

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

### **Overview of First Minor Subdivision Review Process**

#### **(Subdivision Application Review Process for First Minor Subdivisions)**

##### **STEP 1:**

- A. Initial contact with the County Permit Coordinator to set up a pre-application conference.
- B. Applicant develops concept.
- C. Pre-application conference: Applicant obtains guidelines, forms, and regulations, discusses proposal and sketch plan with the County Planning and Environmental Health staff.
- D. Preparation of formal minor subdivision application based on pre-application conference and regulations.

##### **STEP 2:**

- A. Submittal of complete and sufficient subdivision application and review fee to the planner by the application deadline.  
  
The application and supplements will be distributed for review to agencies, utilities, individuals, and other parties with an interest in the proposal.
- B. If requested by the Planning staff, the Planning Board may hold a work session on the application at its next regular meeting. Planning staff recommendation is submitted in writing to the governing body and the applicant.
- C. Public meeting before the governing body action to approve, conditionally approve or deny a minor subdivision.
- D. The governing body shall prepare a written notice of their decision to approve, conditionally approve or deny to the Applicant.

## **(Final Plat Review Process for First Minor Subdivisions)**

### **STEP 3:**

- A. Applicant prepares final plat and satisfies all conditions placed upon the approved application for minor subdivision.
- B. Final plat submitted to planning staff within three years of first minor subdivision application approval.
- D. Final plat approval by governing body when plat conforms to conditions of approval, Montana Subdivision and Platting Act, and local subdivision regulations.
- E. Final plat and supplementary documents filed with the clerk and recorder by the subdivider.

## **Overview of Subsequent Minor Subdivision Review Process**

### **(Subdivision Application Review Process for Subsequent Minor Subdivisions)**

#### **STEP 1:**

- A. Initial contact with the County Permit Coordinator to set up a pre-application conference.
- B. Applicant develops concept.
- C. Pre-Application conference: Applicant obtains guidelines, forms, and regulations, discusses proposal and sketch plan with the County Planning and Environmental Health staff.
- D. Preparation of formal subsequent minor subdivision application based on pre-application conference and regulations.

#### **STEP 2:**

- A. Submittal of complete and sufficient subdivision application and review fee to the planner by application deadline.

The application and supplements will be distributed for review to agencies, utilities, individuals, and other parties with an interest in the proposal.

- B. If requested by the planning staff, the Planning Board may hold a work session on the application at its next regular meeting. Planning staff recommendation is submitted in writing to the governing body and the applicant.
- C. Public hearing before the governing body action to approve, conditionally approve or deny a subsequent minor subdivision.
- D. The governing body shall prepare a written notice of their decision to approve, conditionally approve, or deny to the Applicant.

### **(Final Plat Review Process for Subsequent Minor Subdivisions)**

#### **STEP 3:**

- A. Applicant prepares final plat and satisfies all conditions placed upon the approved application for subsequent minor subdivision.
- B. Final plat submitted to planning staff within three years of subsequent minor subdivision application approval.
- C. Final plat approval by governing body when plat conforms to conditions of approval, Montana Subdivision and Platting Act, and local subdivision regulations.
- D. Final plat is filed following final plat approval. Plat and supplementary documents filed with the clerk and recorder by the subdivider.

## **A. Introduction**

Lewis and Clark County allows only one development right per parcel without the approval of the BOCC; possible additional development of a parcel is what is being assessed during the subdivision review process.

If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision or has not resulted from a tract of record that has more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access is not provided, the first minor subdivision shall be subject to the review procedures, including fees, for a subsequent minor subdivision.

All subdivisions must be designed by the Applicant to avoid or mitigate any significant adverse impacts on:

- agriculture, agricultural water users, or agricultural water;
- local services and provision of local services;
- natural environment;
- wildlife; and
- wildlife habitat; and
- public health, safety and general welfare.

The following requirements shall not apply to first minor subdivisions:

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

## **B. Subdivision Application Review Procedures for First Minor Subdivision**

### **1. Pre-application Procedures**

The applicant (who may be the subdivider or, with the subdivider's written permission, the subdivider's agent) shall contact the County Permit Coordinator to schedule a meeting with County planning and Environmental Health staff. The pre-application meeting shall take place prior to submitting the required subdivision application. The pre-application conference shall take place not more than 30 calendar days from the date that the County Permit Coordinator receives a complete submittal package from the Applicant. This meeting is required and must be held not more than one hundred eighty (180) calendar days prior to submittal of a subdivision application.

The purpose of this meeting is to identify the state laws, local regulations, and the applicable goals and objectives of the Lewis and Clark County Growth Policy that may apply to the subdivision review process, including, but not limited to: zoning regulations, floodplain regulations, and other applicable regulations. The planning staff may notify the applicant of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality.

The applicant shall provide a to-scale sketch plan of the proposed subdivision for review and discussion. The sketch plan may be a freehand sketch made directly on a print of a topographic map. The sketch plan shall be legibly drawn, show the layout of proposed features in relation to existing site conditions, and the scale dimensions shall be noted on the sketch.

The sketch plan shall include pertinent information such as the following:

- a) approximate tract and lot boundaries of existing tracts of record, with scale dimensions noted;
- b) location of easements, existing rights-of-way, proposed county roads, conservation easements, utilities, parks and open spaces; and
- c) a description of general terrain, natural features (including water bodies, floodplains, geologic hazards and soil types), existing structures and improvements, and proposed public improvements.

The applicant shall provide documentation of:

- a) ownership information, such as a deed, option to buy or buy-sell agreement; including permission to subdivide;
- b) water rights, including location of agricultural water facilities;
- c) any applicable rural or special improvement districts
- d) existing zoning, covenants or development regulations standards; and
- e) rights of first refusal for the property;
- f) the most recent certificate of survey or subdivision plat or deed on file with the Clerk and Recorder's Office.

The Applicant shall receive 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 on the subdivision application. The Applicant shall be notified about the time frames that public utilities, agencies, and other entities are given to respond.

The Applicant shall be notified of any particular additional information that may be required for review of the subdivision application. This does not limit the ability of the planning staff to request additional information at a later time.

## **2. Subdivision Application Submissions and Distribution for First Minor Subdivision**

The applicant shall submit for review and approval a subdivision application and preliminary plat of the proposed subdivision that conforms to the requirements of these regulations. The preliminary plat and subdivision application shall be prepared in compliance with the requirements listed in Appendix B, and conform to design and improvement standards of these regulations, including the road and fire standards in Appendix J and K.

If any design features or improvements do not conform with to these standards, the applicant shall submit a written request for variances with the preliminary plat subdivision application, pursuant to the process in these regulations.

The applicant may set forth in the preliminary plat subdivision application a plan for phased development, including filing of the final plat in a phased manner.

The applicant shall submit the following application information to the planning staff as one submittal:

- a. Parts I of the Montana Department of Environmental Quality/Local Government Joint Application Form;
- b. The required review fee;
- c. Three (3) copies of the preliminary plat or site plan and related supplements;
- d. All supplements required by Appendix B;
- e. A property title report prepared by a title company within six months of the date of subdivision application submittal;
- f. The preliminary plat or site plan must conform to the design and improvement standards set forth in Chapter XI of these regulations. If any design features or improvements do not conform to these standards, the applicant shall submit a written request for variances with the subdivision application, pursuant to the procedures in these regulations; and
- g. The application materials must be submitted by an established deadline for first minor subdivisions.

The planning staff will review the application materials and determine the completeness and sufficiency of the application. The planning staff has 5 working days to determine whether the application contains all of the listed elements found in Appendix B of these regulations and shall give written notice to the applicant of the planning staff's determination of completeness. If elements are missing from the application, planning staff shall identify those elements in the written notification. The applicant must provide all missing elements before the review process will restart.

Within 15 working days after the applicant has been notified in writing that the application contains all the required elements, planning staff shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow review of the proposed subdivision, and shall give written notification to the applicant of the determination by staff. If planning staff determines that information in the application is not adequate for review of the proposed subdivision, the insufficiencies of the application shall be identified in the written notification to the applicant. The applicant must provide all necessary information required in the sufficiency notification letter before the review process will restart.

A subdivision application shall be submitted on, or prior to, the established subdivision application deadline. Planning staff shall review the subdivision application for completeness and sufficiency in accordance with the established subdivision application deadline. Applications submitted after the established subdivision application deadline will not be reviewed for completeness and sufficiency until the next established subdivision application deadline. The thirty-five (35) working day review period commences on the first working day after planning staff determines that the subdivision application is complete and sufficient.

The review period may be suspended based on the applicant's written concurrence or request. The applicant may verbally concur or request a suspension before the governing body during a public meeting. A suspension of the review period shall not exceed 1 year from the date of request or concurrence.

A determination that an application is complete and/or contains sufficient information for review does not ensure the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agency or the governing body to request additional information.

A determination of sufficiency by the planning staff does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

After Planning staff has determined the application is complete and sufficient, copies of the subdivision application will be distributed for review to local entities, having a substantial interest in proposed subdivisions, including (but not be limited to) the following:

- Fire, school, and conservation districts;
- Law enforcement, road, and sanitarian/health departments; utilities;
- The United States Forest Service, Bureau of Land Management, and Natural Resources Conservation Service;
- State agencies such as Montana Fish, Wildlife & Parks, the Department of Natural Resources and Conservation, Department of Environmental Quality, and Department of Transportation; and/or
- Other appropriate bodies.

The distribution list may vary, depending on the nature and location of the subdivision proposal.

Review of complete and sufficient applications by planning staff and other organizations shall not delay the governing body's action beyond the thirty-five (35) working day limit. Any review comments shall be made available to the applicant or member of the public upon request. If, during the review of the application, the planning staff contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, planning staff shall notify the applicant of the contact and the timeframe for response. The planning staff will review the application and any comments received from other organizations and the public. Findings and the rationale behind them shall be incorporated into a staff report with recommendations to the governing body.

### **3. Permission to Enter**

By submitting a subdivision application for review, the applicant agrees that the governing body or its designated agent(s) or any affected governmental agency identified during the pre-application meeting may conduct investigations, examinations, and site evaluations deemed necessary to verify information supplied by the applicant as a requirement of these regulations, to post notice, or to adequately evaluate the proposal, and to subsequently monitor compliance with any conditions if the preliminary plat is conditionally approved. The submission of pre-application materials or a preliminary plat subdivision application for review shall constitute permission for the governing body, its agents, and affected agencies to enter the subject property.

In order to facilitate site investigations, the applicant shall establish visible flagging on the property, located at a minimum on property boundary corners and the entrance intersections of main access roads. This flagging must be established at the time of submittal of the preliminary plat subdivision application.

#### **4. Planning Staff Analysis**

The planning staff will review the application and any comments received from agency personnel and the public and prepare a staff report. The copies of the staff report will be sent to the applicant and the governing body.

#### **5. Planning Board Action**

After planning staff accepts a subdivision application as complete and sufficient, the Planning Board may hold a work session for the purpose of submitting comments to planning staff on the subdivision application. The work session shall be called for at the discretion of the Director of Community Development and Planning.

#### **6. Amended Subdivision Application**

If the applicant makes a change to the subdivision application or preliminary plat after the Planning Department has deemed the application complete and sufficient, the applicant shall provide to the Planning Department a written request to amend the application or preliminary plat and to suspend the review period. If the Applicant fails to submit a valid written request, the Planning Department or the governing body will not review the changed subdivision application or preliminary plat.

The Planning Department will determine whether the change is a substantial change and notify the applicant in writing of that determination within five (5) working days after receiving the written request.

If the change is deemed substantial and the applicant wishes to go forward with the changes, the Applicant shall complete the following:

- 1) attend a new pre-application conference;
- 2) submit a new application to the Planning Department; and
- 3) pay all required fees for the new application.

If the original application is not withdrawn, review of the original application will continue and a new thirty-five (35) working day review period will commence.

If the change is deemed not to be substantial, a new thirty-five (35) working day review period commences on the first working day after the Planning Department notifies the applicant in writing of that determination. By requesting to amend an application or preliminary plat, the applicant consents to the restarting of the thirty-five (35) working day review period.

The following changes, although not an exclusive list, may be considered substantial:

- a) reconfiguration or number of lots;
- b) lot uses and or layouts;
- c) road layout;
- d) Traffic Impact Study;
- e) Storm water drainage;
- f) water and wastewater treatment proposals;
- g) parkland and open space;
- h) easements; and
- i) access.

The applicant whose subdivision application or preliminary plat has been deemed by planning staff to be substantially changed may appeal the decision to the governing body by written notice within five (5) working days of receiving the determination letter from the Planning Department. The applicant must appeal in writing and request a hearing before the governing body. The applicant shall include evidence to show that the changes to the subdivision application are not substantial with their written request.

If the governing body determines the changes are not substantial, a new thirty-five (35) working day review period commences on the first working day after the governing body makes their decision. By requesting to amend an application or preliminary plat, the applicant consents to the restarting of the thirty-five (35) working day review period.

## **7. Governing Body Action on Subdivision Application**

The governing body shall hold a public meeting on the proposed minor subdivision. When a proposed subdivision is to be annexed to a municipality, the governing body may hold joint meetings with the governing body of the municipality on the subdivision application and annexation.

Notice of the time, date, and location of the meeting shall be given not less than 15 calendar days prior to the date of the meeting by publication in a newspaper of general circulation in the county and by certified or registered mail to the applicant and each property owner of record immediately adjoining the land included in the subdivision application. The

planning staff shall post notice of the public meeting on the boundary of the proposed subdivision.

## **8. Subsequent Public Meetings on New Evidence Provided After the Public Meeting**

In the event that the governing body receives written documentation or oral comments after the public meeting, the governing body shall determine whether public comments or documents constitute:

- (a) information or analysis of information that was presented at a public meeting that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or
- (b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a public meeting during which the subdivision application was considered.

If the governing body determines that the public comments or documents constitute new information, the governing body may:

- (a) approve, conditionally approve, or deny the proposed subdivision application without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or
- (b) schedule or direct its agent or agency to schedule an additional public meeting for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

If the governing body decides to hold a public meeting for consideration of the new information, it must be held within 15 calendar days of the governing body's determination to schedule the public meeting. Only the new information or analysis of the new information shall be considered at the public meeting.

The governing body shall provide notice of the public meeting as follows:

1. The governing body shall give notice of the specific time and place of the additional public meeting on the public record at

the time it makes its determination that new information has been submitted.

2. The agenda for the public meeting shall be posted in accordance with Lewis and Clark County's "Resolution to Establish Regular Meeting Dates of the Lewis and Clark County Commission and to Describe Procedures for Public Participation."

If an additional public meeting is held, the 35 working day review period is suspended as of the date of the governing body's decision to hold the additional meeting. The 35 working day review period resumes at the governing body's next scheduled public meeting for which proper notice can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the meeting when making its decision to approve, conditionally approve, or deny the proposed subdivision application.

## **9. Governing Body Action on Subdivision Application**

The basis for the governing body's decision to approve, conditionally approve, or deny a subdivision shall be whether the development of the subdivision would meet the requirements of the Montana Subdivision and Platting Act, and these local subdivision regulations, based on the following:

- a. the subdivision application and supplements;
- b. relevant evidence relating to the public health safety, and general welfare;
- c. environmental assessment;
- d. an officially adopted growth policy;
- e. staff report and related information;
- f. additional information (e.g., public comment, agency comment, etc); and
- g. any additional information authorized by law.

The governing body shall issue written findings of fact that weigh the following criteria, as defined in the Implementation Strategy of the Lewis and Clark County Growth Policy:

- a. impacts on agriculture and agricultural water user facilities, as defined in the Growth Policy;
- b. impacts on local services, as defined in the Growth Policy;
- c. impacts on the natural environment, as defined in the Growth Policy;
- d. impacts on wildlife, as defined in the Growth Policy;
- e. impacts on wildlife habitat, as defined in the Growth Policy;
- f. impacts on the public health, safety and general welfare, as defined in the Growth Policy;
- g. compliance with the survey requirements of the Montana Subdivision and Platting Act (MSPA) and these regulations;
- h. compliance with the regulations and review procedures of these regulations;
- i. provision of easements for the location and installation of any planned utilities;
- j. provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument of transfer concerning the parcel; and
- k. consistency with applicable zoning or other regulations in effect and/or any officially adopted applicable plans for the area involved.

If the governing body fails to approve, conditionally approve, or deny the subdivision application within the 35 working day review period under section IV.B.2, the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body approves, conditionally approves, or denies the subdivision application. The financial penalty does not apply if the review period is suspended.

If the governing body approves, conditionally approves or denies the subdivision application, it shall inform the applicant of the decision in writing within 30 working days following the decision. The letter shall

include a copy of the plat and shall state the reason(s) for denial or enumerating the conditions of approval. The written decision shall include:

- 1) information regarding the appeal process for the denial or imposition of conditions;
- 2) identification of the regulations and statutes used in the decision;
- 3) the facts and conclusions the governing body used in their decision and reference documents, testimony, or other materials that form the basis of the decision;
- 4) the conditions of subdivision application approval that must be satisfied before the final plat may be approved; and
- 5) the duration of the approval period (three years).

As detailed in 76-3-608, MCA, the governing body may require the applicant to design the subdivision (or provide other measures) to reasonably minimize potentially significant adverse impacts identified during the review. The governing body shall issue written findings to justify any required mitigation. When requiring mitigation, the governing body shall consult with the applicant, and give due weight and consideration to his/her expressed preferences. Such requirements must be justified by the written findings of the governing body.

The governing body shall collect public comments regarding water and sanitation information presented pursuant to 76-3-622, MCA, and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 calendar days after conditional approval or approval of the subdivision application and preliminary plat. The subdivider shall as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the reviewing authority of the application.

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

## **10. Subdivision Application Approval Period**

Upon approving or conditionally approving a subdivision application, the governing body shall provide the applicant with a dated and signed statement of approval. The governing body will establish a term of approval of not more than three calendar years or less than one calendar

year. At the end of this period the governing body may, at the request of the applicant extend its approval for a period of one year. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Section 76-3-507, MCA.

After the subdivision application is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period, as provided above. Approval of the first minor subdivision application does not constitute approval of the first minor subdivision final plat.

## **11. Inspections and Certification**

Upon subdivision application approval, the county will prepare a list of work for which inspection and certification is needed. All public improvements must be inspected and certified, as meeting the applicable standard and meeting the approved design plan(s), if applicable by an engineer registered in the State of Montana. The applicant is responsible for the costs of inspections and certifications.

## **12. Modifying the Conditions of Approval for a Subdivision Application**

Changes to the conditions of approval that are based on new evidence may be submitted to the governing body for review and approval.

If proposed modifications to subdivision application's conditions of approval are substantial, the entire application must be resubmitted and go through the entire subdivision review process again, including payment of fees, planning staff review, and Board of County Commissioner's meeting. The Planning Director or his or her designee shall make a determination whether the proposed modification is substantial. If the Applicant disagrees with the planning staff's determination the Applicant can make a written appeal to the BOCC.

Changes to the conditions of approval that will not substantially change the original conditional approval, may be submitted to the governing body for review and approval. The process was developed to assure due process and equal protection, and requires two major actions by the BOCC (a and b below):

a. Action Item One

- 1) The Applicant shall send a letter to the BOCC asking that it reconsider a specific condition(s) of approval, or in some cases, reconsider the governing body's decision.
- 2) At a public meeting, the BOCC shall make a determination as to whether the applicant's request merits consideration. In order to warrant consideration, the applicant must make a reasonable argument in writing describing why the terms of subdivision application approval should be reconsidered, stating the following:
  - What circumstances have changed?
  - How will the applicant(s) benefit from the changes?
  - What impacts (both positive and negative) will there be on neighbors, the public in general, and the surrounding environment?

b. Action Item Two

- 1) If the BOCC decides to reconsider the specific condition(s) of approval, the subdivider must submit the appropriate fee to the Planning Department. Once the application fee is paid, public notice must be given and a public meeting on the matter will be scheduled. In addition, landowners adjacent to the subject subdivision will be notified via the mail of the proposed modification(s) and about the public meeting.
- 2) A staff report and recommendations will be completed, based upon the analysis of all the evidence provided by the applicant and/or available staff.
- 3) The BOCC holds a public meeting on the request. At that meeting, the staff report and recommendations will be presented and the applicant will have the opportunity to make a presentation. The public will have an opportunity to provide comment on the proposed modification.
- 4) After the public meeting, the BOCC shall make a final decision.
- 5) A letter outlining the BOCC's decision and rationale shall be sent to the applicant.

### **13. Construction Timing**

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until he or she obtains from the governing body preliminary approval of the proposed subdivision plat, and

Prior to construction of any public improvements, and after receiving preliminary approval, County Planning must review and approve all plans for public improvements required to be submitted by the subdivider, and the subdivider must obtain all necessary permits, which may include but are not limited to: a weed management plan, approach permits, encroachment permits, water rights for public water systems, and floodplain development permits, as well as any permits required by state and federal agencies.

### **C. Final Plat Review Process for First Minor Subdivision**

#### **1. Final Plat Application**

An application for final plat (contained in Appendix D), together with three (3) 11" x 17" paper copies of the final plat and supplements shall be submitted to the Planning Department for review. All public improvements must be inspected and certified by an engineer registered in Montana.

No final plat application shall be accepted, processed, nor any action on a final plat shall be scheduled until a complete application and fee, and copies of the final plat have been received. A final plat application will not be considered complete until all conditions of preliminary approval have been completed.

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

The minor subdivision plat submitted for approval shall comply with the Standards for Final Subdivision Plats. The final plat of the minor subdivision will be reviewed by the Planning Department to ascertain that all conditions and requirements for final plat approval have been met, and all conditions of approval must be satisfied before the application will be deemed complete. Any change to the final plat may require the applicant request a modification of conditions of approval from the governing body.

The governing body requires that the final subdivision plat be reviewed for

errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. The applicant bears the cost of this review. When the survey data shown on the plat meet the requirements set forth by the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation and Final Subdivision Plats, the examining land surveyor shall so certify on the plat. No land surveyor having a financial or personal interest in a plat shall act as an examining land surveyor in regard to that plat.

The subdivider shall make any corrections or revisions to the preliminary plat as noted by the planning staff and/or the examining land surveyor. Then one (1) opaque mylar copy, and one (1) reproducible mylar copy, one (1) paper copy, and one (1) digital copy, when available, of the final plat shall be prepared and submitted to the Planning Department.

The governing body will provide for the review of the abstract or certificate of title of the land in question by the county attorney. The subdivider bears the cost of these documents.

### **3. Guarantee of Public Improvements**

As a condition of approval of the final plat, the subdivider shall have installed all required improvements or shall enter into a subdivision improvements agreement guaranteeing the construction, installation, and/or maintenance of all such improvements. No construction or placement of structures on the lots shall occur until improvements related to public health, safety and general welfare, such as roads or fire-fighting facilities, have been installed, and engineering plans have been approved by the planning department. Alternative methods of guaranteeing public improvements and the procedures and requirement for securing the guarantees are provided in Appendix E.

### **4. Property Owners' Association**

If a common property is to be deeded to a property owners' association, that association shall be incorporated under the applicable laws of the State of Montana, and a maintenance district and appropriate RID(s) will be established.

### **5. Final Plat Approval or Denial**

The governing body shall examine the final subdivision plat and shall approve the plat only if the subdivider has met all of the conditions of approval set forth in the preliminary subdivision approval.

The minor subdivision final plat shall conform in all major respects to the subdivision application and preliminary plat previously reviewed and approved by the governing body, and shall incorporate all required modifications. The governing body may approve a final plat which, in their determination, has been modified to reflect improvements in design, or changes which have occurred in the natural surroundings and environment since the time of subdivision application review and approval.

The governing body shall approve a minor subdivision final plat if it conforms to the approved subdivision application and plat, and if the subdivider has completed all required modifications or conditions, and met or exceeded all standards and requirements of these regulations. Approval shall be certified by the governing body on the face of the minor subdivision final plat.

If the minor subdivision final plat is denied, the reasons for denial shall be stated in the records of the governing body, and a copy forwarded to the applicant. The governing body shall return the opaque and reproducible mylar and digital copies, when available of the final plat to the subdivider within (10) working days of the action. The applicant may then make the necessary corrections and resubmit the plat for approval.

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

## **6. Final Plat Filing**

The subdivider shall submit for filing the approved final plat and supplementary documents with the County Clerk and Recorder, with the subdivider paying the filing and recording fees. After approval, the plat shall not be altered in any manner, either before or after filing. The County Clerk and Recorder shall refuse to accept any plat for record that fails to have approval in proper form or has been altered, and shall file the approved plat only if it is accompanied by the documents specified in Appendix D, (Standards for Final Plats).

## **7. Transfers of Title**

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana; and
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder; and
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the County Clerk and Recorder within two years of the subdivision application approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract; and
- d. That the contracts conspicuously contain the following language: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner"; and
- e. That the County Treasurer has certified that all real property taxes and special assessments assessed and levied (currently due or delinquent) on the land to be subdivided have been paid.

## **D. Subdivision Application Review Procedures for Subsequent Minor Subdivisions**

### **1. Pre-application Procedures**

The applicant (who may be the subdivider or, with the subdivider's written permission, the subdivider's agent) shall contact the County Permit Coordinator to schedule a meeting with County planning and Environmental Health staff. The pre-application meeting shall take place prior to submitting the required subdivision application. The pre-application conference shall take place not more than 30 calendar days from the date that the County Permit Coordinator receives a complete submittal package from the Applicant. This meeting is required and must be held not more than one hundred eighty (180) calendar days prior to submittal of a subdivision application.

The purpose of this meeting is to identify the state laws, local regulations, and the applicable goals and objectives of the Lewis and Clark County Growth Policy that may apply to the subdivision review process, including, but not limited to: zoning regulations, floodplain regulations, and other applicable regulations. The planning staff may notify the applicant of the option of concurrent review of the subdivision by the local government and the Montana Department of Environmental Quality.

The applicant shall provide a to-scale sketch plan of the proposed subdivision for review and discussion. The sketch plan may be a freehand sketch made directly on a print of a topographic map. The sketch plan shall be legibly drawn; show the layout of proposed features in relation to existing site conditions; and the scale dimensions shall be noted on the sketch.

The sketch plan shall include pertinent information such as the following:

- a) approximate tract and lot boundaries of existing tracts of record, with scale dimensions noted;
- b) location of easements, existing rights-of-way, proposed county roads, conservation easements, utilities, parks and open spaces;
- c) a description of general terrain, natural features (including water bodies, floodplains, geologic hazards and soil types), existing structures and improvements, and proposed public improvements.

The applicant shall provide documentation of:

- a) ownership information, such as a deed, option to buy or buy-sell agreement; including permission to subdivide;
- b) water rights, including location of agricultural water facilities;
- c) any applicable rural or special improvement districts;
- d) existing zoning, covenants or development regulations standards; and
- e) rights of first refusal for the property;
- f) the most recent certificate of survey or subdivision plat or deed on file with the Clerk and Recorder's Office.

The Applicant shall receive 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 on the subdivision application. The Applicant shall be notified about the time frames that public utilities, agencies, and other entities are given to respond.

The Applicant shall be notified of any particular additional information that may be required for review of the subdivision application. This does not limit the ability of the planning staff to request additional information at a later time.

## **2. Subdivision Application Submission and Distributions for Subsequent Minor Subdivision**

The applicant shall submit for review and approval a subdivision application and preliminary plat of the proposed subdivision that conforms to the requirements of these regulations. The preliminary plat and subdivision application shall be prepared in compliance with the requirements listed in Appendix B, and conform to design and improvement standards of these regulations, including the road and fire standards in Appendix J and K.

If any design features or improvements do not conform with these standards, the applicant shall submit a written request for variances with the preliminary plat subdivision application, pursuant to the process in these regulations.

The applicant shall submit a written expressed preference for fulfilling the requirement for parkland dedication or cash donation with the preliminary plat subdivision application, as stipulated in these regulations (see Chapter XI for more details).

The applicant may set forth in the preliminary plat subdivision application a plan for phased development, including filing of the final plat in a phased manner.

The applicant shall submit the following subdivision application information to the planning staff as one submittal:

- a. Part I, II, and III of the Montana Department of Environmental Quality (DEQ) Local Government Joint Application Form;
- b. The required review fee;
- c. Five (5) copies of the preliminary plat or site plan and related supplements;
- d. All supplements required by Appendix B;
- e. A property title report prepared by a title company within six months of the date of subdivision application submittal;

- f. The preliminary plat or site plan must conform to the design and improvement standards set forth in Chapter XI of these regulations. If any design features or improvements do not conform to these standards, the applicant shall submit a written request for variances with the subdivision application, pursuant to the procedures in these regulations; and
- g. The application materials must be submitted by the established deadline.

The planning staff will review the application materials and determine the completeness and sufficiency of the application. The planning staff has five (5) working days to determine whether the application contains all of the listed elements and shall notify the applicant of the planning staff's determination. If elements are missing from the application, planning staff shall identify those elements in the written notification. The applicant must provide all missing elements before the review process will restart.

Within 15 working days after the applicant has been notified in writing that the application contains all the required elements, planning staff shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow review of the proposed subdivision, and notify the applicant of the determination by the planning staff. If planning staff determines that information in the application is not adequate for review of the proposed subdivision, the insufficiencies of the application shall be identified in the notification to the applicant.

A subdivision application shall be submitted on, or prior to, the established subdivision application deadline. Planning staff shall review the subdivision application for completeness and sufficiency in accordance with the established subdivision application deadline. Applications submitted after the established subdivision application deadline will not be reviewed for completeness and sufficiency until the next established subdivision application deadline. The thirty-five (35) working day review period commences on the first working day after planning staff determines that the subdivision application is complete and sufficient.

The review period may be suspended based on the applicant's written concurrence or request. The applicant may verbally concur or request a suspension before the governing body during a public meeting. A suspension of the review period shall not exceed 1 year from the date of request or concurrence.

A determination that an application is complete and/or contains sufficient information for review does not ensure the proposed subdivision will be

approved or conditionally approved by the governing body and does not limit the ability of the reviewing agency or the governing body to request additional information.

A determination of sufficiency by the planning staff does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

Copies of the subdivision application and supplements will be distributed for review by local agencies and utilities having a substantial interest in proposed subdivisions. Such agencies may include (but are not be limited to) the following:

- Fire, school, and conservation districts;
- Law enforcement, road, and sanitarian/health departments; utilities;
- The United States Forest Service, Bureau of Land Management, and Natural Resources Conservation Service; and/or
- State agencies such as Montana Fish, Wildlife & Parks, the Department of Natural Resources and Conservation, Department of Environmental Quality, and Department of Transportation.

Review by the planning staff and public agencies shall not delay the governing body's action within the 35 working day limit. Any review comments shall be made available upon request. If, during the review of the application, the planning staff contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, planning staff shall notify the subdivider of the contact and the timeframe for response.

The planning staff will review the application and any comments received from other organizations and the public. Findings and the rationale behind them shall be incorporated into a staff report with recommendations to the governing body.

### **3. Permission to Enter**

By submitting a subdivision application for review, the applicant agrees that the governing body or its designated agent(s) or any affected governmental agency identified during the pre-application meeting may conduct investigations, examinations, and site evaluations deemed necessary to verify information supplied by the applicant as a requirement of these regulations, to post notice, or to adequately evaluate the proposal, and to subsequently monitor compliance with any conditions if

the preliminary plat is conditionally approved. The submission of pre-application materials or a preliminary plat subdivision application for review shall constitute permission for the governing body, its agents, and affected agencies to enter the subject property.

In order to facilitate site investigations, the applicant shall establish visible flagging on the property, located at a minimum on property boundary corners and the entrance intersections of main access roads. This flagging must be established at the time of submittal of the subdivision application.

#### **4. Exemptions from Environmental Assessment**

The following subsequent minor subdivisions shall not be required to submit an environmental assessment:

1. A subdivision that satisfies all of the following criteria (76-3-616(2), MCA):
  - a. The proposed subdivision is entirely within an area inside or adjacent to an incorporated city or town where the governing body has adopted a growth policy that includes the provisions of 76-1-601(4)(c), MCA;
  - b. The proposed subdivision is entirely within an area subject to zoning adopted pursuant to 76-2-203 or 76-2-304, MCA that avoids, significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c), MCA; and
  - c. The subdivision proposal includes a description, using maps and text, of future public facilities and services, that are necessary to efficiently serve the projected development.

#### **5. Planning Board Action**

After planning staff accepts a subdivision application as complete and sufficient, the Planning Board may hold a work session for the purpose of submitting comments to planning staff on the subdivision application. The work session shall be called for at the discretion of the Director of Community Development and Planning.

#### **6. Amended Subdivision Applications**

If the applicant makes a change to the subdivision application or preliminary plat after the Planning Department has deemed the application complete and sufficient, the applicant shall provide to the Planning

Department a written request to amend the application or preliminary plat and to suspend the review period. If the Applicant fails to submit a valid written request, the Planning Department or the governing body will not review the changed subdivision application or preliminary plat.

The Planning Department will determine whether the change is a substantial change and notify the applicant in writing of that determination within five (5) working days after receiving the written request.

If the change is deemed substantial and the applicant wishes to go forward with the changes, the Applicant shall complete the following:

- 1) Attend a new pre-application conference;
- 2) Submit a new application to the Planning Department; and
- 3) Pay all required fees for the new application.

If the original application is not withdrawn, review of the original application will continue and a new thirty-five (35) working day review period will commence.

If the change is deemed to not be substantial, a new thirty-five (35) working day review period commences on the first working day after the Planning Department notifies the Applicant in writing of that determination. By requesting to amend an application or preliminary plat, the applicant consents to the restarting of the thirty-five (35) working day review period.

The following changes, although not an exclusive list, may be considered substantial:

- a) reconfiguration or number of lots;
- b) lot uses and or layouts;
- c) road layout;
- d) Traffic Impact Study;
- e) storm water drainage;
- f) water and wastewater treatment proposals;
- g) parkland and open space;
- h) easements; and
- i) access.

The applicant whose subdivision application or preliminary plat has been deemed by planning staff to be substantially changed may appeal the decision to the governing body by written notice within five (5) working days of receiving the determination letter from the Planning Department. The applicant must appeal in writing and request a public meeting before the governing body. The applicant shall include evidence to show that the

changes to the subdivision application are not substantial with their written request.

If the governing body determines the changes are not substantial, a new thirty-five (35) working day review period commences on the first working day after the governing body makes their decision. By requesting to amend an application or preliminary plat, the applicant consents to the restarting of the thirty-five (35) working day review period.

## **7. Governing Body Action**

The governing body shall hold a public hearing on the proposed subsequent minor subdivision. When a proposed subdivision is to be annexed to a municipality, the governing body may hold joint meetings with the governing body of the municipality on the subdivision application and annexation.

Notice of the time, date and location of the public hearing shall be given not less than 15 calendar days prior to the date of the hearing by publication in a newspaper of general circulation in the county and by certified or registered mail to the applicant and each property owner of record immediately adjoining the land included in the subdivision application. The planning staff shall post notice of the public hearing on the boundary of the proposed subdivision.

## **8. Subsequent Public Hearings on New Evidence Provided After the Public Hearing**

In the event that the governing body receives written documentation or oral comments after the public hearing, the governing body shall determine whether public comments or documents presented to the governing body at a public meeting constitute:

- (a) information or analysis of information that was presented at a public hearing that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or
- (b) new information regarding a subdivision application that has never been submitted as evidence or considered by either the governing body or its agent or agency at a public meeting during which the subdivision application was considered.

If the governing body determines that the public comments or documents constitute new evidence, the governing body may:

- (a) approve, conditionally approve, or deny the proposed subdivision application without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or
- (b) schedule or direct its agent or agency to schedule a public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

If the governing body decides to hold a public hearing, it must be held within 45 calendar days of the governing body's determination to schedule the public hearing. Only new information or analysis of information shall be considered at the public hearing. The governing body may require the applicant pay additional fees to cover the costs associated with providing notice of the subsequent public hearing.

The governing body shall provide notice of the public hearing as follows:

1. Notice of the time and date of the hearing shall be published in the newspaper not less than 15 calendar days prior to the date of the public hearing;
2. At least 15 calendar days prior to the date of the public hearing, notice of the hearing shall be given by certified mail to the applicant, and each adjoining property owners;
3. The governing body may require the notice be posted at a conspicuous place on the site of the proposed subdivision application.

If the public hearing is held, the 35 working day review period is suspended as of the date of the governing body's decision to hold a hearing. The 35 working day review period resumes at the governing body's next scheduled public hearing for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

## **9. Governing Body Action on Subdivision Application**

The basis for the governing body's decision to approve, conditionally approve, or deny a subdivision shall be whether the development of the subdivision would meet the requirements of the Montana Subdivision and Platting Act, and these local subdivision regulations, based on the following:

- a. the subdivision application and supplements;
- b. relevant evidence relating to the public health safety, and general welfare;
- c. environmental assessment;
- d. an officially adopted growth policy;
- e. staff report and related information;
- f. additional information (e.g., testimony, agency comment, etc), and
- g. any additional information authorized by law.

The governing body shall issue written findings of fact that weigh the following criteria, as defined in the Implementation Strategy of the Lewis and Clark County Growth Policy:

- a. impacts on agriculture and agricultural water user facilities, as defined in the Growth Policy;
- b. impacts on local services, as defined in the Growth Policy;
- c. impacts on the natural environment, as defined in the Growth Policy;
- d. impacts on wildlife, as defined in the Growth Policy;
- e. impacts on wildlife habitat, as defined in the Growth Policy;
- f. impacts on the public health, safety and general welfare, as defined in the Growth Policy;
- g. compliance with the survey requirements of the Montana Subdivision and Platting Act (MSPA) and these regulations;

- h. compliance with the regulations and review procedures of these regulations;
- i. provision of easements within and to the proposed subdivision for the location and installation of any planned utilities;
- j. provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument of transfer concerning the parcel; and
- k. consistency with applicable zoning or other regulations in effect and/or any officially adopted applicable plans for the area involved.

If the governing body fails to approve, conditionally approve, or deny the subdivision application within the 35 working day review period under section IV.D.2, the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body approves, conditionally approves, or denies the subdivision application. The financial penalty does not apply if the review period is suspended.

If the governing body approves, conditionally approves, or denies the subdivision application, it shall inform the applicant of the decision in writing within 30 working days following the decision. The letter shall include a copy of the plat and shall state the reason(s) for denial or enumerating the conditions of approval. The written decision shall include:

- 1) information regarding the appeal process for the denial or imposition of conditions;
- 2) identification of the regulations and statutes used in the decision;
- 3) the facts and conclusions the governing body used in their decision and reference documents, testimony, or other materials that form the basis of the decision;
- 4) the conditions of subdivision application approval that must be satisfied before the final plat may be approved; and
- 5) the duration of the approval period (three years).

As detailed in 76-3-608, MCA, the governing body may require the applicant to design the subdivision (or provide other measures) to reasonably minimize potentially significant adverse impacts identified during the review. The governing body shall issue written findings to justify any required mitigation. When requiring mitigation, the governing body shall consult with the applicant and give due weight and consideration to his/her expressed preferences. Such requirements must be justified by the written findings of the governing body.

The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 calendar days after conditional approval or approval of the subdivision application and preliminary plat. The subdivider shall as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the reviewing authority of the application.

The governing body may withdraw approval of an application if it determines that information provided by the applicant, and upon which the decision was based, is inaccurate.

## **10. Subdivision Application Approval Period**

Upon approving or conditionally approving a subdivision application, the governing body shall provide the subdivider with a dated and signed statement of approval. The governing body will establish a term of approval that must be not more than three calendar years or less than one calendar year. At the end of this period the governing body may, at the request of the applicant, extend its approval for a period of one year. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Section 76-3-507, MCA.

After the subdivision application is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period, as provided above. Approval of the subsequent minor subdivision application does not constitute approval of the subsequent minor subdivision final plat.

## **11. Inspections and Certification**

Upon subdivision application approval, the county will prepare a list of work for which inspection and certification is needed. All public

improvements must be inspected and certified, as meeting the applicable standard and meeting the approved design plan(s), if applicable by an engineer registered in the State of Montana. The applicant is responsible for the costs of inspections and certifications.

## **12. Modifying the Conditions of Approval for a Subdivision Application**

If proposed modifications to subdivision application conditions of approval are substantial, the entire application must be resubmitted and go through the entire subdivision review process again, including payment of fees, planning staff review, and BOCC hearing. The Director or his designee shall make a determination whether the proposed modification is substantial. If the subdivider disagrees with staff's determination the Applicant can make a written appeal to the BOCC.

Changes to the conditions of approval that will not substantially change the original conditional approval, may be submitted directly to the governing body for review and approval. The process was developed to assure due process and equal protection, and requires two major actions by the BOCC (a and b below):

a. Action Item One

- 1) The Applicant shall send a letter to the BOCC asking that it reconsider a specific condition(s) of approval, or in some cases, reconsider the governing body's decision.
- 2) At a public meeting, the BOCC shall make a determination as to whether the applicant's request merits consideration. In order to warrant consideration, the applicant must make a reasonable argument in writing describing why the terms of subdivision application approval should be reconsidered, stating the following:
  - What circumstances have changed?
  - How will the applicant(s) benefit from the changes?
  - What impacts (both positive and negative) will there be on neighbors, the public in general, and the surrounding environment?

b. Action Item Two

- 1) If the BOCC decides to reconsider the specific condition(s) of approval, the applicant must submit the appropriate fee to the Planning Department. Once the application fee is paid,

public notice must be given and a public hearing before the BOCC on the matter will be scheduled. In addition, landowners adjacent to the subject subdivision will be notified via the mail of the proposed modification(s) and about the public hearing.

- 2) A staff report and recommendations will be completed, based upon the analysis of all the evidence provided by the applicant and/or available staff.
- 3) The BOCC holds a public hearing on the request. At that hearing, the staff report and recommendations will be presented and the applicant will have the opportunity to make a presentation. The public will have an opportunity to provide comment on the proposed modification.
- 4) After the public hearing, the BOCC shall make a final decision.
- 5) A letter outlining the BOCC's decision and rationale shall be sent to the applicant.

### **13. Construction Timing**

The subdivider shall not proceed with any construction work on the proposed subdivision, including grading and excavation relating to public improvements, until he or she obtains from the governing body preliminary approval of the proposed subdivision plat, and

Prior to construction of any public improvements, and after receiving preliminary approval, County Planning must review and approve all plans for public improvements required to be submitted by the subdivider, and the subdivider must obtain all necessary permits, which may include but are not limited to: a weed management plan, approach permits, encroachment permits, water rights for public water systems, and floodplain development permits, as well as any permits required by state and federal agencies.

## **E. Final Plat Process for Subsequent Minor Subdivision**

### **1. Final Plat Application**

An application for final plat (contained in Appendix D), together with three (3) 11" x 17" paper copy of the final plat and supplements shall be

submitted to the Planning Department for review. All public improvements must be inspected and certified by an engineer registered in Montana.

No final plat application shall be accepted, processed, nor any action on a final plat be scheduled until a complete application and fee, and copies of the final plat have been received. A final plat application will not be considered complete until all conditions of preliminary approval of the subdivision application have been satisfied.

## **2. Final Plat Review**

The final plat of the subsequent minor subdivision will be reviewed by the Planning Department to ascertain that all conditions and requirements for final plat approval have been met. Any significant change to the final plat may require the applicant request a modification of conditions of approval from the governing body.

The governing body may require that the final subdivision plat be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. The subdivider bears the cost of this review. When the survey data shown on the plat meet the requirements set forth by the Montana Subdivision and Platting Act and the Montana Uniform Standards for Monumentation and Final Subdivision Plats, the examining land surveyor shall so certify on the plat. No land surveyor having a financial or personal interest in a plat shall act as an examining land surveyor in regard to that plat.

The subdivider shall make any corrections or revisions to the draft of the final plat as noted by the planning staff and/or the examining land surveyor. Then one (1) opaque mylar copy, and one (1) reproducible mylar copy, one (1) paper copy, and one (1) digital copy, when available, of the final plat shall be prepared and submitted to the Planning Department.

The governing body will provide for the review of the abstract or certificate of title of the land in question by the county attorney. The subdivider bears the cost of these documents.

## **3. Guarantee of Public Improvements**

As a condition of approval of the final plat, the subdivider shall have installed all required improvements or shall enter into a subdivision improvements agreement guaranteeing the construction, installation, and/or maintenance of all such improvements. No construction or placement of structures on the lots shall occur until improvements related to public health, safety and general welfare, such as roads or fire-fighting

facilities, have been installed, and engineering plans have been approved by the planning department. Alternative methods of guaranteeing public improvements and the procedures and requirement for securing the guarantees are provided in Appendix E.

#### **4. Property Owners' Association**

If a common property is to be deeded to a property owners' association, that association shall be incorporated under the applicable laws of the State of Montana, and a maintenance district and appropriate RID(s) shall be established.

#### **5. Final Plat Approval or Denial**

The governing body shall approve or deny the subsequent minor subdivision final plat within thirty-five (35) working days after having met all the conditions of approval of the subdivision application.

The subsequent minor subdivision final plat shall conform in all major respects to the subdivision application and preliminary plat previously reviewed and approved by the governing body, and shall incorporate all required modifications. The governing body may approve a final plat which, in their determination, has been modified to reflect improvements in design, or changes which have occurred in the natural surroundings and environment since the time of subdivision application review and approval.

The governing body shall approve a subsequent minor subdivision final plat if it conforms to the approved subdivision application and plat, and if the subdivider has completed all required modifications or conditions, and met or exceeded all standards and requirements of these regulations. Approval shall be certified by the governing body on the face of the subsequent minor subdivision final plat.

If the subsequent minor subdivision final plat is denied, the reasons for disapproval shall be stated in the records of the governing body, and a copy forwarded to the applicant. The governing body shall return the opaque and reproducible mylar and digital copies, when available of the final plat to the subdivider. The applicant may then make the necessary corrections and resubmit the plat for approval.

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

## **6. Final Plat Filing**

The subdivider shall submit for filing the approved final plat and supplementary documents with the County Clerk and Recorder, with the subdivider paying the filing and recording fees. After approval, the plat shall not be altered in any manner, either before or after filing. The County Clerk and Recorder shall refuse to accept any plat for record that fails to have approval in proper form or has been altered, and shall file the approved plat only if it is accompanied by the documents specified in Appendix D (Standards for Final Plats).

## **7. Transfers of Title**

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana; and
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder; and
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the County Clerk and Recorder within two years of the subdivision application approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract; and
- d. That the contracts conspicuously contain the following language: "The real property which is the subject hereof has not been final platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner"; and

- e. That the County Treasurer has certified that all real property taxes and special assessments assessed and levied (currently due or delinquent) on the land to be subdivided have been paid.

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