicated in Sections 18-4 and 18-4.1 for the cumulative use of the system;

4. The off-site water supply system is located no longer than one county road mile from an existing or proposed internal access road for the subdivision; and

5. The utilization of the off-site water supply system does not require the FPAHJ to travel on arterial or major collector roads, cross railroad crossings, or travel on roads with grades in excess of 11 percent to deliver water from the off-site water supply system to the subdivision.

18-4.7 Fire Protection Authority Having Jurisdiction (FPAHJ) Approval of Water Supplies for Fire Protection

The subdivider shall provide a certification from an engineer, licensed in the State of Montana, stating that any existing, new or improved fire protection water supplies serving the subdivision comply with the requirements of preliminary approval. The subdivider shall also submit a written verification from the Fire Protection Authority Having Jurisdiction (FPAHJ) stating that the FPAHJ has inspected and tested the fire protection water supplies serving the subdivision. The FPAHJ's inspection and testing must occur after the subdivider submits to the FPAHJ a certification from an engineer, licensed in the State of Montana and within six (6) months of the date of final plat submittal stating that any existing, new or improved fire protection water supplies serving the subdivision comply with the requirements of preliminary approval.

18-5 Access & Evacuation

Access for emergency responders and evacuation shall be provided for all buildings. Routes shall provide ingress for fire department apparatus used in establishing a defensive perimeter around building(s) and shall be designed and constructed to allow simultaneous egress for the evacuating public. Access routes shall be deemed driveways or roadways.

18-5.1 Roadways

18-5.1.1 Access to all major and subsequent minor subdivisions shall be provided by a minimum of two approach routes, located as remotely from each other as possible to assure more than one escape route for residents and access routes by emergency vehicles. A cul-de-sac meeting the requirements described in Chapter XI.H.15 fulfills this regulation.

18-5.2 Obstructions

Landscaping or other obstructions placed around structures shall be maintained in a manner that does not impair or impede accessibility for fire department

operations. Filler valves for buried residential propane tanks shall be located below the ground surface to avoid possible shearing by heavy equipment.

18-5.3 Easements and Rights-of-Way

Where necessary, the applicant shall obtain or provide evidence that an attempt was made to obtain an easement from adjacent property owners for emergency vehicle access.

18-6. Water Supply

The location of a fire-fighting water source and each access to that source shall be identified using the Lewis and Clark County Fire Council Dry Hydrant Sign Standard and shall indicate whether it is a fire hydrant on a non-municipal system, a dry hydrant, or another type of water supply. Access and construction for water supplies shall, at a minimum, follow the Driveway standards listed in Appendix J.

18-7 Wildland/Urban Interface

Special standards are required for subdivisions proposed in wildland/urban interface areas.

18-7.1 Wildland/Urban Interface Areas

The fuel hazard rating of wildland/urban interface areas is determined by using the Fuel Hazard Rating Map for the Tri-County area. Developers should consult the “Guidelines for Administration for the Tri-County Fuel Hazard Mapping”(See Appendix K(A), *Wild Fire Fuel Hazard Identification Guidelines for Administration)* to ensure a complete understanding of the Fuel Hazard Rating criteria. If the area to be developed is not covered by the Fuel Hazard Rating Map, the applicant must hire the services of a qualified fire protection professional to assess the Fuel Hazard Rating for the project area. The County Planning Department shall maintain a list of “qualified fire protection professionals” from which the applicant can choose.

18-7.2 Additional Requirements

High fire hazard areas include heads of draws, excessive slopes, dense forest growth or other hazardous wildfire components. For subdivisions proposed in areas classified as B, C or X wildland fuel hazard as defined in 18-7.1 and the fuels are not modified to a lower hazard rating in accordance with 18-7, the following standards shall apply:

18-7.2.1 Roof Coverings- Refer to *Guideline 205 Roof Construction* (Appendix B of *Fire Protection Guidelines For Wildland Residential Interface Development).*

18-7.3 Accesses and Evacuation

18-7.3.1 Roadside Vegetation- Maintain roadside vegetation to protect roads from radiant heat, so they can be used both as escape routes and fire breaks. A recognized fire or fuels management specialist selected from the list of approved qualified fire protection professionals maintained by the County Planning Department shall be used to determine how much vegetation to clear based on local conditions. At a minimum the following standards shall apply:

a. Thin trees to 10 feet between crowns.
b. Remove ladder fuels and prune tree limbs up to 15 feet, or one-third of the live crown of the tree, whichever is less.
c. Remove dead vegetation, logs, snags, etc. Remove snags to a distance that prevents them from falling into cleared right-of-way or on roads.
d. In the clear zone and where practical, reduce brush, grass, and other vegetation and maintain it at a maximum of 12 inches high, in perpetuity.

18-7.3.2 Subdivisions shall be designed to allow emergency vehicles access to areas behind structures by:

a. Providing a perimeter roadway approved by FPAHJ along the entire wildland side of a development;

Or by

b. Providing a fuel break, designed by a recognized fire or fuels management specialist and approved by the FPAHJ, and accessible to fire apparatus.

18-7.4 Building Density Requirements

Densities in areas of steep slopes and/or dense forest growth shall be reduced through minimum lot standards as follows:

Minimum Lot Size (Acres)

% Slope	Open Grass	Forest & Brush
0-10	1	2
11-20	2	3
21-30	3	4
Over 31	4	Not Permitted.[1]

[1]**Building sites shall be prohibited on slopes greater than 30 percent and at the apex of "fire chimneys" (topographical features, usually drainage way or swale, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).**

18-7.5 Vegetation Management

18-7.5.1 A vegetation management plan shall be prepared in accordance with 18-10.

18-8 Fire Protection Covenants

18-8.1
The following covenants may be included as a requirement of the Fire Protection Plan to mitigate potential threats from fire.

18-8.1.1 Maintenance of Fire Protection Water Supply- (for example: water systems, fire hydrants, draft sites, fill sites, buried tanks or open ponds) - Fire protection water supplies must be maintained to their original performance capability in perpetuity. All lot owners shall waive their right to protest the creation of an RID for the purpose of maintaining water supply for fire protection. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

18-8.1.2 Maintenance of Fire Protection Features (for example: defensible spaces, driveway routes, fuel breaks, fuel modification plan, greenbelts, etc.) Fire protection features must be maintained to their original performance capability in perpetuity by the property owners. All lot owners shall waive their right to protest the creation of an RID for the purpose of maintaining all fire protection features. A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the County Clerk and Recorder.

18-8.1.3 Use of Water Supply System – Lot owners shall be notified that the components of a water supply system used for fire protection shall be exclusively available for the purposes of fire protection.

18-8.1.4 Vegetation Management Plans – Lot owners shall be notified of required vegetation management plans and the required vegetation management plan shall be recorded with the County Clerk and Recorder at the time of final plat filing.

18-9 Mapping

18-9.1 A map of the subdivision shall be provided to the FPAHJ indicating streets, addresses, street names, fire protection features, lot lines, buildable area envelopes, utilities, easements, etc.

18-9.2 The subdivider shall provide location data (latitude and longitude) of all on-site and off-site water supply system features that will serve the subdivision to the Lewis and Clark County Community Development and Planning Department with the application for final plat approval or as fulfillment of a Subdivision Improvements Agreement per Appendix E.

18-10 Vegetation Management

18-10.1 A vegetation management plan shall be prepared by a recognized fire or fuels management specialist selected from a list of "qualified fire protection professionals" maintained by the Community Development and Planning Department. The intent of the vegetation management plan is to reduce fuel loading and hazard rating and provide continuous maintenance of the fuel load:

- To protect life and property.

- To reduce the potential for a fire on improved property from spreading to wildland fuels and from a fire in wildland fuels from spreading to the structures.

- To provide a safe working area for emergency responders.

18-10.2 Vegetation Management Plan- Vegetation management plans shall describe all actions that will be taken to prevent a fire from being carried toward or away from the development. A vegetation management plan shall include at least the following information:

a. A copy of the site plan for the development.

b. Methods and timetables for controlling, changing or modifying areas on the property, including roadside vegetation. Elements of the plan shall include removal of slash, snags, vegetation that may grow into overhead electrical lines, other ground fuels, dead trees, and thinning of live trees.

c. Defensible Space – (Refer to Guideline 201.1 and 201.2, Vegetation Reduction And Clearance – *FIRE PROTECTION GUIDELINES FOR WILDLAND RESIDENTIAL INTERFACE DEVELOPMENT*).

d. Fuel Breaks & Greenbelts – (Refer to guideline 204, Fuel Breaks and Greenbelts – *FIRE PROTECTION GUIDELINES FOR WILDLANDRESIDENTIAL INTERFACE DEVELOPMENT*).

e. A plan for continuously maintaining the proposed fuel-reduction, defensible space, fuel breaks & greenbelts measures and responsibility of maintenance defined.

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Appendix K(A): WILD FIRE FUEL HAZARD IDENTIFICATION GUIDELINES FOR ADMINISTRATION

Executive Summary

The following briefly summarizes guidelines for administering wildfire fuel hazard rated lands within the wildland/urban interface.

FUEL HAZARD CLASSES.

Group A

These areas represent a low fuel hazard with potential for fast spreading fires when grass is cured. (Early spring before green-up and late summer and fall). These are areas of grass, weeds, and brush less than 2 feet high. The fire hazard can be easily mitigated in these fuels.

These areas are generally not a problem for development from a fire protection standpoint. Humans can usually avoid burning areas with ease and firefighters can work easily and efficiently under normal weather conditions. Heavy damages are still possible when items are within the burning area without adequate fuel treatments, clearances, or protection. This fuel type will accommodate the heaviest and widest range of developments with respect to wildfire hazards.

Group B

These areas represent a medium fuel hazard. They are medium density conifer stands with primarily a grass and brush understory. The conifer overstory tends to reduce the density of the grass and brush. Minimal fuel reduction is needed to reduce this Group to a less severe state.

Inexperienced people are usually afraid and can panic when these areas burn. Property, real and personal, can sustain heavy losses due to the greater burning intensities. Due to the burning characteristics and resultant dangers for "B' rated fuels, it will be advantageous to coordinate and regulate development in these areas. Development can only exist if fuel modifications and treatments are completed prior to completion of the development.

Group C
This Group represents a high fuel hazard with potential for high intensity crown fires. These are dense conifer stands. Fuels can be reduced to a less severe state on slopes less than 30% but usually require some form of commercial harvest.

Experienced firefighters are most cautious in these fuels and are ever fearful of the crown fire potential. Rescue of persons entrapped by hot wildfires in these fuels is nearly impossible. Property, real and personal, can face complete destruction. Injuries can be serious and deaths may easily occur. The burning characteristics and resultant dangers in “C” fuels make it one in which close, coordinated and regulated development is advantageous to all interests, both public and private. At best, development in these areas will only be marginal in safety and then only after modifications and treatments are completed prior to completion of the development itself.

Group X
This Group represents a high to severe fuel hazard with potential for high intensity fire and extreme rates-of-spread. These are dense, flammable vegetation over two feet high including tall sagebrush and conifer reproduction (regeneration). Fuels can be readily reduced to a less severe state on slopes less than 30%.

Although very similar to “C” fuels when subjected to wildfire , the “X” type is delineated separately from “C” fuels because of its higher intensity burning characteristics, rapid rates of spread and its different requirements for mitigation. The dangers of intense, destructive wildfires are greatest in “X" fuels. Property, real and personal, will face heavy damage and possibly complete destruction during wildfires. Injuries can be serious and deaths may easily occur due to entrapment. The burning characteristics and resultant dangers make it one in which close, coordinated and regulated development is imperative to all interests, both public and private. Fuel Hazard X~' lends itself to modification and can usually be readily reduced

APPENDIX K (B): APPLICATION

The following guidelines apply to all developments in the Urban Wildland Interface (UWI) including residential, commercial, and recreational developments on private, State, and Federal lands. The guidelines should be used in conjunction with local fire authorities to safeguard homes and developments in a specific locale.

201 VEGETATION REDUCTION AND CLEARANCE

Trees, brush and dense undergrowth are the primary fire hazards. This vegetation can ignite readily, burn with intense heat, and promote rapid spread of fire. Vegetation must be managed so as to reduce exposure of structures to flames and radiant heat during a wildfire. The reduction of flammable vegetation and other hazards around buildings provides a "defensible space" for firefighters and residents. As a minimum, developers and landowners should:

1. Create a defensible space by:

a. Determining the slope of the building site.

b. Use the vegetation-slope charts (Appendices A-D of *The Montana Fire Protection Guidelines for Wildland Residential Interface - Development*) as a guide. Reduce and remove vegetation around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guideline. Ornamental trees and shrubs should not touch any buildings.

c. When planting select trees, shrubs, and vegetation that limit or retard fire spread as suggested below:

i. Perennial: Choose hardy perennial flowers that are adapted to our climate. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.

ii. Shrubs: Avoid evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.

iii. Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced in accordance with the landscaping guidelines. (Appendices A-D of *The Montana Fire Protection Guidelines for Wildland Residential Interface - Development*).

d. Montana Fire Hazard Reduction Law requires that any person who creates a slash fire hazard as a result of logging or thinning must reduce or manage the hazard. Contact the Montana Department of State Lands for legal requirements and assistance in reducing any identified hazards.

2. Create a survivable space by:

a. Determining the location of structures to limit the ignition zone around the structures.

b. Minimizing firebrand receptive beds, such as debris, pine needles, firewood stacks, etc., and performing regular maintenance.

Nothing provides a guarantee that a structure will survive a wildland fire. Appropriate and applicable survivable space provisions provide the best chance for a structure to resist loss and/or damage during a wildland fire, on its own, without direct suppression intervention by firefighters.

APPENDIX L:
WATER BODY CLASSIFICATIONS

The list of water bodies is intended to show representative samples but not an exclusive list of water bodies in the County. Water bodies not included in this list will be evaluated as to what type it is (I, II, III or IV) after consultation with the Lewis and Clark Water Quality District and/or applicable state agencies.

TYPE I	**TYPE II**	**TYPE III**	**TYPE IV**
Missouri River (excluding reservoirs)		Canyon Ferry Reservoir	Irrigation canals, laterals, and drainage ditches
		Holter Lake	
		Hauser Lake	
		Lake Helena	
		Regulating Reservoir	
		Wetlands	
	Trout Creek		
	Beaver Creek		
	Willow Creek	Elkhorn Creek	
	Cottonwood Creek		
	Little Prickly Pear Creek	N. F., Little Prickly Pear Creek	
		S.F., Little Prickly Pear Creek	
		Wolf Creek	
		Rodgers Creek	
		Gladstone Creek	
		French Creek	
		Greenpole Creek	

TYPE I	TYPE II	TYPE III	TYPE IV
		Lyons Creek	
		Canyon Creek (and forks)	
	Big Sheep Creek	Spokane Creek	
	Marsh Creek		
	Lost Horse Creek		
	Prickly Pear Creek		
	Silver Creek		
	Ten Mile Creek	Seven Mile Creek	
	Trout Creek	Minehaha Creek	
		Beaver Creek	
		Ruby Creek	
Dearborn River	Flat Creek		
	South Fork, Dearborn		
	North Fork, Dearborn		
	Cundiff Creek		
	Falls Creek	West Fork	
		East Fork	
	Blacktail Creek		
	Whitetail Creek		
	Lost Cabin Creek		
Sun River	North Fork, Sun River		
	South Fork, Sun River		
	Elk Creek	Smith Fork	
		Blubber Creek	
		Ford Creek	
		Gross Creek	

TYPE I	**TYPE II**	**TYPE III**	**TYPE IV**
	Willow Creek	North Fork, Willow Creek	
		Barr Creek	
		Cutrock Creek	
	Little Willow Creek		
	Beaver Creek		
	Patrick Basin Creek		
	Bear Creek		
	Prairie Creek		
	West Fork	Aborn Creek	
	Straight Creek	Wood Creek	
	Moose Creek		
	Rock Creek	Red Shale Creek	
	Gates Creek		
	Lick Creek		
	Open Creek		
Big Blackfoot River	Poorman Creek		
	Beaver Creek		
	Stonewall Creek		
	Keep Cool Creek	Sucker Creek	
	Humbug Creek		
	Seven-Up Pete Creek		
	Landers Fork	Copper Creek	
		Snowbank Creek	
	Falls Creek		
	Ringeye Creek		
	Middle Fork Creek		
	Hogum Creek		

TYPE I	**TYPE II**	**TYPE III**	**TYPE IV**
	Willow Creek		
	Alice Creek	Bartlett Creek	
	Shuve Creek		
	Anaconda Creek		
	North Fork Blackfoot	Dry Fork, Blackfoot	
		Cabin Creek	
		Canyon Creek	
		East Fork, Blackfoot	
		Cooney Creek	
		Dabrata Creek	