

## TABLE OF CONTENTS

<b>Section I</b>	<b>General Provisions</b>	<b>Page</b>
A.	Title	1
B.	General Terms	1
C-1	Authority	1
C-2	Roles and Responsibilities	2
C-3	Interpretation of Terms	2
D	Purpose	3
E	Jurisdiction	4
F	Severability	4
G	Conditions/Mitigation	4

<b>Section II</b>	<b>General Procedures</b>	<b>Page</b>
A-1	Construction Timing	5
A-2	Transfers of Title	5
A-3	Permission to Enter	6
A-4	Appeals	6

<b>Section III</b>	<b>Review and Approval Procedures for Major Subdivisions</b>	<b>Page</b>
A-1	General	7
A-2	Pre-application Process	7
B	Subdivision Application and Preliminary Plat	8
B-1	Subdivision Application and Preliminary Plat Submittal	8
B-2	Application Review	10
B-3	Date of Sufficiency and Related Standards	11
B-4	Review by Affected Agencies	11
B-5	Review by Outside Expertise	11
B-6	Public Hearings and Notices- In General	11
B-7	Planning Board Hearing, Consideration, and Recommendation	13
B-8	Water and Sanitation Information	14
B-9	Commission Hearing	14
B-10	New and Credible Information	15
B-11	Commission Review, Decision, and Documentation	16
B-11	Governing Body Action	17
B-12	Approval Period	18
B-13	Additional Conditions after Approval	18
B-14	Amended Applications	18
B-15	Resubmittal of a Denied Subdivision	20
C	Final Plats	21
C-1	Final Plat Required	21

C-2	Review of Abstract and Covenants	21
C-3	Final Plat Review	21
C-4	Public Improvements Agreement and Guaranty	22
C-5	Final Plat Approval	23
C-6	Final Plat Filing	23
D	Amended Plats	23
D-1	Amended Conditions	24
D-2	Exemption from Amended Plat Review	24

<b>Section IV</b>	<b>Review Procedures for Minor Subdivisions</b>	<b>Page</b>
A	General	25-A
A-1	First Minor Subdivisions	25-A
A-2	Subsequent Minor Subdivisions	25-A
A-3	First Minor Subdivision Pre-Application Process	25-A
B	First Minor Subdivision Application and Preliminary Plat	26-A
B-1	First Minor Subdivision Application and Preliminary Plat Submittal	26-A
B-2	Application Review	28
B-3	Date of Sufficiency and Related Standards	29
B-4	Review by Affected Agencies	30
B-5	Review by Outside Expertise	30
B-6	Public Hearings and Notices	30
B-7	Planning Board Review, Consideration, and Recommendation	30
B-8	Water and Sanitation Information	31
B-9	Commission Hearing	33
B-10	Commission Review, Decision, and Documentation	33
B-11	First Minor Subdivision Plat Approval Period	35
B-12	Additional Conditions after Approval	35
B-13	First Minor Amended Applications	35
B-14	Resubmittal of a Denied First Minor Subdivision	37
C	Final Plats	37
C-1	Final Plat Required	37
C-2	Review of Abstract and Covenants	37
C-3	Final Plat Review	38
C-4	Public Improvements Agreement and Guaranty	39
C-5/A-7	Final Plat Approval	39/A-7
C-6	Final Plat Filing	40
D	Amended Plats	40
D-1	Amended Conditions	41

D-2	Exemption from Amended Plat Review	41
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<b>Section V</b>	<b>Design and Improvement Standards</b>	<b>Page</b>
A	General Standards	42
A-1	Conformance	42
A-2	Natural Environment	42
A-3	Lands Unsuitable for Subdivision	42
A-4	Re-Vegetation	42
A-5	Construction Setbacks from Perennial Streams and Waterbodies	42
A-6	Floodplain Provisions	43
A-7	Improvement Design	44
A-8	Lots	44
A-9	Blocks	45
A-10	Roads and Streets	46
Table 1	Road Design Standards for Subdivisions	54
Table 1, Figure A	Minimum road Standards	55
A-11	Drainage Facilities	57
A-12	Water Supply Systems	57
A-13	Sewage Treatment Systems	58
A-14	Solid Waste	58
A-15	Utilities	58
A-16	Mail Delivery	59
A-17	Noxious Weeds	60
A-18	Watercourse and Irrigation easements	60
A-19	Disposition of Water Rights	62
A-20	Park Land Dedication-Cash in Lieu-Waivers	62
A-21	Fire Protection	65
A-22	Law Enforcement	70
A-23	Restrictive Covenants – Approval, Content and Enforcement by Commission	70
A-24	Waiver of Right to Protest creation of LID, RSID, and RID	71

<b>Section VI</b>	<b>Land Subdivisions Created by Rent of Lease and Condominiums</b>	<b>Page</b>
A	General	73
A-1	Recreational Camping Vehicles-Definition	73
A-2	Mobile Homes-Definition	73
A-3	Land Subdivisions Created by Rent of Lease	73
B	Procedures for Review	74
B-1	Definition	74
B-2	Review and Approval	74
B-3	Improvements	74
B-4	Final Plan Review	74
B-5	DPHHS License	75

C	Design Standards for Spaces Created by Rent or Lease	75
C-1	Design Standards	75
C-2	Additional Provisions	75
D	Mobile Home Park Standards	75
D-1	Mobile Home Spaces	75
D-2	Streets	76
D-3	Electrical Systems	77
D-4	Gas Systems	77
E	Recreational Vehicle Park Standards	77
E-1	Recreational Vehicle Spaces	77
E-2	Density	78
F	Condominiums	78
F-1	Procedures	78
F-2	Review Where Land Will Not Be Divided	78
F-3	Condominiums involving Land Divisions	78
F-4	Design Standards	78
F-5	Unit Ownership Act	78
F-6	Townhome/Townhouse Definition	79

<b>Section VII</b>	<b>Planned Unit Developments</b>	<b>Page</b>
A	Intent	79
B	Procedures and Submittal	79
C	Criteria	80
C	Cluster Development Requirements	79

<b>Section VIII</b>	<b>Administrative Provisions</b>	<b>Page</b>
A	Fees	83
B	Variances	83
C	Amendments to Subdivision Regulations	84
D	Administration	84
E	Vacation of Recorded Plats	85
F	Waivers for PUDs	85

<b>Section IX</b>	<b>Divisions of Land Exempt from Subdivision Review</b>	<b>Page</b>
A	Purpose	87
B	Divisions of Land Entirely Exempt from these Regulations and the MSPA	87
C	Specific Exemptions from Review but Subject to Survey and Zoning Requirements	88
D	Exemption from Survey and Filing but Subject to Review	89
E	Exemption for State Highway Lands	89
F	Procedures and General Requirements for	89

	Review	
G	Family Conveyance	91
H	Security for Mortgages	92
I	Aggregation of Lots and Relocation of Common Boundaries within a Platted Subdivision	93
J	Relocation of Common Boundary Lines	94
K	Agricultural Exemption	95
L	Court Order	95
M	Correction of Errors	95
N	Uniform Standards for Certificates of Survey	96
O	Remainders	96

<b>Letter</b>	<b>Appendix Title</b>	<b>Page</b>
A	Plan and Plat Application Requirements	A-1
B	Application for Subdivision	B-1
	Final Plat Approval Application	B-6
C	Environmental Assessment	C-1
D	Sample Forms and Certificates	D-1
E	Application for Exemption from Subdivision	E-1
F	Uniform Standards for Monumentation, Certificates of Survey, and Final Plats	F-1
G	Subdivision Improvement Guarantees	G-1
H	Standards for Flood Hazard Evaluation	H-1
I	Model Road Access Easement	I-1
J	First Minor Summary of Probable Impacts	J-1
K	Definitions	K-1
L	Certificate of Dedication for Public Roads	L-1

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## **I. GENERAL PROVISIONS**

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

These regulations shall be known as “The Carbon County Subdivision Regulations” hereinafter referred to as “these Regulations.”

### **I-B. General Terms**

Terms used throughout these Regulations are abbreviated as follows:

Montana Code Annotated	<i>MCA</i>
Montana Subdivision and Platting Act	<i>MSPA</i>
Carbon County Clerk and Recorder	<i>Clerk</i>
Carbon County Commission	<i>Commission</i>
Carbon County	<i>County</i>
Carbon County Attorney	<i>County Attorney</i>
Carbon County District Court, 22nd Judicial District	<i>District Court</i>
Carbon County Sanitarian	<i>Sanitarian</i>
Montana Department of Environmental Quality	<i>MDEQ</i>
Montana Department of Transportation	<i>MDOT</i>
Natural Resources and Conservation Services	<i>NRCS</i>
Carbon County Planning Board	<i>Planning Board</i>
Carbon County Subdivision Regulations	<i>Regulations</i>
Carbon County Planning Office	<i>Planning Office</i>
Carbon County Planning Staff	<i>Planning Staff</i>
Director of the Carbon County Planning Office	<i>Director</i>
Carbon County Growth Policy	<i>Growth Policy</i>
Carbon County Road Supervisor	<i>Road Supervisor</i>
Carbon County Treasurer	<i>Treasurer</i>
United States Geological Survey	<i>USGS</i>
Carbon County Weed Control Department	<i>Weed Department</i>

### **I-C-1. Authority**

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



### **I-C-2. Roles and Responsibilities**

The elected officials, appointed boards and County staff share the roles and responsibilities for carrying out the provisions of these Regulations.

The Commission is responsible for establishing policy and legislation affecting land use within the County. The Commission acts on recommendations of the Planning Board.

The Planning Board is the designated planning agency for the County as specified by Commission. The Planning Board is responsible for a variety of discretionary recommendations to the Commission on subdivisions, land use regulation, Growth policy amendments, and zoning. The Planning Board duties and responsibilities are specified in the bylaws duly adopted by the Planning Board.

The Director shall have the authority to administer the provisions of these Regulations, to make determinations with regard to the applicability of the regulations, to interpret provisions, to require additional information to determine the level of detail and appropriate methodologies for required analysis, to prepare application and informational materials as required, to promulgate procedures and rules for unique circumstances not anticipated within the standards and procedures contained within these Regulations, and to enforce requirements.

### **I-C-3. Interpretation of Terms**

For the purposes of these Regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and terms are herein defined as follows:

“Shall” is always mandatory, “must” is always mandatory, “may not” is mandatory, while “should” is not mandatory, and “may” is permissive.

The present tense includes future, the singular includes the plural, and the plural includes the singular.

“And” indicates that all connected items or provisions shall apply.

“Or” indicates that the connected items or provisions may apply singularly or in any combination.

“Either/or” indicates that the connected items or provisions shall apply singularly but not in combination.

Where terms are not specifically defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster’s Encyclopedic Dictionary of the English Language shall be considered in determining ordinarily accepted meanings.

#### **I-D. Purpose**

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; and to 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).

Further, to support the purposes of 76-3-102, MCA these Regulations are intended to promote and provide for the:

1. Orderly development of Carbon County.
2. Coordination of roads within subdivided land with other roads, both existing and planned.
3. Dedication of land for roadways and for public utility easements.
4. Proper physical and legal road access and the improvement of roads
5. Adequate open spaces for travel, light, air, and recreation.
6. Adequate transportation, water, drainage, and sanitary facilities.
7. Avoidance or minimizing of congestion.
8. Avoidance of unnecessary environmental degradation.
9. Encouragement of subdivision development in harmony with the natural environment.
10. Avoidance of danger or injury by reason of natural hazards or the lack of water, drainage, access, transportation, or other public services.
11. Avoidance of excessive expenditure of public funds for the supply of public services.
12. Manner and form of making and filing of any plat for subdivided lands.
13. 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-E. Jurisdiction**

These regulations govern the subdivision of land within the jurisdictional area of the County and the towns of Bridger, Fromberg, Bearcreek, and Joliet.

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

### **I-F. Severability**

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

### **I-G. Conditions/Mitigation**

Regulation of the subdivision of land and the imposition of reasonable conditions on land subdivision is an exercise of valid police power delegated by the State of Montana to Carbon County. Subdividers have the duty to comply with reasonable conditions for design, dedication, improvement, and restrictive use of the land so as to promote the purposes of these Regulations, the safety and general welfare of the future subdivision lot owners and of the community at large.

## **II. GENERAL PROCEDURES**

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

The subdivider proceeds at its own risk with any construction work on a proposed subdivision, including grading and excavation relating to public improvements, without first obtaining preliminary plat approval

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

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

- a. 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. 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 Clerk and Recorder.
- c. The contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the 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. The Treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent.
- e. The contracts shall 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 Clerk and Recorder, title to the property cannot be transferred in any manner."
- f. Instruments which transfer title: Under 76-3-302, MCA, the Clerk and Recorder shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by the Act unless the required certificate of survey or subdivision plat has been reviewed, approved and filed with the Clerk and Recorder and the instrument or transfer describes the parcel or tract by reference to the filed certificate or plat.

### **II-A-3. Permission to Enter**

The Commission 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 material or a plat for review constitutes a grant of permission by the subdivider to enter the subject property.

### **II-A-4. 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.

### **III. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS**

#### **III-A-1. General**

Subdivisions containing six or more lots, and subsequent subdivisions containing five or fewer lots that do not qualify as first minor subdivisions, shall be reviewed under the procedures of this Section.

#### **III-A-2. Pre-application Process**

- a. Pre-application Meeting. The subdivider shall meet with Planning Staff (or other authorized agent or agency, designated by the governing body to review subdivision applications) prior to submitting a subdivision application and preliminary plat. The purpose of this meeting is to discuss these Regulations and standards, to identify the state laws, local regulations and any growth policy provisions that may apply to the subdivision review process, familiarize the subdivider with the goals and objectives of applicable plans, regulations and resolutions, and to discuss the proposed subdivision as it relates to these matters. A request for a pre-application meeting shall be made in writing to the Planning Office. The request shall include the owner's name, address and phone number, name, address and phone number of the subdivider, if different than the owner, a complete legal description of the parcel or parcels proposed to be subdivided and a description of the proposed development plans. The pre-application meeting will be scheduled within thirty (30) days of the Planning Office receiving a written request with all the required information.
  - i. If the owner or owners designates a representative to represent the owner at the pre-application meeting, the representative must have a signed designation granting the authority to represent the landowner for the purpose of subdividing the property.
  - ii. The applicant will provide the materials identified in Appendix A, subsection A (Pre-Application meeting) at or before the scheduled pre-application meeting.
  - iii. At the pre-application meeting, the Planning Staff (or other authorized agent or agency, designated by the governing body to review subdivision applications) will provide the subdivider with a list of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the Planning Staff or other authorized agent designated by the Commission contacts a public utility,

agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

- b. The subdivider shall submit the subdivision application and preliminary plat as provided in III-B-1 of these regulations within one hundred twenty (120) working days of the Planning Office notification of completion of the pre-application process. If an application is not submitted within one hundred twenty (120) working days the subdivider must request a new pre-application meeting and complete the pre-application process as if it were a new proposal.

### **III-B. Subdivision Application and Preliminary Plat**

After the requirement for pre-application review has been satisfied, the subdivider shall submit a subdivision application, including a preliminary plat of the proposed subdivision. Preliminary plats submitted to the Planning Office must conform to the requirements of these Regulations. The preliminary plat shall be prepared by a surveyor licensed to practice in Montana.

#### **III-B-1. Subdivision Application and Preliminary Plat Approval**

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator, as applicable:

1. A completed and signed Subdivision Application Form;
2. The required review fee;
3. A preliminary plat;
4. A Vicinity Sketch;
5. A topographic map;
6. A grading and drainage plan;
7. Engineering plans for all Public and Private Improvements;
8. Overall development plan if development is in phases;
9. Abstract of Title (or Title Report);
10. Lien holders' acknowledgement of subdivision;
11. Documentation of legal and physical access;
12. Documentation of existing easements, including those for Agricultural Water User Facilities;
13. Existing covenants and deed restrictions;
14. Existing water rights;
15. Existing mineral rights;
16. Names and addresses of all adjoining property owners;
17. Proposed road plans and profiles;

18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
19. Proposed easements;
20. Proposed disposition of water rights;
21. Proposed disposition of mineral rights;
22. Parkland dedication calculations;
23. Environmental assessment and/or summary of probable impacts;
24. Transportation impact analysis or transportation plan;
25. Fire risk rating analysis and fire prevention plan;
26. Weed management plan and re-vegetation plan;
27. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
28. FIRM or FEMA panel map and letter identifying floodplain status;
29. Required water and sanitation information;
30. Copies of any review by DEQ or sanitarian under 76-4-134, MCA on the subject property or adjoining properties;
31. A form of Subdivision Improvements Agreement, if proposed;
32. Letter requesting a revocation of agricultural covenants;
33. Letter indicating locations of cultural or historic resources;
34. Variance request or approval;
35. Re-zoning application or approval;
36. Flood hazard evaluation;
37. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
38. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

The requirement for preparing an environmental assessment does not apply when the subdivision meets the criteria in 76-3-616, MCA:

- (a) The proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c), MCA;
- (b) The proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304, MCA that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and
- (c) The subdivision proposal includes a description of future public facilities and services, using maps and text, that are necessary to efficiently serve the projected development.



### **III-B-2. Application Review**

The time limits for the element and sufficiency reviews of this subsection apply to each successive submittal of the application materials until a determination is made that the application contains all the required elements and is sufficient for review and the subdivider is notified in writing.

The Planning Office shall be the entity to complete element and sufficiency review regardless if the subdivider has applied to the MDEQ first pursuant to 76-4-129, MCA.

#### **1. Element Review**

- a. Within five (5) working days of the receipt of the elements required in Section III-B-1 the Planning Office shall determine whether the application contains all the elements required for submittal.
- b. The County shall transmit via regular mail, email, or fax a written determination to the subdivider stating whether the application does or does not contain the required elements and specifying what, if any, elements are necessary to make the application complete.

#### **2. Sufficiency Review**

- a. Within fifteen (15) working days of the issuance of a determination that an application contains all the necessary elements for review, the Planning Office shall determine whether the application and supporting materials are sufficient to allow for the review of the proposed subdivision.
- b. The County shall transmit via regular mail, email, or fax a written determination to the subdivider stating whether the application does or does not contain sufficient information for processing and what, if any, elements require additional information to make the application sufficient for review.
- c. A determination that an application contains sufficient information for review as provided in this subsection does not ensure that the proposed subdivision will be approved or conditionally approved by the Commission and does not limit the ability of the Planning Office, Planning Board or Commission to request additional information during the review process.
- d. A determination of sufficiency by the Planning Office does not limit the MDEQ from requiring more water and sanitation information as part of the MDEQ's review of water and sanitation information.

*The sixty (60) working day review period (or 80 working day review period for subdivisions with 50 or more lots) commences on the date that the Planning Office transmits via regular mail, email, or fax a written determination to the subdivider stating the application contains sufficient information for processing.*

### **III-B-3. Date of Sufficiency and Related Review Standards**

Subdivision review under these Regulations may occur only under those regulations in effect at the time the Planning Office mails a written determination to the subdivider stating the application contains sufficient information for processing. If regulations change during the element and/or sufficiency review by the Planning Staff the element and sufficiency review shall be based on the new regulations.

### **III-B-4. Review by Affected Agencies**

After an application is deemed sufficient, the Planning Office may submit copies of the application, preliminary plat, and supplementary information to relevant public utilities and public agencies for review and comment, and to the Planning Board for its recommendation pertaining to the approval, conditional approval or denial of the subdivision application. Review by public agencies or utilities may not delay the Commission's consideration of the subdivision application beyond the statutory specified review period. If the Planning Office shall request review by a public utility, agency of government, or other parties regarding the subdivision application that were not identified during the pre-application process the Planning Office shall notify the subdivider. The Planning Office will make these comments available to the subdivider and to the general public upon request.

### **III-B-5. Review by Outside Expertise**

The Planning Office, Planning Board, and the Commission may employ outside expertise to assist with the review of a subdivision application and preliminary plat. The Commission shall assess the costs of employing outside expertise to the subdivider.

### **III-B-6. Public Hearings and Notices—In General**

1. Number of Public Hearings. The Planning Board shall hold a public hearing and the Commission may hold a public hearing or a public meeting on the subdivision application and preliminary plat when a hearing is required by these Regulations. Subdivisions that meet criteria of 76-3-616, MCA, are exempt from the requirement to hold a public hearing.

2. Noticing. Notice of the time and date of the hearings will be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. At least 15 days prior to the date of the hearings, the Planning Office will give notice of the hearing by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser of record under contract for deed of property immediately adjoining the land included in the plat.
3. Hearing Procedure.

The general steps for conducting a public hearing are as follows:

1. Introduce public hearing.
2. Explain subdivision review procedure and decision criteria.
3. Planning Department staff report.
4. Applicant presentation.
5. Public testimony.
6. Close public hearing.

The meeting will be conducted so that those who want to speak for or against, or who seek additional information, will have an opportunity to do so while still providing a reasonable adjournment time.

The Planning Board Chair (for hearings conducted by the Planning Board), the Commission Chair (for hearings and meetings conducted by the Commission), or other designate responsible for presiding over the meeting, is responsible for setting the guidelines or methods for public comment. The Chair or their designate will review general guidelines prior to public comment, reminding the public of the criteria upon which the final decision must be made. Because each meeting is somewhat different, a standardized set of guidelines may not work in every case. Options to manage public discussion can include, but are not limited, to the following:

- Asking those who wish to speak to sign in, and use the list to call on speakers.
- Limiting the amount of time each person can speak.
- Allowing each person to speak only once until all have had an opportunity.
- Requesting individuals to address new issues only and not repeat what has already been addressed.

The Planning Board or Commission will make their decision after the public hearing or meeting is adjourned.

### **III-B-7. Planning Board Hearing, Consideration, and Recommendation**

1. Public Hearing. At a noticed public meeting or hearing, the Planning Board shall review all subdivision applications, together with required supplementary plans and information. The Planning Board shall hold a public hearing on all subdivisions for which a public hearing is required.
2. Public Testimony. All written public comment received at or prior to a public meeting or hearing shall be incorporated into the written record of the review. Minutes shall be taken of verbal comment received during the public meeting or hearing before the Planning Board and shall be incorporated into the written record of the review. Copies of the minutes and written comments shall be included in any recommendation made to the Commission by the Planning Board.
3. Consideration. In recommending to approve, conditionally approve, or deny the subdivision and preliminary plat, the Planning Board shall 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 III-B-11-f of these regulations;
  - d. whether the application and preliminary plat conforms to the provisions of:
    - i. the MSPA;
    - ii. these Regulations;
    - iii. applicable zoning regulations;
    - iv. other regulations in effect in the area of the proposed subdivision;
  - e. whether the MDEQ has approved the proposed subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres; and
  - f. whether the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more; and
- e. Planning Staff recommendation.
- ii. Recommendation. Within 10 working days after the public hearing or meeting, the Planning Board will submit to the Commission a recommendation for approval, conditional approval (including any

recommended conditions/mitigation measures), or denial of the subdivision application and preliminary plat.

### **III-B-8. Water and Sanitation Information**

The Planning Staff shall at any public hearing or meeting collect public comment given regarding the information required in Appendix A for water and sanitation. The Commission shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) working days after conditional approval or approval of the subdivision application.

- a. Comments. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the Commission to the:
  - i. Reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
  - ii. Carbon County Sanitarian for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.
- b. Parcel Size.
  - i. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the Commission may require approval by the MDEQ as a condition of approval of the final plat.
  - ii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the Commission may condition approval of the final plat upon the subdivider demonstrating, pursuant to Montana Sanitation and Subdivision Act, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

### **III-B-9. Commission Hearing**

After the Planning Board makes its recommendation, the Commission shall hold a public hearing on the subdivision application.

### **III-B-10. New and Credible Information**

- a. The Commission shall determine whether public comments or documents presented to the Commission at a public meeting or hearing regarding a subdivision application constitute:
  - i. Information or analysis of information that was presented at a public hearing or public meeting held pursuant to III-B-6 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or
  - ii. New information regarding a subdivision application that has never been submitted as evidence or considered by either the Commission or the Planning Board at a hearing or meeting during which the subdivision application was considered.
- b. If the Commission determines that the public comments or documents constitute new information not previously considered at a public hearing or meeting, the Commission may:
  - i. Approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the Commission determines that the new information is either irrelevant or not credible; or
  - ii. Schedule or direct the Planning Board to schedule a subsequent public hearing or meeting for consideration of only the new information that may have an impact on the findings and conclusions that the Commission will rely upon in making its decision on the proposed subdivision.
- c. In deciding whether the information is both new and credible the Commission shall consider:
  - i. Whether the topic of the information has previously been examined or available for examination at a public meeting or hearing on the subdivision application;
  - ii. Whether the information is verifiable, and if applicable, developed by a person with professional competency in the subject matter;
  - iii. Whether the information is relevant to a topic within the jurisdiction of the County.
- d. If a subsequent public hearing or meeting is held to consider new and credible information, the review period is suspended and the new hearing or meeting must be noticed and held within forty-five (45) working days of the Commission's determination to schedule a new hearing or meeting. After the new hearing or meeting, the otherwise applicable time limit for review resumes at the Commission's next scheduled public meeting for which proper notice on the

subdivision application can be provided. The Commission may not consider any information regarding the subdivision application that is presented after the subsequent hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

### **III-B-11. Commission Review, Decision, and Documentation**

The Commission, at a public meeting or hearing will approve, conditionally approve, or deny the subdivision application and preliminary plat within sixty (60) working days (or 80 working days if the proposed subdivision contains 50 or more lots) as provided in III-B-2 of these regulations, unless the subdivider and the Planning Office consent to an extension or suspension of the review period not to exceed one (1) year or if a subsequent public hearing is held pursuant to Section III-B-10 of these Regulations.

If the governing body fails to approve, conditionally approve, or deny the subdivision application within the 60 working day or 80 working day review period, the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body or the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision. The penalties do not apply if the review period is extended or suspended by mutual agreement of the subdivider and reviewing agent or a subsequent public hearing is required to be held per III.B. 10 above.

Basis for Decision. The basis for the Commission's decision to approve, conditionally approve, or deny a subdivision is whether the proposed subdivision application, the preliminary plat; the environmental assessment; the Planning Board's comments and recommendations; the Planning Office staff report and recommendation; and any additional information authorized by law demonstrates that development of the proposed subdivision would meet the requirements of the Montana Subdivision and Platting Act [76-3-608 (3)(a), MCA] and the Carbon County Subdivision Regulations.

- i. Growth Policy. The Commission may not withhold, deny or impose conditions on a subdivision based solely on compliance with the officially adopted Carbon County Growth Policy [76-1-605(2)(b), MCA].
- ii. Water and Sanitation. The Commission may approve, conditionally approve or deny a proposed subdivision application as a result of the water and sanitation information provided in Appendix A or public comment received pursuant to Section III-B-8 on the water and sanitation information only if the approval, conditional approval or denial is based on existing subdivision, zoning, or other regulations that the Commission has the authority to enforce.

- i. For a proposed subdivision that will create one or more parcels containing less than twenty (20) acres, the Commission may require approval by the MDEQ as a condition of approval of the final plat.
- ii. For a proposed subdivision that will create one or more parcels containing twenty (20) acres or more, the Commission may condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

Governing Body Action A governing body may not deny approval of a subdivision based solely on the subdivisions impacts on educational services (MCA §76-3-608(1)), based solely on parcels within a subdivision having been designated as a wildland-urban interface parcels (MCA § 76-3-608(1)) or solely on failure to comply with the Growth Policy (MCA § 76-1-605 (2)(b))

i The governing body shall give due weight and consideration to the subdividers expressed preferences (MCA § 76-3-608(5)(b)). The governing body may not deny approval of a subdivision based solely on the subdivisions impacts on educational services (MCA §76-3-608(1)), based solely on parcels within a subdivision having been designated as a wildland-urban interface parcels (MCA §76-3-608(1)) or based solely on compliance with the Growth Policy (MCA §76-3-605 (2)(b))onditions/Mitigation. The Commission may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required by these Regulations. The Commission shall issue written findings to justify the reasonable conditions/mitigation:

- i. In reviewing a subdivision under this Section and when requiring conditions/mitigation the Commission may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.
- ii. When considering a proposed subdivision application and requiring conditions/mitigation under this Section, the Commission shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

f. Findings of Fact. In reviewing the subdivision the Commission will issue written Findings of Fact that discuss and weigh the following criteria:

- i. Impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety. Subdivisions that meet the criteria of 76-3-616, MCA, are exempted from the requirement to review these criteria.



- ii. Compliance with the survey requirements of the MSPA.
  - iii. Compliance with these Regulations, and the review procedures of these Regulations.
  - iv. The provision of easements for the location and installation of any planned utilities.
  - v. 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.
- g. Written Statement. The Commission shall prepare a written statement on its decision and forward that statement to the subdivider within 30 working days following the oral decision on a subdivision application. The statement shall be available for public review in the subdivision file. The written statement shall provide:
- i. Information regarding the appeal process for the denial or the imposition of conditions.
  - ii. Identification of regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions.
  - iii. The facts and conclusion that the Commission relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision.
  - iv. The conditions/mitigation that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

### **III-B-12. Subdivision Application and Preliminary Plat Approval Period**

Upon approving or conditionally approving a subdivision application and preliminary plat, the Commission will provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than two (2) calendar years. At the end of this period the Commission may, at the request of the subdivider, extend its approval for a period of one (1) year. The Commission may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the Commission and the subdivider.

### **III-B-13. Additional Conditions After Approval**

After the subdivision application and preliminary plat are approved, the Commission may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period described in these Regulations.

The Commission 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.

### **III-B-14. Amended Applications**

- a. If the subdivider changes the subdivision application prior to the Planning Board hearing, the subdivider shall submit the amended application to the Planning Office.
  - i. Within five (5) working days of receiving the amended application, the Planning Staff shall determine whether the changes to the subdivision application are material.
  - ii. The sixty (60) working day review period (or 80 working day review period for subdivisions with 50 or more lots) is suspended while the Planning Office considers the amended application.
    1. If the Planning Staff determines the changes are material, the Planning Staff may require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application.
    2. If the Planning Office determines the changes are not material, the sixty (60) working day review period (or 80 working day review period for subdivisions with 50 or more lots) resumes when the Planning Office sends notice of the decision to the subdivider.
- b. If the subdivider changes the subdivision application after the Planning Board hearing but before the Commission public meeting or hearing, the subdivider shall submit the amended application to the Planning Office for review.
  - i. Within five (5) working days of receiving the amended application, the Planning Staff shall determine whether the changes to the subdivision application are material.
  - ii. The sixty (60) working day review period (or 80 working day review period for subdivisions with 50 or more lots) is suspended while the Planning Staff considers the amended application.

- iii. If the Planning Staff determines the changes are not material, the sixty (60) working day review period (or 80 working day review period for subdivisions with 50 or more lots) resumes when the Planning Staff sends notice of the decision to the subdivider.
- iv. If the Planning Staff determines the changes are material, the Planning Staff shall either:
  - 1. require the subdivider to begin the subdivision review process again, starting with the pre-application process, and require payment of a new application fee;
  - or
  - 2. schedule a new Planning Board hearing to take comment on the amended application. A supplemental staff report shall be prepared to address the changes to the original application. An additional application fee may be charged.
- v. If a second Planning Board hearing is held, the sixty (60) working day review period (or 80 working day review period for subdivisions with 50 or more lots) is suspended for the time period between notice of the Planning Staff's determination and ten (10) days after the date of the second Planning Board hearing.
- c. By making changes resulting in an amended application, the subdivider consents to suspension of the review period as provided in these Regulations.

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

- i. configuration or number of lots;
- ii. road layout or size;
- iii. water and/or septic proposals;
- iv. configuration of park land or open space;
- v. easement provisions; and

- vi. designated access.

### **III-B-15. Resubmittal of a Denied Subdivision**

Following denial of a subdivision application and preliminary plat by the Commission, a new application for the same property may not be submitted unless the following criteria are met:

- a. The new subdivision application and preliminary plat must clearly address or mitigate health and safety and/or design standards which were the basis of the original preliminary plat denial; and
- b. The new subdivision application and preliminary plat must clearly address the six (6) criteria under 76-3-608(3)(a); and
- c. The new subdivision application and preliminary plat application must comply with any adopted zoning regulation.

### **III-C. Final Plats**

#### **III-C-1. Final Plat Required**

After the conditions/mitigation of preliminary approval and the requirements for the installation of improvements have been satisfied, the subdivider shall cause to be prepared a final plat. See (Appendix A and B) for required final plat contents and final plat application materials.

#### **III-C-2. Review of Abstract and Covenants.**

The certificate of a licensed title abstractor, a copy of the covenants, and evidence that the conditions of the preliminary plat approval have been satisfied shall be submitted to the Planning Office for its review and approval at least 30 calendar days prior to submitting an application for final plat approval.

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

The Planning Office will examine the final plat contents and required final plat application materials and recommend approval only when it conforms to the

conditions set forth in the preliminary plat approval, and the terms of the MSPA and these Regulations.

The Commission 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].

- a. Final Plat Submittal. The final plat and all supplementary documents shall be submitted to the Planning Office at least thirty (30) working days prior to the expiration of preliminary plat approval or any extension thereto. The submittal shall include: a final plat application, the appropriate fee, all required information, County Attorney approvals (as necessary), and a written explanation of how each of the conditions of preliminary approval has been satisfied (Appendices A and B).
- b. Review by Planning Office. The Planning Office shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The Planning Office will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete by the Planning Office until all conditions of preliminary approval have been satisfied, including but not limited to:
  - i. Signed final plat certificates.
  - ii. Fire protection requirements approved by the appropriate fire district or fire service area.
  - iii. Signed Memorandum of Understanding between the subdivider and the Weed District.
  - iv. County or State encroachment or access permits.
  - v. Documents that may require approval of the County Attorney, include but are not limited to:
    - a. Articles of Organization or Incorporation for the Property Owner's Association, filed with/by the Montana Secretary of State.
    - b. Bylaws controlling the operation of the Property Owners' Association.
    - c. Restrictive and Protective Covenants encumbering the real property contained within the subdivision.
    - d. Restrictive Deed transferring title of all common open space parcels within the subdivision to the Property Owner's Association.
    - e. Declaration of Unit Ownership (condominiums).
    - f. Public/Private road easements.
    - g. Improvements agreements.

- h. Certificate of a licensed Title Abstractor.
- vi. The Commission may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to these Regulations, the examining surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

#### **III-C-4. 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 G).

The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.

#### **III-C-5. Final Plat Approval**

- a. Approval by the Commission: The Commission shall examine every final subdivision plat and within thirty (30) working days of its submission to the Planning Office shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these Regulations.
  - i. If the final plat is approved, the Commission shall certify its approval on the face of the final plat. When applicable, a certificate of the Commission 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.
  - ii. If the final plat is denied, the Commission shall write a letter stating the reason for denial and forward a copy to the subdivider. The Commission will return the final plat to the subdivider within ten (10) working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

- b. Final Plat Substantially Different: If the final plat differs substantially from the approved preliminary plat, the Commission shall return the final plat to the Planning Office and/or the Planning Board for additional review.
- c. Inaccurate information: The Commission may withdraw approval of a final plat if it determines that material information provided by the subdivider is inaccurate.

### **III-C-6. Final Plat Filing**

After it is approved, the final plat may not be altered in any manner except as provided in III-D. The Clerk and Recorder may not accept any plat for filing that does not bear the Commission'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 F).

### **III-D. Amended Plats**

- a. 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, or abandons a public dedicated road right-of-way must be reviewed and approved by the Commission.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The Commission may not approve an amended preliminary plat without the written consent of the owners (or lenders) of all lots which will be modified by the proposed amendment.
- c. The Commission may not approve an amendment that will place a lot in non-conformance with the design standards contained in Section V of these regulations unless the Commission holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section VIII-B, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats ((Appendix F).

#### **III-D-1. Amended Conditions**

- a. Any proposed amendments to the conditions of preliminary and final approval shall be reviewed and approved by the Commission.
- b. The Planning Board shall review the proposed amendment(s) and make a recommendation to the Commission whether to approve or deny the proposed amendment(s).
- c. The Commission may not approve an amended condition without the written consent of the owners or lenders of all lots which will be affected by the amended condition.
- d. A proposed amendment to the conditions of preliminary and final approval is subject to the procedures for reviewing major or minor subdivisions, as appropriate.
- e. Conditions may only be amended for reason of public health and safety.

#### **III-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 Final Subdivision Plats (Appendix F).



## **IV. REVIEW PROCEDURES FOR MINOR SUBDIVISIONS**

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

Minor subdivisions create five or fewer lots from a tract of record, each lot of which has legal and physical access. If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under the MSPA or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201, MCA or 76-3-207 since July 1, 1973, the subdivision shall be considered a first minor subdivision. All other minor subdivisions shall be considered second or subsequent minor subdivisions.

#### **IV-A-1. First Minor Subdivisions**

For a first minor subdivision created from a tract of record, the requirements for a public hearing and preparation of an environmental assessment do not apply.

- a. Time for Review. The Commission shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within thirty five (35) working days from the date the Planning Office mails a written determination to the subdivider stating that the application contains sufficient information for review, unless the subdivider and the Planning Office consent to an extension or suspension of the review period not to exceed one (1) year.

#### **IV-A-2. Subsequent Minor Subdivisions**

For a second or subsequent minor subdivision created from a tract of record, the requirements for a public hearing and preparation of an environmental assessment apply. The process, requirements, and procedures for review of the Major Subdivision Section apply to a second or subsequent minor subdivision.

#### **IV-A-3. First Minor Subdivision Pre-application Process**

- a. Pre-application Meeting. The subdivider shall meet with Planning Staff (or other authorized agent or agency, designated by the governing body to review subdivision applications) prior to submitting a subdivision application and preliminary plat. The purpose of this meeting is to discuss these Regulations and standards, to identify the state laws, local regulations and any growth policy provisions that may apply to the subdivision review process, familiarize the subdivider with the goals and objectives of applicable plans, regulations and resolutions, and to discuss the proposed subdivision as it relates to these matters. A request for a pre-application meeting shall be made in writing to the Planning Office. The request shall include the owner's name, address and phone number, name, address and phone number of the subdivider, if different than the owner, a complete legal description of the parcel or parcels proposed to be subdivided and a description of the proposed development plans. The pre-application meeting

will be scheduled within thirty (30) days of the Planning Office receiving a written request with all the required information.

- i. If the owner or owners designates a representative to represent the owner at the pre-application meeting, the representative must have a signed designation granting the authority to represent the landowner for the purpose of subdividing the property.
  - ii. The applicant will provide the materials identified in Appendix A, subsection B (Pre-Application meeting) at or before the scheduled pre-application meeting.
  - iii. At the pre-application meeting, the Planning Staff (or other authorized agent or agency, designated by the governing body to review subdivision applications) will provide the subdivider with a list of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the Planning Staff or other authorized agent designated by the Commission contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.
- b. The subdivider shall submit the subdivision application and preliminary plat as provided in III-B-1 of these regulations within one hundred twenty (120) working days of the Planning Office notification of completion of the pre-application process. If an application is not submitted within one hundred twenty (120) working days the subdivider must request a new pre-application meeting and complete the pre-application process as if it were a new proposal.

#### **IV-B. First Minor Subdivision Application and Preliminary Plat**

After the requirement for pre-application review has been satisfied, the subdivider shall submit a subdivision application, including a preliminary plat of the proposed subdivision. Preliminary plats submitted to the Planning Office must conform to the requirements of these Regulations. The preliminary plat shall be prepared by a surveyor licensed to practice in Montana.

##### **IV-B-1. First Minor Subdivision Application and Preliminary Plat Submittal**

The subdivision application and 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 V and be accompanied by the preliminary water and sanitation information.

The subdivider shall submit the following application information to the Planning Office, a sufficient number of copies of the Application for Subdivision Form and all required application materials listed on the Application Form (see Appendix B). These materials include:

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator, as applicable:

1. A completed and signed Subdivision Application Form;
2. The required review fee;
3. A preliminary plat;
4. A Vicinity Sketch;
5. A topographic map;
6. A grading and drainage plan;
7. Engineering plans for all Public and Private Improvements;
8. Overall development plan if development is in phases;
9. Abstract of Title (or Title Report);
10. Lien holders' acknowledgement of subdivision;
11. Documentation of legal and physical access;
12. Documentation of existing easements, including those for Agricultural Water User Facilities;
13. Existing covenants and deed restrictions;
14. Existing water rights;
15. Existing mineral rights;
16. Names and addresses of all adjoining property owners;
17. Proposed road plans and profiles;
18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
19. Proposed easements;
20. Proposed disposition of water rights;
21. Proposed disposition of mineral rights;
22. Parkland dedication calculations;
23. Environmental assessment and/or summary of probable impacts;
24. Transportation impact analysis or transportation plan;
25. Fire risk rating analysis and fire prevention plan;
26. Weed management plan and re-vegetation plan;

27. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
28. FIRM or FEMA panel map and letter identifying floodplain status;
29. Required water and sanitation information;
30. Copies of any review by DEQ or sanitarian under 76-4-134, MCA on the subject property or adjoining properties;
31. A form of Subdivision Improvements Agreement, if proposed;
32. Letter requesting a revocation of agricultural covenants;
33. Letter indicating locations of cultural or historic resources;
34. Variance request or approval;
35. Re-zoning application or approval;
36. Flood hazard evaluation;
37. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
38. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

The requirement for preparing an summary of probable impacts does not apply when the subdivision meets the requirements of 76-3-609(2)(d)(ii), MCA.

\* If the subdivider of a first minor subdivision is requesting a variance from the design and improvement standards, Section V, of these Regulations, the procedures of Section VIII-B must be followed. First minor subdivisions are exempt from the requirement for a public hearing on variance requests. Subsequent minor subdivisions shall comply with requirements for public hearings on variances.

#### **IV-B-2. Application Review**

The time limits for the element and sufficiency reviews of this subsection apply to each successive submittal of the application materials until a determination is made that the application contains the required elements and is sufficient for review and the subdivider or their agent is notified in writing.

The Planning Office shall be the entity to complete element and sufficiency review regardless if the subdivider has applied to the MDEQ first pursuant to 76-4-129, MCA.

## 1. Element Review

- a. Within five (5) working days of the receipt of the elements required in Section III-B-1 the Planning Office shall determine whether the application contains all the elements required for submittal.
- b. The County shall transmit via regular mail, email, or fax a written determination to the subdivider stating whether the application does or does not contain the required elements and specifying what, if any, elements are necessary to make the application complete.

## 2. Sufficiency Review

- a. Within fifteen (15) working days of the issuance of a determination that an application contains all the necessary elements for review, the Planning Office shall determine whether the application and supporting materials are sufficient to allow for the review of the proposed subdivision.
- b. The County shall transmit via regular mail, email, or fax a written determination to the subdivider stating whether the application does or does not contain sufficient information for processing and what, if any, elements require additional information to make the application sufficient for review.
- c. A determination that an application contains sufficient information for review as provided in this subsection does not ensure that the proposed subdivision will be approved or conditionally approved by the Commission and does not limit the ability of the Planning Office, Planning Board or Commission to request additional information during the review process.
- d. A determination of sufficiency by the Planning Office does not limit the MDEQ from requiring more water and sanitation information as part of the MDEQ's review of water and sanitation information.

**The thirty-five (35) working day review period commences on the date that the Planning Office mails a written determination to the subdivider stating the application contains sufficient information for processing.**

## **IV-B-3. Date of Sufficiency and Related Review Standards**

Subdivision review under these Regulations may occur only under those regulations in effect at the time the Planning Office mails a written determination to the subdivider stating the application contains sufficient information for processing. If regulations change during the element and/or sufficiency review by the Planning Staff, the element and sufficiency review shall be based on the new regulations.

#### **IV-B-4. Review by Affected Agencies**

After an application is deemed sufficient, the Planning Office may submit copies of the application, preliminary plat, and supplementary information to relevant public utilities and public agencies for review and comment, and to the Planning Board for its recommendation pertaining to the approval, conditional approval or denial of the subdivision application. Review by public agencies or utilities may not delay the Commission's consideration of the subdivision application beyond the statutory specified review period. If the Planning Office shall request review by a public utility, agency of government, and other parties regarding the subdivision application that was not identified during the pre-application review the Planning Office shall notify the subdivider. The Planning Office will make these comments available to the subdivider and to the general public upon request.

#### **IV-B-5. Review by Outside Expertise**

The Planning Office, Planning Board, and the Commission may employ outside expertise to assist with the review of a subdivision application and preliminary plat. The Commission shall assess the costs of employing outside expertise to the subdivider.

#### **IV-B-6. Public Hearings and Notices**

First minor subdivisions are exempted from the requirement to hold public hearings (76-3-609(2)(d), MCA).

#### **IV-B-7. Planning Board Review, Consideration, and Recommendation**

1. **Public Meeting.** At a regularly noticed meeting the Planning Board shall review all first minor subdivision applications, together with the required supplementary plans and information, and determine whether the subdivision application and preliminary plat are in compliance with these Regulations.

**Noticing.** Notice of the time and date of the Planning Board meetings is published regularly in a paper of local circulation. The agenda is available at the Planning Office.

2. **Public Testimony.** All written public comment received at or prior to a public meeting shall be incorporated into the written record of the review. Minutes shall be taken of verbal comment received during the public meeting before the Planning Board and shall be incorporated into the written record of the review. Copies of the minutes and written comments shall be included in any recommendation made to the Commission by the Planning Board.

3. Consideration. In recommending to approve, conditionally approve, or deny the subdivision and preliminary plat, the Planning Board will consider the following:
  - a. relevant evidence relating to the public health, safety, and welfare;
  - b. summary of probable impacts
  - c. the review criteria specified in Section IV-B-10-f of these regulations;
  - d. whether the application and preliminary plat conforms to the provisions of the following; and
    - i. the MSPA;
    - ii. these Regulations;
    - iii. applicable zoning regulations;
    - iv. other regulations in effect in the area of the proposed subdivision;
    - v. whether the MDEQ has approved the proposed subdivision for proposed subdivisions that will create parcels of less than twenty (20) acres; and
    - vi. whether the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot for a proposed subdivision that will create one or more parcels containing twenty (20) acres or more.
  - d. Planning Staff recommendation
  - e. Within 10 working days after the public meeting, the Planning Board will submit to the Commission a recommendation for approval, conditional approval (including any recommended conditions/mitigation measures), or denial of the subdivision application and preliminary plat.

#### **IV-B-8. Water and Sanitation Information**

The Planning Staff shall at any public meeting collect public comment given regarding the information required in Appendix A for water and sanitation. The Commission shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) working days after conditional approval or approval of the subdivision application.

- a. Comments. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the Commission to the:

- i. Reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
  - ii. Carbon County Sanitarian for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.
- b. Parcel Size.
  - i. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the Commission may require approval by the MDEQ as a condition of approval of the final plat.
  - ii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the Commission may condition approval of the final plat upon the subdivider demonstrating, pursuant to [SB 290, section 4], that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.



#### **IV-B-9. Commission Hearing**

First minor subdivisions are exempted from the requirement to hold public hearings (76-3-609(2)(d), MCA).

#### **IV-B-10. Commission Review, Decision, and Documentation**

The Commission, at a public meeting will approve, conditionally approve, or deny the subdivision application and preliminary plat within thirty five (35) working days as provided in IV-D of these regulations, unless the subdivider and the Planning Office consent to an extension or suspension of the review period not to exceed one (1) year.

- a. Basis for Decision. The basis for the Commission's decision to approve, conditionally approve, or deny a subdivision is whether the proposed subdivision application, the preliminary plat; the Planning Board's comments and recommendations; the Planning Office staff report and recommendation; and any additional information authorized by law demonstrates that development of the proposed subdivision would meet the requirements of the Montana Subdivision and Platting Act [76-3-608 (3)(a), MCA] and the Carbon County Subdivision Regulations.
- b. Growth Policy. The Commission may not withhold, deny or impose conditions on a subdivision based solely on compliance with the officially adopted Carbon County Growth Policy [76-1-605(2)(b), MCA].
- c. Water and Sanitation. The Commission may conditionally approve or deny a proposed subdivision application as a result of the water and sanitation information provided in Appendix A or public comment received pursuant to Section IV-B-8 on the water and sanitation information only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the Commission has the authority to enforce.
  - i. For a proposed subdivision that will create one or more parcels containing less than twenty (20) acres, the Commission may require approval by the MDEQ as a condition of approval of the final plat.
  - ii. For a proposed subdivision that will create one or more parcels containing twenty (20) acres or more, the Commission may condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

d. Educational Services. The Commission may not deny approval of a subdivision based solely on the subdivision's impact on educational services [76-3-608(1), MCA].

e. Conditions/Mitigation. The Commission may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required by these Regulations. The Commission shall issue written findings to justify the reasonable conditions/mitigation:

- i. In reviewing a subdivision under this Section and when requiring conditions/mitigation the Commission may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.
- ii. When considering a proposed subdivision application and requiring conditions/mitigation under this Section, the Commission shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

f. Findings of Fact. In reviewing the subdivision the Commission will issue written Findings of Fact that discuss and weigh the following criteria:

- i. Impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety. Subdivisions that meet the criteria of 76-3-616, MCA, are exempted from the requirement to review these criteria.
- ii. Compliance with the survey requirements of the MSPA.
- iii. Compliance with these Regulations, and the review procedures of these Regulations.
- iv. The provision of easements for the location and installation of any planned utilities.
- v. 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.

g. Written Statement. The Commission shall prepare a written statement on its decision and forward that statement to the subdivider within 30 working days following the oral decision on a subdivision application. The statement shall be available for public review in the subdivision file. The written statement shall provide:

- i. Information regarding the appeal process for the denial or the impositions of conditions.
- ii. Identification of regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions.
- iii. The facts and conclusion that the Commission relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision.
- iv. The conditions/mitigation that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.

#### **IV-B-11. First Minor Subdivision Plat Approval Period**

Upon approving or conditionally approving a subdivision application and preliminary plat, the Commission will provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than two (2) calendar years. At the end of this period the Commission may, at the request of the subdivider, extend its approval for a period of one (1) year. The Commission may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the Commission and the subdivider.

#### **IV-B-12. Additional Conditions After Approval**

After the subdivision application and preliminary plat are approved, the Commission may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period described in these Regulations.

The Commission 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.

#### **IV-B-13. First Minor Amended Applications**

- a. If the subdivider changes the subdivision application prior to the Planning Board meeting, the subdivider shall submit the amended application to the Planning Office.
  - i. Within five (5) working days of receiving the amended application, the Planning Staff shall determine whether the changes to the subdivision application are material.

- ii. The thirty five (35) working day review period is suspended while the Planning Office considers the amended application.
  - 1. If the Planning Staff determines the changes are material, the Planning Staff may require the subdivider to schedule a new pre-application meeting and resubmit the application as a new first minor subdivision application.
  - 2. If the Planning Office determines the changes are not material, the thirty five (35) working day review period resumes when the Planning Office sends notice of the decision to the subdivider.
- b. If the subdivider changes the subdivision application after the Planning Board meeting but before or at the Commission public meeting, the subdivider shall submit the amended application to the Planning Office for review.
  - i. Within five (5) working days of receiving the amended application, the Planning Staff shall determine whether the changes to the subdivision application are material.
  - ii. The thirty five (35) working day review period is suspended while the Planning Staff considers the amended application.
  - iii. If the Planning Staff determines the changes are not material, the thirty five (35) working day review period resumes when the Planning Staff sends notice of the decision to the subdivider.
  - iv. If the Planning Staff determines the changes are material, the Planning Staff shall either:
    - 1. require the subdivider to begin the subdivision review process again, starting with the pre-application process, and require payment of a new application fee; or
    - 2. schedule a new Planning Board meeting to review the amended application. A supplemental staff report shall be prepared to address the changes to the original application. An additional application fee may be charged.
  - v. If a second Planning Board meeting is held, the thirty five (35) working day review period is suspended for the time period between notice of the Planning Staff's determination and ten (10) days after the date of the second Planning Board meeting.
- c. By making changes resulting in an amended application, the subdivider consents to suspension of the review period as provided in these Regulations.

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

- i. configuration or number of lots;
- ii. road layout or size;
- iii. water and/or septic proposals;
- iv. configuration of park land or open space;
- v. easement provisions; and
- vi. designated access.

#### **IV-B-14. Resubmittal of a Denied First Minor Subdivision**

Following denial of a subdivision application and preliminary plat by the Commission, a new application for the same property may not be submitted unless the following criteria are met:

- a. The new subdivision application and preliminary plat must clearly address or mitigate health and safety and/or design standards which were the basis of the original preliminary plat denial; and
- b. The new subdivision application and preliminary plat must clearly address the six (6) criteria under 76-3-608(3)(a); and
- c. The new subdivision application and preliminary plat application must comply with any adopted zoning regulation.

#### **IV-C. Final Plats**

##### **IV-C-1. Final Plat Required**

After the conditions/mitigation of preliminary approval and the requirements for the installation of improvements have been satisfied, the subdivider shall cause to be prepared a final plat. The final plat must be submitted prior to the expiration of the preliminary plat approval period. See Appendices A and B for required final plat contents and final plat application materials.

##### **IV-C-2. Review of Abstract and Covenants.**

The certificate of a licensed title abstractor, a copy of the covenants and evidence that the conditions of the preliminary plat approval have been satisfied shall be submitted

to the Planning Office for its review and approval at least 30 days prior to submitting an application for final plat approval.

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

The Planning Office will examine the final plat contents and required final plat application materials and recommend approval only when it conforms to the conditions set forth in the preliminary plat approval, and the terms of the MSPA and these Regulations.

The Commission 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].

- a. Final Plat Submittal. The final plat and all supplementary documents shall be submitted to the Planning Office at least thirty (30) working days prior to the expiration of preliminary plat approval or any extension thereto. The submittal shall include: a final plat application, the appropriate fee, all required information, County Attorney approvals (as necessary), and a written explanation of how each of the conditions of preliminary approval has been satisfied (Appendices A and B).
- b. Review by Planning Office. The Planning Office shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The Planning Office will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete by the Planning Office until all conditions of preliminary approval have been satisfied, including but not limited to:
  - i. Signed final plat certificates.
  - ii. Fire protection requirements approved by the appropriate fire district or fire service area.
  - iii. Signed Memorandum of Understanding between the subdivider and the Weed Department
  - iv. County or State encroachment or access permits
  - v. Documents that may require the approval of the County Attorney, include but are not limited to:
    - a. Articles of Organization or Incorporation for the Property Owner's Association, filed with/by the Montana Secretary of State.
    - b. Bylaws controlling the operation of the Property Owners' Association

- c. Restrictive and Protective Covenants encumbering the real property contained within the subdivision.
  - d. Restrictive Deed transferring title of all common open space parcels within the subdivision to the Property Owner's Association.
  - e. Declaration of Unit Ownership (condominiums)
  - f. Public/Private road easements
  - g. Improvements agreements
  - h. Certificate of a licensed Title Abstractor
- vi. The Commission may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to these Regulations, the examining surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

#### **IV-C-4. 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 G).

#### **IV-C-5. Final Plat Approval**

- a. Approval by the Commission: The Commission shall examine every final subdivision plat and within thirty (30) working days of its submission to the Planning Office shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these Regulations.
  - i. If the final plat is approved, the Commission shall certify its approval on the face of the final plat. When applicable, a certificate of the Commission 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.
  - ii. If the final plat is denied, the Commission shall write a letter stating the reason for denial and forward a copy to the subdivider. The Commission will return the final plat to the subdivider within ten (10) working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

- b. Final Plat Substantially Different: If the final plat differs substantially from the approved preliminary plat, the Commission shall return the final plat to the Planning Office and/or the Planning Board for additional review.
- c. Inaccurate information: The Commission may withdraw approval of a final plat if it determines that material information provided by the subdivider is inaccurate.

#### **IV-C-6. Final Plat Filing**

After it is approved, the final plat may not be altered in any manner except as provided in III-D. The Clerk and Recorder may not accept any plat for filing that does not bear the Commission'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 F).

- a. **Approval Period**

Final Plat approval shall be in force not more than three (3) years from the date the governing body's approval. At the end of the period the governing body may at the written request of the subdivider upon further review and recommendations from the Planning Board extend its approval for a mutually agreed upon time frame.

#### **IV-D. Amended Plats**

- a. 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, or abandons a public dedicated road right-of-way must be reviewed and approved by the Commission.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The Commission may not approve an amended preliminary plat without the written consent of the owners (or lenders) of all lots which will be modified by the proposed amendment.
- c. The Commission may not approve an amendment that will place a lot in non-conformance with the design standards contained in Section V of these regulations unless the Commission holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section VIII-B Variances.



- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats (Appendices A, B and F).
- e. Plats may only be amended for reasons of public health and safety.

#### **IV-D-1. Amended Conditions**

- a. Any proposed amendments to the conditions of preliminary and final approval shall be reviewed and approved by the Commission.
- b. The Planning Board shall review the proposed amendment(s) and make a recommendation to the Commission whether to approve or deny the proposed amendment(s).
- c. The Commission may not approve an amended condition without the written consent of the owners or lenders of all lots which will be affected by the amended condition.
- d. A proposed amendment to the conditions of preliminary and final approval is subject to the procedures for reviewing major or minor subdivisions, as appropriate.
- e. Conditions may only be amended for reasons of public health and safety.

#### **IV-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 F).

## **V. DESIGN AND IMPROVEMENT STANDARDS**

All subdivisions approved by the Commission must comply with the provisions of this section, except where granted a variance pursuant to Section VIII-B, Variances. The Commission may not grant variances from the provisions of Section V-A-5 Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to Sections VI and VII of these regulations.

### **V-A. General Standards**

#### **V-A-1. Conformance**

The design and development of a subdivision should be consistent with and conform to resolutions, zoning regulations, and these Regulations.

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

The design and development of subdivisions shall, insofar as it is possible preserve or enhance the natural terrain, prominent ridgelines, natural drainage, floodplain, existing topsoil, trees and other natural vegetation.

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

Land which the Commission determines is unsuitable for subdivision because of natural or human caused hazards such as flooding, land slides, excessive slope, rock falls, snow avalanches, subsidence, high water table, polluted or non-potable water; or because of unreasonable burdens on the general public such as the requirements for the excessive expenditure of public funds, environmental degradation, and congestion in the roads shall not be subdivided for building or residential purposes unless the hazards or excessive public burdens are eliminated or will be overcome by appropriate design and construction plans certified by a registered engineer.

#### **V-A-4. Re-Vegetation**

All areas disturbed during construction shall be revegetated with vegetation types approved by the Weed Control Supervisor. All disturbed areas shall be reseeded and/or revegetated and maintained with techniques and schedules approved by the Weed Control Supervisor.

#### **V-A-5. Construction Setbacks from Perennial Streams and Waterbodies**

The river, stream, pond, and lake frontage property in Carbon County is among the most desirable for new development. It is also recognized that the frontage is of major ecological importance for wildlife habitat and protection of water quality.

The minimum construction setbacks may be specified in order to protect riparian areas, wetland, trout spawning areas, critical wildlife habitat, fragile areas, or important historical or archaeological sites.

The following are factors that may be considered a basis for establishing construction setbacks in new subdivisions:

- a. The width of the riparian area;
- b. The location of critical wildlife habitat on the land proposed for subdivision;
- c. Protection of riverbank stability, trees, water quality, and trout spawning areas;
- d. The location of an important historic or prehistoric site on the property; and
- e. To protect the viewshed.

The Planning Board and Commission may consult with the appropriate agencies, (including but not limited to the Montana Department of Fish, Wildlife, and Parks; the Environmental Protection Agency; United States Fish and Wildlife Service; the United States Forest Service; the Carbon County Conservation District; and the State Historic Preservation Office), prior to recommending a setback.

Any mitigation measures proposed by the subdivider shall be considered prior to the establishment of a setback.

#### **V-A-6. Floodplain Provisions**

- a. General. Land subject to being flooded by a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the Commission to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations. Land deemed to be subject to flooding by the Commission may include (but is not limited to) land subject to 100-year flooding, 500-year flooding, shallow flooding, groundwater rise, historically flooded lands located in proximity to a watercourse.
- b. Flood Hazard Evaluation Required. If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a perennial 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 H 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 Office along with the Environmental Assessment required for the preliminary plat.

- c. Waiver. The Commission may waive the flood hazard evaluation requirement where the subdivider contacts the Water Resources Division, DNRC, and that agency states in writing that data indicates that the proposed subdivision is not in the flood hazard area as defined in this Section. In considering a waiver, the Commission shall consult with the Carbon County Floodplain Administrator.
- d. Subdivision of Land within a 100-year Delineated Floodplain. Where the 100-year floodplain has been delineated and mapped in a County approved study, the following standards shall apply to all proposed subdivisions:
  - i. When feasible subdivision roads, bridges, and utilities shall not be located within the 100 year floodplain.
  - ii. Lots with any area proposed to be within the 100-year floodplain shall designate a building lot on the plat. Any building lot or improvement located within 100-year floodplain must be permitted and constructed before final plat approval or covered by a subdivision improvement agreement.
  - iii. Land within the 100-year floodplain may be used for open space, wildlife habitat, recreation, and parks.
- e. Plat Map Requirements. New developments within any land located in 100-year flood hazard areas designated by the regulatory study (FEMA State of Montana or County-approved study) shall field survey the base flood elevation and show the limits on the plat map. Base flood data and the boundary of the base flood and floodway through the subdivision shall also be shown on the plat map.

#### **V-A-7. Improvement Design**

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the Commission 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.

#### **V-A-8. Lots**

Lot size, width shape, and orientation shall be appropriate for the location and contemplated use of the subdivision. Lot designs with irregular shapes, narrow necks, points and flag shapes shall be permitted only when the subdivider can demonstrate that the proposed lot designs are necessary due to topography or other physical constraints. Each lot shall contain a satisfactory building site and conform

to zoning regulations, and to the regulation of MDEQ. Slopes in excess of 25 percent (25%) shall be presumed unsuitable for building sites unless otherwise proved by the subdivider with designs and plans stamped and certified by a Professional Engineer.

- a. No lot shall be subdivided by a dedicated right-of-way or easement, which would reduce the buildable area to a size less than required by these and other adopted regulations.
- b. No lot may be divided by a municipal or county boundary line.
- c. Each lot must abut and have access to a public or private street or road.
- 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 with less than 200 feet average width, may have an average depth greater than three times its average width.
- f. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- g. Double frontage 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.

#### **V-A-9. Blocks**

- h. Blocks shall 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.
- i. Block length shall not be designed, unless otherwise impractical, to be more than one thousand two hundred feet (1,200') or less than four hundred feet (400') in length.
- j. Blocks shall 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 Commission approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.

- k. Rights-of-way for adequate and safe pedestrian access, not less than 10 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

#### **V-A-10. Roads and Streets**

##### **a. General Design**

- i. Roads. The arrangement, type, extent, width, grade, and location of all roads (including but not limited to county and private, 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. All internal subdivision roads and all roads accessing the subdivision shall be brought up to county standard.
- ii. Design. The road standards in these Regulations shall apply to all construction, reconstruction, and paving of roads. Roads must meet the design specifications in Table 1.
- iii. Relation to Un-Subdivided Areas. When a new subdivision adjoins unsubdivided Land (lands or parcels not created by a recorded subdivision plat) and access to the un-Subdivided land must pass through the new subdivision, the subdivider shall provide rights-of-way and construct county standard roads so as to allow suitable access to the un-Subdivided Land.

This requirement may be waived by the Commission when the Planning Office finds that one of the following criteria is met:

- 1. Topography or other physical conditions would make it impracticable to provide access to adjacent un-subdivided land.
- 2. Adequate public access is otherwise available to the adjacent un-subdivided property.
- 3. When the adjoining un-subdivided property is under public ownership.

This requirement shall be waived by the Commission if the adjoining un-subdivided property is subject to a conservation easement or other legally restrictive covenant as confirmed by the County Attorney or a Civil Attorney for Carbon County.

- iv. Relation to Subdivided Areas. The subdivider shall arrange the roads to provide for the continuation of roads between adjacent subdivided properties (lands or parcels created by a recorded subdivision plat) when such continuation is necessary for the convenient movement of traffic,

connection of neighborhoods, effective provision of emergency services, and provision of utilities.

- v. Turnaround Required. No dead end roads shall be permitted without an approved turnaround. Where streets terminate the subdivider shall provide a cul-de-sac. A “T” turnaround may be allowed for roads that serve five (5) lots or less. Cul-de-sacs and “T” turnarounds shall conform to the design specifications in Table 1. Where it is planned that a dead-end road will be extended in the future, a temporary cul-de-sac or “T” turnaround shall be provided.
- vi. Ownership. All roads must either be dedicated to the public or be private roads, with public or private access, to be owned and maintained by an approved property owners’ association. The following certificate of dedication must be included on the face of the plat:

*(I), (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots , parcels, blocks, roads and alleys, and other divisions and dedications , as shown by this plan hereunto included the following described tract of land ( insert description) . The above described tract of land is to be known and designated as \_\_\_\_\_, Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.*

- vii. Access. To facilitate traffic, the provision of emergency services, and the placement of utility easements, the subdivider shall provide all subdivisions with six (6) or more lots with two (2) means of physical access. The subdivider may be required to provide a second access for minor subdivisions if the following conditions exist: the maximum cul-de-sac length standard is exceeded or topography or physical conditions so warrant. Residential driveways shall not have direct access to primary highways. Any vehicular access onto a state highway shall be approved by the MDOT.
- viii. Through Traffic. Local streets must be designed so as to discourage through traffic.
- ix. Frontage Roads. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the Commission may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.

- x. Half Streets. Half streets are prohibited except when they are essential to the development of the subdivision and when the Commission 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.
- xi. Sight Distance. The alignment of all streets and roads must provide adequate sight distances as specified in Table 1.
- xii. Intersections. The following requirements apply to intersections:
  - a) roads must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
  - b) two roads meeting a third street from opposite sides must be offset as specified in Table 1.
  - c) no more than two roads may intersect at one point.
  - d) intersections of local roads 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 three percent.
- xiii. Names. 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.

**b. Improvements**



- (i) Permit Required. Any work on a Carbon County road requires a permit application and approval through the Carbon County Commissioner's office. Application materials are available from the County Commissioner's office.
- (ii) Standards. All roadway improvements including pavement, shoulders, swales, curbs, gutters and drainage must be constructed in accordance with the specifications and standards prescribed in these Regulations.
- (iii) Subgrades. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the County Road Supervisor.
- (iv) Cut and Fill Slopes. Cut and fill slopes should be laid back to a 3:1 (Run : Rise) angle of repose to prevent erosion.
- (v) Fill Sections. For compaction of subgrades, fill sections should be placed in layers and compacted to 90 percent relative density. Water should be applied to obtain optimum moisture content for proper compaction.
- (vi) Clearing and Grubbing. The road right-of-way or easement should be cleared two feet beyond the toe of the fill and the top of the cut as illustrated in Figure A. Brush, stumps, logs, debris, and boulders should be removed from the right-of-way or easement and disposed of in a suitable manner, such as by burning or burying. The proper authorities should be consulted for permits and regulations on the chosen means for disposal. Topsoil must be stripped whenever terrain will permit and stockpiled for use in reclaiming borrow areas and cut and fill slopes.
- (vii) Switch Backs. Switch backs should be avoided, but if terrain makes them necessary they should consist of:
  - a. Fifty (50) feet minimum turning radius;
  - b. Six (6) percent maximum grade through curves;
  - c. Eight (8) percent maximum grade on straightaways; and
  - d. Road surface width increased by four (4) feet through curves.
- (viii) Gravel Road Standards.
  - a. Base course material shall be placed not less than nine (9) inches in depth.

- b. Surface material shall be placed not less than three (3) inches in depth and shall consist of the following mixture:

(ix) Improved Road Material Standards. (See also Table 1, Figure 1)

- a. Crushed or screened base, 9" minimum depth.
- b. Crushed cushion aggregate, 1" minus, 4" minimum depth.
- c. Plant-mix bituminous surface, 3" minimum depth.

(x) Roadway Drainage. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.

- a. Road Surface. The road surface shall be sloped with a crown of -2% to -6%, depending on the type of soil in the subgrade. Poorly drained subgrade soil (heavy clay, for instance) will require a steeper crown than if the subgrade material is well-drained sand and gravel.
- b. Drainage Ditches. Drainage ditches along the sides of gravel roads shall have a minimum grade of 0.4%, and may have grades up to 8.0% where lined with established grasses or rip rap, or where velocity control devices are provided. Plain soil and unlined ditches should not exceed a Run: Rise ratio of 1:1/2:1 (See Figure 1).
- c. Culverts. Culverts are required where roads cross any ditch or watercourse. They are also needed at intersections with other roads and at designed intervals underneath elevated portions of roadways to prevent ponding. It is preferable to provide drainage at frequent intervals rather than concentrating water into one large conduit. Culverts should be sized to the maximum expected flow in fifty years for a given location, with consideration to the size of the watershed, permeability of the soil, vegetation and slope of drainage ditch. They should be of sufficient length to allow construction of a driving surface consistent with the width of adjacent sections of the roadway. Installation of the culverts should be in accordance with generally accepted standards, with attention given to the details of bedding, compaction, and erosion control.

The following are considered to be acceptable culvert materials:

- (a) Corrugated galvanized steel (AASHTO M36 OR M218);
    - (b) Corrugated aluminum (AASHTO M196); or
    - (c) Corrugated polyethylene pipe (AASHTO M252 and M294).
  - d. Roadway drainage features shall not cause discharge which will in any way adversely affect neighboring property.
- (xi). Reclamation of Disturbed Areas. In order to protect the land from erosion and the spread of noxious weeds disturbed areas must have their vegetation reestablished. Disturbed areas, cut and fill slopes and borrow areas must be covered with topsoil, mulched and planted with appropriate vegetation as required in the designed by the subdivider and approved by the Weed District. The choice of species and techniques for installation shall be as specified in the approved Noxious Weed and Revegetation Plan for the subdivision.
- If noxious weed growth appears on private roads, immediate steps must be taken by the property owners' association to remove or treat the infestation to prevent spreading.
- (xii) Preservation of Existing Vegetation. Existing trees and other vegetation shall be preserved where possible. Plants may be required for buffering, screening, or soil erosion protections and are subject to approval by the Commission.
- (xiii) Easements. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1.
- Easements must be granted by each property owner in a signed and notarized document (Appendix I contains a model road access easement).
- The location of any road easement must be shown on the preliminary and final plat. 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.
- (xiv) Bridges. Bridges shall be considered an integral part of any subdivision roadway system and, where required, shall meet the minimum standards for minor collectors (secondary roads) and local roads as specified by the American Association of State Highway and Transportation Officials (AASHTO)

- (xv) Lighting. Street lights shall 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.
- (xvi) Signs. Street or road signs and traffic control devices of the size, shape, and height as specified by standards must be placed at all intersections. Traffic control devices shall conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- (xvii) Paving. Paving is recommended and may be required if it is deemed necessary in order to control erosion, dust, and preserve the natural environment.
- (xviii) Rights-of-Way Maintenance. All road shoulders shall be mowed and kept clear of all flammable materials.
- (xix) Guardrails. Guardrails may be required due to the topography of the subdivision and course of the right-of-way and any potential hazards adjacent to the driving surface.

**c. Improvements Completion and Certification**

- (i) Prior to Final Plat. All roadway improvements shall be completed to the filing of a final plat or shall be guaranteed by the subdivider through an acceptable guaranty.
- (ii) Major Subdivisions. All roadway improvements that access or are within major subdivisions (six (6) lots or more) shall be designed by and constructed under the supervision of a registered professional engineer as required by the laws of the State of Montana. When required by the Road Supervisor as-builts shall be submitted to the Road Department after completion.
- (iii) Minor Subdivisions. Roadway improvements that access or are within minor subdivisions shall be designed and constructed under the supervision of a registered professional engineer as required by the laws of the State of Montana only when County Officials have made a determination that, due to site-specific characteristics, it would be in the public interest to require engineering design and construction supervision of the improvements as required by the laws of the State of Montana. Factors which County Officials shall consider when making this determination include:
  - a. topography (grade, slopes, and side slopes);

- b. soil type;
- c. presence of surface water or high ground water;
- d. visibility and alignment;
- e. existing roadbed and surface material (where present);
- f. anticipated traffic loads;
- g. proposed maintenance arrangements; and
- h. other site-specific factors.

- (iv) Certification of Improvements. Roadway improvements which have been designed by and constructed under the supervision of a registered professional engineer shall, upon completion of their construction, be certified by the engineer as meeting the standards herein as a condition of filing the final or minor subdivision plat. Engineering certification shall also be a condition of the County's issuance of a Satisfaction of Improvements Guarantee in the event the improvements were not constructed and certified prior to the filing of the final or minor subdivision plat. NOTE: Under certain conditions, the County may not issue a Satisfaction of Guarantee until a up to a one year period has passed to evaluate the performance of the guaranteed improvement.

<b>Table 1-Road Design Standards for Subdivisions</b>			
	<b>Community Roads</b>	<b>Multi-Residence</b>	<b>Private Driveway</b>
	6 or more lots	2-5 lots	1 lot
<b>Right of Way/Easement Width</b>	60'	60'	40'
<b>Driving Surface Width<sup>1</sup></b>	24'	22'	16'
<b>Cattle Guards</b>	Same width as driving surface		
<b>Maximum Grade less than 100'</b>	8%	10%	10%
<b>Maximum Grade for more than 100'</b>	8%	8%	8%
<b>Maximum Grade within 50' of intersection</b>	3%	5%	5%
<b>Minimum Site Distance</b>	PER AASHTO REQ.	PER AASHTO REQ.	PER AASHTO REQ.
<b>Turning/curve radius</b>	107'	107'	40'
<b>Minimum Intersection offset</b>	200'	150'	75'
<b>Cul de Sac</b>			
Max. length	1000'	1000'	1000'
Outside R/W Radius	60'	60'	45'
Outside Roadway Radius	45'	45'	45'
<b>T- Turnaround</b>			
Minimum backup lengths (2 required)		30 ft.	30 ft.
<b>Bridges</b>			
Curb to Curb Width <sup>2</sup>	Same width as driving surface plus two feet on each side		
AASHTO Design Load	20 tons	20 tons	20 tons
Minimum Vertical Clearance	15'	15'	15'
<b>Tunnels</b>			
Curb to Curb Width	Same width as driving surface plus two feet on each side		
Minimum Vertical Clearance	15'	15'	15'

<sup>1</sup> Where parking will be permitted add eight feet on each side to be parked. If guardrail installation is required add two feet to each side with guardrail.

<sup>2</sup> Width of the bridge roadway surface shall match the width of the driving surface of the roadway system it joins, unless the driving surface is less than required, in such case a 100' transition zone shall be installed to meet the existing road system.

**Table 1 Figure A**





#### **V-A-11. Drainage Facilities**

- a. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the Commission. 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 and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.
- d. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in road 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 Commission may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the preliminary and final plat and a signed statement granting the easements must appear on the plat.

#### **V-A-12. 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 (DEQ) 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 DEQ standards are incorporated into and made a part of these Regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Before the Commission will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by

DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.

- c. Any central water supply system must provide adequate and accessible water for fire protection.

#### **V-A-13. 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 (DEQ) 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 DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, before the Commission will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.

#### **V-A-14. 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 (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference, this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. In addition, before the Commission 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.

#### **V-A-15. 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. All utilities must be extended to each lot line before final plat approval or be supported by a SIA and appropriate financial guarantee.

- 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 20 feet wide unless otherwise specified by a utility company or the Commission.
- g. When a utility is to be located in an existing, dedicated right-of-way, the subdivider shall obtain a Carbon County Road Work permit, or notice of utility occupancy from MDOT in a state highway.
- h. In addition to showing the location of utility easements on the preliminary and final 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.”

#### **V-A-16. Mail Delivery**

If mail delivery will not be to each individual lot within the subdivision, and mail service is available to the subdivision the subdivider shall provide an off-road area for mail delivery within the subdivision in cooperation with the United States Postal Service. It shall not be the responsibility of the County to maintain or plow any mail delivery area constructed within a County road right-of-way. Mail delivery may not be provided in certain areas of the County. In such instances, the only mail service available would be provided through a rented post office box at the closest post office.

#### **V-A-17. Noxious Weeds**

Noxious weeds shall be controlled as directed by the Weed Control Board in accordance with the Montana County Noxious Weed Control Act.

- a. Prior to application for subdivision and preliminary plat approval, the subdivider shall design a Noxious Weed Control and Revegetation Plan, and the subdivider shall submit the Plan, to the Weed Control Supervisor for a first minor subdivision and to the Weed Control Board for a subsequent minors and major subdivisions for approval. This plan ensures the control of noxious weeds upon approval of the subdivision application and preliminary plat and the revegetation of any lands disturbed during the construction of subdivision improvements.
- b. The subdivider shall submit the approved plan at the time of application for subdivision and preliminary plat approval.
- c. The subdivider shall ensure that after final plat approval the property owner(s) and/or property owners' association shall be responsible for the control of County declared noxious weeds by placing the following covenant on the property:

“The control of noxious weeds by the Association on those areas for which the association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 22-2153) and the rules and regulations of the Carbon County Weed Control District. The landowner shall be responsible for the control of state and county-declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds, after 10 days notice from the Property Owners Association, the Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within 30 days of the mailing of such assessment.”

#### **V-A-18. 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 Commission, 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.

**V-A-19. 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.

**V-A-20. 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 Commission 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 may not be required for:
  - (1). Minor subdivisions.
  - (2). Land proposed for subdivision into parcels larger than five acres.
  - (3). Subdivision into parcels that are all nonresidential.

- (4). A subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums.
  - (5). A subdivision in which only one additional parcel is created.
- c. The Commission, 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.
  - (1). A “cash donation” is the fair market value of the unsubdivided, unimproved land.
  - (2). Where cash has been accepted in lieu of land dedication it shall be stated on the plat.
  - (3). Where cash has been accepted in lieu of land dedication, the Commission shall record in the minutes of the meeting upon the proposed subdivision when the dedication of land for parks and playgrounds was undesirable.
  - (4). The subdivider shall provide a current appraisal of the fair market value by a certified real estate appraiser of their choosing. The appraisal fee shall be the responsibility of the subdivider.
- d. All subdivisions shall be considered residential subdivisions and park dedication requirements shall be satisfied unless there are adopted zoning restrictions which prohibit residential development or it can be shown that the subdivider has immediate plans for non-residential development.
- e. Land dedicated for parkland and recreational purposes shall not be used for the location of water supply and sewage disposal facilities, or storm water detention. Fire fill site ponds may be located within a dedicated park; however, the surface area of the pond cannot count towards the required park dedication.
- f. Park Fund 76-3-621, MCA

5) The local governing body shall waive the park dedication requirement if:

- (a) (i) 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
- (ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);
- (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
- (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection
- (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection
- (1); (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or
- (d) (i) 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
- (ii) 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).

quality of life and recreational opportunities for Carbon County and its residents.

g. Waiver 76-3-621, MCA

- (7) The local governing body may waive the park dedication requirement if:
  - (a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
  - (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).



## **V-A-21. Fire Protection**

**Fire Protection.** All subdivisions must be planned, designed, constructed and maintained so as to minimize the risk of fire, and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. Buildings shall be prohibited in subdivisions or portions of subdivisions where adequate fire protection can not be provided. All subdivisions shall have the availability, through a fire protection district, of fire protection services adequate to respond to fires that may occur within the subdivision as determined by the Board of Commissioners.

**Fire Prevention and Control Plan.** All preliminary plat applications shall contain a Fire Prevention and Control Plan which details how the subdivision will meet the requirements of this section. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A Property Owners' Association must be formed and designated to enforce the provisions of the plan. The fire protection and control plan shall be reviewed by the fire authority having jurisdiction. The fire authority having jurisdiction shall make recommendations to the Board of Commissioners

**Water Supply Requirements.** All new subdivisions shall provide for adequate water supply for fire protection.

- **Commercial Subdivisions including all subdivisions with lots that do not prohibit commercial uses.** Lots that do not prohibit commercial uses or are used for purposes other than for dwellings, parks, open space, drainfield placement or agriculture use shall provide the following;
  1. A municipal water supply system meeting National Fire Protection Association (NFPA) standards or a fire protection water supply system that meets or exceeds the minimum required fire flow and flow duration for buildings as described in the current edition of the Fire Code, as adopted by the State of Montana.
- Major residential subdivisions and residential subdivisions with any lot less than 1 acres shall meet one of the following minimum water supply requirements:

1. A municipal water supply system meeting National Fire Protection Association (NFPA) standards or the current fire code adopted by the State of Montana.
  2. **An approved** underground 30,000 gallon year round water source with approved 6" and 2½" dry hydrant type fittings capable of flowing 1000gpm located not more than **1000 road feet** from the furthest point of any structure located in the subdivision. All tanks will be new and certified by a professional engineer. Installation of these tanks shall be supervised by a professional engineer.
- Minor residential subdivisions with all lot sizes greater than 1 acre shall meet one of the following minimum water supply requirements.
    1. A municipal water supply system meeting National Fire Protection Association (NFPA) standards or the current fire code adopted by the State of Montana.
    2. **An approved** underground 10,000 gallon year round water source, with 6" and 2 ½" dry hydrant type fittings, capable of flowing 1000gpm located **not more than 1000 road feet** from any proposed structure. All tanks will be new or certified by professional engineer. Installation of these tanks shall be supervised by a professional engineer.
    3. **An approved** underground 30,000 gallon year round water source with approved 6" and 2½" dry hydrant type fittings capable of flowing 1000gpm located not more than **one half road mile** from the furthest structure in the subdivision. The water source must have an approved circular turnaround with a minimum easement of 120ft and a minimum road-top surface of 90ft in diameter. There must be a written agreement for the use of the water supply system. All tanks will be new and certified by a professional engineer. Installation of these tanks shall be supervised by a professional engineer.
  - **Water Supply Maintenance.** The subdivider shall provide a written agreement either in the covenants or as a separate contract that ensures

for the continual operation and maintenance of the water supply system. It shall state that it is the responsibility of the Property Owners' Association, the subdivider and the property owners to ensure that the water supply system continually meets its original design criteria, and any improvements required by the fire department. The covenants or contract shall also provide that if the fire department having jurisdiction determines that the property owners within the subdivision are not adequately meeting the requirements for water supply maintenance, the fire department may maintain, improve, or repair the system. The cost of such may be levied against the real property within the subdivision and may be foreclosed in any manner allowed by law.

- **Fire Department Access.** The covenants for the subdivision shall state that the fire department shall have access to all water supply sites for fire suppression, training, and for testing of the system.
- **Additional Water Supply required.** The fire authority having jurisdiction may, at their discretion, request additional water supply or road improvements in areas with special hazards, in areas with limited access, or in areas located more than five road miles from a fire station. The fire authority having jurisdiction will make their recommendations to the Board of Commissioners.
- **Proportionate Reimbursement for the joint use of a fire protection system:** If subsequent subdivisions will be served by an existing water supply site, the County Commission shall include reimbursement of the original water supply site improvement costs as a condition of preliminary approval of the subsequent subdivision. The reimbursement shall be in effect for a period of 15 years from the date of approval of the original subdivision. The proportionate reimbursement shall be determine based on the ratio of the number of lots in the subsequent subdivision to the total lots served by the fill site multiplied by the total cost of the subdivision. When the total cost of the fill site has been reimbursed, subsequent subdivisions shall not be subject to the requirement. Subsequent subdivision must have a contract that makes them proportionally responsible for all improvements and maintenance to the water supply site.
- **Reimbursement qualifications:** The original subdivider shall forward the total costs of the improvement to the planning

department within 60 days of completion of the fire protection system. Subsequent subdivisions shall make their agreement, and payment to the original subdivider, organization or individual responsible for the maintenance of the fire protection system.

**Alternative Fire Protection Features or Systems** –Alternative fire protection technologies, means, features, or systems may be utilized when reviewed by the fire protection authority having jurisdiction and where they provide fire protection equivalent to or greater than required. The fire protection authority having jurisdiction will make recommendations to the Board of Commissioners.

**Driveways to Structures** – To allow for emergency vehicle access to structures, the covenants shall contain language requiring the property owner to provide a driveway meeting the following requirements as approved by the Fire department having jurisdiction;

- For driveways less than 300 feet long a minimum unobstructed driving surface of 12 feet
- for driveways more than 300 feet long a minimum unobstructed driving surface of 16 feet and turnaround including but not limited to a drive-through, cul-de-sac or hammerhead turn-a-round within 50 feet of the building or structure

**High Fire Hazard Areas.** Subdivisions in high fire hazard areas as determined by the chief of the fire department having jurisdiction shall be adequately designed and maintained to provide for fire protection.

- In high fire hazard areas the Fire Prevention and Control Plan shall also include the following:
  - (i) An analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
  - (ii) A map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;
  - (iii) A map of the areas that are to be thinned maintained in a to reduce the interlocking canopy of trees;

- (iv) The identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.
  - (v) The designation of building envelopes. Building sites must be prohibited (and designated on the plat) on slopes greater than 20 percent or at the apex of “fire chimneys” (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- At least two entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles and be constructed to County minimum standards (refer to road standard requirements) except that the turning radius shall be 100 feet minimum for curves and switchbacks. Bridges providing access to the subdivision must be built to a design load of AASHTO H-20 and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.
  - The Fire Prevention and Control Plan must be implemented before the Commission will approve the final plat, and will be considered part of the subdivider’s obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan and make recommendations to the Board of Commissioners. The Plan will not be considered fully implemented until that the Plan has been completed as approved by the Commission.
  - Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
  - The subdivider shall use the July 1993 *Fire Protection Guidelines for Wildland Residential Interface Development (FPGWRID)* or a nationally recognized code that details proper development in the wildland urban interface as a model. The standards within *FPGWRID* shall be considered best practices and shall be incorporated into the Fire Prevention and Control Plan for the subdivision.

**Mapping** –A map or electronic file, in the format approved by the Fire department, of the subdivision shall be provided to the fire department indicating streets, addresses, street names, fire protection features, lot lines, building envelopes, utilities, easements, etc.

**Certification**, prior to final plat approval a Professional Engineer shall certify in writing to the Fire Department Authority having jurisdiction that all required fire protection systems and roadways have been properly built and meet their original design criteria.

**Construction.** The covenants must contain language that requires that No building construction shall begin within a subdivision until the fire department having jurisdiction has received a certification that the provisions for fire protection have been met. Whenever work is being done contrary to the provisions of this section the fire department having jurisdiction may recommend to the Board of Commissioners to order the work to be stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall stop such work until authorized by the fire department to proceed with the work.

#### **V-A-22. Law Enforcement and Fencing Requirements**

Each subdivision shall be reviewed by the local law enforcement authority. The developer shall provide local law enforcement with a packet for comment before the subdivision is submitted to the county. The developer shall incorporate any reasonable comments from law enforcement into the proposed subdivision.

**Historical location and ownership/responsibility of perimeter fencing will transfer to all subsequent owners of any subdivision lots. It is the responsibility of the subdivision lot owner to avoid harmful interactions with historical agricultural practices and neighbors outside of the subdivision.**

#### **V-A-23. Restrictive Covenants – Approval, Content and Enforcement by Commission**

- a. The Commission 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 Commission, contain the following language: “This (These) covenant(s) were required for the approval of the preliminary plat and may not be repealed or amended without the prior written consent of the Carbon County Commission.”
- b. The Commission may require that restrictive covenants it has required as a condition of plat approval contain the following language: “The Carbon

County Commission 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 (as specified per 76-3-608(7), MCA);
  - (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;
  - (viii) Dissolution of the association and modification of the covenants and restrictions only after obtaining the Commission’s approval of the change; and
  - (ix) Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

**V-A-24. Waiver of Right to protest creation of Rural Improvement District**

The governing body may require that a property owner waive a right to protest the creation of a special improvement district or rural improvement district for capital improvement projects. The governing body must specify the specific capital improvement for which protest is being waived. A waiver of a right to protest may not be valid for a period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder. Notice of the waiver of right to protest shall be placed on the face of the plat.

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## **VI. LAND SUBDIVISIONS CREATED BY RENT OR LEASE AND CONDOMINIUMS**

### **VI-A. General**

A subdivision created by rent or lease, including a mobile or manufactured 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). Subdivisions created by rent or lease and condominiums are exempt from the survey requirements of these Regulations, but must be submitted for review and be approved by the Commission before possession of any portion thereof may be conveyed in any manner.

#### **VI-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 **VI-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.

#### **VI-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 **VI-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.

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

- a. Land subdivision created by rent or lease will be reviewed under the procedures described in Section III, Major Subdivisions, or Section IV, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed 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 V, Design and Improvement Standards.

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

### **VI-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).

### **VI-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 Commission 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 III of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section IV of these regulations. The subdivider shall submit to the Commission 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.

### **VI-B-3. Improvements**

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

### **VI-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. The subdivider shall submit the plan to the Planning Office. The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the Planning Office project file.

#### **VI-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 Commission 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.

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

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

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

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

The Commission 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.

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

##### **VI-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 twenty five (25) feet from any property boundary line abutting upon a public street or highway right-of-way and at least twenty (20) feet from other boundary lines of the park.
- c. The mobile home pad must be located at least fifteen (15) 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 mobile home pad shall 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. Parking spaces shall be nine feet by twenty feet (9' X 20') in size. The driveway must be located to allow for convenient access to the mobile home, and be a minimum of twelve (12) feet wide.
- j. One guest parking space must be provided for each ten (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.
- l. Each mobile home must be skirted within thirty (30) calendar 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.
- m. Minimum space area for each mobile home shall be 6,000 square feet.

#### **VI-D-2. Streets**

Streets within a mobile home park must meet the design standards specified in Section V-A-10 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 private or 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. If parking is to be allowed on the road add 8 feet to the total required width for each lane of parking allowed.

#### **VI-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.

#### **VI-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.

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

##### **VI-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. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide. If parking is to be allowed on the road add 8 feet to the total required width for each lane of parking allowed.

- 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 private or public street or highway right-of-way.
- e. Minimum space area for each recreational vehicle shall be 1,500 square feet.

#### **VI-E-2. Density**

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

#### **VI-F. Condominiums**

##### **VI-F-1. Procedures**

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

##### **VI-F-2. 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 VI, 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 III-C-4 Public Improvements Agreement; Guaranty.

##### **VI-F-3. 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 Section III.

##### **VI-F-4. Design Standards**

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

##### **VI-F-5. Unit Ownership Act**

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

#### **VI-F-6. Cluster Development General Requirements**

A minimum of 30% of the total area within the subdivision shall remain undeveloped in a cluster development. Land protected as open space on a long term basis must be identified on the final plat and must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision or development of the open space lots or parcels. (MCA §76-3-509)

## **VII. PLANNED UNIT DEVELOPMENTS**

### **VII-A. Intent**

The intent of this section is to provide flexibility in certain provisions of the Design and Improvement Standards in Section V, allowing the subdivider creativity in subdivision design. Planned Unit Developments (PUD) cluster development, are planned with creative and exemplary subdivision design; provide economies in the supply of public services; enhance and preserve open space and unique natural features; and enable the planning of a tract for a single use or for a harmonious combination of uses that include efficient pedestrian and vehicular circulation.

### **VII-B. Procedures and Submittal**

The requirements of these Regulations shall be followed, with the addition of the following information:

#### **Pre-application Plan**

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

Pedestrian and vehicular traffic circulation plan.

A description of measures to be taken to assure permanence and maintenance of open space and other facilities to be under common ownership.

A description of all proposed waivers or modifications from the Design and Improvement Standards. Waivers shall not endanger the public health and safety.

#### **Preliminary Plat**

A schedule showing the time when improvements required by these Regulations will be completed where a plan calls for a development time of 18 months or more for improvements

The subdivider shall establish a Property Owners' Association and submit a draft of all covenants and legal documents which will govern the association.

A description of all proposed waivers or modifications from the Design and Improvement Standards.

Any additional information found to be necessary during the Pre-application Plan review.



PUDs must comply with the standards contained in Section V Design and Improvement Standards. However, the Commission may provide a waiver and modify the design and improvement standards contained in Section V-A-8 Lots, Section V-A-9 Blocks, Section V-A-10 Streets and Roads, and Section V-A-20 Park Land Dedication upon request of the subdivider when the plan for a PUD meets all the criteria in VII-C. In such cases, no application for a variance under Section VIII-B Variances of these regulations is necessary. Waivers shall not endanger the public health and safety.

### **VII-C. Criteria**

The Commission may establish or approve a PUD and waive or modify the Design and Improvement Standards for lots, blocks, roads, and parks if the following criteria are met or exceeded.

General. The plan shall conform to the intended purposes of these Regulations, the special intent of this Section, and one or more of the following:

Preserve to the maximum extent possible the natural characteristics of the land, including topography, vegetation, streams or other bodies of water.

Preserve productive agricultural land.

Protect important historic sites or structures or areas of important wildlife habitat.

Site Size and Building Envelopes. The total site size, as measured by the boundary perimeter of the PUD, shall be appropriate in size to the proposed use and design. All PUD's shall designate building envelopes for all structures.

Open Space. Each PUD shall provide an area for dedicated park or common open space appropriate in size to the proposed development and design; however, such area shall not be less than the amount of land required to be dedicated under these Regulations for the area of the subdivision, exclusive of all other dedications. Open space may not be sold, transferred, altered or changed without filing an amended plat and receiving approval of the Commission.

Landscaping. Landscaping may be required between buildings or on the PUD perimeter where the Commission deems it necessary to provide buffer screening between different land uses.

Parking Area. Adequate parking area shall be required for the proposed uses of the development, as determined appropriate by the Commission.

Pedestrian Access. Sidewalks, walkways, trails, or other forms of pedestrian access shall be required for the proposed uses of the development, as determined appropriate by the Commission.

Watercourse Enhancement. Watercourses and wetlands shall be protected and enhanced, as determined appropriate by the Commission.

Roads.

Roads designed to furnish access to adjacent areas shall include a public right-of way easement.

Adequate responsibility for the improvement and maintenance of all roads is assumed by the Property Owners' Association.

Property Owners' Association. A Property Owners' Association shall be established and shall be responsible for maintenance of all roadways, pedestrian facilities, openspaces, watercourses, parks, and landscaping of all commonly owned areas.

Other Regulations. Where there are other regulations which require compliance to the PUD or other minimum standards, this Section does not authorize the Commission to waive or modify such regulations.

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## **VIII. ADMINISTRATIVE PROVISIONS**

### **VIII-A. Fees**

A schedule of review fees to be paid by the subdivider to defray the expenses of processing subdivision applications and/or plats and any inspections necessary for subdivision review is available from the Planning Office. Subdivision applications and/or plats shall not be accepted or processed until all fees have been paid in full.

### **VIII-B. Variances**

- a. Hardship. The Commission may grant reasonable variances from the design and improvement standards of these Regulations where it is found that strict compliances with the specific design and improvement standard would result in undue hardship and strict compliance is not essential to the public health, safety, and welfare .
- b. Procedure. The subdivider shall include with the submission of the preliminary plat a written request describing the variance(s) and the facts of hardship upon which the request is based. For major subdivisions and subsequent minor subdivisions, the Planning Board shall consider each variance at a public hearing on the preliminary plat. If a variance is made regarding a first minor subdivision, the variance(s) shall be considered by the Planning Board and by the governing body at their respective meetings to review the first minor subdivision. The Commission may hold an additional public hearing on variance requests for major and subsequent minor subdivisions if it deems necessary. The Commission is the final decision making authority for variance requests.
- c. Review Criteria. In accordance with 76-3-506, MCA, a variance to these Regulations shall be based upon specific variance criteria, and may not have the effect of nullifying the purpose of these Regulations. The Commission shall not approve variances unless it makes findings based upon the evidence presented in each specific case that:
  - i. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
  - ii. 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;
  - iii. The variance will not cause a substantial increase in public costs; and
  - iv. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

- d. Variances from Floodway Not Authorized. The Commission may not, by variance, permit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined in Title 76, Chapter 5, MCA.:
- e. Conditions. In granting variances, the Commission may require such conditions as will, in its judgment, secure the purposes of these Regulations.
- f. Statement of Facts. When a variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.
- g. PUD. Where the standards and requirements of these Regulations may be modified by the Commission in the case of a planned unit development, no application for a variance shall be necessary, the subdivider shall follow the procedure for a waiver. Waivers shall not endanger the public health and safety.

#### **VIII-C. Amendments to Subdivision Regulations**

- a. General. For the purpose of providing for the public health, safety, and general welfare, maintaining consistency with the MSPA and the Administrative Rules of Montana, maintaining consistency with the Growth Policy, or responding to changing conditions within the County, the Commission may amend the provisions of these Regulations.
- b. Hearing. A public hearing on the proposed amendments shall be held before the Planning Board, legal notice of which shall have been given in a newspaper of general circulation in the County not less than fifteen (15) days not more than thirty (30) days prior to the date of hearing. The Planning Board shall send a recommendation on the proposed amendments to the Commission for their consideration. The Commission may hold an additional public hearing on the proposed amendments if it deems necessary. The Commission is the final decision making authority for amendments to these Regulations.

#### **VIII-D. Administration**

- a. Violation. Any person, firm, corporation or other entity who shall violate the provisions of these Regulations shall be guilty of a misdemeanor.
- b. Penalties. Any violation of the provisions of these Regulations is an offense punishable by a fine of not less than \$100.00 nor more than \$500.00 or imprisonment in a county jail for not more than three months or by both fine and imprisonment. Each sale or transfer, or offer of sale or transfer, of each separate parcel of land in violation of any provision of these regulations shall be deemed a separate and distinct offense.

- c. Enforcement. Except as provided in 76-3-303, MCA, every final subdivision plat must be filed for record with the Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. If illegal transfers or offers of any manner are made, the County Attorney for Carbon County shall commence action to enjoin further sales or transfers or offers of sale or transfer and to compel compliance with all provisions of the MSPA and these Regulations, the cost of such action being imposed against the person or entity committing the illegal act.

#### **VIII-E. Vacation of Recorded Plats**

Any plat prepared and recorded herein provided may be vacated in whole or in part as provided by 7-5-2501, 7-5-2502, subsection (1) and (2) of 7-14-2616, 7-14-2617, subsections (1) and (2) of 7-14-4114, and 7-14-4115, MCA. Upon vacation, the Commission or the district court, as provided in 7-5-2502 MCA,, shall determine to which properties the title to the streets and alleys of such vacated portions shall revert.

The Commission or the district court, as provided in 7-5-2502 MCA, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted are adjacent to the vacated portions.

When any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public or private utility facility.

#### **VIII-F. Waivers for PUDs**

In planned unit developments, the Commission may grant reasonable waivers from these Regulations where it is found that these Regulations allow a waiver to be requested and granted. Waivers shall not endanger the public health and safety.

- a. Procedure. The subdivider shall include with the submission of a subdivision application a written statement describing the requested waiver and a response to each criteria and reasons upon which the request is based. The Commission shall consider each waiver if the proposed PUD meets all the criteria provided in Section VII-C.

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## **IX. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW**

### **IX-A. Purpose**

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Act, Section 76-3-101 et. seq. MCA.

### **IX-B. Divisions of Land Entirely exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act**

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the requirements of these Regulations and the MSPA may not apply when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30;
  - i. Before a court of record orders a division of land, the court shall notify the Commission of the pending division and allow the Commission to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- d. A division of land creates cemetery lots;
- e. A division of land is created by the reservation of a life estate;
- f. A division of land is in a location over which the state does not have jurisdiction;
- g. A division of land is created for public rights-of-way or public utility sites;
- h. The land upon which an improvement is situated has been subdivided in compliance with these regulations and the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land;



- i. Condominiums are constructed on land divided in compliance with these Regulations and the MSPA provided that:
  - i. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621 MCA, is complied with; or
  - ii. The condominium proposal is in conformance with applicable zoning regulations.
- j. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land;
- k. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities;
- l. A division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1973;
- m. Deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1973.

**IX-C. Specific Exemptions from Review but Subject to Survey Requirements and Zoning Regulations**

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401. MCA and zoning regulations adopted under Title 76 chapter 2. A division of land may not be made under this section unless the County Treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent. The Clerk shall notify the Planning Office of any land division described in this section or 76-3-207(1) MCA.

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

- c. Divisions made outside of platted subdivision for the purpose of relocating common boundary lines between adjoining properties;
- d. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply in those areas.
- e. For five (5) or fewer lots within a platted subdivision, relocation of common boundaries.
- f. Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel re established. A restriction on the original platted lot or original unplatted parcel continues to apply to those areas.

#### **IX-D. Exemption from Survey and filing Requirements but Subject to Review**

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of these Regulations but must be submitted for review and approved by the Commission before portions thereof may be rented or leased, except when:

- a. The approval of the original division of land expressly contemplated the construction of the condominiums and applicable park dedication requirements of 76-3-621 MCA, are complied with; or
- b. The condominium proposal is in conformance with applicable zoning regulations.

#### **IX-E. Exemption from Survey and Platting Requirements for Lands Acquired for State Highways**

Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 MCA, and are exempted from the surveying and platting requirements of these regulations and the MSPA. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

#### **IX-F. Procedures and General Requirements for Review of Exemptions**

The following procedures, criteria and requirements shall be used to review an exemption claim from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

- a. The Commission designates the Planning Office as its agent for purposes of this these Regulations. All certificates of survey claiming an exemption shall be submitted to the Planning Office along with the application form in Appendix E. The procedures and requirements of this subsection are limited to the exemptions specified in these Regulations.
- b. Claimants are encouraged to meet with the Planning Staff to discuss whether a proposed land division or use of an exemption is in compliance with these criteria. The Planning Staff 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 Planning Office.
- c. Claim for Exemption Submittal. A claimant seeking an exemption under the Act and these Regulations shall submit a claim on the appropriate application forms if needed, including a plat or deed with a signed certificate of exemption, together with sufficient evidence to support the claim and any other information required by these Regulations to the Planning Office.
- d. Determination. The Planning Office, Clerk, and County Attorney shall review the claimed exemption. The Planning Office shall make a report on the findings of the review and issue a determination to allow or disallow the claim.
  - i. In assessing the claimant's purpose the Planning Office will evaluate all relevant circumstances including the nature of the claimant's business and use of the parcel, the prior history of the particular tract in question, the proposed configuration of the tract(s), if the proposed exempt transactions are completed, and patterns of development. Any pattern of development which is the equivalent of a subdivision which has not been reviewed may be presumed to be adopted for the purposes of evading the act. A "pattern of development" occurs whenever three (3) or more parcels of less than one hundred sixty (160) acres with common covenants or facilities, such as roads and utilities, have been divided from the original tract of record.
  - ii. If the Planning Office finds that the proposed use of the exemption complies with the statutes and these criteria, the Planning Office shall advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and any accompanying documents. If the Planning Office finds that the proposed use of the exemption does not comply with the statutes and these Regulations, the Planning Office shall provide notification of its determination to disallow to the person claiming the exemption and advise the Clerk and Recorder to not file or record the documents.
- e. Appeal. The claimant may appeal a determination to evade the Act to the Commission.

- i. If the Commission concludes that the evidence overcomes the determination and that from all the circumstances the exemption is justified, the Commission will allow the exemption. If the Commission concludes that the determination to evade the Act is not overcome and that from all the circumstances the exemption is not justified, the Commission shall make findings and disallow the exemption.
- f. If the claimant proposing to use an exemption does not seek to appeal the determination to disallow, or if the Commission determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may proceed according to the procedures for a subdivision application for the proposed land division.
- g. If the exemption is allowed, the Commission shall direct the Clerk and Recorder to record the certificate of survey.
- h. A certificate of survey of a division of land which is exempted from review may not be filed by the Clerk and Recorder unless it bears the certificate of the person having recorded interest claiming exemption stating that the division of land is exempted from review as a subdivision and citing the applicable exemption.
- i. To assist in the implementation of this review process and to monitor those parcels divided by exemption the Clerk and Recorder shall cause the following identification codes to be added to the numbering of recorded certificates of survey.  
  
CO ... Court order [76-3-201(1)(a), MCA]  
MTG ... Mortgage Exemption [76-3-201(1)(b), MCA]  
RB ... Relocation of Common Boundary [76-3-207(1)(a), MCA]  
FT ... Family Transfer and conveyance [76-3-207(1)(b), MCA]  
AG ... Agricultural Exemption [76-3-207(1)(c), MCA]  
AL ... Aggregation of Lots [76-3-207(e), MCA]  
RE ... Retracement of an Existing parcel
- j. Each newly created parcel less than one hundred sixty (160) acres shall have a certificate of exemption.
- k. These Regulations shall not be applicable to deeds, contracts, leases or other conveyances executed prior to July 1, 1973.
- l. An exemption may not be requested or made under this section unless the Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid except for Security for Construction financing and Court Orders.

#### **IX-G. Exemptions as a Gift or Sale to a Member of the Immediate Family**

- a. Purpose. The proper use 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.
- b. 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.
- c. 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.
- d. One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under these Regulations.
- e. 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.

#### **IX-H. Security for Mortgages, Liens, or Trust Indentures for the Purpose of Construction, Improvements to the Land Being Divided, or Refinancing Purposes**

- a. Purpose. The proper use of the exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes, when a survey of the parcel has been required. Any parcel created for security shall not be conveyed, except to the lending institution during foreclosure.
- b. A rebuttable presumption exists when a division of land that is created to provide security is adopted for the purpose of evading the Act under the following conditions:
  - i. If the division of land is created for the purpose of conveyance;

- ii. The financing is for construction on land other than on the exempted parcel;
  - iii. 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;
  - iv. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
  - v. It appears that the principle 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.
- c. When the security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes exemption is to be used, the landowner shall submit, in addition to such other documents as may be required, a written statement explaining:
- i. How many parcels within the original tract will be created by use of the exemption?
  - ii. Who will have title to and possession of the remainder of the original parcel?
  - iii. 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, or refinancing purposes.
- d. The exempted parcel may be of any size, providing that the parcel size is in compliance with any officially adopted zoning regulation.
- e. The exempted parcel shall be delineated by a dotted line within the survey.
- f. The written statement of lending institution and the instruments creating the security shall be filed at the same time with the Clerk and Recorder.
- g. A transfer of the exempted parcel, by the owner of the property at the time that the land was divided, to any party other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture, subjects the division of land to the requirements of these Regulations.

#### **IX-I. Relocation of Common Boundaries within a Platted Subdivision**

- a. Purpose. The proper use of the exemption for relocation of common boundaries is to rearrange five (5) or fewer lots within a platted subdivision and does not increase the total number of lots. The plat shall contain the title “Amended Plat” and must be filed with Clerk and Recorder.

- b. The Amended Plat showing the relocation of common boundary within a platted subdivision must be accompanied by:
  - i. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and
  - ii. Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error or enhancement of the configuration of the property).
- c. A rebuttable presumption exists when a proposed relocation of common boundaries within a platted subdivision is adopted for the purpose of evading the Act if it determines that six (6) or more lots are affected by the proposal.
- d. Any division of lots which results in an increase in the number of lots or which redesigns or rearranges six (6) or more lots must be reviewed and approved by the Commission prior to the filing of the final plat.

#### **IX-J. Relocation of Common Boundary Lines**

- a. General. Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties, and divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision.
- b. Purpose. The proper use of the exemption for relocating common boundary lines is to:
  - i. Establish a new boundary between adjoining parcels of land, without creating an additional parcel; or
  - ii. Establish a new common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- c. Certificates of Survey showing the relocation of common boundary lines must be accompanied by:
  - i. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and

- d. A presumption of evasion exists when a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:
  - i. The Commission determines that the documentation submitted according to this section does not support the stated reason for relocation or created an additional parcel, and/or
  - ii. The Certificate of Survey for the relocation of common boundary lines significantly rearranges multiple parcels with little or no resemblance to the original configuration of the parcels.

#### **IX-K. Agricultural Exemption**

- a. **Purpose.** An agricultural exemption is a division of land made outside of a platted subdivision by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land, revocable only by mutual consent of the Commission and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes. No building or structure requiring water or sewer facilities shall be utilized on such a parcel. The parcel involved in the division must be outside of a platted subdivision.
- b. A change in use of the land for anything other than agricultural purposes subjects the division to these Regulations.

#### **IX-L. Aggregation of Parcels or Lots**

- a. **Purpose.** This exemption is to allow for aggregating parcels or lots by eliminating the boundaries of the original parcels and establishing the boundary of a single larger aggregate parcel.
- b. **Required Information.** Certificates of survey or amended plats claiming this exemption must clearly distinguish between the existing boundary locations and the new aggregate boundary. This must be accomplished by representing the boundaries of existing lots or parcels with dashed lines and the new boundary with a solid line. Each parcel and lot included in the aggregation must be identified on the Certificate of survey or amended plat. Restrictions or requirements (such as covenants or zoning) on existing parcels must be identified. Ownership of each parcel/lot must be identified and the certificate of survey or amended plat must include signatures of all owners. Where the aggregation involves multiple landowners, the certificate of survey or amended plat must be accompanied by quit claim(s), warranty deed(s), or other recordable transfer document(s) transferring ownership to a single landowner or undivided interest ownership. Any aggregation that includes six or more lots in a platted subdivision must be reviewed and approved by the governing body before an amended plat may be filed with the clerk and recorder (76-3-207(2)(a), MCA).



a. Rebuttable presumptions.

- i. If the boundary of the aggregate tract is different from the perimeter boundary of all combined individual parcels.
- ii. If the resulting parcel includes areas that previously were subject to with existing zoning, covenants, and/or deed restrictions, and those requirements appear to have been eliminated, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

**IX-L. Court Order and Lands acquired for state highways, 76-3-209. MCA**

The proper use of this exemption is when the division of land is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, when a survey of the parcel has been required.

76-3-209. MCA. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA and are exempted from the surveying and platting requirements of the chapter.

**IX-M. Correction of Errors**

Corrections of errors that in the opinion of the Clerk and Recorder will not materially alter the survey may be made by the submission of a corrected certificate of survey to be filed in the Office of the Clerk and Recorders.

**IX-N. Uniform Standards for Certificate of Survey**

A certificate of survey may not be filed by the Clerk and Recorder unless it complies with the requirements of ARM 8.94.3002 Uniform Standards for Certificates of Survey.

**IX-0. Remainders**

a. The Subdivision Act defines a "Division of land" as

*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 this chapter. 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.*

The portion of the larger tract left after segregation of the transferred and/or identified parcels is denominated a "remainder." Only one remainder can be established in the parcel segregation process.

b. To qualify as a remainder, a parcel must not have been created for the purpose of transfer. Rather, the remainder must be retained by the owner. Remainders claimed created in conjunction with requests for exemption from subdivision review of a tract or tracts under §§ 76-3-201 and 76-3-207, M.C.A., shall be examined to determine if the remainder is created for evasion of the subdivision process. The Planning Director or designee shall determine during the plat examination process whether the remainder was created to evade the subdivision process. If the proposed remainder is found to be created for the purpose of evasion of the Act, the subdivider may submit an appeal of the determination by the Planning Director or designee with the preliminary plat application. If an appeal is submitted, the Commissioners shall make the final determination as to whether or not a proposed remainder is being created for the purpose of transfer.

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## APPENDIX A

### PLAN AND PLAT APPLICATION INFORMATION AND REQUIREMENTS

A. **Pre-Application Meeting.** The subdivider shall submit the following at the pre-application meeting:

1. **Sketch Map:** The subdivider shall provide a sketch plan of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn showing, in simple form, the layout of proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. Approximate dimensions should be noted. The sketch plan should include pertinent information such as: approximate tract and lot boundaries, location of all easements, utilities, rights-of-way, parks and open spaces, and a description of general terrain, natural features, existing structures and improvements, and proposed public improvements.
2. **Survey:** A copy of the most recently filed survey(s)
3. **Documents:** A copy of any existing covenants, a copy of any existing deed restrictions, and a copy of any existing easements (access, utility, conservation, irrigation, water, etc.)

B. **Subdivision Application and Preliminary Plat.** The subdivider shall submit a completed Application for Subdivision Form, including all of the application materials specified on the application form, located in Appendix B.

Application requirements for the Preliminary Plat, Water and Sanitation, and Drainage Plan are included below.

C. **Preliminary Plat**

**1. General**

- a. Scale: The preliminary plat shall be legibly drawn at the horizontal scale of not less than two hundred (200) feet to the inch; and shall show boundaries, dimensions, distances and areas, unless specifically noted.
- b. Size: The plat shall be on one or more sheets of eighteen x twenty four inches (18" X 24") or twenty four inches by thirty six inches (24" X 36"). Copies will be folded to approximately eight and a half to nine by eleven inches (8.5" to 9" by 11").
- c. If the information is presented on more than one sheet, the plat shall be paginated and each page shall reference the total number of pages (e.g., page 1 of 4).

- d. All surveying and engineering data shall be prepared under the supervision of a registered engineer or registered land surveyor as their respective licensing laws allow.

**2. Contents.** The preliminary plat shall include the following information.

- a. **Subdivision information:** Name and location of the subdivision, scale, scale bar, North arrow, date of preparation, lots and blocks (designated by number or letter), and the dimensions and area of each lot.
- b. **Roads and Grades:** All roads, alleys, highways, and easements and width of the rights-of-way, grades and curvature of each; existing and proposed road names, and proposed location of intersections for any subdivision requiring access to arterial or collector highways.
- c. **Adjoining Subdivisions:** The numbers and names of adjoining subdivisions and numbers of adjoining certificates of survey.
- d. **Perimeter Survey:** An approximate survey of the exterior boundaries of the platted tract with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or a body of water, the bearings and distances of a closing meander traverse shall be given.
- e. **Section Corner:** The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
- f. **Contours:** Ground Contours shall be provided for the tract according to the following requirements:

<b>Where the average slope is:</b>	<b>Contour intervals shall be:</b>
Under 10%	2 or 2.5 feet
Between 10% and 15%	5 feet
Between 15% and 25%	10 feet
25% or greater	A reasonable contour for the lot sizes

- g. **Phased Improvements:** If the required improvements are to be completed in phases after the final plat is filed, the area and boundaries of each phase shall be shown on the preliminary plat. A schedule of the required improvements for each phase shall also be provided with the subdivision application.
- h. **Existing Structures:** Location of any existing structures, including buildings, railroads, power lines, high pressure gas lines, towers, and other improvements inside and within one hundred feet (100') of the proposed subdivision.
- i. **Zoning:** Zoning classification within the proposed subdivision and adjacent to it.

- j. **Vicinity Map.** A vicinity map showing the location of the proposed subdivision clearly outlined in relation to the nearest town, highway, or street system.
- k. **Utilities.** Existing and proposed utilities inside and within one hundred feet (100') of the proposed subdivision including:
  - Location, size, and depth of sanitary storm sewers, water mains and gas lines or pipelines
  - Location of fire hydrants, fire fill sites, (e.g. pond or tank), electric lines, telephone lines, sewage and water treatment, and storage facilities.
- l. **Easements.** Locations and identify 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.
- m. **Geologic and Natural Features.** Areas of:
  - Slopes greater than 25%
  - Rock outcrops
  - Cliffs
  - Seasonal water ponding
  - Geologic faults
  - Timbered and/or wooded areas
  - Location of natural water systems, such as perennial streams, rivers, watercourses, intermittent streams, lakes or wetlands (and indicate the names and sizes of each)
  - Location of man-made water systems, such as ponds, canals, ditches, reservoirs (and indicate names and sizes).
- n. **Parks and Common Grounds.** Approximate location, boundaries, dimensions, and areas of any parks, common grounds, or other grounds dedicated for public use.

#### **D. Water and Sanitation**

- 1. **Contents:** The subdivider shall submit the information listed in this section for proposed subdivisions that will include new water or wastewater facilities. The information shall include:
  - a. Vicinity Map: A vicinity map that shows:
    - i. The location within 100 feet outside the exterior property line of the subdivision and on the proposed lots, of:
      - 1. Floodplains;
      - 2. Surface water features;
      - 3. Springs;

4. Irrigation ditches;
  5. Existing, previously approved, and , for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
  6. For parcels less than 20 acres, mixing zones identified as required;
  7. The representative drainfield site used for the soil profile description as required;
- ii. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.
- b. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by MDEQ;
  - c. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the MDEQ pursuant to 76-4-104, MCA;
  - d. Evidence of suitability for new onsite wastewater treatment systems that, at a minimum includes:
    - i. A soil profile description from a representative drainfield site identified on the vicinity map, that complies with standards published by the MDEQ;
    - ii. Demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater system and a limiting layer; and
  - e. In cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance;  
For new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
    1. Obtained from well logs or testing of onsite or nearby wells;
    2. Obtained from information contained in published hydrogeological reports; or
    3. As otherwise specified by rules adopted by the MDEQ pursuant to 76-4-104, MCA;
  - f. Evidence of sufficient water quality in accordance with rules adopted by the MDEQ pursuant to 76-4-104, MCA; and
  - g. A preliminary analysis of potential impact to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303, MCA related to standard mixing zones for groundwater, source specific mixing zones, and non significant changes in water quality. The preliminary analysis may be based on

currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (g.), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

2. **Exclusion:** A subdivider whose land division is excluded from review under 76-4-125(2), MCA is not required to submit the information required in this section.
3. **Additional Information:** The Commission may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the Commission complies with the procedures provided in 76-3-511, MCA.

**E. Drainage Plan.** The application will include the following:

Describe measures for the disposal of storm water run-off from streets and roads within the subdivision.

Indicate the type of road surface proposed.

Describe facilities for stream or drainage crossing (e.g., culverts, bridges).

Describe how surface run-off will be drained or channeled from parcels.

A complete grading and drainage plan with accurate dimensions, courses and elevations, showing the proposed grades of roads and drainage improvements.

Indicate whether storm run-off will enter state waters and describe any proposed treatment measures.

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.

**F. Final Plat Application.** A final subdivision plat may not be approved by the Planning Office, Commission, nor filed by the Clerk and Recorder unless all condition of preliminary plat approval have been met. Plans and data shall be prepared under the direction of a registered surveyor as licensing laws allow. The final plat application shall include the following:

- a. Numbered and narrative response describing where and how each condition of preliminary approval was satisfied by the subdivider.
- b. All certificates, with the exception of those of the Commission and Clerk and Recorder, shall be complied with, signed, and notarized. This shall include the Treasurer's Certification that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.



- c. A horizontal scale of not less than two hundred (200) feet to the inch, and the lengths of all lines shall be shown to at least tenths of a foot and all angles and bearings to at least the nearest minute.
- d. Compliance with the requirements of the Uniform Standards for Final Subdivision Plats (See Appendix F).
- e. Three (3) copies are required, being either a cloth back and Mylar or two Mylar copies (or equal thereof) of permanent quality and one paper copy. All copies must be complete including seals and signatures.
- f. Whenever more than one sheet must be used to accurately portray the land subdivided, each sheet must show the number of that sheet and the total number of sheet included. All certifications shall be shown or referenced on one sheet.
- g. The following original documents shall accompany the final plat. All documents shall be properly notarized or sealed where applicable.
  - 1. Certification by a licensed title abstractor showing the names of the owners of record of land to be subdivided and the names of any lien holders or claimants of record against the land. Certificate shall be accompanied by the Civil Attorney's approval.
  - 2. Covenants or notice of deed restrictions required by the Commission.
  - 3. Certification by the MDEQ that it has approved the plans and specifications for sanitary, water, and storm water facilities when required, and the local approval issued by PCEHD.
  - 4. Articles of incorporation and the bylaws for any Property Owners' Association.
  - 5. Improvements agreement and financial security, if required improvements are to be installed after the filing of the final plat.
  - 6. Fire Protection Plan approved by the Fire Protection Authority with Jurisdiction.
  - 7. Road Easements.
  - 8. Conservation Easements.
  - 9. Declaration of Unit Ownership (condominiums).
  - 10. MDOT access or encroachment permits (copy only) for subdivision road access onto state highways.
  - 11. Carbon County Road Work permit.

**12. Any applicable streambed, streambank, and/or wetland permits required**

\* Approval Period-Final Plat approval shall be in force not more than three (3) years from the date the governing body's approval. At the end of the period the governing body may, at the written request of the subdivider, upon further review and recommendations from the Planning Board extend its approval period for a mutually agreed upon time frame.

## APPENDIX B

### CARBON COUNTY APPLICATION FOR SUBDIVISION

A. GENERAL INFORMATION	
<b>Name of Subdivision</b>	<hr/>
<b>Location</b> (nearest town)	<hr/>
<b>Rural Address</b>	<hr/>
<b>Legal Description</b> (1/4 section)	<hr/>
<b>Name of Owner(s)</b>	<hr/>
Address	<hr/>
Phone	<hr/>
<b>Name of Agent</b>	<hr/>
Address	<hr/>
Phone	<hr/>
<b>Surveyor</b>	<hr/>
Address	<hr/>
Phone	<hr/>
<b>Engineer</b>	<hr/>
Address	<hr/>
Phone	<hr/>
<hr/>	

<b>B. DESCRIPTIVE DATA</b>	
<b>Total area in acres</b>	_____
<b>Number of lots or rental spaces and total acreage of lots</b>	_____
<b>Total acreage of lots</b>	_____
<b>Minimum size of lots</b>	_____
<b>Maximum size of lots</b>	_____
<b>Total acreage in roads</b>	_____
<b>Total acreage in parks, open space, and/or common facilities</b>	_____
<b>Current Land Use</b>	_____
<b>Existing Zoning</b>	_____
<b>Existing Covenants, Easements, Rights of First Refusal, or Deed Restriction</b>	_____
(Type and Description)	_____
<b>School District</b>	_____
<b>State or County Road Access</b>	_____
<b>Fire Department that Services the Property</b>	_____
<b>Type of Water Supply System</b>	_____ 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)
<b>Type of Wastewater Treatment System</b>	<input type="checkbox"/> Individual wastewater treatment system <input type="checkbox"/> Number of bedrooms (3 bedrooms will be used if unknown) <input type="checkbox"/> Shared wastewater treatment system (2 connections) <input type="checkbox"/> Multiple-user system (3-14 connections and fewer than 25 people) <input type="checkbox"/> Service connection to multiple-user system <input type="checkbox"/> Service connection to public system <input type="checkbox"/> Extension of public main <input type="checkbox"/> New public system (15 or more connect. or serving 25 or more)
<b>Solid Waste Disposal Site</b>	_____

<b>Proposed Use and Numbers of Lots or Spaces</b>	<input type="checkbox"/> Residential, single family <input type="checkbox"/> Residential, multiple family Number of units _____ <input type="checkbox"/> Type of multiple family structure (e.g. duplex) _____ Number of units _____ <input type="checkbox"/> Planned unit development Number of units _____ <input type="checkbox"/> Condominium Number of units _____ <input type="checkbox"/> Mobile home park Number of units _____ <input type="checkbox"/> Recreational vehicle park Number of units _____ <input type="checkbox"/> Commercial or industrial <input type="checkbox"/> Other (please describe) _____
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<b>C. APPLICATION MATERIALS</b>	
	<p>The following materials must be included with the application. The applicant is advised to carefully review the requirements of Section V (Design and Improvement Standards) to ensure that the materials adequately address and conform to the requirements of that section.</p> <p>Fifteen (15) copies of this application, with each copy including all required materials and information, must be submitted to the Planning Office. The copies should be bound in sets, ready for distribution. All copies of the plat, and other oversize material shall be folded to approximately 8.5-9 inches x 11 inches in sets ready for distribution.</p>
<b>Identify location of item in the application by page # or other</b>	<b>Required Item</b>
_____	The required fee. See fee schedule. Fee = _____.

_____	Signed Consent to Subdivide Forms (as applicable). (Use form in Appendix D. Signatures must be notarized.)
_____	Title Guarantee.
_____	Adjoining Property Owner Information. Certified list of adjoining property owners each purchaser of record under contract for deed of property immediately adjoining the land included in the plat and addresses, and property description (including those areas across public rights-of-way and/or easements). Application must include a vicinity map showing the ownership of lands adjacent to the subdivision.
_____	If the subdivision is proposed for review as the first minor subdivision from a tract of record, the application must include documentation that the subdivision qualifies as a first minor subdivision.
_____	Environmental Assessment (for major subdivisions) – See Appendix C for form
	OR
_____	Summary of the Probable Impacts (for first minor subdivisions only) – See Appendix J for form
_____	Water and Sanitation Information (See Appendix A).
_____	Drainage Plan (See Appendix A)
_____	Water Rights Disposition. The applicant must provide information on existing water rights and how they will be allocated or otherwise distributed. (Refer to requirements in Section V.) If there are no water rights associated with the property, the application should include a statement to that effect and provide associated documentation.
_____	Legal Access. Describe the legal access to the subdivision. Identify the public road or roads that will provide legal access to the subdivision. Provide copies of easements or proposed easements to provide legal access to the subdivision, if applicable.
_____	Fire Suppression Plan. (Refer to requirements in Section V—the plan must meet the requirements of this section.)
_____	Weed Management Plan. A Weed Management and Revegetation Plan approved by the Weed Department for control of weeds upon preliminary plat approval and during construction of improvements.
_____	Documentation that subdivider has submitted the subdivision application materials to public utilities, agencies of local, state and federal government, and any other entities identified during the pre-application meeting. Include copies of any responses from those agencies.
_____	Restrictive Covenants and Property Owners' Association Articles of Incorporation and Bylaws. If common property is being dedicated to a property owners' association or otherwise to be maintained or operated by the association, this information must be submitted. (Refer to Section V for requirements.) If no covenants or property owners' association is being

	proposed, a statement to that effect should be included in the application.
_____	Subdivision Improvements Agreement (SIA). If the applicant is proposing to complete required improvements after final plat, an SIA and Financial Guarantee must be drafted and conform to the requirements of these subdivision regulations. (See Section III-C-4 and use the forms in Appendix G). If no improvements are proposed after final plat, the application should include a statement to that effect.
	Drafts of appropriate certificates. (See Appendix D.)
	If the tract of land is to be subdivided in phases, the subdivider must provide an overall development plan indicating intent for the development of the remainder of the tract.
	If the subdivision does not meet the design criteria of Section V, a written request for a variance must be included with the application. (Refer to Section VIII-B for information on what should be included in a variance request.)
	A copy of each oversized map and plat sheet reduced to 8.5 inches x 11 inches or 11 inches x 17 inches.
	Preliminary Plat. This should be prepared to conform to the requirements in Appendix A.

I hereby affirm that all the statements and information contained herein and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the Carbon County Commission for approval of the preliminary plat of this subdivision and grant permission for County Officials and reviewing agency officials to enter the subject property described above.

I understand that it is my responsibility to provide surveyors, engineers and attorneys with dates of meetings, copies of staff reports, board reports, and findings of fact. The Carbon County Planning Office will provide the above reports to duly designated agent, rather than to me, if such agent is identified on the first page of this application form.

**NOTE: All owners of record, and all those with a recorded interest in the parcel to be subdivided (e.g., mortgagors and lienholders) must sign the application form or a “Consent to Subdivide Form” which must be included with this application.**

\_\_\_\_\_  
Owner of Record

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Owner of Record

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

## CARBON COUNTY FINAL PLAT APPROVAL APPLICATION

<b>A. GENERAL INFORMATION</b>		
First Minor: _____	Second Minor: _____	Major: _____
<b>Name of Subdivision</b>	_____	
<b>Name of Owner(s)</b>	_____	
Address	_____	
Phone	_____	
<b>Name of Agent</b>	_____	
Address	_____	
Phone	_____	
<b>Surveyor/Engineer</b>	_____	
Address	_____	
Phone	_____	
<b>Location</b> (nearest town)	_____	
<b>Rural Address</b>	_____	
<b>Legal Description</b> (1/4 section)	_____	
<b>B. DESCRIPTIVE DATA</b>		
<b>Date of Preliminary Plat Approval</b>	_____	
<b>Total area in acres</b>	_____	



<b>Number of lots and total acreage of lots</b>	_____
<b>Existing Zoning</b>	_____
<b>School District</b>	_____
<b>Fire Department that Services the Property</b>	_____

**C. APPLICATION MATERIALS**

_____	The required fee. See fee schedule. Fee =_____.
_____	Numbered and narrative response describing how and where each condition of preliminary approval was satisfied by the subdivider.
_____	Final Plat that complies with the requirements of the Uniform Standards for Final Subdivision Plats.
_____	Three (3) copies are required, being either a cloth back and Mylar or two Mylar copies (or equal thereof) of permanent quality and one paper copy. All copies must be complete including seals and signatures.
_____	All certificates with the exception of those of the Commission and Clerk and Recorder, shall be complied with, signed, and notarized.
_____	Documents which satisfy the conditions for final plat approval:
_____	Covenants, bylaws, restrictions and articles of Incorporations for Property Owner's Association.
_____	Covenants or deed restrictions required by the Commission.
_____	Certification by the MDEQ that it has approved the plans and specifications for sanitary, water, and storm water facilities when required, and the local approval issued by PCEHD.
_____	Improvements agreement and financial security, if required improvements are to be installed after the filing of the final plat.
_____	Fire Protection Plan approved by the Fire Protection Authority with Jurisdiction.
_____	Easements, Road, Conservation, Irrigation, Access, etc.
_____	MDOT access or encroachment permit (copy only) for subdivision road access to state highway.
_____	Carbon County Road Work Permit.

I hereby affirm that all the statements and information contained herein and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the Carbon County Commission for approval of the final plat of the \_\_\_\_\_ Subdivision.

\_\_\_\_\_  
Owner of Record

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent

\_\_\_\_\_  
Date

With Power of Attorney from Owner of Record

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## **APPENDIX C**

### **Environmental Assessment and Community Impact Statement**

#### **General Instructions**

Using best available information the subdivider shall provide narrative responses to the following questions and provide materials as required. Sources of information must be identified for each section of the assessment. Preparation of the environmental assessment shall follow the following outline and shall be identified with the appropriate section, heading, number and letter. On-site inspections may be made regarding any question. Falsification or omission of any part of the questionnaire shall constitute grounds for rejection of the application for plat approval.

#### **I. DESCRIPTION OF ENVIRONMENTAL FEATURES**

Describe the following environmental features, provide responses to each of the following questions and provide reference materials as required.

##### **A. Surface Water**

###### **1. Locate on a plat overlay or sketch map:**

- a. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
- b. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
- c. Time when water is present (seasonally or all year).
- d. Any areas subject to flood hazard, or in delineated 100 year floodplain?
- e. Describe any existing or proposed streambank alteration from any proposed construction or modification of lake beds or stream channels.

Provide information on location, extent, type and purpose of alteration, and permits applied for.

##### **B. Groundwater**

Using available data, provide the following information:

1. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.

2. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

### C. Topography, Geology and Soils

1. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. Address conditions such as:

- a. Shallow bedrock
- b. Unstable slopes
- c. Unstable or expansive soils
- d. Excessive slope

On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected.

In considering any unusual conditions specifically address any problems which may be encountered in excavating for:

- Basements
- Water supply trenches
- Sewer line trenches
- Septic tanks and drainfields
- Underground electrical and telephone lines

2. Locate on a overlay or sketch map:

a. Any known hazards affecting the development which could result in property damage or personal injury due to:

- 1. Falls, slides or slumps -- soil, rock, mud, snow.
- 2. Rock outcroppings
- 3. Seismic activity.
- 4. High water table

3. Describe measures proposed to prevent or reduce these dangers.

4. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

## D. Vegetation

1. On a plat overlay or sketch map:
  - a. Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
  - b. Identify the location of critical plant communities such as:
    - Stream bank or shoreline vegetation
    - Vegetation on steep, unstable slopes
    - Vegetation on soils highly susceptible to wind or water erosion
    - Type and extent of noxious weeds
2. Describe measures to:
  - a. Preserve trees and other natural vegetation (e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover).
  - b. Protect critical plant communities (e.g. keeping structural development away from these areas), setting areas aside for open space.
  - c. Prevent and control grass, brush or forest fires (e.g. green strips, water supply, access.)
  - d. Measures to control noxious weeds

## E. Wildlife

1. What species of fish and wildlife use the area affected by the proposed subdivision?
2. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
3. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

## II. SUMMARY OF PROBABLE IMPACTS

Except where exempt by state law (per 76-3-509, 76-3-609 or 76-3-608(6), MCA) all subdivisions must be reviewed for the impact on agriculture, agricultural water user

facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety (76-3-608 (3)(a), MCA).

The applicant is required to respond to each of the items in Section C below.

## **A. Definitions**

The following provides definitions for each of the criteria:

- 1. Agriculture:** The use of the land for grazing and cropping to produce food, feed, and fiber commodities. Examples may include: cultivation and tillage of the soil; dairying; growing and harvesting of agricultural or horticultural commodities; and the raising of livestock, bees, fur-bearing animals, or poultry. This definition does not include concentrated animal feeding operations.
- 2. Agricultural water user facilities:** Facilities that provide water for the production of agricultural products on agricultural land including, but not limited to ditches, canals, pipes, head gates, sprinkler systems, tanks, reservoir, ponds, or developed springs.
- 3. Local services:** Any and all services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, transportation system, and educational system as well as services not provided by local government such as electricity, gas, telephone, and solid waste disposal.
- 4. Natural environment:** Existing physical conditions relating to land, water, air, plant and animal life of an area and the interrelationship of those elements, such as soils, geology, topography, vegetation, surface water, ground water, aquifers, drainage patterns, recharge areas, climate, floodplains, noise, scenic resources, and objects of historic, prehistoric, cultural, or aesthetic significance.
- 5a. Wildlife:** Animals (e.g. mammals, birds, reptiles, fish), that are neither human nor domesticated, existing in their natural environment.
- 5b. Wildlife habitat:** Geographic areas containing physical or biological features essential to wildlife for breeding, rearing, nesting, and/or winter feeding and forage; and/or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.
- 6. 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, as well as for the welfare of a specific individual or a small class of persons.

## **B. Evaluation**

The evaluation of the effect of the proposed subdivision on these six criteria determines if there are significant unmitigated adverse impacts. Unmitigated adverse impacts are potential grounds for denial of a proposed subdivision. Below are examples of items considered in evaluating the impact of a proposed subdivision on the six primary criteria. These examples do not necessarily reflect all potential items. Depending on the proposed subdivision, some of these items may not apply. In addition, some proposals may require evaluation of other factors not included in these examples to weigh the subdivision's effect on these criteria. It is the subdivider's responsibility to document proposed mitigation of any adverse impacts on these six criteria.

## **C. Summary of Probable Impacts.**

Provide a written response to each of the bulleted items for each of the six criteria. The response should clarify the probable impact of the proposed subdivision in relation to the specific item.

### **1. Effect on agriculture.**

- Number of acres that would be removed from the production of crops or livestock.
- Acres of prime farmland (as defined by the USDA) that would be removed from production.
- Effect on use of remainder (if any) and adjoining properties as farm or ranch land
- Potential conflicts between the proposed subdivision and adjacent agricultural operations including:
  - Interference with movement of livestock or farm machinery
  - Maintenance of fences
  - Weed proliferation
  - Vandalism or theft
  - Harassment of livestock by pets or humans
- Other items to be considered include:
  - Effect on market value of surrounding land
  - Net effect on taxes resulting from additional services

### **2. Effect on agricultural water user facilities.**

- Location and proximity to agricultural water user facilities
- Potential conflicts between facility users and subdivision residents including:
  - Seeps, flooding, washouts,
  - Obstructions and interference
  - Unintended uses (recreation or landscaping)
- Water rights
- Vehicular access to facility

**3. Effect on local services.**

- Increased demand on services and need to expand services
- Ability to provide services to subdivision
  - Response times
  - Conditions of roads, bridges, and railroad crossings
  - Physical Barriers.
- Provision of adequate local services and public facilities simultaneous or prior to onset of impact.
- Any special or rural improvement districts that would obligate local government involvement fiscally or administratively

**4. Effect on natural environment.**

- Runoff reaching surface waters (e.g., streams, rivers or riparian areas).
- Impacts on ground water quantity and quality.
- Impacts on air quality.
- Impacts on scenic resources.
- Impacts on historic, pre-historic, and cultural resources
- Noxious weeds.
- Wetlands not covered under nationwide permits.

**5. Effect on wildlife.**

- Impacts of humans and pets on:
  - Threatened, endangered or sensitive species or species of concern
  - Other known species in the area

**6. Effect on wildlife habitat.**

- Loss of significant, important and critical habitat, as defined by Montana Fish, Wildlife and Parks or the U.S. Fish and Wildlife Service.
- Impacts on significant, important and critical habitat including potential effects of
  - roads and traffic
  - closure of existing operations and/or potential to provide new access to public lands

**7. Effect on public health and safety.**

- Creation of potential man-made hazards (e.g. unsafe road intersection, development in wildland residential interface fire areas).
- Natural hazards (e.g. wildfire, flooding, steep slopes).
- Existing potential man-made hazards (e.g. high pressure gas lines, lack of fire protection, cumulative impacts).
- Traffic safety.
- Emergency vehicle access.
- Emergency medical response time.
- Condition of road leading to proposed subdivision.
- Condition of bridges on road leading to proposed subdivision.



- Any other item that endangers public health and safety

### **III. COMMUNITY IMPACT REPORT**

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local government. Provide responses to each of the following questions and provide reference materials as required.

#### **A. Education and Busing**

1. Describe the available educational facilities which would serve this subdivision.
2. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

#### **B. Roads and Maintenance**

1. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
  - a. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
  - b. Describe increased maintenance problems and increased cost due to this increase in volume.
2. Describe proposed new public or private access roads including:
  - a. Measures for disposing of storm run-off from streets and roads.
  - b. Type of road surface and provisions to be made for dust.
  - c. Facilities for streams or drainage crossing (e.g. culverts, bridges).
  - d. Seeding of disturbed areas.
3. Describe the closing or modification of any existing roads.

4. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
5. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
6. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

#### C. Water, Sewage, and Solid Waste Facilities

1. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).
2. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
3. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
4. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Montana Department of Environmental Quality (MDEQ) and should be submitted using the appropriate MDEQ subdivision form or the MDEQ/Local Government Joint Application Form.
5. Describe the proposed method of collecting and disposing of solid waste from the development.
6. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

#### D. Fire and Police Protection

1. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
  - a. Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? What fire protection procedures are planned?

b. Law Enforcement protection -- is the proposed subdivision within the jurisdiction of a County Sheriff?

2. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, what additional expense would be necessary to make these services adequate, and who would pay the costs?

E. Payment for extension of Capital Facilities

Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

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## APPENDIX D

### SAMPLE FORMS AND CERTIFICATES

- a. **General:** The following represent the general format for the certificates to be shown on plats. Other certificates than those shown may be required by the County Commission, when deemed appropriate. A corporate notary shall be used in place of an individual notary when appropriate.
- b. **Dedication or Consent.** All parts of subdivisions must contain a Certificate of Dedication or Certificate of Consent. In the case of corporate ownership, the proper corporation officers shall sign, corporate notary form shall be used, and the corporate seal shall be affixed. The certificate shall read as follows:

---

---

#### **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 hereunto included, the following described land in Carbon County, 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 roadways, and open space and parks shown on said plat are hereby granted and donated to the use of the public forever. Unless specifically listed herein, the lands included in all roadways, and open space and parks shown dedicated to the public are accepted for public use, but the County accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the lands included in all roadways, and open space and parks shown hereby dedicated to public use. The lands included in all roadways, and open space and parks shown dedicated to the public for which the County accepts responsibility for maintenance include (list specific lands, if any).

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

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

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#### **Certificate of Consent – 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 hereunto included the following described land in Carbon County, 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), Carbon County, Montana

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

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

- 
- c. **Utility Dedication:** All parts of subdivisions must contain a Certificate of Dedication for utility easements. The certificate shall read as follows:
- 

**Certificate of Dedication Utility Easement– 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 Carbon County, to-wit:

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

The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, internet, cable television or other similar utility or service, 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.

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

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

---

- d. **Consent to Subdivide.** In those cases where the area being platted on the plat of the subdivision is subject to any liens, mortgages, claims, or other encumbrances by party(ies) or other owner(s) the following certificate shall also be required:
- 

**Consent to Subdivide**

(I) (We), the undersigned mortgagee(s) or encumbrancer(s), do hereby join in and consent to the described plat, releasing (my) (our) respective liens, claims or encumbrances as to any portion of said lands now being platted into streets, avenues, parks or other public areas which are dedicated public use and enjoyment.

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

(Acknowledged and notarized signature of all encumbrancers of record.)

---

- e. **Cash-in-lieu of Park.** Where the park requirements are being waived in lieu of cash, plats of subdivision shall show the following certificate:

---

---

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

I, (County Clerk and Recorder) of Carbon County, Montana, do certify that the following order was made by the County Commission of Carbon 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 Carbon County Commission 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 Carbon County, Montana this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

(Seal)

(Signature of Clerk)

- 
- 
- f. **Off Site Park.** Where the park requirements are being provided off site of the platted subdivision, plats of subdivision shall show the following certificate:

---

---

**Certificate Accepting Off Site Park Land Dedication**

In as much as an alternative to dedication of park land, for park and playground purposes within the platted area of (Subdivision Name), would be desirable, it is hereby ordered by the County Commission of the Carbon County that land dedication for park purposes be provided off-site with land outside of the platted area of (Subdivision Name) in accordance with the provisions of the Montana Subdivision and Platting Act, §76-3-101 through §76-3-625, MCA, and the Carbon County Subdivision Regulations. The off-site park land dedication will be provided with the following described tract(s) of land, to wit:

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

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

Chairman, Carbon County Commission  
(Signature)

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- g. **Park Dedication to School District.** Where the park requirements are satisfied by providing dedication of land to School District, plats of subdivision shall show the following certificate:

---

---

**Certificate Accepting Park Land Dedication to School District**

In as much as an alternative to dedication of park land, for park and playground purposes within the platted area of (Subdivision Name), would be desirable, it is hereby ordered by the County Commission of Carbon County that required land dedication for park purposes be met with land dedicated to the \_\_\_\_\_ School District in accordance with the provisions of the Montana Subdivision and Platting Act, §76-3-101 et. seq., MCA, and the Carbon County Subdivision Regulations. If the \_\_\_\_\_ School District chooses to no longer use the land for school buildings and facilities, the ownership of the land shall revert to the Carbon County for park purposes and the \_\_\_\_\_ School District shall transfer the land to the County with clear title. The land dedication will be provided with the following described tract(s) of land, to wit:

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

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

Chairman, Carbon County Commission

(Signature)

Chairman, \_\_\_\_\_ School District Board of Trustees

(Signature)

- 
- 
- h. **Surveyor.** All plats of subdivision shall contain a Certificate of Surveyor and shall read as follow:

---

---

**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)



- i. **Improvements Completion.** Where improvements are to be installed prior to final plat approval, the plat of subdivision shall contain a Certificate of Completion of Public Improvements (to be submitted with application for approval of final subdivision plat). The certificate shall read as follows:

---

---

**Certificate of Completion of Public Improvements**

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. \_\_\_\_\_

(Engineers Seal)

- 
- 
- j. **County Commission.** The County Commission shall certify approval fo the plat of subdivision. Said certificate shall read as follows:

---

---

**Certificate of County Commission**

The County Commission of Carbon 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)

ATTEST:

(Signature of Clerk and Recorder)

(Seal of County)

Carbon County, Montana

- k. **County Treasurer.** All final subdivision plats shall show the following certificate:

---

---

**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,  
Carbon County, Montana

- 
- 
1. **Clerk and Recorder:** All subdivision plats, amended subdivision plats, and Certificates of Survey shall show the following certificate of the Clerk:

---

---

**Certificate of Filing by Clerk and Recorder**

STATE OF MONTANA     )  
  ) ss.  
County of \_\_\_\_\_ )

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_\_ o'clock.

(Signature of Clerk and Recorder)  
County Clerk and Recorder, Carbon County, Montana

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- 
- m. **Exemptions:** The following represents examples of certificates to be used on certificates of survey for the following types of exemptions: relocation of common boundaries, land gift or sale to family member, agricultural exemption, and security for construction.

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**Certificate of Exemption**  
**(Relocation of Common Boundary Outside of Platted Subdivision)**

(I) (We) certify that the purpose of this survey is to relocate common boundaries between adjoining properties outside of a platted subdivision. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(a), MCA.

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

(Signature of Property Owner(s))

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**Certificate of Exemption**  
**(Relocation of Common Boundary Between A Single Lot**  
**Within a Platted Subdivision and Adjoining Land Outside of Platted Subdivision)**

(I) (We) certify that the purpose of this survey is to relocate common boundaries between a single lot within a platted subdivision and adjoining land outside of a platted subdivision. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(e), MCA. I/We hereby acknowledge that any restrictions or requirements on the original platted or original unplatted parcel continue to apply to those areas.

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

(Signature of Property Owner(s))

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**Certificate of Exemption**  
**(Family Conveyance)**

(I)(We) certify that the purpose of this survey is to create Tract \_\_\_\_\_ for transfer of ownership as a family gift or sale and that no prior family gift or sale has been conveyed to \_\_\_\_\_ and that this exemption complies with all conditions imposed upon its use. Therefore this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(b), MCA, and the Carbon County Subdivision Regulations.

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

(Signature of Property Owner(s))

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**Certificate of Exemption**  
**(For Agricultural Purposes)**

(I) (We) certify that the purpose of this survey is to create Tract \_\_\_\_\_ for gift or sale, which is to be used for agricultural purposes only, and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)©, MCA and the Carbon County Subdivision Regulations.

(I) (We) also hereby enter a covenant, to run with the land, that Tract \_\_\_\_\_ as shown hereon, will be used exclusively for agricultural purposes only. No building or structure requiring water or wastewater facilities shall be utilized on Tract \_\_\_\_\_. This covenant is revocable only by the mutual consent of the Carbon County Commission and the property owner(s).

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

(Signature of Property Owner(s))

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**Certificate of Exemption**  
**(Security For Mortgages, Liens, Trust Indentures for Construction, Improvements  
To the Land Being Divided, or Refinancing)**

(I) (We) Certify that the purpose of this survey is to create a parcel of land to provide security for (Type of Security: mortgage, lien, trust indenture, construction, improvements to the land, refinancing), and that this exemption complies with all conditions imposed upon its use. Therefore, this survey is exempt from review as a subdivision pursuant to section 76-3-201(1)(b) MCA of the Subdivision and Platting Act , the Carbon County Subdivision Regulations and from review by the Montana Department of Environmental Quality pursuant to 76-4-125(2)(a)MCA.

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

(Signature of Property Owner(s))

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- n. **Exemption Accepted.** If the exemption is allowed, the County Commission shall so certify in a printed certificate on the certificate of survey.
- 

I, Chairman of the Board of County Commissioners, do hereby certify that the use of the exemption claimed on the accompanying certificate of survey has been duly reviewed, and has been found to conform to the requirements of the Montana Subdivision and Platting Act, Section 76-3-101 et. seq. MCA, and the Carbon County Subdivision Regulations.

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

(Signature of Chairman)

Chairman, Board of County Commissioners, Carbon County, Montana

## APPENDIX E

### CARBON COUNTY APPLICATION FOR EXEMPTION FROM SUBDIVISION CLAIM

#### A. GENERAL INFORMATION

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**Name of Claimant(s)** If more than two claimants, use additional sheets.

**#1 Name**

Address

Phone

**#2 Name**

Address

Phone

**Name of Surveyor**

Address

Phone

**Location** (nearest  
town)

**Parcel(s)** If more than two parcels, use additional sheets.

**#1 Address**

**Legal Description**  
(1/4 section)

**Existing Zoning and  
Zoning District**

**How and When  
Parcel Created**  
(example, COS 432,  
6/4/2001)

**#2 Address**

**Legal Description**  
(1/4 section)

**Existing Zoning and  
Zoning District**

**How and When  
Parcel Created**  
(example, COS 432,  
6/4/2001)

**B. EXEMPTION TYPE**

☐ **Family Conveyance**

Recipient(s)	Relationship to Claimant	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_ Attach copies of all deeds, contracts, restrictions and covenants related to this property recorded within the past year.

\_\_\_\_\_ If recipients are under age 18, attach documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc.

Date Claimant(s) became sole owner(s) of parcel to be divided: \_\_\_\_\_

**See Attached Exemption Supplement A for Family Conveyance that must be completed and signed and is subject to the following Affidavit.**

☐ **Agricultural Exemption** (Covenant running with the land, revocable only by mutual consent of the Commission and the property owner, that the land will be used exclusively for agricultural purposes. No structure requiring water or sewer facilities shall be utilized on this parcel.)

Description of current and proposed agricultural use

\_\_\_\_\_  
\_\_\_\_\_

☐ **Relocation of Common Boundary Lines** (All lots outside of a platted subdivision or a lot within a platted subdivision and adjoining unplatted land.)

Description, which type proposed?

\_\_\_\_\_  
\_\_\_\_\_

Reason or justification

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Relocation of Common Boundary Lines Within Platted Subdivision** (All lots inside of a platted subdivision.)

Reason or justification

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ **Security for Construction** (“mortgage survey”.)

\_\_\_\_\_ Attach signed and notarized statement from the lending institution confirming that the exempt parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

☐ **Aggregation of Parcels or Lots**

☐ **Other**

Reason or justification

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#### **C. INTENTIONS FOR USE**

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Claimants’ and recipients’ intentions for the **use** of **each** parcel (including existing, new and remainder parcels) (e.g. will parcels be used for agriculture, residences, etc.?)

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#### **D. INTENTIONS FOR DISPOSITION**

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Claimants’ and recipients’ **long term and short term** for the **disposition** of **each** parcel (including existing, new and remainder parcels) (e.g. will parcels be gifted, sold, retained, etc.?)

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## E. APPLICATION MATERIALS

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- ☐ **Certificate of Survey:**
- ☐ Four paper copies (six for family conveyance or complex boundary realignments)
  - ☐ Two Mylar copies, with all required certificates, including:
    - ☐ County Commission's ☐ Surveyor's, signed
    - ☐ Clerk and Recorder's ☐ Treasurer's certificate, signed
    - ☐ Claimant's certificates of exemption, signed and notarized
- ☐ **Copies of recorded deeds** documenting present ownership in all affected parcels
- ☐ **Copies of proposed deeds** for exchange of ownership, if any exchange is proposed
- ☐ **Copies of proposed deed restrictions or covenants** if any are proposed
- ☐ **Copies of existing deed restrictions or covenants**, if any
- ☐ If parcel is in a zoning district, a **Site Plan** showing all existing and proposed structures and proposed property lines.
- ☐ If claim is for family conveyance, **Copies of all deeds, contracts, restrictions and covenants related to the property recorded within the past year.**
- If recipients are under age 18, **attach documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc**
- ☐ If claim is for mortgage exemption, **Statement from lending institution confirming need.**

## F. ACKNOWLEDGEMENTS

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**I understand** that the State of Montana provides certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act.

**I affirm** that this exemption claim is **not** an attempt to evade the Montana Subdivision and Platting Act.

**I recognize** that I may be subject to penalty if my actions are deemed to be an effort to evade subdivision review, as set forth in the Montana Code Annotated:

- 76-3-301(3) If transfers not in accordance with this chapter [e.g. Chapter 3 Local Regulation of Subdivisions] are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.
  - 76-3-105 Violations. Any violation of the provisions of these this chapter [e.g. Chapter 3 Local Regulation of Subdivisions] or these Regulations is an offense punishable by a fine of not less than \$100.00 nor more than \$500.00 or imprisonment in a county jail for not more than three months or by both fine and imprisonment. Each sale or transfer, or offer of sale or transfer, of each separate parcel of land in violation of any provision of these regulations shall be deemed a separate and distinct offense.
  - 45-7-201 Perjury.
1. A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.



2. A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than \$50,000, or by both such fine and imprisonment.
3. Falsification is material, regardless of admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.
4. It is not defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.
5. No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
6. Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.
7. No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.
  - 45-7-202 False Swearing.
1. A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:
  - a. The falsification occurs in an official proceeding;
  - b. The falsification is purposely made to mislead a public servant in performing his official function; or
  - c. The statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.
2. Subsections (4) through (7) of 45-7-201 apply to this section.
3. A person convicted of false swearing shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

## G. AFFIDAVIT

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\_\_\_\_\_, Claimant(s) being first duly sworn  
upon oath, deposes and says as follows:

I, as Claimant, have read the foregoing Application for Exemption from Subdivision  
Claim, and affirm that it is true and correct.

\_\_\_\_\_  
Claimant's signature Date: \_\_\_\_\_

\_\_\_\_\_  
Claimant's signature Date: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

(Continued next page)

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Seal

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## EXEMPTION SUPPLEMENT A

### FAMILY CONVEYANCE

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1. Are you or any of your immediate family real estate professionals, developers, builders, etc? \_\_\_\_\_
2. Have you made prior subdivision exemption claims on any property in Carbon County? \_\_\_\_\_
3. Is your primary residence located on this parcel? \_\_\_\_\_
4. Do you own more than one parcel in Carbon County? \_\_\_\_\_
5. Why are you proposing this division of land? \_\_\_\_\_  
\_\_\_\_\_
6. What is the history of this tract? \_\_\_\_\_  
\_\_\_\_\_
7. How long have you owned or had an interest in the tract? \_\_\_\_\_
8. Do you own the tract free and clear? \_\_\_\_\_ If not, describe your mortgage or lending agreement \_\_\_\_\_
9. Are you delinquent at all with regard to the payments of this property? \_\_\_\_\_
10. At anytime in the last three years have you been delinquent? \_\_\_\_\_
11. Does the retirement of debt influence your decision to divide this land? \_\_\_\_\_
12. Was the parcel created by a previous exemption? \_\_\_\_\_
13. Please describe any previous family transfers in which you or the intended recipients have been involved? \_\_\_\_\_  
\_\_\_\_\_
14. Have you or a recent owner previously expressed an interest in subdividing the parcel? \_\_\_\_\_  
If yes, why didn't you or a recent owner pursue subdivision? \_\_\_\_\_
15. Have you previously attempted to sell any portion of the parcel? \_\_\_\_\_  
If yes, when and where did you attempt to sell it? \_\_\_\_\_  
If yes, when and why did you decide not to sell it? \_\_\_\_\_
16. Are any persons other than your immediate family interested in purchasing or developing any of the tracts? \_\_\_\_\_

## **APPENDIX F**

### **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.

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## APPENDIX H

### STANDARDS FOR FLOOD HAZARD EVALUATIONS

- 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 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. **Intent.** The intent of a flood hazard evaluation is to assess all possible flooding hazards to a subdivision. Part of this evaluation must therefore address the uncertainty of predicted conditions during significant meteorologic, geologic, and hydrologic events, and the evaluation draws upon known and observed flood behaviors and dynamics for context. The regulatory flood maps and associated flood studies recognized by Carbon County may contain some of this information but do not address the full range of hazards and flooding conditions necessary for a Flood Hazard Evaluation.
- C. **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.
- D. **Submission of Report.** Three (3) copies of the required Flood Hazard Evaluation shall be submitted at the time of subdivision and preliminary plat application. 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 (DNRC) for review and concurrence.
- E. **Flood Hazard Evaluation.** A Flood Hazard Evaluation is a professional assessment of all possible flooding hazards and a report of the risks associated with this potential flooding in the proposed subdivision. In addition to industry standard, one-dimensional, steady state water surface evaluation modeling, a flood hazard evaluation includes:
  - 1. A discussion of overbank flow path uncertainty related to: rivers and stream channels that are topographically higher than surrounding

floodplains, shallow flooding channels, alluvial fan flooding, debris jams, ice jams and/or diversions, and ditches.

2. A discussion of possible or predicted channel stability during flood events, including the possibility of channel avulsion and/or thalweg migration that could affect the flooding dynamic in the project area.
  3. A discussion of the risk of landslides and/or debris flows occurring and affecting flood behavior in the project area drainages.
  4. An analysis of the stability and structural integrity of permitted and unpermitted floodplain fill in the vicinity of the project that contacts the regulatory 100-year floodplain, including rip rap, berms, levees, and other fill.
  5. A statement attesting that all proposed sanitary sewer infrastructure meets 100-year flood design standards and/or will not otherwise contribute to water pollution during periods of flooding or high groundwater.
  6. A discussion of irrigation ditches in the area and how they would affect the project should they fail, overtop or route surface runoff.
  7. An identification of depressional areas (areas below the Base Flood Evaluation or design flood evaluation but unconnected to a separate and discrete flow path).
- E. **Detailed Information.** The detailed information to be included in the Flood Hazard Evaluation shall include the following:
- a. Project information
    1. Brief description of project and study objectives
    2. Project location: Address, Legal and common
    3. Map or aerial photograph of project location
  - b. Hydrology
    1. Summary of available gauge sites and discharge estimations
    2. Explanation of choice of discharge estimation method
    3. Computations
  - c. Survey
    1. Benchmark description with datum (NGVD 1929, NAVD 1988 or reference)

2. Plan view showing watercourse, property bounds, cross section locations, proposed flood boundaries, benchmarks, and any bridges, diversion dams, levees or other pertinent structures.
3. Photocopy of current FIRM at project location with panel number noted
4. Plots of cross sections looking downstream
  - 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.
5. Photos of channel, overbanks, and any hydraulic structures
6. Establish temporary benchmark near development
7. Topographic data if flood boundaries are being drawn. Spot elevations or contours.

d. Hydraulics

1. Discussion of choice of methodology, Normal Depth, Step Backwater (HEC-RAS), Other
2. Paper copies of input/output files and on CD
3. Discussions of model parameters including Manning's n values, starting surface water elevations, flow regime, etc.
4. Discussion of any special concerns, bridges, levees, side channels, ineffective flow areas, etc.



5. Discussion of model results, model warnings, assumed critical depths

e. Results

1. Summary
2. BFE at project location
3. Maps of floodplain boundary (if required)
4. P.E. Stamp
5. Cover Letter to Floodplain Administrator

- F. **Waiver of Requirement.** The Commission may waive this requirement where the subdivider contacts the Water Resources Division, DNRC, and that agency states in writing that data indicates that the proposed subdivision is not in the flood hazard area as defined in this Section. In considering a waiver the Commission shall consult with the Carbon County Floodplain Administrator.

## GRANT OF ACCESS EASEMENT

I-1

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## APPENDIX J

### FIRST MINOR SUMMARY OF PROBABLE IMPACTS

Except where exempt by state law (per 76-3-509, 76-3-609 or 76-3-608(6), MCA) all subdivisions must be reviewed for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety (76-3-608 (3)(a), MCA).

The applicant is required to respond to each of the items in Section C below.

#### A. Definitions

The following provides definitions for each of the criteria:

**1. Agriculture:** The use of the land for grazing and cropping to produce food, feed, and fiber commodities. Examples may include: cultivation and tillage of the soil; dairying; growing and harvesting of agricultural or horticultural commodities; and the raising of livestock, bees, fur-bearing animals, or poultry. This definition does not include concentrated animal feeding operations.

**2. Agricultural water user facilities:** Facilities that provide water for the production of agricultural products on agricultural land including, but not limited to ditches, canals, pipes, head gates, sprinkler systems, tanks, reservoir, ponds, or developed springs.

**3. Local services:** Any and all services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, transportation system, and educational system as well as services not provided by local government such as electricity, gas, telephone, and solid waste disposal.

**4. Natural environment:** Existing physical conditions relating to land, water, air, plant and animal life of an area and the interrelationship of those elements, such as soils, geology, topography, vegetation, surface water, ground water, aquifers, drainage patterns, recharge areas, climate, floodplains, noise, scenic resources, and objects of historic, prehistoric, cultural, or aesthetic significance.

**5a. Wildlife:** Animals (e.g. mammals, birds, reptiles, fish), that are neither human nor domesticated, existing in their natural environment.

**5b. Wildlife habitat:** Geographic areas containing physical or biological features essential to wildlife for breeding, rearing, nesting, and/or winter feeding and forage; and/or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.

**6. 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, as well as for the welfare of a specific individual or a small class of persons.

## **B. Evaluation**

The evaluation of the effect of the proposed subdivision on these six criteria determines if there are significant unmitigated adverse impacts. Unmitigated adverse impacts are potential grounds for denial of a proposed subdivision. Below are examples of items considered in evaluating the impact of a proposed subdivision on the six primary criteria. These examples do not necessarily reflect all potential items. Depending on the proposed subdivision, some of these items may not apply. In addition, some proposals may require evaluation of other factors not included in these examples to weigh the subdivision's effect on these criteria. It is the subdivider's responsibility to document proposed mitigation of any adverse impacts on these six criteria.

## **C. Summary of Probable Impacts.**

Provide a written response to each of the bulleted items for each of the six criteria. The response should clarify the probable impact of the proposed subdivision in relation to the specific item.

### **1. Effect on agriculture.**

- Number of acres that would be removed from the production of crops or livestock.
- Acres of prime farmland (as defined by the USDA) that would be removed from production.
- Effect on use of remainder (if any) and adjoining properties as farm or ranch land
- Potential conflicts between the proposed subdivision and adjacent agricultural operations including:
  - Interference with movement of livestock or farm machinery
  - Maintenance of fences
  - Weed proliferation
  - Vandalism or theft
  - Harassment of livestock by pets or humans
- Other items to be considered include:
  - Effect on market value of surrounding land
  - Net effect on taxes resulting from additional services

### **2. Effect on agricultural water user facilities.**

- Location and proximity to agricultural water user facilities
- Potential conflicts between facility users and subdivision residents including:

- Seeps, flooding, washouts,
- Obstructions and interference
- Unintended uses (recreation or landscaping)
- Water rights
- Vehicular access to facility

### **3. Effect on local services.**

- Increased demand on services and need to expand services
- Ability to provide services to subdivision
  - Response times
  - Conditions of roads, bridges, and railroad crossings
  - Physical Barriers.
- Provision of adequate local services and public facilities simultaneous or prior to onset of impact.
- Any special or rural improvement districts that would obligate local government involvement fiscally or administratively

### **4. Effect on natural environment.**

- Runoff reaching surface waters (e.g., streams, rivers or riparian areas).
- Impacts on ground water quantity and quality.
- Impacts on air quality.
- Impacts on scenic resources.
- Impacts on historic, pre-historic, and cultural resources
- Noxious weeds.
- Wetlands not covered under nationwide permits.

### **5. Effect on wildlife and wildlife habitat.**

- Loss of significant, important and critical habitat, as defined by Montana Fish, Wildlife and Parks or the U.S. Fish and Wildlife Service.
- Impacts on significant, important and critical habitat including potential effects of
  - roads and traffic
  - closure of existing operations and/or potential to provide new access to public lands
  - effects of humans and pets on wildlife.

### **6. Effect on public health and safety.**

- Creation of potential man-made hazards (e.g. unsafe road intersection, development in wildland residential interface fire areas).
- Natural hazards (e.g. wildfire, flooding, steep slopes).

- Existing potential man-made hazards (e.g. high pressure gas lines, lack of fire protection, cumulative impacts).
- Traffic safety.
- Emergency vehicle access.
- Emergency medical response time.
- Condition of road leading to proposed subdivision.
- Condition of bridges on road leading to proposed subdivision.
- Any other item that endangers public health and safety

## **APPENDIX K DEFINITIONS**

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this section. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular.

1. **ACCESS (LEGAL AND PHYSICAL):** Legal Access means that each lot in a subdivision abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties from a public road to each lot in the subdivision. Physical access means that a street or road conforming to the subdivision design standards provides safe vehicular access from a public street or road to each lot in the subdivision.
2. **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.
3. **AGRICULTURAL WATER USER FACILITY:** 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.
4. **BED AND BREAKFAST:** An establishment which provides overnight lodging to the public for compensation; caters to the public; is located in the proprietor’s residence and serves only breakfast to registered guests. A bed and breakfast shall not contain more than five rooms for rent to the public.
5. **BENCHMARK:** A reference point for making measurements.



6. BLOCK: A group of lots, tracts or parcels within well defined fixed boundaries.
7. BUILDING SETBACK LINE: An imaginary line establishing the minimum distance that structures may be located from lot lines and street right-of-ways.
8. CERTIFICATE OF SURVEY: A drawing of a field survey prepared by a registered land surveyor for the purpose of disclosing facts pertaining to boundary locations.
9. CLUSTER DEVELOPMENT: A subdivision with lots clustered in a group of five or more lots that's 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 the other lands to remain undeveloped.
10. COMMERCIAL: A commercial use is any business, retail trade or service activity.
11. CONDOMINIUM: A form of individual ownership with unrestricted right of conveyance 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 all units.
12. COVENANT: An agreement, in writing, of two or more parties by which any of the parties pledges himself to the others that something is done or shall be done.
13. 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.
14. 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. Provided that where required by the Act the land upon which an improvement is situated has been subdivided in compliance with the Act, the sale, rent, lease or other conveyance of one or more parts of a building structure or other improvement (not to include mobile homes) situated on one or more parcels of land is not a division of land and is not subject to the terms of the Act.
15. DRIVEWAY: A private road-that services only one residence.

16. DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one family.
17. EASEMENT: A right to use land, other than as a tenant, for a specific purpose; such right being held by someone other than the person who holds title to the land.
18. 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.
19. FIRST MINOR SUBDIVISION: A proposed subdivision of a tract of record that has not been subdivided or created by a subdivision under these regulations, or has not resulted from a tract of record that has had more than five parcels created from that tract of record since July 1, 1973.
20. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.
21. 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.
22. FLOODPLAIN: The area adjoining the watercourse or drainage way which would be covered by the flood water of a flood of 100 year frequency.
23. FLOODWAY: The channel of a watercourse or drainage way and those portions of the floodplain adjoining the channel which are reasonably expected to carry and discharge the flood water of any watercourse or drainage way.
24. FINAL PLAT: the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the County Clerk and Recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.
25. GOVERNING BODY: The board of county commissioners or the governing authority of a city or town organized pursuant to the law.
26. GUEST HOUSE - an accessory structure that is used for temporary and periodic quarters for guests. The structure is not used for a permanent residence and may not be leased or rented to the general public.

27. GROWTH POLICY PLAN - means and is synonymous with a comprehensive development plan, master plan or comprehensive plan and meets the requirements of 76-1-601 MCA.
28. IMMEDIATE FAMILY: a spouse, child by blood or adoption, and parents.
29. LOCAL FIRE AUTHORITY: A local fire district, fire service area, or the County Fire Marshall.
30. LOCATION MAP: A small map showing the location of a tract of land in relation to a larger land area.
31. LOT: A parcel, plot or other land area created by subdivision for sale, lease or rent.
32. 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 width of the lot measured by averaging its two narrow dimensions.
  - 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.
33. LOT TYPES:
- a. Corner Lot: A lot located at the intersection of two streets.
  - b. Interior Lot: A lot with frontage on one street.
  - c. Through Lot: A lot whose front and rear lines both abut on a street.
34. MAJOR SUBDIVISION: A subdivision which does not qualify for review as a minor subdivision.
35. 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 76-3-609, MCA.
36. 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.
37. **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.
38. **MOBILE HOME SUBDIVISION:** A tract of land providing spaces for two (2) or more mobile homes
39. **MOBILE HOME STAND:** That area of a mobile home lot which has been prepared for the placement of a mobile home
40. **MODULAR OR FACTORY BUILT BUILDING:** A dwelling constructed at a factory in accordance with the Uniform Building Code applicable to site built homes and transported to the site for final assembly on a permanent foundation
41. **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.
42. **MONUMENT (PERMANENT MONUMENT):** Any structure of masonry, metal, or other permanent material placed in the ground, which is exclusively identifiable as a monument of a survey point, expressly placed for surveying reference.
43. **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.
44. **OPEN SPACE:** Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
45. **ORIGINAL TRACT:** A tract of land created as of July 1, 1973.
46. **OVERALL DEVELOPMENT PLAN:** The master plan of a subdivision designed for a single tract and proposed to be subdivided in phases.

47. OWNER: The person, corporation, or other entity that holds actual title to the property.
48. PLANNED UNIT DEVELOPMENT: (PUD): A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.
49. PLANNING BOARD: The Carbon County Planning Board
50. PLANNING OFFICE: The Carbon County Planning Office
51. PLANNING STAFF: The Carbon County Planning Staff
52. PLAT: A graphic representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.
- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, roads, alleys, lot, blocks, and other elements of a subdivision which furnish a basis for a review by a governing body.
  - b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the County Clerk and Recorder and containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. (Title 76, Chapter 3, MCA).
  - c. Vacated Plat: A plat which has been removed from the County record under provisions of Title 76, Chapter 3, Part 305, MCA.
  - d. Amended Plat: The final drawing of any change to a platted subdivision required to be filed with the County Clerk and Recorder and containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act. (Title 76, Chapter 3, MCA)
51. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public such as parks, streets and roads, sidewalks, curbs and gutters, street lighting, utilities and systems for water supply, sewage disposal and drainage.

52. PUBLIC UTILITY: Has the meaning provided in 69-3-101, and the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23.
53. QUALIFIED PROFESSIONAL(S): Person(s) with experience, training and competence in the pertinent discipline. A qualified professional must be licensed to practice in the State of Montana in the related professional field, if such field is licensed. If not licensed, a qualified professional must have a national certification in the pertinent field. If national certification in the field does not exist, the minimum qualification should be a bachelor's degree with 10 years of related professional work, or master's degree in the field and three year of related professional work.
54. RECREATIONAL VEHICLE PARK: A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers or automobiles for transient dwelling purposes.
55. 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.
56. RIGHT-OF-WAY: A strip of land dedicated or acquired for use as a public way.
57. RURAL PLANNED UNIT DEVELOPMENT - A development that designates home sites on a large tract of land in order to preserve at least 75% of the land for open space, wildlife habitat, winter range, riparian areas, or agricultural land. A rural planned unit development may or may not contain a mixture of land uses (ie commercial, residential, industrial) and may or may not contain traditional cluster development. The main function of a rural planned unit development is to preserve large tracts of land in open space, wildlife habitat, riparian or agricultural use.
58. STATE: The State of Montana.
59. STREAM : Any natural creek, watercourse, drainage, waterway, gully, ravine or was in which water flows continuously or intermittently and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow.
60. ROADWAY TYPES: For purposes of these regulations the definition of street and road is interchangeable and the roadway types are defined as follows.

- a. Alley: A road used primarily for vehicular access to the rear of properties which abut on and are served by public roads.
  - b. Arterial: A road having the primary function of moving traffic and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two (2) to four (4) lanes of moving traffic and provide limited access to abutting property.
  - c. Collector: A road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and may have two parking lanes.
  - d. Local Roads: A road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, may have one or two parking lanes and provide access to abutting properties.
  - e. Dead-End Road: A road having only one outlet for vehicular traffic.
  - f. Half-Road: A portion of the width of a road, usually along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.
  - g. Cul-de-sac: A road having only one outlet for vehicular traffic and terminating in a turn-around area.
  - h. Loop: A local road which begins and ends on the same street, generally used for access to properties.
  - i. Frontage Access (Service Road): A local or collector road, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
  - j. Private Road: A road is private if its right-of-way has not been dedicated for public use, and is maintained by a private party/property owner's association.
  - k. Public Road: A road is public if its right-of-way has been dedicated for public use, but is maintained by either a private party/ property owner's association or a public entity.
61. SUBDIVIDER: Any person, firm or corporation, or other entity who causes land to be subdivided or who proposes a subdivision of land. The entity may or may not be the actual owner of the property, but has an option to purchase

the property or be the legal representative of the landowner, in which case, the landowner is not considered to be the actual subdivider.

62. SUBDIVISION: A division of land or land so divided, that creates one or more parcels containing less than one hundred sixty (160) acres that cannot be described as a one-quarter aliquot part of a United States Government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and includes any resubdivision; and further includes a condominium or area, regardless of its size, that provides or will provide multiple spaces for recreational camping vehicles or mobile homes.

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

64. SWALE: A drainage channel or shallow depression, natural or manmade designed to direct surface water flow.

65. TRACT: A single parcel of land held in single and undivided ownership as shown by the official records on file in the office of the County Clerk and Recorder.

66. 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.

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

- i. an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or
- ii. a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

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

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



67. WATERCOURSE: Stream, a natural depression or channel which gives direction to a current of water at any time of the year.
68. WILDLIFE: Living animals which are neither human nor domesticated.
69. WILDLIFE HABITAT: A place frequented by wildlife or site where wildlife naturally lives.
70. WILDLIFE FENCING: A wildlife friendly fencing type approved or recommended by Montana Fish, Wildlife and Parks.

**APPENDIX L**

**CERTIFICATE OF DEDICATION FOR PUBLIC ROADS**

**To be placed on the face of the plat**

(I), (We) the undersigned property owner(s) do hereby certify that (I) (We) have caused to be surveyed, subdivided and planned into lots , parcels, blocks, roads and alleys, and other divisions and dedications , as shown by this plan hereunto included the following described tract of land

(Legal description to also include exterior boundary description of area contained in plat and total acreage)

The above described tract of land is to be known and designated as \_\_\_\_\_, Carbon County, Montana, and the lands included in all roads, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever. The roadways dedicated to the public are accepted for public use but the county accepts no responsibility for maintaining the same. The owner(s) agree(s) that the County has no obligation to maintain the roads hereby dedicated to the public use.

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires \_\_\_\_\_