

# **City of East Helena Subdivision Regulations**

*April 2024*  
*Adopted by City Council May 7, 2024*

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## CHAPTER 1. GENERAL PROVISIONS

### **1. Title**

These regulations will be known and may be cited as “The Subdivision Regulations of the City of East Helena;” hereinafter referred to as “these regulations.”

### **2. Authority**

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

### **3. Purpose**

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

These regulations are intended to comply with Part 5 of the MSPA, and are intended to promote:

- a. The orderly development of the jurisdictional area.
- b. The coordination of roads within subdivided land with other roads, both existing and planned.
- c. The dedication of land for roadways and for public utility easements.
- d. The improvement of roads.
- e. The provision of proper physical and legal access, including obtaining necessary easements.
- f. The provision of adequate open spaces for travel, light, air, and recreation.
- g. The provision of adequate transportation, water, drainage, and sanitary facilities.
- h. The avoidance or minimizing of congestion.
- i. The avoidance of subdivisions which would involve unnecessary environmental degradation.
- j. The avoidance of subdivisions which would involve danger or injury by reason of natural hazard including but not limited to fire and wildland fire, flooding, rock falls or landslides, unstable soils, and steep slopes.
- k. The avoidance of subdivisions which would involve danger or injury by reason of man-made hazard including but not limited to high voltage lines, high pressure gas lines; and air or vehicular traffic safety hazards.

- l. The avoidance of subdivisions which would involve the lack of water, drainage, access, transportation, or other public improvements.
- m. The avoidance of subdivisions which would involve excessive expenditure of public funds for the supply of public improvements, facilities, and services.
- n. The manner and form of making and filing of any plat for subdivided lands.
- o. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

#### **4. Jurisdiction**

These regulations govern the subdivision of land within the jurisdictional area of the City Council of the City of East Helena.

When a proposed subdivision is proposed to be annexed to the City, the City will have jurisdiction over the review of the subdivision for concurrence with these regulations and the City Council will conduct public hearings and otherwise coordinate the subdivision review process and annexation procedures.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

#### **5. Severability**

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



## CHAPTER 2. GENERAL PROCEDURES

### **1. General**

#### **a. Construction Timing**

Construction work shall not occur on land proposed for subdivision until the City Council has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility the work will have to be redone or removed. In addition, Section 76-4-121, MCA, regulates subdivision activities.

#### **b. Transfers of Title**

The transfer of title shall be in compliance with Section 76-3-303, MCA and as may be amended by the Montana State Legislature.

#### **c. Permission to Enter**

The City Council or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the City Council, its agents, and affected agencies to enter the subject property.

#### **d. Review Procedure**

Every plat of subdivision must be reviewed, approved and filed for record with the County Clerk and Recorder in accordance with the procedures contained herein before title to the subdivided land can be sold or transferred in any manner.

### **2. First Minor Subdivisions**

First minor subdivision is a subdivision containing five or fewer lots, in which legal and physical access to all lots is provided and shall be from a tract of record that has not been subdivided or created by a subdivision under the MSPA or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since October 1, 2003.

#### **a. First Minor Subdivision Application**

1. The subdivider shall submit to the City a subdivision application containing the materials identified in these regulations and in the pre-application meeting.
2. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record; and
3. Applicable review fees.
4. The subdivider may not request a variance to any aspect of legal and/or physical access.
5. Summary of Probable Impact.

6. Community Impact Report.
- b. First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions:

1. preparation of an environmental assessment.
2. parkland dedication.
3. public hearing requirements.

### **3. Reserved**

### **4. Major Subdivisions**

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

- a. Subdivision Application
  1. The subdivider shall submit to the City a subdivision application containing the materials identified in these regulations and in the pre-application meeting.
  2. Applicable review fees.
  3. Environmental Assessment.
  4. Summary of Probable Impact.
  5. Community Impact Report.

### **CHAPTER 3. PRE-APPLICATION REVIEW PROCESS FOR SUBDIVISIONS**

The purpose of a pre-application review is to discuss this regulation and these standards, to familiarize the developer with the standards, goals and objectives of applicable plans, regulations and ordinances, and to discuss the proposed subdivision as it relates to these matters.

#### **1. Written Request**

Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator. The pre-application meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.

#### **2. Sketch**

At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.

#### **3. Pre-application Meeting**

- a. The subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations, floodplain regulations, building codes, fire codes, and institutional controls regulations.
- b. The subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
- c. The subdivision administrator may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the subdivision administrator to request additional information at a later time.

#### **4. Time for Preliminary Plat Submittal**

Unless the subdivider submits a subdivision application within 180 calendar days of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

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## **CHAPTER 4. PRELIMINARY PLAT REVIEW PROCESS FOR SUBDIVISIONS**

After the requirement for a pre-application review has been satisfied, the developer may submit a preliminary plat subdivision application. Subdivision applications shall be submitted, along with the appropriate review fee and all required subdivision application information as set forth in this regulation and must conform to the requirements of this regulation. The preliminary plat shall be prepared by a surveyor licensed to practice in the State of Montana.

### **1. Element Review**

- a. A subdivision application is considered to be received on the date of delivery to the City and when accompanied by the review fee, the day of delivery is not considered a working day.
- b. Within five (5) working days of receipt of a subdivision application, the subdivision administrator shall determine whether the application contains all of the applicable materials required by this regulation and shall give written notice to the subdivider of the subdivision administrator's determination.
  1. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
  2. The subdivider may correct the deficiencies and resubmit the application.
  3. When the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required by this regulation.
  4. This process shall be repeated until the subdivider submits an application containing all the materials required by this regulation, or the application is withdrawn.

### **2. Sufficiency Review**

- a. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.
  1. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
  2. The subdivider may correct the deficiencies and resubmit the application or withdraw the application.

3. When the subdivider corrects the deficiencies and resubmits the application, the subdivision administrator shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
  4. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.
  5. If substantial changes to the subdivision application materials and/or preliminary plat are made by the subdivider during sufficiency review or in the process of responding to sufficiency deficiencies, the subdivider may be required to resubmit the subdivision application and fee as determined by the Subdivision Administrator.
- b. A determination that an application contains sufficient information for review does not ensure that the proposed subdivision will be approved or conditionally approved by the City Council and does not limit the ability of the subdivision administrator, planning board, or the City Council to request additional information during the review process.
  - c. A determination of sufficiency by the subdivision administrator does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

### **3. Phased Developments**

- a. A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to Chapter 6, Section 2 for all phases of a development and a schedule of when the subdivider plans to submit for review of each phase of the development.
- b. Except as otherwise provided by this section, the phased development application must be reviewed in conformity with this code.
- c. The subdivider may change the schedule for the review of each phase of the development upon approval of the City Council, after a public hearing, if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.
- d. For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary plat approval of the subdivision, the subdivider, prior to submission of infrastructure plans for review for each phase, shall provide written notice to the City Council not more than 1 year or less than 90 calendar days in advance of submitting the final plat application. The notice shall include any changes to the preliminary plat and an analysis of the phase as it relates to the primary review criteria and city regulations and standards. The City Council shall hold a public hearing pursuant to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider to determine whether changed circumstances justify amending any conditions of approval.

- e. The governing body may amend or impose additional conditions of approval only if it determines, based on a review of the primary review criteria, that the existing conditions of approval are inadequate to mitigate the potentially adverse impacts identified during the original review based on changed circumstances.
- f. Notwithstanding the provisions of 76-3-610(2), the City Council shall issue supplemental written findings of fact within 20 working days of the hearing and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information.
- g. Any additional conditions must be met before final plat approval for each particular phase and the approval in accordance with 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year unless the City Council approves phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the City Council.

#### **4. Expedited Review**

A subdivision application, regardless of the number of lots, that meets the requirements set forth in this section is entitled to the expedited review process at the applicant's request.

##### a. Expedited Review Requirements

A subdivision qualifies for the expedited review process if it meets the following requirements:

1. Is within the City of East Helena corporate limits.
2. Complies with City of East Helena Zoning Regulations and complies with design standards and other regulations outlined within the City of East Helena Subdivision Regulations; and
3. Includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

##### b. Expedited Review Application Exemptions

Subdivision applications that meet the requirements for expedited review are exempt from the following:

1. Preparation of an environmental assessment, and
2. Review criteria for impacts on agriculture, agriculture water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety.

##### c. Review Process

On submission for expedited review under this section, the subdivision application must be reviewed for required elements and sufficiency of information as provided in Sections 1 and 2 above. The subdivisions administrator shall determine whether the application complies with the City of East Helena Zoning Regulations and complies with the design

standards and other regulations outlined within the East Helena Subdivision Regulations. The application may include a request for variance or deviation from the subdivision regulations. The subdivision administrator shall ensure the application includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

d. Governing Body Review

1. The City Council shall hold a hearing and approve, conditionally approve, or deny the subdivision application within 35 working days of a determination by the subdivision administrator that the application contains required elements and sufficient information for review. If the subdivision application includes a request for variance or deviation from the subdivision regulations the time for holding a hearing must be extended to 45 working days.
2. Provide notice for the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
3. Approve the application unless public comment or other information demonstrates the application does not comply with:
  - A. Adopted zoning regulations, design standards, and other requirements of subdivision regulations including any criteria for granting variances or deviations from the subdivision regulations; and
  - B. Adopted ordinances or regulations for the onsite development of or extension to public infrastructure.
4. Provide to the applicant and the public a written statement within 30 days of the decision to approve or deny a proposed subdivision for expedited review as allowed in this section that provides:
  - A. The facts and conclusions that the governing body relied on in making its decision to approve or deny the application; and
  - B. The conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.
5. The City Council may do the following as it relates the expedited review:
  - A. With the agreement of the applicant, grant one extension of the review period allowed in subsection 1 above, not to exceed 180 calendar days; and
  - B. Adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements of the City of East Helena Subdivision Regulations.

e. Subdivision Located Outside City Limits

A subdivision located outside of the boundaries of incorporated limits of the City of East Helena may not utilize the expedited review process provided in this section unless the board of county commissioners of the county where the subdivision is located has voted



to allow the provisions of this section to apply to subdivisions located outside the boundaries of an incorporated city or town.

**5. Administrative Minor Subdivision Review Procedure.**

A project may use the administrative minor subdivision review process if it meets all applicable requirements identified below.

a. Applicability

A subdivision of five or fewer lots, that complies with the applicable zoning district standards and the following:

1. The subdivision will be served by municipal water and sewer service;
2. Has existing legal and physical access to each lot; and,
3. Does not require a variance to these regulations.

b. Exemptions to Administrative Minor Subdivision Application Requirements

The following do not apply to subdivisions that qualify as an Administrative Minor Subdivision.

1. Review of the subdivision based on the primary review criteria and submittal of the summary of probable impacts based on the primary review criteria.
2. Preparation of an environmental assessment.
3. Public hearing requirements.
4. Parkland dedication.

c. Process

1. Pre-application meeting.
2. Element Review, except notification to homeowner, landowner, appropriate neighborhood councils, or other neighborhood organizations is not required.
3. Sufficiency Review.
4. Notification: Immediately upon determination that the application is sufficient for review, the following must be notified by first-class mail of the pending application:
  - A. Each property owner of record immediately adjoining the proposed subdivision project.
  - B. Each purchaser under contract of property immediately adjoining the proposed project.
5. Administrative Review: The subdivision administrator shall approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement of the decision within 30 working days of a determination that the application contains required elements and sufficient information for review.

d. Appeal

An appeal of the subdivision administrator's decision to approve, approve with conditions or deny an Administrative Minor Subdivision may be made in writing with the request that the administrator forward the application on to the City Council. The City Council shall sustain the administrator's decision based on the record as a whole, unless the decision is found to be arbitrary, capricious, or unlawful. The appellant's written request for appeal shall address their reasoning for why the subdivision administrator's decision is arbitrary, capricious, or unlawful. The City Council shall make a final determination within 15 working days from the receipt of the request to appeal.

## **6. Applicable Regulations**

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

## **7. Time Period for Approval, Conditional Approval, or Denial**

- a. First Minor Subdivision: Within 35 working days, the City Council shall approve, conditionally approve or deny the proposed subdivision according to these regulations, unless the subdivider and the City agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.
- b. Subsequent Minor Subdivisions: Subsequent minor subdivisions shall be reviewed using the process for major subdivisions.
- c. Major Subdivisions: For subdivisions that create 50 lots or less, within 60 working days, the City Council shall approve, conditionally approve or deny the proposed subdivision and for subdivisions that create over 50 lots, within 80 working days the City Council shall approve, conditionally approve or deny the proposed subdivision according to these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to these regulations. The review period begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.
- d. Expedited Review: For subdivisions using the expedited review process, within 35 working days the City Council shall approve, conditionally approve, or deny the proposed subdivision unless the application includes an application for a variance or deviation from the subdivision regulations then the review period is extended to 45 working days. The review period begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.
- e. Administrative Minor Subdivision: For minor or subsequent minor subdivisions utilizing the administrative minor subdivision process, within 30 working days the subdivision administrator shall approve, conditionally approve, or deny the proposed subdivision.

The review period begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

### **8. Public Agency and Utility Review**

- a. Review and comment by public agencies or utilities may not delay the City Council's action on the subdivision application beyond the 35-working day review period. The City Council will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.
- b. If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring interest in the real property identified in the subdivision application shall disclose that the entity has been involved with that effort prior to submitting a comment, an opinion, or information as provided in this section.

### **9. Subdivision Administrator Review**

The subdivision administrator shall review subdivision applications, prepare the staff report, provide recommendations, assist the Planning Board in their review and recommendation, and assist and advise the City Council in their decision making.

### **10. Public Hearings and Notices – In General**

#### **a. Hearings**

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

#### **b. Notice**

1. The planning board and City Council shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the city as required by law.
2. As required by law, prior to the date of the required public hearing, the City Council shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to 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.
3. The subdivider shall post a notice at a conspicuous location on the proposed subdivision at least 10 days prior to the public hearing.

## **11. Planning Board Review**

- a. First Minor Subdivision: Under 76-1-107(2), MCA, the Planning Board delegates to the subdivision administrator its responsibility to advise the City Council on First Minor Subdivisions.
- b. Subsequent Minor Subdivisions: Subsequent minor subdivisions shall be reviewed using the process for major subdivisions.
- c. Major Subdivisions: After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

## **12. Planning Board Recommendation**

- a. Consideration Standards: In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:
  1. these regulations.
  2. applicable zoning regulations.
  3. the MSPA, including but not limited to 76-3-608(3); and
  4. other applicable regulations.
- b. Consideration-Evidence: In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):
  1. the subdivision application and preliminary plat.
  2. the environmental assessment.
  3. the summary of probable impacts and proposed mitigation.
  4. an officially adopted growth policy.
  5. information provided at public hearing(s).
  6. subdivision administrator's staff report and recommendation; and
  7. any additional information authorized by law.
- c. Written Recommendation: Within 10 working days after the public hearing, the planning board shall submit the following in writing to the subdivider and the City Council:
  1. recommended findings of fact based on the evidence that discuss and consider the subdivision's compliance with and impact on the items listed in these regulations.
  2. a recommendation for approval, conditional approval, or denial of the subdivision application and preliminary plat; and
  3. a recommendation for approval or denial of any requested variances.

### **13. Water and Sanitation Information**

The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The planning board shall forward all comments regarding water and sanitation to the City Council.

### **14. Subdivider's Preference for Mitigation**

The subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's preference for mitigation of impacts identified through the subdivision review process. The City Council will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation. [76-3-608(5)(b), MCA]

### **15. City Council Hearing**

- a. After the planning board makes its recommendation, the City Council shall hold a public hearing on the subdivision application.
- b. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the City Council directly, to be forwarded to the City Council.
- c. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, opinion or information.

### **16. New Information**

- a. Upon an objection made at the hearing, the City Council shall determine whether public comments or other information presented for consideration at the City Council's public hearing constitute:
  1. Relevant, new information regarding a subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by the governing body or its agent or agency and has a substantial effect on the governing bodies consideration of the application.
- b. If the City Council determines that public comments or other information presented at the hearing constitutes relevant new information regarding the subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by the governing body or its agent or agency and has a substantial effect on the governing bodies consideration of the application, the City Council shall determine whether the public comments or documents are relevant and credible with regard to the City Council's decision.
  1. If the City Council determines the information or analysis of information is either not relevant or not credible or the change to the design of the subdivision does not substantially impact analysis of the potential adverse impacts, then the City Council shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or

2. If the City Council determines the new information or analysis of information including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions in light of the new information is relevant and credible, then the City Council shall schedule or direct the planning board to schedule a subsequent public hearing.
  3. At the subsequent hearing the planning board or City Council shall consider only the new information or analysis of information, including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions in light of the new information is relevant and credible that the City Council will rely on in making its decision on the proposed subdivision.
- c. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions including the design of the subdivision that the City Council will rely on in making its decision on the proposed subdivision.
  - d. New information or analysis of information is considered to be credible if it is based on one or more of the following:
    1. physical facts or evidence.
    2. personal observations supported by objective facts.
    3. evidence provided by a person with professional competency in the subject matter; or
    4. scientific data supported by documentation.

#### **17. New Information Subsequent Public Hearing**

- a. If a subsequent public hearing is held, it must be held within 45 days of the City Council's determination to schedule a subsequent hearing. The planning board or City Council shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
  1. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
  2. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing before the City Council shall be given by certified mail to the subdivider, each adjoining landowner to 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.
- b. If a subsequent public hearing is held, the review period is suspended as of the date of the City Council's decision to schedule a subsequent hearing. The review period resumes on the date of the City Council's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

**18. City Council Decision and Documentation**

a. Prerequisites to Approval

The City Council may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

1. provides easements for the location and installation of any planned utilities.
2. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.
3. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by these regulations.
4. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth have been considered and will be accomplished before the final plat is submitted.
5. assures that the requirements of 76-3-504(1)(k), MCA, regarding watercourse and irrigation easements as set forth have been considered and will be accomplished before the final plat is submitted; and
6. provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the City Council shall consider above, and whether the proposed subdivision complies with:

1. these regulations.
2. applicable zoning regulations.
3. other applicable regulations.
4. the MSPA, including but not limited to the following impacts:
  - A. impact on agriculture.
  - B. impact on agricultural water user facilities.
  - C. impact on local services.
  - D. impact on the natural environment.
  - E. impact on wildlife
  - F. impact on wildlife habitat.
  - G. impact on public health and safety; and
  - H. excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils.
2. proposed mitigation.

- A. The City Council may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review but may not require a set-aside of land or monetary contribution for the loss of agricultural soils.

c. Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the City Council may consider and weigh the following, as applicable:

1. the subdivision application and preliminary plat.
2. the environmental assessment.
3. the summary of probable impacts, community impact report, and mitigation.
4. an officially adopted growth policy.
5. comments, evidence and discussions at the public hearing(s). Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion.
6. subdivision administrator's staff report and recommendations.
7. planning board recommendation; and
8. any additional information authorized by law.

The City Council may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcel.

Notwithstanding the foregoing, the City Council may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

**19. Water and Sanitation-Special Rules**

- a. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the City Council finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- b. For a proposed subdivision that will create one or more parcels, the subdivider shall obtain approval by the DEQ and the City for water and sewer main extensions as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed, or water and sewer main extensions will be approved to service the proposed lots. The City shall require either DEQ approval of the proposed subdivision or require that a Municipal Facilities Exclusion be approved by the City Council and DEQ prior as a condition of approval of the final plat.



- c. A subdivision cannot be approved if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment.
- d. If the water supply or wastewater treatment systems are shared, multiple user or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public service commission jurisdiction or exempt from public service commission jurisdiction. If exempt, an explanation for the exemption must be provided.

## **20. Documentation of City Council Decision**

- a. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the City Council shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.
- b. Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion in order for the governing body to include the agency comment in its written statement.
- c. If the City Council conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in Section 17.b. above that forms the basis for the condition.
- d. When the City Council approves, denies, or conditionally approves the proposed subdivision, it shall within 30 working days following the oral decision send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
  - 1. contain information regarding the appeal process for the denial or imposition of conditions.
  - 2. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision.
  - 3. provide the facts and conclusions that the City Council relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
  - 4. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
  - 5. set forth the time limit for approval, pursuant to the subsection below.

## **21. Subdivision Application and Preliminary Plat Approval Period**

- a. Upon approval or conditional approval of the preliminary plat, the City Council shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

1. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at the request of the subdivider, extend the approval.
  - A. All requests for extensions must be in writing and must provide responses to the following criteria and supporting documentation, if any:
    - i. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
    - ii. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
    - iii. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision non-compliant with current design standards, such as road design, wildfire, or flood standards.
    - iv. Consistency with adopted comprehensive planning documents, including but not limited to, the jurisdiction's growth policy, annexation policy, capital improvements plan, transportation plan, etc.
    - v. Impacts to public health, safety and general welfare.
    - vi. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
  - B. Prior to granting any extensions greater than 3 years past original signed statement of original preliminary plat approval for a major subdivision, the governing body must hold a public hearing. 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.
  - C. Prior to granting any extension of a preliminary plat approval for a minor subdivision, the governing body should hold a public meeting noticed in accordance with the standard practices of the governing body.
  - D. After the hearing or meeting, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request. Additional conditions may not be imposed as a condition of subdivision extension.
2. For phased developments, the governing body may approve phased developments that extend beyond the time limits set forth in Chapter 4, Section 18.a., but all phases of the phased development must be submitted for review and approved or

denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

3. After the application and preliminary plat are approved, the City Council may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.
4. The City Council may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

## **22. Amended Applications**

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency but before the Planning Board hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
  1. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
  2. The review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
  3. If the subdivision administrator determines the changes are not material, the review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
  4. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting, resubmit the application as a new subdivision application, and require payment of a new application fee or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed changes.
- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the City Council hearing, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
  1. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
  2. The review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.

3. If the subdivision administrator determines the changes are not material, the review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
4. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
  - A. require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee; or
  - B. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the subdivision administrator's determination to schedule a new planning board hearing shall be provided. A supplemental staff report shall be prepared to address the changes to the original application.
5. If a new Planning Board hearing is held, the review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.
- d. The following changes, although not an exhaustive list, may be considered material:
  1. configuration or number of lots.
  2. street layout.
  3. water sewer, or storm water proposals.
  4. configuration of park land or open spaces.
  5. easement provisions.
  6. designated access; or
  7. change in use.
- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the City Council by written notice within 10 working days. The subdivider may request a hearing and may submit additional evidence to show that the changes to the preliminary plat are not material.
  1. The review period is suspended until the City Council's decision on the appeal is made.
  2. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the City Council shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board.

3. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the review period resumes as of the date of the decision.
4. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the review period provided above.

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## **CHAPTER 5. FINAL PLAT REVIEW PROCESS FOR SUBDIVISIONS**

After the conditions of preliminary approval and the requirements for the installation of improvements have been satisfied, the developer shall cause to be prepared a final plat. The final plat shall conform to the uniform standards for final subdivision plats as set forth in the Administrative Rules of Montana (ARM). Plans and data shall be prepared under the supervision of a registered surveyor, licensed in the State of Montana, as their licensing laws allow.

### **1. Final Plat Contents**

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

### **2. Final Plat Initial Review**

- a. After approval of the subdivision preliminary plat by the City Council, the subdivider may present a final plat to the City Council for approval. Portions of an approved preliminary plat will not be approved for final plat unless the portion has been reviewed as a part of a phased development and the portion represents an entire phase.

- b. Final Plat Submittal

The final plat approval application form and all supplementary documents must be submitted to the subdivision administrator at least 60 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

1. The final plat application.
2. The final plat review fee.
3. A written summary and supporting documentation verifying how each condition of preliminary plat approval has been satisfied.
4. A Title Report or updated Abstract of Title dated no less than 30 days prior to the date of submittal.
5. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction.
6. The DEQ Subdivision Approval or a Municipal Facilities Exclusion if approved by the City Council.
7. A final Grading and Drainage Plan, including all road plans, as built information, and profiles, and state or local encroachment permits.
8. All engineering plans.
9. Any homeowner association documents including bylaws, covenants, and/or declarations.
10. City attorney approvals; and

11. One 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats.
12. At a minimum the following improvements shall be installed prior to final plat approval:
  - A. water and sanitary sewer mains.
  - B. water and sewer services into all lots within the subdivision.
  - C. all storm water infrastructure shall be installed; and
  - D. the roads shall be installed to a minimum of the top of the base course gravel.
  - E. All other required improvements shall be financially guaranteed, and the subdivider shall enter into a subdivision improvements agreement with the City for installation of remaining infrastructure.
13. County Treasurer certification that no real property taxes and special assessments assessed and levied on the land to be subdivision are delinquent.
14. Proof of closure.

c. Review by Subdivision Administrator

1. A final plat is considered to be received on the date of delivery to the subdivision administrator or governing body when accompanied by the required review fee.
2. Within 20 working days of receipt of the final plat, the subdivision administrator shall review the final plat to determine whether the conditions and requirements for final plat approval have been met. The subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the subdivision administrator until all conditions of preliminary approval have been satisfied. If the subdivision administrator determines that the final plat does not contain the information required, the subdivision administrator shall notify the subdivider in writing of the final plat defects.
3. The subdivision administrator may review subsequent submissions of the final plat for information found to be deficient during the original review of the final plat.
4. The time limits provided in subsection ii. apply to each submission of the final plat until a written determination is made that the final plat contains the required information, and the subdivider is notified.
5. If the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application.
6. The subdivision administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Lewis and Clark County Clerk and Recorder.



When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

7. Proof from the Lewis and Clark County Examining Land Surveyor that the subdivision plat has been reviewed for closure and is in compliance with the survey requirements of the Montana Subdivision and Platting Act.
8. If determination is made that the final plat contains the required information, the City Council shall review and approve or deny the final plat within 20 working days.
9. The subdivider or subdivider's designated agent and the subdivision administrator may mutually agree in writing to extend the review periods provided for in this section and establish timeframes for the extension and any relevant parameters.

### **3. Restrictive Covenants – Approval, Content & Enforcement by City Council**

- a. The City Council may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the City Council, be set forth in a separate heading identifying them as plat approval covenants and indicating: "These covenant(s) may not be repealed or amended without prior written consent of the (name of the East Helena City Council)."
- b. Covenants not specifically required by the City cannot be enforced by the City, therefore if covenants are proposed then they shall be accompanied by homeowner's association articles of incorporation, declaration, and bylaws. All homeowner's association documents, and proposed covenants shall be submitted to the City for review and approval by the City Council.
- c. No proposed covenants shall be in conflict with any City of East Helena code or ordinance, including the City Zoning Ordinance.

### **4. Public Improvements Agreement; Guaranty**

- a. As a condition of approval of the final plat, the subdivider must have installed all required improvements and have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all remaining required improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or firefighting facilities, have been installed and engineering plans have been filed.
- b. All Improvements Agreements shall meet the following standards:
  1. The agreement and security shall be satisfactory to the City Attorney as to form and manner of execution.
  2. Requests for partial release of security shall only be in amounts such that the security will always equal 125 percent of the value of the remaining uncompleted work, and such that not more than 90 percent of the security is released prior to completion of all improvements. The City may take into account the location and scope of development phases in evaluating requests to reduce the amount of a

financial guarantee. The City may require verification that all liens have been released and payments made prior to releasing a portion of the security.

3. Shall provide for the City to require a replacement security in the event the issuer of the security becomes insolvent, enters receivership, or otherwise gives cause for the City to lack confidence in the ability of the issuer to honor the security.
  4. Shall permit the City in the event of default by the developer to include in the costs to be recovered from the security those costs resulting from the need to call in the security, including but not limited to costs for the City Attorney's time.
  5. The financial security shall be placed in the keeping of the City Clerk.
  6. The agreement shall stipulate the time schedule the subdivider proposes for accomplishing the required improvements.
  7. The improvements agreement shall be filed with the final plat.
  8. The security provided shall be a financial security valid for one year beyond the subdivider's proposed time schedule to complete the required improvements.
  9. Any requested extension beyond the original agreed upon time schedule shall require a new improvements agreement addressing anew each and every requirement of this Section 4, just as if the project itself was commencing for the first time.
- c. If the subdivider chooses to enter into a subdivision improvements agreement, or any agreed upon extension, financially guaranteeing the public improvements, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the City Council indicating such and including a copy of the as-built drawings stamped by a professional engineer in the State of Montana. Prior to release of the guarantee, all public improvements shall be certified by the subdivider and a professional engineer in the State of Montana as having been installed in conformance with the approved plans and specifications and a copy of the record drawings shall be submitted to the City. The three bids shall be current and no older than four (4) months at the time of execution of the subdivision improvements agreement.

d. Securities.

Financial Securities. A variety of means of providing for the security of improvements agreements, ensuring adequate maintenance of required improvements and ensuring compliance with conditions of approval for various developments may be allowed. One or more of the following instruments may be used to provide a financial security for improvements to be completed. The method, terms and amount of security must be acceptable to the City. Financial security is the primary method to provide security for installation of physical improvements.

1. Direct payment of cash to the City.
2. Irrevocable letters of credit.

3. Cash escrows held by the City, or held by an approved escrow agent and subject to an executed escrow agreement; or
4. Performance bonds, in limited circumstances and subject to approval by the City Attorney.

#### **5. Amending Approved Preliminary Plats Before Final Plat Approval**

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
  1. The subdivision administrator shall determine whether the changes to the preliminary plat are material.
  2. If the subdivision administrator determines the changes are material, the subdivision administrator may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
  3. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes, notify the subdivider and identify those changes to the City Council during final plat review for acceptance.
- b. The following changes, although not an exhaustive list, may be considered material:
  1. Increase in the number of lots.
  2. Changes in access or street layout.
  3. Water and wastewater capacity.
  4. Configuration of park land or open spaces.
  5. Easement provisions.
  6. Designated access.
  7. Changes to conditions of approval; or
  8. Changes in use.
- c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the City Council in writing within 10 working days. The subdivider may request a hearing and may submit additional evidence to show that the changes to the preliminary plat are not material.
- d. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the City Council through a properly noticed public hearing in order to determine if the condition may be waived or amended.

#### **6. Final Plat Approval**

- a. Approval by the City Council

The City Council shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations or deny it pursuant to (ii) below.

1. If the final plat is approved, the City Council shall certify its approval on the face of the final plat. When applicable, a certificate of the City Council expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
2. If the final plat is denied, the City Council shall write a letter stating the reason for denial and forward a copy to the subdivider. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

b. Inaccurate Information

The City Council may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

**7. Final Plat Filing**

After it is approved, the final plat may not be altered in any manner except as provided herein. The Lewis and Clark County Clerk and Recorder may not accept any plat for filing that does not bear the City Council's approval in proper form or that has been altered.

**8. Amending Filed Plats**

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots in a platted subdivision or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the City Council.
- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The City Council may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.
- c. The City Council may not approve an amendment that will place a lot in non-conformance with the standards contained in these regulations or with local zoning regulations unless the City Council holds a public hearing on the amendment and issues a written variance from the standards.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats.

## **CHAPTER 6. SUBMITTAL MATERIALS AND REQUIREMENTS**

All applications and supplemental materials, including all copies of plats and site development plans shall be bound and folded into complete sets ready for distribution.

### **1. Pre-Application**

- a. Any subdivider desiring to subdivide land pursuant to this title shall present a complete and signed pre-application plat application to the City showing all pertinent features of the proposed subdivision and all proposed improvements.
- b. The full required application fee.
- c. The sketch may be a freehand sketch drawn directly on a print of a topographic map or recent aerial photo of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property.
- d. Information on the current status of the site, including but not limited to:
  - location and legal description.
  - approximate tract and lot boundaries of existing tracts of record.
  - description of general terrain and topography.
  - natural features on the land, including water bodies, floodplains geologic hazards, and soil types; soil contamination
  - existing structures and improvements.
  - existing utility lines and facilities serving the area to be subdivided.
  - existing easements and rights of way.
  - public transportation routes.
  - existing zoning or development regulation standards.
  - existing conservation easements.
  - existing covenants or deed restrictions
  - north arrow
- e. Documentation on the current status of the site, including but not limited to:
  - ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide.
  - location of Agricultural Water User Facilities, diversion points and places of use.
  - any special improvement districts; and
  - rights of first refusal for the property.
  - water rights, including the type, uses and ownership.

- Description of any physical and environmental site conditions affecting development, including water bodies, floodplains, geological hazards, and high fire risk areas.
  - existing drainage.
  - Nearest existing water and wastewater mains to the property, and type, size, and location of existing wastewater treatment facilities, including septic systems.
- f. Information on the proposed subdivision, including but not limited to:
- tract and proposed lot boundaries, and lot sizes. If a phased development, each phase should include this data per phase.
  - proposed public and private improvements.
  - location of utility lines and facilities.
  - easements and rights of way.
  - parks and open space and proposed conservation easements. If a phased development, each phase should include this data per phase.
  - proposed zoning, zoning or subdivision variances, etc.
  - proposed special maintenance or improvement district.
  - proposed drainage provisions.
  - proposed covenants or deed restrictions.

## **2. Preliminary Plat**

The subdivider shall submit to the City a subdivision application addressing these topics and containing the following materials, as applicable:

- a. Any subdivider desiring to subdivide land pursuant to this title shall present a complete and signed preliminary plat application to the City showing all pertinent features of the proposed subdivision and all proposed improvements.
- b. The full required application fee.
- c. The following number of copies of the proposed preliminary plat and all application materials must be submitted to the City:
  1. Two (2) copies of the proposed preliminary plat and all application materials for review of checklist items.
  2. Once the application has been determined to contain the checklist items, three (3) paper copies and one electronic PDF, or other approved format, copy of the proposed preliminary plat and all application materials for sufficiency review.
  3. Once the application has been determined to contain sufficient information for review:
    - A. six (6) paper copies of the proposed preliminary plat and all application materials for a major subdivision; or

- B. five (5) copies for a minor subdivision; and
  - C. one (1) electronic PDF, or other approved format, copy;
  - D. preliminary plats must be in the format required by the Lewis and Clark County Clerk and Recorder; and
  - E. one copy of the preliminary plat in an eleven inch by seventeen-inch (11" x 17") format.
- d. Preliminary Plat: The subdivider shall submit to the City a preliminary plat with the following information:
- 1. Title block to include:
    - A. Name of subdivision.
    - B. Location.
    - C. A scale not exceeding one hundred feet per inch (100' = 1").
    - D. North arrow.
    - E. Date of preparation; and
    - F. Name of preparer.
  - 2. The exterior boundaries of the platted tract.
  - 3. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision's boundaries.
  - 4. Perimeter survey, including gross acreage and net acreage.
  - 5. All lots, blocks and applicable tracts of land, designated by numbers and the approximate dimensions and area of each lot.
  - 6. An amended subdivision plat must cite the subdivision that is being amended and identify the blocks and lots being amended.
  - 7. Use restrictions for lots designed for special uses, such as lots exclusively for townhouses.
  - 8. Identify on the preliminary plat or overlay the locations of any existing and proposed easements affecting the subdivision.
  - 9. The names of adjoining platted subdivisions and numbers of adjoining certificates of surveys previously recorded.
  - 10. The subdivision or development name (the title must contain the words "plat" and/or "subdivision")
  - 11. The legal description, including Section, Township, and Range, and any underlying survey data.
  - 12. A north arrow.
  - 13. The scale used on the plat.
  - 14. The certification of a professional land surveyor.

15. The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications).
  16. The names of all owners of record and the subdivider [if different from the owner(s)].
  17. The date the preliminary plat is completed.
  18. Proposed lot layout with approximate dimensions and sizes.
  19. Lots and blocks identified by number or letter.
  20. The use of each lot, if other than for single-family residential.
  21. The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given.
  22. All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property.
  23. All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each.
  24. Existing and proposed road and street names.
  25. Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, alleys, or highways.
  26. The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted lands.
  27. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
  28. Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use.
  29. The total gross area of the subdivision and the total net area, exclusive of public areas and rights-of-way.
  30. Existing and proposed infrastructure and proposed utilities including:
    - A. The approximate location, size, and depth of existing and proposed sanitary and storm sewers.
    - B. The approximate location, size, and depth of existing and proposed water mains, lines, wells, and facilities; and
    - C. The approximate locations of gas lines, fire hydrants or firefighting water storage facilities, electric and telephone lines, and streetlights.
- e. A vicinity map; showing:
1. The approximate locations of all existing buildings, structures, and other improvements.



2. Ownership of lands immediately adjoining a subdivision, and existing buildings, structures and other improvements on those lands.
- f. A topographic map.
1. For any land area which will be subdivided or disturbed, contour intervals of 2' where the average slope is less than 10%; intervals of five feet where the average slope is greater than 10% and less than 15%; and intervals of ten feet where the average slope is 15% or greater.
  2. Slopes greater than 25% shall be shown as no-build zones.
- g. A grading and drainage plan; that includes: (not required for administrative minor subdivision review)
1. Proposed grades of all streets and roads.
  2. Proposed drainage facilities for all lots, blocks, and other areas displaying accurate dimensions, courses, and elevations.
  3. Existing and proposed contours, using the contour requirements of a topography map.
  4. Graded slopes.
  5. Calculations for a ten-year frequency one-hour storm and a method to mitigate adverse impacts for a 100-year frequency one-hour storm; and
  6. Construction procedures, slope protection, or information describing the ultimate destinations of storm runoff used to minimize erosion; and
  7. Slope Stability Report shall be completed if the proposed subdivision includes areas with the potential for land sliding or slope instability. The report must be completed by a qualified soil or geotechnical engineer and indicate the locations, character, and extent of all areas of all slope stability, and these areas shall be shown on the plat.
- h. Engineering plans for all public and private improvements. (not required for administrative minor subdivision review)
- i. When a tract of land is subdivided in phases, an overall development plan indicating the subdivider's intentions for development of the entire tract, including incremental provisions for utilities and estimated timing of construction. A subdivider applying for a phased development shall submit with the subdivision application an overall phased development preliminary plat on which independent platted development phases must be shown. Each phase must include a minimum of 6 lots and the date of completion of each phase. Each phase must include:
1. a separate preliminary plat with the number of lots in that phase.
  2. the location of proposed water and wastewater infrastructure needed to serve that phase and demonstrate how these systems can function independently and will provide for future connectivity.

3. the location of proposed storm water infrastructure needed to serve that phase and demonstration how these facilities can function independently and will provide for future connectivity.
  4. the location of proposed streets and nonmotorized infrastructure needed to serve that phase and demonstration how the proposed motorized and nonmotorized transportation network can function independently and will provide for future connectivity; and
  5. the proposed parkland dedication and demonstration how the dedicated parkland can function independently.
- j. Abstract of title (or Title Report).
  - k. Any existing or proposed zoning.
  - l. Location of utilities, railroad rights of way, watercourses, and other nearby land uses.
  - m. A legal description of the subject property, a copy of the currently filed plat or certificate of survey, and the last recorded deed for the subject property.
  - n. Lienholders acknowledgement of subdivision.
  - o. Documentation of legal and physical access.
  - p. Documentation of existing easements, including those for Agricultural Water User Facilities.
  - q. Existing covenants and deed restrictions.
  - r. Existing water rights.
  - s. Existing mineral rights.
  - t. The names and addresses of owners of record of adjacent property and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat and 3 sets of mailing labels for each address.
  - u. Approach/access/encroachment permits from the Montana Department of Transportation or local jurisdiction.
  - v. The following information must be provided on a site plan to determine compliance with the City of East Helena Zoning Ordinance:
    1. The location of all existing structures, including dimensions and size.
    2. Existing and proposed use of any existing structure.
    3. The distance of any existing structure from proposed lot lines (setbacks).
    4. Location and number of any required parking spaces for existing uses; and
    5. Location and size of any required landscaping areas for existing uses.
  - w. Proposed road plans and profile that includes: (not required for administrative minor subdivision review)
    1. Street names.

2. Right-of-way or easement widths.
  3. Pavement widths.
  4. Street grades.
  5. Pavement and base thickness.
  6. Typical cross sections for each type of road.
  7. Road profiles and cross sections for all proposed streets and roads which have grades exceeding 5%, or cuts and fills exceeding 3’.
  8. The type and location of sidewalks and curbs (where required).
  9. The minimum site distances at corners.
  10. The minimum curb radiuses at corners.
  11. For cul-de-sac streets:
    - A. widths of turn around radiuses.
    - B. minimum right-of-way widths at the turnarounds.
    - C. minimum pavement or road surface width at the turnarounds.
    - D. total lengths of the streets.
  12. The locations and characteristics of bridges and culverts.
  13. The locations and dimensions of adjoining lots and open spaces.
  14. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets.
  15. Typical grading and location of intersections with private driveways; and
  16. Description of how the roads will be maintained.
- x. Proposed easements.
  - y. Proposed disposition of water rights, as required.
  - z. Proposed disposition of mineral rights.
    - aa. Parkland dedication calculations: including a property valuation or appraisal if cash-in-lieu is proposed.
    - bb. Visible flagging on the property adequate to determine exterior boundaries of the proposed subdivision, park land dedication, and accesses including, but not limited to, property boundary corners, perimeter of proposed park land dedication, and the entrance of access streets.
    - cc. Describe land uses on lands adjacent to the subdivision.
    - dd. Describe any growth policy, or other land use regulations covering the area proposed for subdivision or adjacent land.
    - ee. Written permission for the subdivider's agent to represent the subdivider and to receive notification of the City's determination of a complete and sufficient application.

- ff. Written proof that all levied real property taxes and assessments have been paid.
- gg. Any ordinances or resolutions, such as alley or street closures, that specifically impact the plat.
- hh. Written plan of compliance with institutional controls, including dust management plan for construction activities and/or soil permit.
- ii. An environmental assessment and/or a summary of the probable impacts and community impact report for the proposed subdivision based on the criteria described in MCA 76-3-608 and as defined by the City East Helena Growth Policy, including: (not required for administrative minor subdivision review)
  - 1. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
  - 2. an explanation of how the subdivider has responded to the comments of the subdivision administrator at the pre-application meeting.
- jj. Submit a Traffic Impact Study whenever the subdivision is projected to generate two-hundred (200) or more new vehicle trips per day per the estimate traffic standards of the Institute of Transportation Engineers; if less than 200 new trips per day, provide the capability of existing and proposed roads to safely accommodate this increased traffic; (not required for administrative minor subdivision review)
- kk. Fire risk rating analysis and fire prevention plan.
- ll. Weed Management Plan and Re-vegetation Plan.
- mm. Property owners' association documents, including draft articles of incorporation, declaration and bylaws.
- nn. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in the subdivision regulations.
- oo. Required water and sanitation information, including:
  - 1. For administrative minor subdivisions, a will serve letter is required from the City of East Helena for water and sewer service to each lot. For lots less than 20-acres a Municipal Facilities Exclusion (MFE) approval from DEQ will be required prior to final plat approval.
  - 2. Provide the following attachments to the preliminary plat:
    - A. A vicinity map or plan that shows:
      - i. The location, within 100 feet outside of the exterior of the property line of the subdivision and on the proposed lots, of:
        - 1. floodplains.
        - 2. surface water features.

3. springs.
      4. irrigation ditches.
      5. existing and previously approved water wells and wastewater systems.
    - ii. The location, 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, as provided below, including whether the water supply and wastewater treatment systems are public as those systems are defined in rule published by the DEQ;
  - 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 DEQ pursuant to 76-4-104;
3. Water Supply
- A. High Groundwater Report indicating there is not a problem with high groundwater present on the property proposed for subdivision. When evidence of high groundwater is present, the developer must submit plans that are prepared by a professional engineer to mitigate the problem.
  - B. A vicinity map or plan that shows:
    - i. the location, within 100' outside of the exterior property line of the subdivision and on the proposed lots of:
      1. floodplains.
      2. surface water features.
      3. springs.
      4. irrigation ditches.
      5. existing and previously approved water wells and wastewater treatment systems.
    - ii. the location, outside the exterior property line of the subdivision, of public water and sewer facilities.
  - C. 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 public as those systems are defined in rules published by the Department of Environmental Quality in the Administrative Rules of Montana, or 76-4-101 et seq., MCA, including the following information:
4. For a public water system:
- A. If an existing system is to be used:

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

4. provide the following attachments:
  - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development.
  - b. plans and specifications for all proposed extensions and additional lines and facilities as required by the ARM and Circular DEQ-2 or Circular DEQ-4.

6. Storm Water

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

7. Solid Waste

- A. Describe the proposed method of solid waste collection and disposal.
- B. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
- C. If on-site disposal of solid waste is proposed, provide the information required in the ARM.

pp. A form of Subdivision Improvements Agreement, if proposed.

qq. Letter requesting revocation of agricultural covenants, if applicable.

rr. Letter indicating locations of cultural or historic resources.

ss. Completed zoning and subdivision variance applications, if applicable.

tt. Re-zoning application or approval.

uu. When required, a flood hazard evaluation, which contains the following detailed information: [to be submitted to the Water Resources Division, Department of Natural Resources]

1. Certification by a registered professional engineer.

2. An overall scaled plan view 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 floodplains
  - G. USGS gauging stations (if any);
3. 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 which contains the following information:
  - A. Elevations and stations that are determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD88 or NGVD29 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. [Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.]
5. A description and sketch of all bridges within the reach, showing unobstructed waterway openings and elevations.
6. Elevation of the water surface is to be determined by survey as part of each valley cross section.



7. Supporting Documentation, such as engineering reports of computer computations, calculations, and assumptions that may include:
  - A. Hydrology (research of published hydrology or calculations showing how hydrology was derived).
  - B. Input files (hardcopy and on diskette); and
  - C. Output files (diskette only).
- vv. Proposed street lighting plan.
- ww. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials.
- xx. Such additional relevant and reasonable information as identified by the Subdivision Administrator that is pertinent to the required elements of this section.
- yy. Mitigation Plan - Identify, list and describe any and all potential adverse impacts resulting from the proposed subdivision; identify, list and describe any and all proposed mitigation to overcome the potential adverse impacts resulting from the proposed subdivision; and identify, list and describe other potential but not proposed mitigation to overcome the potential adverse impacts resulting from the proposed subdivision.

### **3. Environmental Assessment**

Information specified in this Part must be provided in addition to that required in this application form.

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

a. Surface Water

Locate on a plat overlay or sketch map:

1. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
2. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
3. Time when water is present (seasonally or all year).
4. Any areas subject to flood hazard, or in delineated 100-year floodplain.
5. Any areas containing wetlands shall be delineated through a wetlands investigation by a certified consultant.
6. Describe any existing or proposed streambank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.
7. Include copies of all permits obtained for this project. These permits include, but are not limited to:

- A. Montana Stream Protection Act (SPA 124 Permit). Administered by the Habitat Protection Bureau, Fisheries Division, Montana Fish, Wildlife and Parks
- B. Storm Water Discharge General Permit. Administered by the Water Quality Bureau, Montana Department of Environmental Quality
- C. Montana Natural Streambed and Land Preservation Act (310 Permit). Administered by the Board of Supervisors, Lewis and Clark County Conservation District
- D. Montana Floodplain and Floodway Management Act (Floodplain Development Permit). Administered by the City of East Helena, Floodplain Administrator
- E. Federal Clean Water Act (404 Permit). Administered by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency
- F. Federal Rivers and Harbors Act (Section 10 Permit). Administered by the U.S. Army Corps of Engineers
- G. Short-term Water Quality Standard for Turbidity (318 Authorization). Administered by Montana Department of Environmental Quality
- H. Montana Land-Use License or Easement on Navigable Waters. Administered by the Montana Department of Natural Resources and Conservation
- I. Montana Water Use Act (Water Right Permit and Change Authorization). Administered by the Water Rights Bureau, Montana Department of Natural Resources and Conservation

b. Groundwater

Using available data, provide the following information:

- 1. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.
- 2. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

c. Topography, Geology and Soils

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

- D. Excessive slope.
  - 2. Locate on an overlay or sketch map:
    - A. Any known hazards affecting the development which could result in property damage or personal injury due to:
      - i. Falls, slides or slumps -- soil, rock, mud, snow.
      - ii. Rock outcroppings
      - iii. Seismic activity.
      - iv. High water table.
  - 3. Describe measures proposed to prevent or reduce these dangers.
  - 4. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.
  - 5. Provide an overlay on the NRCS soil survey map, and the pertinent soil reports.
    - A. The physical properties and engineering indexes for each soil type.
    - B. Soil limitations for building and site development, and water features for each soil type.
    - C. Hydric soils report for each soil type. If hydric soils are present, the developer shall provide a wetlands investigation by a certified consultant, and
    - D. The developer shall provide any special design methods planned to overcome the above limitations.
- d. Vegetation
- 1. On a plat overlay or sketch map:
    - A. Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
    - B. Identify the location of critical plant communities such as:
      - i. Stream bank or shoreline vegetation
      - ii. Vegetation on steep, unstable slopes
      - iii. Vegetation on soils highly susceptible to wind or water erosion
      - iv. Type and extent of noxious weeds.
  - 2. Describe measures to:
    - A. Preserve trees and other natural vegetation (e.g., locating roads and lot boundaries, planning construction to avoid damaging tree cover).
    - B. Protect critical plant communities (e.g., keeping structural development away from these areas), setting areas aside for open space.

- C. Prevent and control grass, brush or forest fires (e.g., green strips, water supply, access.)
  - D. Control and prevent growth of noxious weeds.
- e. Wildlife
1. Identify species of fish and wildlife use in the area affected by the proposed subdivision.
  2. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
  3. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g., keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

#### **4. Summary of Probable Impacts**

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

- a. Effects on Agriculture
1. Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
  2. Describe whether the subdivision would remove from production any agricultural or timber land and how many acres will be removed.
  3. Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences).
  4. Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
  5. Describe effects the subdivision would have on the value of nearby agricultural lands.
- b. Effects on Agricultural Water User Facilities
1. Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
  2. Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

c. Effects on Local Services

1. Indicate the proposed use and number of lots or spaces in each:
  - A. Residential, single-family
  - B. Residential, multiple-family
  - C. Types of multiple-family structures and number of each (e.g., duplex, 4-plex)
  - D. Planned unit development (No. of units)
  - E. Condominium (No. of units)
  - F. Mobile Home Park
  - G. Recreational Vehicle Park
  - H. Commercial or Industrial
  - I. Other (Please describe)
2. Describe the additional or expanded public services and facilities that would be demanded of local government or special districts to serve the subdivision.
  - A. Describe additional costs which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
  - B. Who would bear these costs (e.g., all taxpayers within the jurisdiction, people within special taxing districts, or users of a service)?
  - C. Can the service providers meet the additional costs given legal or other constraints (e.g., statutory ceilings on mill levies or bonded indebtedness)?
  - D. Describe off-site costs or costs to other jurisdictions may be incurred (e.g., development of water sources or construction of a sewage treatment plant; costs borne by a nearby municipality).
3. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible (e.g., allow installation of a central water system or upgrading a country road).
4. What are the present tax revenues received from the unsubdivided land?
  - A. By the County \$
  - B. By the municipality if applicable
  - C. By the school(s) \$
5. Provide the approximate revenues received by each above taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds (e.g.,

personal property taxes on mobile/manufactured homes are paid into the County general fund).

6. Would new taxes generated from the subdivision cover additional public costs?
7. How many special improvement districts would be created which would obligate local government fiscally or administratively? Are any bonding plans proposed which would affect the local government's bonded indebtedness?

d. Effects on the Historic or Natural Environment

1. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.
  - A. Describe procedures to be followed if any historic, paleontological, archeological, cultural sites, structures or object are found on site during site preparation and construction.
  - B. The developer shall discuss the impact of the proposed development on any historic features, and the need for inventory, study and/or preservation with the State Historic Preservation Office (SHPO).
2. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.
  - A. Would any streambanks or lake shorelines be altered, streams rechanneled, or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
  - B. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?
  - C. Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
  - D. Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
  - E. Would the value of significant historical, visual, or open space features be reduced or eliminated?
  - F. Describe possible natural hazards the subdivision could be subject to (e.g., natural hazards such as flooding, rock, snow or landslides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes).
3. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g., use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

e. Effects on Wildlife and Wildlife Habitat

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

f. Effects on the Public Health and Safety

1. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.
2. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
3. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.
4. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which would be created by the subdivision.

**5. Community Impact Report**

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

a. Education and Busing

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

b. Roads and Maintenance

1. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
2. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.

3. Describe increased maintenance problems and increased cost due to this increase in volume.
  4. Describe proposed new public or private access roads including:
    - A. Measures for disposing of storm run-off from streets and roads.
    - B. Type of road surface and provisions to be made for dust.
    - C. Facilities for streams or drainage crossing (e.g., culverts, bridges).
    - D. Seeding of disturbed areas.
  5. Describe the closing or modification of any existing roads.
  6. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
  7. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
  8. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.
- c. Water, Sewage, and Solid Waste Facilities
1. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g., methods, capacities, locations).
  2. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
  3. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
  4. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
  5. Describe the proposed method of collecting and disposing of solid waste from the development.
  6. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.
- d. Fire and Police Protection
1. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
    - A. Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?



- B. Law Enforcement protection – is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department?
- 2. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?
- e. Payment for extension of Capital Facilities
  - 1. Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

**6. Final Plat**

- a. A complete and signed final plat application to the City.
- b. The full required application fee.
- c. The required number of copies of the final plat and all application materials.
- d. A final subdivision plat may not be approved by the City Council unless all certificates, with the exception of the City and the County Clerk and Recorder, have been complied with, signed and notarized and all subdivision regulations and conditions of preliminary plat approval have been met. This shall include the Certification by the County Treasurer that no real property taxes and special assessments assessed and levied on the land to be subdivided are delinquent.
- e. A final subdivision plat may not be approved by the City Council or filed by the County Clerk and Recorder unless it complies with the uniform standards for final subdivision plats (in the ARM).
- f. As required: as-built drawings, i.e., copies of final plans, profiles, grades and specifications for public improvements, including a complete grading and drainage plan.
- g. Copy of the state highway access or encroachment permit where a street created by the plat will intersect with a state highway.

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## **CHAPTER 7. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW**

### **1. Purpose**

The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3. These regulations address the more commonly used exemptions.

### **2. General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA**

The City Council and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

### **3. Divisions of Land Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA]**

The City Council will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the City Council of the pending division and allow the City Council to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
  1. This Exemption Applies:
    - A. to a division of land of any size.
    - B. if the land that is divided is only conveyed to 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 the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations.

- C. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.

## 2. Statement of Intent

Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a person 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.

## 3. Use of Exemption

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot.

This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.

## 4. Required Materials

When this exemption is to be used, the landowner must submit to the subdivision administrator:

- A. a statement of how many interests within the original tract will be created by use of the exemption.
- B. the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture).
- C. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and
- D. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

## 5. Rebuttable Presumptions

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 new building site.
- B. the financing is not for construction or improvements on the exempted parcel, or for re-financing.

- C. the person named in the “statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed” is anyone other than the borrower of funds for construction;
  - D. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs.
  - E. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract.
  - F. it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose.
  - G. the division of land is created for the purpose of conveyance 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; or
  - H. if the resulting lots would not comply with existing zoning, institutional controls, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property.
  - d. A division of land creates cemetery lots.
  - e. A division of land is created by the reservation of a life estate.
  - f. A division of land is created by lease or rental for farming and agricultural purposes.
  - g. A division of land is in a location over which the state does not have jurisdiction; or
  - h. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

#### **4. Divisions of Land Which May be Exempt from Review and Surveying**

- a. Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, MCA, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:
  - 1. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621, MCA, is complied with; or
  - 2. The condominium, townhomes, or townhouses proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.
- b. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for on-site weather or air

navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.

- c. A division of state-owned land is not subject to the MSPA or these regulations 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.
- d. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- e. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)]. 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.

## **5. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations**

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 Chapters 2 or 3. 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. The Lewis and Clark County Clerk and Recorder shall notify the subdivision administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Lewis and Clark County Clerk and Recorder prior to the survey being submitted to the subdivision administrator for evasion review. The divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions.

- a. Relocation of Common Boundary [76-3-207(1)(a), MCA]

### 1. Statement of Intent

The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow a one-time transfer of a tract to affect that relocation or elimination without subdivision review.

### 2. Required Information

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in the ARM [Appendix A] must be included on the certificate of survey. Certificates

of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected. A site plan showing access to adequate water and wastewater mains, structures on the subject lots are in compliance with zoning, and location, width and purpose of all existing and proposed easements.

### 3. Use of Exemption

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

### 4. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- A. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
- B. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

## b. Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]

### 1. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. An immediate family member includes family members of any age and may be owned jointly with that immediate family member’s spouse. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts. An immediate family member who receives a division of land may not transfer or otherwise convey the division of land for up to two years after the date of the division unless City Council sets a period of less than two years, or City Council authorizes a variance from these requirements to address hardship situations.

#### A. Outside Platted Subdivisions

- i. If the property is within a zoning district, each family transfer parcel shall be at least five acres in size unless the zoning district allows for smaller parcel sizes.

B. Inside Platted Subdivisions

- i. Division must be within a subdivision that has been approved by City Council; and
- ii. Creates parcels of a size allowed within the subdivision.

2. Required Information

A certificate of survey, amended plat, if the division is within a platted subdivision, or recording of an instrument of conveyance that uses 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 [in the ARM found in Appendix A. Also, the certificate of survey, amended plat, or instrument of conveyance must be accompanied by a deed or other conveying document. A site plan showing access to adequate water and wastewater mains, structures on the subject lots are in compliance with zoning, and location, width and purpose of all existing and proposed easements.

3. Use of Exemption

One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

The family member who is the grantee of the parcel created by the use of this exemption cannot transfer ownership of the parcel for a period of eighteen (18) months from the date the survey is filed. Conveyance of the parcel sooner than 18 months will subject the parcel to be reviewed as a subdivision by the Planning Board.

4. Rebuttable Presumptions

- A. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
- B. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
- C. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
- D. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

c. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]



1. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

2. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [In accordance with the ARM,] The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

3. Use of Exemption.

- A. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- B. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- C. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

4. Rebuttable Presumptions.

The following conditions must be met, or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- A. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the City Council and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the City Council.
  - 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 have been or will be built on it.
  - C. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.
- d. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]

1. Statement of Intent

- A. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision, but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas, without review.
- B. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the City Council must review and approve the amended plat and an amended plat must be filed with the Lewis and Clark County Clerk and Recorder.

2. Use of exemption

Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

3. Rebuttable presumption

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

e. Aggregation of Lots or Parcels

1. Statement of Intent

Aggregation of parcels on a certificate of survey or of lots on a subdivision plat is allowed provided the boundaries of the original parcel or lot are eliminated and the boundaries of the larger aggregated parcel or lot are established.

2. Use of exemption

This exemption may be used without a boundary line relocation but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply. A notarized statement on the amended plat or certificate of survey must reflect these restrictions/requirements, including any applicable zoning, covenants and/or deed restrictions.

3. Rebuttable presumption

- A. If a resulting lot is inconsistent with the approved conditions of subdivision approval, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

- B. If the resulting lot or parcel does not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- C. If the amended plat or certificate or survey does not show fewer lots of parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

## **6. Procedures and Review of Subdivision Exemptions**

### a. Submittal

Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a 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.

### b. Review

When a division of land for which an exemption is claimed is submitted to the subdivision administrator, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the City Council (e.g., city attorney, city engineer, public works, treasurer, and Lewis and Clark County Clerk and Recorder). The subdivision administrator and City Council agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

1. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria herein.
2. The subdivision administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.
3. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the subdivision administrator shall notify the City Council and advise the Lewis and Clark County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and the criteria herein, the subdivision administrator shall advise the Lewis and Clark County Clerk and Recorder not to file or record the documents, and the materials will be returned to the landowner.
4. The subdivision administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not

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

c. Appeals

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

**7. Remaining Parcels of Land**

Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term “remainder” has been used to refer to that portion of an original tract which is not itself created for transfer, but which is left after other parcels are segregated for transfer.

A “remainder” less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review as a “remainder.” If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed.

a. Remainders of Phased Subdivisions

The remainder of each phase of the subdivision shall be platted as an undevelopable tract, with the following language placed on the face of the final plat. No public improvements shall be required for the undevelopable tract until it is subdivided as a lot which is not subject to this restriction:

*NOTICE IS HEREBY GIVEN to all potential purchasers of Tract X of XXXXX Subdivision Phase X, City of East Helena, Lewis and Clark County, Montana, that the final plat of the subdivision was approved by the East Helena City Council without*

*completion of on- and off-site improvements required under the East Helena Municipal Code.*

*As such, this Restriction is filed with the final plat that stipulates that any use of this lot is subject to further subdivision, and no development of this lot shall occur until all on- and off-site improvements are completed as required under the East Helena Municipal Code.*

*THEREFORE, BE ADVISED, that Zoning and Building Permits will not be issued for Tract X of XXXXX Subdivision Phase X City of East Helena, Lewis and Clark County, Montana until all required on- and off-site improvements are completed and accepted by the City of East Helena. No building or structure requiring water or sewer facilities shall be utilized on this lot until this restriction is lifted. This restriction runs with the land and is revocable only by further subdivision or the written consent of the City of East Helena.*

## **CHAPTER 8. DESIGN AND IMPROVEMENT STANDARDS**

All subdivisions approved by the City Council must comply with the provisions of this section, except where granted a variance. The City Council may not grant variances from the Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to the appropriate section of these regulations.

### **1. Conformance with Regulations**

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

### **2. Natural Environment**

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

### **3. Lands Unsuitable for Subdivision**

Land that the City Council determines is unsuitable for subdivision because of natural or human caused hazards such as flooding, landslides, excessive slope, rock falls, subsidence, high water table, presence of wetlands; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds, environmental degradation, or congestion in the streets or roads may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

### **4. Floodplain Provisions**

#### **a. Purpose**

Purpose of this section is to reduce potential for risk to public health and safety and property damage by setting limits for construction and development in areas subject to flooding.

#### **b. Applicability**

This section applies to any subdivision with land subject to flooding including: 1) lands within the 100-year floodplain as adopted by the governing body in the jurisdiction's local floodplain regulations; 2) historically flooded lands; and 3) lands in proximity to a watercourse or drainway, as the terms "watercourse" and "drainway" are defined in the Montana Floodplain and Floodway Management Act.

#### **c. Standards**

##### **1. General Criteria**

- A. Base Flood Elevation and Boundary - The Base Flood Elevations and boundary of the 100-Year Floodplain area must be determined and considered during lot layout and building location design;
- B. Locations of Structures - Locations for future structures and development must be reasonably safe from flooding;

- C. Surface Water Drainage - Adequate surface water drainage must be provided to reduce exposure to flood hazards.
- D. Utilities - Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage; and
- E. Permits - Floodplain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area.

2. Determining Extent of Flood Hazard Area

- A. Areas Identified in Local Floodplain Regulations: In areas where the Base Flood Elevations exist as part of flood studies and maps delineated, designated and established by the DNRC, the Flood Hazard Area shall be the area where the Base Flood Elevations intersect site-specific surveyed ground elevations.

In areas where there are no Base Flood Elevations, the subdivider is responsible for the studies and surveys addressed below under “**Methodology for Determining Base Flood Elevations.**”

Waiver: If the property owner believes the subject property has been inadvertently included in the 100-year floodplain, the property owner may provide information and request a determination from the floodplain administrator, adhering to applicable provisions for such determinations in the floodplain regulations.

- B. Areas with Watercourses Not Identified in Local Floodplain Regulations: The area subject to flooding shall be determined by either option #1 or #2 below:

- i. Option #1: The flood hazard area shall be the area:

- 1. Within 2,000 horizontal feet and less than 20 vertical feet above the Ordinary High-Water Mark of a watercourse draining an area of 20 square miles or more; or,
    - 2. Within 1,000 horizontal feet and less than 10 vertical feet above the Ordinary High-water Mark of a watercourse draining an area between 10 and 20 square miles.

- ii. Option #2: The flood hazard area shall be the area where the Base Flood Elevations intersect site-specific surveyed ground elevations. Base flood elevations shall be determined according to “Method for Determining Base Flood Elevations” below.

- C. Methodology for Determining Base Flood Elevations

The subdivider shall provide to the Subdivision Administrator, Local Floodplain Administrator, and the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC) the Base Flood Elevations and the 100-year

floodplain boundaries, and include a written narrative of methodology, and details of data and calculations used to determine the Base Flood Elevation. The preliminary and final plat shall show the boundary of the area where the Base Flood Elevations intersect site-specific surveyed ground elevations. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The governing body shall provide a written request to the DNRC Floodplain Management Section to review and comment upon the adequacy of the methodology and data used to establish Base Flood Elevations.

If DNRC is unable to provide the review, the governing body or Floodplain Administrator may request the subdivider pay for independent peer review of the Base Flood Elevations and 100-year floodplain boundaries. Any additional subdivision review fees and any independent peer review fees shall be assessed at the rate established by the governing body's fee schedule.

D. Design Standards

There shall be no building, new development, or artificial obstructions within the Flood Hazard Area, as identified in Section ii, "Determining Extent of Flood Hazard Area." This prohibition includes structures, roads, bridges, etc. Artificial obstructions include anything that is not a natural obstruction and that could impede or change direction of water flow or that could be carried downstream to the damage or detriment of life or property. Fencing that does not obstruct water flow is allowed.

The desired design standard is that lots for residential or building purposes shall include no portion of nor be immediately adjacent to the 100-year floodplain.

E. Plat Requirements

- i. Preliminary Plat - The Preliminary Plat shall show the Flood Hazard Area as identified in Section ii, "Determining Extent of Flood Hazard Area."
- ii. Final Plat - The Flood Hazard Area shall be shown as "No Build Zone" on the final plat. The documents used to determine the flood hazard area shall be filed with the final plat.

F. Notice to Lot Purchasers

The notice shall follow requirements of MCA and include reference to lot owner's responsibility for:

- i. Compliance with Restrictions on Development and Artificial Obstructions in the Flood Hazard Area; and
- ii. Flood Insurance - The notice should advise the lot purchaser that flood insurance is available only through FEMA and should provide a recent indication of anticipated costs of obtaining such insurance.

G. No Variance Allowed on Restrictions within the Flood Hazard Area



As required by MCA 76-3-504(1)(f), subdivisions for building purposes are absolutely prohibited in the floodway of a flood of 100-year frequency and in areas determined to be subject to flooding by the governing body. By adopting these subdivision regulations, the governing body has determined all flood hazard areas as identified in Section XI-D(c)(ii) to be subject to flooding.

#### H. Compliance with Other Applicable Laws and Regulations

Permits for any improvements to be installed by the subdivider (e.g., roads, electrical, etc.) must be obtained before construction. If construction is approved to occur after final plat, the permits shall be received by final plat. Applicable Laws and Regulations that may require permits include:

- i. Jurisdiction's Locally Adopted Floodplain Ordinance
- ii. Conservation District 310 Permit - 310 permit from a conservation district when a private, nongovernmental individual or entity proposes work in or near a stream on public or private land (Statute: 76-15-701, et seq., MCA (land use regulations) and 75-7-101, et seq., MCA (stream preservation).
- iii. State Land Use License - A land use license or easement is required for an entity proposing a project on lands below the low water mark of navigable waters as designated by the Montana Department of Natural Resources and Conservation (DNRC).
- iv. 318 Authorization (formerly 3A) - Permit must be obtained from the DEQ prior to initiating a short-term activity that may cause unavoidable short-term violations of state water quality standards. The FWP may also issue 318 authorizations during the 310 or 124 permitting process.
- v. Federal Rivers and Harbors Act - Under Section 10, Federal Rivers and Harbors Act, any structure or work on, over, under or affecting navigable waters requires authorization from the U.S. Department of the Army, Corps of Engineers.
- vi. Clean Water Act - Under Section 404 of the Federal Clean Water Act, a permit is required from the U.S. Department of the Army, Corps of Engineers, for the placement of dredged or fill materials in United States' waters.
- vii. 401 Water Quality Permit - The Montana Department of Environmental Quality must provide 401 Water Quality Certification prior to issuance of Corps of Engineers permits. The certification process is handled internally through agreements between the agencies.
- viii. Pollutant Discharge Elimination System (MPDES) - Permits issued by DEQ.

- ix. Storm Water Discharge Permit Program for Construction Activity - Permit issued by DEQ. Requires submission of a Storm Water Pollution Prevention Plan (SWPP).
- x. Streamside Management Zone Laws in Chapter 5, Title 77 of MCA.
- xi. Natural Streambed and Land Preservation Act, Chapter 7, Title 75 of MCA, which authorizes the 310-permitting process.
- xii. Stream Protection Act, Part 5, Chapter 5, Title 87 of MCA, which authorizes the 124 Permit issued by Montana FWP.

d. Applicable Plans

Plans applicable to floodplain hazards include the Pre-Disaster Mitigation Plan and the Growth Policy adopted by the jurisdiction.

**5. Payment for Extension of Public Improvements**

- a. The Council shall require the subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities or construct required improvements for extending capital facilities related to the public, health, and safety, including but not limited to public roads and transportation facilities, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision (76-3-510, MCA):
  - 1. The Council may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending the capital facilities related to education.
  - 2. If capital facilities do not exist to serve the proposed subdivision, the subdivider is solely responsible for the cost associated with extending capital facilities to serve the proposed subdivision to a connection point approved by the Council.
  - 3. All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.
  - 4. The extent of required off-site improvements shall be determined by acceptable engineering methods such as Traffic Impact Studies, Engineering Reports, Engineering Plans, etc. that analyze existing off-site systems that serve the proposed subdivision and the impact the proposed subdivision has on those systems. The analysis shall include information on improvements required to existing systems to serve the proposed subdivision, costs associated with required improvements, and proportion of cost directly attributable to the proposed subdivision.
- b. A statement must be included on the subdivision plat that acceptance of a deed for a lot within the subdivision constitutes the assent of the owners to any future SID/RSID, based on benefit, for upgrading and/or maintaining the streets within the subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, and drainage facilities and may be used in lieu of their signatures on an SID/RSID petition. This assent shall constitute a waiver of right to protest creation of a special improvement district for any specifically identified capital improvements, pursuant to MCA 76-3-

608(7). This waiver of the right to protest formation of a SID/RSID for capital improvement projects expires 20 years after the date the final subdivision plat is recorded with the County Clerk and Recorder. The required SID waiver statement must be provided on the plat and on each instrument of conveyance indicating that the purchasers of any lots in the subdivision will be required to waive the right to protest the creation of an SID for the subject improvements.

## **6. Improvement Design**

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

## **7. Lots**

Each lot must contain a satisfactory building site and conform with applicable zoning regulations and these regulations.

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

## **8. Blocks**

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 800 feet.
- c. Rights-of-way for adequate and safe pedestrian access, at least 20 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

## **9. Streets and Roads**

- a. Design
  1. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
  2. Roads must meet the design specifications in Table 1.

3. Dead-end Streets are generally prohibited. The review authority may consider and approve the installation of dead-end streets only when necessary due to enhancement of safety and natural or manmade barriers, topography, the presence of critical lands, access control, adjacency to parks or open space, or similar site constraints. If dead-end streets are proposed, they shall meet the following guidelines:
    - a. Only one (1) dead-end street shall be permitted per 30-acres of development. This shall apply to the area being platted and not include any remainders. For example, if the total area being subdivided is 100-acres in size the development would be permitted four (4) dead-ends within that 100-acres.
    - b. All dead-end streets shall be provided with a turnaround meeting the design requirements of the City of East Helena Engineering Standards.
  4. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners' association. The lands included in all streets, avenues, and alleys, must be dedicated to the public for public use, but the City accepts no responsibility for maintaining the same. The City has no obligation to maintain the lands included in all streets, avenues, and alleys dedicated to public use unless the City specifically accepts responsibility for maintenance. Unless the City specifically accepts responsibility for maintenance, the lands included in all streets, avenues, and alley shall be owned and maintained by an approved property owners' association.
  5. Residential driveways must not have direct access to State Highways, unless approved by the Montana Department of Transportation, and shall not have direct access onto arterial or collector streets. Any subdivision road access onto a state highway must be approved by the Montana Department of Transportation.
  6. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the City Council may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
  7. Half streets are prohibited. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
  8. The alignment of all streets and roads must provide adequate sight distances.
  9. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.
- b. Improvements
1. All public roads shall be paved and provided with curb and gutter, boulevards, and sidewalks. All private roads shall be paved, excepting roads accessing one single-family residential lot. All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in

accordance with the Montana Public Works Standard Specifications, most current edition.

2. Streets and roads must be designed to ensure proper drainage.
3. A Traffic Impact Study shall be submitted whenever the subdivision is projected to generate two hundred (200) or more new vehicle trips per day per the estimated traffic standards of the Institute of Transportation Engineers; if less than 200 new trips per day, provide the capability of existing and proposed roads to safely accommodate this increased traffic. The traffic impact study shall be prepared by a professional engineer in the State of Montana and shall be prepared in accordance with accepted standards of practice for preparation of traffic impact studies. The traffic impact study shall evaluate the capacity of the existing road systems that will serve the proposed subdivision and shall make recommendations for any improvements that may be necessary to the existing road system to accommodate the increased traffic from the proposed development.
4. The traffic impact study shall be submitted for review and approval by the City Council or designee.
5. Plans for road improvements shall be prepared by a professional engineer in the State of Montana and submitted for review and approval by the City Council or designee.
6. All street improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications and the approved plans and specifications prior to acceptance by the City.
7. All subdivision improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.
8. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1. Easements must be granted by each property owner in a signed and notarized document.
9. The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.
10. Streetlights shall be required in all proposed subdivisions. A street lighting plan shall be submitted for review and approval by the City.
11. Street or road signs and traffic control devices of the size, shape, and height approved by the City of East Helena must be placed at all intersections. Traffic control devices must conform to the standards contained in the Manual on Uniform Control Devices, most current edition.
12. When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

## **10. Drainage Facilities**

- a. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the City Council or designee. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- b. A grading and drainage plan as required is subject to approval by the City Council or designee.
- c. Curbs and gutters are required for all public streets. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- d. Plans for the conveyance and detention of storm water shall be prepared by a professional engineer in the State of Montana and shall be submitted for review and approval by the City Council or designee.
- e. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- f. Drainage systems must not discharge into any sanitary sewer facility.
- g. Drainage systems must be designed and certified by a professional engineer.
- h. The City Council may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.
- i. All storm water drainage improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications and the approved plans and specifications prior to acceptance by the City.
- j. All storm water improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.

## **11. Water Supply Systems**

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana DEQ and contained in the ARM and the Montana Public Works Standard Specifications most current edition. By this reference these DEQ standards and the Montana Public Works Standard Specifications are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in the ARM.
- b. The City Council may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, Sections 76-4-101 *et seq.*, MCA.

- c. All lots created within the City of East Helena shall be served by the City of East Helena public water supply system. No separate water supply systems are permitted within the City of East Helena.
- d. The subdivider shall submit an engineering report for review and approval by the City Council or designee that demonstrates the City of East Helena has adequate water capacity in its system to accommodate the proposed development. The report shall include an analysis of all existing water infrastructure that will be impacted by the proposed subdivision and if existing infrastructure does not have adequate capacity to serve the proposed subdivision, the report shall make recommendations for improvements to the existing system. The report and design must also provide adequate and accessible water for fire protection.
- e. Plans for any proposed water system shall be prepared by a professional engineer in the State of Montana and submitted for review and approval of the City Council or designee.
- f. All water improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications, DEQ, and the approved plans and specifications prior to acceptance by the City.
- g. All water improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.

## **12. Sewage Treatment Systems**

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in the ARM and the Montana Public Works Standard Specifications most current edition. By this reference these DEQ standards and the Montana Public Works Standard Specifications are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in the ARM.
- b. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, Sections 76-4-101 *et seq.*, MCA before the City Council can approve the final plat.
- c. All lots created within the City of East Helena shall be served by the City of East Helena public sanitary sewer system. No separate sanitary sewer systems are permitted within the City of East Helena.
- d. The subdivider shall submit an engineering report for review and approval by the City Council or designee that demonstrates the City of East Helena has adequate capacity in its sanitary sewer system to accommodate the proposed development. The report shall include an analysis of all existing sanitary sewer infrastructure that will be impacted by the proposed subdivision and if existing infrastructure does not have adequate capacity to serve the proposed subdivision the report shall make recommendations for improvements to the existing system.

- e. Plans for any proposed sanitary sewer system shall be prepared by a professional engineer in the State of Montana and submitted for review and approval of the City Council or designee.
- f. All sanitary sewer improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications, DEQ, and the approved plans and specifications prior to acceptance by the City.
- g. All sanitary sewer improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.

### **13. Solid Waste**

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of solid waste disposal must comply with the standards adopted by the DEQ and contained in the ARM. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in the ARM.
- b. Before the City Council will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act Sections 76-4-101, *et seq.*, MCA.
- c. All solid waste within the City of East Helena is collected and disposed of by the City of East Helena. The subdivider shall provide a plan for the collection of garbage waste for review and approval of the City Council or designee.

### **14. Non-Municipal Utilities**

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of non-municipal utilities, such as telephone, electric power, gas, internet, cable television or other similar utility or service within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities must be located in a 10-ft utility easement adjacent to the road right-of-way to simplify location and repair of lines, unless otherwise requested by the utility. Underground facilities must be installed after the street has been brought to grade and before it is surfaced, and conduit shall be provided under all streets at proposed utility crossings to facilitate utility maintenance. The subdivider shall coordinate with all affected utilities to determine the appropriate locations of all road crossings.
- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.



- f. Utility easements must be 10 feet wide unless otherwise specified by a utility company.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the City, or local or state highway department.
- h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

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

### **15. Water Course and Irrigation Easements**

- a. Except as noted below, the subdivider shall establish within the subdivision ditch easements that:
  - 1. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots.
  - 2. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - 3. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
  - 1. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the City Council, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
  - 2. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
  - 3. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider’s intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the Lewis and

Clark County Clerk and Recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

**16. Disposition of Water Rights**

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

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

**17. Park Land Dedication – Cash in Lieu – Waivers -- Administration**

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the City Council a cash or land donation equal to:
  - 1. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller.
  - 2. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre.
  - 3. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  - 4. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
  - 5. 0.03 acres per dwelling unit of subdivisions for multi-family housing, recreational camping vehicles, mobile homes, or condominiums.
- b. A park dedication is not required for:
  - 1. minor subdivisions.
  - 2. subdivision lots larger than five acres.
  - 3. nonresidential subdivision lots.

4. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  5. subdivisions which will create only one additional parcel.
- c. The City Council, in consultation with the subdivider and the planning board, may determine suitable locations for parks and playgrounds, and giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- d. The City Council may waive the park dedication requirement if it determines that:
1. 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
  2. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required.
  3. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
  4. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated.
  5. the area of the land proposed to be subdivided, by virtue of a combination of the provisions above, is reduced by an amount equal to or exceeding the area of the dedication; or
  6. 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
  7. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required.
- e. The City Council may waive the park dedication requirement if:
1. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
  2. The area of land to be subject to long-term protection equals or exceeds the area of dedication required.

- f. Subject to the approval of the local City Council and acceptance by the school district trustees, a subdivider may dedicate a land donation to a school district, adequate to be used for school facilities or buildings.
- g. The City Council will administer funds dedicated to the public in accordance with 76-3-621, MCA.
- h. For the purposes of this park dedication requirement:
  - 1. “cash donation” means the fair market value of the unsubdivided, unimproved land; and
  - 2. “dwelling unit” means a residential structure in which a person or persons reside.

### **18. Fire Protection**

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. Measures must include:

- a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.
- b. The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.
- c. The availability of the East Helena Volunteer Fire Department for fire protection services adequate to respond to fires that may occur within a subdivision.
- d. All fire protection for subdivisions shall be in compliance with the current adopted City of East Helena fire code.

### **19. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard**

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

- a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan must include the following items:
  - 1. an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography.
  - 2. a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation.
  - 3. a map of the areas that are to be thinned to reduce the interlocking canopy of trees.
  - 4. the identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.

- c. At least two entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of 20 tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.
- d. Building sites may not be located on slopes greater than 25 percent or at the apex of “fire chimneys” (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. The Fire Prevention and Control Plan must be implemented before the City Council will approve the final plat and will be considered part of the subdivider’s obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the fire chief has given written notice to the City Council that the Plan has been completed as required by the City Council.
- f. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A property owners’ association must be formed and designated to enforce the covenants, conditions, and restrictions.
- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by the East Helena Volunteer Fire Department.

**20. Noxious Weeds**

A weed control plan shall be developed and implemented for every new subdivision. The weed control plan shall be in compliance with the City of East Helena weed control Ordinance. Noxious weeds shall be controlled in all developments as directed by the County Weed Control District (district) in accordance with the Montana County Noxious Weed Control Act (§7-22-21, MCA). The developer shall have any noxious weeds identified and their location mapped by a person with experience in weed management and knowledgeable in weed identification. A noxious weed management and revegetation plan approved by the district for control of noxious weeds shall be submitted with the preliminary plat application. This plan shall ensure the control of noxious weeds upon preliminary plat approval and the revegetation of any land disturbed during the construction of subdivision improvements.

**CHAPTER 9. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES**

**1. Definition**

A subdivision of an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.

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

a. Recreational Camping Vehicles

1. Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under Recreational Vehicle Park Standards, below.

b. Mobile/Manufactured Homes

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under Mobile/Manufactured Home Park Standards, below.

c. Mobile Home/Recreational Vehicle Parks

1. Mobile home and recreational vehicle parks will be reviewed under the procedures described in Major Subdivisions, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure.
2. Mobile home and recreational vehicle parks are subject to the applicable standards contained herein.

d. Subdivisions for Lease or Rent, Not Subject to Subdivision Review

1. Land subdivision created by rent or lease for the purpose of erecting cell towers are not subject to subdivision review.
2. Tower subdivision created by rent or lease for the purpose of co-location of antennae are not subject to subdivision review.
3. Buildings for lease or rent, a structure or unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosures of persons or property or for the operation of a business, where the title to the parcels may not be sold or otherwise transferred, are not subject to subdivision review. Condominiums or townhomes are not buildings for lease or rent.

**3. Procedures for Review**

a. Review and Approval

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes are exempt from the surveying and filing requirements of the MSPA. However, they must be submitted for review and approved by the City Council before spaces may be rented or leased.

1. Submittal

The subdivider shall submit a completed application in accordance with Major Subdivisions and a plan of the proposed development, conforming to the requirements for preliminary plats.

2. Review

The procedure used to review mobile home and recreational vehicle parks will depend on the number of spaces within the proposed subdivision. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

b. Improvements

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

c. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be filed with the Lewis and Clark County Clerk and Recorder.

d. DPHHS License

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

**4. Design Standards, General**

a. Design Standards

Subdivisions created by rent or lease must comply with the provisions of these regulations.

b. Additional Provisions

The City Council may require provision for:

1. storage facilities on the lot or in compounds located within a reasonable distance.

2. a central area for storage or parking of boats, trailers, or other recreational vehicles.
3. landscaping or fencing to serve as a buffer between the development and adjacent properties.
4. an off-street area for mail delivery; and
5. street lighting.

## **5. Mobile/Manufactured Home Park Standards**

Mobile/Manufactured home parks shall meet the requirements of the ARM. Information shall be submitted to the City that shows all the requirements of the ARM can be met.

### **a. Mobile/Manufactured Home Spaces**

1. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
2. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
3. The mobile/manufactured home pad must be located at least 10 feet from the edge of pavement of the street that serves it.
4. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
5. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
6. The City Council may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
7. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
8. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.
9. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home and be a minimum of 10 feet wide.
10. One guest parking space must be provided for each 5 mobile/manufactured home spaces. Group parking may be provided. Guest parking may be provided by providing sufficient street width to allow for on-street parking



11. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
12. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

b. Streets

Streets within a mobile/manufactured home park must meet the standards specified herein. Streets must be designed to allow safe placement and removal of mobile homes.

1. Streets must be designed to provide safe access to public roads.
2. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking. To provide adequate room for emergency vehicle access a minimum 20-ft paved width shall be provided.
3. One-way roads must be at least 20 feet wide; two-way roads must be at least 24 feet wide. Additional width for on-street parking shall be provided on all streets and shall be a provided as a minimum 6-ft shoulder on each side of the required road width specified above. The 6-ft shoulder shall be finished with gravel, asphalt concrete pavement, or other approved surfacing.

c. Electrical Systems

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

d. Gas Systems

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

## **6. Recreational Vehicle Park Standards**

Recreational vehicle parks shall meet the requirements of the ARM. Information shall be submitted to the City that shows all the requirements of the ARM can be met.

### a. Recreational Vehicle Spaces

1. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
2. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
3. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
4. All recreational vehicle spaces shall be located at least 25 feet from any street.

### b. Density

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

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## **CHAPTER 10. PLANNED UNIT DEVELOPMENTS**

### **1. Purpose**

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider innovation and creativity in subdivision design. Section 76-3-103(10), MCA defines a planned unit development as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.” Specifically, with regard to the improvement and protection of public health, safety and general welfare, it shall be the intent of this section to promote the City’s pursuit of the community goals and objectives described in the East Helena Growth Policy.

### **2. Procedures**

If the subdivision administrator designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures for Major Subdivisions.

### **3. Standards**

#### a. Design Standards

PUDs must comply with the standards contained herein. However, the City Council may modify the design and improvement standards contained herein upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space. In such cases, no application for a variance of these regulations is necessary.

#### b. Streets

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

#### c. Open Space

Each PUD must comply with the requirements of Park Land Dedication of these regulations. The open space must be:

1. Owned by a property owners’ association; or
2. Dedicated to public use, if acceptable to the City Council; or
3. A combination of (a) and (b) above.

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

#### d. City Council Determination

The City Council shall make a determination that the requested modification(s) will produce an environment, landscape quality and character superior to that produced by the

existing standards of this title, and which will be consistent with the intent and purpose of this chapter, with the adopted goals of the East Helena growth policy. Upon deciding in favor of the modification request, the City Council may grant modification(s), above or below minimum or maximum standards respectively as established in this title, including the complete exemption from a particular standard. If the City Council does not determine that the proposed modified standards will create an environment, landscape quality and character superior to that produced by the existing standards of this title, and which will be consistent with the intent and purpose of this chapter, then no modification shall be granted.

## **CHAPTER 11. ADMINISTRATIVE PROVISIONS**

### **1. Fee Schedule**

Fees, not limited to those described below, payable to the City, shall be as established by the City Council.

a. Preliminary Plat Review

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval.

b. Final Plat Review and Inspection

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a non-refundable fee at the time of application for final plat approval to the City.

### **2. Variances**

a. Variances Authorized

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

The City Council will not approve a variance unless it finds that:

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

b. Variances from Floodway Provisions Not Authorized

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

c. Procedure

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

d. Conditions

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

e. Statement of Fact

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

**3. Amendment of Regulations**

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

**4. Administration**

a. Enforcement

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

b. Violation and Penalties

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

c. Appeals

1. A person who has filed with the City Council an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the City Council to recover actual damages caused by a final action, decision, or order of the City Council or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
2. A party identified below who is aggrieved by a decision of the City Council 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. 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.

4. The following parties may appeal under the provisions above:
  - 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. one of the following municipalities:
    - 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.
    - iii. a third-class municipality, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.



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

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

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

(Acknowledged and notarized signatures of all encumbrancers of record)

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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 Lewis and Clark County Clerk and Recorder) of East Helena, Montana, do certify that the following order was made by the City Council of East Helena 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 by East Helena City Council 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 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 and special assessments 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

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**Certificate of Final Plat Approval – City**

The Council of the City of East Helena, 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

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**Certificate of Filing by Lewis and Clark County Clerk and Recorder**

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

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_\_ o'clock.  
(Signature of Lewis and Clark County Clerk and Recorder)  
County Lewis and Clark County Clerk and Recorder, \_\_\_\_\_ County,  
Montana

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**Certificate of Exclusion from Montana Department of Environmental Quality Review**

CERTIFICATE OF EXCLUSION FROM MONTANA DEPARTMENT  
OF ENVIRONMENTAL QUALITY REVIEW

The (Name of Subdivision), Lewis and Clark County, Montana, is within the City of East Helena, Montana, a third-class municipality, and within the planning area of the East Helena growth policy which was adopted pursuant to §76-1-601 et seq., MCA, and can be provided with

adequate storm water drainage and adequate municipal facilities. Therefore, under the provisions of §76-4-125(2)(d), MCA, this subdivision is excluded from the requirement for Montana Department of Environmental Quality review.

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

(Signature), Mayor  
City of East Helena, Montana

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**Certification of Use of Exemption Claim**

The following certificates shall be provided in a printed certificate on the amended plat or certificate of survey for allowed exemptions:

**CERTIFICATE OF GOVERNING BODY**

I, (Mayor), do hereby certify that the accompanying (Certificate of Survey or Amended Plat) has been duly reviewed, and has been found to conform to the requirements of the Subdivision and Platting Act, §76-3-101 et. seq., MCA, and the East Helena Subdivision Regulations.

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

(Signature),

**CERTIFICATE OF EXEMPTION**

(I) (We) certify that the purpose of this survey is to (state exemption), and therefore this survey is exempt from review as a subdivision pursuant to §76-3-207(1) (add appropriate sub-section), MCA.

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

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

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### **CHAPTER 13. DEFINITIONS**

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

#### **ACCESS (LEGAL AND PHYSICAL):**

- a. Legal access means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property and has dedicated the easement or a private road for public use.
- b. Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.

**ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.

**AGRICULTURE:** All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, incidental to or in conjunction with farming operation, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

**AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water to agricultural lands for stock watering or irrigation for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.

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

**CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.

**CITY:** The incorporated City of East Helena and includes any person employed by East Helena or any person appointed or elected to represent residents of East Helena.

**CITY COUNCIL:** The governing authority of the City of East Helena organized pursuant to law [76-3-103 (7), MCA].



**CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].

**COMMENCEMENT:** The beginning of the planning process for platting and construction of a subdivision or phase of a subdivision.

**CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.

**COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed or other document that restricts or regulates the use of the real property.

**DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3), MCA].

**DEQ:** The Montana Department of Environmental Quality.

**DIVISION OF LAND:** The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4), MCA].

**DWELLING UNIT:** Any structure or portion thereof providing complete, independent and permanent living facilities for one household.

**EASEMENT:** Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.

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

**FEMA:** The Federal Emergency Management Administration is an independent agency of the United States government that provides a single point of accountability for all federal emergency preparedness and mitigation and response activities and is responsible for the preparation of floodplain maps and management of floodplains throughout the United States.

**FIRM:** Is an official map of a community within the United States that displays the floodplains, more explicitly special hazard areas and risk premium zones, as delineated by the Federal Emergency Management Agency (FEMA).

**FIRST MINOR SUBDIVISION:** A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].

**FLOOD:** The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA].

**FLOOD OF 100 YEAR FREQUENCY:** A flood magnitude which has a one percent chance of occurring in any given year or is a flood magnitude which is expected to recur on the average of once every 100 years [76-5-103 (9), MCA].

**FLOODPLAIN:** The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100-year frequency [76-5-103 (10), MCA].

**FLOODWAY:** The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [76-5-103 (11), MCA].

**GROWTH POLICY:** An official public document adopted pursuant to Title 76, Chapter 1, MCA; the fundamental planning document for local communities, providing the present and future context for growth and development, and used by the local government as a general guide for development decisions. The growth policy is not a regulatory document but provides a framework and rationale for the regulations, programs and initiatives that communities undertake in order to realize the goals and objectives set forth in the policy.

**IMPROVEMENT AGREEMENT:** A contractual agreement that may be required by the City Council to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the direct payment of cash, deposit of certified funds, irrevocable letters of credit, performance or property bonds (only in limited circumstances and subject to approval of City Attorney), private or public escrow agreements, or similar financial guarantees.

**INSTITUTIONAL CONTROLS:** Non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of a response action. Institutional controls work by limiting land or resource use and providing information that helps modify or guide human behavior at properties where hazardous substances prevent unlimited use and unrestricted exposure. The Lewis and Clark County Environmental Health Department has developed an Institutional Controls Program for the East Helena Superfund Site.

**LANDOWNER:** All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a 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. For all other

purposes of these regulations, the terms “property owner,” “landowner,” and “owner” mean both the seller and the purchaser under a contract for deed.

**LOCAL SERVICES:** Any and all services or facilities that local government entities are authorized to provide directly or through a contractor

**LOT:** A parcel, plot, or other land area created by subdivision for sale, or transfer of title.

**LOT MEASUREMENT:**

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the front lot line.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

**LOT TYPES:**

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

**MAJOR SUBDIVISION:** A subdivision that creates six or more lots.

**MINOR SUBDIVISION:** A subdivision that creates five or fewer lots.

**MOBILE (MANUFACTURED) HOME:** A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes and are transported to the site for final assembly on a permanent foundation.

**MOBILE (MANUFACTURED) HOME SPACE:** A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

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

**MOBILE (MANUFACTURED) HOME PAD:** That area of a mobile home space which has been prepared for the placement of a mobile home.

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS:** Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.

**MONUMENT (PERMANENT MONUMENT):** Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

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

**NATURAL ENVIRONMENT:** The physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic, prehistoric, cultural, or aesthetic significance.

**NRCS:** The Natural Resources Conservation Service, formerly known as the Soil Conservation Service (SCS), is an agency of the United States Department of Agriculture (USDA) that provides technical assistance to farmers and other private landowners and managers and one of its primary responsibilities is the assessment and classification of soils throughout the United States.

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

**OVERALL DEVELOPMENT PLAN:** The plan of a subdivision design proposed to be subdivided in stages.

**PHASED DEVELOPMENT:** A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are scheduled for review on a schedule proposed by the subdivider.

**PLANNED UNIT DEVELOPMENT (PUD.):** A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].

**PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.

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

- a. **Preliminary Plat:** A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a City Council as more specifically set forth in these regulations and the MSPA.

- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the Lewis and Clark County Clerk and Recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
- c. Amended Plat: The final drawing of any change to a filed platted subdivision, or any lots within a filed platted subdivision.
- d. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.

**PRE-APPLICATION SKETCH (OR DRAWING):** A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision.

**PRIVATE IMPROVEMENT:** Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

**PRIVATE ROAD:** A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted. A private road is one that provides access to multiple family dwellings with access from a public road. An example would be an internal road that accesses a group of condominiums on a single lot or group of lots or an internal road that accesses a group of multiple family dwellings on a single lot or group of lots.

**PUBLIC HEALTH AND SAFETY:** A condition of optimal well-being, free from danger, risk, or injury for a community at large, or for all people, not merely for the welfare of a specific individual or a small class of persons. The prevailing healthful, sanitary condition of well-being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high-pressure gas lines; and air or vehicular traffic safety hazards.

**PUBLIC IMPROVEMENT:** Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.

**PUBLIC ROAD OR STREET:** A road or street is public if its right-of-way has been dedicated or acquired for public use.

**RECREATIONAL CAMPING VEHICLE:** A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.

**RECREATIONAL VEHICLE PARK:** A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.

**RECREATIONAL VEHICLE SPACE:** A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.

**REVIEWING AUTHORITY:** The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

**RIGHTS-OF-WAY:** A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

**STATE:** The State of Montana.

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

- a. **Alley:** A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
- b. **Arterial:** A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
- c. **Collector:** A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
- d. **Local Streets:** A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
- e. **Half-Street:** A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- f. **Cul-de-sac:** A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- g. **Loop:** A local street which begins and ends on the same street, generally used for access to properties.
- h. **Frontage Access (Service Road):** A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

**SUBDIVIDER:** Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

**SUBDIVISION:** A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any re-subdivision and a condominium [76-3-103(16), MCA]. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

**SUBDIVISION ADMINISTRATOR:** The person(s) authorized by the City Council to perform the duties of review and administration set forth in these regulations.

**SUBSEQUENT MINOR SUBDIVISION:** Any subdivision of five or fewer parcels that is not a first minor subdivision.

**SURVEYOR (PROFESSIONAL LAND SURVEYOR):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

**SURVEYOR (EXAMINING LAND SURVEYOR):** A professional land surveyor duly appointed by the City Council to review surveys and plats submitted for filing.

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

**TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT):** A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.

**TOPOGRAPHY:** General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

**TOWNHOUSE LOT:** Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.

**TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file

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in the records of the Lewis and Clark County Clerk and Recorder's office [76-3-103(17)(a), MCA].

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

**WILDLIFE:** Things that are living, which are neither human nor domesticated. Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.

**WILDLIFE HABITAT:** The place or type of site where wildlife naturally lives and grows.



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