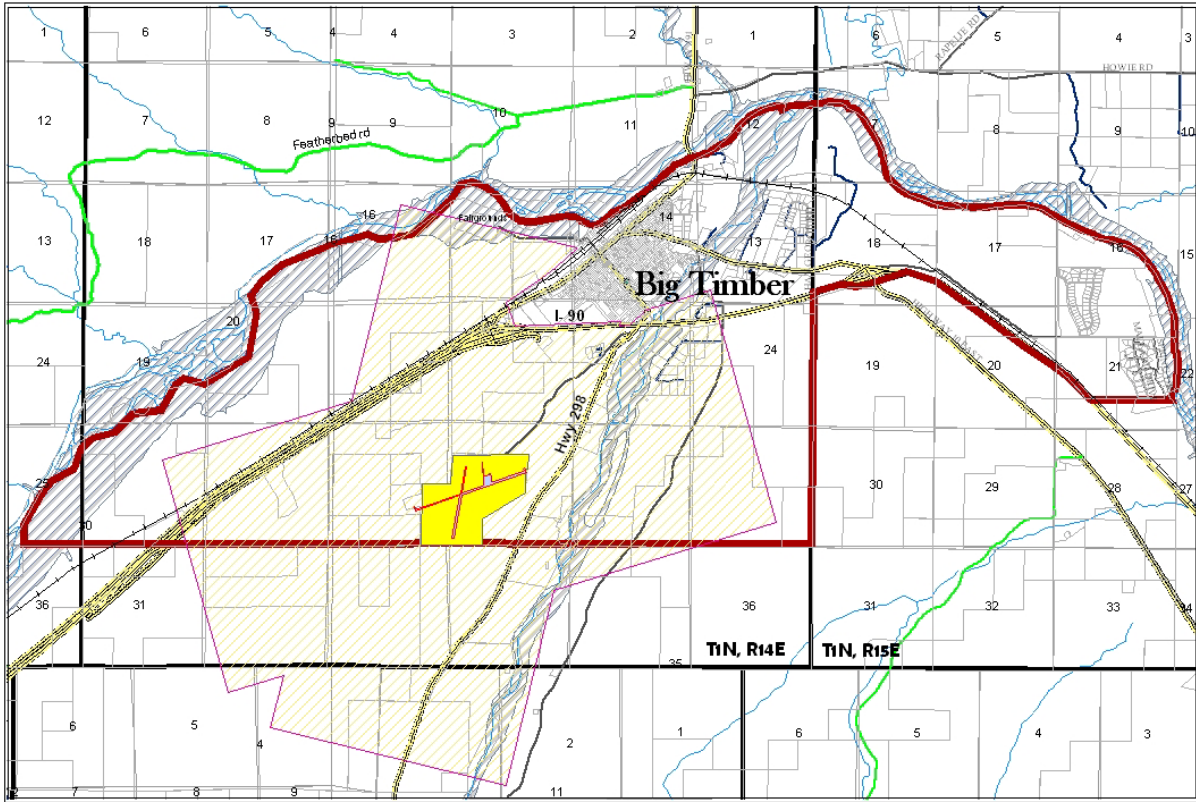


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# APPENDIX A CITY-COUNTY PLANNING BOARD JURISDICTION



-  Airport Influence Area
-  county section
-  Townships
-  Rivers and Streams
-  City-County Planning Board
-  Commercial

City- County Planning Board Jurisdiction  
Appendix A



**APPENDIX B**  
**SWEET GRASS COUNTY AND CITY OF BIG TIMBER**  
**SUBDIVISION APPLICATION FORM**

Name, address and telephone number of landowner and agent, if any.

Landowner:	Agent:
_____	_____
_____	_____
_____	_____
phone: _____	phone: _____

1. Name of the proposed development \_\_\_\_\_

2. Location (City and/or County) \_\_\_\_\_

Legal description: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_

3. 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 \_\_\_\_\_

4. 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) \_\_\_\_\_

5. Provide the following information regarding the development:

- a. Current land use \_\_\_\_\_
- b. Existing zoning or other regulations \_\_\_\_\_
- c. Is the subdivision property within the Big Timber Airport Influence Area? Yes \_\_\_ No \_\_\_

6. Type of water supply system proposed:

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

7. Type of wastewater treatment system proposed:

- 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 \_\_\_\_\_ Name of public system \_\_\_\_\_
- e. Extension of public main \_\_\_\_\_ Name of public system \_\_\_\_\_
- f. New public system \_\_\_\_\_

8. Name of solid waste (garbage) disposal service \_\_\_\_\_

I hereby affirm that all the statements and information contained herein and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to Sweet Grass County/City of Big Timber for approval of the preliminary plat for the \_\_\_\_\_ Subdivision.

\_\_\_\_\_  
Subdivider or Agent

Date: \_\_\_\_\_

Fee paid \$ \_\_\_\_\_

## APPENDIX C

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

An environmental assessment is a required submittal for subdivisions applications that are not first minor subdivision applications, unless the subdivision qualifies for an exemption as allowed under Section 3.7.2 of these regulations.

The subdivider shall provide the information requested in a format that follows the headings outlined in the below listed Part I.

#### **PART I**      **DESCRIPTION OF SURROUNDINGS AND COMMUNITY IMPACT REPORT** *(as required under 76-3-603 (a), (c) and (d), MCA)*

##### **A.      Geology**

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

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

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

##### **B.      Vegetation**

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

##### **C.      Fish and Wildlife**

1.      Identify any major species of fish and wildlife using the area to be affected by the proposed subdivision.

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

**D. Historical Features**

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

**E. Roads**

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

**F. Utilities**

1. Identify the utility companies involved in providing electrical power, natural gas, and telephone service. Indicate whether utility lines will be placed underground.

2. Identify on the subdivision application plat or overlay the locations of any needed utility easements [as required by 76-3-608(c), MCA].
3. Indicate whether the subdivision application plat has been submitted to affected utilities for review.
4. Estimate the completion date of each utility installation.

**G. Emergency Services**

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

- a. fire protection – indicate whether the proposed subdivision is in an urban or rural fire district. If not, describe plans to form or extend an existing fire district, or describe other fire protection procedures.
    - 1) Where applicable, information regarding subdivisions planned in areas of high fire hazards as provided in IV-A-18 of these regulations.
  - b. police protection
  - c. ambulance service
  - d. medical services
2. Indicate whether the needs of the proposed subdivision for each of the above services will be met by existing personnel and facilities.
    - a. If not, describe the additional expenses necessary to make these services adequate.
    - b. Explain who will pay for the necessary improvements.

**H. Schools**

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

**I. Land Use**

1. Describe land uses on lands adjacent to the subdivision.

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

**J. Parks and Recreation Facilities**

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

**PART II      SUMMARY OF PROBABLE IMPACTS**

*Provide a completed copy of the Summary of Probable Impacts found in Appendix D*

## **APPENDIX D**

### **SUMMARY OF PROBABLE IMPACTS**

*The Subdivision and Platting Act under 76-3-608(3)(a) MCA requires evaluation of a subdivision's effects on the following Primary Review Criteria:*

- 1) *Agriculture,*
- 2) *Agricultural water user facilities,*
- 3) *Local services, the natural environment,*
- 4) *Wildlife and wildlife habitat and*
- 5) *Public health and safety.*

*Unless exempt from review as allowed under Section 76-3-609(2)(d), MCA each subdivision plat application shall be evaluated for impacts based on the definitions and review criteria provided below in this section. Subdividers are required to submit a summary of probable impacts with the subdivision application.*

**Subdividers: Review the definitions and evaluation criteria listed below and provide a written summary of impacts your subdivision proposal may have for each of the Primary Review Criteria.**

#### **C.1 Effect on Agriculture**

##### **C.1.1 Definition of Agriculture**

As used in this part, the following definitions apply: (1) "Agriculture" means : (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g)); (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

"Agriculture and food product" includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

##### **C.1.2 Evaluation Criteria for Effects on Agriculture**

- a. The number of acres that would be removed from the production of crops or livestock. Acreage will be obtained from Department of Revenue tax records.
- b. Removal of agricultural lands that are critical to the county's agricultural base. Maps and land capability classifications developed by the USDA Natural Resource Conservation shall be used to determine the agricultural significance of land.
- c. It will be determined whether the unsubdivided parcel is part of a continuing farm or ranch unit by evaluating the use of the remainder and adjoining properties.
- d. Potential conflicts between the proposed subdivision and adjacent agricultural operations shall be evaluated including:
  - Interference with the movement of livestock or farm machinery
  - Interference with agricultural production and activities
  - Maintenance of fences
  - Proliferation of weeds
  - Increased human activity
  - Harassment of livestock by pets

**C.2 Effect on Agricultural Water User Facilities**

**C.2.1 Definition of Agricultural Water User Facility**

Agricultural water user facility shall mean any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes as defined in 15-7-202, MCA, including but not limited to ditches, canals, headgates, sprinkler systems, water pipelines, tanks, reservoirs, ponds or developed spring used for agricultural purposes.

**C.2.2 Evaluation Criteria for Effects on Agricultural Water User Facilities**

- a. Location and proximity to a ditch, canal, headgate, sprinkler system, watering tank or developed spring shall be considered.
- b. Consider potential subdivision nuisance complaints or problems due to agricultural water user facilities such as safety hazards to residents or water problems from irrigation ditches, headgates, siphons, sprinkler systems or other facilities.
- c. Ownership of water rights and the historic and current use of facility on the proposed subdivision shall be examined. Easements to protect the use of water user facilities on or accessed through a subdivision shall be considered.
- d. Allocation of water rights within a subdivision shall be considered.

**C.3 Effect on Local Services**

**C.3.1 Definition of Local Services**

Local services are any and all services or facilities that local government entities are authorized to provide.

**C.3.2 Evaluation Criteria**

- a. Increased demand on services and need to expand services for a proposed subdivision.
  - Sheriff
  - Big Timber Volunteer Fire Department
  - Sweet Grass County Ambulance Service
  - Schools
  - Roads and Bridges
- b. Cost of services
  - Current and anticipated tax revenues
  - Cost of services for the subdivision
  - Evaluate the need for special or rural improvement districts

**C.4 Effect on Natural Environment**

**C.4.1 Definition**

Natural environment means the physical and biological features of an area that may be altered by human activity including topography, soil, geology, vegetation, and surface and groundwater.

**C.4.2 Evaluation Criteria**

- a. Expected alteration of any streambanks or lake or reservoir shorelines. Any draining, filling or alteration of any wetland.
- b. Needed cuts and fills on slopes as a result of road or building construction.
- c. Significant removal of vegetation contributing to potential soil erosion or bank or slope instability.
- d. Effect on the level of the aquifer.
- e. Evaluate whether the subdivision design maintains significant open space.

## **C.5 Effect on Wildlife and Wildlife Habitat**

### **C.5.1 Definitions**

Wildlife means animals that are neither human nor domesticated.

Wildlife habitat means the sum of environmental conditions in a specific place that is occupied by a wildlife species or population.

### **C.5.2 Evaluation Criteria**

- a. Location of subdivision and access roads with respect to critical wildlife areas such as big game wintering range, calving areas, migration routes, nesting areas, wetlands, or habitat for endangered or threatened species.
- b. Expected effects of pets and human activity on wildlife.

## **C.6 Effect on Public Health and Safety**

### **C.6.1 Definition**

Public health and safety refers to natural or man-made conditions that may pose a physical threat to either future residents or the general public.

### **C.6.2 Evaluation Criteria**

- a. Potential hazards to residents of subdivision from high voltage lines, high-pressure gas lines, highways, roads, railroads or railroad crossings, nearby industrial or mining activity.
- b. Evaluate existing activities taking place in the vicinity of the subdivision.
- c. Evaluate traffic and fire conditions.
- d. Presence of natural hazards such as flooding, rock, snow or landslides, high winds, wildfire, or difficulties such as shallow bedrock, high water table, expansive soils or excessive slopes.

## APPENDIX E AREA DESCRIPTION FORM

Subdivision Name: \_\_\_\_\_

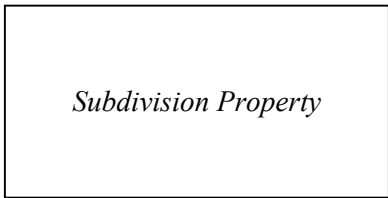
Legal Description of Subdivision Property \_\_\_\_\_

<b>Current Land Uses Surrounding the Subdivision Property</b>
---------------------------------------------------------------

Please enter the appropriate land uses from the list below that are adjacent to your proposed subdivision using the space provided below or attach your own map to this form with the adjacent uses noted.

<u>Use Labels</u>	<u>Description of Use Label</u>
Resource Lands:	<i>lands used for agricultural operations such as ranching/farming</i>
Open Space Lands	<i>areas of large (+160 acre) tracts of land void of man made structures</i>
Com/Ind:	<i>property used for commercial or industrial operations</i>
ST-1:	<i>tracts 40 to 160 acres in size</i>
St-2:	<i>tracts 20 to 40 acres in size</i>
ST-3:	<i>tracts 5 to 20 acres in size</i>
RR	<i>rural tracts that are 5 acres or smaller</i>
CR:	<i>properties that include clustered residential subdivisions that include common homeowner grounds that amount to approximately 85% or more of the total subdivision property</i>
Park Area	<i>public park or recreational areas</i>

↑ NORTH



*Additional Comments Concerning land uses and characteristics surrounding the proposed subdivision:*

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*(continue on additional pages if necessary)*

## APPENDIX F STANDARDS FOR FLOOD HAZARD EVALUATIONS

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

- A. General. Land subject to being flooded by a flood of one hundred year (100) frequency as defined by Title 76, Chapter 5, M.C.A., or land deemed to be subject to flooding by the county Commission, may not be subdivided for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
  
- B. Procedure. If any portion of a proposed subdivision is within two thousand (2,000) horizontal feet and less than twenty (20) vertical feet of a stream draining an area of twenty five (25) square miles or more, and no official floodplain or floodway delineation (study) of the stream has been made, the subdivider shall provide in detail the calculated 100 year frequency water surface elevations and/or 100 year floodplain boundaries. This detailed study must be performed by a licensed professional engineer experienced in this field of work. This information may be submitted, upon the request of the commissioners, to the Floodplain Management Section, Water Resources Division, Department of Natural Resources and Conservation for review and concurrence.
  
- C. Detailed Information. The detailed information to be submitted to the Water Resources Division, Department of Natural Resources, shall include the following:
  1. Certification: Certification by a registered professional engineer.
  2. Overall Plan View: An overall scaled plan view (project map) with identified scale for vertical and horizontal distance showing the following:
    - a. watercourse
    - b. floodplain boundaries
    - c. location of property
    - d. contours
    - e. cross-sections
    - f. bridges or other contractions in the floodplain
    - g. USGS gauging stations (if any)
  3. Benchmark(s): The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
  4. Cross-sectional information:

a. *Cross-section elevations and stations should be determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.*

b. Each cross-section must cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Occasionally, wide floodplains require a dog-leg alignment to be perpendicular to the anticipated flow lines. Shots should be taken at the water's edge and measurements taken (if elevation shots cannot be taken) to determine the channel bottom shape. Cross sections must be accurately located on a USGS 7 ½ minute quad sheet.

c. The number of cross-sections needed, and the distance between cross-sections will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections are required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography.

\*\*Note: Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.

5. Bridges: Descriptions and sketches of all bridges within the reach, showing unobstructed waterway openings and elevations.

6. Water Surface: Elevation of the water surface is to be determined by survey as part of each valley cross section.

7. Supporting Documentation: Engineering reports of computer computations, calculations, and assumptions that may include:

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

# APPENDIX G

## FINAL PLAT APPLICATION FORM

- 1) Name of Subdivision \_\_\_\_\_
- 2) Final Plat Review Fee Paid \_\_\_\_\_ (*include fee with submittal of Final Plat Application Form*)
- 3) Location: \_\_\_\_\_ 1/4 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_
- 4) Name, address and telephone number of subdivider:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_
- 5) Descriptive Data:
- Gross area in acres \_\_\_\_\_
  - Number of lots or rental spaces \_\_\_\_\_
  - Existing zoning or other regulations \_\_\_\_\_
  - \_\_\_\_\_
- 6) Date Subdivision Application Approved: \_\_\_\_\_
- 7) All improvements installed? \_\_\_\_\_ (If No, attach approved subdivision improvements agreement or guarantees.)
- 8) List of materials submitted with this application:

\_\_\_\_\_ 2 paper copies of the final plat in form prepared for signatures (*signed mylars should be submitted after approval of the final plat application*)

\_\_\_\_\_ Title Report

\_\_\_\_\_ MDEQ Certification of Approval for the subdivision if the subdivision contains lots under 20 acres in size

\_\_\_\_\_ County Sanitarian Certification of Approval if the subdivision contains lots over 20 acres in size

\_\_\_\_\_ Signed County Weed Board Letter of Agreement with the subdivider

\_\_\_\_\_ The governing body's Findings of Fact Report and conditions of subdivision approval, if any

List other documents specified for recording by the governing body as a condition the subdivision application plat approval which are also being submitted with this application:

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

I do hereby certify that all the statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply for approval of the final plat of

\_\_\_\_\_  
*Name of Subdivision*

\_\_\_\_\_  
Subdivider

Date \_\_\_\_\_

## **APPENDIX H**

### **SAMPLE PLAT CERTIFICATES**

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

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

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

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

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – County

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

**CERTIFICATE OF COMPLETION**

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

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

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**Certificate of Surveyor – Final Plat**

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

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

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

(Seal)

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

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**Certificate of Dedication – Final Plat**

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

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

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

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

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

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

(I) (We), the undersigned lienor, 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 lien or encumbrance holders of record)

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

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

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

(Seal)

(Signature of Clerk)

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

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

(Date) (Notarized Signature of Subdivider)

**Declaration of Covenant**

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

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

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

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

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

TO WIT:

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

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

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

(Signature of Subdivider)  
Acknowledgement and Notarization  
of Signature

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

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

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

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

**Certificate of County Treasurer**

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

(legal description of land)

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

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

**Certificate of Final Plat Approval – County**

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

(Signatures of Commissioners)

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

(Seal of County)

**Certificate of Final Plat Approval – City**

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

by (Signature of City or Town Clerk)  
Clerk

(Signature of Mayor)  
Mayor

**Certificate of Filing by Clerk and Recorder**

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

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

(Signature of Clerk and Recorder)

County Clerk and Recorder, \_\_\_\_\_ County, Montana

# APPENDIX I

## SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

### MODEL SUBDIVISION IMPROVEMENT AGREEMENT

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

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

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

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

#### Developer’s Obligations

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

6. Warranty: The Developer warrants that each and every improvement will be free from defects for a period of 1 year from the date that the City (or County) accepts the dedication of the last improvement completed by the Developer.
7. Commencement and Completion Periods: The Developer will complete all of the required improvements within (2) years from the effective date of this Agreement.
8. Compliance with Law: The Developer will comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

#### City's (or County's) Obligations

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

#### Other Provisions

#### APPENDIX I- 2

13. Events of Default: The following conditions, occurrences or actions constitute a default by the Developer during the completion period:
  - a. failure to complete construction of the improvements within two years of final subdivision plat approval;
  - b. failure to remedy the defective construction of any improvement within the remedy period;
  - c. insolvency of the Developer or the filing of a petition for bankruptcy;
  - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.
14. Measure of Damages: The measure of damages for breach of this Agreement is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment ( ) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Developer's liability. The City (or County) may complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.
15. Local Government Rights Upon Default:
  - a. Upon the occurrence of any event of default, the City (or County) may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost [as shown in Attachment ( )] of all improvements previously certified by the City (or County). The City (or County) may complete improvements itself or contract with a third party for completion, or the City (or County) may assign the proceeds of the letter of credit to a subsequent developer who has acquired the Subdivision and who has the same rights of completion as the City (or County) if and only if the subsequent developer agrees in writing to complete the unfinished improvements.
  - b. In addition, the City (or County) may suspend final plat approval. During this suspension the Developer may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City (or County) until the improvements are completed and certified by the City (or County).
16. Indemnification: The Developer agrees to indemnify and hold the City (or County) harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Developer is not an employee or agent of the City (or County).
17. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City (or County) and by the Developer.
18. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each will bear its own costs in their entirety.

19. Third Party Rights: No person or entity who is not party to this Agreement has any right of action under this Agreement, except that if the City (or County) does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City (or County) to exercise its rights.
20. Scope: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
21. Time: For the purpose of computing the commencement and completion periods, and time periods for City (or County) action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Developer or the City (or County) from performing the obligations under this Agreement.
22. Assigns: The benefits of this Agreement to the Developer may not be assigned without the express written approval of the City (or County). Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City (or County) to assign its rights under this Agreement.

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

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

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

\_\_\_\_\_  
City (or County) Official

\_\_\_\_\_  
Developer

## ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

The subdivider shall provide one or more of the following financial security guarantees in the amount of 100 percent of the estimated total cost of installing all required improvements.

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

### 2. Escrow Account

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

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

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

### 3. 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 a 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 an 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 instructing 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 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of \_\_\_\_\_. The bond 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, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

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

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

**MODEL**

**IRREVOCABLE LETTER OF CREDIT**

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

Name of Local Government  
Address

Date

Gentlemen:

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

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

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

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

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

(Lending Institution)

(Signature and Title of Official)



## APPENDIX K

### EXEMPTIONS FROM SUBDIVISION REVIEW FOR CERTAIN DIVISIONS OF LAND

Certain divisions of land are exempt from subdivision review as provided under 76-3-201 and 76-3-207, MCA. The governing body shall review each of these divisions of land to determine whether the claim for exemption is valid pursuant to the Montana Subdivision and Platting Act or if the claim for exemption is made for the purpose of evading review as a subdivision.

**2005 MCA Reference:**

**76-3-201. Exemption for certain divisions of land -- fees for examination of division.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) 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 this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), 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) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

**76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of [76-3-401](#) for divisions of land not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted

*subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.*

*(2) Notwithstanding the provisions of subsection (1):*

*(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;*

*(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.*

*(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.*

*(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.*

*(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.*

*(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.*

#### A. PROCEDURES AND GENERAL REQUIREMENTS

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey, exempt amended plat, or where a survey is not required an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption along with the required Exemption Review Fee listed in the Fee Schedule found in APPENDIX L.

2. When a certificate of survey, exempt amended plat, or instrument of conveyance is submitted to the County Clerk and Recorder, the Clerk and Recorder shall cause the documents to be reviewed by the designated agents of the governing body: ( the Sweet Grass County Planner, Sanitarian, Treasurer, and Clerk and Recorder). The agents shall review the proposed land division to determine whether it complies with the requirements set forth in these regulations, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act.

3. After the review to evaluate compliance with the requirements contained in these regulations, the agents shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act, after which the written recommendation will be presented to the County Commissioners for their review.

4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the Clerk and Recorder to file the certificate of survey, exempt amended plat, or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder to not file or record the documents, and the Clerk shall return the materials to the landowner.

5. Any person whose proposed use of exemption has been denied by the designated agents may appeal the agents' decision to the County Commissioners. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act.

If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an exempt amended plat or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

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

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

7. The County Commission and its agents, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: (1) the nature of the claimant's business, (2) the prior history of the particular tract in question, (3) the proposed configuration of the tracts if the proposed exempt transaction is completed, and (4) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr 454, 1993).

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

9. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.

10. The use of family conveyance exemptions 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 shall be presumed to be adopted for purposes of evading the Act.

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

- CO.....Court Order (76-3-201(1)(a), MCA)
- MTG.....Mortgage Exemption (76-3-201(1)(b), MCA)
- LE.....Life Estate (76-3-201(1)(e), MCA)
- RCB .....Relocation of Common Boundary (76-3-207(a), (d), (e), MCA)
- FC.....Family Conveyance (76-3-207(b), MCA)
- AG.....Agricultural Exemption (76-3-207(c), MCA)
- AL .....Aggregation of Lots (76-3-207(e), MCA)

12. If the use of an exemption is determined to be an evasion of the Act, the landowner may submit a subdivision application for the proposed land division.

**B. EXEMPTION AS A GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY (76-3-**

207(1)(a), MCA)

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
2. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7),MCA).
3. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this Resolution. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.
5. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
6. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

C. EXEMPTION TO PROVIDE SECURITY FOR A CONSTRUCTION MORTGAGE, LIEN OR TRUST INDENTURE (76-3-201(1)(b) MCA)

1. Statement of Intent: Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
2. When this exemption is to be used, the landowner shall submit to the City County Planning Office:
  - a) a signed statement from the landowner and the lending institution that the creation of the exempted parcel is necessary for the owner to secure financing through a construction mortgage, lien or trust indenture on the exempted parcel.
  - b) any certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in item G.(3) of these Evasion Criteria.
3. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- a. it will create more than one building site;
- b. the loan is for someone other than the owner of record of the parcel to be divided.
- c. it will create a pattern of development which is equivalent to a subdivision with such characteristics as common roads, sewer, water, utility easements, restrictive covenants, open space or common marketing or promotional plan.

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

1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.

2. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the MDEQ, provided the applicable exemption is properly invoked by the property owner.

3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading the Act:

- a. The parties to the transaction by gift, sale, or agreement, 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 or open space. The covenant must be signed by the property owner, the buyer or lessee and the County Commissioners. An example of a covenant is provided on page K-9.
- b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
- c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision.
- d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed under MCA Title 76, Chapter 3.

E. RELOCATION OF COMMON BOUNDARY (76-3-207(1) (a, d and e), MCA)

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that change in location without subdivision review.

2. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.

3. Certificates of survey or amended plats claiming this exemption must be clearly distinguished between existing the boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey as provided in item G.(5, 6, or 7) of these Evasion Criteria.

## F. REMAINDER PARCELS

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

## G. CERTIFICATIONS FOR USE OF SUBDIVISION & PLATTING ACT EXEMPTIONS

1. Statement of Intent: In order to file exempted amended plats of certificates of survey, the exempted amended plat or certificate of survey must include certification that it is exempt from review under the Montana Subdivision and Platting Act. Exemption Certifications should read substantially as shown below.

### 2.a. Gift or Sale to Member of Immediate Family:

"I (we) hereby certify that the purpose for this division of land is to transfer parcel \_ # \_ as shown on this certificate of survey to \_\_\_\_ (Grantee)\_\_\_\_, my (our) ( daughter, son, mother, father, wife or husband), that this is the first and only gift or sale to this person on or after April 1, 1993. I (we) am (are) entitled to use this exemption in that I (we) am (are) in compliance with all conditions imposed on the use of this exemption; therefore, this division of land is exempt from review as a subdivision pursuant to section 76-3-207(1)(b) MCA".

### 2.b. Gift or Sale to Member of Immediate Family & exempt from surveying requirements:

"The grantor(s) hereby certifies (y) that the purpose for this division of land is to transfer the aliquot part of a section described in this deed to \_\_\_\_ (Grantee)\_\_\_\_, my (our) (daughter, son, mother, father, wife or husband), that this is the first and only gift or sale to this person on or after April 1, 1993. Furthermore, I (we) am (are) entitled to use this exemption in that I (we) am (are) entitled to use this exemption in that I (we) am (are) in compliance with all conditions imposed on the use of this exemption; therefore, this division of land is exempt from review as a subdivision pursuant to section 76-3-207(1)(b) MCA and is furthermore exempt from any survey requirements pursuant to 76-3-401 MCA."

### 3. Construction mortgages, liens, or trust indentures: (*Certifications must be signed by owner of record and lender*).

"We hereby certify that the purpose of this survey is for construction mortgage (lien or trust indenture) purposes only pursuant to 76-3-201(1)(b),MCA, and is for the parcel of ground described in this survey. Furthermore, the boundaries of the parcel are extinguished and the acreage reverts back into the initial acreage upon satisfactory payment of the mortgage, lien or trust indenture with the filing of a Satisfaction Document with the Clerk and Recorder."

### 4a Use for Agriculture:

"I (we) hereby certify that the purpose of this survey is to create a parcel as an agricultural tract, and that a covenant has been entered into, with the landowner, buyer, or lessee revocable only by mutual consent of

the governing body and the property owner, that the land will be used exclusively for agricultural use, and that this division of land is therefore exempt from review as a subdivision pursuant to Section 76-3-207 (1)(c ) MCA.”

4b. Use for Agriculture and exempt from surveying requirements:

“The grantor(s) hereby certifies (y) that the division(s) of land described in this deed as (aliquot part description) is (are) an agricultural tract(s), and that a covenant has been entered into, with the buyer, revocable only by mutual consent of the governing body and the property owner, that the land will be used exclusively for agricultural use and that this division of land is therefore exempt from review as a subdivision pursuant to section 76-3-207 (1)(c ) MCA, and is furthermore exempt from survey requirements pursuant to 76-3-401 MCA.”

5. Relocation of Common Boundary Outside of Platted Subdivisions:

“I (we) hereby certify that the purpose of this survey is to relocate common boundary lines between adjoining properties outside of platted subdivisions and is exempt from subdivision review pursuant to 76-3-207(1)(a), MCA.”

6. Rearranging or Redesigning Lots Within a Platted Subdivision:

“I (we) hereby certify that the purpose of this survey is to relocate common boundary lines and the aggregation of five or fewer lots within a platted subdivision, fewer than six (6) lots are affected, and no additional lots are hereby created; therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207 (1)(d), MCA.”

7. Relocating Common Boundaries between a Lot Within a Platted Subdivision and Land Outside:

“I (we) hereby certify that the purpose of this survey is to relocate a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision; therefore, this survey is exempt from review as a subdivision pursuant to section 76-3-207(1)(e), MCA.”

“SAMPLE”  
**DECLARATION OF COVENANT**

This declaration made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, hereinafter referred to as the “Declarants”;

That whereas, declarants are parties to the gift, sale or agreement to buy or sell the property described on Certificate of Survey Number \_\_\_\_\_ on file and of record in the Office of the Clerk and Recorder of Sweet Grass County, Montana.

Now, therefore, Declarants hereby declare that the parcel(s) described above which contain less than one hundred sixty acres shall be held, sold, and conveyed in any manner subject to this covenant, which shall run with the real property and be binding on all parties having any right, title or interest in the described property (properties) or any part thereof, their heirs, executors, successors, administrators and assignees, and shall bind each owner thereof. This covenant may be revoked by mutual consent of the owners of the involved parcel(s) and the governing body of Sweet Grass County. The governing body is deemed to be a party to and may enforce this covenant. TO WIT.

The parcel(s) shown on the Certificate of Survey Number \_\_\_\_\_ as containing less than one hundred sixty acres, shall be used exclusively for agricultural purposes and that no building or structure requiring sewage facilities will be erected or utilized.

IN WITNESS WHEREOF, the undersigned, being the Declarants, herein, has hereunto set his hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Signature of Buyer or Lessee

\_\_\_\_\_  
Acknowledgment and Notarization

\_\_\_\_\_  
Signature of Governing Body

Note: Any change in use of the land for anything other than agricultural purposes subjects the parcel(s) to review and approval following the procedures for a subdivision section 76-3-207 (2) (b) MCA.

**APPENDIX L  
FEE SCHEDULE**

<b><u>Subdivision Application Fees:</u></b>	
First Minor Subdivision of a Tract of Record	\$500 plus \$50 per lot or rent or lease unit
Subsequent Minor Subdivision	\$600 plus \$50 per lot or rent or lease unit
Major Subdivision Application Review Fee	
County Subdivision	\$800 plus \$50 per lot or rent or lease unit
City of Big Timber Subdivision	\$600 plus \$50 per lot or rent or lease unit
Variance Request from Local Regulation's Design Standards	\$50
<b><u>Final Plat or Final Plan Review Fees:</u></b>	
Minor Subdivisions ( <i>all Minor Subdivisions, both First Minor or Subsequent Minor Subdivisions, and including review of Final Plan for Subdivisions for Rent or Lease</i> )	\$100, plus consultant fees*
Major Subdivision Final Plat or Final Plan (for Subdivision for Rent or Lease) Review Fee	\$500, plus consultant fees*
<b><u>Fire Department Review Fees</u></b> (Subdivision located within or to be annexed into the City of Big Timber are except from this fee)	\$50 per lot up to \$750
<b><u>County Weed Board Review Inspection Fees</u></b>	<i>The County Weed Supervisor shall charge applicants on a per hour basis for review and inspection services required to complete a Weed Board Letter of Agreement for the Subdivision and any associated Subdivision Weed Management Plan. These charges are collected by the Sweet Grass County Weed Supervisor Office.</i>
<b>Subdivision Review -Exemption Claim</b>	\$35
<b>Copies of the Sweet Grass County and City of Big Timber Subdivision Regulations</b>	\$30

NOTE \*Consultant fees may include, engineering review of public improvements, examining land surveyor, legal review or other professional fees as required.

# APPENDIX M

## SWEETGRASS COUNTY BRIDGE STANDARDS

*Adopted April 1, 2002*

### BASIC POLICY

Sweet Grass County has adopted a policy of replacing old and unsafe bridges with culverts when feasible. The culverts shall be sized to handle the minimum storm event designated by this bridge standard. The use of multiple culverts is discouraged due to debris collection and siltation problems. Culvert materials and installation shall meet the guidelines of this bridge standard.

Should replacement with a culvert not be feasible, a new bridge shall be constructed to meet AASHTO and MDT standards as modified or amended by this bridge standard. All new bridge and culvert designs are subject to the approval of the Sweet Grass County Road & Bridge Department.

Bridges requiring rehabilitation or replacement shall be prioritized annually by the County Commission and County Road Superintendent. Replacement of existing structures shall follow the order of the priority list with the exception of emergencies and special exemptions.

### HYDROLOGY

New bridge or bridge replacement planning shall include a site inspection by the County Road Superintendent to determine if evidence from historical flow patterns reveal a need for a hydrological study prior to a new bridge or culvert placement or replacement. Where hydrological studies are recommended the following procedure shall be used.

#### Hydrologic Method

. The following factors are to be evaluated and included in the analysis:

- Size, shape, slope, land use, geology and soils of the drainage basin
- Geometry and configuration of stream channel
- Characteristics of the flood plain

Several methods are available to analyze the design storm runoff from a drainage basin. The following methods are recognized by Sweet Grass County:

**USGS Rural Regression Equations** per Analysis of the Magnitude & Frequency of Floods and the Peak Flow Gaging Network in Montana, USGS, 1992.

**USGS Regional Regression Analysis** per Analysis of the Magnitude & Frequency of Floods and the Peak Flow Gaging Network in Montana, USGS, 1992.

**USGS Regional Frequency Analysis** per Analysis of the Magnitude & Frequency of Floods and the Peak Flow Gaging Network in Montana, USGS, 1992.

**Log Pearson Analysis** of stream gauge data at a point near the proposed structure

provided that a minimum of 10 years of gauging data is available.

**SCS Curve Number Method** for areas draining less than 3 square miles.

**Rational Method** for areas draining less than 80 acres.

**FEMA 100 yr & 500 yr Floods** in areas designated as being within the 100 & 500 year floodplains. Contact the Sweet Grass County floodplain administrator regarding whether structure is located within either floodplain. The County's permitting authority is described under the Sweet Grass County Floodplain Regulations.

Alternative methods may be considered should the design engineer determine that a more accurate estimate of the runoff is available.

For drainage basins with an area greater than one square mile at least three methods must be averaged to determine the peak runoff volume.

### **Design Frequency**

The structure shall be sized to accommodate the 50 year event when possible without significantly increasing the project cost. Structures deemed to be of low significance by the County Road Superintendent may be permitted by the County to use a minimum design flow of a 25 year event.

Sweet Grass County Road & Bridge Department personnel shall be contacted during the hydraulic analysis to provide input on historic flood volumes.

### **Waterway Opening Size**

The waterway opening for a bridge shall be sized to pass the design flood while providing a minimum freeboard of 12" between the bottom of the lowest stringer and the water surface. Additional freeboard may be required for mountain streams, which carry a large amount of debris. The opening shall be sufficiently large as to minimize backwater conditions that may cause damage to adjacent property. The waterway opening size for a culvert shall meet the requirements of the culvert section of these standards.

Bridges over large drainages or in densely populated areas should be analyzed with an appropriate modeling program such as HEC-2 or HEC-RAS to accurately determine the flow characteristics and backwater elevations.

## **BRIDGE & CULVERT DESIGN**

### **Specifications**

Bridge and culvert design and construction shall conform to the following specifications unless otherwise modified or amended in this document.

AASHTO Standard Specifications for Highway Bridges, current edition and any amendments thereto.

Montana Department of Transportation Standard Specification for Road and Bridge Construction, current edition and any amendments thereto.

## Materials

All materials and workmanship shall be in accordance with AASHTO Specifications and MDT Road & Bridge Specifications or as amended in this document.

Reinforcement Steel:	Reinforcement steel shall be ASTM A615 Grade 60 steel minimum. Heating of reinforcement steel for bending will not be allowed.
Structural Steel:	ASTM A36 or A588
Portland Cement Concrete:	Class “AD” or “DD” concrete shall be used for all cast-in-place structures. Minimum 6.5 Sack Mix, 3000 PSI @ 28 days.  Class “Pre” concrete shall be used for all prestressed members.
Timber:	The use of timber stringers is discouraged in new structures. However, treated timbers are acceptable in low volume, isolated areas. Treated timber may be used for piles and decking material. Timber piles may not be spliced. All timber shall be treated with a preservative approved by the American Wood Products Association (AWPA).

## Loads

Design loads shall be applied as specified in the AASHTO Standard Specifications. The minimum design live load shall be HS 20-44. Please refer to Appendix A of the AASHTO Standard Specifications for HS 20-44 loading requirements. Reductions from the minimum design live load may be considered on a case by case basis with a variance granted by the County Commission.

The weight of future surface overlays must be addressed in the dead loads should they be a possibility.

## Summary Design Requirements by Road Classification

### Class I:

Class I roads are maintained by the Montana Department of Transportation. Design requirements shall meet Montana Department of Transportation requirements.

## **Class II:**

Road Width:	Min. 24' Shoulder - Shoulder
Road Crown:	Min. 2%
Bridge Width:	Min. 24' Rail - Rail
Freeboard: flood	Min. 12" between lowest stringer and design
Bridge Rail:	Must meet AASHTO T-101 standards.
Neoprene pads should be placed between the base plate and bridge deck on concrete structures.	
Substructure:	Concrete spread footing or driven pile with reinforced concrete cap or steel beam cap depending on bridge type and location. HP section, Steel Pipe and Timber are acceptable pile materials. Timber piles may not be spliced.
Superstructure:	Generally precast/prestressed concrete. Bulb Tees, Tridecks, Twin Tees and Channels are acceptable types of precast, prestressed beams. Steel girders are acceptable for long span structures and aesthetics. Treated glulam stringers and glulam deck panels are acceptable for aesthetic reasons.
Bridge Deck Surface:	Skid Resistant Texture
Painting:	Shop Coat on all exposed steel
Drainage:	Bridge shall be sufficiently cambered, crowned or super elevated to provide adequate storm drainage.
Impact Protection:	Guard angles shall be provided on all concrete structures.
Deflection: simple or continuous spans.	Live load + Impact deflection < L/1000 for

## **Class III through Class VI**

Bridges on Class III through Class VI roads shall meet the Class II specifications with the following exceptions:

Road Width:	Width requirements shall be reviewed on a case-by-case basis. Single lane bridge widths may be approved on low volume roads.
Bridge Rail:	Rail requirements shall be reviewed on a case-by-case basis. Alternative rail requirements may be authorized by the County Road Superintendent.

### ***Quality Control***

The County Road Superintendent shall have the authority to decide whether a new bridge installation shall include that the bridge be designed and stamped by a professional engineer registered with the State of Montana.

### **Geotechnical**

Where a comprehensive geotechnical investigation is deemed a requirement by the County Road Superintendent a reputable geotechnical engineering firm shall be retained to determine the engineering properties of the soils through the use of borings, test pits, sampling and other methods. The geotechnical report shall be stamped by a professional engineer registered with the State of Montana.

### **As-Constructed Plans**

Upon completion of the structure the design engineer shall provide the County Bridge Department with one set of full size and one set of half size As-Constructed plans of the project for their records.

### **Scour**

Scour shall be evaluated on a case-by-case basis. Historically scour has not been a problem on end abutments properly armored with riprap and underlain with a geotextile. However, should the abutment be located on the outside of a channel bend a scour analysis may be warranted.

A scour analysis is suggested whenever a pier(s) is placed within the stream channel.

The substructure (spread footing or piles) must extend a minimum of 6' below the scour depth unless a geotechnical investigation indicates otherwise.

### **Temperature Effects**

The effect of temperature shall be investigated when designing the stringer-substructure connection. The use of elastomeric bearing pads is recommended when precast/prestressed beams are incorporated into the design.

### **Skew**

While crossings at 90° to the flowline are preferred, skewed bridges may be required to best fit a specific site. When a skew is required the angle should be kept to 30° or less as measured between a line normal to the bridge centerline and a line parallel to the flowline.

### **Culverts**

Culverts shall generally be constructed of reinforced concrete, (RCP), aluminum, aluminized steel, polyethylene or CMP coated with bituminastic to prolong service life. Uncoated CMP culverts may be acceptable for small diameter pipes.

Culvert headwater (HW) should be kept to a reasonable level at the design flow to prevent flooding of adjacent property. Headwater depths at design flow shall generally follow the MDT design criteria listed below where D is the diameter of a circular pipe and R is the rise of an arch pipe.

<u>Pipe Size</u>	<u>HW @ Design Flow</u>
<= 42"	< 3D or 3R
48"-108"	<1.5D or 1.5R
>= 120"	< D+2' or R+2'

The headwater at the entrance during a 100 year flood may not exceed historic levels by more than 6" in FEMA floodplains per State and County codes.

The minimum culvert diameter shall be 12" for cross drains to allow for routine maintenance and cleaning.

Culvert alignment shall match the horizontal and vertical configuration of the existing channel as closely as possible to minimize sedimentation. Culverts shall be adequately sized to accommodate debris or ice that may occur in the channel.

Open bottom culverts, such as aluminum boxes, should be considered where feasible to minimize the impact on the streambed. Open culverts shall be set on either a metal or concrete footing per the manufacturer's recommendation.

Culverts carrying large volumes of water shall have concrete cutoff walls on both the upstream and downstream ends to prevent erosion below the pipe. Cutoff walls are not required when an open bottom culvert is utilized.

The upstream fill slope must be adequately protected against erosion. Slopes of 3:1 or less may only require reseeding whereas a more severe slope (>3:1) should either have riprap or a headwall. Culverts with upstream fill slopes exceeding 2:1 must have concrete headwalls.

### **Permits**

The design engineer shall obtain the permits necessary to construct the new structure unless otherwise directed by the County. The design engineer should follow the Guide to Stream Permitting in Montana to determine which permits are required for various type of work. A 124 Permit (FWP), 3A Permit (DEQ) and 404 Permit (Corps) will generally be required for all projects. Private projects will require a 310 Permit (Sweet Grass Co. Conservation District) in place of the 124 Permit. An erosion and sediment control plan may be required by the Sweet Grass County Conservation District as well.

**Signing**

Object markers per the FHWA Manual of Uniform Traffic Control Devices for Streets and Highways shall be installed at each corner of the new bridge or at the ends of the guardrail leading to the fill section over a culvert.

**Riprap**

Class II random riprap shall be used for erosion protection on bridge abutments and culvert outfalls.

Placement of a geotextile fabric below the riprap is recommended in order to prevent the migration of fines. The Engineer and County Road Foreman shall jointly determine whether a geotextile is required on a case-by-case basis.

Riprap may not be placed on slopes greater than 1.5:1. A 2:1 maximum slope is desirable.

The depth of the riprap section shall be 1.5' minimum at culvert outfalls and 2.5' minimum for bridge abutments. The nominal diameter of the riprap shall be taken as one-half the depth of the riprap section. The riprap should be keyed at the bottom of the slope.

The placement of riprap around piers set in the stream channel shall not serve to reduce the minimum footing/pile depth required for scour.

**Guardrail**

Existing guardrail in the vicinity of the new structure shall be removed and replaced with new guardrail. Should the existing guardrail be in good condition it may be removed and reused. New guardrail should not be connected to existing guardrail unless specifically approved by the County Road Superintendent.

In general, the length of new guardrail location should match the length of preexisting guardrail. The length of the new guardrail may only be reduced when the roadside slopes have been flattened to a 3:1 or less. The limits of the new guardrail should not be reduced from the preexisting length without approval of the County Road Superintendent.

The ends of the guardrail leading into a bridge or culvert shall be signed with object markers per the Signing section of these Standards.

**Bridge Approaches**

The roadway leading to the new bridge should be reconstructed as required to provide a smooth transition that will minimize the impact forces transmitted to the structure. This may require the road to be reconstructed for several hundred feet on either side of the bridge



## APPENDIX O

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

Current through September 2005

#### 24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

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

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

#### **24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY**

- (1) A certificate of survey may not be filed by a county clerk and recorder unless it complies with the following requirements:
- (a) A certificate of survey must be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, overall to include a 1 ½ inch margin on the binding side.
  - (b) One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
  - (c) If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
  - (d) A certificate of survey must show or contain on its face or on separate sheets referred to on its face the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
    - (i) A title or title block including the quarter-section, section, township, range, principal meridian and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not bear the title "plat," "subdivision" or any title other than "Certificate of Survey."
    - (ii) The name(s) of the person(s) who commissioned the survey and the names of any adjoining platted subdivisions and the numbers of any adjoining certificates of survey previously filed.
    - (iii) The date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line or retrace an existing parcel of land.
    - (iv) A north arrow.
    - (v) A scale bar. (The scale must be sufficient to legibly represent the required information and data.)
    - (vi) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 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 a distinct symbol, and the certificate of survey must bear a certification by the surveyor as to which they will be set.
- (B) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 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's statement as to the origin of the bearings shown in the certificate of survey. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the certificate of survey shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
- (ix) The bearings, distances and curve data of all boundary lines. If the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
  - (A) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.
  - (B) For purposes of this rule a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
- (x) Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.
- (xi) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- (xii) A narrative legal description of the parcel surveyed as follows:
  - (A) If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
  - (B) If the survey depicts the retracement or division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the parcel or lot number of the parcel surveyed.
  - (C) If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the parcel surveyed.

- (D) If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.
- (E) The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel.
- (xiii) Except as provided by (1)(f)(iv), all parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification.
- (xiv) The location of any easement that will be created by reference to the certificate of survey.
- (xv) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3- 625, MCA) and the regulations adopted under that Act.
- (xvi) A memorandum of any oaths administered under 76-3-405, MCA.
- (xvii) Space for the county clerk and recorder's filing information.
- (e) Certificates of survey that do not represent a division of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must bear a statement as to their purpose and must meet applicable requirements of this rule for form and content.
- (f) Procedures for divisions of land exempted from public review as subdivisions. Certificates of survey for divisions of land meeting the criteria set out in 76-3-207, MCA, must meet the following requirements:
  - (i) A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.
  - (ii) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.
  - (iii) If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
  - (iv) If a certificate of survey invokes the exemption for the relocation of common boundary lines:
    - (A) The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);

- (B) The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;
- (C) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.
- (v) A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d) or (e), MCA, must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey. The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.
- (vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes and special assessments assessed and levied on the surveyed land have been paid.
- (vii) For purposes of (1)(f), when the parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner", "landowner" and "owner" mean the seller of the parcel under the contract-for-deed.
- (g) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in 76-3-201, 76-3-205 and 76-3-209, MCA, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

#### **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 guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches overall to include a 1 1/2-inch margin on the binding side.
  - (b) One signed copy on cloth-backed material or on 3 mil or heavier matte stable-base polyester film or equivalent and one signed reproducible copy on a stable-base polyester film or equivalent must be submitted.
  - (c) If more than one sheet must be used to adequately depict the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed or referred to on one sheet.
  - (d) A survey that modifies a filed subdivision plat must be entitled "amended plat of (lot, block and name of subdivision being amended)," and unless it is exempt from subdivision review by 76- 3-201

or 76-3-207(1)(d) or (e), MCA, may not be filed with the county clerk and recorder unless it meets the filing requirements for final subdivision plats specified in this rule.

- (2) A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information. The surveyor may, at his or her discretion, provide additional information regarding the survey.
- (a) A title or title block indicating the quarter-section, section, township, range, principal meridian, county and, if applicable city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition".
  - (b) The name of the person(s) who commissioned the survey and the name(s) of the owner of the land to be subdivided if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions, and the numbers of any adjoining certificates of survey previously filed.
  - (c) A north arrow.
  - (d) A scale bar. (The scale must be sufficient to legibly represent the required information and data on the plat.)
  - (e) The location of, and other information relating to all monuments found, set, reset, replaced or removed as required by ARM 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 bear a certification by the surveyor as to the reason the monuments have not been set and the date by which they will be set.
    - (ii) All monuments found during a retracement that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 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 the term "basis of bearings" means the surveyor's statement as to the origin of the bearings shown on the plat. The basis of bearings may refer to a particular line between monumented points in a previously filed survey document. If the plat shows true bearings, the basis of bearings must describe the method by which these true bearings were determined.
  - (h) The bearings, distances and curve data of all boundary lines. If the subdivision is bounded by an irregular shoreline or body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given.
    - (i) The courses along a meander line are shown solely to provide a basis for calculating the acreage of a parcel with one or more riparian boundaries as the parcel existed at the time of survey.
    - (ii) For purposes of these regulations a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.
  - (i) Data on all curves sufficient to enable the re-establishment of the curves on the ground. For circular curves these data must at least include radius and arc length. For non-tangent curves, which must be so labeled, the plat must include the bearings of radial lines or chord length and bearing.

- (j) Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically.
- (k) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.
- (l) All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels must be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the bearings and lengths of these excepted boundaries must be shown.)
- (m) All streets, alleys, avenues, roads and highways; their widths (if ascertainable) from public records, bearings and area; the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways.
- (n) The location, dimensions and areas of all parks, common areas and other grounds dedicated for public use.
- (o) The total acreage of the subdivision.
- (p) A narrative legal description of the subdivision as follows:
  - (i) If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.
  - (ii) If the plat depicts the division of a parcel or lot that is shown on a filed certificate of survey or subdivision plat, the information required by this subsection is the number or name of the certificate of survey or plat and the number of the parcel or lot affected by the survey.
  - (iii) If the parcel surveyed does not fall within (2)(p)(i) or (ii), above, the information required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision.
  - (iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.
- (q) The dated signature and the seal of the surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act.
- (r) A memorandum of any oaths administered under 76-3-405, MCA.
- (s) The dated, signed and acknowledged consent to the subdivision of the owner of the land being subdivided. For purposes of this rule when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "owner" and "owner of the land" refers to the seller under the contract-for-deed.
- (t) Certification by the governing body that the final subdivision plat is approved.
- (u) Space for the clerk and recorder's filing information.

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

**APPENDIX P**  
**MONTANA SUBDIVISION AND PLATTING ACT,**  
**TITLE 76, CHAPTER 3 OF THE 2005 MONTANA CODE ANNOTATED**

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### **Part 1. General Provisions**

**76-3-101. Short title.** This chapter may be cited as the "Montana Subdivision and Platting Act".

**History:** En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

**76-3-102. Statement of purpose.** It is the purpose of this chapter to:

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

**History:** En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995; amd. Sec. 2, Ch. 348, L. 2001.

**76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means 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.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means 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.

(13) "Public utility" has the meaning provided in [69-3-101](#), except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision 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.

(16) (a) "Tract of record" means 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.

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

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

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

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in

this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997; amd. Sec. 3, Ch. 348, L. 2001; amd. Sec. 1, Ch. 298, L. 2005.

**76-3-104. What constitutes subdivision.** A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

**76-3-105. Violations.** Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

**History:** En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

## **Part 2. Miscellaneous Exemptions**

**76-3-201. Exemption for certain divisions of land -- fees for examination of division.** (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

- (a) 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 this state pursuant to the law of eminent domain, Title 70, chapter 30;
- (b) subject to subsection (3), 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) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- (d) creates cemetery lots;
- (e) is created by the reservation of a life estate;
- (f) is created by lease or rental for farming and agricultural purposes;
- (g) is in a location over which the state does not have jurisdiction; or
- (h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

- (a) to a division of land of any size;
- (b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9); amd. Sec. 2, Ch. 503, L. 1997; amd. Sec. 1, Ch. 340, L. 2001; amd. Sec. 3, Ch. 549, L. 2003; amd. Sec. 1, Ch. 563, L. 2003.

**76-3-202. Exemption for structures on complying subdivided lands.** Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

**76-3-203. Exemption for certain condominiums.** Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter if:

(1) the approval of the original division of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in [76-3-621](#) are complied with; or

(2) the condominium proposal is in conformance with applicable local zoning regulations where local zoning regulations are in effect.

**History:** En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 1, Ch. 534, L. 2001.

**76-3-204. Exemption for conveyances of one or more parts of a structure or improvement.** 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, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

**76-3-205. Exemption for airport land and state-owned lands -- exception.** (1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

(2) A division of state-owned land is not subject to the requirements of this chapter 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.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5); amd. Sec. 1, Ch. 548, L. 1999.

**76-3-206. Exemption for conveyances executed prior to July 1, 1974.** This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(part).

**76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning regulations - - exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of [76-3-401](#) for divisions of land not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995; amd. Sec. 2, Ch. 436, L. 2003; amd. Sec. 2, Ch. 563, L. 2003; amd. Sec. 1, Ch. 252, L. 2005.

**76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions.**

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

**76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways.**

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

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

**76-3-210. Subdivisions exempted from requirement of an environmental assessment.** (1) Subdivisions totally within an area that is covered by all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:

(a) a growth policy adopted pursuant to chapter 1;

(b) zoning regulations pursuant to [76-2-201](#) or chapter 2, part 3; and

(c) a strategy for development, maintenance, and replacement of public infrastructure pursuant to [76-1-601](#).

(2) (a) A planning board established pursuant to chapter 1 may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:

(i) the subdivision is proposed in an area for which a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the growth policy; or

(ii) the subdivision will contain fewer than 10 parcels and less than 20 acres.

(b) When an exemption is granted under this subsection (2), the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review.

(c) If a properly established planning board having jurisdiction does not exist, the governing body may grant exemptions as specified in this subsection (2).

**History:** (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1); amd. Sec. 20, Ch. 582, L. 1999; amd. Sec. 10, Ch. 599, L. 2003.

### Part 3. Land Transfers

**76-3-301. General restriction on transfer of title to subdivided lands.** (1) Except as provided in [76-3-303](#), every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of [76-3-611](#)(1) in proper form unless the plat is located in an area over which the state does not have jurisdiction.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in [76-3-207](#)(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of the action must be imposed against the party not prevailing.

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979; amd. Sec. 2, Ch. 340, L. 2001.

**76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements.** (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred:

(a) is in a location in which the state does not have jurisdiction; or

(b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987; amd. Sec. 3, Ch. 340, L. 2001.

**76-3-303. Contract for deed permitted if buyer protected.** Notwithstanding the provisions of [76-3-301](#), 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:

(1) 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;

(2) 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;

(3) 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 2 years of the preliminary plat approval, the escrow agent shall

immediately refund to each purchaser any payments he has made under the contract;

(4) that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) 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."

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985.

**76-3-304. Effect of recording complying plat.** The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

**76-3-305. Vacation of plats -- utility easements.** (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by [7-5-2501](#), [7-5-2502](#), [7-14-2616](#)(1) and (2), [7-14-2617](#), [7-14-4114](#)(1) and (2), and [7-14-4115](#). Upon vacation, the governing body or the district court, as provided in [7-5-2502](#), shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in [7-5-2502](#), shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

**History:** En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

**76-3-306. Covenants run with the land.** All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

**History:** En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

**76-3-307. Donations or grants to public considered a grant to donee.** Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

**History:** En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

#### Part 4. Survey Requirements

**76-3-401. Survey requirements for lands other than subdivisions.** All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of [76-3-406](#).

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

**76-3-402. Survey and platting requirements for subdivided lands.** (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of [76-3-406](#), by or

under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

**76-3-403. Monumentation.** (1) The board of professional engineers and professional land surveyors shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It is the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

**History:** En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 211, Ch. 483, L. 2001; amd. Sec. 6, Ch. 190, L. 2003.

**76-3-404. Certificate of survey.** (1) Except as provided in [70-22-105](#), within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in the map;

(c) discloses evidence to suggest alternate locations of lines or points; or

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.

(2) A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and must conform to monumentation and surveying requirements promulgated under this chapter.

**History:** En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979; amd. Sec. 4, Ch. 549, L. 2003.

**76-3-405. Administration of oaths by registered land surveyor.** (1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under [76-3-404](#).

**History:** En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

**76-3-406. Surveys affecting irrigation districts -- additional survey requirements.** (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

- (a) traversed by a canal or ditch owned by an irrigation district; or
- (b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

**History:** En. Sec. 1, Ch. 136, L. 1993.

## **Part 5. Local Regulations**

**76-3-501. Local subdivision regulations.** The governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- (1) the orderly development of their jurisdictional areas;
- (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 improvement of roads;
- (5) the provision of adequate open spaces for travel, light, air, and recreation;
- (6) the provision of adequate transportation, water, and drainage;
- (7) subject to the provisions of [76-3-511](#), the regulation of sanitary facilities;
- (8) the avoidance or minimization of congestion; and
- (9) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995; amd. Sec. 2, Ch. 298, L. 2005.

**76-3-502. Repealed.** Sec. 4, Ch. 236, L. 1981.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

**76-3-503. Hearing on proposed regulations.** Before the governing body adopts subdivision regulations pursuant to [76-3-501](#) or [76-3-509](#), it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 4, Ch. 348, L. 2001.

**76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

- (a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in [76-3-604](#)(1);
- (b) except as provided in [76-3-210](#), [76-3-509](#), or [76-3-609](#), require the subdivider to submit to the governing body an environmental assessment as prescribed in [76-3-603](#);
- (c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;
- (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- (e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for

subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of [76-3-511](#), water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under [76-4-104](#) for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in [76-3-604](#) and [76-3-622](#) for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

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

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

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

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the 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;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the

physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to [76-3-605](#) and [76-3-615](#);

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in [76-3-201](#) or [76-3-207](#) is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in [76-3-604](#).

(2) In order to accomplish the purposes described in [76-3-501](#), the subdivision regulations adopted under [76-3-509](#) and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005.

**76-3-505. Repealed.** Sec. 16, Ch. 298, L. 2005.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995; amd. Sec. 22, Ch. 582, L. 1999; amd. Sec. 12, Ch. 599, L. 2003.

**76-3-506. Provision for granting variances.** Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

**76-3-507. Provision for bonding requirements to ensure construction of public improvements.** (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements

commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of [2-9-111](#).

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997.

**76-3-508. Repealed.** Sec. 4, Ch. 236, L. 1981.

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

**76-3-509. Local option cluster development regulations and exemptions authorized.** (1) If the governing body has adopted a growth policy that meets the requirements of [76-1-601](#), the governing body may adopt regulations to promote cluster development and preserve open space under this section.

(2) Regulations adopted under this section must:

(a) establish a maximum size for each parcel in a cluster development;

(b) subject to subsection (3)(d), establish a maximum number of parcels in a cluster development; and

(c) establish requirements, including a minimum size for the area to be preserved, for preservation of open space as a condition of approval of a cluster development subdivision under regulations adopted pursuant to this section. The regulations must require that open space be preserved through an irrevocable conservation easement, granted in perpetuity, as provided for in Title 76, chapter 6, prohibiting further division of the parcel.

(3) Regulations adopted under this section may:

(a) establish a shorter timeframe for review of proposed cluster developments;

(b) establish procedures and requirements that provide an incentive for cluster development subdivisions that are consistent with the provisions of this chapter;

(c) authorize the review of a division of land that involves more than one existing parcel as one subdivision proposal for the purposes of creating a cluster development;

(d) authorize the creation of one clustered parcel for each existing parcel that is reviewed as provided in subsection (3)(c); and

(e) establish exemptions from the following:

(i) the requirements of an environmental assessment pursuant to [76-3-603](#);

(ii) review of the criteria in [76-3-608](#)(3)(a); and

(iii) park dedication requirements pursuant to [76-3-621](#).

(4) Except as provided in this section, the provisions of this chapter apply to cluster development subdivisions.

**History:** En. Sec. 6, Ch. 348, L. 2001.

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

**History:** En. Sec. 8, Ch. 468, L. 1995.

**76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under [76-3-501](#) or [76-3-504](#)(1)(f)(iii) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement [76-3-501](#) or [76-3-504\(1\)\(f\)\(iii\)](#) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

**History:** En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997; amd. Sec. 2, Ch. 302, L. 2005.

## Part 6. Local Review Procedure

**76-3-601. Submission of application and preliminary plat for review -- water and sanitation information required.** (1) Subject to the submittal deadlines established as provided in [76-3-504\(3\)](#), the subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements and must be accompanied by the preliminary water and sanitation information required under [76-3-622](#).

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in [20-9-615](#), the county governing body shall provide a summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of [76-3-604](#), [76-3-605](#), [76-3-608](#) through [76-3-610](#), and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to [7-3-4444](#).

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995; amd. Sec. 23, Ch. 582, L. 1999; amd. Sec. 67, Ch. 7, L. 2001; amd. Sec. 4, Ch. 298, L. 2005; amd. Sec. 3, Ch. 302, L. 2005.

**76-3-602. Fees.** The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision applications.

**History:** En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868; amd. Sec. 5, Ch. 298, L. 2005.

**76-3-603. Contents of environmental assessment.** When required, the environmental assessment must accompany the subdivision application and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in [76-3-608](#); and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under [76-3-501](#) as may be required by the governing body;

(2) except as provided in [76-3-609](#), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in [76-3-608](#).

**History:** En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1995; amd. Sec. 6, Ch. 298, L. 2005.

**76-3-604. Review of subdivision application -- review for required elements and sufficiency of information.** (1)

(a) Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to [76-3-504](#)(3) and receipt of the review fee submitted as provided in [76-3-602](#), the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by [76-3-504](#)(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency 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 this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) 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 reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in [76-3-615](#).

(5) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of [76-3-620](#).

(6) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to [76-3-622](#) and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) 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:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) 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.

(7) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) 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, pursuant to [76-3-622](#), that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

(8) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 236, L. 1999; amd. Sec. 24, Ch. 582, L. 1999; amd. Sec. 4, Ch. 527, L. 2001; amd. Sec. 7, Ch. 298, L. 2005; amd. Sec. 5, Ch. 302, L. 2005.

**76-3-605. Hearing on subdivision application.** (1) Except as provided in [76-3-609](#) and subject to the regulations adopted pursuant to [76-3-504](#)(1)(o) and [76-3-615](#), at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. 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 must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983; amd. Sec. 25, Ch. 582, L. 1999; amd. Sec. 8, Ch. 298, L. 2005.

**76-3-606. Repealed.** Sec. 11, Ch. 468, L. 1995.

**History:** En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

**76-3-607. Repealed.** Sec. 11, Ch. 468, L. 1995.

**History:** En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

**76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in [76-3-509](#) or in [76-3-609](#)(2) or (4), the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the impact of development on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy.

(7) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to [76-3-622](#) or public comment received pursuant to [76-3-604](#) on the information provided pursuant to [76-3-622](#) 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.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995; amd. Sec. 26, Ch. 582, L. 1999; amd. Sec. 7, Ch. 348, L. 2001; amd. Sec. 10, Ch. 298, L. 2005; amd. Sec. 6, Ch. 302, L. 2005.

**76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to [76-3-504](#).

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this

chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under [76-3-201](#) or [76-3-207](#) since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in [76-3-604](#)(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in [76-3-608](#)(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

(ii) the requirement to hold a hearing on the subdivision application pursuant to [76-3-605](#); and

(iii) the requirement to review the subdivision for the criteria contained in [76-3-608](#)(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in [76-3-608](#)(3)(a).

(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) [76-3-608](#)(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in subsection (4), any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in [76-3-601](#) through [76-3-605](#), [76-3-608](#), [76-3-610](#) through [76-3-614](#), and [76-3-620](#).

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995; amd. Sec. 2, Ch. 236, L. 1999; amd. Sec. 11, Ch. 298, L. 2005.

**76-3-610. Effect of approval of application and preliminary plat.** (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to [76-3-507](#).

(2) After the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1).

**History:** En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983; amd. Sec. 12, Ch. 298, L. 2005.

**76-3-611. Review of final plat.** (1) The governing body shall examine each final subdivision plat and shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

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

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

**History:** En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995.

**76-3-612. Abstract of title required for review process.** (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of 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.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

**History:** En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

**76-3-613. Index of plats to be kept by county clerk and recorder.** (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

**History:** En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

**76-3-614. Correction of recorded plat.** When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

**History:** En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

**76-3-615. Subsequent hearings -- consideration of new information -- requirements for regulations.** (1) The regulations adopted pursuant to [76-3-504](#)(1)(o) must comply with the provisions of this section.

(2) The governing body shall determine whether public comments or documents presented to the governing body at a hearing held pursuant to [76-3-605](#) constitute:

(a) information or analysis of information that was presented at a hearing held pursuant to [76-3-605](#) that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

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

(3) If the governing body determines that the public comments or documents constitute the information described in subsection (2)(b), the governing body may:

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

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(4) If a public hearing is held as provided in subsection (3)(b), the 60-working-day review period required in [76-3-604](#)(4) is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

**History:** En. Sec. 9, Ch. 298, L. 2005.

**76-3-616 through 76-3-619 reserved. 76-3-620. Review requirements -- written statement.** In addition to the requirements of [76-3-604](#) and [76-3-609](#), following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

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

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

**History:** En. Sec. 2, Ch. 224, L. 1995; amd. Sec. 13, Ch. 298, L. 2005.

**76-3-621. Park dedication requirement.** (1) Except as provided in [76-3-509](#) or subsections (2), (3), and (6) through (8) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

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

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

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

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

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

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

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the

cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

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

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(9) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(10) A land donation under this section may be inside or outside of the subdivision.

**History:** En. Sec. 9, Ch. 468, L. 1995; amd. Sec. 27, Ch. 582, L. 1999; amd. Sec. 8, Ch. 348, L. 2001; amd. Sec. 1, Ch. 469, L. 2003; amd. Sec. 2, Ch. 333, L. 2005.

**76-3-622. Water and sanitation information to accompany preliminary plat.** (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater

treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, 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 department of environmental quality pursuant to [76-4-104](#);

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to [75-5-301](#) and [75-5-303](#) related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under [76-4-125\(2\)](#) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in [76-3-511](#).

**History:** En. Sec. 4, Ch. 302, L. 2005.

**76-3-623 through 76-3-624 reserved.**

**76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) 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.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) 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;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in [7-1-4111](#), if a subdivision is proposed within 3 miles of its limits;

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

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

(4) 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.

**History:** En. Sec. 10, Ch. 468, L. 1995; amd. Sec. 14, Ch. 298, L. 2005.