

**TOWN OF CLYDE PARK
SUBDIVISION
REGULATIONS**

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DEFINITIONS

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not consistent with the context, words used in the present tense include the future; the singular, (unless otherwise specifically defined in a particular section), including the plural, and the plural the singular; the word "shall" is always mandatory, and the word "may" indicates use of discretion in making decisions.

1. **AGRICULTURE:** The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticulture crops that are raised, grown, or produced for commercial purposes.
2. **AGRICULTURAL WATER USER FACILITIES:** Any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.
3. **BLOCK:** a group of lots, tracts or parcels within well-defined and fixed boundaries.
4. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.
5. **CLUSTER DEVELOPMENT:** A subdivision with lots clustered that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped [76-3-103(2), MCA].
6. **GROWTH POLICY:** A comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to Title 76, MCA, on or after October 1, 1999.
7. **CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units.
8. **COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed that restricts or regulates the use of the real property.
9. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3), MCA].
10. **DEQ:** The Montana Department of Environmental Quality.
11. **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 MSPA (Montana

Subdivision and Platting Act). The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4), MCA].

12. DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one household.
13. EASEMENT: Authorization by a property owner for another to use all or a portion of the owner's property for a specified purpose.
14. 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.
15. FIRST MINOR SUBDIVISION: A proposed minor 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. [Mont. Code Ann. 76-3-609(2)].
16. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.
17. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude expected to recur on the average on once every 100 years, or a flood magnitude which has a one percent chance of occurring in any given year.
18. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency.
19. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage.
20. GOVERNING BODY: The governing authority of a county, city, town, or consolidated local government organized pursuant to law.
21. LOCAL SERVICES: All services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.
22. LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.
23. LOT MEASUREMENT:
 - a. Lot Depth-The length of a line drawn perpendicularly to the front lot line and extending the rear lot line.

- b. Lot Width-The average width of the lot.
- c. Lot Frontage-The width of the front lot line.
- d. Lot Area-The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way.

24. LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.

25. MAJOR SUBDIVISION: A subdivision which does not qualify for review as a minor subdivision.

26. MINOR SUBDIVISION: A subdivision that creates five or fewer lots from a tract of record.

27. 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.

28. 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.

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

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

31. 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.

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

33. NATURAL ENVIRONMENT: The physical conditions that exist within a given area.

34. OPEN SPACE: Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

35. **OVERALL DEVELOPMENT PLAN:** The plan of a subdivision design for a single tract proposed to be subdivided in stages.
36. **PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.
37. **PLAT:** A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.
- a. **Preliminary Plat:** A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA.
 - b. **Final Plat:** The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in the regulations and the MSPA. (Title 76, Chapter 3, MCA).
 - c. **Amended Plat:** The final drawing of any change to a filed platted subdivision.
38. **PUBLIC HEALTH AND SAFETY:** A condition of wellbeing wherein risk of injury to the community at large is minimized.
39. **PUBLIC IMPROVEMENT:** Any structure of facility constructed to serve the residents of a subdivision or the general public.
40. **PUBLIC ROAD OR STREET:** A road or street which has been dedicated for public use.
41. **RECREATIONAL CAMPING VEHICLE:** A vehicular type unity 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.
42. **RECREATIONAL VEHICLE PARK:** A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.
43. **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.
44. **STATE:** The State of Montana.
45. **STREET TYPES:** For purposes of these regulations, street types are defined as follows:
- a. **Alley:** A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.

- b. **Arterial:** A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
 - c. **Collector:** A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
 - d. **Local Streets:** A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
 - e. **Half-Street:** A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
 - f. **Cul-de-sac:** A street having only one outlet for vehicular traffic and terminating in a turn-around area.
 - g. **Loop:** A local street which begins and ends on the same street, generally used for access to properties.
 - h. **Frontage Access (Service Road):** A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
46. **SUBDIVIDER:** Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" also included the subdivider's agent, if the subdivider has provided the subdivision administrator written notification that the subdivider's agent is authorized to act on the subdivider's behalf and to receive notices regarding local government decisions concerning the subdivision.
47. **SUBDIVISION:** A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes and re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA].
48. **SUBDIVISION ADMINISTRATOR:** The person authorized by the governing body to perform the duties of the subdivision administrator set forth in these regulations.

49. **SUBSEQUENT MINOR SUBDIVISION:** Any subdivision of five or fewer parcels that is not a first minor subdivision.
50. **SURVEYOR (REGISTERED LAND SURVEYOR):** A person licensed in conformance with the Montana Professional Engineer's Registration Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
51. **SURVEYOR (EXAMINING LAND SURVEYOR):** A registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.
52. **SWALE:** A drainage channel or depression designed to direct surface water flow.
53. **TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office [76-3-103(17)(a), MCA].
54. **VICINITY SKETCH:** A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.
55. **WILDLIFE:** Those animals that are not domesticated or tames.
56. **WILDLIFE HABITAT:** The physical surroundings required for the existence of wildlife.

I. GENERAL PROVISIONS

I-A. Title

These regulations will be known and may be cited as "The Subdivision Regulations of the Town of Clyde Park, MT," hereinafter referred to as "these regulations."

I-B. Authority

Authorization for these regulations is contained in the MSPA. [Title 76, Chapter 3, MCA].

I-C. Purpose

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

These regulations are intended to comply with part five of the MSPA and are intended to promote: 1. The orderly development of the jurisdictional area. 2. The coordination of roads within subdivided land with other roads, both existing and planned. 3. The dedication of land for roadways and for public utility easements. 4. The provision of proper physical and legal road access, including obtaining of necessary easements. 5. The provision of adequate open spaces for travel, light, air, and recreations. 6. The provision of adequate transportation, water, drainage, and sanitary facilities. 7. The avoidance or minimizing of congestion. 8. The avoidance of subdivisions which would involve unnecessary environmental degradation. 9. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services. 10. The avoidance of excessive expenditure of public funds for the supply of public services. 11. The manner and form of making and filing of any plat for subdivided lands. 12. The administration of these regulations by defining the powers and duties of approving authorities including procedures for the review and approval of all plats of subdivisions covered by these provisions.

I-D. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of the Town of Clyde Park.

If a proposed subdivision lies within one mile of a third-class city or town or within two miles of a second-class city or within three miles of a first-class city, the county governing body must

submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

If a proposed subdivision is located in a rural school district, the governing body shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

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

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

I-E. Severability

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

II. GENERAL PROCEDURES

II-A-1. Construction Timing

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

II-A-2. Transfers of Title

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;"
- e. That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
- f. A copy of the contracts and escrow agreement described above must be submitted to the City subdivision administrator.

II-A-3. Permission to Enter

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

II-A-4. Appeals

- a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- b. A party identified in subsection (c) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- c. The following parties may appeal under the provisions of subsection (b) above:
 - i. the subdivider;
 - ii. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

- iii. the county commissioners of the county where the subdivision is proposed; and
- iv. (A) a first-class municipality as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(B) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits;

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

III. MAJOR SUBDIVISIONS

III-A. Review and Approval Procedures for Major Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as minor subdivisions under 76-3-609, MCA and these regulations.

III-A-1. Pre-application Process

- a. Prior to submittal of the subdivision application, the subdivider shall request a pre-application meeting with the Subdivision administrator. The meeting shall occur within 30 calendar days after the subdivider submits a written request for the meeting to the subdivision administrator.
- b. At the time of the pre-application meeting request, the subdivider shall provide the subdivision administrator with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be freehand sketch drawn directly on a print of the topographic map and should include the following:
 - i. Information on the current status of the site, including:
 - (A) location;
 - (B) approximate tract and lot boundaries of existing tracts of record;
 - (C) description of general terrain;
 - (D) natural features including wetland, riparian areas, streams, etc.;
 - (E) existing structures and improvements;
 - (F) existing utility lines and facilities; and

- (G) existing easements and rights of way.
- ii. Information on the proposed subdivision, including:
 - (A) tract and lot boundaries;
 - (B) proposed public improvements;
 - (C) location of utility lines and facilities;
 - (D) easements and rights of way;
 - (E) parks and open space; and
 - (F) list of variances to be requested with the preliminary plat
- c. At the pre-application meeting:
 - i. the subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;
 - ii. the subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision and that may be contacted for comment of the subdivision application. The subdivision administrator shall also identify the time-frames that the public utilities, agencies, and other entities are given to respond.
 - iii. the subdivision administrator shall identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application pursuant to Section III-B-2. This does not limit the ability of the subdivision administrator to request additional information at a later time.
 - d. Unless the subdivider submits the subdivision application as provided in Section III-B-I of these regulations within 180 working days of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

III-B. Subdivision Applications

III-B-1. Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the subdivision administrator a subdivision application containing the following materials:
- i. two (2) hard copies and two (2) digital copies (compact disc) containing the Subdivision Plat Application, preliminary plat, preliminary plat contents and supplements, environmental assessment, summary of probable impacts and community impact report. See Appendix B for Subdivision Plat Application, preliminary plat contents and supplements, environmental assessment, summary of probable impacts and community impact report; and
 - ii. the required review fee as stated in the Fee Schedule in Section S; and
 - iii. two (2) copies 18" by 24" (or 24" by 36") of the preliminary plat and 14 copies 11" by 17" of the preliminary plat completed by a land surveyor which:
 - (A) contains the information required for preliminary plats at a scale no smaller than 100 feet to the inch; and
 - (B) conforms to the Design and Improvement Standards set forth in Section VI of these regulations; and
 - iv. a summary of probable impacts, pursuant to Appendix B and section III-B-9, including any mitigation of impacts; and
 - v. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and¹
 - vi. such additional relevant and reasonable information as identified by the subdivision administrator during the pre-application meeting pursuant to section III-A-1(c) that is pertinent to the required elements of this section; and
 - vii. a list of property owners of record whose property immediately adjoin the proposed subdivision and each purchaser under contract for deed of property immediately adjoining the proposed subdivision.

¹*Comment: Review by Utilities and Governmental Agencies*

Section 76-3-504(1)(i), MCA, requires that local subdivision regulations provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government that have a substantial interest in a proposed subdivision.

III-B-2. Review Process

- a. **Local Government to Perform Element and Sufficiency Review** The local government shall be the entity to complete element and sufficiency review even if the subdivider has applied to the DEQ first pursuant to 76-4-129, MCA.
- b. **Element Review**
 - i. Within five (5) working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by Section III-B-1 of these regulations and shall give written notice to the subdivider of the subdivision administrator's determination.
 - (A) If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall identify those elements in the notification and no further action shall be taken on the application by the subdivision administrator until the missing elements are submitted.
 - (B) The subdivider may correct the deficiencies and resubmit the application.
 - (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (b)(i)(B) above, the subdivision administrator shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required.
 - (D) This process shall be repeated until the subdivider submits an application containing all the materials required by Section III-B-1.
- c. **Sufficiency Review**
 - i. Within fifteen (15) working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (b), the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of the MSPA and these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.
 - (A) If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify the insufficient information in its notification and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
 - (B) The subdivider may correct the deficiencies and resubmit the application.
 - (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivision administrator shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information

that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.

- (D) This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of the MSPA and these regulations.
- ii. A determination that an application contains sufficient information for review as provided in this subsection (c) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.
- iii. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.
- d. Applicable Regulations Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.
- e. Time Period for Approval, Conditional Approval, or Denial Within sixty (60) working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section III-B-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section III-B-7 of these regulations. The review period of sixty (60) working days begins once the subdivision administrator has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the subdivision administrator sends the notice to the subdivider.
- f. Public Agency and Utility Review Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 60 working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

III-B-3. Public Hearings and Notices-In General

a. Hearings

The planning board shall hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

- i. Notice of the times and dates of the hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 calendar days prior to the dates of the hearings.
- ii. At least 15 calendar days prior to the dates of the hearing, notice of the hearing shall be given 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 under contract for deed of property immediately adjoining the land included in the preliminary plat.
- iii. The subdivision administrator may require the notices be posted at conspicuous places on the site of the proposed subdivision.

III-B-4. Planning Board Hearing, Consideration and Recommendation

- a. Hearing After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, the planning board shall hold a public hearing on the subdivision application.
- b. Consideration-Standards In recommending approval, conditional approval or denial of the subdivision application, the planning board shall base its recommendation on compliance of the subdivision application with the following:
 - i. these regulations, including but not limited to the design standards set forth in Section VI;
 - ii. applicable zoning regulations;
 - iii. The MSPA, including but not limited to 76-3-608(3), as delineated in section III-B-8(a) and (b) of these regulations; and
 - iv. other applicable regulations.
- c. Consideration-Evidence In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):
 - i. the subdivision application and preliminary plat;
 - ii. the environmental assessment;
 - iii. discussion of probable impacts;
 - iv. an officially adopted growth policy;
 - v. public hearing(s);
 - vi. subdivision administrator report and recommendation;
 - vii. written and verbal public testimony; and

- viii. any additional information authorized by law.
- d. **Recommendation** Within 10 working days after the public hearing, the planning board shall submit the following in writing to the subdivider and the governing body:
 - i. recommended findings of fact based on the evidence in subsection (c) above that discuss and weigh for the subdivision's compliance with and impact on subsection (b) of these regulations; and
 - ii. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- e. **Water and Sanitation Information** The planning board shall collect public comment regarding the water and sanitation information required by Appendix A. The planning board shall forward all comments regarding water and sanitation to the governing body.

III-B-5. Subdivider's Preference for Mitigation

No later than ten (10) calendar days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body the subdivider's comments on and responses to the planning board's recommendations. This document may include the subdivider's alternative proposal, if any, for mitigating the impacts identified in the planning board's recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

III-B-6. Governing Body Hearing

- a. After the planning board makes its recommendation, the governing body shall hold a public hearing on the subdivision application.
- b. The governing body shall determine whether public comments for documents presented at the governing body's public hearing constitute either:
 - i. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall proceed as set forth in subsection c below.
- c. If the governing body determines that public comments or documents presented constitute new information or analysis of information regarding a subdivision application that has never been submitted as evidence or considered by the planning board at a public hearing

on the subdivision application, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision.

- i. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall, schedule or direct the planning board to schedule a subsequent public hearing pursuant to Section III-B-7 for consideration of only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- d. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - i. physical facts or evidence;
 - ii. corroborated personal observations; or
 - iii. scientific data

III-B-7. Subsequent Public Hearing

- a. If a subsequent public hearing is held pursuant to section III-B-6(c)(ii), it must be held within 45 calendar days of the governing body's determination to schedule a subsequent hearing. Only the new information or analysis of information shall be considered at the subsequent public hearing.
 - i. Notice of the time and date of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 calendar days prior to the date of the subsequent hearing.
 - ii. At least 15 calendar days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, each property owner or record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
 - iii. The governing body may require the notice be posted at conspicuous places on the site of the proposed subdivision.
- b. If a subsequent public hearing is held, the 60 working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60 working day review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

- c. The governing body 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.²

III-B-8. Governing Body Decision and Documentation

- a. **Prerequisites to Approval** The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:
- i. provides easements for the location and installation of any planned utilities;
 - ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
 - iii. assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section III-C-5 of these regulations; and
 - iv. complies with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights as follows:
 - v. If the proposed subdivision will create lots averaging less than five acres in size, pursuant to 76-3-504(1)(j), MCA, the subdivider shall:
 - (A) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water, and reserve and sever any remaining surface water rights from the land;
 - (B) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners with the subdivision who have a legal right and access to the water; or
 - (C) reserve and sever all surface water rights from the land.
- b. **Consideration-Standards** In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection (a) above, and whether the proposed subdivision complies with:

²Note: This language was added because the statute seems to provide that once the subsequent public hearing is held, the governing body will not hear any more information on the subdivision application and no further hearings will be held. If a subsequent hearing is held the governing body should take further public comment at its next public meeting only after a decision has been reached in order to prevent any further new information from influencing the governing body's decision.

- i. these regulations, including, but not limited to, the design standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations; and
- iv. the MSPA, including but not limited to the following factors that are representative of, but not an exhaustive list of impacts on the criteria identifies in 76-3-608(3)(a), MCA:

(A) Impacts on agriculture

Agriculture is defined as the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction are considered to have a minimal effect on agriculture.
- (2) Proposed subdivisions or associated improvements that are located on prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service are considered to have an impact on agriculture.
- (3) Proposed subdivisions or associated improvements that predominately border land defined as agricultural or timberland by the Montana Department of Revenue or state trust lands are considered to have an impact on agriculture.

(B) Impact on agricultural water user facilities

Agricultural water user facilities are defined as any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

- (1) Proposed subdivisions located on land with agricultural water user facilities or adjoining an agricultural water use facility are considered to have an impact on agricultural water user facilities.
- (2) Proposed subdivisions that involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities are considered to have an impact on agricultural water user facilities.

- (3) Proposed subdivisions or associated improvements that will alter access for maintenance of agricultural water user facilities are considered to have an impact on agricultural water user facilities.
- (4) Proposed subdivisions or associated improvements that will alter the movement or availability of water are considered to have an impact on agricultural water user facilities.

(C) Impact on local services

Local services are defined as all services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction and will use existing utilities located within one-half mile of the subdivision are considered to have a minimal impact on local services.
- (2) Proposed subdivisions that will require the extension of public facilities by more than one-half mile are considered to have an impact on local services.

(D) Impact on natural environment

The natural environment is defined as the physical conditions that exist within a given area.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction and will use existing utilities located within one-half mile of the subdivision are considered to have a minimal impact on the natural environment except as otherwise provided in subsection (5) below.
- (2) Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, rivers, streams, lakes, or other natural surface waters are considered to have an impact on the natural environment.
- (3) Proposed subdivisions or associated improvements that are proposed on land with a high-water table (less than 4 feet from the surface), wetlands, or groundwater recharge areas are considered to have an impact on the natural environment.
- (4) Proposed subdivisions or associated improvements that are proposed in locations with evidence of soils with building or site

development limitations as defined by the soil survey or are proposed on slopes greater than 25 percent are considered to have an impact on the natural environment.

- (5) Proposed subdivisions or associated improvements that are proposed on land with historical, cultural, archeological, or paleontological features are considered to have an impact on the natural environment.

(E) Impacts on wildlife and habitat

Wildlife and wildlife habitat are defined as living things that are neither human nor domesticated and the physical surroundings required for their existence.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction are considered to have a minimal impact on wildlife and wildlife habitat.
- (2) Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, wetlands, rivers, streams, lakes, or other natural surface waters are considered to have an impact on wildlife and wildlife habitat.
- (3) Proposed subdivisions or associated improvements that are proposed in an area with rare or endangered species, as identified by state or federal agencies, are considered to have an impact on wildlife.
- (4) Proposed subdivisions or associated improvements that are proposed on or adjacent to land identified by state or federal agencies as critical habitat are considered to have an impact on wildlife and wildlife habitat.

(F) Impacts on public health and safety

Public health and safety is defined as a condition of well-being wherein risk of injury to the community at large is minimized.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction and utilize available public facilities are considered to have a minimal impact on public health and safety.
- (2) Proposed subdivisions or associated improvements that are located in an area identified as a high fire hazard area by a fire district are considered to have an impact on public health and safety.

- (3) Proposed subdivisions or associated improvements that are proposed on land with high pressure gas lines or high voltage lines are considered to have an impact on public health and safety.
- (4) Proposed subdivisions or associated improvements that are proposed on land or adjacent to Superfund or hazardous waste sites are considered to have an impact on public health and safety.
- (5) Proposed subdivisions or associated improvements that are proposed on or adjacent to abandoned landfills, mines, wells, waste sites, or sewage treatment plants are considered to have an impact on public health and safety.

c. Consideration-Evidence In making its decision to approve, conditionally approve, or deny a proposed subdivision, the governing body may consider the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the statement of probable impacts and mitigation;
- iv. an officially adopted growth policy;³
- v. comments, evidence and discussions at the public hearing(s);
- vi. subdivision administrator reports and recommendations
- vii. planning board recommendation;
- viii. any relevant public testimony; and
- ix. any additional information authorized by law.

d. Water and Sanitation-Special Rules

- i. The governing body may conditionally approve or deny a proposed subdivision application as a result of the water and sanitation information provided in Section III-B-1(a)(i) or public comment received pursuant to subsection (iv) below and Section III-B-4(e) on the water and sanitation information only if the conditional approval or denial is based on existing subdivision, zoning or other regulations that the governing body has the authority to enforce.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the DEQ as a condition of approval of the final plat.

³Note: The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

- iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body 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 drain field for each lot.
- iv. The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) days after conditional approval of the subdivision application and preliminary plat.
- v. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - (A) reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
 - (B) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Governing Body Decision

- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written Findings of Fact that discuss and weigh the proposed subdivision's compliance with subsection (a) above and impact on the standards set forth in subsection (b) above.
- ii. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - (A) contain information regarding the appeal process for the denial or imposition of conditions;
 - (B) identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - (C) provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - (D) provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

f. Subdivision Application and Preliminary Plat Approval Period

- i. The governing body must establish the term of the approval or conditional approval of the subdivision application and preliminary plat, which must be at least one but not more than three calendar years.
 - (A) At the end of this period, the governing body may, at the request of the subdivider, extend its approval for a period of one year.
 - (B) The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section III-C-5.
- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
- iii. The governing body may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

III-B-9. Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision, administrator makes a determination of sufficiency pursuant to section III-B-2(c) but before the Planning Board hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
 - i. Within five (5) working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
 - ii. The sixty (60) working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
 - iii. If the subdivision administrator determines the changes are not material, the 60 working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator may either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the 60 working day review period.
- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body hearing, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.

- i. Within five (5) working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
- ii. The 60 working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
- iii. If the subdivision administrator determines the changes are not material, the 60 working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
- iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
 - (A) require the subdivider to begin the subdivision review process again, starting with the pre-application process; or
 - (B) schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the subdivision administrator's determination to schedule a new planning board hearing shall be provided as set forth in section III-B-3. A supplemental staff report shall be prepared to address the changes to the original application.
- v. If a new Planning Board hearing is held pursuant to subsection (b)(iv)(B) above, the 60 working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii).
- d. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions; and
 - vi. designated access.
- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within ten (10) working days. The

subdivider may request a hearing and may submit additional evidence to show that the changes to the preliminary plat are not material.

- i. The 60 working day review period is suspended until the governing body decision on the appeal is made.
- ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to subsection (b)(iv)(A) or (B).
- iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 60 working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 60 working day review period provided in subsection (i) above.

III-C. Final Plats

III-C-1. Final Plat Submittal

The final plat must be submitted to the subdivision administrator before the expiration of the subdivision application and preliminary plat approval period described in Section III-B-8(f). An application for final plat approval (see form, Appendix C), the final plat, and the appropriate review fee, if any, must be submitted to the subdivision administrator.

III-C-2. Final Plat Contents

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

III-C-3. Final Plat Review

- a. **Final Plat Submittal** The final plat and all supplementary documents shall be submitted to the subdivision administrator at least thirty (30) working days prior to the expiration of preliminary plat approval or an extension thereto, and no less than fifteen (15) working days prior to the date the final plat is presented to the governing body for approval. The submittal shall include, as applicable:
 - i. a final plat application;
 - ii. the appropriate fee;
 - iii. title abstract (no more than 30 days old)

- iv. two (2) signed mylar copies of the plat with all required certificates;
 - v. two (2) paper copies of the plat;
 - vi. two (2) bound copies of the required information necessary to respond to the Uniform Standards for Final Subdivision Plats (Appendix A) and the conditions of approval including a written narrative explaining how each of the conditions of the preliminary plat approval has been satisfied;
 - vii. two (2) digital copies on Compact Disc (CD) containing the drawing file for the plat and a pdf copy of the completed application form, the plat, the written narrative and all attachments necessary to respond the Uniform Standards for Final Subdivision Plats (Appendix A) and the conditions of approval.
 - viii. county and/or city attorney approvals.
- b. **Review by Subdivision Administrator** The subdivision administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The subdivision administrator will not accept, begin processing, nor schedule any action by the governing body on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete by the subdivision administrator until all conditions of preliminary approval have been satisfied, including but not limited to:

The subdivision administrator may require that final subdivision plats 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 meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped certificate on the plat. The certificate must be signed by the surveyor.

III-C-4. Restrictive Covenants-Approval, Content and Enforcement by Governing Body

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

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

III-C-5. Public Improvements Agreement; Guaranty

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

III-C-6. Final Plat Approval

- a. Approval by the Governing Body The Planning Board and the governing body shall examine every final subdivision plat and within thirty (30) working days from the date deemed complete by the subdivision administrator and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations of deny it pursuant to (ii) below.
 - i. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
 - ii. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider with 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 governing body shall return the final plat to the subdivider for additional review pursuant to Section III-B-2.
- c. **Inaccurate Information** The governing body may withdraw approval of a final plat if it determines that material information provided by the subdivider is inaccurate.

III-C-7. Final Plat Filing

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

III-D. Amending Filed 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 and 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 governing body.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners (or lenders) of all lots which will be modified by the proposed amendment.
- c. The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in section VI of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section X-B, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats (Appendix A).
- e. Plats may only be amended for reasons of public health and safety.

IV. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

Subdivisions containing five or fewer parcels shall be reviewed as set forth in the Section IV. First minor subdivisions shall be reviewed pursuant to section IV-A and subsequent minor subdivisions shall be reviewed pursuant to Section IV-B.

IV-A. First Minor Subdivision Review

IV-A-1. Pre-application Process

- a. Prior to submittal of the subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator.⁴ The meeting shall occur within 30 calendar days after the subdivider submits a written request for the meeting to the subdivision administrator.
- b. At the time of the pre-application meeting request, the subdivider shall provide the subdivision administrator with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:
 - i. Information on the current status of the site, including:
 - (A) location;
 - (B) approximate tract and lot boundaries of existing tracts of record;
 - (C) description of general terrain;
 - (D) natural features;
 - (E) existing structures and improvements;
 - (F) existing utility lines and facilities; and
 - (G) existing easements and rights of way.
 - ii. Information on the proposed subdivision, including:
 - (A) tract and lot boundaries;
 - (B) proposed public improvements;
 - (C) location of utility lines and facilities;
 - (D) easements and rights of way; and
 - (E) parks and open space.
- c. At the pre-application meeting:
 - i. the subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

⁴Note: This section is drafted to make the pre-application meeting mandatory.

- ii. the subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision and that may be contacted for comment on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
- iii. the subdivision administrator shall identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application pursuant to Section IV-A-5. This does not limit the ability of the subdivision administrator to request additional information at a later time.
- d. Unless the subdivider submits the subdivision application as provided in Section IV-A-1 of these regulations within 180 working days⁵ of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

IV-A-2. First Minor Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the subdivision administrator a subdivision application containing the following materials:
 - i. two (2) hard copies and two (2) digital copies (compact disc) of the completed Subdivision Plat Application (see Appendix B), containing the materials identified in section IV-A-8 and in the pre-application meeting, and
 - ii. sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record;
 - iii. the required review fee as stated in the Fee Schedule in Section X-A;
 - iv. two (2) copies 18" by 24" (or 24" by 36") of the preliminary plat and 14 copies 11" by 17" of the proposed minor subdivision which:
 - (A) contains the Form, Content and Supplements required by Appendix B; and
 - (B) conforms to the Design and Improvement Standards set forth in Section VI of these regulations
 - v. a summary of probable impacts, pursuant to Appendix B and section IV-A-89, including any mitigation of impacts;

⁵This gives the subdivider six months from the date of the pre-application meeting to file the application. Some jurisdictions may wish to lengthen the time to as long as one year or shorten it to three or four months. It is within the jurisdiction's discretion.

- vi. proof that the subdivider has submitted for review copies of the subdivision application to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision;⁶ and
- vii. such additional relevant and reasonable information as identified by the subdivision administrator during the pre-application meeting pursuant to section IV-A-1(c)(ii) that is pertinent to the required elements of this section.

IV-A-3. First Minor Subdivision Plat Form and Contents

For a first minor subdivision, the subdivider shall submit a preliminary plat that conforms to the Montana Uniform Standards for Monumentation, and Subdivision Plats (Appendix A0. The subdivider must also submit the supplements required for preliminary plats in Appendix B-Form, Content, and Supplements and responses to the Summary of Probable Impacts unless otherwise exempted in Section IV-A-4. The minor subdivision plat must conform to the design standards set forth in Section VI of these regulations.

IV-A-4. First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions:

- a. preparation of an environmental assessment;
- b. public hearing requirements; and
- c. review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, *if* the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those impacts.

IV-A-5. First Minor Subdivision Review Process

- a. **Local Government to Perform Element and Sufficiency Review** The local government shall be the entity to complete element and sufficiency review even if the subdivider has applied to the DEQ first pursuant to 76-4-129, MCA.
- b. **Element Review**
 - i. Within five (5) working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by Section IV-A-2, including Appendix B of these regulations, as applicable, and shall give written notice to the subdivider of the subdivision administrator's determination.

⁶Comment: Section 76-3-504(1)(i), MCA, requires that local subdivision regulations provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government that have a substantial interest in a proposed subdivision. Note: The governing body may not deny a proposed subdivision or delay action on it beyond the time limits specified in the MSPA because a reviewing utility or agency has failed to comment on the plat.

- (A) If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall identify those elements in the notification and no further action shall be taken on the application by the subdivision administrator until the missing elements are submitted.
- (B) The subdivider may correct the deficiencies and resubmit the application.
- (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivider whether the resubmitted application contains all the materials required by Section IV-A-2 and by Appendix B of these regulations, as applicable.
- (D) This process shall be repeated until the subdivider submits an application containing all the materials required by Section IV-A-2, including Appendix A and Appendix B, as applicable.

c. Sufficiency Review

- i. Within fifteen (15) working days after the reviewing agent or agency notifies the subdivider that the application contains all of the required elements as provided in subsection (b), the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of these proposed subdivision under the provisions of the MSPA and these regulations and give written notification, to the subdivider of the subdivision administrator's determination.
 - (A) If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify the insufficient information in its notification and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
 - (B) The subdivider may correct the deficiencies and resubmit the application.
 - (C) If the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivision administrator shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.
 - (D) This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of the MSPA and these regulations.
- ii. A determination that an application contains sufficient information for review as provided in this subsection (c) does not ensure that the proposed subdivision will

be approved or conditionally approved by the governing body and does not limit the ability of the subdivision administrator, planning board, or the governing body to request additional information during the review process.

- iii. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.
- d. Applicable Regulations Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.
- e. Time Period for Approval, Conditional Approval, or Denial Within thirty-five (35) working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins once the subdivision administrator has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the reviewing agent or agency sends the notice to the subdivider.
- f. Public Agency and Utility Review Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the 35 working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

IV-A-6. First Minor Planning Board Consideration and Recommendation

a. Consideration-Standards

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

- i. these regulations, including but not limited to the design standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. the MSPA, including but not limited to 76-3-608(3), MCA, as delineated in Section IV-A-8(a) and (b) of these regulations; and

- iv. other applicable regulations.
- b. **Consideration-Evidence** In recommending approval, conditional approval, or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):
 - i. the subdivision application and preliminary plat;
 - ii. discussion of probable impacts;
 - iii. an officially adopted growth policy;⁷
 - iv. subdivision administrator reports and recommendation;
 - v. any relevant public testimony; and
 - vi. any additional information authorized by law.
- c. **Recommendation** Within 10 working days of the meeting at which the governing body is to consider the subdivision application and preliminary plat, the planning board shall submit the following in writing to the subdivider and the governing body:
 - i. recommended findings of fact based on the evidence in subsection (b) above that discuss and weigh the subdivisions compliance with and impact on subsection (a) of these regulations; and
 - ii. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- d. **Water and Sanitation Information** The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by Appendix A. The planning board shall forward all comments regarding water and sanitation to the governing body.

IV-A-7. Subdivider's Preference for Mitigation

No later than ten (10) days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body the subdivider's comments on and responses to the planning board's recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the planning board's recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences [76-3-608(5)(b), MCA].

⁷The planning board may not base its recommendation solely on the subdivision application's compliance with an officially adopted growth policy. However, the planning board may consider the growth policy as one factor.

IV-A-8. First Minor Subdivision Governing Body Decision and Documentation

- a. **Prerequisites to Approval** The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:
- i. provides easements for the location and installation of any planned utilities;
 - ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
 - iii. assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section III-C-5 of these regulations; and
 - iv. complies with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights as follows:

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

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

- b. **Consideration-Standards** In approving, conditionally approving, or denying a first minor subdivision application, the governing body shall consider subsection (a) above and whether the proposed subdivision complies with:
- i. these regulations, including but not limited to, the design standards set forth in Section VI;
 - ii. applicable zoning regulations;
 - iii. other applicable regulation; and
 - iv. the MSPA, including but not limited to the following factors that are representative of, but not an exhaustive list of impacts on the criteria identifies in 76-3-608(3)(a), MCA:

(A) Impacts on agriculture

Agriculture is defined as all aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction are considered to have a minimal effect on agriculture.
- (2) Proposed subdivisions or associated improvements that are located on prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service are considered to have an impact on agriculture.
- (3) Proposed subdivisions or associated improvements that predominately border land defined as agricultural or timberland by the Montana Department of Revenue or state trust lands are considered to have an impact on agriculture.

(B) Impact on agricultural water user facilities

Agricultural water user facilities are defined as those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.

- (1) Proposed subdivisions located on land with agricultural water user facilities or adjoining an agricultural water use facility are considered to have an impact on agricultural water user facilities.
- (2) Proposed subdivisions that involve the abandonment or transfer of water rights from the property being subdivided, or that involve the abandonment or removal of agricultural water user facilities are considered to have an impact on agricultural water user facilities.
- (3) Proposed subdivisions or associated improvements that will alter access for maintenance of agricultural water user facilities are considered to have an impact on agricultural water user facilities.
- (4) Proposed subdivisions or associated improvements that will alter the movement or availability of water are considered to have an impact on agricultural water user facilities.

(C) Impact on local services

Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction and will use existing utilities located within one-half mile of the subdivision are considered to have a minimal impact on local services.
- (2) Proposed subdivisions that will require the extension of public facilities by more than one-half mile are considered to have an impact on local services.

(D) Impact on natural environment

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

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction and will use existing utilities located within one-half mile of the subdivision are considered to have a minimal impact on the natural environment except as otherwise provided in subsection (5) below.
- (2) Proposed subdivisions or associated improvements that are proposed in locations with riparian areas, rivers, streams, lakes, or other natural surface waters are considered to have an impact on the natural environment.
- (3) Proposed subdivisions or associated improvements that are proposed on land with a high-water table (less than 4 feet from the surface), wetlands, or groundwater recharge areas are considered to have an impact on the natural environment.
- (4) Proposed subdivisions or associated improvements that are proposed in locations with evidence of soils with building or site development limitations as defined by the soil survey or are proposed on slopes greater than 25 percent are considered to have an impact on the natural environment.
- (5) Proposed subdivisions or associated improvements that are proposed on land with historical, cultural, archeological, or paleontological features are considered to have an impact on the natural environment.

(E) Impacts on wildlife and habitat

Wildlife is defined as animals that are not domesticated or tamed; and wildlife habitat is defined as the place or area where wildlife naturally lives or travels through.

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction are considered to have a minimal impact on wildlife and wildlife habitat.
- (2) Proposed subdivisions or associated improvements that are proposed in locations with riparian area, wetlands, rivers, streams, lakes, or other natural surface waters are considered to have an impact on wildlife and wildlife habitat.
- (3) Proposed subdivisions or associated improvements that are proposed in an area with rare or endangered species, as identified by state or federal agencies, are considered to have an impact on wildlife.
- (4) Proposed subdivisions or associated improvements that are proposed on and or adjacent to land identified by state or federal agencies as critical habitat are considered to have an impact on wildlife and wildlife habitat.

(F) Impacts on public health and safety

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

- (1) Proposed subdivisions that are contiguous to developed unincorporated town sites or within the city-county planning jurisdiction and utilize available public facilities are likely to have an impact on public health and safety.
- (2) Proposed subdivisions or associated improvements that are located in an area identified as a high fire hazard area by a fire district are considered to have an impact on public health and safety.
- (3) Proposed subdivisions or associated improvements that are proposed on land with high pressure gas lines or high voltage lines are considered to have an impact on public health and safety.

- (4) Proposed subdivisions or associated improvements that are proposed on land or adjacent to Superfund or hazardous waste sites are considered to have an impact on public health and safety.
- (5) Proposed subdivisions or associated improvements that are proposed on or adjacent to abandoned landfills, mines, wells, waste sites, or sewage treatment plants are considered to have an impact on public health and safety.

c. Consideration-Evidence In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the governing body may consider the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the statement of probable impacts and mitigation;
- iii. an officially adopted growth policy⁸;
- iv. subdivision administrator reports and recommendations;
- v. planning board recommendation
- vi. any relevant public testimony; and
- vii. any additional information authorized by law.

d. Water and Sanitation-Special Rules

- i. The governing body may conditionally approve or deny a proposed subdivision application as a result of the water and sanitation information provided or public comment received pursuant to subsection (iv) below and Section IV-A-8(d) on the water and sanitation information only if the conditional approval or denial is based on existing subdivision, zoning or other regulations that the governing body has the authority to enforce.
- ii. for a proposed subdivision that will ^{be} created on ^{one} or more parcels containing less than 20 acres, the governing body may require approval by the DEQ as a condition of approval of the final plat.
- iii. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body 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 drain field for each lot.
- iv. The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) days after conditional approval or approval of the subdivision application and preliminary plat.

⁸Note: The governing body may not base its decision solely on the subdivision application's compliance with an officially adopted growth policy. However, it may consider the growth policy as one factor.

v. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

- (A) reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
- (B) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Governing Body Decision

- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written Findings of Fact that discuss and weigh the proposed subdivision's compliance with (a) and impact on the standards set forth in subsection (b) above.
- ii. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - (A) contain information regarding the appeal process for the denial or imposition of conditions;
 - (B) identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - (C) provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - (D) provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

f. Subdivision Application and Preliminary Plat Approval Period

- i. The governing body must establish the term of the approval or conditional approval of the subdivision application and preliminary plat, which must be at least one but not more than three calendar years.
 - (A) At the end of this period the governing body may, at the request of the subdivider, extend its approval for a period of one year.
 - (B) The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section IV-A-10.

- ii. After the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.
- iii. The governing body may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

IV-A-9. First Minor Subdivisions-Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
 - i. Within five (5) working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
 - ii. The 35 working day review period is suspended while the subdivision administrator considers the amended application or preliminary plat.
 - iii. If the subdivision administrator determines the changes are not material, the 35 working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application.
- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).
- c. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. road layout;
 - iii. water and/or septic proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions; and,
 - vi. designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's

decision to the governing body. The person may request a hearing and may submit additional evidence to show that the changes to the preliminary plat are not material.

- i. The 35 working day review period is suspended until the governing body decision on the appeal is made.
- ii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat should be resubmitted pursuant to subsection (a)(iv).
- iii. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35 working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35 working day review period provided in Section IV-A-5.

IV-A-10. First Minor Subdivision Final Plat

The final plat must have the contents and be submitted and reviewed in accordance with the appropriate requirements contained in Section III-C, Final Plat.

IV-B. Subsequent Minor Subdivisions

Subsequent minor subdivisions shall be reviewed as major subdivision. All the requirements and procedures of Section III of these regulations must be followed for subsequent minor subdivisions.

V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

V-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 MSPA.

V-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 do not apply unless otherwise specifically provided 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 governing body of the pending division and allow the governing body 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 created by lease or rental for farming and agricultural purposes;
- g. A division of land is in a location over which the state does not have jurisdiction;
- h. A division of land is created for public right-of-way or public utility sites.

V-C. Specific Exemptions

- a. 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.
- b. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land.
- c. 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 on-site weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities;
- d. 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, 1974.
- e. Deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.

V-D. 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 subdivision administrator of any land division described in this section or 76-3-207(1), MCA.

V-D-1. Relocation of Common Boundary [76-3-201(1)(a), MCA]

- a. **Statement of Intent.** The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between two parcels and to allow a one-time transfer of a tract to affect that relocation or elimination without subdivision review.
- b. **Required Information.** Certificates of survey claiming this exemption must clearly distinguish between the existing boundary locations and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification and the stated reason for the relocation must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.
- c. **Use of Exemption.** The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.
- d. **Rebuttable Presumptions.** The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:
 - i. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
 - ii. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

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

- a. **Statement of Intent.** The intention of this exemption is to allow a landowner to convey one parcel to each member of his or her immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
 - (i) The term "immediate family" means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.
- b. **Required Information** 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 or a statement detailing where the deed is in escrow, how long it will be in escrow and authorization to contact the escrow agent for verification.

- c. Use of Exemption One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under 76-3-201(1)(b), MCA, and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member provided the use of the exemption creates no more than one additional parcel of less than 160 acres in size.
- d. Rebuttable Presumptions
 - i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
 - ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
 - iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
 - iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

V-D-3. Exemption for Agricultural Purposes [76-3-207(1)(c), MCA]

- a. Statement of Intent. The intention of this exemption is to allow a landowner to create a parcel without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings will be built on it.
- b. Required Information. A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-201(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24,183, 1104(f)(iii)]. The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.
- c. Use of Exemption.
 - i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
 - ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.

- iii. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.
- d. **Rebuttable Presumptions.** The following conditions must be met, or the use of the exemption will be presumed to have been adopted for the purpose of evading the Act:
 - i. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the county commissioners and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the governing body.
 - ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings will be built on it.
 - iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

V-D-4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-201 (1)(D), (E) AND (2)(A), MCA]

- a. **Statement of Intent.**
 - i. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.
 - ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the clerk and recorder.
- b. **Required Information.** The plat shall contain the title "amended plat" and must be filed with the County Clerk and Recorder. The amended plat showing the aggregation of lots and/or relocation of common boundary within a platted subdivision must be accompanied by an original deed exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that is acquiring additional land; documentation showing the need or reason for the relocation; statement on the plat with the stated reason for the relocation; signatures of all landowners whose parcels are changed by the relocation or aggregation. The amended plat must clearly distinguish the prior boundary location from the new boundary.
- c. **Use of exemption.** Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-201(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

d. Rebuttable presumption.

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

V-E. Procedures and Review of Subdivision Exemptions

V-E-1. Submittal

Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator and where applicable the sanitarian the following:

- (a) two (2) signed mylar copies and two (2) paper copies of a certificate of survey or amended plat or if a survey is not required, an instrument of conveyance;
- (b) one (1) original deed, covenant or applicable document of conveyance; and
- (c) evidence of, and an affidavit affirming, entitlement to the claimed exemption.

V-E-2. Review

When a claimed exemption is submitted to the subdivision administrator, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g. city attorney, sanitarian, treasurer and clerk and recorder). The subdivision administrator and governing body agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- a. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with this section.
- b. Within thirty (30) working days of submittal the subdivision administrator shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.
- c. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and these criteria, the subdivision administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and these criteria, the subdivision administrator shall advise the clerk and recorder to not file or record the documents, and the clerk shall return the materials to the landowner.
- d. The subdivision administrator, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business,

the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-E-3. Appeals

- a. Any person whose proposed use of an exemption has been denied by the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the agent's decision to the governing body. The person may request a hearing and may submit additional evidence to show that the use of the exemption in question is not intended to evade the MSPA or these regulations, and, thereby overcome the rebuttable presumption.
- b. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.
- c. If the person proposing to use an exemption does not seek to rebut the rebuttable presumption or if the governing body determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may submit a subdivision application for the proposed land division.

V-E-4. Non-Rebuttable Presumption for Evasion

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

V-E-5. Identification Codes

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

CO ... Court order [76-3-201(1)(a), MCA]
ME ... Mortgage Exemption [76-3-201(1)(b), MCA]
LE ... Life Estate [76-3-201(1)(e), MCA]
RB ... Relocation of Common Boundary [76-3-201(1)(a), MCA]
FC ... Family Conveyance [76-3-201(1)(b), MCA]
AE ... Agricultural Exemption [76-3-201(1)(c), MCA]
OS ... Occasional Sale (used prior to April 6, 1993)
AL ... Aggregation of Lots [76-3-207(e), MCA]

VI. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to **Section X-B, Variances**. The governing body may not grant variances from the provisions of Section VI-A-4, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to sections VII, VIII, and IX of these regulations.

VI-A. General Standards

VI-A-1. Conformance with Zoning

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

VI-A-2. Natural Environment

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

VI-A-3. Lands Unsuitable for Subdivision

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

VI-A-4. Floodplain Provisions

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

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining and are 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 B 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 subdivision administrator along with the Environmental Assessment required for the preliminary plat.

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

VI-A-5. Improvement Design

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

VI-A-6. Lots

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

- a. No lot may be divided by a municipal or county boundary line.
- b. No lot may be divided by a public road, alley or utility right-of-way or easement
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary access to a lot.
- d. Corner lots must have driveway access to the same street or road that provides access to interior lots.
- e. Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.
- f. No lot may have an average depth greater than three times its average width.
- g. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

VI-A-7. Blocks

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

VI-A-8. Streets and Roads

a. Design

- i. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
- ii. Roads must meet the design specifications in Table 1.
- iii. Where streets terminate, either a cul-de-sac or "T" turnaround must be provided at the terminus. Cul-de-sacs and "T" turnarounds must conform to the design specifications in Table 1.
- iv. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association.
- v. Residential driveways must not have direct access to primary highways. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation.
- vi. Local streets must be designed so as to discourage through traffic.
- vii. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- viii. Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- ix. The alignment of all streets and roads must provide adequate sight distances.
- x. Intersections. The following requirements apply to intersections:
 - (A) streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
 - (B) two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
 - (C) no more than two streets may intersect at one point.
 - (D) intersections of local streets with major arterials or highways must be avoided.

- (E) intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
- (F) hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.
- (G) the grade of approaches to major highways may not exceed five percent.
- xi. Names of new streets or roads are 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. All roadway improvements including pavement, curves, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations and the Clyde Park ordinance concerning roadway construction, and using materials approved by the governing body.
- ii. Roadway upgrades must be free of topsoil, sod, vegetation, or organic matter, soft clay, and other substandard materials. Subgrade must be properly rolled, shaped, and compacted, and must be approved by the governing body.
- iii. Streets and roads must be designed to ensure proper drainage. This may require service crowning, culverts, curbs and gutters, drainage swales and storm drains.
- iv. 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 H contains a model road access easement).

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

- v. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.
- vi. Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety.

- vii. The road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- viii. When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

TABLE 1: *Road Design Standards for Subdivisions*

<u>Minimum Design Standards</u>	<u>Minor Collector</u>	<u>Local Road</u>
1. Minimum right-of-way width	60 ft.	
a. level terrain		50 ft.
b. hilly terrain		60 ft.
2. Minimum roadway width ¹	26 ft.	24 ft.
3. Minimum curb radius or edge of pavement at intersections	25 ft.	15 ft.
4. Maximum grades ²	8%	9%
5. Approaches onto Public Roads		
a. minimum sight distance	200 ft.	150 ft.
b. minimum width	35 ft.	30 ft.
c. Maximum grade for 20'	5%	5%
6. Curvature ³		
a. design speed	30 mph	20 mph
b. maximum curve	23	53.5
c. minimum radius	249 ft.	107 ft.
7. Cul-de-sacs/Turnarounds		
a. maximum road length	-	1000 ft.
b. cul-de-sac: minimum outside right-of-way radius	-	40 ft.
c. cul-de-sac: minimum outside roadway radius	-	35 ft.
d. "T" turnaround: backup lengths (2 required)	-	30 ft. each
8. New bridges		
a. curb-to-curb widths ⁴	26 ft.	24 ft.
b. design load capacity	20 tons	20 tons
c. vertical clearance	4.5 ft.	4.5 ft.

¹Where parking will be permitted add eight feet on each side. If guardrail installation is required or a shoulder is desired, add two feet to each side of roadway.

²Grades over 10% must not exceed 100 feet in length.

³Curvature is based on a super-elevation of .08/ft.

⁴Width of the bridge roadway surface should match the width of the roadway system it joins.

PG. 80 DRAWINGS?????

VI-A-9. Drainage Facilities

- a. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the governing body. Subdivisions containing less than 20 acres in size must also be reviewed and approved under title 76, Chapter 4, MCA, by the DEQ.
- 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 service run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- e. Drainage systems must not discharge into any sanitary sewer facility.
- f. Drainage systems must be designed and certified by a professional engineer.
- g. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

VI-A-10. Water Supply Systems

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana 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 term used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. The governing body may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, section 76- 4 - 101 *et seq.*, MCA.
- c. Any central water supply system must provide adequate and accessible water for fire protection.

IV-A-11. Sewage Treatment Systems

- a. For subdivision will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the 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 using these standards will have the meanings assigned to them in ARM 17.36.101.
- b. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the governing body can approve the final plat.
- c. For subdivisions containing parcels containing 20 acres or more, the subdividers shall have demonstrated that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot before the governing body may approve the final plat.

VI-A-12. Solid Waste

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method must comply with the standards adopted by the 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 term used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA.
- c. For subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres, the proposed method of storing and disposing of solid waste generated within the subdivision in the subdivision must comply with the local environmental health department regulations.

VI-A-13. Utilities

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to

simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.

- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with 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 the easements are placed in the street, they must be located between the roadway and the right-of-way line.
- f. Utility easements must be 15 feet wide unless otherwise specified by utility company or governing body.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.
- h. In addition to showing the location of utility easement on the plat with dashed lines, the following statement must appear on the final plat:

"the undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, internet, 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."

VI-A-14. Water Course and Irrigation Easements

- a. except as noted in subsection (b), below, the subdivider shall established within the subdivision ditch easements that:
 - i. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and on obstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation and 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 form to provide for the use of the water right on the subdivision lots;
 - ii. are a sufficient distance from the center line of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - iii. prohibit the placement of structures were the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdividers need not establish irrigation easements as provided above if:

- i. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - ii. 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
 - iii. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

VI-A-15. Disposition of Water Rights

If a subdivision will create lots averaging less than 5 acres in size, the subdivider shall submit evidence with the final plat but 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 an access to the water; or
- c. reserved and severed all surface water rights from the land proposed for subdivision.

VI-A-16. Park Land Dedication-Cash in Lieu-Waivers-Administration⁹

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 - i. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - ii. 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;
 - iii. 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
 - iv. 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.
- b. A park dedication is not required for:
 - i. minor subdivisions;
 - ii. subdivision lots larger than 5 acres;
 - iii. non-residential subdivision lots;
 - iv. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
 - v. subdivisions which will create only one additional parcel.
- c. The governing body, in consultation with the sub divider in 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 express 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 cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- d. The governing body will waive the park dedication requirement if he determines that:
 - i. A. the preliminary plat provides for a planned unit development or other development would land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who ultimately reside in the development; and

⁹Comment: As provided in 76-3-621(2), MCA, if a proposed subdivision will be located entirely within an area for which the governing body has established density requirements in an adopted growth policy for zoning regulations, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or zoning regulations. These requirements are in lieu of those provided in subsection a., below, and may not exceed 0.03 acres per dwelling unit.

- B. the area of the land and any improvements set-aside (by way of conservation easements or other similar mechanism) for park and recreational purposes equals or exceeds areas of the dedication required under VI-A-16-a;
 - ii.
 - A. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interest; or an anesthetic values; and
 - B. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under VI-A-16-a above;
 - iii. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections VI-A-16-d-i and VI-A-16-d-ii above, is reduced by an amount equal to or exceeding the area of the dedication required under VI-A-16-a; or
 - iv.
 - A. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
 - B. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under VI-A-16-a.
- e. The local governing body may waive the park dedication requirement if:
 - i. The subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interest, or anesthetic values; and
 - ii. The area of land subject to long-term protection equals or exceeds the area of dedication required under subsection VI-A-16-a.
- f. The governing body will administer funds dedicated to the public under this section in accordance with section MCA 76-3-621.
- g. For the purposes of this park dedication requirement:
 - i. "cash donation" means the fair market value of the unsubdivided, unimproved land. At the time of final plat submittal, the subdivider is responsible for providing an appraisal by a certified real estate appraiser for the amount of land that would have been dedicated; and
 - ii. "dwelling unit" means a residential structure in which a person or persons reside.

VI-A-17. 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. Measures must include:

- a. The placement of structure so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.
- b. The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.
- c. The availability, through a fire protection District or other means, a fire protection services adequate to respond to fires that may occur within a subdivision.

VI-A-18. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard

For areas identified as wildfire hazard areas by the United States Forest Service, the Montana Department of Natural Resources and Conservation, a local fire protection authority, or a local growth policy, the following apply:

- a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan must include the following items:
 - 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 disease diseased vegetation;
 - 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.
- c. At least two entrances/exits must provide escape routes for residents and access to the subdivision by firefighting vehicles. Bridget is providing access to the subdivision must be built to a design load of 20 tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.
- d. Building sites may not be located on slopes of greater than 25% or at the apex of "fire chimneys" (topographic features, usually drainage ways or swales, which tend to final or otherwise concentrate fire toward the top of steep slopes).
- e. The Fire Prevention and Control Plan must be implemented for the governing body 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 improve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the Fire Chief has given written notice to the planning board or

subdivision administrator that the Plan has been completed as approved by the (planning board).

- f. 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 covenants, conditions, and restrictions.
- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences work and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with the standards set by (the appropriate local fire protection authority).*

* In the absence of such standards, the subdivider must at least provide the following for effective fire control:

- a. A central water system with a minimum flow of 1,000 gallons per minute; or
- b. Cisterns, reservoirs or Phil Ponce at appropriate locations:
 - i. For single dwelling units: minimum capacity of 2,500 gallons;
 - ii. For 6 or more dwelling units: minimum capacity of 500 gallons per dwelling unit.

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

VII-A. Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes¹⁰

VII-A-1. Recreational Camping Vehicles-Definition

Developments which are subject to subdivision review because they will be reviewed under Section VII-E, below. For purposes of these regulations the term "recreational camping vehicle" means a vehicular typing 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. Determine includes but is not limited to travel trailers, camping trailers, truck campers, and motor homes.

¹⁰Comment: The MSPA defines the term "subdivision" to include areas, regardless of their size, that provide or will provide multiple spaces for recreational camping vehicles or motor homes regardless of whether the spaces for recreational camping vehicles or motor homes regardless of whether the spaces will be made available for rent by the general public for a fee. I development which is A subdivision under the MSPA because it will provide multiple spaces for recreational camping vehicles or mobile homes may also be subject to regulation by the Montana Department of Public Health and Human Services (DPHHS) under Title 50, Chapter 52, MCA, if it will be a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in section 50-52-102, MCA. If so, the governing body should condition its MSPA approval of the development on the subdivider's obtaining the appropriate license from DPHHS.

VII-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 VII-D, 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.

- 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 subdividers shall submit an unsurveyed final plan drawn to scale, rather than a final plat.
- b. Land subdivisions created by rent or lease or subject to the applicable design and improvement standards contained in Section VI, Design and Improvement Standards.

VII-B. Procedures for Review

VII-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).

VII-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 final requirements of the MSPA. These subdivisions must be submitted for review and approved by the governing body before portions of the subdivision maybe rented or leased. This subdivider shall submit a completed application form and a plan of the proposed development. The procedure used 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 subdividers shall submit to the governing body the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the lot layout in the proposed location of the mobile home, recreational vehicle, or other unit on the lot.

VII-B-3. Improvements

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

VII-B-4. Final Plat Review

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

VII-B-5. DPHHS License

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

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

VII-C-1. Design Standards

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

VII-C-2. Additional Provisions

The governing body may require provision for:

- a. storage facilities on the lot or in compounds located within a reasonable distance;
- b. a central area for storage for 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.

VII-D. Mobile Home Park Standards

VII-D-1. Mobile Home Spaces

- a. Mobile home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.

- b. All mobile homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines at the park.
- c. The mobile home pad must be located at least 10 feet from the street 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 it space. The total area occupied by a mobile home and it's roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- f. The governing body may require that the mobile home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
- g. No mobile home or it's attached structures, such as awnings and carports, maybe located within 20 feet of any other mobile home or its attached structures.
- h. No detached structure, such as a storage shed, maybe located within 5 feet of any Mobile home or its attached structures.
- i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile home space. The driveway must be located to allow for convenient access to the mobile home and be a minimum of 10 feet wide.
- j. One guest parking space must be provided for each 10 mobile home spaces. Group parking may be provided.
- k. The limits of each mobile home space must be clearly marked on the ground by permanent flush steaks, 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 30 days after it is moved to a space within the mobile home park. The skirting must be of a fire-resistant material similar to that of the mobile home exterior.

VII-D-2. Streets

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

- a. Streets must be designed to provide safe access to public roads.
- b. Roads with in 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.

VII-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.

VII-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.

VII-E. Recreational Vehicle Park Standards

VII-E-1. Recreational Vehicle Spaces

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic in access to spaces.
- b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
- c. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of the separation requirement, be considered part of the recreational vehicle.
- d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

VII-E-2. Density

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

VIII. CONDOMINIUMS

VIII-A. Procedures

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

VIII-A-1. Review Where Land Will Not be Divided

If note division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section VII, 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-5 Public Improvements Agreement; Guaranty.

VIII-A-2. Condominium Subdivisions Involving Land Divisions

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

III-B Review and Approval Procedures for Major Subdivisions

III-C Final Plats

VIII-B. Standards

VIII-B-1. Design Standards

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

VIII-B-2. Unit Ownership Act

Condominium development must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-701, MCA.

IX. CLUSTER DEVELOPMENT

- a. As authorized by 76-3-509, MCA, the following apply to subdivisions proposed under this section:
 - i. An area of open space must be preserved that is at least as large as the area that will be developed.
 - ii. Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.
 - iii. Unless the subdivision will be provided with community ~~sewer~~ water, each lot in the cluster must be a minimum of one acre.

- iv. Multiple adjacent tracts of record may be aggregated to create a single parcel for the purpose of creating a cluster development.
 - v. The maximum number of parcels permissible in a cluster development is the maximum number of parcels that are authorized by the administrative rules adopted by the DEQ under Title 76, Chapter 4, MCA.
 - vi. The maximum size of parcels allowed within a cluster development is determined by Cluster Density Bonuses and other zoning requirements, as identified in the Clyde Park Zoning Regulations.
- b. Park dedication requirements for cluster subdivisions created under this section are waived.

X. ADMINISTRATIVE PROVISIONS

X-A. Fee Schedule

<u>Number of Proposed Lots or Dwellings Units</u>	<u>Fee</u>
1-5 (Minor Subdivisions)	\$600.00 plus \$20 per lot
Subsequent Minor Subdivisions	\$800.00 plus \$40 per lot
Final Plat for Minor Subdivisions	\$300.00
5 or greater lots (Major Subdivision)	\$800.00 plus \$40 per lot
Final Plat for Major Subdivisions	\$400.00 plus \$20 per lot
Mobile Home or RV Parks	\$600.00 plus \$20 per unit
Condominiums	\$600.00 plus \$20 per unit
Final Plat for Condominium, Mobile Homes or RV Parks	\$400.00

X-A-1. Preliminary Plat Review

To cover cost of reviewing plans, advertising, holding public hearings, and other activities associated with the review of the subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the Town Clerk, at rates determined in the Fee Schedule (See X-A) are payable at the time of application.

X-A-2. Final Plat Review and Inspection

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials the subdivider shall pay a non-refundable fee at the time of application for final approval to the Town Clerk at rates determined in the Fee Schedule (See X-A.)

X-B. Variances

X-B-1. Variances Authorized

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

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

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

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

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

X-B-3. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

X-B-4. Conditions

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

X-B-5. Statement of Facts

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

X-C. Amendment of Regulations

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

X-D. **Administration**

X-D-1. **Enforcement**

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

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

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

X-D-3. **Appeals**

A decision of the governing body regarding a proposed subdivision maybe appealed to the District Court, as provided.

- a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to soothe the governing body to recover actual damages caused by final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- b. A party identified in subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approved, or denying application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appealed to the Sixth Judicial District Court, Park County. The petition must specify the grounds upon which the appeal is made.
- c. For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.
- d. The following parties may appeal under the provisions of subsection (b) above:
 - i. the subdivider;
 - ii. a landowner with a property boundary can tedious to the proposed subdivision or a private landowner with property within Park County where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - iii. the Park County Commission; and

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

24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

1. The following standards govern the monumentation of land surveys:
 - a. The terms "monument" and "permanent monument" I was using 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 not less than 1 inch in diameter mark 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 monument making 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 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 his many monuments as, in the surveyors' professional judgment, are necessary to reasonably sure 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 specified date. The surveyor she'll 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 we're 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 in 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 tangents he, point a 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 point need not otherwise be monumented.
- f. If the placement of the required monument at its proper location is physically impractical, the surveyor may set a reference or witness monument. This monument has the same status as other monuments of record if its location is properly shown. If the surveyor relies upon any existing monument in conducting a survey, he or she shall confirm the location of the monument and show and describe it on the resulting certificate of survey or subdivision plat.

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

1. A certificate of survey may not be filed by 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 and 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 blinding side.
 - b. One signed copy on cloth-backed material or on 3 mil or have your mate stable-base polyester film or equivalent and one sign 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 survey, 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. This surveyor may, at his or her discretion, provided 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 survey land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision" or any title other than "Certificate of Survey."
 - ii. The name(s) of the person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.
 - iii. The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.
 - iv. A north arrow.
 - v. A scale bar. (The scale must be sufficient to legibly represent the required information and data.)
 - vi. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
 - A. If additional monuments are to be set after the certificate of survey is filed, these monuments must be shown by 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 influence the position of any corner or boundaries indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).
 - vii. The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the survey.
 - viii. Witness and reference monuments and basis of bearings. For purposes of this rule the term "basis of bearings" means the surveyor 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 any a regular 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 curbs on the ground. First 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 line shown to be at least tenths of a foot, and all angles and bearings shown to be 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, maybe noted parenthetically.
- xii. In 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 her lot that is shown on a file 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 the 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 depicts 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 buy 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 date of 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 acknowledge 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 dash 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. This 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 approval of the local government body is not required and citing the applicable exemption.
 - vi. If the certificate of survey invokes an extension 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 survey is owned by the federal government.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

1. A final subdivision plat may not be approved by the governing body or filed by the county clerk and recorder unless it complies with the following requirements:
 - a. Final subdivision plats must be legibly drawn with permanent ink or printed or reproduced by a process of guaranteeing a permanent record and must be 18" x 24" x 36" inches by 24" by 36" 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 sign 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 file 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 that quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".
 - b. The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.
 - c. A north arrow.
 - d. A scale bar. (the scale must be sufficient to legibly represent the required information and data on the plat.)

- e. The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 24.183.1101(1)(c).
 - i. If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must there a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.
 - ii. All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c)
- f. The location of any section corners or corners of divisions of sections pertinent to the survey.
- g. Witness and reference monuments and basis of bearings. For purposes of this rule for 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 this subdivision is bounded by any a regular 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 the 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 reestablishment 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 hundred of a meter, maybe noted parenthetically.
- k. The location of any section corners or corners of the 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. (Accepted parcels must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these accepted 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 and 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 file 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 this 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 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 lienholders 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 lienholders 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 improvements to be installed.
 - g. Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvement, including a complete the 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 treasure that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

APPENDIX B

SUBDIVISION PLAT APPLICATION

PART 1 GENERAL DESCRIPTION AND INFORMATION

1. Name of the proposed subdivision

2. Property address and/or general location

3. Legal description: _____ 1/4 _____ 1/4 of Section _____
Township _____ Range _____

4. Type of water supply system:

- a. ☐ Individual surface water supply from spring
- b. ☐ Multiple-family water supply system (3-14 connections and fewer than 25 people)
- c. ☐ Service connection to multiple-family system
- d. ☐ Service connection to public system
- e. ☐ Extension of public main
- f. ☐ New public system
- g. ☐ Individual well

5. Type of wastewater treatment system:

- a. ☐ Individual or shared on-site septic system
- b. ☐ Multiple-family on-site system (3-14 connections and fewer than 25 people)
- c. ☐ Service connection to multiple-family system
- d. ☐ Service connection to public system
- e. ☐ Extension of public main
- f. ☐ New public system

6. Name of solid waste garbage disposal site and hauler:

7. Is information included which substantiates that there will be no degradation of state waters or that degradation will be nonsignificant? Yes ☐ No ☐

8. Descriptive Data:

a. Number of lots or rental spaces

b. Total acreage in lots being reviewed

c. Total acreage in streets or roads

d. Total acreage in parks, open space, and/or common facilities

e. Total gross acreage of subdivision

f. Minimum size of lots or spaces

g. Maximum size of lots or spaces

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

_____ Residential, single family

_____ Residential, multiple family

_____ Types of multiple family structures and numbers of each (e.g. duplex)

_____ Planned Unit Development (Number of units _____)

_____ Condominium (Number of units _____)

_____ Mobile Home Subdivision (Number of spaces _____)

_____ Recreational Vehicle Subdivision (Number of spaces _____)

_____ Commercial or Industrial

_____ Other (please describe) _____

10. Provide the following information regarding the development:

a. Current land use

- b. Existing zoning or other regulations

- c. Depth to groundwater at the time of year when water table is nearest to the natural ground surface within the drain field area

- d. Depth to bed rock or other impervious material in the drain field area

- e. If a tract of land is to be subdivided in phases, an overall development plan indicating the intent for the development of the remainder of the tract.
- f. Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (submitting a draft copy of a homeowners' association bylaws and articles of incorporation is advocate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)
- g. Indicate whether the mineral rights have been severed from the property:
Yes ☐ No ☐
- h. Indicate whether water rights have been suffered from the property:
Yes ☐ No ☐
11. Is the applicant claiming an exemption under Section IV-A-1 of the subdivision regulations from the requirement to prepare an environmental assessment?
Yes ☐ No ☐
12. Landowner, subdivider and representative information:
- a. Landowners'
- Names _____
- Mailing Address _____
- Phone _____ Fax _____
- Email Address _____

I/We hereby certify that the above information is true and correct to the best of my/our knowledge.

Landowners' Signature(s) _____

Date _____

b. Subdivider's Name _____

Mailing Address _____

Phone _____

Fax _____

Email Address _____

I hereby certify that the above information is true and correct to the best of my knowledge.

Subdivider's Signature _____

Date _____

By marking the checkbox below, subdivide or agrees to allow the Town of Clyde Park to send copies of correspondence to the representative. If the checkbox is not marked correspondence will be sent to the LANDOWNER AND SUBDIVIDER ONLY!

☐ By marking this checkbox, I agreed to allow the Town of Clyde Park to send copies of correspondence to all parties listed on the application.

c. Representative's Name (Engineer, Surveyor, etc.) _____

Mailing Address _____

Phone _____

Fax _____

Email Address _____

I hereby certify that the above information is true and correct to the best of my knowledge.

Representative's Signature _____

Date _____

PART II PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS

1. Preliminary Plat Subdivision Application Form:

The subdividers shall submit a completed subdivision application form that is signed by the landowner(s) of record.

2. Preliminary Plat Review Fee:

The subdividers shall submit the required review fee as identified in the pre-application meeting and in Section X-A of the subdivision regulations.

3. Preliminary Plat Form, Contents, and Supplements:

The subdividers shall submit 2 copies 18" x 24" (or 24" by 36") of the preliminary plat and 14 copies 11" x 17" of the preliminary plat completed by a land surveyor. In addition, the subdividers shall submit 2 hard copies and 2 Digital copies (compact disc) containing the preliminary plat contents and supplements, environmental assessment, summary of probable impacts and community impact report.

The following information must be provided on a preliminary plat foreign supplements to the preliminary plat:

- a. The subdivision or development name (the title must contain the words "plat" and/ "subdivision")
- b. The legal description, including Section, Township, and Range, and any underlying survey data;
- c. A north arrow;
- d. The scale used on the plat;
- e. The certification of a professional land surveyor;
- f. The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications);
- g. The names of all owners of record in the subdivider [if different from the owner(s)];
- h. The date the preliminary plat is completed;
- i. Proposed lot layout with approximate dimensions and sizes;
- j. Lots and blocks identify by number or letter;
- k. The use of each lot, if other than for single-family residential;
- l. The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given;
- m. All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property;
- n. All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each;
- o. Existing and proposed road and street names;

- p. Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, and alleys, or highways;
 - q. The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted land;
 - r. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
 - s. Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use;
 - t. The total gross area of the subdivision and the total net area, exclusive a public areas and rights-of-way;
 - u. Existing and proposed infrastructure and proposed utilities including:
 - i. The approximate location, size, and depth of existing and proposed sanitary and storm sewers;
 - ii. The approximate location, size, and depth of existing and proposed water mains, lines, wells, and facilities; and
 - iii. The approximate locations of gas lines, fire hydrants or firefighting water storage facilities, electric and telephone lines, and street lights.
4. A vicinity sketch showing:
- a. The approximate locations of all existing buildings, structures, and other improvements;
 - b. Ownership of land immediately adjoining a subdivision, and existing buildings, structures and other improvements on those lands; and
 - c. any existing or proposed zoning of the tract and adjacent land, if applicable.
5. A topographic map:
- a. For any land area which will be subdivided or disturbed, contour intervals of 2' where the average slope is less than 10%; intervals of 5 feet where the average slope is greater than 10% and less than 15%; and intervals of 10 feet where the average slope is 15% or greater.
 - b. Slopes greater than 25% shall be shown as no-build zones.
6. A grading and drainage plan that includes:
- a. Proposed grades of all streets and roads;
 - b. Proposed drainage facilities for all lots, blocks, and other areas displaying accurate dimensions, courses, and elevations;
 - c. existing and proposed contours, using the contour requirements of a topography map;
 - d. Graded slopes;
 - e. Calculations for a ten-year frequency one-hour storm and a method to mitigate adverse impacts for a 100-year frequency one-hour storm; and

- f. Construction procedures, slope protection, or information describing the ultimate destinations of storm runoff use to minimize erosion; and
 - g. Slope Stability Report shall be completed if the proposed subdivision includes areas with the potential for land sliding or slope instability. The report must be completed by a qualified soil or geotechnical engineer and indicate the locations, character, and extent of all areas of all slope stability, and these areas shall be shown on the plat.
- 7. Engineering plans for all public and private improvements;
- 8. Overall development plan and if the improvements are to be completed in phases, the approximate area of each phase shall be shown on the plat.
- 9. Abstract of Title (or Title Report) dated not more than 30 days prior to the date of submittal;
- 10. Lienholders' Acknowledgment of Subdivision for each lienholder identified on the Abstract of Title or Title Report;
- 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. A proposed road plan and profile that includes:
 - a. Street names.
 - b. Right-of-way or easement widths;
 - c. Pavement widths;
 - d. Street grades;
 - e. Pavement and base thickness;
 - f. Typical cross sections for each type of road;
 - g. Road profiles and cross sections for all proposed streets and roads which have grades exceeding 5%, or cuts and fills exceeding 3'.
 - h. The type and location of sidewalks and curbs (where required);
 - i. The minimum site distances at corners;
 - j. The minimum curb radiuses at corners;
 - k. For cul-de-sac streets:
 - i. widths of turn around radiuses;
 - ii. minimum right-of-way widths at the turnarounds;
 - iii. minimum pavement or road surface width at the turnarounds;
 - iv. total lengths of the streets.

- l. The locations and characteristics of bridges and culverts;
 - m. The locations and dimensions of adjoining lots and open spaces;
 - n. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets;
 - o. Typical grading and location of intersections with private driveways; and
 - p. Description of how the roads will be maintained.
18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
 19. Proposed easements;
 20. Proposed disposition of water rights, as required by Section VI-A-15 of the subdivision regulations;
 21. Proposed disposition of mineral rights;
 22. Parkland dedication calculations, including a property valuation assessment or appraisal if cash-in-lieu of parkland is proposed;
 23. Environmental Assessment and/or Summary of Probable Impacts including:
 - a. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
 - b. an explanation of how the subdivider has responded to the comments of the subdivision administrator at the pre-application meeting.
 24. Transportation Impact Analysis or Transportation Plan;
 25. Fire Risk Rating Analysis and Fire Prevention plan as required in Section VI-A-18 of the subdivision regulations;
 26. Weed Management Plan and Re-vegetation plan;
 27. Property owners' Association Documents shall accompany the preliminary plat, and at a minimum shall provide the information, form, and contents included in Section III-C-4 of the subdivision regulations;
 28. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-A-4 of the subdivision regulations and paragraph 35 of this Part II.
 29. Required water and sanitation information, including:
 - a. Provide the following attachments to the preliminary plat:

- i. A vicinity map or plan that shows:
 - (A) The location, within 100 feet outside of the exterior of the 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 provided in subsection (X); and
 - (7) the representative drain field site used for the soil profile description as required under subsection (C)(4); and
 - (B) The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.
 - ii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, as provided below, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rule published by the DEQ;
 - iii. 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 DEQ pursuant to 76-4-104;
- b. Water Supply
- i. High Groundwater Report indicating there is not a problem with high groundwater present on the property proposed for subdivision. When evidence of high groundwater is present, the developer must submit plans that are prepared by a professional engineer to mitigate the problem;
 - ii. A vicinity map or plan that shows:
 - (A) the location, with 100' outside of 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 provided in subsection c.i.C.1 below.
 - (B) the location, with 500' outside the exterior property line of the subdivision, of public water and sewer facilities;
 - iii. 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 the Department of Environmental Quality in the Administrative Rules of Montana, or 76-4-101 et seq., MCA, including the following information:

- (A) If an **individual water supply system** is proposed for each parcel:
 - (1) Indicate the distance to the nearest public water system
 - (2) Attach a copy of the lot layout showing the proposed location of each spring, well, or cistern and indicating the distance to existing or proposed wastewater treatment systems.
 - (3) Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
 - (B) For a **multiple user water system**:
 - (1) If an existing system is to be used:
 - (a) Identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - (b) indicate the system's capacity to handle additional load and its distance from the development;
 - (c) provide evidence that permission to connect to the system has been granted;
 - (2) provide the following attachments:
 - (a) map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
 - (b) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
 - (3) evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
- iv. Where a new system is proposed:
- (A) Provide evidence of adequate water availability, unless cisterns are proposed:
 - (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 DEQ pursuant to 76-4-104;
 - (a) indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - (b) provide all information required in ARM 17.36.330-336 and Circular DEQ-3.

- (c) Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
- (B) For a **public water system**:
 - (2) If an existing system is to be used:
 - (a) identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - (b) indicate the system's capacity to handle additional load and its distance from the development;
 - (c) provide evidence that permission to connect has been granted;
 - (d) provide the following as attachments;
 - (e) a map or plat showing the location, sizes, and depth of any existing water lines and facilities which will directly serve parcels within the proposed development;
 - (i) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
 - (ii) Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
 - (3) If a new system is proposed:
 - (a) Provide evidence of adequate water availability:
 - (i) obtained from well logs or testing of onsite or nearby wells;
 - (ii) obtained from information contained in published hydrogeological reports; or
 - (iii) as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
 - (b) indicated who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - (c) provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
 - (d) Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104.

c. Wastewater Treatment System

- i. For new on-site waste water treatment systems, evidence of suitability that at a minimum includes:
 - (A) a soil profile description from a representative drain field site identified on the vicinity map that complies with the standards published by DEQ;

- (B) 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 treatment system and a limiting layer; and
 - (C) in cases in which the soil profile or other information indicates the groundwater is within 7 feet of the natural ground surface, evidence that the groundwater will not exceed the minimum vertical separation distance provided in section (B) above.
- ii. For all new wastewater treatment systems, a preliminary analysis of potential impacts to groundwater quality using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-503 related to standard mixing zones for groundwater, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis maybe based on currently available information and must consider the effects of overlapping mixing zones from proposed an existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection to subdivide her may perform a complete and nondegradation Analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.
- iii. If **individual wastewater treatment systems** are proposed for each parcel:
 - (A) Indicate the distance to the nearest public wastewater treatment system.
 - (B) Provide all information required in ARM 17.36.320-345 and in Circular DEQ-4 for conventional systems or Circular DEQ-5 for alternative systems.
 - (C) Evidence of suitability.
 - (D) Preliminary analysis of potential impact to groundwater.
- iv. For a **multiple-user wastewater treatment** system:
 - (A) If an existing system is to be used:
 - (1) identify the system in the person, firm, or agency responsible for operation and maintenance;
 - (2) indicate the system's capacity to handle additional load and its distance from the development;
 - (3) provide evidence that permission to connect to the system has been granted;
 - (4) provide the following attachments:
 - (a) a map or plat showing the location, sizes, and death of any existing sewer lines and facilities which will directly serve parcels within the proposed development; and

- (b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.320-345 and Circular DEQ-4 or Circular DEQ-5.
 - (B) If a new system is proposed:
 - (1) indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - (2) provide all information required in ARM 17.36.320-326 and Circular DEQ-4 or Circular DEQ-5.
 - (3) evidence of suitability.
 - (4) preliminary analysis of potential impact to groundwater.
- v. For a **public wastewater treatment system**:
 - (A) If an existing system is to be used:
 - (1) identify the system in the person, firm, or agency responsible for operation and maintenance;
 - (2) indicate the system's capacity to handle additional load and its distance from the development;
 - (3) provide evidence that permission to connect to the system has been granted;
 - (4) provide the following attachments:
 - (a) a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
 - (b) plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 and Circular DEQ-2 or Circular DEQ-4.
- d. Storm Water
 - ii. Describe measures for the collection and disposal of storm run-off from streets and roads within the subdivision.
 - iii. Indicate the type of road surface proposed.
 - iv. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
 - v. Describe a service run-off will be drained or channels from parcels.
 - vi. Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
 - vii. 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.
 - viii. Provide the grading and storm water or drainage plan as required by section II-3 Preliminary Plat Supplements, subsection (e) of this appendix.

- e. Solid Waste
 - i. Describe the proposed method of solid waste collection and disposal.
 - ii. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
 - iii. If on-site disposal of solid waste is proposed, provide the information required in ARM 17.36.309(2).
- 30. A form of Subdivision Improvements Agreement, if proposed;
- 31. Letter requesting a revocation of agricultural covenants;
- 32. Letter indicating locations of cultural or historic resources;
- 33. Variance request or approval;
- 34. Re-zoning application or approval;
- 35. When required, a flood hazard evaluation which contains the following detailed information [to be submitted to the Water Resources Division, Department of Natural Resources]:
 - a. Certification by a registered professional engineer;
 - b. An overall scaled plan view with identified scale for vertical and horizontal distance showing the following:
 - i. watercourse
 - ii. floodplain boundaries
 - iii. location of property
 - iv. contours
 - v. cross-sections
 - vi. bridges or other contractions in the floodplains
 - vii. USGS gauging stations (if any);
 - c. The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
 - d. Cross-sectional information which contains the following information:
 - i. Elevations and stations that are 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.
 - ii. Each cross-section must cross the entire floodplain. The cross-section of 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. Shot should be taking 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 1/2-minute quad sheet.

- iii. 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 of the property where the elevations are desired. Additional cross-sections must be taken of bridges, control structures, or natural constrictions in topography. [Photogrammetric methods may be used in lieu of cross-sections whenever appropriate and when reviewed and approved by the County.]
- e. A description and sketch of all bridges within the reach, showing unobstructed waterway openings and elevations.
- f. Elevation of the water surface is to be determined by survey as part of each valley cross section.
- g. Supporting Documentation, such as engineering reports of computer computations, calculations, and assumptions that may include:
 - i. Hydrology (research of published hydrology or calculations showing how hydrology was derived)
 - ii. Input files (hardcopy and on diskette)
 - iii. Output files (diskette only)
- 36. 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
- 37. 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.

PART III ENVIRONMENTAL ASSESSMENT

Information specified in this Part must be provided in addition to that required in parts I and II of this application form, unless the proposed subdivision qualifies for an exemption under Section IV-A-4 of the subdivision regulations.

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

1. Surface Water

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 percent 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.

2. Groundwater

Using available data, provide the following information:

- a. 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.
- b. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

3. Topography, Geology and Soils

- a. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:
 - i. Shallow bedrock
 - ii. Unstable slopes
 - iii. Unstable or expansive soils
 - iv. Excessive slope

- b. Locate on an overlay or sketch map any known hazards affecting the development which could result in property damage or personal injury due to:
 - i. Falls, slides or slumps---soil, rock, mud, snow,
 - ii. Rock outcroppings
 - iii. Seismic activity.
 - iv. High water table
- c. Describe measures proposed to prevent or reduce these dangers.
- d. Describe the location and amount of any cut or fill more than 3 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.

4. Vegetation

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

5. Wildlife

- a. Identify species of fish and wildlife use that area affected by the proposed subdivision.
- b. 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.
- c. 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).

Part IV SUMMARY OF PROBABLE IMPACTS

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

1. Impact on Agriculture

- a. Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
- b. Describe whether the subdivision would remove from production any agricultural or timber land.
- c. Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating for machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damage fences).
- d. Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
- e. Describe the effects the subdivision would have on the value of nearby agricultural lands.

2. Impact on Agricultural Water User Facilities

- a. Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
- b. Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

3. Impact on Local Services

- a. Indicate the proposed use and number of lots or spaces in each:

_____ Residential, single family
_____ Residential, multiple family
_____ Types of multiple family structures and number of each (e.g. duplex, 4-plex)
_____ Planned unit development (No. of units)
_____ Condominium (No. of units)
_____ Mobile Home Park
_____ Recreational Vehicle Park

_____ Commercial or Industrial

_____ Other (Please describe _____)

- b. Describe the additional or expanded public services and facilities that would be demanded of local government or special districts to serve the subdivision.
- Describe the additional cost which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
 - Who would bear these costs (e.g. all taxpayers within the jurisdiction, people within special taxing district, or users of a service)?
 - Can the service providers meet the additional costs given legal or other constraints (e.g. statutory ceilings on mill levies or bonded indebtedness)?
 - Describe off-site costs or costs to other jurisdictions may be incurred (e.g. development of water sources or construction of a sewage treatment plant; cost borne by a nearby municipality).
- c. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services is feasible (e.g. allow installation of a central water system or upgrading a county road).
- d. What are the present tax revenues received from the unsubdivided land?
- By the County \$ _____
 - By the municipality if applicable _____
 - By the school(s) \$ _____
- e. Provide the approximate revenues received by each about taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds (e.g. personal property taxes on mobile/ manufactured homes are paid into the County general fund).
- f. Would new taxes generated from the subdivision cover additional public costs?
- g. How many special improvement districts would be created which would obligate local government fiscally or administratively? Or any bonding plans proposed which would affect the local governments bonded indebtedness?

4. Impact on the Natural Environment

- a. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.

- b. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or an adjacent land? Describe plans to protect the sights.
- i. Would any streambanks or lake shorelines be altered, streams rechanneled, or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
 - ii. Would ground water supplies likely be contaminated or depleted as a result of the subdivision?
 - iii. Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
 - iv. Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
 - v. Would the value of significant historical, visual, or open-space features be reduced or eliminated?
 - vi. Describe possible natural hazards the subdivision could be subject to (e.g., natural hazard such as flooding, rock, snow or landslides, high winds, severe wildfires, or difficulty such as a shallow bed rock, high water table, unstable or expansive soils, or excessive slopes).
- c. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

5. Impact on Wildlife and Wildlife Habitat

- a. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.
- b. Describe the effect that pets or human activity would have on wildlife.

6. Impact on Public Health and Safety

- a. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.

- b. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
- c. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.
- d. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which would be created by the subdivision.

PART V COMMUNITY IMPACT REPORT

Provide a community impact report containing 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 providing reference materials as required.

1. Education

- a. Describe the available educational facilities which would serve this subdivision.
- b. 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.

2. Roads and Maintenance

- a. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
- b. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
- c. Describe increased maintenance problems and increased due cost to this increase in volume.
- d. Describe proposed new public or private access roads including:
 - i. Measures for disposing of storm run-off from streets and roads.
 - ii. Type of road surface and provisions to be made for dust.
 - iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
 - iv. Seeding of disturbed areas.
- e. Describe the closing or modification of any existing roads.
- f. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
- g. 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.
- h. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

3. Water, Sewage, and Solid Waste Facilities

- a. Briefly described water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).
- b. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
- c. Where hook-up to an existing system is proposed, describe estimated impact on the existing system, and show evidence that permission has been granted to hook up to the existing system.
- d. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
- e. Describe the proposed method of collecting and disposing of solid waste from the development.
- f. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

4. Fire and Police Protection

- a. 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:
 - i. Fire Protection--is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned.
 - ii. Law--Enforcement Protection-Which of-is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department?
- b. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make the services adequate, and who would pay the costs?

5. Payment for Extension of Capital Facilities

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

**APPENDIX C
FINAL PLAT APPLICATION**

Date Received _____

1. Name of Subdivision _____

2. Location: _____ 1/4 Section _____ Township _____ Range _____

For Amended Plats

Lot(s) _____ Block(s) _____

Subdivision _____

3. Landowners' Names _____

Mailing Address _____

Phone _____ Fax _____

Email Address _____

Subdivider's Name _____

Mailing Address _____

Phone _____ Fax _____

Email Address _____

Engineer's Name _____

Mailing Address _____

Phone _____ Fax _____

Email Address _____

Surveyor's Name _____

Mailing Address _____

Phone _____ Fax _____

Email Address _____

4. Additional names, telephone numbers and email addresses of persons or firms providing services and information (e.g. designer, planning consultant, attorney):

5. Descriptive Data:

- a. Gross area in acres _____
- b. Net area in acres _____
- c. Area of parkland in acres _____
- d. Number of lots or rental spaces _____
- e. Zoning _____

6. Date Preliminary Plat Approved:

7. Any Conditions? _____ Yes _____ No (If Yes, attach written narrative responding to conditions)

8. Any Deed Restrictions or covenants? _____ Yes _____ No (If Yes, attach a copy.)

9. All improvements installed: _____ Yes _____ No (If No, attach a subdivision signed improvements agreement and financial guarantee.)

10. List of materials submitted with this application:

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____
- f. _____
- g. _____
- h. _____
- i. _____
- j. _____

I do hereby certify that all the statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby applied to the Town Council of the Town of Clyde Park for approval of the final plat of _____ (name of subdivision).

Subdivider

FOR OFFICIAL USE ONLY

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

**APPENDIX D
SAMPLE CERTIFICATES**

1. **General**-All subdivision final plats, amended plat or certificates of survey shall contain a Certificate of Surveyor, Certificate of County Treasurer and Certificate of Filing by Clerk & Recorder.

CERTIFICATE OF SURVEYOR

STATE OF MONTANA)

) ss.

County of Park)

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. _____

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 encompasses by the proposed (Name of Subdivision) have been paid:

(legal description of land)

Dated this _____ day of _____, 20 ____.

(Seal)

County Treasurer, Park County, Montana

CERTIFICATE OF FILING BY CLERK AND RECORDER

STATE OF MONTANA)

) ss.

County of Park)

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

County Clerk and Recorder, Park County, Montana

2. **Governing Body**-All plats and surveys shall contain a Certificate of Governing Body.

Final Plats shall contain the following:

I, (Mayor) of the Town of Clyde Park, Montana, do hereby certify that the Town Council 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 show on this plat as being dedicated to such use, this _____ day of _____, 20 _____.

by _____
Town Clerk

Mayor

Amended plats and Certificates of Survey shall contain the following:

CERTIFICATE OF GOVERNING BODY

I, (Mayor) of the Town of Clyde Park, Montana, do hereby certify that the accompanying (Certificate of Survey of Amended Plat) has been duly reviewed, and has found to conform to the requirements of the Subdivision and Platting Act, Title 76, Chapter 3, MCA.

by _____
Town Clerk

Mayor

3. **Infrastructure and Improvements-** Where land is being dedicated for the benefit of the public a Certificate of Dedication is required. In some cases where the area being platted is subject to liens, mortgages, claims or other encumbrances by other parties the Consent to Dedication by Encumbrances. Where improvements are installed either prior to submitting the final plat or where improvements will be financially guaranteed a Certificate of Completion Shelby included on the plat.

CERTIFICATE OF DEDICATION

(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 the Town of Clyde Park, to-wit:

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

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

Dated this _____ day of _____, 20 _____.

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

CONSENT TO DEDICATION BY ENCUMBRANCES

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

Dated this _____ day of _____, 20 _____.

(Acknowledged and notarized signatures of all encumbrancers of record)

CERTIFICATE OF COMPLETION

I, (Name of Subdivider), and I, (Name of Subdivider's Registered Engineer), a registered professional engineer licensed to practice in the State of Montana, hereby certify that the following public improvements, required as a condition of approval of (Name of Subdivision), have been installed in conformance with the attached engineering specifications and plans or financially guaranteed and covered by an accompanying improvement agreement. Installed Improvements: (List the improvements actually installed). Financially Guaranteed Improvements: (List the improvements to be financially guaranteed). The subdivider hereby warrants any defects in these improvements for a period of one year from the date of acceptance by the Town of Clyde Park. The sub divider grants possession of all public infrastructure improvements to the Town of Clyde Park and the Town hereby accepts possession of all public infrastructure improvements, subject to the above indicated warranty.

Signature of Subdivider

Date

Signature of Professional Engineer

Date

Registration No. _____

(Engineers Seal)

4. **Additional Certificates**-The Certificate of Waiver of Parkland Dedication and Acceptance of Cash in Lieu Thereof is required on the plat where the Town Council has approved a cash donation in lieu of parkland dedication for the subdivision.

In some instances, the governing body may require the 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 county clerk and recorder. The Subdivision administrator will indicate whether the governing body has determined a need for additional review in which case the Certificate of Examining Land Surveyor shall be included on the plat, amended plat or certificate of survey.

CERTIFICATE OF WAIVER OF PARK LAND DEDICATION AND ACCEPTANCE OF CASH IN LIEU THEREOF

I, Town Clerk of the Town of Clyde Park, Montana do certify that the following order was made by the Town Council of Clyde Park 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 are of (Name of Subdivision) is undesirable for the reasons set forth in the minutes of the meeting, it is hereby ordered by the Town Council that land dedication for park purposes be waived and cash in lieu, in the amount of _____ dollars be accepted in accordance with the provisions of Title 76, Chapter 3, MCA.

In witness whereof, I have hereunto affixed the seal of Town of Clyde Park, Montana this _____ day of _____, 20_____.

(Seal)

(Signature of Clerk)

CERTIFICATE OF EXAMINING LAND SURVEYOR

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

Dated this _____ day of _____, 20_____.

(Signature) _____

Name _____

Registration No. _____

APPENDIX E
SUBDIVISION IMPROVEMENTS AGREEMENT

The parties to this Subdivision Improvements Agreement ("this agreement") are _____ ("the subdivider") and the Town of Clyde Park.

WHEREAS, the subdivider desires to defer construction of improvements described in Attachment (____); and

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOW:

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

Subdivider's Obligations

3. **Improvements:** The Subdivider Shall construct and install, at his own expense, those subdivision improvements listed in Attachment (____) of this Agreement. The Subdivider's obligation to complete the improvements arises upon approval of the final subdivision plat, is not conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision and is independent of any obligations of the Town contained in this Agreement.
4. **Security:** To Secure the performance of his/ her obligations under this Agreement, the Subdivider shall deposit with the Town on or before the effective date, an Irrevocable Letter of Credit (or other financial security acceptable to the local officials) in the amount of \$ _____. The letter of credit shall be issued by (lending institution), be payable at sight to the Town at any time upon presentation of (1) a sight draft drawn on issuing lending institution in the amount up to \$ _____, (2) a signed statement or affidavit executed by an authorized Town officials stating that the Subdivider is in default under this Agreement; and (3) the original copy of the letter of credit.

5. Standards: The Subdivider shall construct the required improvements according to the standards and specifications required by the Town as specified in Attachment (____) of this Agreement.
6. Warranty: The Subdivider Warren that each and every improvement shall be free from defects for period of 1 year from the date that the City (or County) accepts the dedication of the last improvement completed by the Subdivider.
7. Commencement and Completion Periods: The Subdivider shall complete all of the required improvements within one year from the effective date of this Agreement.
8. Compliance with Law: The Subdivider shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

Town of Clyde Park Obligations

9. Inspection and Certification:
 - a. The Town shall provide for inspection of the improvements as they are completed and, where found acceptable, shall certify those improvements as complying with the standards and specifications set forth in Attachment (____) of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Subdivider that the improvements are complete and that he/she desires Town inspection and certification. Before requesting Town certification of any improvement, the Subdivider shall present to the Town of Clyde Park valid lien waivers from all persons providing materials or performing work on the improvement.
 - b. Certification by the Town does not constitute a waiver by the Town of the right to draw funds under the letter of credit in the event defects in or failure of any improvement are found following the certification.
10. Notice of Defect: The Town shall provide timely notice to the Subdivider whenever inspection reveals that an improvement does not conform to the Standard specifications set forth in Attachment (____), or is otherwise defective. The Subdivider shall have 30 days from the date the notice is issued to remedy the defect. The Town may not declare a default under this Agreement during the 30 day remedy period unless the Subdivider clearly indicates he/she does not intend to correct the defect. The Subdivider shall have no right to correct the defect in, or failure of, any improvement found after the Town accepts dedication of the improvements.

11. **Reduction of Security:** After the acceptance letter of any improvement, the amount that the Town is entitled to draw on the letter of credit shall be reduced by an amount equal to 90% of the estimated cost of the improvement as shown in Attachment (____). At the request of the Subdivider, the Town shall execute the certificate verifying the acceptance of the improvement and waving its right to draw on the letter of credit to the extent of the amount. Upon a certification of all of the improvements the balance that maybe drawn under the credit shall be available to the Town for the one-year warranty period plus an additional 90 days.
12. **Use of Proceeds:** The Town shall use funds drawn under the letter of credit only for the purposes of completing the improvements or correcting defects in or failure of the improvements.

Other Provisions

13. **Events of Default:** The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:
 - a. failure to complete construction of the improvements within one year of final subdivision plat approval;
 - b. failure to remedy the defective construction of any improvement within the remedy period;
 - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
 - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.
14. **Measure of Damages:** The Measure of damages for breach of this Agreement is a reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment (____) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Subdivider's liability. The Town may complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.
15. **Local Government Rights Upon Default:**
 - a. Upon the occurrence of any event of default, the Town may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost [as shown

in Attachment (_____) of all improvements previously certified by the Town. The Town may complete improvements itself or contract with the third-party for completion, or the Town may assign the proceeds of the letter of credit to a subsequent subdividers who has acquired the Subdivision and who has the same rights of completion as the Town if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.

- b. In addition, the Town may suspend the final plat approval. During this suspension the Subdivider may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the Town until the improvements are completed and certified by the Town.
16. Indemnification: The Subdivider agrees to indemnify and hold Town harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Subdivider is not an employee or agent of the Town.
17. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the Town and the Subdivider.
18. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.
19. Third Party Rights: No person or entity who was not party to this Agreement has any right of action under this Agreement, except that if the Town does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the Town to exercise its rights.
20. Scope: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
21. Time: For the purpose of computing the commencement and completion periods, and time periods for Town action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the Town from performing the obligations under this Agreement.

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

The Town shall release the original Subdivider's letter of credit if it accepts the new security from any subdivider or lender who obtains the property. However, no action by the Town constitute a release of the original subdivider from his liability under this Agreement.

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

Dated this _____ day of _____, 20_____.

Mayor

Subdivider

APPENDIX F
ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

1. Letter of Credit

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

- a. That the creditor guarantees funds in an amount equal to 125% of the cost, as approved by the governing body, of completing all required improvements.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor shall immediately pay to the governing body upon presentation of a sight draft without further action, and amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.

2. Escrow Account

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

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

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

3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of the decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the

exchange of the property for the amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Enter an agreement with the escrow agent inducting the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose or pledged as a security for any other matter until it is released by the governing body.

4. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50% of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

5. Surety Performance Bond

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

6. Special Improvements District

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

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

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

APPENDIX G
IRREVOCABLE LETTER OF CREDIT

Town of Clyde Park
P.O. Box 177
Clyde Park, Montana

Letter of Credit No. _____

Date: _____

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

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

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

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

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

(Lending Institution)

(Signature and Title of Official)

APPENDIX H
GRANT OF ACCESS EASEMENT

THIS INDENTURE, made and entered into this _____ day of _____,
20 _____, by and between _____ of _____, Montana,
hereinafter referred to as the "Grantor" and (subdivider) of _____, Montana,
hereinafter referred to as the "Grantee."

THE GRANTOR does hereby give, grant and convey unto the Grantee, its successor and assigns, the right, privilege and authority to construct, reconstruct, maintain, operate, repair, improve, and to travel upon and use, a road and its necessary fixtures and appurtenances through, over, and across a corridor, 60 feet wide, shown on the attached certificate of survey, extending across the following described tract(s) of land:

(legal description of Grantor's property over which easement is granted)

THIS GRANT of right and authority shall run with the said property and be binding on the Grantor, its successors, all subsequent owners and any parties having right, title, or interest in the said property.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand this _____ day of _____,
20 _____.

Grantor

STATE OF MONTANA)

) SS.

County of Park

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 _____

Jh.1.cp.7.07.SR