

**Subdivision Regulation  
Ordinance No. 2005-06**

**BEAVERHEAD COUNTY  
SUBDIVISION  
REGULATIONS**

**Revised  
August - 2005**

## INTRODUCTION

This revision reflects changes made to the Montana Subdivision and Platting Act through the 2003 legislative session as well as changes made to the Design and Improvement Standards as a result of a series of public hearing conducted by the Beaverhead County Planning Board and the County Commissioners in 2004.

The Planning board conducted a public hearing on the proposed changes in February 2004. The Board forwarded the final draft revisions to the County Commissioners in April 2004.

The County Commissioners conducted a series of three public hearing on these subdivision regulations in Lima, Wisdom, and Dillon in June, 2004 and adopted these regulations in July 2005.

## Table of Contents

<b>I. GENERAL PROVISIONS.....</b>	<b>1</b>
I-A. Title.....	1
I-B. Authority.....	1
I-C. Purpose.....	1
I-D. Jurisdiction.....	2
I-E. Severability.....	2
<b>II. MAJOR SUBDIVISIONS.....</b>	<b>2</b>
II-A. Review and Approval Procedures for Major Subdivisions.....	2
II-A-1. Construction Timing.....	2
II-A-2. Transfers of Title.....	2
II-A-3. Pre-application Procedures.....	3
II-B. Preliminary Plats.....	3
II-B-1. Preliminary Plat Submittal.....	3
II-B-2. Review Period.....	5
II-B-3. Permission to Enter.....	5
II-B-4. Public Hearing.....	5
<b>SUBSEQUENT HEARINGS.....</b>	<b>6</b>
II-B-5. Planning Board Recommendation.....	6
II-B-6. Subdivider's Preference for Mitigation.....	7
II-B-7. Preliminary Plat Approval.....	7
II-B-8. Preliminary Plat Approval Period.....	9
II-C. Final Plats.....	10
II-C-1. Final Plat Submittal.....	10
II-C-2. Final Plat Contents.....	10
II-C-3. Final Plat Review.....	10
II-C-4. Restrictive Covenants Approval, Content and Enforcement by Governing Body.....	10
II-C-5. Public Improvements Agreement; Guaranty.....	11
II-C-6. Final Plat Approval.....	11
II-C-7. Final Plat Filing.....	12
II-D. Amending Final Plats.....	12
II-D-1. Material Alterations.....	12

II-D-2.	Exemptions from Amended Plat Review.....	12
<b>III.</b>	<b>MINOR SUBDIVISIONS .....</b>	<b>13</b>
III-A.	General Requirements for Minor Subdivisions .....	13
III-A-1.	Construction Timing.....	13
III-A-2.	Transfers of Title .....	13
III-A-3.	Pre-application Procedures .....	13
III-B.	Minor Subdivision Plats.....	16
III-B-1.	Minor Subdivision Plat Submittal.....	16
III-B-2.	Permission to Enter.....	17
III-B-3.	Minor Subdivision Plat Form and Contents.....	17
III-B-4.	Exemptions from Environmental Assessment .....	17
III-B-5.	Public Hearing .....	17
III-B-6.	Planning Board Recommendation .....	17
III-B-7.	Minor Subdivision Plat Approval .....	18
III-B-8.	Minor Subdivision Plat Approval Period.....	19
III-B-9.	Minor Subdivision Final Plat.....	19
III-C.	Amending Final Plats for Minor Subdivisions .....	19
III-C-1.	Material Alterations .....	19
<b>IV.</b>	<b>DESIGN AND IMPROVEMENT STANDARDS.....</b>	<b>19</b>
IV-A.	General Standards .....	20
IV-A-1.	Conformance with Zoning .....	20
IV-A-2.	Natural Environment.....	20
IV-A-3.	Lands Unsuitable for Subdivision.....	23
IV-A-4.	Floodplain Provisions .....	23
IV-A-5.	Improvement Design.....	23
IV-A-6.	Lots .....	23
IV-A-7.	Blocks .....	24
IV-A-8.	Streets and Roads.....	24
IV-A-9.	Drainage Facilities .....	33
IV-A-10.	Water Supply Systems.....	33
IV-A-11.	Sewage Treatment Systems.....	34
IV-A-12.	Solid Waste.....	34
IV-A-13.	Utilities .....	34
IV-A-14.	Water Course and Irrigation Easements [76-3-504(1)(j), (k), MCA] .....	35
IV-A-15.	Disposition of Water Rights [76-3-504(1)(i), MCA] .....	36
IV-A-16.	Park Land Dedication – Cash in Lieu – Waivers -- Administration .....	36
IV-A-17.	Fire Protection .....	38
IV-A-18.	Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard .	39
<b>V.</b>	<b>AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES – LAND SUBDIVISIONS CREATED BY RENT OR LEASE.....</b>	<b>40</b>
V-A.	Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes .....	40
V-A-1.	Recreational Camping Vehicles -- Definition.....	40
V-A-2.	Mobile Homes – Definition .....	40
V-A-3.	Land Subdivisions Created by Rent or Lease .....	40
V-B.	Procedures for Review .....	41
V-B-1.	Definition .....	41

V-B-2.	Review and Approval .....	41
V-B-3.	Improvements .....	41
V-B-4.	Final Plan Review .....	41
V-B-5.	DPHHS License .....	41
V-C.	Design Standards for Subdivision Spaces Created by Rent or Lease .....	41
V-C-1	Design Standards .....	41
V-C-2.	Additional Provisions.....	42
V-D.	Mobile Home Park Standards .....	42
V-D-1.	Mobile Home Spaces .....	42
V-D-2.	Streets.....	43
V-D-3.	Electrical Systems.....	43
V-D-4.	Gas Systems .....	43
V-E.	Recreational Vehicle Park Standards.....	43
V-E-1.	Recreational Vehicle Spaces.....	43
V-E-2.	Density .....	44
<b>VI.</b>	<b>PLANNED UNIT DEVELOPMENTS.....</b>	<b>44</b>
VI-A.	Purpose.....	44
VI-B.	Procedures.....	44
VI-C.	Standards.....	44
VI-C-1.	Design Standards .....	44
VI-C-2.	Streets.....	45
VI-C-3.	Open Space .....	45
<b>VII.</b>	<b>CONDOMINIUMS.....</b>	<b>45</b>
VII-A.	Procedures.....	45
VII-A-1.	Review Where Land Will Not be Divided.....	45
VII-A-2.	Condominium Subdivisions Involving Land Divisions.....	45
VII-B.	Standards.....	45
VII-B-1.	Design Standards.....	45
VII-B-2.	Unit Ownership Act.....	46
<b>VIII.</b>	<b>CLUSTER DEVELOPMENT .....</b>	<b>46</b>
VIII-A	Cluster Development, Option I.....	46
VIII-B.	Cluster Development, Option II.....	46
<b>IX.</b>	<b>GENERAL COMMERCIAL AND INDUSTRIAL DEVELOPMENT STANDARDS.....</b>	<b>47</b>
IX-A.	Development Standards Scope: .....	47
IX-A-I.	Intent: .....	47
IX-A-2.	Minimum Standards:.....	47
IX-A-3.	Commercial and Industrial Landscaping Standards: .....	47
IX-A-4.	Commercial and Industrial Sign Standards.....	48
<b>X.</b>	<b>ADMINISTRATIVE PROVISIONS.....</b>	<b>49</b>
X-A.	Fee Schedule .....	49
X-A-1.	Preliminary Plat Review .....	49
X-A-2.	Final Plat Review and Inspection .....	50
X-B.	Variances.....	50
X-B-1.	Variances Authorized.....	50
X-B-2.	Variances from Floodway Provisions Not Authorized.....	50

X-B-3. Procedure ..... 50  
X-B-4. Conditions ..... 51  
X-B-5. Statement of Facts ..... 51  
X-C. Amendment of Regulations ..... 51  
X-D. Administration ..... 51  
X-D-1. Enforcement ..... 51  
X-D-2. Violation and Penalties ..... 51  
X-D-3. Appeals ..... 51

**LIST OF APPENDIXES**

A. *Subdivision Plat Application*.....A-1  
B. *Montana Department of Environmental Quality/Local Government Joint Application Form*.....B-1  
C. *Standards for Flood Hazard Evaluations*.....C-1  
D. *Sample Forms and Certificates*.....D-1  
E. *Subdivision Improvements Agreement; Guaranty*.....E-1  
F. *Grant of Access Easement*.....F-1  
G. *Uniform Standards for Moumentation, Certificates of Survey, and Final Subdivision Plates*.....G-1  
H. *Evasion Criteria*.....H-1  
I. *Definitions*.....I-1  
J. *Fire Protection Guidelines and Risk Rating for Wildland Development*.....J-1

## **SUBDIVISION REGULATIONS**

### **I. GENERAL PROVISIONS**

#### **I-A. Title**

These regulations will be known and may be cited as “The Subdivision Regulations of Beaverhead County;” hereinafter referred to as “these regulations.”

#### **I-B. Authority**

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

#### **I-C. Purpose**

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

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

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The provision of proper physical and legal road access, including obtaining of necessary easements.
5. The provision of adequate open spaces for travel, light, air, and recreation.
6. The provision of adequate transportation, water, drainage, and sanitary facilities.
7. The avoidance or minimizing of congestion.
8. The avoidance of subdivisions, which would involve unnecessary environmental degradation.
9. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services.
10. The avoidance of excessive expenditure of public funds for the supply of public services.

11. The manner and form of making and filing of any plat for subdivided lands.
12. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions.

#### **I-D. Jurisdiction**

***Note: Jurisdiction***

*The governing body of Beaverhead County is the “governing body” for purposes of reviewing subdivisions located within the unincorporated areas of the county. If a proposed subdivision will overlap the corporate boundaries of the incorporated town of Lima or City of Dillon, the subdivision must be reviewed and approved, conditionally approved, or disapproved by both governing bodies [Section 76-3-601(2), MCA].*

These regulations govern the subdivision of land within the jurisdictional area of the governing body of Beaverhead County.

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

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

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

#### **I-E. Severability**

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

## **II. MAJOR SUBDIVISIONS**

### **II-A. Review and Approval Procedures for Major Subdivisions**

Major subdivisions are subdivisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as minor subdivisions under 76-3-609 or 76-3-505, MCA.

#### **II-A-1. Construction Timing**

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

#### **II-A-2. Transfers of Title**

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



- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana.
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract.
- d. That the contracts contain the following language conspicuously set out therein: “The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.”
- e. A copy of the contracts and escrow agreement described above must be submitted to the County Planner.

### **II-A-3. Pre-application Procedures**

#### ***Note: Pre-application Conference***

*Many potential problems and misunderstandings regarding procedures, requirements, and standards can be identified and resolved at a pre-application conference. In addition, the pre-application meeting may allow for possible mitigation measures to be suggested prior to the submittal of the preliminary plat. The pre-application conference should be held within a reasonable amount of time after the initial contact by the subdivider and prior to submittal of the preliminary plat.*

The subdivider is encouraged to arrange a meeting with the County Planner, County Sanitarian and County Road Manager prior to submitting the required preliminary plat. The purpose of this meeting is to discuss applicable subdivision regulations, standards, exemptions, and any other applicable land-use regulations.

The subdivider should provide a sketch plan of the proposed subdivision showing the layout of proposed features in relation to the existing site conditions. The sketch plan may be drawn freehand on a print of a topographic map, and should include pertinent information such as: location, approximate tract and lot boundaries, description of general terrain, natural features, existing structures and improvements, and proposed public improvements.

Depending on the nature of the proposal, the planning staff may also recommend that a pre-application presentation be made to the Planning Board prior to formal submittal.

### **II-B. Preliminary Plats**

#### **II-B-1. Preliminary Plat Submittal**

The subdivider shall submit for review and approval a preliminary plat of the proposed subdivision, which conforms to the requirements of these regulations. The preliminary plat must be in the form, and contain the information and supplements required by Appendix A, and conform to the Design and Improvement Standards set forth in Section IV. In addition, the subdivider may submit a joint application form (see Appendix B) for concurrent review by the Department of Environmental Quality and the governing body as provided in 76-4-129, MCA.

The subdivider shall submit the following application information to the subdivision administrator:

- a. A completed copy of the Preliminary Plat Application Form (see Appendix A), or the D.E.Q/Local Government Joint Application Form (see Appendix B);
- b. The required review fee as stated in the Fee Schedule in Section X; and
- c. Eighteen (18) copies of the preliminary plat and plat supplements.
- d. An environmental assessment (see Appendix A, Part III), unless exempt as follows:
  - (i) The requirement for preparing an environmental assessment does not apply when:
    - (a) The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to Section 76-1-606, MCA; and
    - (b) The governing body has adopted zoning regulations pursuant to sections 76-2-301 through 76-2-328, MCA (municipal zoning); or sections 76-2-201 through 76-2-228, MCA (county zoning pursuant to a growth policy); and
    - (c) The governing body has adopted a strategy for development, maintenance, and replacement of public infrastructure pursuant to section 76-1-601(2)(e), MCA.
  - (ii) The planning board may waive the requirement for preparing an environmental assessment when:
    - (a) The proposed subdivision is in an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA, and the proposed subdivision will be in compliance with the policy; or
    - (b) The subdivision will contain fewer than 10 parcels and less than 20 acres.

When an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review.

- e. Proof that the subdivider has submitted copies of the preliminary plat and environmental assessment, if applicable, to the following utilities and agencies of local, state, and federal government (as deemed applicable by the county planner) for review. Depending on the location and nature of the proposed subdivision, the subdivision administrator may require the subdivider to submit copies of the preliminary plat and environmental assessment to additional governmental agencies.
  - (i) (Electrical utility)
  - (ii) (Natural gas utility)
  - (iii) (Telephone utility)
  - (iv) (Fire department of fire district)
  - (v) (Water or sewer district)
  - (vi) Montana Department of Transportation

- (vii) (County/municipal road department)
- (viii) Montana Department of Fish, Wildlife and Parks
- (ix) (Grade-school and high-school districts)
- (x) (Conservation district)
- (xi) (Irrigation district or ditch company)

**II-B-2. Review Period**

The application materials and fee must be submitted to the County Planner 10 working days prior to a regular meeting of the planning board. The County Planner will review the application to determine whether or not it is complete. If the application is not complete, the administrator will notify the subdivider within three (3) working days of the date of submittal. The subdivider will be allowed five (5) working days to correct any deficiencies. The application will be deemed presented, and the 60-working-day review period will commence on the date that the County Planner determines that the application is complete.

At the next regular meeting of the planning board the application will be introduced and scheduled for public hearing at the following regular meeting of the planning board.

Review by public agencies or utilities may not delay the governing body’s action on the preliminary plat beyond the 60 working day review period. The governing body will make these comments available to the subdivider and to the general public upon request.

**II-B-3. Permission to Enter**

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

**II-B-4. Public Hearing**

- a. After accepting a subdivision application as complete at least one public hearing on the subdivision application will be held by the governing body, the Beaverhead County Planning Board, or both. The governing body, the Beaverhead County Planning Board, or both will consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved or denied by the governing body.
- b. Notice of the public hearing will be given by publication in a newspaper of general circulation not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat will also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.
- c. When a hearing is held by the Beaverhead County Planning Board, the Board will act in an advisory capacity and recommend to the governing body the approval, conditional approval,

or denial of the proposed subdivision. This recommendation will be submitted to the governing body in writing no later than 10 working days after the public hearing.

### **Subsequent Hearings**

- d. The governing body will determine whether public comments or documents presented to the governing body at a hearing constitute:
  - (i) information or analysis of information that was presented at a hearing by the Planning Board that the public has had a reasonable opportunity to examine and comment on; or
  - (ii) new information regarding the subdivision application that has never been submitted as evidence or considered by either the Planning Board or the governing body at a hearing during which the subdivision application was considered.
- e. If the governing body determine that the public comments or documents constitute the information described in (ii) above the governing body may:
  - (i) approve, conditionally approve, or deny the proposed subdivision if they determine that the new information is either irrelevant or not credible; or
  - (ii) schedule or direct the Planning Board to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- f. If a public hearing is held as provided in e. (ii) above, the 60 working day review period is suspended, and the new hearing will be noticed and held within 45 days of the governing body's decision to schedule a new hearing. After the new hearing, the 60 working day time limit resumes at the governing body's next scheduled public meeting for which the proper public 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.

### **II-B-5. Planning Board Recommendation**

The planning board will consider the following:

- a. Relevant evidence relating to the public health, safety, and welfare;
- b. The environmental assessment;
- c. The review criteria specified in Section II-B-7 of these regulations; and
- d. Whether the preliminary plat conforms to the provisions of:
  - (i) The Montana Subdivision and Platting Act - (M.S.P.A.);
  - (ii) These regulations;
  - (iii) Applicable zoning regulations; and

- (iv) Other regulations in effect in the area of the proposed subdivision.
- e. The planning board will use as a guide, and give consideration to the general policies set out in the Beaverhead County Growth Policy and its addendums.

Within 10 days after the public hearing, the planning board will submit the following in writing to the subdivider and the governing body:

- a. Its findings regarding the items under subsections a. through d. above;
- b. Recommended Findings of Fact that weigh the review criteria contained in 76-3-608, MCA; and
- c. A recommendation for approval, conditional approval (including any recommended mitigation measures), or disapproval of the plat.

***Note: New Statutory Requirements***

*The 1999 Legislature substantially revised the requirements for community growth policies. One of these changes requires growth policies to explain how the community intends to achieve the goals and objectives contained in the policy.*

*The 2003 Legislature deleted the requirement, adopted in 2001, that the goals and objectives of a growth policy that fall within the scope of the review conducted under the Subdivision and Platting Act be incorporated as provisions of the subdivision regulations. However, section 76-1-606, MCA, continues to require the subdivision regulations be in accordance with a growth policy if one has been adopted.*

**II-B-6. Subdivider’s Preference for Mitigation**

No later than 10 days before the meeting at which the governing body is to consider the planning board’s recommendation on the preliminary plat, the developer may submit in writing to the governing body his comments on and responses to the planning board’s recommendations. This document may include the subdivider’s alternative proposals, if any, for mitigating the impacts identified in the planning board’s recommendations. The planning department will provide this notice to those individuals who attended the planning board’s public hearing on the proposal. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider’s expressed preferences [76-3-608(5)(b), MCA].

**II-B-7. Preliminary Plat Approval**

In reviewing the subdivision the governing body will issue written Findings of Fact that discuss and weigh the proposed subdivision’s effects on the following as applicable (pursuant to 76-3-608, MCA): agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety.

The governing body will approve, conditionally approve, or disapprove the preliminary plat within 60 working days of its presentation as provided in II-B-2 of these regulations, unless the subdivider consents to an extension of the review period. If the governing body disapproves or conditionally approves the preliminary plat, it will forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reasons for disapproval or enumerating the conditions which must be met to assure approval of the final plat [76-3-604(3), MCA]. This letter should set out the evidence upon which the governing body based the denial or imposition of conditions and information regarding the process for appealing the decision [76-3-620, MCA].

The proposed subdivision must:

- a. Comply with the requirements of the MSPA, these subdivision regulations, and the review procedures of these regulations;
- b. Provide easements for the location and installation of any planned utilities;
- c. Provide legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- d. Assure that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-C-5 of these regulations; and
- e. Comply with the requirements of section 76-3-504, MCA, regarding the disclosure and disposition of water rights as follows:

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

- (i) Reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;
- (ii) If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- (iii) Reserve and sever all surface water rights from the land.

As provided in section 76-3-510, MCA, "a local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision."

The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the development of the subdivision will meet the requirements of the MSPA, these regulations, and applicable zoning regulations. In reaching this decision, the governing body will consider the following as applicable:

- a. The preliminary plat;
- b. The environmental assessment;
- c. Public hearing;
- d. Planning board recommendations;
- e. The provision of easements for the location and installation of any necessary utilities;
- f. The 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 transferring the parcel; and

- g. The governing body will use as a guide and give consideration to the general policies set out in the Beaverhead County Growth Policy and it's addendums.
- h. Any additional information.

**II-B-8. Preliminary Plat Approval Period**

Upon approving or conditionally approving a preliminary plat, the governing body will provide the subdivider with a dated and signed statement of approval. The governing body will establish the term of the approval, which will be at least one but not more than three calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a period of one year. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-C-5 [76-3-610(1), MCA].

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above [76-3-610(2), MCA].

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

**OVERVIEW 1: Preliminary Plat Review Process**

1. Initial contact with planning board or county planner: applicant obtains guidelines, forms, and regulations.
2. Pre-application conference: applicant discusses proposal and sketch plan with planning board or subdivision administrator. Potential problem areas are identified and pertinent regulations are highlighted.
3. Submittal of formal application:

*The application materials and fee must be submitted to the subdivision administrator 10 working days prior to a regular meeting of the planning board. The subdivision administrator will review the application to determine whether or not it is complete. If the application is not complete, the administrator will notify the subdivider within (three) working days of the date of submittal. The subdivider will be allowed (five) working days to correct any deficiencies. **The application will be deemed presented, and the 60-working-day review period will commence, on the date that the subdivision administrator determines that the application is complete.***

*At the next regular meeting of the planning board the application will be introduced and scheduled for public hearing at the following regular meeting of the planning board.*

4. Fifteen days prior to the public hearing, notice of the hearing is published and certified letters are mailed to adjacent property owners and the subdivider.
5. On-site inspection and administrative review by the subdivision administrator or plat review committee.
6. Planning board meeting: the public hearing is conducted and the subdivision is reviewed.
7. Planning board recommendation for approval, conditional approval, or disapproval of plat is submitted in writing to the governing body and subdivider within 10 days of the public hearing.

8. *Governing body action to approve, conditionally approve, or disapprove plat must be completed within the 60-working day-time-limit unless the subdivider consents to an extension of this period. The governing body will issue written findings of fact that weight the criteria in II-B-7 of these regulations.*

## **II-C. Final Plats**

### **II-C-1. Final Plat Submittal**

The final plat must be submitted to the county planner before the expiration of the preliminary plat approval period as described in Section II-B-8. An application for final plat approval (see form, Appendix D), the final plat, and the appropriate review fee, if any, must be submitted to the county planner.

### **II-C-2. Final Plat Contents**

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

### **II-C-3. Final Plat Review**

The county planner, will examine the final plat and recommend approval only when it conforms to the conditions set forth in the preliminary plat approval, and when it meets state requirements for the form, accuracy, and descriptive contents for records of survey. In addition, the governing body will approve the final plat only after the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land proposed for subdivision have been paid [76-3-611, MCA].

The governing body may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before the plat may be recorded by the clerk and recorder. If the information shown on the plat meets the requirements of the MSPA and the Montana Uniform Standards for Monumentation and Final Subdivision Plats (Appendix G), the examining land surveyor shall certify his approval on the plat. A land surveyor who has a financial or personal interest in a plat may not act as an examining land surveyor in regard to that plat [76-3-611(2), MCA].

The governing body may provide for the review of the abstract or certificate of title required by section 76-3-612, MCA, by the county attorney if the land lies in an unincorporated area, or by the city or town attorney if the land lies within a city or town [76-3-612(2), MCA].

### **II-C-4. Restrictive Covenants – Approval, Content and Enforcement by Governing Body**

- a. The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, contain the following language: This (These) covenant(s) may not be repealed or amended without the prior written consent of the Beaverhead County Commissioners.
- b. The governing body may require that restrictive covenants it has required as a condition of plat approval contain the following language: “Beaverhead County is a party to this restrictive covenant and may enforce its terms.”
- c. If common property is to be deeded to a property owners’ association, the covenants and by-laws which govern the association must, at a minimum, provide for the:



- (i) Formation of a property owners' association concurrently with the filing of the final subdivision plat;
- (ii) Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
- (iii) Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
- (iv) Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
- (v) Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
- (vi) Adjustment of assessments to meet changing needs;
- (vii) Means of enforcing the covenants, and of receiving and processing complaints;
- (ix) Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
- (ix) Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

#### **II-C-5. Public Improvements Agreement; Guaranty**

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. (A model improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are provided in Appendix E.)

***Note:***

*One of the most important public benefits of subdivision review is the assurance it provides that necessary improvements (such as roads, culverts, and utilities) are properly designed and installed, and arrangements made to ensure their maintenance. Except as noted below, subdividers may either install the required improvements before the final plat is filed, or delay installation by entering into an improvements agreement with Beaverhead County to install the improvements by a certain date. Beaverhead County will require the subdivider to provide a financial or other security to guarantee compliance with the agreement.*

*In SB 167 the 2001 Legislative Assembly amended section 76-4-121, MCA, of the Sanitation in Subdivisions Act to provide that, with the exceptions noted in 76-4-125, MCA, no facility for the supply of water or disposal of sewage or solid waste may be constructed in a subdivision containing lots of less than 20 acres until the final plat of the subdivision has been filed with the county clerk and recorder. Consequently, unless one of the exemptions of 76-4-125, MCA, applies, an improvements guaranty will always be required when subdivision plans call for water, sewage, and solid waste improvements.*

#### **II-C-6. Final Plat Approval**

The governing body will examine every final subdivision plat and will approve it when and only when it conforms to the conditions of approval set forth for the preliminary plat and to the terms of the MSPA and

these regulations. The governing body will approve or disapprove the final plat within thirty (30) days of its presentation to the county planner.

If the governing body disapproves the final plat, it will state its reasons in writing and forward a copy to the applicant. The governing body will return the final plat to the subdivider within 10 days of the action. The applicant may then make any necessary corrections and resubmit the final plat for approval.

The governing body will certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat. An acceptance of a dedication is ineffective without this certification.

If the final plat differs substantially from the approved preliminary plat, the governing body will transmit the final plat to the planning board or subdivision administrator for additional review. The governing body may withdraw approval of a final plat if it determines that material information provided by the subdivider is inaccurate.

### **II-C-7. Final Plat Filing**

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

### **II-D. Amending Final Plats**

#### **II-D-1. Material Alterations**

Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration, which increases the number of lots or modifies six or more lots must be reviewed and approved by the governing body.

An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate (Sections II-A through II-C of these regulations for major subdivisions or Sections III-A through III-C for minor subdivisions). The governing body may not approve a preliminary plat amendment without the written consent of the owners of all lots, which will be modified, by the proposed amendment.

The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in Section IV of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section IX-B, Variances.

The final amended plat submitted for approval must comply with the requirements for final subdivision plats (Appendix G).

#### **II-D-2. Exemptions from Amended Plat Review**

Amended plats that show the relocation of common boundaries between, or the aggregation of, five or fewer lots are exempt from subdivision review [76-3-207(1)(d), MCA]. These amended plats must be prepared following the requirements of the Montana Uniform Standards for Certificates of Survey (Appendix G).

### **III. MINOR SUBDIVISIONS**

Subdivisions containing five or fewer parcels that qualify for expedited review under 76-3-505 or 76-3-609, MCA, will be reviewed as follows.

#### **III-A. General Requirements for Minor Subdivisions**

##### **III-A-1. Construction Timing**

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

##### **III-A-2. Transfers of Title**

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent must immediately refund to each purchaser any payments made under the contract;
- 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”;
- e. That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
- f. A copy of the contracts and escrow agreement described above shall be submitted to the County Planner.

##### **III-A-3. Pre-application Procedures**

###### ***Note: Pre-application Conference***

*Many potential problems or misunderstandings regarding procedures, requirements, and standards can be resolved at pre application conference. In addition, the pre-application meeting may allow for problem areas to be identified and mitigation measures to be suggested long before conditions are made for preliminary plat approval.*

- a. The subdivider is encouraged to arrange a meeting with the county planner, sanitarian and road manager prior to submitting the required preliminary plat. The purpose of this meeting is to discuss applicable subdivision regulations and standards.

- b. The county planner will notify the subdivider of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality.
- c. The county planner will explain the various types of minor subdivision review. The subdivision administrator and the subdivider will agree as to which review is most appropriate.
- d. The subdivider may provide a sketch plan of the proposed subdivision for review and discussion.
- e. The sketch plan must be a legible scale drawing showing the layout of proposed features in relation to the existing site conditions.
- f. The sketch plan may be drawn freehand on a print of a topographic map. Scale dimensions must be noted.
- g. The sketch plan must include pertinent information such as: location, approximate tract and lot boundaries, description of general terrain, natural features, existing structures and improvements, and proposed public improvements.

Depending on the nature of the proposal, the planning staff may also request that a pre-application presentation be made to the Planning Board prior to formal submittal.

**Note: Types of minor subdivision review**

*The requirements and procedures for reviewing “minor” subdivisions are addressed by two sections of the MSPA. Section 76-3-609, MCA, provides for a streamlined review of the first minor subdivision from a “tract of record,” whereas section 76-3-505, MCA, provides for “summary review and approval” of subsequent minor subdivisions from a tract of record. It is important to note that, with the exception provided in section 76-3-505(2)(a)(ii), MCA, the substantive criteria contained in section 76-3-608, MCA, for reviewing subdivisions apply to “minor” as well as “major” subdivisions.*

**Tract of Record**

*As noted above, whether section 76-3-609 or 76-3-505, MCA, applies to the review of a minor subdivision depends on whether the subdivision is the first or a subsequent division from a “tract of record.” Section 76-3-103(16)(a), MCA, defines this term as “an individual parcel of land...that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office.” For purposes of review under section 76-3-609, MCA, the “tract of record” in question appears to be the tract from which an earlier minor subdivision was segregated. Thus, a subsequent minor subdivision created either within a lot in the first subdivision reviewed under section 76-3-609, MCA, or within the portion of the original parcel remaining after the segregation of the first subdivision would constitute a “second or subsequent minor subdivision” and would be ineligible for review under 76-3-609, MCA.*

**Minor Subdivision Review under Section 76-3-609, MCA**

*To qualify for review under this section a subdivision must, in addition to being the first minor subdivision from a tract of record, contain five or fewer parcels in which proper access to all lots is provided and in which no land will be dedicated to the public for parks or playgrounds. If these conditions are met, the review must be completed within 35 working days of the submission of the application and the subdivider is exempt from the MSPA’s public hearing and environmental assessment requirements*

**Minor subdivision Review under Section 76-3-505, MCA**

*Minor subdivisions which are the second or subsequent subdivisions from a tract of record may be eligible for “summary” review under section 76-3-505(1) or (2), MCA. As with section 76-3-609, MCA, to qualify for review under this section a subdivision must contain five or fewer lots to which proper access is provided and in which no land will be dedicated to public use for parks or playgrounds. In addition, however, if any lot in the subdivision will contain less than 20 acres, the subdivision must have*

been approved by the Department of Environmental Quality under the Sanitation in Subdivisions Act before it is eligible for review under section 76-3-505, MCA.

A subdivider may elect to submit his minor subdivision for review under either section 76-3-505 or 76-3-609, MCA, in the form of a final rather than a preliminary plat. The advantage of this to the subdivider is that, under 76-3-505, MCA, unless the local regulations provide otherwise, the Act's public hearing requirement does not apply to the subdivision. [See *Young v. Stillwater County Comm'rs*, 177 Mont. 488, 582 P.2d 353 (1978)]. A potential disadvantage, however, is that if the governing body requires modifications in the subdivision's design, the subdivider may suffer the loss of the cost of preparing the final plat.

### **OVERVIEW 2: *Minor Subdivision Review Process*** **First Minor from a Tract of Record (76-3-609, MCA)**

#### Qualifiers

- Must be the first minor from a tract of record
- Must provide proper access to all proposed lots
- Must have no land being dedicated to the public for parks or playgrounds

#### Review requirements

- Decision must be made within 35 working days of the submission of the application
- Written statement of the conditions of approval or reasons for denial must be issued by the governing body
- Requirements for a public hearing and an environmental assessment do not apply ***Summary review of subsequent minor subdivisions from a tract of record (76-3-505), MCA***

#### **First situation (proposed lots less than 20 acres)**

##### Qualifiers

- Must have proper access to all proposed lots
- Must have no land being dedicated to the public for parks or playgrounds
- Must have prior D.E.Q approval for water, sewer and solid waste

##### Review requirements

- Section 76-3-505(1), MCA, requires local governments to provide procedures for "summary review"
- Preliminary plat application review is optional (developer may go directly to final plat review)
- No formal public hearing is required if a final plat, rather than a preliminary plat, is submitted
- Provisions for an abbreviated environmental assessment, 76-3-603(2), MCA (unless totally exempted under 76-3-210)
- Locally designated review period

#### **Second situation (proposed lots greater than 20 acres)**

##### Qualifiers

- Must have proper access to all proposed lots
- Must have no land being dedicated to the public for parks or playgrounds
- All proposed lots must be 20 acres or larger

##### Review requirements

- Section 76-3-505(1), MCA, requires local governments to provide procedures for "summary review"
- Provisions for an abbreviated environmental assessment, 76-3-603(2), MCA (unless totally exempted under 76-3-210)
- Preliminary plat application review is optional (developer may go directly to final plat review)
- Locally designated review period

### **Third situation**

#### Qualifiers

- In addition to meeting the requirements of 76-3-505(1), MCA, the proposed subdivision must be in an area located within a jurisdictional area covered by a growth policy that meets state statutory requirements
- Must be in an area that is covered by local government initiated zoning regulations

#### Review Criteria

- Local governments must make decision within 35 days of the application
- Preliminary plat application review is optional (developer may go directly to final plat review)
- Provisions for an abbreviated environmental assessment, 76-3-603(2), MCA (unless totally exempted under 76-3-210)
- Unless required by local regulations the following do not apply:
  1. Requirement for a formal public hearing
  2. Review criteria contained in 76-3-608(3)(a), MCA

### **III-B. Minor Subdivision Plats**

#### **III-B-1. Minor Subdivision Plat Submittal**

##### ***Note: Preliminary Plats for Minor Subdivisions***

*Under 76-3-601, MCA, a preliminary plat need not be submitted for a minor subdivision eligible for review under 76-3-505, MCA. The subdivider has the option of submitting a final plat, which will have the surveying completed and will be virtually ready for filing upon approval of the governing body. However, the submission of a plat in final form does not exempt the proposal from preliminary plat review. Whether the subdivider submits a preliminary plat or final plat, the local government will need the preliminary plat supplements (e.g., vicinity map, contour map) in order to properly review the proposed subdivision. By submitting a final plat, the subdivider may be able to file the plat in less time, but he takes the risk that the governing body will require changes in the design and layout, which would necessitate re-surveying.*

*The pre-application meeting is valuable as a means of explaining these options and risks.*

The subdivider shall submit the following application information to the county planner:

- a. A Minor Subdivision Plat Application (preliminary or final) Form or a LOCAL/Local Government Joint Application Form;
- b. The required fee as stated in the Fee Schedule in Section X;
- c. Eighteen (18) copies of the minor subdivision plat and any supplements.
- d. Evidence of proper access to all lots;
- e. For review under 76-3-609, MCA, evidence that the subdivision will be the first minor subdivision from a tract of record; or
- f. For review under 76-3-505, MCA, a certificate of approval from the D.E.Q whenever approval is required by Title 76, Chapter 4, MCA, and any additional requirements.

*The application materials and fee must be submitted to the county planner 21 working days prior to a regular meeting of the planning board. The subdivision administrator will review the application to determine whether or not it is complete. If the application is not complete, the administrator will notify the subdivider within (three) working days from the date of submittal. The subdivider will be allowed*

*(five) working days to correct any deficiencies. The review period commences on the date that the subdivision administrator determines that the application is complete.*

### **III-B-2. Permission to Enter**

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

### **III-B-3. Minor Subdivision Plat Form and Contents**

For a minor subdivision, the subdivider may submit either a preliminary plat or a final plat that conforms to the Montana Uniform Standards for Monumentation, Certificates of Survey, and Subdivision Plats (Appendix G). With either form of plat, the subdivider must also submit the supplements required for preliminary plats described in Appendix A of these regulations. The minor subdivision plat must conform to the design standards set forth in Section IV of these regulations.

### **III-B-4. Exemptions from Environmental Assessment**

For the first minor subdivision created from a tract of record the requirement for submitting an environmental assessment does not apply at all [76-3-609(3), MCA]. For the second or subsequent minor subdivisions from a tract of record the subdivider need only provide a summary of the probable impacts of the proposed subdivision based on the criteria in section 76-3-608(3)(a), MCA [76-3-603(2), MCA]. When an environmental assessment is required, the subdivider shall submit the information requested in Appendix A.

### **III-B-5. Public Hearing**

For the first minor subdivision created from a tract of record, the requirement for holding a public hearing does not apply at all [76-3-609(3), MCA]. A public hearing will be held to consider a second or subsequent minor subdivision from a tract of record only if the subdivider elects to submit a preliminary plat. When a public hearing is held, the requirements in Section II-B-4 of these regulations shall be followed.

### **III-B-6. Planning Board Recommendation**

In developing its recommendation on a minor subdivision, the planning board will consider the following:

- a. Relevant evidence relating to the public health, safety, and welfare;
- b. Review criteria specified in Section III-B-7, Minor Subdivision Plat Approval;
- c. Whether the preliminary plat conforms to the provisions of:
  - (I) The MSPA;
  - (ii) These regulations;
  - (iii) Applicable zoning regulations; and
  - (iv) Other regulations in effect in the area of the proposed subdivision.

Within 10 days after the public hearing, the planning board will submit in writing to the governing body:

- a. Its findings regarding the items under subsection a and c, above;
- b. Recommended Findings of Fact that weigh the review criteria contained in 76-3-608(3)(a), MCA; and
- c. A recommendation for approval, conditional approval, or disapproval of the plat.

### **III-B-7. Minor Subdivision Plat Approval**

After the application is deemed complete, the governing body will approve, conditionally approve, or disapprove the minor subdivision plat within the following periods:

- a. For subdivisions reviewed under section 76-3-609, MCA, 35 working days;
- b. For subdivisions reviewed under section 76-3-505(2), MCA, 35 days;
- c. For subdivisions reviewed under section 76-3-505(1), MCA, 35days.

The subdivider may consent in writing to an extension of the review period. The governing body will base its decision to approve, conditionally approve, or disapprove a minor subdivision on the following:

- a. The preliminary plat;
- b. The environmental assessment (when required);
- c. The public hearing (when required);
- d. The planning board's recommendations;
- e. The subdivision's expected effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;
- f. Compliance with the requirements of the MSPA, and the regulations and review procedures of these local subdivision regulations;
- g. The provision of easements for the location and installation of any necessary utilities;
- h. The 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 transferring the parcel;
- i. Any applicable zoning regulations; and
- j. Additional information.

The governing body will issue written Findings of Fact that discuss and weigh the criteria listed above, pursuant to 76-3-608, MCA.

If the governing body disapproves or conditionally approves the plat, it will forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions which must be met to assure approval of the plat [76-3-604(3), 76-3-609(2), MCA].



If the governing body conditionally approves or disapproves the preliminary plat it will, in addition to the letter described above, provide the subdivider with a written statement setting out (1) the reasons for the denial or imposition of conditions, (2) the evidence upon which the governing body based the denial or imposition of conditions, and (3) information regarding the process for appealing the denial or imposition of conditions [76-3-620, MCA].

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

### **III-B-8. Minor Subdivision Plat Approval Period**

Upon approving or conditionally approving a preliminary plat, the governing body will provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than three calendar years or less than one calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a period of more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section II-C-5.

After the 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 above.

### **III-B-9. Minor Subdivision Final Plat**

The final plat must be drawn in accordance with the appropriate requirements contained in Section II-C, Final Plat.

## **III-C. Amending Final Plats for Minor Subdivisions**

### **III-C-1. Material Alterations**

Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration, which increases the number of lots or modifies six or more lots must be reviewed and approved by the governing body.

An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate (Sections II-A through II-C of these regulations for major subdivisions or Sections III-A through III-C for minor subdivisions). The governing body may not approve a preliminary plat amendment without the written consent of the owners of all lots, which will be modified, by the proposed amendment.

The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in Section IV of these regulations, or with applicable zoning regulations, unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section IX-B, Variances.

The final amended plat submitted for approval must comply with the requirements for final subdivision plats (Appendix G).

## **IV. DESIGN AND IMPROVEMENT STANDARDS**

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section IX-B, Variances. The governing body may not grant variances from the provisions of Section IV-A-4, Floodplain Provisions. For subdivisions created by rent

or lease, planned unit developments, and condominiums, refer to sections V, VI, and VII of these regulations.

#### **IV-A. General Standards**

##### **IV-A-1. Conformance with Zoning**

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

##### **IV-A-2. Natural Environment**

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

- a. To protect water quality, maintain wildlife habitat, and protect natural drainage systems and riparian areas along the Beaverhead River and Big Hole River building sites shall be located at least 200 feet from the mean high water mark of the Beaverhead and Big Hole Rivers.

All development must comply with Ordinance No: 2005-1, big Hole River Conservation Development Standards and Permitting Process.

Any new lot created along the Beaverhead, Big Hole, and Red Rock Rivers shall have a minimum of 300 feet of frontage width.

All other surface water features (springs, creeks, ponds, lakes, streams, etc.) excepting manmade irrigation waterways shall have a 50-foot building setback and a 100-foot minimum drain field setback.

- b. A Beaverhead County Weed Management Plan approved by the Beaverhead County Weed Board will be filed with the Weed Board prior to final subdivision approval. **This plan will also require the posting of a bond.** This plan will include the name and address of the property owner or applicant, the legal description and location of the property, vicinity or other map locating the property and ownership, noxious weed data that will include:

1. Types of noxious weeds present on property
2. Approximate number of acres infested with noxious weeds
3. Anticipated land use and other environmental concerns
4. Planned weed control activities
5. Plans for future weed control for a period of 3 to 5 years.
6. Signature(s) of property owner(s) must appear on application and must be notarized.

The Beaverhead County Weed Board, or its representative, will inspect the proposed subdivision with consideration given to the filed Weed Management Plan as a reference for noxious weeds infesting the subdivision acreage.

A fee will be paid by the developer to defray the expenses of the onsite inspection of the proposed subdivision and the review of the Subdivision Weed Management Plan. All fees will be paid to Beaverhead County Weed Control and are as follows:

### **Minor Subdivisions**

1. A 1 lot minor subdivision will not be charged an inspection fee except for mileage over 20 miles. (state mileage rate)
2. Subdivisions containing 2 to 3 lots will be charged an inspection fee of \$25.00 plus mileage over 20 miles. (state mileage rate)
3. Subdivisions containing 4 to 5 lots will be charged an inspection fee of \$50.00 plus mileage over 20 miles. (state mileage rate)

### **Major Subdivisions**

1. Major subdivisions consisting of 6 or more lots will be charged an inspection fee of \$50.00 plus \$10.00 per lot and mileage. (state mileage rate)

Subdivision Weed Management Plan Review and Approval Applications will not be accepted unless accompanied by applicable fees.

After reviewing the Weed Management Plan and making an onsite inspection of the subdivision site, the Beaverhead County Weed Board will approved or reject the application. If the plan is approved, an approval letter will be sent to the property owner or applicant and the Beaverhead County Planning Board

If the plan is rejected, the applicant has the following options:

- a. The Weed Management Plan may be revised by the applicant and resubmitted to the Weed Board for review.
- b. The applicant may request assistance from the Weed Board or its representative in revising the Weed Management Plan.
- c. The applicant may request an administrative hearing pursuant to sec. 7-22-2110, MCA

The Beaverhead County Weed Board considers the Subdivision Weed Management Plan process a positive means of continuing awareness and education for landowners to be knowledgeable of and responsible for their noxious weed problems. It is the Beaverhead County Weed Board's desire to persist with effective management of the state and county declared noxious weeds, as stated in the Montana County Noxious Weed Control Act.

- c. To protect the economic viability of agriculture within Beaverhead County, the planning board and/or governing body may require mitigation measures as necessary when land used primarily for agricultural purposes is proposed for residential or commercial development. In determining whether mitigation measures will be required the planning board shall consider:
  1. Current land use;
  2. Size of the parcel;
  3. Location (proximity to other agriculture or communities);
  4. Potential for future agricultural uses;
  5. Size of the proposed development; and

6. Any other information relevant to determining affect of proposed development in agriculture in Beaverhead County.
- d. The Planning Board and/or governing body may require an Agriculture Management Plan for the property. The Agriculture Management Plan shall be developed by the owner working in conjunction with an independent private Beaverhead County agricultural management professional and shall be approved by the governing body. The Agriculture Management Plan must address the following issues;
1. Description of the parcel(s) and location;
  2. Current operation of the ranch and/or farm, including description of crops and livestock present.
  3. Soils survey;
  4. History of operations;
  5. Three-year plan of operation, including calendars for livestock and crop activities;
  6. Proposed plan for future operation;
  7. Mitigation plan for interaction between residential development and agricultural operations.
  8. Irrigation and water rights held;
  9. Access to he property and description of may easements;
  10. Weed Control;
  11. Possibilities for expansion of agricultural operations; and;
  12. Any other information relevant to the viability of agriculture on the ranch and/or farm.

When an Agriculture Management Plan is required an affirmative covenant will be placed on the property obligating the developer to update the Agriculture Management Plan every three years. At that time, the planning board will review the update to the Agriculture Management Plan and evaluate the viability of agriculture on the ranch and/or farm.

- e. To ensure that sufficient land is available to support agriculture and agriculture related businesses, the planning board and/or governing body may require that a percentage of land proposed for development be made available for agriculture through use of covenants or other deed restrictions.

The planning board and/or governing body may require a covenant obligating the developer or landowner to either actively use the land for agriculture or make the land available or lease at market prices for agricultural uses as a condition of plat approval.

The planning board and/or governing body may also require an agricultural use only covenant as a condition of plat approval.

### **IV-A-3. Lands Unsuitable for Subdivision**

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards such as flooding, high potential for wildfires, snow avalanches, rock falls, land slides, steep slopes in excess of 25%, subsidence, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, air or vehicular traffic hazards or congestion, or because of unreasonable burdens on the general public such as the need for excessive expenditures of public funds, or other features which may be detrimental to the health, and safety, of existing or future residents may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

### **IV-A-4. Floodplain Provisions**

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

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider must furnish survey data to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation. Survey data must comply with the Standards for Flood Hazard Evaluations contained in Appendix C of these regulations. After the Floodplain Management Section of the Water Resources Division has prepared a report delineating the floodway, the subdivider must submit it to the planning board (or county planner) along with the Environmental Assessment required for the preliminary plat.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area.

### **IV-A-5. Improvement Design**

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

### **IV-A-6. Lots**

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

- a. No lot may be divided by a municipal or county boundary line.
- b. No lot may be divided by a public road, alley or utility right-of-way or easement.
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot.
- d. Corner lots must have driveway access to the same street or road that provides access to interior lots.
- e. Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.
- f. No lot may have an average depth greater than three times its average width.

- g. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.
- i. All subdivisions having either public or private streets/roads shall have the lot lines extended to the center of the road right-of-way or easement. The county will not be responsible for maintaining the same.

**IV-A-7. Blocks**

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,600 feet.
- c. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the governing body approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.
- d. Rights-of-way for adequate and safe pedestrian access, at least 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

**IV-A-8. Streets and Roads**

***Note: Public and Private Streets/Roads, Homeowners Association***

Public Streets/Roads

Public roads shall lie within rights-of-ways or easements which have been dedicated to the public. Property owner's property line shall extend to centerline of adjacent street or road. An approved homeowners association shall maintain public subdivision roads, rights-of-ways, and easements, until dedication to the public or other public agency.

Private Streets/Roads

Private roads/streets shall lie within private roadway rights-of-ways or easements. An approved homeowners association shall maintain these roads, until dedication to the public or other public agency.

Homeowners Association

A homeowners association or corporation shall be formed for all subdivisions having roads, parks and/or common areas. The homeowners association or corporation and its covenants, bylaws and easements shall be recorded concurrent with or prior to the time of final plat approval. The Homeowners Association shall have language in their by-laws that allows for the collection of dues to: maintain and grade roadways, install and maintain drainage improvements, dust abatement application, snow removal, and noxious weed control as well as other responsibilities of the Association.

Special Improvement District (S.I.D.) Wavier

The governing body will require landowners in subdivisions located within a one (1) mile radius of the City limits of Dillon to waive the right to protest the creation of a Special Improvement District for City services and/or infrastructure improvements.

a. Design Standards

- (i) The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
- (ii) Roads must meet the design specifications in Table 1. Whenever an access serves two or more residences, it shall be classified as a road and subject to Beaverhead County Subdivision Road Standards regardless of its length.
- (iii) Dead end streets without cul-de-sacs are not permitted. Where a future street extension is proposed, a cul-de-sac or a “T” turn around shall be provided. Streets ending in cul-de-sacs shall be no longer than 1000 feet, as measured from the center of the cul-de-sac. (Table 1.)
- (iv) All streets/roads within a subdivision shall be dedicated to the public or designated private streets/roads, and the ownership will be shown on the final plat. Roadways dedicated to the public can be accepted for public use, but Beaverhead County shall not be responsible for maintaining the same, unless expressly agreed to by the County.
- (v) Residential driveways shall not have direct access to primary highways or major collectors. For extreme circumstances the Montana Department of Transportation or Beaverhead County Road Department may issue their respective road approach permit.
- (vi) Local streets must be designed so as to discourage through traffic.
- (vii) Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- (iix) Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- (ix) The alignment of all streets and roads must provide adequate sight distances.
- (x) Intersections. The following requirements apply to intersections:
  - a) Streets must intersect at 90-degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 75 degrees to the centerline of the roadway being intersected.
  - b) Two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
  - c) No more than two streets may intersect at one point.
  - d) Intersections of local streets with major arterials or highways must be avoided.
  - e) Intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.

- f) Hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
- g) The grade of approaches to major highways may not exceed five percent.
- (xi) Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names. An addressing system shall be developed in conformance with Section 7B (Subdivision Standards) of the Beaverhead County Addressing Ordinance.
- (xii) Each subdivision of six or more lots shall provide two different ingress-egress routes built to Beaverhead County subdivision road and/or emergency access standards (refer to Tables 1&2) that provide access to the nearest collector or arterial road.
- (xiii) All areas disturbed during construction shall be re-vegetated by the subdivider with seed and fertilizer mixture and rate approved by Beaverhead County. A detailed revegetation plan shall be submitted as part of the drawings and specifications. The plan shall contain sufficient information to ensure the County Commission that all areas of disturbed soil will be completely re-vegetated. The plan shall address weed control during the revegetation process. The Beaverhead County Extension Office should be consulted for seed and fertilizer rates/mixtures.

b. Improvements & Construction Standards

- (i) All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must comply with construction standards defined in the current editions of: the American Association of State Highway Transportation Official's, "Policy on Geometric Design of Highways and Streets", the Montana Public Work Standards and the Beaverhead County Minimum Road Construction Standards (Figure 1), unless otherwise specified below. A licensed professional engineer and the County Commissioners must approve any deviation from these standards.
- (ii) Roadway sub-grades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Sub-grades must be properly rolled, shaped, and compacted, and must be approved by the engineer.
- (iii) Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.
- (iv) Where access to the subdivision will be by an easement across privately-owned property, the subdivider must provide evidence that the necessary easement has been acquired and that the easement encompasses the nature and intensity of the use, which will result from development of the subdivision.

Easements must be granted by each property owner in a signed and notarized document. (Appendix F contains a model road access easement).



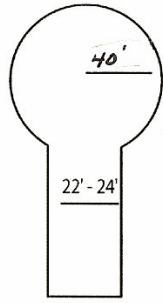
The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

- (v) Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.
- (vi) Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.
- (vii) Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation. (Reference A (xi) pg. 23)
- (viii) If mail delivery will not be to each individual lot within the subdivision, the sub-divider shall provide an off street area for mail delivery within the subdivision in cooperation with the United States Post Office. Responsibility for maintenance may be included as part of the public improvements agreement.
- (ix) All roads shall be designed and inspected through the course of construction and certified as built to Beaverhead County approved subdivision road standards by a licensed professional engineer when completed.
- (x) Subdivisions utilizing public roadways will be required to waive the right to protest the future creation of a Rural Improvement District.
- (xii) All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage shall be constructed in accordance with the specifications and standards prescribed in these regulations, using materials approved by the governing body. The sub-divider and/or homeowners shall comply with the following requirements: 1). One to five parcels meet the minimum design and construction standards. 2). Six to 20 parcels meet the recommended minimum design and construction standards and provide effective long-term dust suppression treatment on internal roads. 3). 21 plus parcels meet the recommended minimum design and construction standards for paved roads when:
  - 1. The primary access of the proposed subdivision is from a paved State or County road.
  - 2. The proposed subdivision is within 1 mile of the incorporated city limits of Dillon.
  - 3. The Planning Board and Board of County Commissioners determines that because of location, size, anticipated future use, and physical environment of the proposed subdivision, paving will be required.
- (xiii) Where a subdivision is accessed by a substandard County maintained road(s), the sub-divider shall contribute to the County an amount equal to the pro rata share of the improvements necessary to bring said road(s) up to the appropriate road

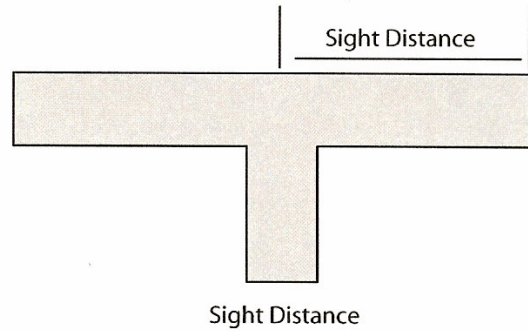
standard. If the County does not use the contribution within seven years, the County shall reimburse the sub-divider upon the written request from the sub-divider.

The subdivision contribution will be that portion of the anticipated improvements that are required and are directly attributable to the impact with the proposed subdivision based on benefit.

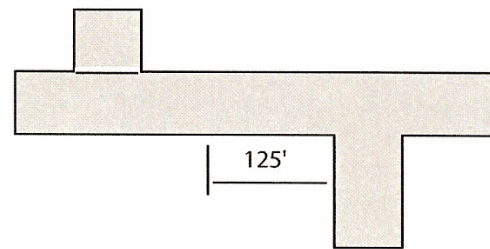
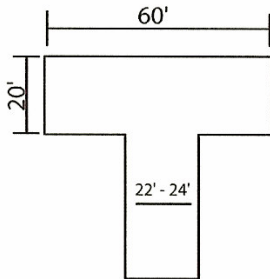
- (xii) All subdivisions with an access road intersecting a paved County or State road shall have a paved approach paved back to the right-of-way boundary.



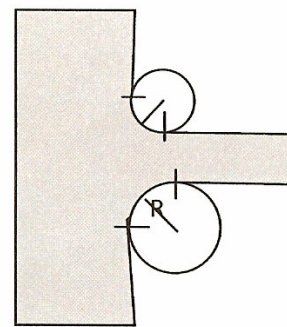
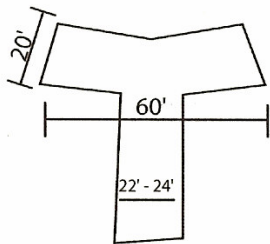
Cul-de-sac



Sight Distance



Intersection Offset



Curb Radius

**Right-of-Way Widths**

Road rights-of-way not only provide a corridor for the road, but also provide space for the road slope and borrow area, cuts and fills, locating utilities, and holding plowed snow. Where separate utility easements are to be provided, the width of rights-of-way can be reduced.

Because road construction in hilly or mountainous terrain usually requires more cutting and filling than is required on level ground, wider rights-of-way in uneven terrain will be necessary.

**Road Widths**

Each driving lane should be 10-11 feet wide to accommodate moving vehicles including trucks, motor homes, and camper trailers. A shoulder of two feet on each side of the road provides reasonable safety, so a minimum road width of 24 feet is a reasonable standard. Roads could be wider for subdivisions with greater traffic volumes or where higher driving speeds are expected. Where on-street parking will be allowed, an eight-foot parking lane should be added to the width of the driving lane.

**Cul-de-sacs/Turnarounds**

*Circular cul-de-sacs are the traditional means of allowing vehicles to turn around at the end of a street. Cul-de-sacs greater than 40 feet create large, unattractive expanses of pavement that are expensive to build and maintain, and contribute unnecessarily to storm water run-off. A 40-foot radius is adequate for cul-de-sacs in residential subdivisions. Fire trucks, ambulances, moving vans, garbage trucks, and snowplows can make the turn with one backing movement. Most of these vehicles use residential streets infrequently, and in most cases attending personnel can guide the driver during backing maneuvers.*

*The “T” turnaround is a practical alternative that uses about 1/6 the land area of a typical cul-de-sac. Also, “T” turnarounds avoid the awkward pie-shaped lots often associated with cul-de-sacs. Each leg of the “T” turnaround should be 30 feet long. Parking restrictions may be necessary.*

**Table 1**  
**Beaverhead County Road Design Standards**

<b><u>Minimum Design Standards</u></b>	<b><u>Local Road</u></b>	<b><u>Local Road</u></b>	<b><u>Minor Collector</u></b>	<b><u>Major Collector</u></b>
	Less than 32 TPD	32 to 100 TPD	100-300 TPD	300 + TPD
	1-4 Lots	5-12 Lots	13 to 39 Lots	40 + Lots
1. Minimum right-of-way width	50 to 60 ft.	60 ft.	60 ft.	60 ft.
2. Minimum roadway width	20 to 22 ft.	22 to 24 ft.	24 ft.	24 to 28 ft.
3. Minimum approach radius at Intersections G	See G Below	See G Below	See G Below	See G Below
4. Maximum grades B	10%	10%	8%	8%
5. Stopping sight distance A	See A Below	See A Below	See A Below	See A Below
6. Angle of Intersecting Centerlines	at least 75 <sup>o</sup>	at least 75 <sup>o</sup>	at least 75 <sup>o</sup>	at least 75 <sup>o</sup>
7. Cul-de-sac				
a. Maximum length C	1,000 ft.	1,000 ft.	NA	NA
b. Minimum outside right-of-way	50 ft.	50 ft.	NA	NA
c. Minimum outside roadway radius	40 ft.	40 ft.	NA	NA
8. New Bridges				
a. Curb-to-curb width minimum D	16 to 24 ft.	24 to 26 ft.	26 to 28 ft.	28 to 32 ft.
b. Design load (AASHTO) minimum E	HS-20	HS-20	HS-20	HS-25
c. Vertical clearance	14.5 ft.	14.5 ft.	14.5 ft.	14.5 ft.
9. Paving Requirements F	--	--	20+ Lots	Required

*A- The designing engineer will use current A.A.S.H.T.O. Standards as a guideline for stopping sight distance at each intersection.*

*B- Grades of 10% shall not exceed 100 feet in length.*

*C- Measured to center of cul-de-sac.*

*D- Roadway surface on bridge should not be less than roadway it connects to.*

*E- American Association of State Highway Transportation Officials.*

*F- See 9. a (page 6)*

*G- 75<sup>o</sup>-intersection, 55' approach radius: 90<sup>o</sup>-intersection, 50' approach radius.*

**Table 2**

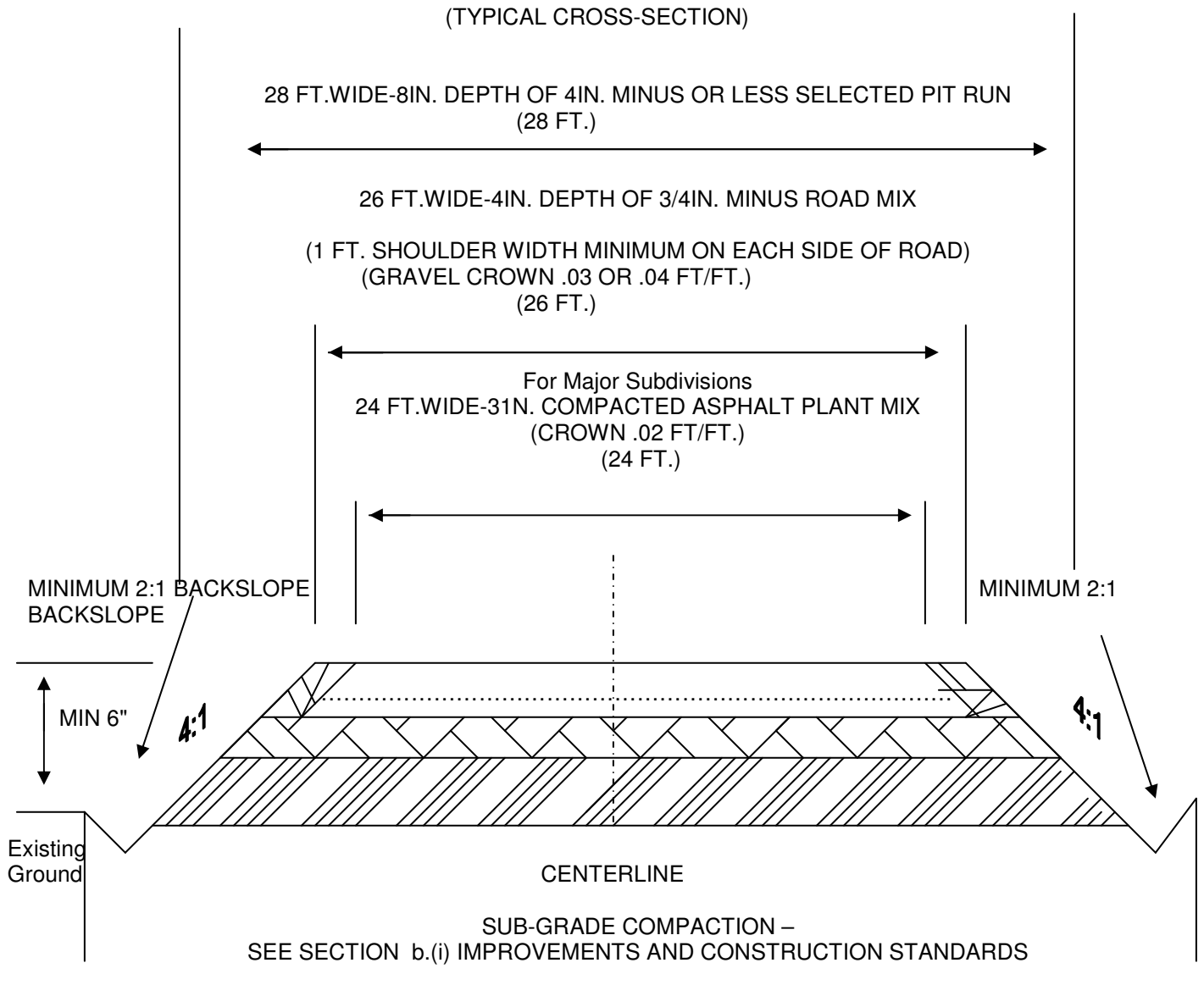
## Emergency Access Road – Design Standards

<b>“Year Round All Weather Design”*</b>	
<b>Minimum Right-of-Way Width</b>	<b>30 feet</b>
<b>Minimum Roadway Width</b>	<b>12 feet</b>
<b>Minimum Material Depth</b>	<b>4 inches</b>
<b>Maximum Material Size</b>	<b>3 inches</b>

\* May require culverts, delineators, raised surface, etc. depending on site-specific conditions.

FIGURE 1

# BEAVERHEAD COUNTY MINIMUM ROAD CONSTRUCTION STANDARDS\*



\*24 FOOT WIDE DRIVING SURFACE

ENGINEER INSPECTION AND WRITTEN APPROVAL REQUIRED ON EACH OF THE FOLLOWING:

- (1.) SUB-GRADE AND DITCHES.
- (2.) COMPACTED PIT RUN MATERIAL, 4 IN. MINUS. OR LESS
- (3.) COMPACTED CRUSHED TOP SURFACING TYPE "A" 3/4 MINUS.
- (4.) FINISHED ROADWAY AND STREET SIGNS.

#### **IV-A-9. Drainage Facilities**

- a. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the Montana Department of Environmental Quality.
- b. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- c. Culverts or bridges of adequate size shall be provided and installed by the sub-divider where drainage channels intersect any street right-of-way or easement. Bridges shall be no narrower than the driving portion of the road serving each end, and have a minimum load limit of not less than 40,000 pounds (20 tons). Minimum culvert sizes shall be 15 inches in diameter for driveways and 18 inches in diameter for roads. 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 licensed professional engineer. This shall include arrangements for driveway culverts. The cost and installation of driveway culverts shall be the responsibility of each individual lot owner. Culvert size and length and notification of the lot owner's responsibility shall be clearly stated in the covenants.
- d. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- e. Drainage systems must not discharge into any sanitary sewer facility.
- f. Drainage systems must be designed and certified by a professional engineer.
- g. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

#### **IV-A-10. Water Supply Systems**

- a. The proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana Department of Environmental Quality (D.E.Q) and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.303, and 17.36.305. By this reference these D.E.Q standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. 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 D.E.Q or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.
- c. Any central water supply system must provide adequate and accessible water for fire protection.

**Note:**

*Beaverhead County is required under Montana statute to review subdivisions for water supply, sewage disposal, and solid waste disposal. Section 76-3-504(6)(c), MCA, of the Subdivision and Platting Act requires that local subdivision regulations contain standards for the supply of water at least as stringent as those adopted by D.E.Q under the Sanitation in Subdivisions Act (sections 76-4-101 et seq., MCA). The local governing body has adopted these standards by reference, as shown above.*

#### **IV-A-11. Sewage Treatment Systems**

- a. The proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the Montana Department of Environmental Quality (D.E.Q) and contained in the Administrative Rules of Montana (ARM) 17.36.301, 17.36.302, 17.36.312, and 17.36.320 through 17.36.326. By this reference these D.E.Q standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, 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 D.E.Q or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 et seq., MCA.

***Note:***

*Beaverhead County is required under Montana statute to review subdivisions for water supply, sewage disposal, and solid waste disposal. Section 76-3-504(6)(c), MCA, of the Subdivision and Platting Act requires that local subdivision regulations contain standards for the disposal of sewage at least as stringent as those adopted by D.E.Q under the Sanitation in Subdivisions Act (sections 76-4-101 et seq., MCA). The local governing body has adopted these standards by reference, as shown above.*

#### **IV-A-12. Solid Waste**

- a. The proposed method of storing and disposing of solid waste generated within the subdivision must comply with the standards adopted by the Montana Department of Environmental Quality (D.E.Q) and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this D.E.Q standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, 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.

***Note:***

*Beaverhead County is required under Montana statute to review subdivisions for water supply, sewage disposal, and solid waste disposal. Section 76-3-504(6)(c), MCA, of the Subdivision and Platting Act requires that local subdivision regulations contain standards for the disposal of solid waste at least as stringent as those adopted by D.E.Q under the Sanitation in Subdivisions Act (sections 76-4-101 et seq., MCA). The local governing body has adopted these standards by reference, as shown above.*

#### **IV-A-13. Utilities**

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.



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

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

**IV-A-14. Water Course and Irrigation Easements [76-3-504(1)(j), (k), MCA]**

- a. Except as noted in b., below, the subdivider shall establish within the subdivision ditch easements that:
  - (1). 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;
  - (2). are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - (3). prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
  - (1). the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land

and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or

- (2). 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
  - (3). the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

#### **IV-A-15. Disposition of Water Rights [76-3-504(1)(i), MCA]**

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

#### **IV-A-16. Park Land Dedication – Cash in Lieu – Waivers -- Administration**

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
  - (1). 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
  - (2). 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
  - (3). 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  - (4). 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.

- b. A park dedication is not required for:
  - (1). minor subdivisions;
  - (2). subdivision lots larger than five acres;
  - (3). nonresidential subdivision lots;
  - (4). subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  - (5). subdivisions which will create only one additional parcel.
  
- c. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
  
- d. The governing body will waive the park dedication requirement if it determines that:
  - (1). (a) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
    - (b) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection **a**;
  - (2). (a) the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
    - (b) the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under **a** above;
  - (3) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections **d** (1) and (2) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection **a**; or
  - (4) (a) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
    - (b) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).
  
- e. The local governing body may waive the park dedication requirement if:
  - (1). the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

- (2). The area of land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of dedication required under subsection (1).
- f. The governing body will administer funds dedicated to the public under this section in accordance with section 76-3-621, MCA.
- g. For the purposes of this park dedication requirement:
  - (1). “cash donation” means the fair market value of the unsubdivided, unimproved land; and
  - (2). “dwelling unit” means a residential structure in which a person or persons reside.

**IV-A-17. Fire Protection**

All subdivisions shall be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forest or woodland areas as per guidelines outlined in Fire Protection Guidelines For Wildland Residential Interface Development. These guidelines have been adopted by the Montana Fire Chiefs Association, the Montana County Fire Wardens Association, and the Montana Fire Districts Association.

“Firewise” development standards developed by the National Wildland/Urban Interface Fire Protection Program may also be used as guidelines.

Measures must include:

- a. The placement of structures in such a manner so as to minimize the potential for flame spread to permit efficient access for fire fighting equipment.
- b. The County Planner, Local Fire Department and County Fire Warden will review the proposed subdivision and make recommendations to the governing body on the adequacy of fire protection in the area. \*Note: Beaverhead Fire District #2 – Dillon Volunteer Fire Dept. has adopted the NFPA Uniform Fire Code as its guideline.
- c. IV-A-17-c to read: The presence of adequate fire fighting facilities on-site will be required on all subdivisions creating 3 or more lots or when a second or subsequent subdivision of a parent parcel of ground creates a total of 3 or more lots.
  - (1). 3 lots - a 3,000-gallon water supply in the form of a cistern, reservoir, or fill pond located in an appropriate approved location within the subdivision or a dry hydrant located within 2 miles measured by road distance capable of producing 250 g.p.m. for 20 minutes.
  - (2). 4 - 5 lots a 5,000-gallon water supply in the form of a cistern, reservoir, or fill pond located in an appropriate approved location within the subdivision or a dry hydrant located within 2 miles measured by road distance capable of producing 250 g.p.m. for 1 hour.

All water supplies shall be available and accessible on a year round basis with an approved hydrant(s) maintained by the property owners. The property owners shall also be responsible for maintaining the water level in the supply source, unless the water is used by the fire department outside the subdivision. In that case the fire department shall be responsible for replenishing the water supply. This developed source shall have an approved hydrant system(s) and access site maintained by the property owners.

- d. An adequate water supply and water distribution system to fight fires on site, when required by the governing body. Part 3, Article 9, Section 901-903 of the Uniform Fire Code, as adopted by the State of Montana will be used as guidelines for commercial lots.
- e. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.
- f. All major subdivisions shall provide two access roads to assure adequate escape routes for residents and access for fire fighting and other emergency response vehicles. One of these roads may be built to emergency access road standards.
- g. Special standards for subdivisions proposed in areas of high fire hazard will be determined as per guidelines outlined in DNRC Fire Risk Ratings for Existing and Planned Developments.

The following requirements will be implemented to mitigate the hazards noted in the rating.

#### **IV-A-18. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard**

- a. Minor Subdivision – one of the following:
  - (i) 2,500 gallon water supply per lot on site in the form of cisterns, reservoirs, or fill ponds at appropriate locations. It is recommended one water source be developed to meet the needs of the entire subdivision. The water supply shall be available and accessible on a year round basis with an approved hydrant maintained by the property owners. The property owners shall also be responsible for maintaining the water level in the water supply source, unless the water is used by the fire department outside the subdivision. In that case the fire dept shall be responsible for replenishing the water supply, or;
  - (ii) A developed water source within 1 mile of the subdivision capable of maintaining a year round minimum flow of 250 gallons per minute for 20 minutes. This developed source shall have an approved hydrant system and access site maintained by the property owners, or;
  - (iii) An automatic residential fire sprinkler system will be required for each dwelling that meets the requirements of NFPA-13D. A letter of certification shall be submitted to the Planning Department upon completion of each dwelling. Each homeowner will be responsible for the maintenance of each sprinkler system.
- b. Major Subdivisions – one the following:
  - (i) A year round all weather water source either on site or within one mile of the proposed subdivision that will maintain a minimum flow of 250 g.p.m. for two hours. The water source shall have an approved hydrant system and access site maintained by the property owners, or;
  - (ii) A self-replenishing central water supply system on site that will maintain a minimum for of 250 g.p.m. for two hours.

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

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

***Notes:***

*The MSPA defines the term “subdivision” to include areas, regardless of their size, that provide or will provide multiple spaces for recreational camping vehicles or mobile homes regardless of whether the spaces will be made available for rent by the general public for a fee. A development which is a subdivision under the MSPA because it will provide multiple spaces for recreational camping vehicles or mobile homes may also be subject to regulation by the Montana Department of Public Health and Human Services (DPHHS) under Title 50, Chapter 52, MCA, if it will be a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA. If so, the governing body will condition its MSPA approval of the development on the subdivider’s obtaining the appropriate license from DPHHS.*

**V-A-1. Recreational Camping Vehicles -- Definition**

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

**V-A-2. Mobile Homes – Definition**

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

**V-A-3. Land Subdivisions Created by Rent or Lease**

***Note:***

*Land subdivisions that will be created by rent or lease, rather than by sale, are subject to review and approval under the MSPA but, under section 76-3-208, MCA, are exempt from the Act’s surveying and filing requirements. Consequently, after the governing body approves a preliminary plat of a subdivision to be created by rent or lease, the subdivider should prepare a final “plan” rather than a surveyed final “plat.” Upon its approval by the governing body this plan may be kept in the clerk and recorder’s office.*

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

## **V-B. Procedures for Review**

### **V-B-1. Definition**

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

### **V-B-2. Review and Approval**

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

### **V-B-3. Improvements**

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

### **V-B-4. Final Plan Review**

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats contained in Appendix A, Preliminary Plat Form, Contents, and Supplements. The subdivider shall submit the plan to the governing body or subdivision administrator. The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the office of the clerk and recorder.

### **V-B-5. DPHHS License**

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

## **V-C. Design Standards for Subdivision Spaces Created by Rent or Lease**

### **V-C-1. Design Standards**

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

### **V-C-2. Additional Provisions**

The governing body may require provision for:

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

### **V-D. Mobile Home Park Standards**

#### **V-D-1. Mobile Home Spaces**

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



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

#### **V-D-2. Streets**

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

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile home park must be designed to provide safe traffic circulation and parking.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

#### **V-D-3. Electrical Systems**

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

#### **V-D-4. Gas Systems**

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the “National Fuel Gas Code” (NFPA Pamphlet 54-1981) and the “Standard for the Storage and Handling of Liquefied Petroleum Gases” (NFPA Pamphlet 58-1981).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- c. Each mobile home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

#### **V-E. Recreational Vehicle Park Standards**

##### **V-E-1. Recreational Vehicle Spaces**

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
- b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
- c. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.

- d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

### **V-E-2. Density**

The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

## **VI. PLANNED UNIT DEVELOPMENTS**

### **VI-A. Purpose**

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider creativity in subdivision design. Section 76-3-103(10), MCA defines a planned unit development as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.”

#### ***Note: Planned Unit Development***

*MSPA defines a PUD as “a land development project consisting of residential clusters, industrial parks, shopping centers, or office parks that compose a planned mixture of land uses built in a prearranged relationship to each other **and having open space and community facilities in common ownership**” [emphasis added; section 76-3-103(10), MCA]. The Act actually uses this term only in connection with the park dedication requirement [76-3-621(6)(a), MCA]. Although the term does not include commercial and industrial subdivision developments that do not provide for common open space and facilities, this fact has no practical effect because these nonresidential developments are exempt from the Act’s park requirement [section 76-3-621(3)(c), MCA].*

### **VI-B. Procedures**

If the governing body designates a proposed development plan as a PUD, the preliminary plat may be submitted for review. Submittal must comply with requirements and procedures contained in the following Sections:

- II-A. Review and Approval Procedures for Major Subdivisions
- II-B. Preliminary Plats
- II-C. Final Plats

### **VI-C. Standards**

#### **VI-C-1. Design Standards**

#### ***Note: Exceptions***

*The local government may grant exceptions to the design standards contained in Section IV of these regulations when proposed PUDs include provisions for efficient traffic circulation, adequate light, air and open space.*

PUDs must comply with the standards contained in Section IV Design and Improvement Standards. However, the governing body may modify the design and improvement standards contained in Section IV-A-6 Lots, Section IV-A-7 Blocks, Section IV-A-8 Streets and Roads, and Section IV-A-16 Park Land Dedication upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space. In such cases, no application for a variance under Section IX-B Variances of these regulations is necessary.

### **VI-C-2. Streets**

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

### **VI-C-3. Open Space**

Each PUD must comply with the requirements of subchapter IV-A-16.d. of these regulations. The open space must be:

- a. Owned by a property owners' association; or
- b. Dedicated to public use, if acceptable to the governing body; or
- c. A combination of a. and b. above.

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

## **VII. CONDOMINIUMS**

### **VII-A. Procedures**

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

#### **VII-A-1. Review Where Land Will Not be Divided**

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

#### **VII-A-2. Condominium Subdivisions Involving Land Divisions**

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

- II-A Review and Approval Procedures for Major Subdivisions
- II-B Preliminary Plats,
- II-C Final Plats.

### **VII-B. Standards**

#### **VII-B-1. Design Standards**

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

## **VII-B-2. Unit Ownership Act**

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

## **VIII. CLUSTER DEVELOPMENT**

### ***Note: Cluster Development***

*The 2001 Legislature passed Senate Bill 479, which authorizes local governments to establish exemptions from certain requirements of the MSPA for proposed subdivisions that will cluster development and preserve open space. This authority exists only when a jurisdiction has adopted a growth policy meeting the minimum requirements of 76-1-601, MCA.*

*Option 1 of this section will address cluster development as it is prescribed in 76-3-509, MCA. Because that statute requires the establishment of a conservation easement in perpetuity, this option is more appropriate for cluster development proposals that involve large easement areas.*

*Option 2 suggests a second cluster option for subdivisions that will provide open space but are not suitable for the creation of perpetual conservation easements. This option will be more applicable to smaller cluster developments. Open spaces preserved under this part would be dedicated to and maintained by a homeowners' association.*

### **VIII-A. Cluster Development, Option I**

1. As authorized by 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 allowed within a cluster development is five (5) acres.
2. Park dedication requirements for clustered subdivisions created under this section are waived.

### **VIII-B. Cluster Development, Option II**

1. The following apply to cluster developments created under this option:
  - a. The development must preserve an area of open space that is at least as large as the area that will be developed.

- b. The proposal must provide a mechanism for the maintenance of the open space in perpetuity. The open space may be dedicated to a homeowners' association for the purpose of maintenance, and may be used for agricultural or other purposes that enhance the preserved area.
  - c. Unless the subdivision will be served by a community sewer or water system, each lot in the cluster must be a minimum of one acre in size.
  - d. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
2. Park dedication requirements are waived for clustered subdivisions created under this section.
  3. The requirements of an environmental assessment pursuant to 76-3-603 M.C.A are waived for clustered subdivisions created under this section.

**IX. GENERAL COMMERCIAL AND INDUSTRIAL DEVELOPMENT STANDARDS**

**IX-A. Development Standards Scope:**

These standards shall apply to all commercial and industrial subdivisions, and all commercial lots within subdivisions.

**IX-A-I.Intent:**

These standards are intended to provide for minimum standards for commercial activities that affect the physical aspects of the county. They are intended to preserve property values, and promote the public health, safety, and welfare.

**IX-A-2. Minimum Standards:**

Plans for commercial or industrial lots shall incorporate the following standards:

- a) Lot area shall be two acres or more in size.
- b) Off-street parking: One space per every 250 square feet of floor area shall be provided. Required parking shall be located so as to preclude backing maneuvers onto any public right-of-way, and shall not be located within any setback area. All off-street parking and driveways shall be paved; improvement plans shall be approved by the Beaverhead County Road Manager.
- c) Setbacks: The following minimum setbacks shall apply:
  - Front setback..... 40 feet
  - Setback from adjacent property.....50 feet
  - Setback from irrigation ditch.....50 feet

For the purpose of measuring setbacks, all protruding portions of buildings or structures shall be part of the building or structure.

**IX-A-3.Commercial and Industrial Landscaping Standards:**

- a. Landscaping standards scope: These standards shall apply to all commercial, and industrial subdivisions, and all commercial lots within subdivisions.

- b. Intent: The intent of these standards is to: enhance, conserve and stabilize property values by encouraging pleasant and attractive surroundings; encourage preservation of existing trees and vegetation on proposed building sites; and control erosion from site disturbance.
- c. Definition: Landscaping shall mean some combination of planted, living trees, shrubs, hedges, vines, ground cover, flowers and lawns suitable for the climate, exposure, and site condition. In addition, the combination or design may include earth sculpture, cobble, bark, mulch, edgers, flower tubs, rock and such structural features as fountains pools art works, screens, walls, fences or benches, but such objects alone shall not meet the requirements of this provision. The selected combination of object sand plants for landscaping purposes shall be arranged in a harmonious manner compatible with the building and its surroundings.
- d. Landscaping area:\* Landscaping area shall be the area of the lot or lots less the total area occupied by all buildings on the site. For new site development, landscaping shall be provided according to the following schedule:

<u>Landscaping Area</u> *(as defined above)	<u>Minimum Landscaping Requirements</u>
Up to twenty-two thousand (20,000) square feet	Ten percent (10%) of landscaping area
Twenty-two thousand (22,000) square feet to five (5) acres	Eight percent (8%) of landscaping area
Five (5) acres to ten (10) acres	Six percent (6%) of landscaping area
Ten (10) acres and over	Four percent (4) of landscaping area

- e. Screening: Where landscaped screening is required by the planning director, said screening shall consist of shrubs, evergreen trees, or fencing, or a combination thereof closely spaced and maintained at a height of at least four (4) feet, unless otherwise specified.
- f. Maintenance: Provisions shall be made in the bylaws of the property owners association or other appropriate mechanism for review and approval of site landscaping plans and maintenance.

**IX-A-4. Commercial and Industrial Sign Standards**

- a. Sign standards scope: These standards shall apply to all commercial and industrial subdivisions, and all commercial lots within subdivisions.
- b. Intent: These standards are intended to provide for the proper erection, design, and placement of all signs and sign structures not located within a building. Design standards are established in order to achieve the proper relationship of signs to their environment, enhance the outward appearance of the community as a whole, and secure pedestrian and vehicular safety.
- c. General Provisions: Plans for commercial signs shall be submitted to the property owners' association for review. Their restrictive covenants shall incorporate the following sign standards:

- 1) Nothing in these standards shall be interpreted as prohibiting or excluding such signs as are required by law. This includes legal notices and advertisements prescribed by law or posted by any lawful officer or agent.
- 2) Any sign attached to an exterior window of a building, on the external or internal side of the window, shall be regulated by these standards.
- 3) All signs shall be maintained by the owner and kept in good repair and shall be painted and repainted at reasonable intervals. The surface of the ground under and about any free-standing on or off premise sign shall be kept clear of weeds, rubbish, and flammable waste material.
- 4) The supporting members of a roof sign or projecting sign shall appear to be free of any extra bracing angle iron, guy wires, cables, etc. The supports shall appear to be an architectural and integral part of the building. Supporting columns of round, square, or shaped steel members may be erected if required bracing, visible to the public, is minimized or covered.
- 5) Signs not in use, by reason of change of occupancy or vacation of the building or use, shall be removed within ninety (90) days by the owner of the sign.
- 6) Illuminated signs, shall be illuminated in such a manner that the light there from shall shine only on the sign on the property on which it is located and shall not shine onto any other property, in any direction, except by indirect reflection. No lighting arrangement shall be permitted which, by reason of brilliance or reflected light, is a detriment to surrounding properties or prevents the reasonable enjoyment of residential uses.
- 7) No projecting sign, marquee sign, or under marquee sign shall have a vertical clearance of less than eight (8) feet, and no such sign shall have a vertical clearance of less than fourteen (14) feet where it extends over any vehicular driveway or parking area.
- 8) Projecting signs shall not extend more than ten (10) feet which distance shall be measured horizontally between the outer extremity of the sign and the wall or structure to which it is attached. Where projecting signs are permitted to extend over public property, the sign may not project beyond ten (10) feet, or within two (2) feet of the curb line, whichever is less.
- 9) No sign shall project or extend into a public right-of-way unless provisions are herein made.

## **X. ADMINISTRATIVE PROVISIONS**

### **X-A. Fee Schedule**

#### **X-A-1. Preliminary Plat Review**

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

<u>Number of Proposed Lots or Dwelling Units</u>	<u>Fee</u>
Minor Subdivisions (1 - 5) Lots	\$400 + \$50 per Lot
Major Subdivisions (6+) Lots	\$900 + \$10 per Lot

<u>Survey Review Fee</u>	
1 - 5 Lots	\$ 150
6 -10 Lots	\$ 160
11 - 15 Lots	\$ 170
16 - 20 Lots	\$ 180
21 - 25 Lots	\$ 190
26 - Over	\$ 200

**X-A-2. Final Plat Review and Inspection**

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials the subdivider shall pay a non-refundable fee at the time of application for final approval to the planning department at the following rate:

Final Review Fee Major & Minor Subdivisions	\$ 200
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**X-B. Variances**

**X-B-1. Variances Authorized**

The governing body may grant variances from Chapter IV, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that:

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

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

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

**X-B-3. Procedure**

The subdivider shall include with the submission of the preliminary plat a completed variance request form (Appendix D) that justifies the requested variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body.



**X-B-4. Conditions**

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

**X-B-5. Statement of Facts**

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

**X-C. Amendment of Regulations**

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

**X-D. Administration**

**X-D-1. Enforcement**

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

**X-D-2. Violation and Penalties**

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

**X-D-3. Appeals**

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

APPENDIX A

SUBDIVISION PLAT APPLICATION

**PART I GENERAL DESCRIPTION AND INFORMATION**

1. Name of the proposed development \_\_\_\_\_
2. Location (City and/or County) \_\_\_\_\_  
Legal description: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_
3. Is concurrent review by the local governing body and the Montana Department of Environmental Quality Requested? Yes \_\_\_\_\_ No \_\_\_\_\_
4. Type of water supply system:
  - a. Individual surface water supply for spring \_\_\_\_\_
  - b. Multiple-family water supply system (3-14 connections and fewer than 25 people) \_\_\_\_\_
  - c. Service connection to multiple-family system \_\_\_\_\_
  - d. Service connection to public system \_\_\_\_\_
  - e. Extension of public main \_\_\_\_\_
  - f. New public system \_\_\_\_\_
5. Type of wastewater treatment system:
  - a. Individual or shared on-site septic system \_\_\_\_\_
  - b. Multiple-family on-site system (3-14 connections and fewer than 25 people) \_\_\_\_\_
  - c. Service connection to multiple-family system \_\_\_\_\_
  - d. Service connection to public system \_\_\_\_\_
  - e. Extension of public main \_\_\_\_\_
  - f. New public system \_\_\_\_\_
6. Name of solid waste (garbage) disposal site \_\_\_\_\_
7. Is information included which substantiates that there will be no degradation of state waters or that degradation will be non-significant?  
\_\_\_\_\_
8. Descriptive Data:
  - a. Number of lots or rental spaces \_\_\_\_\_

- b. Total acreage in lots being reviewed \_\_\_\_\_
- c. Total acreage in streets or roads \_\_\_\_\_
- d. Total acreage in parks, open space, and/or common facilities \_\_\_\_\_
- e. TOTAL gross acreage of subdivision \_\_\_\_\_
- f. Minimum size of lots or spaces \_\_\_\_\_
- g. Maximum size of lots or spaces \_\_\_\_\_

9. Indicate the proposed use(s) and number of lots or spaces in each:

- \_\_\_\_\_ Residential, single family
- \_\_\_\_\_ Residential, multiple family
- \_\_\_\_\_ Types of multiple family structures and numbers of each (e.g. duplex)
- \_\_\_\_\_ Planned Unit Development (Number of units \_\_\_\_\_ )
- \_\_\_\_\_ Condominium (Number of units \_\_\_\_\_ )
- \_\_\_\_\_ Mobile Home Subdivision (Number of spaces \_\_\_\_\_ )
- \_\_\_\_\_ Recreational Vehicle Subdivision (Number of spaces \_\_\_\_\_ )
- \_\_\_\_\_ Commercial or Industrial
- \_\_\_\_\_ Other (please describe) \_\_\_\_\_

10. Provide the following information regarding the development:

- a. Current land use \_\_\_\_\_
- b. Existing zoning or other regulations \_\_\_\_\_
- c. Depth to ground water at the time of year when water table is nearest to the natural ground surface within the drainfield area \_\_\_\_\_
- d. Depth to bedrock or other impervious material in the drainfield area \_\_\_\_\_
- e. If a tract of land is to be subdivided in phases, an overall development plan indicating the intent for the development of the remainder of the tract.
- f. Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)

g. Indicate whether the mineral rights have been severed from the property:

Yes \_\_\_\_\_ No \_\_\_\_\_

11. Is the applicant claiming an exemption under Section II-B-1.d. of these regulations from the requirement to prepare an environmental assessment?

Yes \_\_\_\_\_ No \_\_\_\_\_

Name, address, and telephone number of designated representative, if any (e.g., engineer, surveyor).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

Name, address, and telephone number of owner(s).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Print name of owner

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

The statement must be signed by the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale.

## **PART II      PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS**

### **1. PRELIMINARY PLAT FORM**

The subdivider shall submit a legible plat at a scale sufficient to minimize the number of sheets and maintain clarity. The plat must be one or more sheets either 18 x 24 inches or 24 x 36 inches in size.

### **2. PRELIMINARY PLAT CONTENTS**

The preliminary plat must contain on its face, or on separate sheets referenced on its face, a map with an outline of the subdivision clearly indicated. To achieve this, the subdivider may use a current topographic map, an aerial photograph, or a location map of the largest scale available.

The following information must be provided on the preliminary plat or in supplements to the preliminary plat:

- a. The name and location of the subdivision, scale, scale bar, north arrow, and date of preparation.
- b. The approximate exterior boundaries of the subdivision 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 copies of previously recorded certificates of survey or subdivision plats, should be submitted.
- c. All lots and blocks, designated by numbers, and the dimensions and area of each lot.
- d. All streets, alleys, avenues, roads and highways, 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 and telephone lines, and street lights.
- g. The approximate location of existing buildings, structures and improvements.
- h. The approximate locations and identity of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways, including descriptions of their width and purpose.

### **A. Physical Conditions**

1. Provide the following attachments:
  - a. A vicinity map showing the locations of the proposed subdivision in relation to the nearest town, highway, or street system.
  - b. A soils survey map and most recent interpretations of soil suitability for the proposed land uses.
  - c. A topographic map of the development with contour intervals at least 20 feet (a 7 ½ minute U.S.G.S. topographic map may be used if available). Where lots are proposed on slopes 10% or greater, contours must be shown at 5 foot intervals.

The map must show the location of:

- 1) any rock outcroppings;
- 2) any areas subject to flood hazard. If available, 100 year floodplain studies should be included. (The local floodplain administrator or the Floodplain Management Section of the Water Resources Division of the Department of Natural Resources and Conservation may be contacted for assistance in determining flood hazard locations);
- 3) any natural water systems such as streams, rivers, intermittent streams, lakes or wetlands (also indicate the names and sizes of each);
- 4) any man-made water systems such as ponds, canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present use of each);
- 5) any existing or proposed utilities located within or adjacent to the proposed subdivision, including electrical power, natural gas, and telephone service.

## **B. Water Supply**

1. If an **individual water supply system** is proposed for each parcel:
  - a. Indicate the distance to the nearest public water system.
  - b. Provide all information required in the Administrative Rules for the Montana Sanitation in Subdivisions Act (ARM) 17.36.303.
  - c. Attach three copies of the lot layout showing the proposed location of each spring, well, or cistern and indicating the distance to existing or proposed wastewater treatment systems.
2. For a **multiple family water system**:
  - a. If an existing system is to be used:
    - 1) identify the system and the person, firm, or agency responsible for its operation and maintenance;
    - 2) indicate the system's capacity to handle additional load and its distance from the development;

- 3) provide evidence that permission to connect to the system has been granted;
- 4) provide two copies of the following attachments:
  - a) map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
  - b) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
- 5) Where a new system is to be used:
  - a) indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
  - b) provide all information required in ARM 17.36.305 and Circular DEQ 3.

3. For a **public water system**:

- a. If an existing system is to be used:
  - 1) identify the system and the person, firm, or agency responsible for its operation and maintenance;
  - 2) indicate the system's capacity to handle additional load and its distance from the development;
  - 3) provide evidence that permission to connect has been granted;
  - 4) provide two copies of the following as attachments:
    - a) a map or plat showing the location, sizes, and depth of any existing water lines and facilities which will directly serve parcels within the proposed development;
    - b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.302 and Circular DEQ 1 or Circular DEQ 3.
- b. If a new system is proposed:
  - 1) indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
  - 2) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.302 and Circular DEQ 1 or Circular DEQ 3.

**C. Wastewater Treatment**

1. If **individual wastewater treatment systems** are proposed for each parcel:

- a. Indicate the distance to the nearest public wastewater treatment system.

- b. Provide all information required in ARM 17.36.304 and in Circular DEQ 6 for conventional systems or Circular DEQ 5 for alternative systems.
2. For a **multiple-family wastewater treatment** system:
- a. If an existing system is to be used:
    - 1) identify the system and the person, firm, or agency responsible for its operation and maintenance;
    - 2) indicate the system's capacity to handle additional load and its distance from the development;
    - 3) provide evidence that permission to connect to the system has been granted;
    - 4) provide two copies of the following attachments:
      - a) a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
      - b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.305 and Circular DEQ 4 or Circular DEQ 5.
  - b. If a new system is proposed:
    - 1) indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
    - 2) provide all information required in ARM 17.36.305 and Circular DEQ 4 or Circular DEQ 5.
3. For a **public wastewater treatment** system:
- a. If an existing system is to be used:
    - 1) identify the system and the person, firm, or agency responsible for its operation and maintenance;
    - 2) indicate the system's capacity to handle additional load and its distance from the development;
    - 3) provide evidence that permission to connect to the system has been granted;
    - 4) provide two copies of the following attachments:
      - a) a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
      - b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.302 and Circular DEQ 2 or Circular DEQ 4.



- b. If a new system is proposed:
  - 1) indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
  - 2) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.302 and Circular DEQ 2 or Circular DEQ 4.

**D. Solid Waste**

- 1. Describe the proposed method of solid waste collection and disposal.
- 2. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
- 3. If on-site disposal of solid waste is proposed, provide the information required in ARM 17.36.309(2).

**E. Drainage**

For streets and roads:

- a. Describe measures for the disposal of storm run-off from streets and roads within the subdivision.
- b. Indicate the type of road surface proposed.
- c. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
- d. Describe how surface run-off will be drained or channeled from parcels.
- e. Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
- f. Describe any existing or proposed streambank or shoreline alteration, and any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.

**3. PRELIMINARY PLAT SUPPLEMENTS**

The following must be supplied and considered part of the preliminary plat:

- a. Copies of easements or proposed easements to provide legal access to the subdivision.
- b. When a tract of land is to be subdivided in phases, the subdivider shall provide an overall development plan indicating intent for the development of the remainder of the tract.
- c. Drafts of any 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 a draft of the covenants and restrictions which will govern the association. These covenants and restrictions must be in accordance with the requirements contained in Section II-C-5, Public Improvements Agreement; Guaranty.

- e. A complete grading and drainage plan with accurate dimensions, courses and elevations, showing the proposed grades of streets and drainage improvements.
- f. Drafts of public improvements agreement and guaranty.
- g. Where applicable, information regarding the disposition of water rights as provided in IV-A-14 of these regulations.
- h. A vicinity sketch or sketches of adjacent land showing:
  - 1) The names of platted subdivisions and numbers of certificates of survey previously recorded.
  - 2) The ownership of lands adjacent to the exterior boundaries of the subdivision and to any access road leading from a present public right-of-way to the boundary of the proposed subdivision. Lands separated from the exterior boundary of the subdivision by public or private rights-of-way are deemed to be adjacent for the purpose of this requirement.
  - 3) Location of any buildings, railroads, power lines, towers, roads, and other land uses.
  - 4) Any existing or proposed zoning.
  - 5) The names and addresses of owners of record of adjacent property.
- i. An environmental assessment unless the subdivision is exempt under the provisions of Section II-B-1.d. Appendix C provides the format of the assessment and questions to be addressed by the subdivider.
- j. Proof that the subdivider has submitted copies of the preliminary plat and environmental assessment, if applicable, to the utilities and environmental agencies specified under Section II-B-1.e. of these regulations.

PART III INFORMATION REQUIRED FOR ENVIRONMENTAL ASSESSMENT UNDER THE MONTANA SUBDIVISION AND PLATTING ACT

Information specified in this Part must be provided in addition to that required in parts I and II of this application form, unless it qualifies for an exemption under Section II-B-1.d. of these regulations.

**A. Geology**

1. Locate on a copy of the preliminary plat, or on a plat overlay, any known hazards affecting the development which could result in property damage or personal injury due to:
  - a. falls, slides or slumps – soil, rock, mud, snow;
  - b. seismic activity.

Describe any proposed measures to prevent or reduce the danger of property damage or personal injury from any of these hazards.

2. Identify any geological conditions that might affect development, such as areas of bedrock, unsuitable soils, or high ground water. Describe any measures proposed to minimize the problems presented by the identified conditions.

**B. Vegetation**

1. Locate on a copy of the preliminary plat, or on a plat overlay, the location of the major vegetation types such as marsh, grassland, shrub, and forest.
2. Describe measures to be taken to protect trees and vegetative cover (e.g. design and location of lots, roads, and open spaces).
3. Identify areas containing noxious weed growth. Describe proposed means of weed control, especially to prevent weed growth on areas disturbed by construction.

**C. Fish and Wildlife**

1. Identify any major species of fish and wildlife using the area to be affected by the proposed subdivision.
2. Locate on a copy of the preliminary plat, or on a plat overlay, any known important wildlife areas, such as big game winter range, waterfowl nesting areas, habitat for rare or endangered species and wetlands.
3. Describe any proposed measures to protect wildlife habitat or to minimize degradation (e.g. keeping buildings and roads away from shorelines or setting aside marshland as undeveloped open space).

**D. Historical Features**

1. Describe and locate on a copy of the preliminary plat, or on a plat overlay, any known or possible historic, archaeological or cultural sites which may be affected by the proposed subdivision.
2. Describe any plans to protect such sites or properties.

**E. Roads**

1. Describe any required construction of new public or private access roads or substantial improvements to existing public or private access roads.
2. Describe the proposed closure or modification of any existing roads.
3. If any of the individual lots is accessed directly from an arterial street or road, explain why access was not provided by means of a frontage road or a road within the subdivision.
4. Indicate who will pay the costs of installing and maintaining dedicated or private roadways.
5. Estimate how much daily traffic the subdivision, when fully developed, will generate on existing streets and arterials.
  - a. Discuss the capability of existing and proposed roads to safely accommodate this increased traffic.
  - b. Describe any maintenance problems and costs that will result from this increase in volume.
6. Describe any potential year-round accessibility concerns for conventional automobiles over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision.
7. 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.

**F. Utilities**

1. Identify the utility companies involved in providing electrical power, natural gas, and telephone service. Indicate whether utility lines will be placed underground.
2. Identify on the preliminary plat or overlay the locations of any needed utility easements [as required by 76-3-608(c), MCA].
3. Indicate whether the preliminary plat has been submitted to affected utilities for review.
4. Estimate the completion date of each utility installation.

**G. Emergency Services**

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

- a. Fire protection – indicate whether the proposed subdivision is in an urban or rural fire district. If not, describe plans to form or extend an existing fire district, or describe other fire protection procedures.
  - 1) Where applicable, information regarding subdivisions planned in areas of high fire hazards as provided in IV-A-18 of these regulations.
- b. Police protection
- c. Ambulance service

- d. Medical services
2. Indicate whether the needs of the proposed subdivision for each of the above services will be met by existing personnel and facilities.
- a. If not, describe the additional expenses necessary to make these services adequate.
  - b. Explain who will pay for the necessary improvements.

**H. Schools**

- 1. Describe the available educational facilities that would serve this subdivision and the road distance to each.
- 2. Estimate the number of school children who will be added by the proposed subdivision. Provide a statement from the administrator of the appropriate school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities, and by the existing school bus system.

**I. Land Use**

- 1. Describe land uses on lands adjacent to the subdivision.
- 2. Describe any comprehensive plan or other land use regulations covering the area proposed for subdivision or adjacent land. If the subdivision is located near an incorporated city or town, describe any plans for annexation.
- 3. Where public lands are adjacent to or near the proposed development, describe the present and anticipated uses of those lands (e.g., grazing, logging, and recreation). Describe how the subdivision will affect access to any public lands.
- 4. 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 should be accurately described and their origin and location identified.
- 5. Describe any on-site or off-site uses creating a nuisance such as unpleasant odor, unusual noises, dust or smoke. Any such conditions should be accurately described and their origin and location identified.

**J. Parks and Recreation Facilities**

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

## APPENDIX B

### SUBDIVISION APPLICATION FORM

#### Montana Department of Environmental Quality Local Government Joint Application Form

Section 76-4-129, MCA, provides that this Joint Subdivision Application Form may be used to apply for Montana Department of Environmental Quality (DEQ) approval of subdivisions under the Sanitation in Subdivision laws and for subdivision approval by local governments under the Subdivision and Platting Act. The form replaces DEQ form E.S. 91 and local preliminary plat approval forms. Landowners thus are relieved from the burden of providing similar information on different forms under two separate laws. Please consult with your local planning board, health department, or DEQ regarding the proper submittal of this application and supporting materials.

- A. When applying for subdivision review by the planning board and local governing body, the following parts of this form must be completed and submitted to the governing body or its designated agent:
1. Part I must be completed for all subdivisions required to be reviewed and approved by the local governing body.
  2. Parts I, II and III must be completed for all subdivisions for which local subdivision regulations require submittal of an environmental assessment.
- B. When applying for review of subdivisions by DEQ, the following parts of this form must be completed and submitted to DEQ. If the proposed subdivision is located in a county contracted to perform the review of subdivisions, the application must be submitted to the local health department.
1. Parts I and II must be completed for all subdivisions subject to review and approval by DEQ.
- C. When applying for concurrent review of the subdivision by the local governing body and by DEQ, the following parts of this form must be completed and submitted to the local governing body or its designated agent, or to DEQ:
1. Parts I and II must be completed for all subdivisions for which concurrent review is requested.
  2. Parts I, II and III must be completed for all subdivisions for which local subdivision regulations require submittal of an environmental assessment.

Copies of this Joint Application Form are available from:

- Montana Department of Environmental Quality, Permitting and Compliance Division;
- Montana Department of Commerce, Economic and Community Development Division;
- local health departments and sanitarians; and
- local planning offices.

**Montana Department of Environmental Quality/**  
**Local Government Joint Application Form**

**PART I. GENERAL DESCRIPTION AND INFORMATION**

1. Name of proposed development \_\_\_\_\_
2. Location (City and/or County) \_\_\_\_\_  
Legal description: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_
3. Is concurrent review by the local governing body and DEQ requested?  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. Type of water supply system:  
\_\_\_\_\_ Individual well  
\_\_\_\_\_ Individual cistern  
\_\_\_\_\_ Individual surface water supply or spring  
\_\_\_\_\_ Shared well (2 connections)  
\_\_\_\_\_ Multiple-user water supply system (3-14 connections and fewer than 25 people)  
\_\_\_\_\_ Service connection to multiple-user system  
\_\_\_\_\_ Service connection to public system  
\_\_\_\_\_ Extension of public main  
\_\_\_\_\_ New public system (15 or more connections or serving 25 or more people)
5. Type of wastewater treatment system:  
\_\_\_\_\_ Individual wastewater treatment system  
\_\_\_\_\_ \_\_\_\_\_ number of bedrooms, 3 bedrooms will be used if unknown  
\_\_\_\_\_ Shared wastewater treatment system  
\_\_\_\_\_ Multiple-user system (3-14 connections and fewer than 25 people)  
\_\_\_\_\_ Service connection to multiple-user system  
\_\_\_\_\_ Service connection to public system  
\_\_\_\_\_ Extension of public main  
\_\_\_\_\_ New public system (15 or more connections or serving 25 or more people)
6. Name of solid waste (garbage) disposal site \_\_\_\_\_
7. Non-degradation: Is information included which substantiates that there will be no degradation of state waters or that degradation will be non-significant? \_\_\_\_\_  
If not, have you enclosed an Application to Degrade? \_\_\_\_\_
8. Descriptive Data:  
Number of lots or rental spaces \_\_\_\_\_  
Total acreage in lots being reviewed \_\_\_\_\_  
Total acreage in streets or roads \_\_\_\_\_  
Total acreage in parks, open space, and/or common facilities \_\_\_\_\_  
TOTAL gross acreage of subdivision \_\_\_\_\_  
Minimum size of lots or spaces \_\_\_\_\_  
Maximum size of lots or spaces \_\_\_\_\_
9. Indicate the proposed use(s) and number of lots or spaces in each:  
\_\_\_\_\_ Residential, single family  
\_\_\_\_\_ Residential, multiple family  
\_\_\_\_\_ Types of multiple family structures and numbers of each (e.g. duplex)  
\_\_\_\_\_ Planned Unit Development (No. of units \_\_\_\_\_)  
\_\_\_\_\_ Condominium (No. of units \_\_\_\_\_)  
\_\_\_\_\_ Mobile Home Park  
\_\_\_\_\_ Recreational Vehicle Park  
\_\_\_\_\_ Commercial or Industrial  
\_\_\_\_\_ Other (please describe) \_\_\_\_\_

10. Provide the following information regarding the development:
- a. Current land use \_\_\_\_\_
  - b. Existing zoning or other regulations \_\_\_\_\_
  - c. Depth to ground water at the time of year when water table is nearest to the natural ground surface within the drainfield area \_\_\_\_\_
  - d. Depth to bedrock or other impervious material in the drainfield area \_\_\_\_\_
  - e. An overall development plan indicating the intent for the development of the remainder of the tract, if a tract of land is to be subdivided in phases.
  - f. Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)

I understand that: "A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until the subdivision plat or certificate of survey subject to review under this part has been accepted for filing by the clerk and recorder in accordance with 76-4-122 and recorded pursuant to Title 70, chapter 21" (certificate of subdivision approval has been issued) (76-4-121, MCA), AND "A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation." (76-4-130, MCA) [Parenthetical text added for clarification].

I designate \_\_\_\_\_ as my representative for purposes of this application.

Name, address and telephone number of designated representative, if any (e.g., engineer, surveyor).

\_\_\_\_\_  
Name Phone

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Signature of owner Print name of owner

\_\_\_\_\_  
Address of owner (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Date Phone

(The statement must be signed by the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale.)

**Notice:** The statutory time frame for each review is 60 days. Re-submittal of denied or incomplete applications restarts the time frame. The estimated time for the Department to act on a complete subdivision application is 10 days for subdivisions reviewed by a local department of health under contract to the Department. Local health departments review subdivisions within 50 days of receipt of a complete application. During non-peak times, a review may take 25 to 45 days. For peak times, the review may take 45 to 60 days.



**PART II REQUIRED INFORMATION FOR APPROVAL OF SUBDIVISIONS UNDER SANITATION IN SUBDIVISIONS LAWS (e.g., parcels less than 20 acres, trailer courts, RV parks, condominiums)**

All applications must include the information required in ARM 17.36.101-805 and the appropriate circulars. In order to facilitate review, the application should be organized in the same manner as this application form and follow closely the submittal requirements in the rules and circulars.

**A. Physical Conditions**

1. Provide the following attachments:
  - a. A vicinity map showing the location of the proposed subdivision in relation to the nearest town, highway(s).
  - b. Soils survey map and most recent interpretations of soil suitability for the proposed land uses.
  - c. Topographic map of the development with contour intervals meeting the preliminary plat requirements of the local subdivision regulations.
  - d. A copy of a preliminary plat\* (a minor subdivision plat if applicable) prepared in accordance with local subdivision regulations, or a final plat, show the location of:
    - 1) any rock outcroppings.
    - 2) any areas subject to flood hazard or, if available, 100 year floodplain studies. (The local floodplain administrator or the Floodplain Management Section of the Water Resources Division of the Department of Natural Resources and Conservation may be contracted for assistance in determining flood hazard locations.)
    - 3) any natural water systems such as streams, rivers, intermittent streams, lakes or wetlands (also indicate the names and sizes of each).
    - 4) any man-made water systems such as wells, ponds, canals, ditches, aqueducts, reservoirs and irrigation systems (also indicate the names, sizes and present use of each).
    - 5) any existing or proposed utilities located within or adjacent to the subdivision, including electrical power, natural gas, telephone service, water and sewer pipelines or facilities.

\*Submit a preliminary plat or certificate of survey with complete and accurate legal description adequate for DEQ to initiate and complete its review of the subdivision.

**B. Water Supply**

1. Where an individual water supply system is proposed or existing for each parcel:
  - a. For a proposed system, provide all information required in ARM 17.36.328 – 336.
    - (1) Indicate the distance to the nearest public water system.
  - b. If an existing system will be used:
    - (1) Provide all information required in ARM 17.36.335.
  - c. Attach four copies of the lot layout showing the proposed or existing location of each water supply source (spring, well or cistern) and indicating the distance to existing or proposed wastewater treatment systems.
2. Where a multiple user water system is proposed or existing:
  - a. If an existing system will be used:
    - 1) identify the system and the person, firm or agency responsible for its operation and maintenance.
    - 2) indicate the system's capacity to handle additional use and its distance from the development.

- 3) provide evidence that permission to connect has been granted.
  - 4) provide three copies of the following attachments:
    - a) map or plat showing location, sizes and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development.
    - b) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.335 and DEQ-3.
  - b. If a new system will be used:
    - 1) indicate who will install the system, who will bear the costs, when it will be completed and who will own it.
    - 2) provide all information required in ARM 17.36.330 - 336 and DEQ-3.
- 3 Where a public water system is proposed or existing:
- a. If an existing system will be used:
    - 1) identify the system and the person, firm or agency responsible for its operation and maintenance.
    - 2) provide evidence that the system is approved by DEQ and is in compliance with the regulations.
    - 3) provide evidence that the managing entity has authorized the connections, the system has adequate capacity to meet the needs of the subdivision, the system is in compliance with department regulations, and the appropriate water rights exist or have been applied for the connections.
    - 4) provide three copies of the following as attachments:
      - a) a map or plat showing the location, sizes and depth of any existing water lines and facilities which will directly serve parcels within the proposed development.
      - b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 - 330 and DEQ-1 or DEQ-3.
  - b. If a new system will be used:
    - 1) indicate who will install the system, who will bear the costs, when it will be completed and who will own it.
    - 2) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 - 330 and DEQ-1 or DEQ-3.

**C. Wastewater Treatment**

- 1. Where individual wastewater treatment systems are proposed for each parcel:
  - a. Indicate the distance to the nearest public wastewater treatment system.
  - b. Provide all information required in ARM 17.36.320 - 345 and in DEQ-4.
- 2. For a proposed multiple user wastewater treatment system:
  - a. Where an existing system is to be used:
    - 1) identify the system and the person, firm or agency responsible for its operation and maintenance.
    - 2) indicate the system's capacity to handle additional use and its distance from the development.
    - 3) provide evidence that permission to connect has been granted.
    - 4) provide two copies of the following attachments:
      - a) a map or plat showing the location, sizes and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development.
      - b) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.320 - 345 and DEQ-4.
  - b. Where a new system is proposed:
    - 1) indicate who will install the system, who will bear the costs, when it will be completed and who will own it.
    - 2) provide all information required in ARM 17.36.320 - 326 and DEQ-4.

3. For a proposed public wastewater treatment system:

a. Where an existing system is to be used:

- 1) identify the system and the person, firm or agency responsible for its operation and maintenance.
- 2) provide evidence that the system is approved by DEQ and is in compliance with the regulations.
- 3) provide evidence that the managing entity has authorized the connections, the system has adequate capacity to meet the needs of the subdivision, and the system is in compliance with department regulations.
- 4) provide three copies of the following as attachments:
  - a) a map or plat showing the location, sizes and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development.
  - b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 and DEQ-2 or DEQ-4.

b. Where a new system is proposed:

- 1) indicate who will install the system, who will bear the costs, when it will be completed and who will own it.
- 2) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.320 - 326 and DEQ-2 or DEQ-4.

**D. Solid Waste**

1. Describe the proposed method of collecting and disposing of solid waste.
2. Indicate the name and location of the department-licensed or appropriate out-of-state solid waste disposal site where solid waste will be disposed in accordance with ARM 17.36.309.

**E. Drainage**

1. Streets, roads, and un-vegetated areas.
  - a. Describe measures for disposing of storm run-off from streets, roads, parking lots, and other un-vegetated areas within the subdivision or onto adjacent property.
  - b. Indicate type of road surface proposed.
  - c. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
  - d. Describe how surface run-off will be drained or channeled from parcels.
  - e. Indicate if storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
  - f. Describe any existing or proposed stream bank or shoreline alteration, any proposed construction or modification of lakebeds or stream channels. Provide information on location, extent, type and purpose of alternation.
  - g. Provide storm drainage plans and specifications as required by ARM 17.36.310 and DEQ-8.

## F. Other Permits That May Be Necessary

### 1. WATER USE PERMIT (WATER RIGHTS)

The Montana Water Law requires new water developments (after July 1, 1973) to be filed with the Department of Natural Resources and Conservation to receive a water right. For groundwater developments, wells and developed springs, the amount of water to be used will determine which form to file with the department.

**Form 602 – Notice of Completion of Groundwater Development:** This form is to be filed when the groundwater development is a well, developed spring or a groundwater pit. The amount of water to be used cannot exceed 35 gallons per minute or 10 acre-feet per year. The form is to be filed within 60 days after the well or spring development is completed and the water has been put to the intended beneficial use. Do not file until the well is hooked up and being used.

**Form 600 – Application for Beneficial Water Use Permit:** When the groundwater development is a well, developed spring or groundwater pit and the intended use will be over 35 gallons per minute and 10 acre-feet per year, a water use permit must be issued before water can be appropriated. A correct and complete application with the criteria supplement and filing fee must be filed with the Department.

**Forms** are available at the Water Resources Regional Office at the following addresses:

**Helena:** Water Resources Regional Office, Placer Center, 21 North Last Chance Gulch, PO Box 201601, Helena, MT 59620-1601, (406) 449-0944 or the regional office in your area,

**Billings:** Water Resources Regional Office, Airport Industrial Park, 1371 Rintop Dr., Billings, MT, 59105-1978, (406) 247-4415

**Bozeman:** Water Resources Regional Office, 151 Evergreen Dr., Suite C, Bozeman, MT 59715, (406) 586-3136

**Glasgow:** Water Resources Regional Office, 222 6<sup>th</sup> St South, Glasgow, MT 59230, (406) 228-2561

**Havre:** Water Resources Regional Office, 210 6<sup>th</sup> Ave., Havre, MT 59501, (406) 265-5516

**Kalispell:** Water Resources Regional Office, 109 Cooperative Way, Suite 110, Kalispell, MT 59901, (406) 752-2288

**Lewistown:** Water Resources Regional Office, 613 NE Main St., Suite E, Lewistown, MT 59457, (406) 538-7459

**Missoula:** Water Resources Regional Office, Town & Country Shopping Center, 1610 S. Third St. West, Suite 103, Missoula, MT 59806, (406) 721-4284

**PART III INFORMATION REQUIRED FOR ENVIRONMENTAL ASSESSMENT UNDER THE SUBDIVISION AND PLATTING ACT**

Information specified in this Part must be provided in addition to that required in Parts I and II of this application form, when the preparation of an environmental assessment is required by the Montana Subdivision and Platting Act.

**A. Geology**

1. Locate on a copy of the preliminary plat, or on a plat overlay, any known hazards affecting the development which could result in property damage or personal injury due to:
  - a. falls, slides or slumps -- soil, rock, mud, snow.
  - b. seismic activity.

Describe any proposed measures to prevent or reduce the danger of property damage or personal injury from any of these hazards.

2. Identify any geological conditions that might affect development, such as areas of bedrock, unsuitable soils, or high groundwater. Describe any measures proposed to minimize the problems presented by the identified conditions.

**B. Vegetation**

1. Locate on a copy of the preliminary plat, or on a plat overlay, the location of the major vegetation types such as marsh, grassland, shrub, forest.
2. Describe measures to be taken to protect trees and vegetative cover (e.g., design and location of lots, roads, and open spaces).
3. Identify areas containing noxious weed growth. Describe proposed means of weed control, especially to prevent weed growth on areas disturbed by construction.

**C. Wildlife**

1. Identify any major species of fish and wildlife use the area to be affected by the proposed subdivision.
2. Locate on a copy of the preliminary plat, or on a plat overlay, any known important wildlife areas, such as big game winter range, waterfowl nesting areas, habitat for rare or endangered species and wetlands.
3. Describe any proposed measures to protect wildlife habitat or to minimize degradation (e.g., keeping buildings and roads away from shorelines or setting aside marshland as undeveloped open space).

**D. Historical Features**

1. Describe and locate on a copy of the preliminary plat, or on a plat overlay, any known or possible historic, archaeological or cultural sites that may be affected by the proposed subdivision.
2. Describe any plans to protect such sites or properties.

**E. Roads**

1. Describe any required construction of new public or private access roads or substantial improvements to existing public or private access roads.
2. Describe the proposed closure or modification of any existing roads.
3. If any of the individual lots is accessed directly from an arterial street or road, explain why access was not provided by means of a frontage road or a road within the subdivision.
4. Indicate who will pay the costs of installing and maintaining dedicated or private roadways.
5. Estimate how much daily traffic the subdivision, when fully developed, will generate on existing streets and arterials.
  - a. Discuss the capability of existing and proposed roads to safely accommodate this increased traffic.
  - b. Describe any increased maintenance problems and cost that will be caused by this increase in volume.
6. Describe any potential year-round accessibility concerns for conventional automobiles over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision.
7. 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.

**F. Utilities**

1. Identify the utility companies involved in providing electrical power, natural gas, and telephone service. Indicate whether utility lines will be placed underground.
2. Identify on the preliminary plat or overlay the locations of any needed utility easements [as required by 76-3-608(3)(c), MCA].
3. Indicate whether the preliminary plat has been submitted to affected utilities for review.
4. Estimate the completion date of each utility installation.

**G. Emergency Services**

1. Describe the emergency services available to the residents of the proposed subdivision, including number of personnel and number of vehicles or type of facilities and road distance to facilities for:
  - a. fire protection – indicate whether the proposed subdivision is in an urban or rural fire district. If not, describe plans to form or extend an existing fire district, or describe other fire protection procedures.
    - 1) Where applicable, information regarding subdivisions planned in areas of high fire hazards as provided in IV-A-18 of these regulations.
  - b. police protection.
  - c. ambulance service.
  - d. medical services.

2. Indicate whether the needs of the proposed subdivision for each of the above services will be met by present personnel and facilities.
  - a. If not, describe the additional expenses necessary to make these services adequate.
  - b. Explain who will pay for the necessary improvements.

**H. Schools**

1. Describe the available educational facilities that would serve this subdivision and the road distance to each.
2. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the appropriate school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities, and by the existing school bus system.

**I. Land Use**

1. Describe land uses on lands adjacent to the subdivision.
2. Describe any comprehensive plan or other land use regulations covering the area proposed for subdivision or adjacent land. If the subdivision is located near an incorporated city or town, describe any plans for annexation.
3. Where public lands are adjacent to or near the proposed development, describe the present and anticipated uses of those lands (e.g., grazing, logging, and recreation). Describe how the subdivision will affect access to any public lands.
4. 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 should be accurately described and their origin and location identified.
5. Describe any on-site or off-site uses creating a nuisance such as unpleasant odor, unusual noises, dust or smoke. Any such conditions should be accurately described and their origin and location identified.

**J. Parks and Recreation Facilities**

Describe park and recreation facilities to be provided within the proposed subdivision and other recreational facilities, which will serve the subdivision.

Possible sources of information to contact when completing the form include the following:

Local Agencies

City or County Health Department	School District
City Engineer or County Surveyor	Fire District or Department
County Road Supervisor	Police or Sheriff's Department
Conservation District	Hospital or Ambulance Service
County Extension Service	Chamber of Commerce
Planning Board Staff	Telephone, Electrical Power, Gas and
Floodplain Administer	Cable

<u>State Agencies</u>	<u>Information</u>	<u>Location</u>
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	surface and groundwater, 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
<u>Federal Agencies</u>	<u>Information</u>	<u>Location</u>
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



## APPENDIX C

### STANDARDS FOR FLOOD HAZARD EVALUATIONS

When required, the subdivider shall follow these procedures for evaluating flood hazards:

- A. **General.** Land subject to being flooded by a flood of one hundred year (100) frequency as defined by Title 76, Chapter 5, M.C.A., or land deemed to be subject to flooding by the county Commission, may not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
- B. **Procedure.** If any portion of a proposed subdivision is within two thousand (2,000) horizontal feet and less than twenty (20) vertical feet of a stream draining an area of twenty five (25) square miles or more, and no official floodplain or floodway delineation (study) of the stream has been made, the subdivider shall provide in detail the calculated 100 year frequency water surface elevations and/or 100 year floodplain boundaries. This detailed study must be performed by a licensed professional engineer experienced in this field of work. This information may be submitted, upon the request of the commissioners, to the Floodplain Management Section, Water Resources Division, Department of Natural Resources and Conservation for review and concurrence.
- C. **Detailed Information.** The detailed information to be submitted to the Water Resources Division, Department of Natural Resources, shall include the following:
  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 must 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 cannot be taken) to determine the channel bottom shape. Cross sections must be accurately located on a USGS 7 ½ minute quad sheet.
- c. The number of cross-sections needed, and the distance between 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 are 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.

\*\*Note: 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 reports of computer computations, calculations, and assumptions that may include:

- 1. Hydrology (research of published hydrology or calculations showing how hydrology was derived)
  - 2. Input files (hardcopy and on diskette)
  - 3. Output files (diskette only)

## **APPENDIX D**

### **SAMPLE FORMS AND CERTIFICATES**

Final Plat Approval Application Form

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

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

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

Covenant for Use With the Five Acre, Single Family Dwelling Exemption

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – County

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

Variance Request Form

**Final Plat Approval Application Form**

Date \_\_\_\_\_

1. Name of Subdivision \_\_\_\_\_

2. Location: \_\_\_\_\_ 1/4 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ For Amended Plats: Lot(s) \_\_\_\_\_ Block(s) \_\_\_\_\_ Subdivision

3. Name, address and telephone number of subdivider:  
\_\_\_\_\_  
\_\_\_\_\_

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

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

6. Date Preliminary Plat Approved: \_\_\_\_\_

7. Any Conditions? \_\_\_\_\_ (If Yes, attach list of conditions.)

8. Any Deed Restrictions or covenants? \_\_\_\_\_ (If Yes, attach a copy.)

9. All improvements installed? \_\_\_\_\_ (If No, attach a subdivision improvements agreement or guarantees.)

10. List of materials submitted with this application:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_
- f. \_\_\_\_\_

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

\_\_\_\_\_  
Subdivider

-----  
FOR OFFICIAL USE ONLY

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

**Certificate of Completion of Public Improvements Agreement**

(To be submitted with application for approval of final subdivision plat)

**CERTIFICATE OF COMPLETION**

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

\_\_\_\_\_  
Signature of Subdivider

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Professional Engineer

\_\_\_\_\_  
Date

Registration No. \_\_\_\_\_

\_\_\_\_\_  
Address (Engineers Seal)

**Certificate of Surveyor – Final Plat**

State of Montana     )  
                                  ) ss.  
County of \_\_\_\_\_ )

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Seal)

(Signature of Surveyor)  
Registration No. \_\_\_\_\_  
(Address)

**Certificate of Dedication – Final Plat**

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

**Consent to Dedication by Encumbrances, If Any**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Acknowledged and notarized signatures of all encumbrancers of record)

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

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

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

(Seal)

(Signature of Clerk)

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

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

(Date)

(Notarized Signature of Subdivider)



**Declaration of Covenant**

(To be filed with final plat where the five-acre, single-family dwelling exemption applies)

THIS DECLARATION made on the date hereafter set forth, by (Name of Subdivider).

**W I T N E S S E T H**

THAT WHEREAS, Declarant is the owner of certain property known as (Name of Subdivision) in (City or County), State of Montana, which is more particularly described in attached Exhibit A.

NOW, THEREFORE, (Name of Subdivider) hereby declares that all of the properties described above will be held, sold, and conveyed subject to the following covenant which will run with the real property and be binding on all owners thereof and their heirs, successors and assigns. The covenant may be revoked for any or all parcels within the subdivision by mutual consent of the owners of the parcels in question and the governing body of (City or County).

TO WIT:

No parcels within (Name of Subdivision) may be re-subdivided into parcels containing less than five acres and only single family dwellings and their associated outbuildings may be constructed within the boundaries of the subdivision, and only one such dwelling may be constructed on any present or future parcel or lot within the constructed subdivision. For the purpose of this restriction “single family dwelling” means a building under one roof designed and intended for use and occupancy as a residence by a single family.

The governing body of (Name of City or County) is deemed to be a party to and may enforce its covenant.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Signature of Subdivider)  
Acknowledgement and Notarization  
of Signature

**Certificate of Examining Land Surveyor Where Required – Final Plat**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

**Certificate of County Treasurer**

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

(legal description of land)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(seal) \_\_\_\_\_ (Signature of County Treasurer) Treasurer,  
\_\_\_\_\_ County, Montana

**Certificate of Final Plat Approval – County**

The County Commission of \_\_\_\_\_ County, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(Signatures of Commissioners)

(Seal of County)

ATTEST:  
(Signature of Clerk and Recorder)  
\_\_\_\_\_, Montana



**BEAVERHEAD COUNTY, MONTANA  
VARIANCE REQUEST FORM**

Beaverhead County Planning Department  
Beaverhead County Courthouse  
2 South Pacific St #7  
Dillon, MT 59725-2799

PH: 406-683-3765  
FAX: 406-683-3769

=====

**PART A.**

1. Applicant's Name: \_\_\_\_\_
2. Subdivision Name: \_\_\_\_\_
3. Representative/Contact Person: \_\_\_\_\_
4. Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PART B**

1. Subdivision Regulation that a Variance is being requested for: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Specific Subdivision Regulation Section: (example: VIII, A, 14(a)) \_\_\_\_\_  
\_\_\_\_\_

**PART C**

1. Alternate proposal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART D**

1. What is the undue hardship that will result if this regulation is enforced? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## APPENDIX E

### SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

#### SUBDIVISION IMPROVEMENT AGREEMENT

The parties to this Subdivision Improvements Agreement (“this agreement”) are \_\_\_\_\_ (“the Developer”) and Beaverhead County.

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

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

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

#### Developer’s Obligations

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

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

#### Beaverhead County's Obligations

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

#### Other Provisions

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

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

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

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

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Beaverhead County Commissioners

\_\_\_\_\_  
Developer



## ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

**Note:**

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider fail to install the required the improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below.

The subdivider shall provide one or more of the following financial security guarantees in the amount of 120 percent of the estimated total cost of installing all required improvements.

1. Letter of Credit – PREFERRED BY GOVERNING BODY

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

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

2. Escrow Account

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

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

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

3. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for

each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

4. Surety Performance Bond

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

5. Special Improvements District

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

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

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

**MODEL**

**IRREVOCABLE LETTER OF CREDIT**

Letter of Credit No. \_\_\_\_

Name of Local Government  
Address

Date

Gentlemen:

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

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

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

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

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

    (Lending Institution)    

    (Signature and Title of Official)



## APPENDIX G

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

Effective February 10, 2000

#### 8.94.3001 UNIFORM STANDARDS FOR MONUMENTATION

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

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

#### **8.94.3002 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY**

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

- (iii) The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.
- (iv) A north arrow.
- (v) A scale bar. (The scale must be sufficient to legibly represent the required information and data.)
- (vi) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 8.94.3001(1)(c).
  - (A) If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to which they will be set.
  - (B) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 8.94.3001(1)(c).
- (vii) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the survey.
- (viii) Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- (ix) The bearings, distances and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
  - (A) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.
  - (B) For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- (x) Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.
- (xi) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.

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



- (i) A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.
- (ii) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.
- (iii) If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
- (iv) If a certificate of survey invokes the exemption for the relocation of common boundary lines:
  - (A) The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);
  - (B) The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;
  - (C) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.
- (v) A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.
- (vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.
- (vii) For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.

- (g) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205 and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

#### **8.94.3003 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS**

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

- (d) A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)
- (e) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 8.94.3001(1)(c).
  - (i) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.
  - (ii) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 8.94.3001(1)(c).
- (f) The location of any section corners or corners of divisions of sections pertinent to the survey.
- (g) Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- (h) The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
  - (i) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.
  - (ii) For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- (i) Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.
- (j) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- (k) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.
- (l) All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels must be

marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)

- (m) All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.
  - (n) The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.
  - (o) The total acreage of the subdivision.
  - (p) A narrative legal description of the subdivision as follows:
    - (i) If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
    - (ii) If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
    - (iii) If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
    - (iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
  - (q) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.
  - (r) A memorandum of any oaths administered under 76-3-405, MCA.
  - (s) The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
  - (t) Certification by the governing body that the final subdivision plat is approved.
  - (u) Space for the clerk and recorder's filing information.
- (3) The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing:

- (a) If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.
- (b) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.
- (c) A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.
- (d) Copies of any covenants or deed restrictions relating to the subdivision.
- (e) If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.
- (f) A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.
- (g) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.
- (h) If applicable, the certificate of the examining land surveyor.
- (i) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.
- (j) The certification of the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

## APPENDIX H

### EVASION CRITERIA

RESOLUTION NO. \_\_\_\_\_

#### A RESOLUTION ADOPTING (*REVISED*) CRITERIA FOR LOCAL DETERMINATION OF EVASION OF THE SUBDIVISION AND PLATTING ACT

*(WHEREAS, the Resolution Adopting Criteria for Local Determination of Evasion of the Subdivision and Platting Act (the Act) dated June 17, 1996, is in need of revision because of legislative changes to the Act and recent Attorney General Opinions and court decisions pertaining to the Act; and*

WHEREAS, the Legislature, in adopting and amending the Subdivision and Platting Act, Section 76-3-101, et seq., MCA, has presumed: (1) that parcels of land containing less than 160 acres are building sites and that the creation of these parcels should be reviewed and approved by the local governing body applying the review criteria set forth in Section 76-3-608, MCA; (2) that the exemptions from subdivision review under Sections 76-3-201, and 76-3-207, MCA, are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites or creates so few building sites that only minimal impact will likely result; and (3) that the purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review but rather to deal with the exceptional circumstance when subdivision review is unnecessary; and

WHEREAS, the Montana Supreme Court decisions in State ex rel. Florence-Carlton School District vs. Board of Commissioners, 180 Mont. 285, 590 P.2d 602 (1978); State ex rel. Leach v. Visser, 234 Mont. 438, 767 P.2d 858 (1989); and State ex rel. Dreher v. Fuller, 257 Mont. 445, 849 P.2d 1045 (1993); have recognized a county's obligation to prohibit the use of exemptions from subdivision review to evade the Act; and

WHEREAS, the parcels of land created by exemptions often do not provide for: (1) the coordination of roads within the divided land or with other roads, both existing and planned; (2) the dedication of land for roadways and public utility easements; (3) the provision of adequate open spaces, for travel, light, air and recreation; (4) the provision of adequate transportation, water drainage, and sanitary facilities; (5) the avoidance of minimizing of congestion; (6) the avoidance of land division that would involve unnecessary environmental degradation; and (7) the avoidance of danger or injury to health, safety or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, schools or other public services, or would necessitate an excessive expenditure of public funds for the supply of such services; and

WHEREAS, the likelihood that land development problems will occur is greatly increased when building sites are created without public review and are further divided without review; and

NOW THEREFORE BE IT RESOLVED, that Beaverhead County adopts the following criteria (*that shall supersede those adopted by Beaverhead County on June 17, 1996, and the criteria*) shall guide the County Commissioners in determining when the use of an exemption from subdivision review is adopted to evade the purpose of the Montana Subdivision and Platting Act:

#### PROCEDURES AND GENERAL REQUIREMENTS

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et seq., MCA) shall submit to the County Clerk and Recorder (1) a certificate of survey or, if a

survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption.

2. When a certificate of survey or instrument of conveyance is submitted to the County Clerk and Recorder, the Clerk and Recorder shall cause the documents to be reviewed by the designated agents of the governing body: (the county planner, sanitarian and clerk and recorder). The agents shall review the proposed land division to determine whether it complies with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act.
3. After evaluating the proposed use of the exemption for compliance with the requirements contained in this Resolution, the agents shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the clerk and recorder to not file or record the documents, and the clerk shall return the materials to the landowner.
5. Any person whose proposed use of exemption has been denied by the designated agents because the use of the exemption raised a rebuttable presumption established by these guidelines may appeal the agents' decision to the County Commissioners. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act, and, thereby overcome the rebuttable presumption.

If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the Act, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the act, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

*If the person proposing to use an exemption does not seek to rebut the rebuttable presumption or if the governing body determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may submit a subdivision application for the proposed land division.*

6. Advisory Examination. Landowners or their representatives are encouraged to meet with the County's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

The agents may issue an advisory opinion only, and the opinion creates no commitment on the local officials when the documents creating the proposed land division are submitted to the Clerk and Recorder.

7. The County Commission and its agents, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 257 Mont. 445, 849 P.2d 1045 (1993)).

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

CO ... Court order [76-3-201(1)(a), MCA]  
ME ... Mortgage Exemption [76-3-201(1)(b), MCA]  
LE ... Life Estate [76-3-201(1)(e), MCA]  
BR ... Boundary Retracement [76-3-207(1)(a), MCA]  
FT ... Family Transfer [76-3-207(1)(b), MCA]  
AE ... Agricultural Exemption [76-3-207(1)(c), MCA]  
OS ... Occasional Sale (used prior to April 6, 1993)  
AL ... Aggregation of Lots [76-3-207(e), MCA]  
BA ... Boundary Adjustment  
EA ... Easement  
ROW...Right-of Way

9. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A “pattern of development” occurs whenever 3 or more parcels of less than 160 acres with common covenants or facilities have been divided from the original tract.

EXEMPTION AS A GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY [76-3-207(1)(b), MCA]

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of his or her immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
2. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.
3. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certification of compliance. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under this Resolution. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.
5. Any proposed use of the family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of the previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
6. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.



EXEMPTION TO PROVIDE SECURITY FOR CONSTRUCTION MORTGAGES, LIENS, OR TRUST  
INDENTURES [76-3-201(1)(b), MCA]

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

**Comment:**

*With the elimination of the occasional sale exemption in 1993, local jurisdictions have seen an increase in efforts to use the “construction mortgage” exemption as a means to create building lots without review. Local officials should diligently review each proposed use of this exemption to ensure that the use conforms to the intended purpose of the exemption. **Legitimate use of this exemption will normally involve (1) a larger tract that the claimant is selling on a contract for deed, and (2) a requirement from a lending institution that the purchaser hold title to a smaller parcel within the larger parcel as security for a building construction loan.***

*The Construction mortgage, lien, or trust indenture exemption is occasionally invoked in connection with the Small Tract Financing Act of Montana (Title 71, Chap. 1, part 3, MCA). This Act is the principal vehicle by which Montana’s lending institutions loan money for residential and commercial development. However, it may be used only if the tract of land that will secure the loan contains 40 acres or less (71-1-301, MCA). Consequently, before a lending institution may make a construction loan to the owner of a parcel larger than 40 acres, the owner must sever a parcel of less than 40 acres from the larger parcel and transfer title to this smaller parcel to a trustee designated by the lender. The trustee holds the title for the benefit of the lender until the borrower repays the underlying loan. If the borrower defaults on the loan, the trustee is required to sell the tract and distribute the sale proceeds between the lender and the borrower.*

*If it appears that the only reason a forty-acre parcel is being created is to allow the property owner to obtain construction financing under the Small Tract Financing Act, the use of the construction mortgage, lien, or trust indenture exemption may be appropriate.*

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.

2. When this exemption is to be used, the landowner must submit to the clerk and recorder:
  - a. a statement of how many parcels within the original tract will be created by use of the exemption;
  - b. the deed, trust indenture or mortgage for the exempt parcel (which states that the tract of land is being created only to secure a construction mortgage, lien or trust indenture);
  - c. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted parcel is conveyed; and

- d. a signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.
3. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:
    - a. it will create more than one building site;
    - b. the financing is not for construction on the exempted parcel;
    - c. the person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction.
    - d. title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs.
    - e. it appears that the principal reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.

**EXEMPTION FOR AGRICULTURAL PURPOSES [76-3-207(1)(c), MCA]**

1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings will be built on it.
2. “Agricultural purpose,” for purposes of these evasion criteria, means the use of land for raising crops or livestock, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the Act:
  - a. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the county commissioners and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the county commissioners.
  - b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings will be built on it.
  - c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
  - d. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be constructed or erected on parcels created under this exemption unless the covenant is revoked.

E. RELOCATION OF COMMON BOUNDARY [76-3-207(1)(a), MCA]

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review.
2. Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification must be included on the certificate of survey.
3. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

REMAINDER PARCELS

1. Statement of Intent: A “remainder” parcel is that part of an original tract that is left following the segregation of other parcels from the tract for the purpose of transfer. A “remainder” may not be created for the purpose of conveyance. A “remainder” that is created by the segregation of a subdivision from a larger original tract is not part of the subdivision nor is it subject to the surveying requirements of the MSPA. Although the term “remainder” does not appear in the MSPA, the possibility that remainder parcels may exist is implicit in the express provisions of the MSPA (Attorney General letter opinion to Robert McCarthy, April 22, 1987).
2. A landowner claiming that a parcel is a “remainder” must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner’s residence on the parcel, and building plans for a structure to be built by or for the landowner.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

BOARD OF \_\_\_\_\_ COUNTY COMMISSIONERS

\_\_\_\_\_  
Chairman

\_\_\_\_\_

\_\_\_\_\_

## DEFINITIONS

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

1. **AGRICULTURE:** Montana Code Annotated contains definitions for the words “agriculture” and “agricultural” as follows:
  - 41-2-103, MCA. Definitions. As used in this part, the following definitions apply: (1) “Agriculture” means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
  - 81-8-701, MCA. Definitions. Unless the context requires otherwise, in this part the following definitions apply: (1) “Agricultural and food product” includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.
2. **AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water for agricultural land as defined in 15-7-202, MCA, or which provide water for the production of agricultural products as defined in 15-1-101, MCA, including, but not limited to, ditches, pipes, and head gates.
3. **BLOCK:** A group of lots, tracts or parcels within well-defined and fixed boundaries.
4. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.
5. **CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots 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 [76-3-103(2), MCA].
6. **GROWTH POLICY:** This term is synonymous with a comprehensive development plan, master plan, or comprehensive plan that meets the requirements of 76-1-601, MCA.
7. **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.
8. **COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed that restricts or regulates the use of the real property.
9. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted [76-3-103(3), MCA].
10. **DIVISION OF LAND:** The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the

identity of the segregated parcels pursuant to the 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 [76-3-103(4), MCA].

11. DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one family.
12. EASEMENT: Authorization by a property owner for another to use the owner's property for a specified purpose.
13. 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.
14. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.
15. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude expected to recur on the average of once every 100 years, or a flood magnitude which has a one percent chance of occurring in any given year.
16. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency.
17. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage.
18. GOVERNING BODY: The governing authority of a county, city, town, or consolidated local government organized pursuant to law.
19. LOCAL SERVICES: Any and all services or facilities that local government entities are authorized to provide.
20. LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.
21. 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 determined exclusive of street, highway, alley, road, or other rights-of-way.
22. LOT TYPES:
  - a. Corner Lot: A lot located at the intersection of two streets.
  - b. Interior Lot: A lot with frontage on only one street.
  - c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
23. MAJOR SUBDIVISION: A subdivision which does not qualify for review as a minor subdivision.
24. MINOR SUBDIVISION: A subdivision containing five or fewer parcels where proper access to all lots is provided, no land in the subdivision will be dedicated to public use for parks or playgrounds, and the subdivision is eligible for review under 76-3-505 or 76-3-609, MCA.

25. **MOBILE HOME:** A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.
26. **MOBILE HOME SPACE:** A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.
27. **MOBILE HOME PARK:** A tract of land that provides or will provide spaces for two or more mobile homes.
28. **MOBILE HOME PAD:** That area of a mobile home space which has been prepared for the placement of a mobile home.
29. **MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS:** Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.
30. **MONUMENT (PERMANENT MONUMENT):** Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
31. **NATURAL ENVIRONMENT:** The physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, noise, and objects of historic or aesthetic significance.
32. **OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
33. **OVERALL DEVELOPMENT PLAN:** The plan of a subdivision design for a single tract proposed to be subdivided in stages.
34. **PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.
35. **PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.
36. **PLAT:** A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.
  - a. **Preliminary Plat:** A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.
  - b. **Final Plat:** The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and

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

- c. Amended Plat: The final drawing of any change to a filed platted subdivision.
- 37. PUBLIC HEALTH AND SAFETY: A condition of optimal well-being, free from danger, risk, or injury for a community at large, or for all people, not merely for the welfare of a specific individual or a small class of persons.
- 38. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public.
- 39. PUBLIC ROAD OR STREET: A road or street which has been dedicated for public use.
- 40. RECREATIONAL CAMPING VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.
- 41. RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.
- 42. 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.
- 43. STATE: The State of Montana.
- 44. STREET TYPES: For purposes of these regulations, street types are defined as follows:
  - a. Alley: A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.
  - b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
  - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
  - d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
  - e. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
  - f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
  - g. Loop: A local street which begins and ends on the same street, generally used for access to properties.

- h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
- 45. SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA].
- 46. SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA].
- 47. SURVEYOR (REGISTERED LAND SURVEYOR): A person licensed in conformance with the Montana Professional Engineer's Registration Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
- 48. SURVEYOR (EXAMINING LAND SURVEYOR): A registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.
- 49. SWALE: A drainage channel or depression designed to direct surface water flow.
- 50. TRACT OF RECORD: An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(17)(a), MCA].
- 51. VICINITY SKETCH: A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.
- 52. WILDLIFE: Living animals which are neither human nor domesticated.
- 53. WILDLIFE HABITAT: A place frequented by wildlife or site where wildlife naturally lives.



## **Appendix J: Fire Protection Guidelines and Risk Rating for Wildland Interface Development**

### **PART I INTRODUCTION**

#### **101 WILDFIRE PROTECTION**

In Montana, summer typically brings the fire season – the result of low rainfall, high temperatures, low humidities, and summer thunderstorms. Nevertheless, major wildfires can occur at any time of the year. Varied topography, semi-arid climate, and numerous human-related sources of ignition make this possible. But Montanans can readily protect lives, property, natural resources, and scenic beauty and greatly facilitate the work of fire suppression organizations by following the guidelines offered in this publication.

Both the Montana Department of State Lands and State Fire Marshal recommend that these guidelines be adopted by local government, fire protection agencies, planners, developers, and homeowners. But because Montana is so large and diverse in terrain, vegetation and weather, it is important that the guidelines be applied with flexibility and in consultation with local fire experts. In some cases, certain trade-offs may be possible. For example, residential sprinklers may be used to compensate for a reduction in driveway width; a wide road with numerous turnouts may suffice, rather than a separate road for access and egress which may not be possible or very expensive to construct. Although our goal must be the protection of life, property, and resources, there may be several alternatives to achieving that end.

#### **102 WILDLAND RESIDENTIAL INTERFACE**

Since the mid-1960's, and particularly in the last 10 to 15 years, people have subdivided and developed wildlands for residential, recreational and commercial uses. This development has created many communities mixed with wildland vegetation. Fire Protection Specialists call these areas the Wildland Residential Interface (WRI).

A WRI fire situation exists anywhere that structures are located close to natural vegetation. A fire can spread from the vegetation to structures or vice-versa. A WRI can vary from a large housing development adjacent to natural vegetation to a structure(s) surrounded by natural vegetation. There are two general categories of WRI:

1. Boundary WRI - An area where a clearly defined, linear boundary of homes meets wildland vegetation. Typically, we find this sort of interface on the fringe of large towns.
2. Intermix WRI - An area where structures are scattered among or mixed with wildland vegetation, without a clearly defined boundary. Typically, we find the intermix WRI in rural areas where people have subdivided wildlands into small parcels of 1 to 40 acres.

## 103 COMMON PROBLEMS

Fire protection agencies, local governments, developers, planners, and landowners must work together to improve fire protection in the WRI. Some common problems are:

1. Responsibilities and jurisdictions of different fire protection agencies are sometimes unclear.
2. The responsibilities of the developer, planner, and landowner are not well defined. Few people who live, plan, and develop in the interface recognize the wildfire hazards. Consequently, they seldom invest in appropriate fire prevention measures.
3. Frequently no agency takes the responsibility for adopting or enforcing local and State fire regulations.
4. Firefighters often find inadequate roads, insufficient water, and a build-up of natural fuels.
5. Some WRI areas have no organized fire protection agency.

Wildfire disasters in WRI areas are common in many parts of the nation, and the problem is increasing. This can be corrected only through comprehensive planning that includes housing development design, fuels management, and public education. A fire suppression organization by itself will not suffice.

The following guidelines describe how to reduce risk by reducing and managing the buildup of fuels, building and maintaining adequate road systems, providing adequate water to firefighters, and using fire-resistant materials and designs for homes and outbuildings.

## PART II GUIDELINES

### 200 APPLICATION

The following guidelines apply to all developments in the WRI, 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 REDUCTIONS 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) 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: 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).
- 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. Roadside Vegetation:

Maintain roadside vegetation to protect roads from radiant heat, so they can be used both as escape routes and firebreaks (Figure 1). Local conditions will dictate how much vegetation to clear. It is suggested that developers, landowners, and local officials:

- 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.
- c. In the clear zone and where practical, reduce brush, grass, and other vegetation and maintain it at a maximum of 12 inches high.

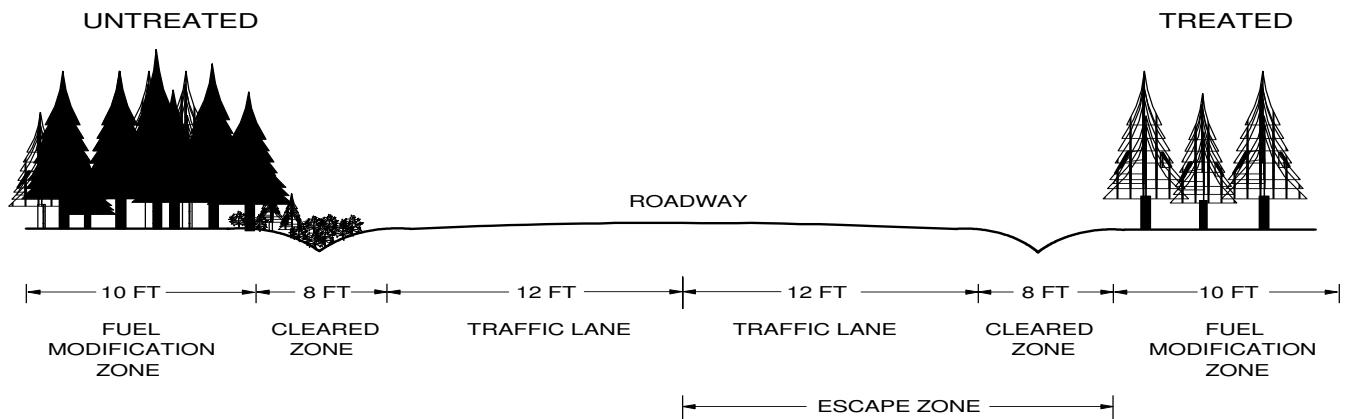


Figure 1 - Recommended treatment for roadside vegetation.

## 202 ROADS

In an emergency, all road systems shall provide for unobstructed traffic circulation for residents, firefighters, and fire equipment. This requires wide, well-constructed roads with sufficient turnarounds to prevent getting stuck off the road, and to allow simultaneous access by emergency vehicles and escape by local residents. Turns must be designed and hill grades established with truck traffic in mind. Fire departments must be able to drive close to residences. Narrow, private roads, while picturesque and inexpensive to build, reduce access and limit the ability of emergency vehicles to respond quickly.

### 1. Access Routes

All developments should have more than one access route. Access routes should allow two-way traffic so fire equipment can move in and people move out of an area in an emergency. Access route design should consider escape routes and safety zones. Roads should be designed to meet county standards, if the standards allow for adequate two-way traffic.

### 2. Primary Roads

Primary roads should be designed and built as follows (Figure 2):

- a. An adequate right-of-way, consisting of:
  - i. Two 12-foot wide driving lanes.
  - ii. Two 8-foot wide zones clear of vegetation. [see Section 201(2).]
  - iii. Two 10-foot wide zones of reduced vegetation. [see Section 201(2).]

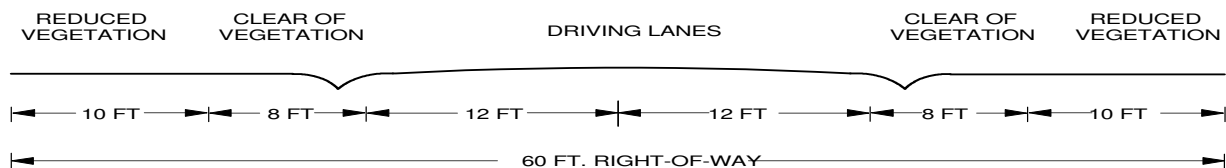


Figure 2 - Primary road right-of-way.

### 3. Secondary Roads

Secondary roads should be designed and built as follows (Figure 3):

- a. An adequate right-of-way, consisting of:
  - i. Two 10-foot wide driving lanes.
  - ii. Two 4-foot wide zones clear of vegetation. [See Section 201 (2).]
  - iii. Two 8-foot wide zones of reduced vegetation. [See Section 201 (2).]

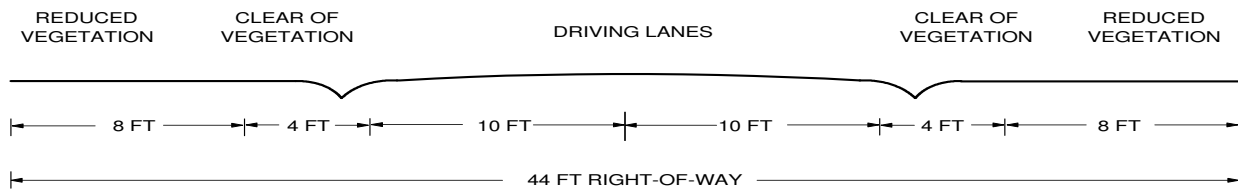


Figure 3 - Secondary road right-of-way.

### 4. Rights-of-way

Strive to dedicate all rights-of-way to the county in which they are built. If the county is not accepting rights-of-way, an agency or organization should be designated to be responsible for right-of-way maintenance.

- a. Easements and rights-of-way should be of sufficient width to accommodate the traveled way, shoulders, parking spaces, vegetation modification, and other local requirements along the road or street.

## 5. Emergency Service Access to Individual Lots and Driveways

Driveways should be constructed as follows (Figure 4):

- a. A minimum unobstructed driving surface of 12 feet and a vertical clearance of 15 feet for driveways less than 300 feet and a 16 foot driving surface for any driveway over 300 feet.
- b. A 4-foot wide zone of reduced vegetation on each side of the driving surface is desirable.
- c. Turnaround space should be provided at all building or structure sites on driveways over 300 feet in length.
  - i. A turnaround should be within 50 feet of the building or structure when there is no community water supply with fire hydrants.
  - ii. A turnaround should be within 150 feet of the building or structure when there is a community water supply with fire hydrants.
- d. If the driveway is less than 16 feet wide turnouts, should be designed and constructed every 300 feet along the driveway's length.
- e. The opening through a gate should be two feet wider than the road.

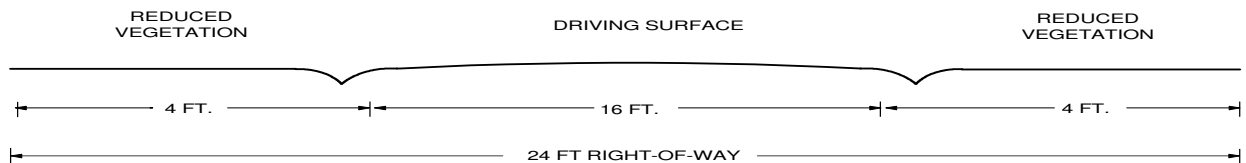


Figure 4 - Individual lots and driveway access.

## 6. Cul-de-sacs

- a. In areas of extreme fire hazard classification, as determined by the local fire authority, the length of a road ending in a cul-de-sac T shall not exceed 600 feet (Figure 5). In all other areas the maximum length will be 1,000 feet.
- b. End all cul-de-sacs with a clearance of at least 90 feet in diameter (45' radius).

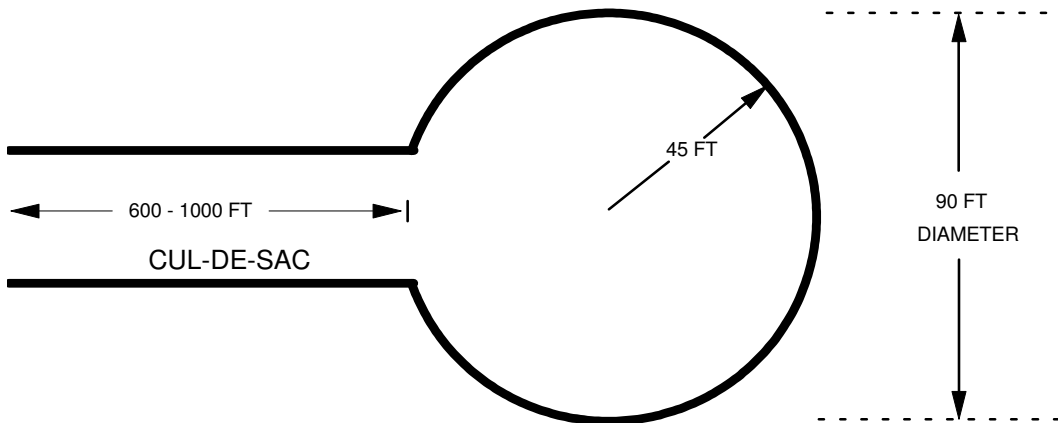
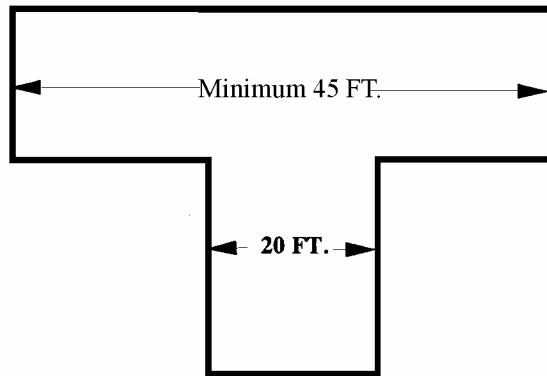


Figure 5 - Cul-de-sac specifications.

## 7. Hammerhead T Turnarounds

- a. Hammerhead-T designed turnarounds must provide emergency vehicles with a 3-point turnaround capability. In areas of extreme fire hazard classification, as determined by the local fire authority, the length of a road ending in a Hammerhead T shall not exceed 600 feet (Figure 6). In all other areas the maximum length will be 1,000 feet.
- b. Maintain a minimum of 45 feet in length and 20 feet in width of turnaround area.





## 8. Road Grades

Road grades often will determine what type of emergency fire equipment (if any) can access an area. The desirable road grades should be no greater than 8 percent. However, many factors influence the building of roads, and an 8 percent grade is not always possible or practical. Roads greater than 10 percent may be allowed upon approval by the local fire authority and should consider the following:

- a. Roads with grades steeper than 10 percent should only be allowed when there is no alternative and upon approval of the local fire authority.
- b. In steep areas where roads cannot be built on grades of 10 percent or less, keep the steeper roads as short as possible.
- c. All roads with a grade steeper than 10 percent should be graded and surfaced and of sufficient design to support the weight of 20-ton vehicles.

## 9. Road and Driveway Intersections

- a. Build road intersections as close to 90 degrees as possible (Figure 7).
- b. Build all roads straight for a distance of 80 feet from any intersection.
- c. Avoid building an intersection at an angle less than 45 degrees.

## 10. Road Curve Radius

Fire equipment is as varied as road conditions. Consult the local fire authority and design the road to accommodate present and planned developments in terms of getting fire equipment in and people out in the case of an emergency. In general, build road curves in a radius of 100 feet or more (Figure 7).

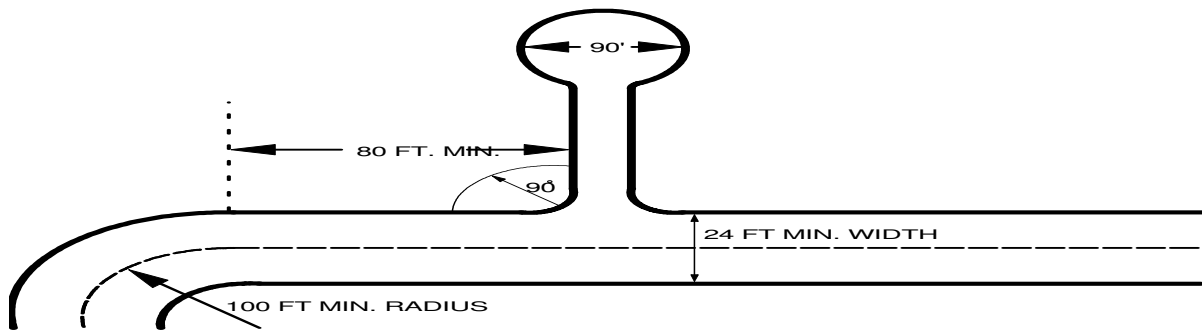


Figure 7 - Road curve specifications.

## 11. Bridges

- Build bridges as wide as the roads or driveways they connect (Figure 7).
- At primary entrances and exits of developed areas, build or reinforce all bridges to a design load of 40 tons (80,000 pounds) minimum.
- Build or reinforce all other bridges within developments to a design load of 20 tons (40,000 pounds).
- Build all bridges using non-flammable materials.

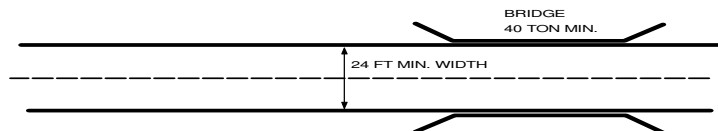


Figure 8 - Primary road bridge specifications.

## **203 WATER STORAGE AND SUPPLY**

Water is the single most important factor in suppressing structure fires. Water also plays an important role in suppressing wildland fires. Every community should store and supply water in a broadly-based system.

### **1. Fire Hydrants**

If hydrants are planned, install hydrants of the size and type and in locations determined by the local fire authority or jurisdiction, or use the following general guidelines:

- a. In interface areas of 0 to 2 homes per acre, install fire hydrants no more than 660 feet apart. The hydrant system must maintain a minimum flow of 500 gallons per minute.
- b. In interface areas of more than 2 homes per acre, install fire hydrants no more than 330 feet apart. The hydrant system must maintain a minimum flow of 750 gallons per minute.
- c. In areas where the fire authority having jurisdiction has declared a high, very high, or an extreme fire hazard, provide fire hydrants with 30 psi of residual water pressure.
- d. In areas where the fire authority having jurisdiction has declared a low or moderate fire hazard, provide fire hydrants with 20 psi of residual water pressure.
- e. Store and supply enough water to flow through hydrants at the required rate for at least 2 hours. This is in addition to the maximum daily flow that the area needs for domestic water.

### **2. Water Mains**

- a. When hydrants are required, use only waterways at least 6 inches in diameter.
- b. Install gate valves to connect the water mains and fire hydrants.
- c. Replace smaller water mains with ones that meet this standard.
- d. Install water mains that permit circulating water flow.

### **3. Individual Water Storage and Supply**

It is recommended that in WRI areas where homes have an independent water supply, such as an individual well and pump, developers and owners should provide for adequate storage and supply of water for firefighting purposes.

- a. Developers and owners can use cisterns, swimming pools, tanks, lakes, ponds, streams, etc. to store water.
- b. Store at least 2,500 gallons of water per residence in addition to the domestic water source.
- c. Attach a dry hydrant or provide a draft opening to the 2,500 gallon water source. For lakes, ponds, and streams, provide fire engine access as below and install dry hydrants where possible.
- d. Locate the water source where fire engines can easily reach it. On level ground, fire engines must be able to get within 10 feet of the water source to be able to use it effectively.
- e. Install at least two 3/4-inch hose outlets for each building.
- f. Landowners must consult with the local fire authorities to see if they need to operate a water shuttle. If so, develop the shuttle areas as specified.
- g. Equip any electrical pump with a reliable backup electrical generator or an alternative gasoline-powered pump.
- h. Firefighters must be able to find the water source. Document each source of water on the plans of the development, home, or other structure(s), and give this documentation to the local fire authority.
- i. Protect the structures that house water storage or water supply, per Sections 201, 205, and 206.

#### **4. Residential Sprinklers**

Residential sprinkler systems provide excellent fire protection. These systems should be considered when evaluating the fire safety of homes. Fire authorities could consider installation of residential sprinkler systems as a trade-off for other fire protection measures.

Contact your local fire authorities to discuss residential sprinkler systems for the protection of your home. Be sure a licensed contractor designs and installs the sprinkler system.

Fire authorities having jurisdiction may require developers or landowners to store or supply water beyond the guidelines detailed above. These address only the minimum water storage and supply guidelines.

WRI fire protection may rely on fuel breaks and greenbelts to separate communities, groups of structures, or individual homes. These breaks can slow or stop the spread of an oncoming fire. Locate fuel breaks and greenbelts to protect both existing and planned developments and adjacent wildlands.

Good landscaping design can incorporate vegetation or fire fuel breaks in planned developments. These fuel breaks should not be a bare soil trail bulldozed around a subdivision, but can be as simple as the removal of dead and fallen trees, tree limbs, shrubs and other flammable vegetation together with breaking the continuity of vegetation in a band 100-300 feet around the development.

One of the most effective means of providing fire protection is the use of open spaces and public use areas such as parks, recreation sites, picnic areas, and perimeter roads to break fuel continuity.

Natural features such as rocky formations with little or no vegetation, rivers or streambeds in which vegetation has been thinned and dead and dying materials removed can also be utilized in an overall subdivision landscaping plan to help retard an advancing wildfire.

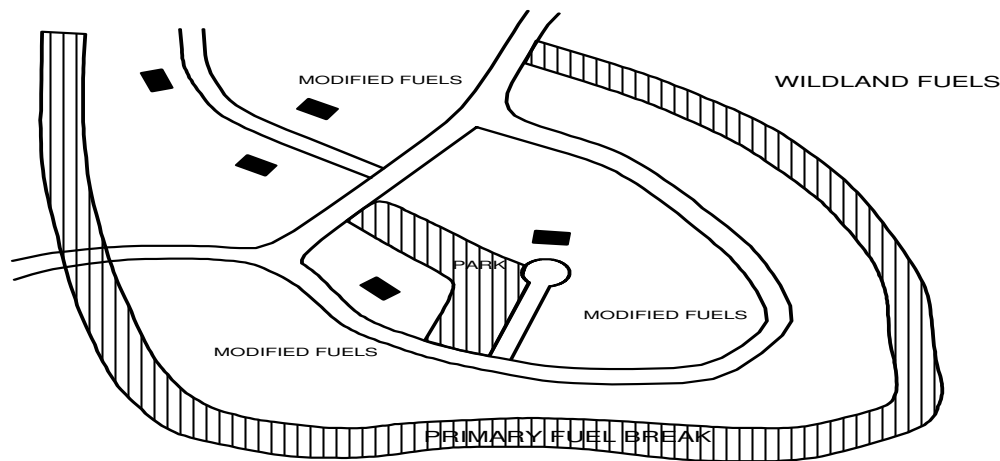


Figure 9 - Fuel breaks and fuel modifications designed to protect a development.

Wildfire can produce exceptionally strong winds that can carry particles up to a mile from the fire front. These airborne fire brands landing on a roof can ignite the building and threaten other structures. Roof material is more critical than roof construction. Consider the following elements:

1. \*Use only Class A or B fire-rated roofing materials.
2. Never use untreated wood shakes or shingles.
3. Where practical, build all roofs with the minimum of a 4 in 12 pitch.
4. If possible, avoid horizontal roofs.

\*Wood shakes or shingles can achieve a Class B rating by using a foil-faced or equivalent substrate or underlayment of non-combustible material and when the shakes are periodically treated with fire retardant. Follow manufacturer's treatment guidelines and re-treat as specified.

## FIRE RATING OF ROOFING MATERIALS

Fire Rating		Type of Material	Spread Index ***
Class	A	Slate Rock shingle Concrete tile Fiberglass based: - asphalt shingle - rolled roofing	0-25
Class	B	Aluminum shingle Aluminum or steel panels Periodically treated - wood shingle or shake plus heat barrier	26-75
Class	C	Felt-tar based - asphalt shingle - rolled roofing Asphalt tar gravel Periodically Treated - wood shake - wood shingle	76-200
Not Rated		Untreated wood shingle or shake	200++

The Spread Index is determined by the UL Tunnel Test that uses samples of 20 inches by 25 feet of building materials and compares the Flame Spread to Asbestos Cement Board (rated as 0) and uncoated red oak (rated as 100).

The National Fire Protection Association (NFPA) has adopted these classifications based on the American Society for Testing and Materials ASTM-E-84 (UL Tunnel) test results. Federal, State, and local authorities accept these classifications.

## 206 BUILDING CONSTRUCTION

All buildings in the WRI shall be designed and constructed to comply with the Uniform Building Codes (UBC) and the Uniform Fire Codes (UFC).

### 1. Eaves, Balconies, Decks, Unenclosed Roofs, and Floors

- a. Protect the exposed underside of all eaves, balconies, and unenclosed roofs, decks, and floors with one-hour fire-resistant materials.
- b. Protect all supporting beams and posts, in stilt or cantilevered construction, with one-hour fire-resistant materials.

### 2. Vents

- a. Attic openings, soffit vents, foundation louvers, or other direct openings in outside walls, overhangs, or roofs should be no larger than 144 square inches.
- b. Cover all openings in outside walls, overhangs, or roofs with a 1/4-inch non-combustible, corrosion-resistant metal mesh.

### 3. Chimneys

- a. Install only an approved spark arrester around the mouth of the chimney, stovepipe, or vent of any heater, stove, or fireplace.
- b. Clean spark arrester regularly to remove deposits.

### 4. Exterior Walls

Build outside walls out of one-hour fire-resistant materials. Do not use shingles, shakes, or rough-cut wood siding to sheathe outside walls.

### 5. Exterior Rafters

Close off the spaces between outside rafters, wall plates, and the underside of the roof sheathing with wood at least two inches thick or equivalent solid blocking.

### 6. Windows

Wildfire can radiate through windows, heating the interior of houses to combustion temperature. It can heat, crack, and break the windows, letting in burning particles.

- a. Keep window surface area to a minimum. In particular, since fire usually travels uphill, minimize window surface area on downhill-facing walls.
- b. Build several small windows instead of one large window, as large windows are more vulnerable to fire damage.
- c. Screen all windows.



## **207 BUILDING SPACING AND DENSITIES**

The distance between structures directly affects how fast a wildfire can spread. Local governments, developers, owners, and responsible fire authorities should consider base spacing and density dependent on slope and fuels in the area of the structures.

### **1. Building Spacing**

- a. Residential structure spacing must meet county requirements. Attempt to space buildings, including mobile homes, at least 60 feet apart and at least 30 feet from the property line.

### **2. Building Densities**

- a. Locate buildings on each piece of property so that developers and homeowners can reduce vegetation in accordance with Section 201. General guidelines to meet the defensible space are:
  - i. Slope 0% - 20% - A minimum 1 acre for a structure to be placed on lands in forest fuels.
  - ii. Slope 21% - 30% - A minimum 1.5 acre for a structure to be placed on lands in forest fuels.
- b. Never build structures in forest fuels where the slope is greater than 30%, at a canyon mouth, in a ridge saddle, or in other areas of extreme fire hazard.

## **208 BUILDING ADDRESSES AND ROAD SIGNS - NAMES AND NUMBERS**

Clearly designate roads by names and buildings by numbers so emergency personnel can find the fire site quickly. All road signs and address numbers must be visible from the road.

### **1. Buildings**

- a. A building should clearly display the address number between 4 and 8 feet above the ground.
- b. The use of only non-combustible material for address markers is recommended.

- c. Personnel in emergency vehicles must be able to read the address from at least 100 feet. Number all buildings with script at least 4 inches high and at least 1/2-inch wide. The signs should be reflectorized and should contrast with the background color of the sign.
- d. A cluster of buildings owned by the same person may share a single address.

## **2. Road and Street Signs**

- a. The State or county must install and maintain State and county road signs.
- b. The owners of private roads must install and maintain approved private road signs.
- c. The responsible party should place the approved road name on a sign between 4 and 8 feet off the ground, where it can easily be seen.
- d. The use of only non-combustible material for road signs is recommended.
- e. Personnel in emergency vehicles must be able to read the road name from at least 100 feet. Print all road signs with script at least 4 inches high and at least 1/2-inch wide. The signs should be reflectorized, and numbers should contrast with the background color of the sign.

## **209 UTILITIES**

Most fires resulting from electrical lines seem to be caused by distribution lines, not transmission lines. In eastern Montana, however, transmission lines do cause some fires. On classified forest land, utility companies and individuals responsible for utilities, must maintain all rights-of-way in accordance with Rule VIII of the Montana Department of State Lands Forest Fire Regulations, which states:

*All persons, firms or corporations who own, control, operate, or maintain electrical transmission or distribution lines shall, prior to the beginning of fire season each year, inspect said power lines for hazards and risks, correct the fire hazards and risks found, and inform the recognized agency that necessary remedial actions have been accomplished.*

In addition and on all lands:

### **1. Distribution Circuit (Line)**

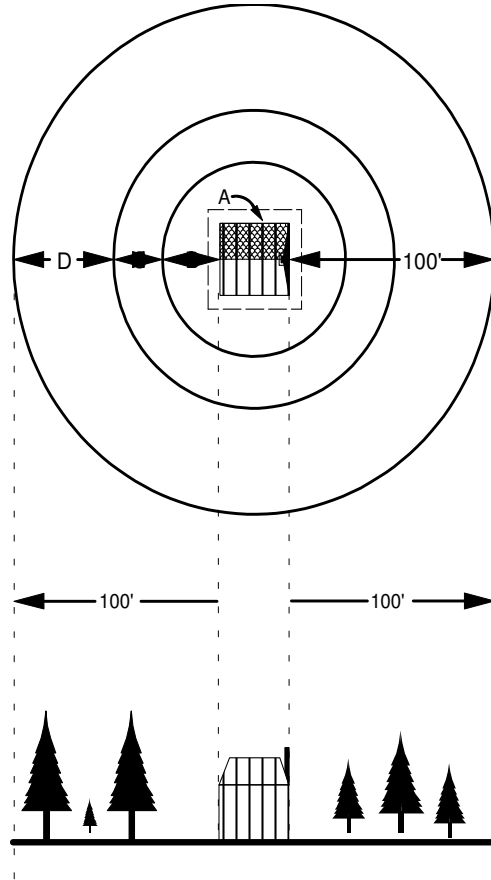
- a. Build, modify, or extend all distribution lines underground wherever practical.
- b. For above-ground lines, vegetation in rights-of-way must be managed.

### **2. Transmission Circuit (Line)**

- a. Transmission lines of 34.5 kilovolts and greater cannot be placed underground. Rights-of-way should be free of fire hazards.

# VEGETATION REDUCTION GUIDELINES

## 0% TO 10% SLOPE



**A = THE FIRST 3 FEET OF B**

Maintain an area of non-combustible material - flowers, plants, concrete, gravel, mineral soil, etc.

**B = 10 FEET**

Remove all trees and downed woody fuels.

**C = 20 FEET**

Thin trees to 10 feet between crowns.

Prune limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

Maintain surface vegetation at 3 inches or less.

Remove all downed woody fuels.

**D = 70 FEET**

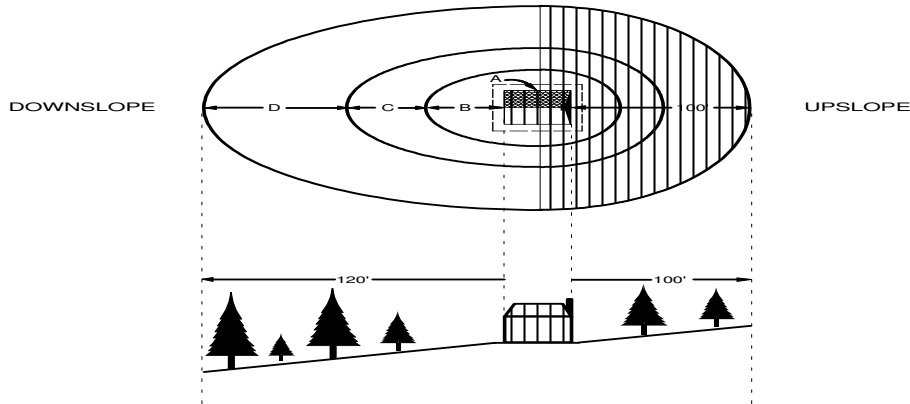
Thin trees to 10 feet between crowns.

Prune limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

Remove all downed woody fuels more than 3 inches in diameter.

# VEGETATION REDUCTION GUIDELINES

## 10% TO 20% SLOPE



The shaded areas (upslope) of B, C, & D remain a constant distance of 10', 20', and 70' respectively. The shaded area begins from the mid-section of a structure. The unshaded areas (downslope) of B, C, & D increase with slope as detailed below:

**A = THE FIRST 3 FEET OF B**

Maintain an area of non-combustible material - flowers, plants, concrete, gravel, mineral soil, etc.

***B = 15 FEET***

Remove all trees and downed woody fuels.

**C = 25 FEET**

Thin trees to 10 feet between crowns.

Prune limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

Maintain surface vegetation at 3 inches or less.

Remove all downed woody fuels.

***D = 80 FEET***

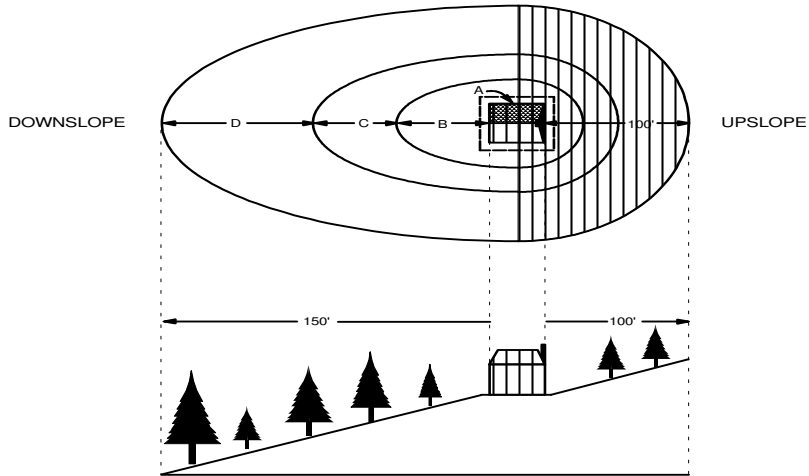
Thin trees to 10 feet between crowns.

Prune limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

Remove all downed woody fuels more than 3 inches in diameter.

# VEGETATION REDUCTION GUIDELINES

## 20% TO 30% SLOPE



The shaded areas (upslope) of B, C, & D remain a constant distance of 10', 20', and 70' respectively. The shaded area begins from the mid-section of a structure. The unshaded areas (downslope) of B, C, & D increase with slope as detailed below:

### *A = THE FIRST 3 FEET OF B*

Maintain an area of non-combustible material - flowers, plants, concrete, gravel, mineral soil, etc.

### *B = 20 FEET*

Remove all trees and downed woody fuels.

### *C = 30 FEET*

Thin trees to 10 feet between crowns.

Prune limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

Maintain surface vegetation at 3 inches or less.

Remove all downed woody fuels.

### *D = 100 FEET*

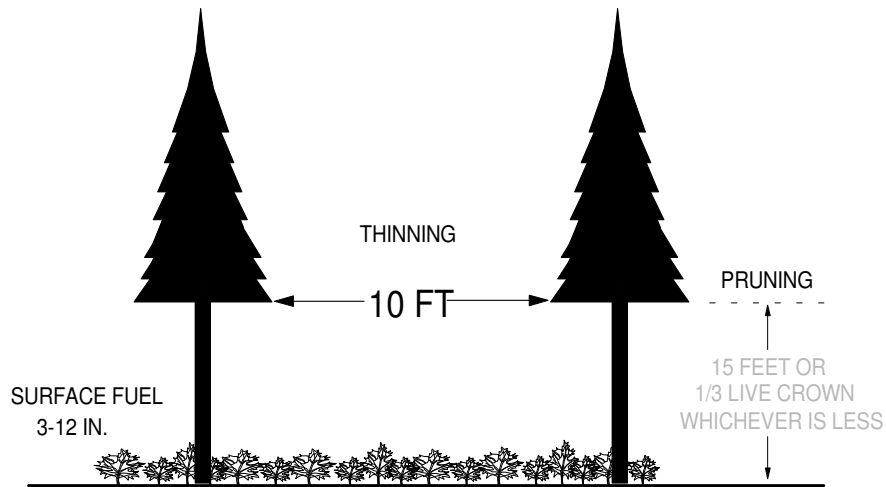
Thin trees to 10 feet between crowns.

Prune limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

Remove all downed woody fuels more than 3 inches in diameter.

# VEGETATION REDUCTION GUIDELINES

## THINNING AND PRUNING



In areas where vegetation modification is prescribed, use the following guidelines:

### A. THINNING

Thin trees to 10 feet between crowns.

### B. PRUNING

Prune the limbs of all remaining trees to 15 feet or one-third the total live crown height, whichever is less.

### C. SURFACE VEGETATION

Maintain surface vegetation at 3" to 12" as detailed.

**EXISTING DEVELOPMENT  
FORM C - RATING FORM  
(Rev. 3/93)**

**RATING AREA:** \_\_\_\_\_ **DATE:** \_\_\_\_\_ **RATED BY:** \_\_\_\_\_

**ROADS**

**ROAD ACCESS - Items 1 and 2**

- Multiple primary access roads  
= 0
- Two primary access roads = 1
- One primary + one alternative access road  
= 2
- One-way in/out = 3
- No primary access roads = 4

**ROAD SURFACE WIDTH, PRIMARY ACCESS ROUTES - Item 3**

- > 28' Road Surface + Shoulder  
= 1
- 28' Road Surface + Shoulder = 2
- 16 - < 28' Road Surface + Shoulder = 3
- < 16' Road Surface + Shoulder  
= 4

**MAXIMUM ROAD GRADE - Item 4**

- 0-5% = 1
- 6-8% = 2
- > 8 - 10% = 3
- > 10% = 4

**SECONDARY ROAD ENDINGS - Item 5**

- Loops or > 90' Diameter Cul de Sacs = 1
- Cul de Sac Diameter 70-90' = 2
- Cul de Sac Diameter <70' = 3
- Dead Ends - No Cul de Sac = 4

## **BRIDGES - Items 6 and 7**

- **No Bridges** = 1
- **40 Ton(+) limit on access bridges**  
= 2
- **20-39 Ton limit on all access bridges** = 3
- **< 20 Ton limit any access bridge**  
= 4

## **TOPOGRAPHY**

### **SLOPE - Item 8**

- **0-10%** = 2
- **11-20%** = 4
- **21-30%** = 6
- **> 30%** = 8

### **ASPECT - Item 9**

- **North (315 degrees through 45 degrees)**  
= 0
  - **East (46 degrees through 135 degrees)**  
= 1
- **Level** = 2
- **West (226 degrees through 315 degrees)**  
= 3
- **South (136 degrees through 225 degrees)**  
= 4

### **MOST DANGEROUS FEATURE - Item 10**

- **None** = 2
- **Adjacent Steep Slopes** = 4
- **Draws/Ravines** = 6
- **Chimneys, Canyons, Saddles** = 8



## FUELS

### FUEL TYPE - Item 11

- Grass around >90% of structures = 5
- Low brush field, or open timber around >10% of structures = 10
- Dense conifer or brush field exist around >10% of structures = 15
- Slash, bugkill, dense lodgepole pine exist around >10% of structures = 20

### RISK SOURCES - total from Item 12

- 0-4 Risk Sources Present = 5
- 5-8 Risk Sources Present = 10
- 9-12 Risk Sources Present = 15
- 13+ Risk Sources Present = 20

### ELECTRICAL UTILITIES - Item 13

- All Underground = 0
- Above Ground/Underground Combination (Well Maintained) = 10
- Above Ground (Poorly Maintained) = 20

## HOMES

### ROOF MATERIAL - Item 15

- 90-100% of homes have metal, composition, tile or other fire resistant roofing = 5
- 80-89% of homes have metal, composition, tile or other fire resistant roofing = 10
- 75-79% of homes have metal, composition, tile or other fire resistant roofing = 15
- < 75% of homes have metal, composition, tile or other fire resistant roofing = 20

### UNENCLOSED BALCONIES, DECKS, EAVES, STILTS, ETC. - Item 16

- < 10% of homes have unenclosed balconies, decks, eaves, stilts, etc. = 1
- 10-20% of homes have unenclosed balconies, decks, eaves, stilts, etc. = 2
- 21-25% of homes have unenclosed balconies, decks, eaves, stilts, etc. = 3
- > 25% of homes have unenclosed balconies, decks, eaves, stilts, etc. = 5

### DENSITY OF HOMES - Item 17

- (For 0-30% slope)
  - > 100' between homes = 1
  - 0-100' between homes = 3
  - < 60' between homes = 5
  
- (For 31-50% slope)
  - > 100' between homes = 2
  - 60'100' between homes = 4
  - < 60' between homes = 6

### LANDSCAPING - Item 18

- 76-100% homes meet the fire-resistant landscaping guidelines in the Appendix F = 2
- 51-75% homes meet the fire-resistant landscaping guidelines in the Appendix F = 4
- 26-50% homes meet the fire-resistant landscaping guidelines in the Appendix F = 6
- 0-25% homes meet the fire-resistant landscaping guidelines in the Appendix F = 9

### WATER SUPPLY

#### HYDRANTS - Items 19, 20 and 21

- 500 GPM hydrants available on < 660' spacing = 2
- 500 GPM hydrants available = 4
- < 500 GPM hydrants available = 6
- No hydrants = 8

#### DRAFT SOURCES - Item 22

- Accessible Sources Available Within Hoselay Distance = 2
- Draft Sources Available Within 5 mi. via primary access roads = 4
- Draft Sources Require Development = 6
- Draft Sources Unavailable = 8

#### HELICOPTER DIP SPOTS - Item 23

- Under 2 min. turnaround (<1 mi.) = 1
- Within 2-5 min. turnaround (1-2 mi.) = 2
- Within 6 min. turnaround (3 mi.) = 3
- Beyond 6 min. turnaround or Unavailable = 4

**STRUCTURAL FIRE PROTECTION - Items 24 and 25**

- **<= 5 min. from fire department** = 5; if VFC = 10
- **6-15 min. from fire department** =10; if VFC = 15
- **16-30 min. from fire department** =15; if VFC = 20
- **No RFD, FSA, municipal fire district or VFC?** = 20

**HOMEOWNER CONTACT - Items 26 and 27**

- **Central contact - formal/well organized group (e.g., a homeowners assoc.)** = 5
- **Less central contact - an informal/loosely organized group (e.g., a civic club or development office)** = 10
- **Multiple groups - different contacts representing different parts of the community** = 15
- **No organized contacts** = 20

**FIRE OCCURRENCE - Item 28**

- **.00-.10 Fires/1000 ac./10 yr.** = 5
- **.11-.20 Fires/1000 ac./10 yr.** = 10
- **.21-.40 Fires/1000 ac./10 yr.** = 15
- **.40+ Fires/1000 ac./10 yr.** = 20

**TOTAL SCORE**

<b>&lt;= 110</b>	<b>low risk - low priority</b>
<b>111-135</b>	<b>moderate risk - moderate priority</b>
<b>136-150</b>	<b>high risk - high priority</b>
<b>151-170</b>	<b>very high risk - very high priority</b>
<b>&gt;= 171</b>	<b>extreme risk - extreme</b>