

SUBDIVISION REGULATIONS



SWEET GRASS COUNTY & CITY OF BIG TIMBER

Adopted 2020

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SUBDIVISION REGULATIONS

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LIST OF APPENDICES

INSERT APPENDICES LIST HERE

1 GENERAL PROVISIONS

1.1 Title

These regulations shall be known and may be cited as "The Subdivision Regulation of Sweet Grass County and Big Timber" hereinafter referred to as "these regulations".

1.2 Authority

Authorization for these regulations is contained in the Montana Subdivision and Platting Act (MSPA).

1.3 Purpose

These regulations are adopted by the local governments of the City of Big Timber and Sweet Grass County to provide rules and directives to be used in reviewing subdivisions as required by the Montana Subdivision and Platting Act (MSPA). These regulations incorporate the requirements of the Montana Subdivision and Platting Act found in Title 76, Chapter 3 of the Montana Code Annotated (MCA) and include other local requirements such as review procedures to be used by the local government and subdivision design requirements.

The local government review process is intended to provide a subdivision review process that will carry out the purpose of review as outlined in the MSPA under Section 76-3-102 of the MCA.

2019 MCA Reference: 76-3-102. Statement of purpose. It is the purpose of this chapter to:

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

Further, to support the purposes of 76-3-102, MCA, these regulations 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 provision of proper physical and legal road access, including obtaining of necessary easements.
- e. The provision of adequate open spaces for travel, light, air and recreation.
- f. The provision of adequate transportation, water, drainage;
- g. Subject to the provisions of 76-3-511, the regulation of sanitary facilities.
- h. The avoidance or minimizing of congestion.

- i. To provide for review and awareness of subdivision effects on agriculture, agricultural water user facilities, natural environment, wildlife and wildlife habitat, and public health and safety.
- j. The avoidance of subdivision which would involve unnecessary environmental degradation.
- k. The avoidance of danger or injury to health, safety and welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation or other public services.
- l. The avoidance of excessive expenditure of public funds for the supply of public services.
- m. The manner and form of making and filing of any plat for subdivided lands.
- n. 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.

1.4 Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of Sweet Grass County and of the City of Big Timber.

If a proposed subdivision lies within one mile of the City of Big Timber, the county governing body must submit the preliminary plat to the Big Timber governing body or its designated agent for review and comment. If a proposed subdivision lies partly within the City of Big Timber, the preliminary plat must be submitted to, and approved by, both the city and the county governing bodies.

When a proposed subdivision is also proposed to be annexed to the City of Big Timber the governing body of the City of Big Timber shall combine public hearings and otherwise coordinate the subdivision review process and annexation procedures whenever possible.

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

1.5 Severability

Where any word, phrase, clause, sentence, paragraph, section, or other part of these regulations is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid.

1.6 MCA Excerpts

These regulations include excerpts from the Montana Code Annotated (MCA) as a convenient reference tool. The content of these excerpts may be amended from time to time by the Montana State Legislature as a result of actions taken during a legislative session. These sessions normally take place every odd year. The MCA excerpts included in this edition of these regulations are taken from the 2019 MCA. The excerpts will require updating following publication, by the Montana Code Commissioner, of any new volume which replaces or supplements the 2019 MCA. By referencing the code in the local subdivision regulations, any amendments to the applicable code sections shall also be included and incorporated as though set forth herein, whether or not the actual language of the subdivision regulations have been changed to include the new language in the excerpts.

2 DEFINITIONS

Whenever the following words or phrases appear in this text, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include 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:

A. **LEGAL ACCESS:** When the subdivision abuts a public street or road under the jurisdiction of the City, the County, or the State, or when the subdivider has obtained and documented adequate and appropriate written easements from a public road to the subdivision across all intervening properties.

B. **PHYSICAL ACCESS:** When a road or driveway conforming to City and/or County standards provides vehicular access from a public or private road to the subdivision.

ADJOINING (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 common road.

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 registered land surveyor for the purpose of disclosing facts pertaining to boundary locations. (*Reference: 76-3-103, MCA*)

CONDOMINIUM: A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use with owners of the other units.

COVENANT: (RESTRICTIVE COVENANT): A promise included in an agreement restricting the use of real property or the kind of buildings that may be erected thereupon; the promise is usually expressed by the creation of an express covenant, reservation, or an exception in a deed.

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

DENSITY: The number of lots or dwelling units within a given geographic area (e.g., 4 dwelling units per acre).

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

DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities for one family.

EASEMENT: Authorization by a property owner for another to use the owner's property for a specified purpose. A right, created by an express or implied agreement, of one owner of land to make lawful and beneficial use of the land of another.

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

EVASION OF THE MONTANA SUBDIVISION AND PLATTING ACT: A use of the statutory exemptions from the subdivision review which, in the judgment of the governing body, is not consistent with the legislative intent of the Subdivision and Platting Act, or which creates a pattern of development which is the equivalent of a subdivision without local government review and approval.

EXAMINING LAND SURVEYOR: A registered land surveyor appointed by the governing body to review surveys and plats submitted for filing. (*Reference: 76-3-103, MCA*)

FINAL PLAT: The final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter. (*Reference: 76-3-103, 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.

FLOOD OF 100 YEAR FREQUENCY: A flood magnitude expected to recur on the average of one every 100 years, or a flood magnitude which has a one percent chance of occurring in any given year.

FLOODPLAIN: The area adjoining the watercourse or drainage which would be covered by the floodwater of a flood of 100-year frequency.

FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater of any watercourse or drainage.

GOVERNING BODY: The Board of County Commissioners of Sweet Grass County or the Big Timber City Council.

IMMEDIATE FAMILY: A spouse, children by blood or adoption, and parents. (*Reference: 76-3-103, MCA*)

IMPROVEMENT AGREEMENT: A contractual arrangement that may be required by the governing body to ensure the construction of such improvements as are required by local subdivision regulations. These may include collateral such as irrevocable letters of credit, performance or property bonds, private or public escrow agreements, deposit of certified funds, or similar financial guarantees.

LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.

LOT MEASUREMENTS:

- a.) Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b.) Lot Width -- The 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.

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.

MANUFACTURED HOMES:

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

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

OPEN SPACE: Land that is essentially free of significant man-made structures, and that possesses an intrinsic aesthetic, agricultural, historic, natural resource, recreation or scenic value, and that is designated and retained under current specific provisions of state law 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 for a single tract proposed to be subdivided by stages.

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

PLANNING BOARD: The County and City-County Planning Boards formed pursuant to Title 76, Chapter 1, MCA.

PLAT: A graphic representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications. (*Reference: 76-3-103, MCA*)

PRELIMINARY PLAT: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body. (*Reference 76-3-103, MCA*)

PUBLIC IMPROVEMENT: Any structure or facility constructed to serve the residents of a subdivision or the general public.

PUBLIC UTILITY: "Public utility" has the meaning provided in [69-3-101](#), except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44".
(Reference: 76-3-103, MCA)

PUBLIC ROAD OR STREET: A road or street which has been established 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. The terms include, but is not limited to, travel trailers, camping trailers, truck campers and motor homes.

RECREATIONAL VEHICLE PARK: A place used for public camping where persons can rent space to park individual camping trailers, pick-up campers, motor homes, travel trailers or automobiles for transient dwelling purposes. RV Parks are developments subject to subdivision review in accordance with these regulations.

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.

REGISTERED LAND SURVEYOR: A person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana. (Reference: 76-3-103, MCA)

REGISTERED PROFESSIONAL ENGINEER: A person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana. (Reference: 76-3-103, MCA)

RIGHT-OF-WAY: A strip of land dedicated or acquired for use as a public way.

STATE: State of Montana.

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

- a.) Alley: A street used primarily for vehicular access to the rear of properties which abut on and are served by public roads.
- b.) Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterial generally carry relatively large volumes of traffic. Arterial 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 along the outside perimeter of a subdivision, where the remaining portion of the street must be located on adjacent property.
- 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 arterial or collectors.

SUBDIVIDER: A person who causes land to be subdivided or who proposes a subdivision of land. (*Reference 76-3-103, MCA*)

SUBDIVISION: "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. 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. (*Reference: 76-3-103, MCA*)

Subdivisions are classified in one of the following classifications:

- a.) **Minor Subdivision:** A subdivision that creates five or fewer lots from a tract of record in which proper access to all lots is provided. If the tract of record proposed for subdivision has not been previously divided by the recording of a subdivision plat or if the tract has not been created from a tract of record that has had more than five parcels created from the tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973, then the proposed subdivision is classified as a First Minor Subdivision. Any minor subdivision that is not a First Minor Subdivision from a tract of record, is a Subsequent Minor Subdivision.

- b.) **Major Subdivision:** A subdivision which cannot be classified as a minor subdivision.

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

TRACT: Land area proposed to be subdivided.

TRACT OF RECORD:

(a) An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office. However, a "remainder" of an original patent, cannot, in and of itself, be a tract of record.

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

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

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

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels. (*Reference: 76-3-103(17), MCA*)

UTILITIES: The facilities and systems for delivering utility services including but not limited to water, sewer, solid waste, storm drainage, gas, electricity, telephone, and cable television. Utilities may be publicly or

privately owned.

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

3 GENERAL PROCEDURES AND REQUIREMENTS FOR SUBDIVISION APPLICATIONS

3.1 Construction Timing

The subdivider shall not proceed with construction work on the proposed subdivision, including grading and excavation relating to public improvements, until the governing body has given preliminary approval of the proposed subdivision plat. The county attorney will be notified in writing of all violations.

3.2 Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to lots within the subdivision can be sold or transferred in any manner. After a subdivision plat application has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if the conditions required by Section 76-3-303, MCA are met.

2019 MCA Reference:

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of [76-3-301](#), after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

- (1) under the terms of the contracts, the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the state of Montana;
- (2) under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- (3) the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments the purchaser has made under the contract;
- (4) the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
- (5) the contracts contain the following language conspicuously set out: "The real property that is the subject of this contract 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 may not be transferred in any manner."

Preapplication Procedures:

The subdivider shall meet with the subdivision administrator **within six months** prior to submitting the required subdivision application. The purpose of this meeting is to discuss these regulations and standards. The subdivider shall provide a sketch plan of the proposed subdivision for review and discussion. The sketch plan shall be a legible drawing showing in simple form the layout of proposed features in relation to the existing site condition. The sketch plan may be a freehand sketch made directly on a print of a topographic map. Scale dimensions must be noted. Attached to the sketch plan, the subdivider shall provide the following general information:

- A. Information on the current status of the site, including:
 - i. Location;
 - ii. Approximate tract and Lot boundary of existing tract of record proposed for subdivision;
 - iii. Description of general terrain;
 - iv. Natural features on the land, including existing structures and improvements;
 - v. Existing utility lines and facilities serving the area to be subdivided;
 - vi. Existing easements and rights of way that benefit or burden the property to be subdivided;
 - vii. Existing zoning, if any;
 - viii. whether the land is subject to a conservation easement, and if so, a copy of the conservation easement must be provided;
 - ix. Existing covenants or deed restrictions; and
 - x. current noxious weed condition, if known.
- B. Documentation on the current status of the site, including:
 - i. Ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
 - ii. Water rights, including location of any ditches or agricultural water user facilities;
 - iii. Any special improvement districts; and
 - iv. Rights of first refusal for the property.
- C. Information on the proposed Subdivision, including:
 - i. Tract and proposed Lot boundaries;
 - ii. Proposed Public and Private Improvements;
 - iii. Location of utility lines and facilities;
 - iv. Access – both legal and physical – to the property; and
 - v. any other information the applicant believes relevant.

If the subdivider is not the legal owner of record, the subdivider must have written consent from the legal owner of record and the legal owner must sign any preliminary plat application.

A checklist, which lists the items required for the subdivision application review, is available from the planning staff and will be utilized to conduct the preapplication meeting. The completed checklist shall be signed by the subdivider and the Subdivision Administrator and filed in the Planning Office. A copy of the current checklist (which may be updated as needed) is provided in the Appendices.

At the pre-application meeting:

1. The planner shall provide, at the applicant's cost, a copy of the local subdivision regulations and will discuss the subdivision review process in general, including but not limited to, zoning regulations, floodplain regulations, and other applicable codes.
2. The planner shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other organizations that the subdivider must contact in writing to solicit comment at the pre-application stage.
3. The planning office may thereafter contact any of these agencies to solicit comment on the subdivision application but it is the subdivider's responsibility to contact the agencies and organizations and provide feedback from these agencies in the subdivision submittal.
4. The planner shall also explain the subdivider's obligation to mail pre-application information to the immediately adjacent landowners, any lienholders or easement holders, and any potentially affected water users.
5. It is the subdivider's responsibility to ascertain lienholders, easement holders, adjacent landowners and water users.
6. The planning office shall identify relevant additional information the planning office anticipates will be required for review of the subdivision application, provided that the applicant's plan is developed enough for the planning office to provide this information. This does not limit the ability of the planning office, a reviewing agency or board, or the governing body to request additional information at a later time.

3.3 Permission to Enter

The governing body or its designated agent(s) or agency may conduct such investigations, examination, and site evaluations as they deem necessary to verify information supplied as a requirement of these regulations. The submission of preapplication materials or a subdivision application shall constitute a grant of permission to enter the subject property. If the subdivider is not the owner of the proposed subdivision property the subdivider shall provide the owner's written permission to enter the property.

3.4 Subdivision Application Classifications**3.4.1 Minor Subdivisions****3.4.1.1 First Minor Subdivisions**

First Minor Subdivisions are proposed subdivisions which will contain five or fewer lots in which proper access to all lots is provided. However, to be classified as a first minor subdivision, the tract of record proposed for subdivision must not have been (1) previously divided by the recording of a subdivision plat or (2) created from a tract of record that has had more than five parcels created from the tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973. The requirements for submitting an environmental assessment and for holding a public hearing shall not apply to the First Minor Subdivision created from a tract of record. The review period for a First Minor Subdivision is 35 working days after a determination by the Planner that the application contains required elements and sufficient information for review.

3.4.1.2 Subsequent Minor Subdivisions

A minor subdivision proposed within either a previous subdivision or what remains of the tract of record from which a prior subdivision was taken, which contains five or fewer lots and in which proper access to all lots is provided constitutes a Subsequent Minor Subdivision. A minor subdivision proposed within a tract of record that had more than five parcels created from the tract of record under 76-3-201

or 76-3-207, MCA since July 1, 1973, which contains five or fewer lots and in which proper access to all lots is provided is also classified as a Subsequent Minor Subdivision.

A public hearing is required for a subsequent minor subdivision and the review period is 60 working days after a determination by the planning office that the application contains required elements and sufficient information for review

Subsequent minor subdivisions are exempt from the requirements of an environmental assessment.

3.4.2 Major Subdivision

Subdivision applications, which cannot be classified as a minor subdivision, are considered major subdivision applications.

A public hearing is required for major subdivision applications and the review period is 60 working days after a determination by the planning office that the application contains required elements and sufficient information for review.

Unless otherwise exempt under Section 3.7.2 of these regulations, an environmental assessment must be submitted which meets the requirements specified in Section 3.7.1.

3.5 Submittal Requirements for Subdivision Applications

The subdivider shall submit for review and approval 8 copies of the subdivision application, including copies of the preliminary plat and supplements conforming to the requirements of these regulations. Appendix B includes a checklist of preliminary plat submittal requirements. It is the subdivider's responsibility to send information to and collect comment from neighbors and applicable agencies and organizations, prior to submitting the preliminary plat. The planning office will thereafter conduct its own review or follow up.

The Preliminary Plat Application must be signed by the current legal owner(s) of the property proposed for subdivision and the subdivider, if different.

3.5.1 Preliminary Plat Submittal Form and Contents

The subdivider shall submit a legible plat at a scale sufficient to minimize the number of sheets and maintain clarity. The plat must be one or more sheets either 18 x 24 inches or 24 x 36 inches in size.

Preliminary plats shall show the following:

- a.) Name and location (quarter section(s), section, township, range, principal meridian) of the subdivision, scale bar, north arrow and date of preparation
- b.) The exterior boundaries of the subdivision and location of section corners pertinent to the subdivision property along with a metes and bounds or other legal description of the property
- c.) All proposed lots and blocks, designated by numbers and the dimensions and area of each lot
- d.) A tabulation of the number of lots by various sizes, type of use and number of units
- e.) The total gross area and net area (gross area less area devoted to dedicated public streets and alleys) of the subdivision
- f.) All existing streets, alleys, roads, highways with the name, width of the right-of-way, and location of existing intersections and driveway approaches

- g.) All proposed new streets, alleys, roads, with the name, width of the right-of-way, and location of proposed intersections
- h.) Location, boundaries, dimensions and areas of proposed park areas, common grounds or other grounds dedicated for public use or set aside for common use
- i.) The location of existing buildings, structures or improvements within the proposed subdivision property
- j.) The location and route of existing and proposed utilities such as water, sewer, power, telephone and gas located on or adjacent to the proposed subdivision property
- k.) The location and identity of existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways that are adjacent or within the subdivision, including descriptions of their width and purpose
- l.) The location and description of all existing agricultural water user facilities and ownership
- m.) Natural water systems such as streams, rivers, intermittent streams, lakes or wetlands and the approximate location of any officially designated 100year floodplain boundary that crosses any portion of the proposed subdivision property.

3.5.2 Other Submittals

The subdivider shall submit 15 copies of the following application information to the subdivision administrator along with the preliminary plat:

All Subdivisions shall submit:

- a.) A completed copy of the Sweet Grass County and City of Big Timber Subdivision Application. Appendices B-E.
- b.) A vicinity sketch or sketches of adjacent land showing:
 - 1) The names of platted subdivisions and numbers of certificates of survey previously recorded.
 - 2) The ownership of lands adjacent to the exterior boundaries of the subdivision and to any access road leading from a present public right-of-way to the boundary of the proposed subdivision. Lands separated from the exterior boundary of the subdivision by public rights-of-way are deemed to be adjacent for the purpose of this requirement.
 - 3) Any existing or proposed zoning.
- c.) A completed Summary of Probable Impacts Report, including impacts noted from the reviewing agencies or organizations contacted by the subdivider. See Appendix E.
- d.) The required review fees as stated in the fee schedule listed in Appendix L.
- e.) A current Title Report, with any limitations on the intended access along the route depicted on the preliminary plat;
- f.) Copies of all exceptions identified in the title report;
- g.) A Letter of Agreement and a Noxious Weed Plan approved by the County Weed Board and signed by the County Noxious Weed Coordinator;
- h.) A topographical map showing ground contours in a least 20 foot increments for the subdivision property, (a 7 1/2 minute U.S.G.S. topographic map may be used);
- i.) Names and addresses of adjacent landowners;
- j.) Copies of any recorded easements or covenants on the subdivision property;
- k.) Covenants and Articles of incorporation for a Homeowners Association, if applicable;
- l.) Two copies of the preliminary plat and plat supplements along with fifteen copies of the plat in 11"x 17" reduced format.

- m.) Copies of existing easements or proposed easements to provide legal access to the subdivision.
- n.) Overall development plan for phasing, if any is proposed.
- o.) Where applicable, information regarding the ownership of and disposition of water rights as provided in these regulations
- p.) Copies of all agency and organizational comments received by the subdivider;
- q.) If new roads will be required to access the subdivision or subdivision lots, the following information shall be submitted:
 - (1) Describe measures for the disposal of storm run-off from streets and roads within the subdivision.
 - (2) Indicate the type of road surface proposed.
 - (3) Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
 - (4) Describe how surface run-off will be drained or channeled from parcels.
 - (5) Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
 - (6) 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.
 - (7) A preliminary grading and drainage plan with showing the proposed alignment and grades of streets and drainage improvements.
- r.) Preliminary plans for all public and private improvements;
- s.) Lienholders' consent to subdivision;
- t.) Documentation of legal and physical access

Additional submittals required for Major Subdivisions:

- u.) Environmental assessment, unless exempt as specified in Section 3.7.2;

Additional submittals required for all major or minor subdivisions located outside the City of Big Timber:

- a) BTVFD Fire Protection Review completed by the Big Timber Volunteer Fire Department Chief;
- b) A completed copy of the Area Description Form (Appendix F);
- c) A map of soil types identified on the subdivision property along with the NRCS descriptions and suitability interpretations of each soil type;
- d) Preliminary water and sanitation information required under 76-3-622, MCA;
- e) A statement from the PSC as to whether the water and wastewater systems are subject to the jurisdiction of the public service commission, as required by 76-3-222(b)(ii), MCA
- f) Water and sanitation submittals to DEQ or the county reviewing agency;
- g) Existing water rights and mineral rights;
- h) Proposed disposition of water rights and mineral rights. If mineral rights are not owned by applicant, then purchasers must be warned of the split estate.
- i) Fire mitigation/protection plan;

- j) Flood insurance rate map (FIRM) or Federal Emergency Management Agency (FEMA) panel map and letter identifying floodplain status;
- k) Such additional relevant and reasonable information as identified by the subdivision administrator during the subdivision review process that is pertinent to the required elements of this section.

APPENDICES: The Appendices are incorporated herein by reference and are an integral part of these Subdivision Regulations.

2019 MCA Reference

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

- (a) a vicinity map or plan that shows:
 - (i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:
 - (A) flood plains;
 - (B) surface water features;
 - (C) springs;
 - (D) irrigation ditches;
 - (E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - (F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and
 - (G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and
 - (ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;
- (b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including:
 - (i) whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality; and
 - (ii) if the water supply and wastewater treatment systems are shared, multiple user, or public, a statement of whether the systems will be public utilities as defined in [69-3-101](#) and subject to the jurisdiction of the public service commission or exempt from public service commission jurisdiction and, if exempt, an explanation for the exemption;
- (c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to [76-4-104](#);
- (d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:
 - (i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;
 - (ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - (iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);
- (e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
 - (i) obtained from well logs or testing of onsite or nearby wells;
 - (ii) obtained from information contained in published hydrogeological reports; or
 - (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to [76-4-104](#);
- (f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to [76-4-104](#);
- (g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to [75-5-](#)

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

(2) A subdivider whose land division is excluded from review under [76-4-125](#)(1) is not required to submit the information required in this section.

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

3.5.3 Element and Sufficiency Review of the Subdivision Application

For both minor and major subdivisions, the initial review process shall be performed in accordance with Section 76-3-604, MCA. A subdivision application is considered received on the date of delivery to the reviewing agency when accompanied by the required review fee. Within five working days of receipt of a subdivision application and required fees submitted to the County Planning Office, the Subdivision Administrator or authorized personnel in the Planning Office shall determine whether the application contains all of the materials listed in Section 3.5 of these regulations and shall provide written notification to the subdivider stating whether the application contains the required elements. If the application is missing required elements, the missing items shall be listed in the notification and no further action shall be taken on the application until the required elements are submitted. The subdivider may correct the deficiencies or withdraw the application. If the subdivider submits the missing elements, the 5 working day review period will commence again from receipt of all elements.

Within 15 working days after the subdivider is notified that the application contains all of the required application elements, the Subdivision Administrator shall determine whether the application submittals contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under the provisions of Title 76 Chapter 3 and local regulations and shall notify the subdivider whether additional information is necessary or if the application is deemed sufficient to allow for review. If the Subdivision Administrator or authorized personnel in the Planning Office determines that the application is not sufficient for review, the subdivider shall be given notice of the additional information required for review and no further action shall be taken on the application until the required information is submitted. The subdivider may correct the deficiencies or withdraw the application. The time limits provided in this section apply to each submittal of the application until a determination is made that the application is sufficient and the subdivider is notified.

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 governing body and does not limit the ability of those appointed to review the subdivision application to request additional information during the review process. The governing body shall approve, conditionally approval or deny the proposed subdivision within the following time periods after a determination by the planning office that the subdivision application is sufficient for review by the planning board: 35 working days for a first minor subdivision, 60 working days for a subsequent minor subdivision or a major subdivision or 80 working days if the proposed subdivision contains 50 or more lots. These time frames may be extended, or suspended if the subdivider and the Subdivision Administrator agree to an extension or suspension of the review period, not to exceed one year, or a subsequent public hearing is scheduled and held as provided in 76-3-615.

Once an application is deemed sufficient, the Subdivision Administrator will schedule the Planning Board meeting to consider the subdivision and the public hearing to be held by the Planning Board, if a hearing is required under Section 4.3 of these regulations.

2019 MCA Reference:

76-3-604. Review of subdivision application -- review for required elements and sufficiency of information. (1) (a) A subdivision application is considered to be received on the date of delivery to the reviewing agent or agency and when accompanied by the review fee submitted as provided in [76-3-602](#).

(b) Within 5 working days of receipt of a subdivision application, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by [76-3-504\(1\)\(a\)](#) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination. If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

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

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

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

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

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

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 80 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

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

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

(5) (a) If the governing body fails to comply with the time limits under subsection (4), 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 denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

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

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

subdivision application and preliminary plat.

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

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

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

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

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [76-3-622](#), that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

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

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

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3.6 Environmental Assessments

3.6.1 Contents of an Environmental Assessment

Unless exempt, subdivision applications shall include an environmental assessment that meets the content requirements set out under Section 76-3-603, MCA, if applicable.

2019 MCA Reference: 76-3-603. Contents of environmental assessment.

(1) When required, the environmental assessment must accompany the subdivision application and must include:

(a) for a major subdivision:

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

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

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

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

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

(2) An environmental assessment conducted pursuant to this chapter is distinct from an environmental review conducted pursuant to Title 75, chapter 1. The standards of review applicable to an environmental review conducted pursuant to Title 75, chapter 1, do not apply to an environmental assessment conducted pursuant to this chapter.

3.6.2 Exemptions from Environmental Assessment

The requirement of preparing an environmental assessment do not apply to a first or subsequent minor subdivision created from a tract of record.

For a first minor subdivision as well as a second or subsequent minor subdivision, the subdivider need only provide a summary of the probable impacts of the proposed subdivision based on the primary review criteria established in 76-3-608(3)(a), MCA.

3.7 Water and Sanitation – Special Rules

1. Water and sanitation information pursuant to Section 76-3-222, MCA must be submitted with the preliminary plat. 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 governing body finds that the application does not comply with adopted subdivision, zoning, floodplain or other regulations.
2. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body shall require approval by the DEQ 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 drainfields will be available when the lots are developed. For lots served by an individual septic system, the governing body may also condition approval on the subdivider demonstrating that there is at least one area for a septic system and a replacement drainfield for each lot on the lot to be served by the septic system. Mixing zones shall be designed so as to avoid crossing property lines, if possible. If a mixing zone crosses a property line, the governing body may condition approval of the final plat upon the subdivider obtaining an easement from the owner of the property encroached on by a mixing zone.
3. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot on the lot to be served by the septic system. Mixing zones and well isolation zones shall be designed so as to avoid crossing outside the subdivision. If a mixing zone crosses a subdivision property line, the governing body may condition approval of the final plat upon the subdivider obtaining an easement from the owner of the property encroached on by a mixing zone. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drainfields will be available when the lots are developed.
4. The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within thirty (30) days after conditional approval or approval of the subdivision application and preliminary plat.
5. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
 - (A) reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

- (B) local health department, county sanitarian or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres
6. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat. Generally, this requirement is met by receipt of a Certificate of Subdivision Approval or exemption from DEQ.
 7. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [76-3-622](#), that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

4 REVIEW PROCEDURES FOR SUBDIVISION APPLICATIONS

4.1 Criteria for Local Government Review

Criteria for local government review is provided in the Montana Subdivision and Platting Act, Section 76-3-608, MCA. The basis for recommendations and eventual decisions made during the review process shall be as specified in Section 76-3-608, MCA.

2019 MCA Reference: 76-3-608. Criteria for local government review.

- (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under [76-13-145](#).
- (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.
- (3) A subdivision proposal must undergo review for the following primary criteria:
 - (a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in [76-3-509](#), [76-3-609](#)(2) or (4), or [76-3-616](#), the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;
 - (b) compliance with:
 - (i) the survey requirements provided for in part 4 of this chapter;
 - (ii) the local subdivision regulations provided for in part 5 of this chapter; and
 - (iii) the local subdivision review procedure provided for in this part;
 - (c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and
 - (d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.
- (4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).
- (5)
 - (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.
 - (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.
- (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to [76-3-622](#) or public comment received pursuant to [76-3-604](#) on the information provided pursuant to [76-3-622](#) only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.
- (7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to

protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

(8) A governing body may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise provided for under chapter 4 or this chapter 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. For the purposes of this section, "well isolation zone" has the meaning provided in [76-4-102](#).

(9) 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 under [76-3-620](#) 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 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, an opinion, or information as provided in this subsection.

(10) Findings of fact by the governing body concerning whether the development of the proposed subdivision meets the requirements of this chapter must be based on the record as a whole. The governing body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful.

4.2 Evaluation of Primary Review Criteria Under Section 76-3-608(3)(A)

The Subdivision and Platting Act under 76-3-608(3)(a) MCA requires evaluation of a subdivision's impacts on the following primary review criteria:

- agriculture,
- agricultural water user facilities,
- local services, the natural environment,
- wildlife and wildlife habitat and
- public health and safety.

Unless exempt from review as allowed under Sections 76-3-608(6) or 76-3-509, 609(2) or (4) or 76-3-616, MCA, each subdivision application shall be evaluated for impacts based on the definitions and review criteria provided below in this section. Mitigation measures may be required to minimize a subdivision's potential impact to the below listed primary review criteria categories when the impacts of the subdivision are deemed to be significant by the governing body.

4.2.1 Impact on Agriculture

4.2.1.1 Definition of Agriculture

Montana Code Section 41-2-103 defines "Agriculture" as: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g)); (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

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

4.2.1.2 Evaluation Criteria for Impacts on Agriculture

- a. The number of acres that would be removed from the production of crops or livestock will be reviewed. Acreage will be obtained from Department of Revenue tax records.
- b. Removal of agricultural lands that are critical to the county’s agricultural base. Maps and land capability classifications developed by the USDA Natural Resource Conservation shall be used to determine whether the lands are considered of critical importance, but the maps are just one tool and considerations of existing land use patterns, as well as mitigation measures will also be reviewed.
- c. Consideration will be given to whether the unsubdivided parcel is part of a continuing farm or ranch unit by evaluating the use of the remainder and adjoining properties.
- d. Potential conflicts between the proposed subdivision and adjacent agricultural operations shall be evaluated, along with consideration of measures to address conflicts, including:
 - Interference with the movement of livestock or farm machinery
 - Interference with agricultural production and activities
 - Maintenance of fences
 - Proliferation of weeds
 - Increased human activity
 - Harassment of livestock by pets
- e. In the event of impacts to agriculture, mitigation measures will be considered.
- f. Right to farm provisions are to be included in covenants and fencing along roads and between properties that are used for movement of or grazing of livestock may be required.

2019 Reference: 45-8-111(4), MCA: *An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a public nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.*

76-2-901, MCA: Agricultural activities -- legislative finding and purpose. *(1) The legislature finds that agricultural lands and the ability and right of farmers and ranchers to produce a safe, abundant, and secure food and fiber supply have been the basis of economic growth and development of all sectors of Montana's economy. In order to sustain Montana's valuable farm economy and land bases associated with it, farmers and ranchers must be encouraged and have the right to stay in farming.*

(2) It is therefore the intent of the legislature to protect agricultural activities from governmental zoning and nuisance ordinances.

4.2.2 Impact on Agricultural Water User Facilities

4.2.2.1 Definition of Agricultural Water User Facility

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

4.2.2.2 Evaluation Criteria for Impacts on Agricultural Water User Facilities

- a. Location and proximity to a ditch, canal, headgate, sprinkler system, watering tank or developed spring shall be considered.
- b. Consider potential subdivision nuisance complaints or problems due to agricultural water user facilities such as safety hazards to residents or water problems from irrigation ditches, headgates, siphons, sprinkler systems or other facilities that may seep, flood or otherwise affect the subdivision property.
- c. Ownership of water rights and the historic and current use of facility on the proposed subdivision shall be examined. Easements to protect the use, access to, repair and maintenance of water user facilities on or accessed through a subdivision shall be required.
- d. Allocation of water rights within a subdivision shall be considered and may be required when fractionalized water rights will result or as a matter of state law;
- e. HOA documents may be required to address water rights and all access and easements relative to water rights and appropriate disclosures to purchasers;
- f. Set backs may be required for ditches.

4.2.3 Impacts on Local Services

4.2.3.1 Definition of Local Services

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

4.2.3.2 Evaluation Criteria

- a. Increased demand on services and need to expand services for a proposed subdivision as addressed by information from the following:
 - Sheriff
 - Big Timber Volunteer Fire Department
 - Sweet Grass County Ambulance Service
 - Schools
 - Roads Supervisor/Public Works
- b. Cost of services
 - Current and anticipated tax revenues
 - Cost of services for the subdivision
 - Revenues from subdivision fees for water/sewer connection/fire mitigation and other
 - Evaluation of the need for special or rural improvement districts

4.2.4 Impacts on Natural Environment

4.2.4.1 Definition

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

Open space land means any land that is essentially free of significant man-made structures, and that possesses an intrinsic aesthetic, agricultural, historic, natural resource, recreational or scenic value, and that is designated and retained under provisions of state law for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

4.2.4.2 *Evaluation Criteria*

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

4.2.5 **Impact on Wildlife and Wildlife Habitat**

Wildlife means game animals, game fish, migratory game birds, and upland game birds as defined in 87-2-101, MCA, that currently reside in Sweet Grass County, and other species officially declared threatened or endangered under the federal Endangered Species Act, that currently reside in Sweet Grass County.

Wildlife Habitat means the sum of environmental conditions in a specific place that is historically and typically occupied by a wildlife species or population. It is recognized that wildlife populations have a great propensity to adapt to the activities of humans. Unless specific habitat has been declared critical to a wildlife species by an official government agency, a habitat area must be presumed not to be critical, and not in need of protection or mitigation for the survival and proliferation of the species within the county.

Critical wildlife habitat means a specific geographic area such as big game wintering range, calving areas, migration routes, nesting areas, or wetlands that have been declared critical for the health of game wildlife species by the Montana Department of Fish, Wildlife and Parks (DFWP) and concurred in by the local biologist; or for threatened or endangered species (under the Federal Endangered Species Act), by the US Fish and Wildlife Service (FWS). Critical wildlife habitat should be specifically delineated as such on currently applicable published maps developed and approved by DFWP or FWS for this purpose.

4.2.5.1 *Evaluation Criteria*

- a. Location of subdivision and access roads with respect to wildlife critical wildlife habitat.
- b. Effects of pets and human activity on wildlife and specifically critical wildlife habitat.
- c. Recommendations from Fish, Wildlife and Parks for mitigation.

4.2.6 **Impact on Public Health and Safety**

4.2.6.1 *Definition*

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

4.2.6.2 *Evaluation Criteria*

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

4.3 Review Procedures

4.3.1 Subdivision Administrator Report

After receipt of a subdivision application, the Subdivision Administrator may also send notification of the subdivision proposal and a request for comments to affected units of local government or other agencies with responsibilities or resources that are affected by the subdivision. However, the subdivider should have contacted all applicable agencies and offices to solicit comments as part of the subdivision application. The following agencies and local government offices shall be notified of the application and invited to provide comment on the proposed subdivision (see list attached to Exhibit B which may be updated as needed):

- Superintendents or Trustees of the school districts that the subdivision property is located in
- Montana Department of Fish, Wildlife and Parks
- Power and phone utility providers for the area in which the proposed subdivision is located
- Owners of utility lines such as gas transmission pipelines or overhead power lines that run through the proposed subdivision property
- Sweet Grass County Ambulance Service
- Sweet Grass County Sheriff
- Sweet Grass County Road and Bridge Department
- Sweet Grass County Assessor's Office
- Big Timber Volunteer Fire Department
- The City of Big Timber Public Works Department (if the proposed subdivision is within one mile from the Big Timber City Limits)
- Natural Resource Conservation Service
- Montana Department of Transportation (if the proposed subdivision will be accessed by, or adjacent to, a state highway)
- Montana Rail Link (if the proposed subdivision will be accessed by a road that crosses the MLR railroad tracks)
- The appropriate ditch company representative for those ditch companies which have ditches or irrigation facilities that may be affected by the subdivision due to ditch flow or access needs across the subdivision property or due to potential changes to membership characteristics that would result from subdivision of the property.
- County Sanitarian
- Public Service Commission
- USDA, if the proposed subdivision is accessed via a USDA road
- Sweet Grass County Weed Department

The Subdivision Administrator shall prepare a Preliminary Findings Report which includes comments received from affected agencies and units of local government and which reviews items required for evaluation by the planning board and governing body. The Preliminary Findings Report shall be submitted to members of the planning board, having jurisdiction for the subdivision location, prior to their meeting on the subdivision proposal.

4.3.2 Planning Board Review and Recommendation

There are two planning board jurisdictions designated within Sweet Grass County. The City-County Planning Board jurisdiction boundaries are described in the City Growth Policy and Zoning Regulations. The County Planning Board jurisdiction includes all remaining areas within Sweet Grass County that are not included in the City-County Planning Board jurisdiction.

Planning boards shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of subdivision applications that fall within their jurisdiction. The planning board's recommendation shall be submitted to the appropriate governing body within 10 working days of the public hearing or review meeting for the subdivision application.

A copy of this recommendation will be mailed to the applicants, along with copies or a summary of any public comment submitted at a hearing. If applicants, landowners, or other aggrieved parties disagree with the planning board reports, recommendations and findings of fact, they must submit a written statement to the governing body detailing the reasons for their objection and evidence that justifies the objection. This written statement must be submitted to the governing body no later than two working days before their scheduled meeting to act on the subdivision application.

4.3.3 Public Hearings or Review Meetings

4.3.3.1 When Public Hearings are Required

The planning board shall conduct a public hearing for all subdivision applications other than applications for first minor subdivisions from a tract of record, which are exempt from this requirement under Section 76-3-609(2)(e), MCA.

The planning board shall conduct a public meeting to review first minor subdivisions from a tract of record. These meetings are noticed outside the County Commission offices at least 48 hours in advance of the meeting. These meetings are open to the public, but are not public hearings.

After accepting a subdivision plat application as sufficient, the Planning Office shall schedule a public hearing or public meeting to be held before the planning board by which the application will be reviewed. When a proposed subdivision is also proposed to be annexed to the City of Big Timber, the governing body of Big Timber shall hold joint hearings on the subdivision plat application and annexation whenever possible.

If, during review of the application by the governing body as described in Section 4.3.4, the governing body determines that new, relevant and credible information becomes available regarding the subdivision application the governing body shall request that the Planning Board conduct an additional public hearing on that new information in accordance with the notice and procedure requirements of this Section 4.3.3.

2019 MCA Reference: 76-3-605. Hearing on subdivision application.

(1) Except as provided in [76-3-609](#) and [76-3-616](#) and subject to the regulations adopted pursuant to [76-3-504\(1\)\(o\)](#) and [76-3-615](#), at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

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

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

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

4.3.3.2 Public Notice

All subdivisions that come before the planning board for their recommendations in accordance with these regulations, will be legally noticed as required by the Montana Subdivision and Platting Act. Published legal notices shall include instructions for requesting alternate accessible hearing locations or formats required by persons with disabilities who wish to participate in the hearing. Adjoining landowners shall be notified of any proposed subdivision. Adjoining landowners mean owners of record of properties that share common boundaries or that are located directly across a road, river, stream, ditch, or lake and would otherwise be sharing a boundary in the absence of such feature.

Notice of the time and date of any public 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 hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property adjoining the land included in the plat shall be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

4.3.3.3 Public Hearing Procedures

A presentation of the subdivision proposal may be made at the public hearing by the subdivider or an authorized representative. The subdivision administrator shall also make a presentation of the preliminary findings of fact based on these regulations and the review criteria. After the presentations, questions and comments on the proposed subdivision will be received. Both verbal and written comments will be accepted.

Hearing Procedures should be conducted in accordance with the following steps:

- 1) Circulate a sign-up sheet, provide a place for public to indicate whether they intended to speak.
- 2) Set up any equipment, if needed, such as tape recorder, podium, screen, or other visual aid equipment.
- 3) The hearing is opened by the Planning Board Chairperson-describe reason for the public hearing – subdivision application
- 4) Explain subdivision review procedure – staff provides recommendation to board; board makes recommendation to the local governing body.
- 5) Establish ground rules for speaking – no personal attacks, address comments to specific review criteria, go over subdivision review criteria listed below which will be considered in the Planning Board’s evaluation.
 - a.) Effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and the public health and safety.
 - b.) Compliance with the requirements of the Montana Subdivision and Platting Act and the regulations and review procedures of the local subdivision regulations.
 - c.) The provisions of easements for the location and installation of any necessary utilities.
 - d.) The provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.

- e.) Whether the preliminary plat conforms to the provisions of:
 - The Montana Subdivision and Platting Act
 - The Sweet Grass County and City of Big Timber Subdivision Regulations
 - Applicable zoning regulations
 - Other regulations in effect in the area.
- 6) Staff presentation – City-County Planning Staff
 - a.) Review staff report
 - b.) Present findings of fact and recommendations
- 7) Subdivider’s presentation by the Subdivider or authorized representative
- 8) Public input of the proposal
 - Information submitted should be factual, relevant and not merely duplication of previous presentation.
 - A reasonable time shall be allowed each speaker.
 - Each person speaking shall give name, address and nature of interest in the matter.
- 9) A question and answer period for the board to inquire into statements made earlier.
- 10) Rebuttal at the discretion of the Chairperson.
- 11) Motion for adjournment
- 12) Adjourn

4.3.4 Governing Body Review and Decisions

Review by the governing body shall begin following receipt of a written recommendation from the planning board.

Subdivider's Preference for Mitigation

At least two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the governing body the subdivider's comments on and responses to the planning board's recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences [76-3-608(5)(b), MCA].

The governing body shall approve, conditionally approve, or disapprove the subdivision plat application within the following time frames:

- Within 60 working days of determination of sufficiency for a subsequent minor or major subdivision less than 50 lots;
- Within 80 working days of determination of sufficiency for a major subdivision with 50 or more lots, or,
- Within 35 working days of determination of sufficiency if the subdivision application is for a First Minor Subdivision

The governing body shall issue a written Findings of Fact that discusses and weighs the following criteria (pursuant to 76-3-608, MCA):

- a.) Effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and the public health and safety;

- b.) Compliance with the requirements of the MSPA, and the regulations and review procedures of these local subdivision regulations;
- c.) The provision of easements for the location and installation of any needed utilities; and
- d.) The provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.
- e.) Applicable zoning regulations or ordinances.

The governing body may conditionally approve a subdivision plat application and require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review. The governing body shall issue written findings to justify the reasonable mitigation required. When requiring mitigation, subdivider will have the opportunity to express their preference. The subdivider's preference for mitigation will be considered by the governing body along with the planning board's recommendations, information from the public hearing, written comments received by the public and the findings of fact. Written comments to the governing body must be submitted at least two working days prior to the date the governing body acts on the application in order to receive consideration.

Following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall submit a written statement to the subdivider with notification of their decision. This notification shall include information regarding the appeal process for denial or imposition of conditions. This notification shall also:

- Identify the regulations and statutes that are used in reaching the decision to deny or impose conditions and reference documents, testimony, or other materials that form the basis of the decision; and
- Provide the conditions that apply to the subdivision plat approval and that must be satisfied before the final plat may be approved.

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

4.3.4.1 New Information

If, during the governing body's review of a subdivision application the governing body determines that, new, relevant and credible information has become available concerning the application which was not available at the time of the Planning Board's review or public hearing, the governing body shall submit the new information to the Planning Board for review and a subsequent public hearing, unless the application is exempt from a public hearing under 76-3-609(2)(d)(ii), MCA. Prior to making a determination regarding new information's relevance or credibility under this section, the governing body shall examine such items as whether the information has effects on the governing bodies evaluation of the subdivision proposal's impacts and features and whether this information was available but not submitted to, or requested by the Planning Board at the time of the Planning Board's review.

2019 MCA Reference:**76-3-615. Subsequent hearings -- consideration of new information -- requirements for regulations.**

(1) The regulations adopted pursuant to [76-3-504](#)(1)(o) must comply with the provisions of this section.

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

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

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

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

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

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

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

4.4 Subdivision Application Approval Period and Extensions

Upon approving or conditionally approving a subdivision plat application, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for 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 subdivider, extend its approval for a period of no more than one year, except that the governing body may extend its approval for a period of more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Section 5.

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

4.5 Amended Subdivision Applications or Amended Preliminary Plats

4.5.1 If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.

- (i) Within five (5) working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
- (ii) The working day review period (35 or 60 days) is suspended while the subdivision administrator considers the amended application or preliminary plat.
- (iii) If the subdivision administrator determines the changes are not material, the working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
- (iv) If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
 - a. require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application, or
 - b. if the Planning Board has already held a meeting or hearing on the preliminary plat, schedule a new Planning Board hearing to take comment on the amended preliminary plat. Notice of the subdivision administrator's determination to schedule a new planning board hearing or meeting shall be provided as otherwise required herein. A supplemental staff report shall be prepared to address the changes to the original application.
 - c. If a new Planning Board meeting or hearing is held pursuant to subsection (iv)(b) above, the working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board meeting or hearing.

4.5.2 By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.

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

- (i) configuration that increases number of lots or decreases lot size;
- (ii) road layout;
- (iii) water and/or septic proposals and location of drainfields;
- (iv) configuration of park land or open spaces;
- (v) easement provisions; and
- (vi) designated access.

4.5.4 A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

- (i) The applicable working day review period is suspended until the governing body decision on the appeal is made.
- (ii) If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat should be resubmitted.

- (iii) If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the applicable working day review period resumes as of the date of the decision.
- (iv) By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the applicable working day review period provided in this section.

5 FINAL PLATS SUBMITTED FOR RECORDING

Once a decision has been issued by the governing body on a subdivision application and all conditions of approval are satisfied, the final plat may be submitted for recording. The final plat must be submitted to the Subdivision Administrator for recording in the Clerk and Recorder Office before the expiration of the subdivision plat application approval period.

An application for approval of final plat recording, (see form, Appendix G), together with two signed opaque mylars, the appropriate review fee and required documents shall be submitted to the Subdivision Administrator. Documents to be recorded with a final plat are:

- a.) Current title report for the subdivision property,
- b.) MDEQ Certification of Approval for the subdivision if the subdivision contains lots under 20 acres in size,
- c.) County Sanitarian Certification of Approval if the subdivision contains lots over 20 acres in size,
- d.) Signed County Weed Board Letter of Agreement with the subdivider,
- e.) The governing body's Findings of Fact Report and conditions of subdivision approval, if any,
- f.) Homeowner Association Bylaws and Covenants for the subdivision if required under the subdivision's conditions of approval, and;
- g.) Any other documents specified for recording by the governing body as a condition the preliminary plat approval.

A list of the required documents to be recorded with the plat shall be shown on the face of the final plat.

The final plat submitted for approval shall conform to the subdivision plat as previously reviewed and approved by the governing body and shall incorporate all required modifications. The final plat shall comply with the Montana Uniform Standards for Final Subdivision Plats.

Because subdivisions may be completed in phases, separate final plats may be filed that constitute only that portion of the approved subdivision plat that reflects that phase of the development, provided that such portion conforms to all requirements of these regulations and is approved by the governing body.

5.1 Final Plat Review

Once a subdivider believes they have completed all conditions of approval, then the subdivider may submit for final plat approval.

A Final Plat application shall be deemed submitted on the day received when accompanied by the review fee.

The subdivision administrator shall have twenty (20) working days to determine if the final plat contains the information required in the preliminary plat conditions, conforms to the MSPA and subdivision regulations and the treasurer certifies that taxes are paid.

If the final plat does not contained the required information, the subdivision administrator shall provide notice to the applicant identifying the defects and during re-review can only look at the information

determined to be deficient in the notice. Another 20 days shall apply to the review time once the deficient information is received.

If the governing body requires review by an examining land surveyor, then notice shall be given of that review.

Once the subdivision administrator determines that the final plat application contains all the required information, the governing body has 20 working days to review and approve or deny the final plat.

. Any change to conditions of approval requested by the subdivider which are deemed significant by the governing body shall require the holding of a public hearing for review.

The governing body may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the clerk and recorder. When the survey data shown on the plat meet the conditions 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 governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

5.2 Final Plat Approval

In addition to the review process outlined above, the subdivision administrator shall examine the final subdivision plat and perform a site inspection. The final plat shall be recommended for approval when it conforms to the conditions of approval set forth on the subdivision plat application and to the terms of the Montana Subdivision and Platting Act and these regulations.

If the final plat is disapproved, 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 final plat to the subdivider within ten days of the action. The applicant may then make the necessary corrections and resubmit the final plat for approval. Approval shall be certified by the governing body on the face of the final plat, and the county treasurer shall certify that all taxes have been paid on the land proposed for subdivision. The acceptance of land dedications shall be made by specific resolution of the governing body and noted on the final plat.

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

5.2.1 Clean Up of Property Required

Prior to final plat approval, the subdivider shall ensure that all construction and other construction waste and debris is removed from the subdivision property. This includes concrete, asphalt, dead and downed trees, and other material as may be considered debris at the discretion of the governing body.

5.3 Final Plat Filing

After approval by the governing body, 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 filing that fails to have approval in proper form or that has been altered, and shall file the approved plat only if it is accompanied by the documents specified in Uniform Standards for Final Subdivision Plats and these regulations. In addition, the clerk and recorder shall refuse to accept the final plat for filing if the county treasurer has not certified that all real property taxes and special assessments assessed and levied on the land proposed for subdivision have been paid [76-3-611, MCA].

5.4 Correcting Filed Final Plats

Corrections of drafting or surveying errors that in the governing body's opinion will not materially alter the plat may be made by the submission of a corrected final plat for the governing body's approval. The plat shall be entitled "Corrected Plat of the (name of subdivision) Subdivision" and the reason for the correction shall be stated on the face of the plat.

5.5 Amending Final Plats

5.5.1 Material Alterations

Changes that materially alter any portion of the filed final plat, its land divisions, or improvements shall be made by the filing of an amended plat showing all alterations. Within a platted subdivision, any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder.

The amended plat shall be subject to procedures for major or minor subdivisions, as is appropriate.

The governing body may not approve an amendment which will place the plat in non-conformance with the standards contained herein unless a public hearing is held on the plat and a written variance from the standards is issued pursuant to Section 10.2, Variances.

The final amended plat submitted for approval shall comply with the Montana Uniform Standards for Final Subdivision Plats (Appendix O), with the exception that the title shall include the word "Amended." ("Amended plat of the (name) Subdivision" or (name) Subdivision, Amended.")

5.5.2 Exemptions from Amended Plat Review

Amended subdivision plats that show the relocation of common boundaries and the aggregation of lots within platted subdivisions where five or fewer of the original lots are affected within a platted subdivision filed with the county clerk and recorder are exempt from approval as a subdivision. An amended plat must be prepared following the requirements of the Montana Uniform Standards for Final Subdivision Plats (Appendix O) except that in place of the governing body's approval the landowner must certify that the approval of the governing body is not required pursuant to Section 76-3-207 (1), MCA.

6 DESIGN AND IMPROVEMENT STANDARDS FOR SUBDIVISIONS

All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section 10.2, Variances. The governing body may not grant variances from the provisions of Section 6.1.4, Floodplain Provisions. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Chapters 7, 8, 9 of these regulations.

6.1 General Standards

6.1.1 Conformance with Other Regulations

The design and development of a subdivision shall conform with any adopted zoning regulations, and with health department and other regulations.

6.1.2 Natural Environment

The design and development of subdivisions must provide satisfactory building sites which are properly related to topography, and which allow for, the preservation the natural terrain, natural drainage, existing topsoil, trees and natural vegetation.

6.1.3 Lands Unsuitable for Subdivision Due to Hazards

The governing body may find land to be unsuitable for subdivision because of potential hazards such as:

- Flooding from storm water drainage, waterway overbank flows or potential ditch washouts or ditch seepage,
- Snow avalanches,
- Eroding banks above a river's 100 year floodplain
- Rock falls or land slides,
- Steep slopes in excess of 25 percent slope,
- High potential for wildfire,
- Subsidence,
- High water table,
- Polluted or non-potable water supply,
- High voltage lines,
- High pressure gas lines,
- Aircraft, railroad or vehicular traffic hazards or congestion,
- Severe toxic or hazardous waste exposure; or
- Because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds or other features which may be detrimental to the health, safety, or general welfare of existing or future residents.

These lands must not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved mitigation measures or design and construction plans. In some cases the governing body may require that "No Construction Zones" be identified on the final plat as one measure to protect future lot owners from a particular hazard. The width or size of these zones shall be determined by the governing body based on available information concerning the hazard.

6.1.4 Floodplain Provisions

Subdivision lands located in the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA, or land deemed subject to flooding as determined by the governing body shall be not be permitted for building or residential purposes, or other uses that may increase or aggravate flood hazards to life, health, or property. Portions of proposed subdivision lots which contain areas that fall within a determined 100-year floodplain shall be shown on the plat as areas restricted from dwelling construction.

The quantity of each lots' area that is included within the floodplain shall be noted on the plat. Access roads for the proposed subdivision lots shall not cross into 100-year floodplain areas, except as necessary for bridge approaches or access to planned waterfront parks or boat launch area.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official **floodway** delineation or **floodway** studies of the stream have been made, the subdivider must furnish survey data to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation. Survey data must comply with the Standards for Flood Hazard Evaluations as contained in Appendix F of these regulations. After the Floodplain Management Section of the Water Resources Division has prepared a report delineating the **floodway**, the subdivider must submit the report to the subdivision administrator along with the Environmental Assessment required for the subdivision plat.

The governing body shall waive this requirement where the subdivider contacts the Water Resources Division and that agency states in writing that available data indicated that the proposed subdivision is not in a flood hazard area.

6.1.5 Improvement Design

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

6.1.6 Lots

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

- a. No single lot shall be divided by a municipal or county boundary line.
- b. Lots less than 80 acres in size shall not be divided by a public road. Lots which are 80 acres or greater in size may be divided by a public road, however, no less than 10 acres of the lot shall be on the opposite side of the public road.
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary means of access to a lot.
- d. Corner lots must have driveway access to the same street or road as interior lots.
- e. Corner lots must be of sufficient area to provide acceptable visibility for traffic safety.
- f. The average lot depth shall not exceed three times the lot's average width. However, lots greater than five acres in size may have depths greater than three times its average width provided that the lot width is no less than 150 feet.

- g. Side lot lines for lots of 20 acres or less in size must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.
- i. Lots shall be clearly numbered or otherwise identified on the plat.
- j. Lots crossed by a gas transmission pipeline running outside of a public street or alley right of way, shall be a minimum of five acres in size.

6.1.7 Blocks

The below listed requirements are applicable when the subdivision is entirely surrounded by public right of ways, waterways, railway, parks or a combination thereof creating a group of lots, tracts or parcels within well-defined fixed boundaries. Block patterns shall be defined on the preliminary plat for proposed subdivisions within or adjacent to the City of Big Timber and any other platted townsite.

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,600 feet.
- c. Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul-de-sacs.
- d. Rights-of-way for pedestrian walks, not less than five feet wide, shall be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.
- e. Block layouts shall coincide with master plan arrangements adopted by the governing body.

6.1.8 Streets, Roads, Bridges and Approaches Within the Subdivision

Subdivisions located within the City of Big Timber or subdivisions which will be annexed into the City of Big Timber shall meet street and approach design requirements specified in the Standards for Public Works Improvements for the City of Big Timber in addition to applicable requirements listed in this section.

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, to topographical conditions, and to public convenience and safety, and in their relation to the proposed uses of the land to be served by them.
- 2) All roads within a rural subdivision must meet the design specifications in Table 1. Rural subdivision gravel roads shall be constructed as specified in Figure 2. Where the governing body has required paved roads for a rural subdivision, the road shall be constructed as specified in Figure 3. Unless the governing body has accepted dedication of the roads within a subdivision, these roads are to be maintained by the subdivision and the subdivision HOA shall be responsible for road maintenance, including snow removal.
- 3) Where streets terminate, either a cul-de-sac or "T" turnaround must be provided at the terminus. Cul-de-sacs and "T" turnarounds must conform to the design specifications set forth in Table 1 and shown in Figure 1.

- 4) All new streets or roads within a subdivision must either be dedicated to the public or be owned and maintained by an approved property owners' association. The local governing body shall determine whether the new streets or roads should be dedicated to the public or owned and operated by an approved property owners association.
- 5) Proposed roads or driveways which will intersect state or county roads shall be kept to a minimum. Subdivisions with any lots smaller than 20 acres in size and with two or more lots shall utilize approaches from non-public roadways, if available, or shall utilize joint use approaches or frontage roads in order to minimize approaches onto county roads or state highways.
- 6) Any new vehicular access onto a state highway must be approved by the Montana Department of Transportation. A road approach permit from the Montana Department of Transportation shall be required for new approaches onto state highways.
- 7) Approach permits from the Sweet Grass County Roads and Bridges Department shall be required for new approaches onto county roads.
- 8) Turn lanes for new or existing approaches may be required by the Montana Department of Transportation or the local governing body to accommodate increase traffic and safety concerns.
- 9) Local streets must be designed so as to discourage through traffic.
- 10) Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary for adequate protection of residential properties and to separate arterial and local traffic.
- 11) Half streets are prohibited except where essential to the development of the subdivision and where the governing body is assured that it will be possible to require the dedication of the other half of the street when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- 12) The alignment of streets and roads must provide adequate sight distances.
- 13) Intersections. The following items apply to intersections:
 - i. Streets must intersect at 90 degree angles, except when topography prohibits this alignment. In no case may the angle of intersection be less than 60 degrees to the centerline of the roadway being intersected.
 - ii. Two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
 - iii. No more than two streets may intersect at one point.
 - iv. Intersections of local streets with major arterials or highways must be kept to a minimum.
 - v. Intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds on the intersecting roadways.
 - vi. Hilltop intersections are prohibited, except where no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.

- vii. The grade of approaches to road or street intersections may not exceed five percent for a length of 50' from the intersection.
- 14) Names of new streets aligned with existing streets must be the same as those of the existing streets. Proposed street names must not duplicate or cause confusion with existing street names.
 - 15) Streets which are a continuation of existing streets outside the proposed subdivision shall be aligned to assure their center lines coincide. Where straight continuations are not physically possible, the centerline offset shall not be less than 125 feet. Continuation of existing streets shall have the right-of-way width of at least that of the existing streets unless otherwise specified by the governing body.
 - 16) New bridges, which shall be utilized for access to the subdivision, shall be designed and constructed in accordance with any applicable County Bridge Standards.

b. Improvements

- 1) Roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in the most recent edition of the Montana Public Works Standard Specifications.
- 2) Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, or other substandard materials. Subgrades and surfacing must be properly rolled, shaped and compacted and must be approved by the governing body.
- 3) Streets and roads must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.
- 4) 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. Each easement must allow construction and perpetual maintenance of a road across the property and allow vehicular travel on the road.
 - i. Adequate and appropriate easements must be granted by each property owner through a signed and notarized document.
 - ii. 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.
- 5) Construction of individual residential driveways is not a required subdivision improvement when access can be provided to each residential lot in conformance with Sweet Grass County standard approach specifications and site conditions do not necessitate special design and construction for the driveway routing. The following driveway approach requirements apply for lots which are planned to be accessed from a state highway or county road:
 - i. The subdivider shall submit an approval from the Montana Department of Transportation (MDOT) for new approaches from a state highway which are required to access proposed lots. Construction of new driveways approaches shall be completed and approved by MDOT prior to filing a final plat.
 - ii. The subdivider shall submit an approval from the Sweet Grass County Road Supervisor for new approaches from county roads. Construction of new driveway approaches for subdivision lots may be required prior to filing a final plat if requested by the County Road Supervisor due to particular design needs. Driveway approaches onto county roads utilized for livestock trailing shall be required to install cattle guards and/or gates at the approaches prior to filing the final plat.
 - iii. The subdivider shall pay for driveway signage and/or rural address numbers and

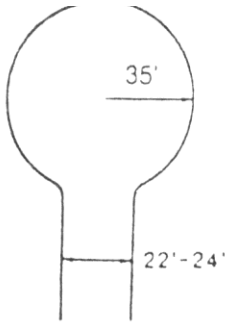
maintenance of the same shall be the responsibility of the subdivider or subsequent purchaser.

- 6) Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body.
- 7) Street light installations may be required by the governing body on subdivision streets located within the City of Big Timber or other town sites.
- 8) Street or road signs and traffic control devices of the size, shape and height as approved by the governing body must be placed at all intersections. Examples of sign placements are shown in Figure 4. Traffic control devices must be consistent with the *Manual on Uniform Control Devices* available from the Montana Department of Transportation.
- 9) When required by the United States Postal Service, the subdivider must provide an off-street area for mail delivery.

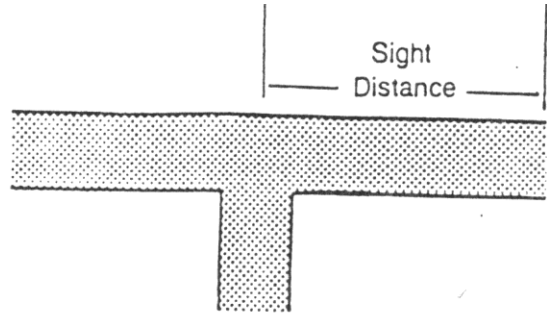
6.1.9 Streets, Roads and Bridges Outside the Subdivision Property

Subdivisions which are determined to increased vehicle trips per day on a public road above the level of service that the road is maintained for at the time of the application, or, subdivisions which are considered to cause unsafe travel conditions to existing roads or bridges, shall be required to improve the existing road and bridges to county standards specified for the projected daily vehicle trips and shall remedy any unsafe traffic conditions that may result from the subdivision's traffic or traffic patterns.

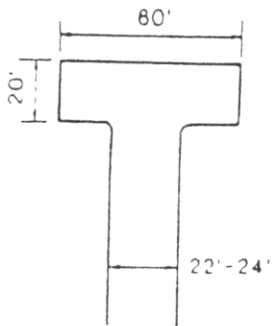
FIGURE 1



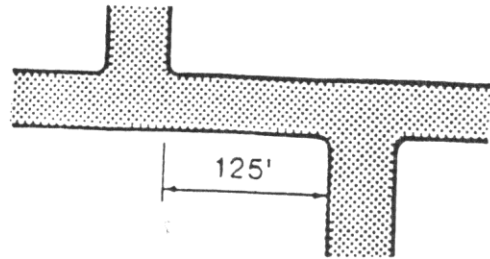
Cul-de-sac



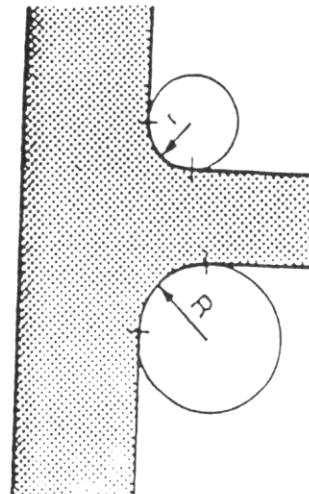
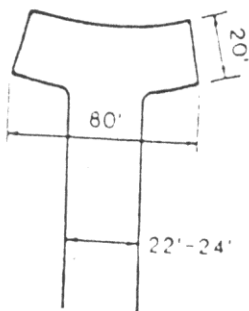
Sight Distance



"T" Turnaround

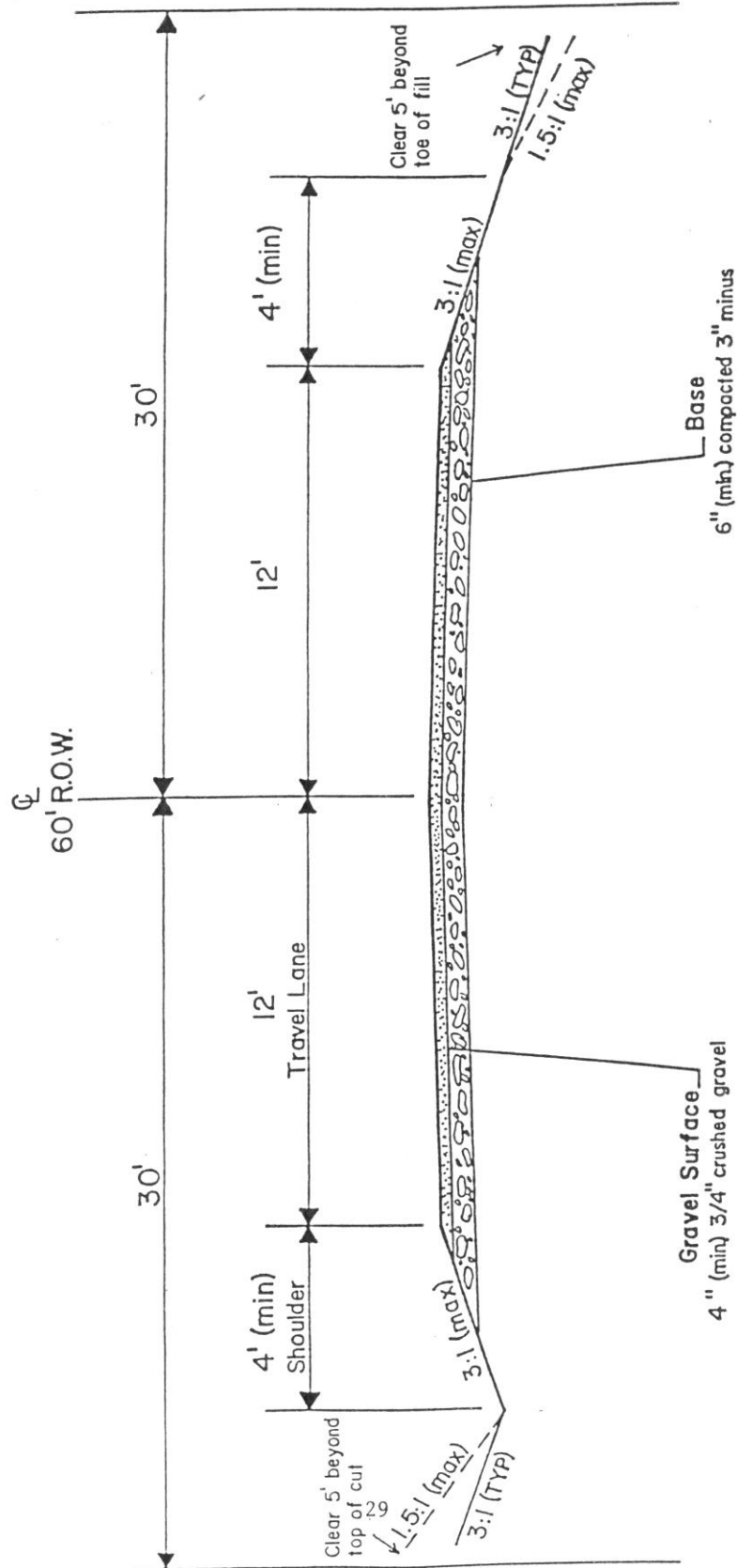


Intersection Offset



Curb Radius

Minimum Design Standards - Gravel Road Section



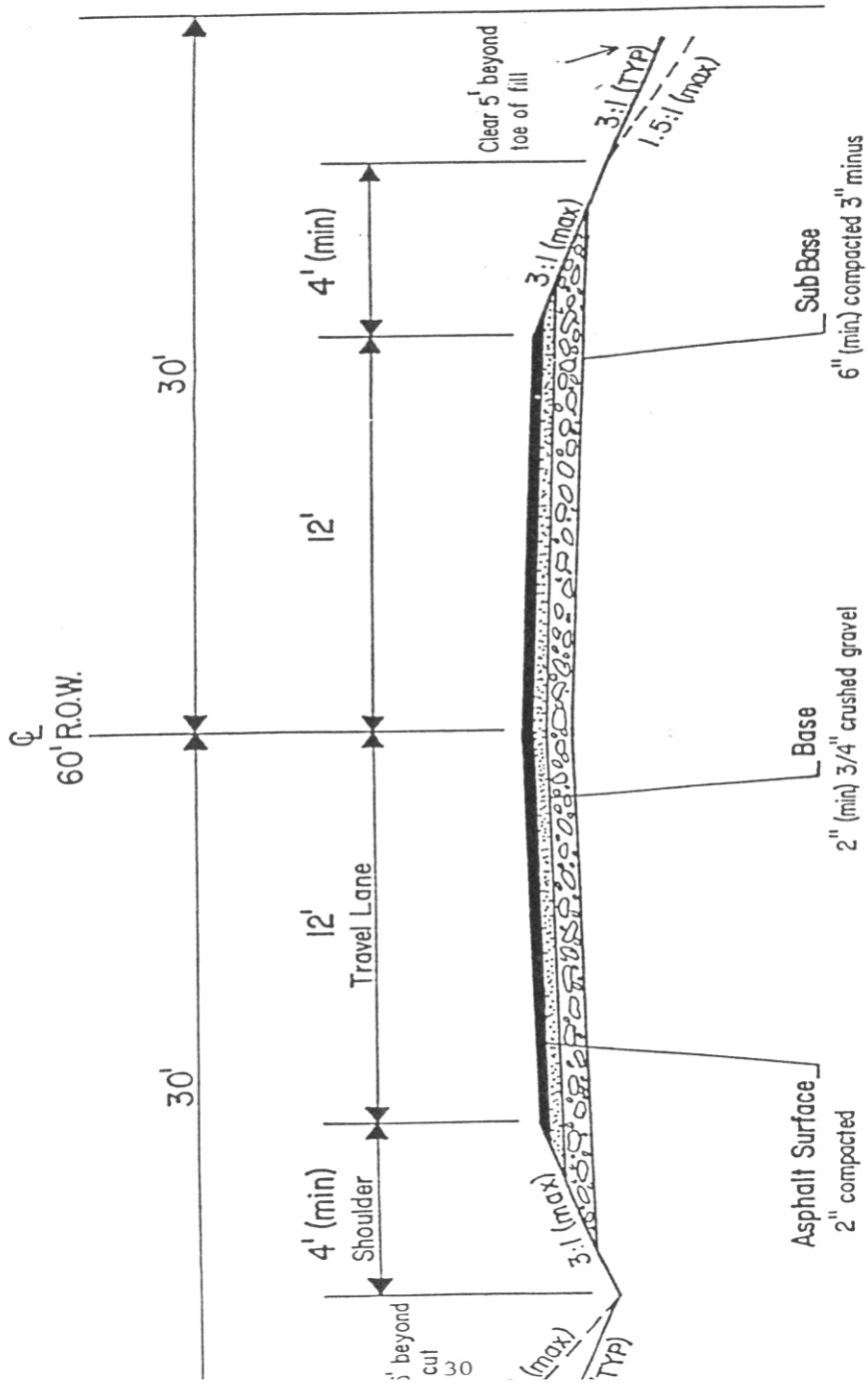
Notes:

1. Crown grade .02'/ft
2. Superelevated where appropriate

FIGURE 2

FIGURE 3a

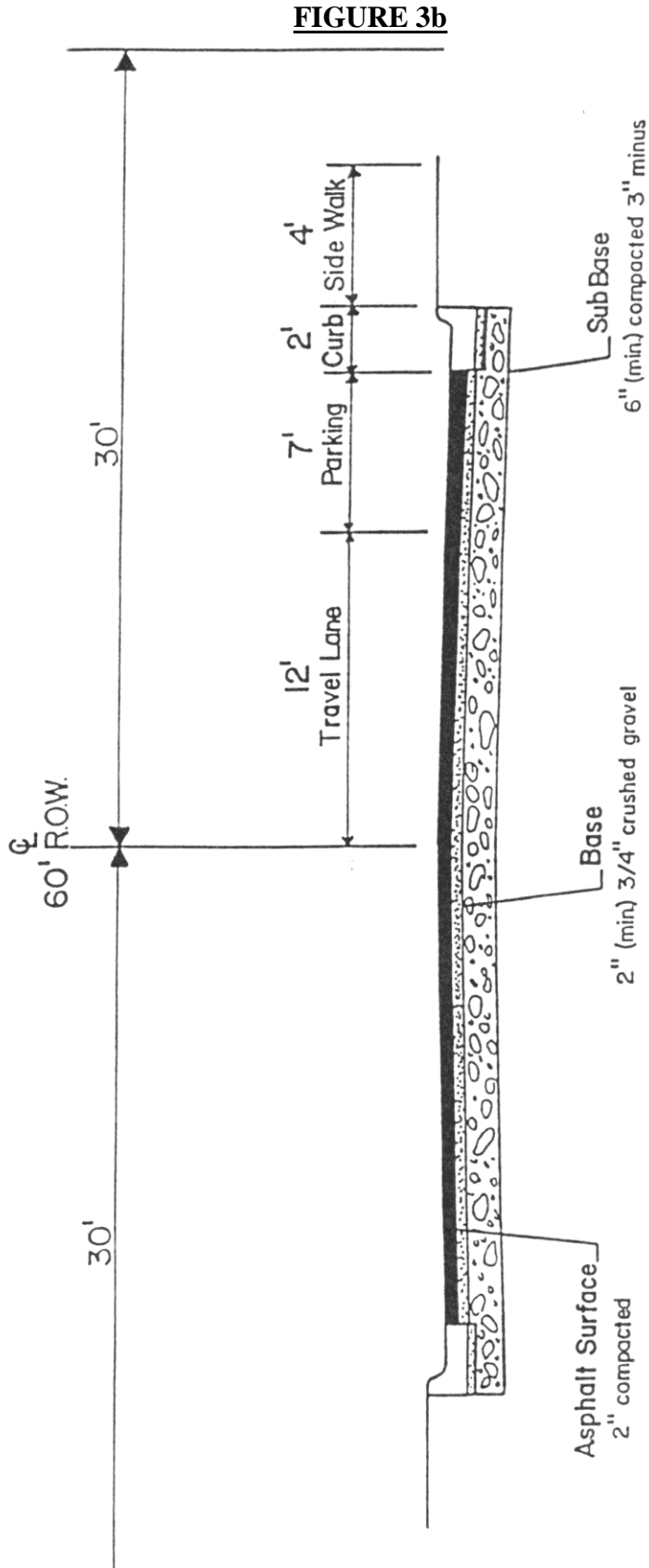
Minimum Design Standards-Street Section with Drainage Swales



Notes:

1. Crown grade .02'/ft
2. Super-elevated where appropriate

Minimum Design Standards-Street Section with Curb and Gutter



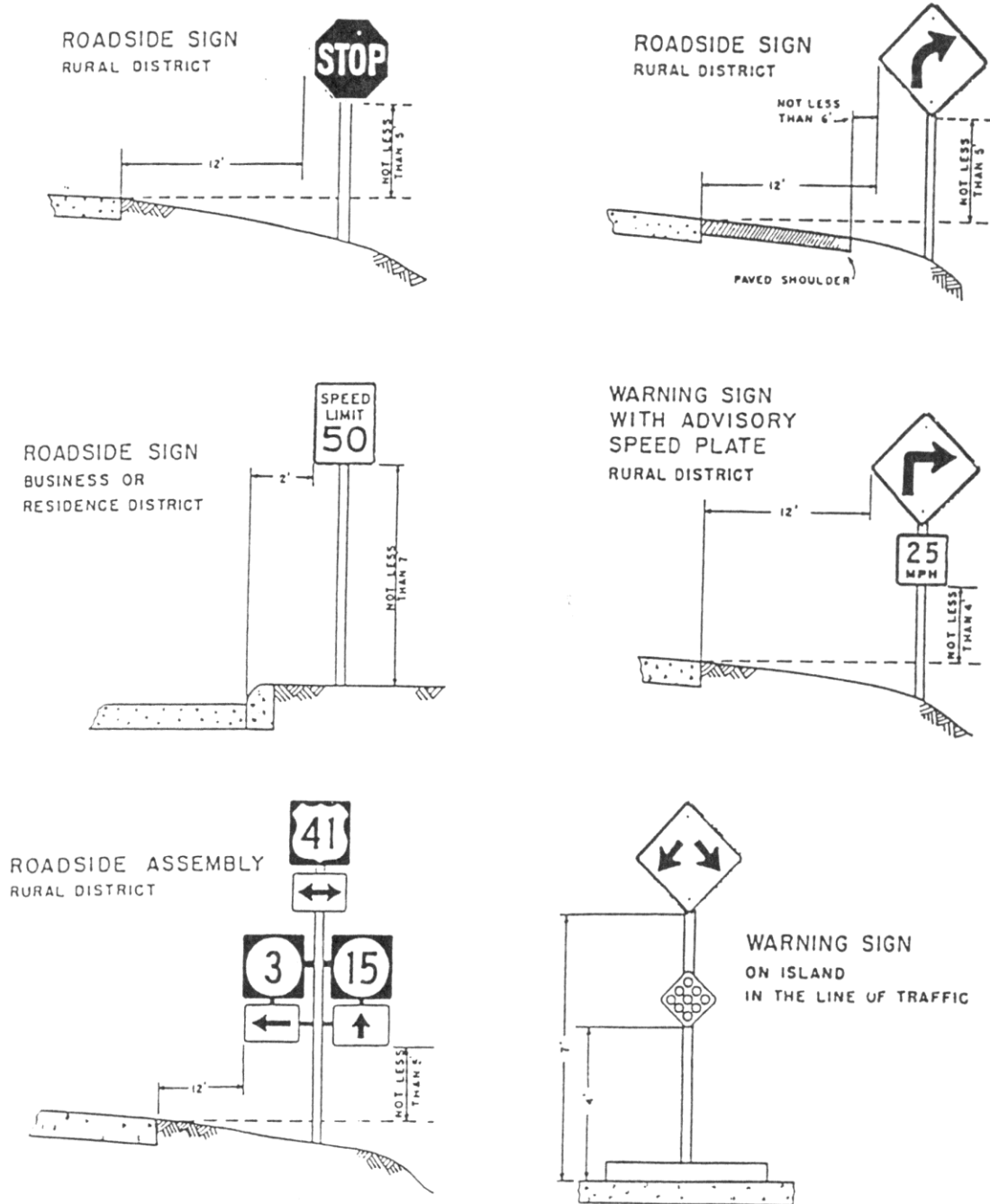
as:

Crown grade .02'/ft.

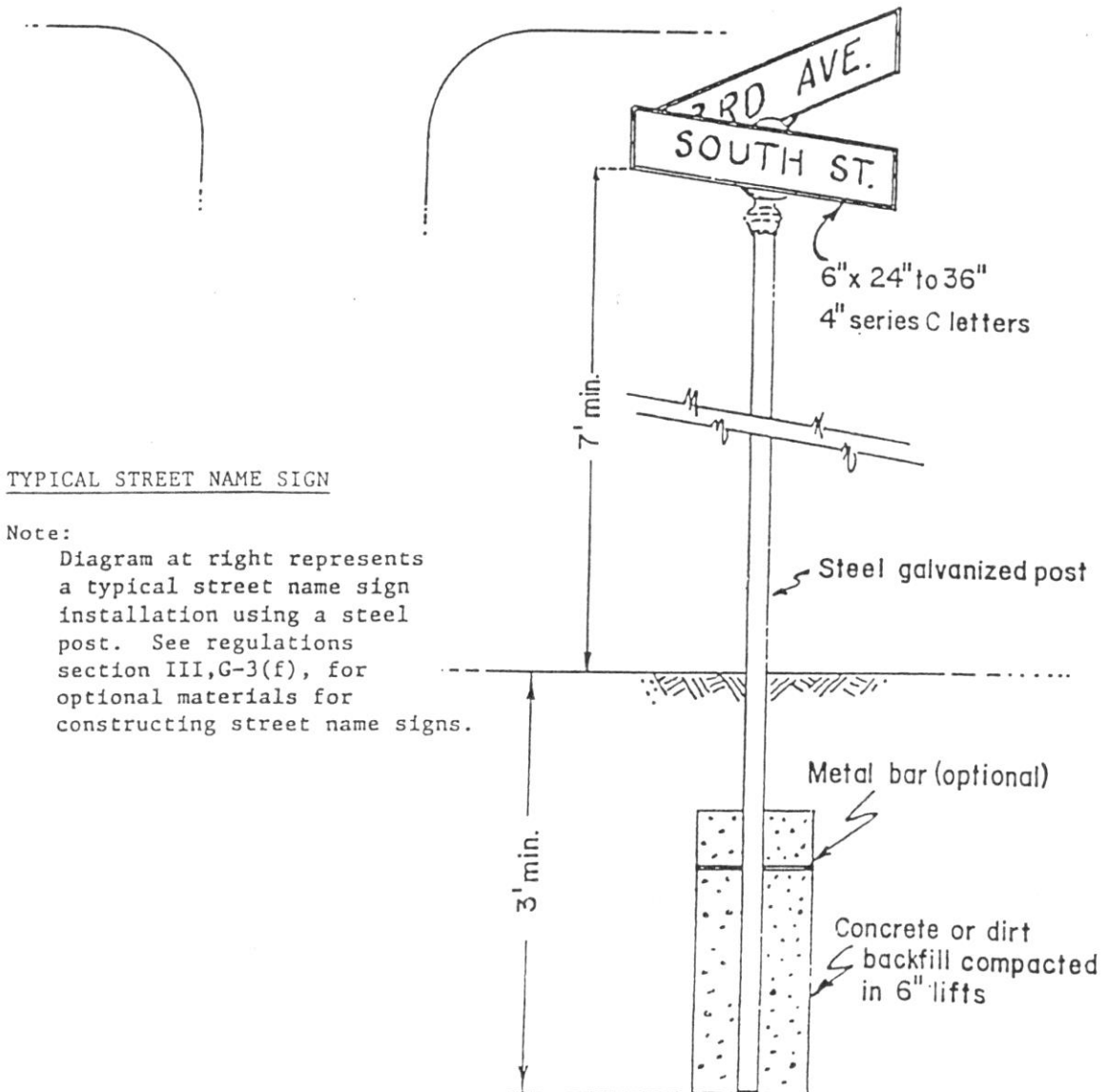
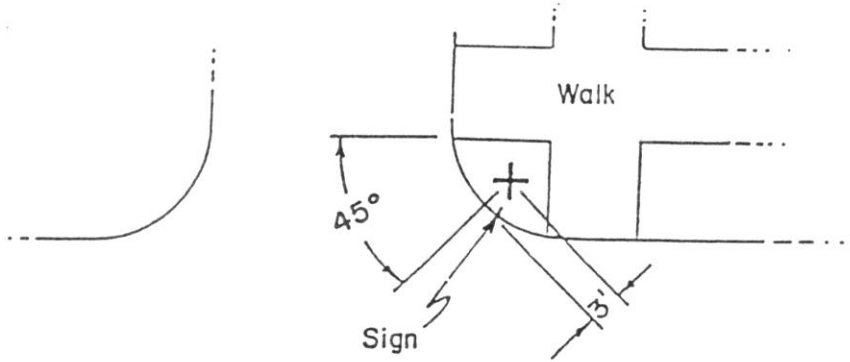
Superelevated where appropriate

FIGURE 4

Traffic Control Sign Location



STREET NAME SIGN LOCATION-Typical Residential



TYPICAL STREET NAME SIGN

Note:
 Diagram at right represents a typical street name sign installation using a steel post. See regulations section III,G-3(f), for optional materials for constructing street name signs.

TABLE 1: ROAD DESIGN STANDARDS FOR SUBDIVISIONS

<u>Minimum Design Standards</u>	<u>Minor Collector</u>	<u>Local Road</u>
1. Minimum right-of-way width	60 ft.	
a. level terrain		50 ft.
b. hilly terrain		60 ft.
2. Minimum roadway width ¹	24 ft.	20 ft.
3. Minimum curb radius or edge of pavement at intersections (See Figure 1)	25 ft.	15 ft.
4. Maximum road grades ²	8%	9%
5. Approaches onto Public Roads		
a. minimum sight distance	200 ft.	200 ft.
b. minimum width	35 ft.	30 ft.
c. maximum grade for 50'	5%	5%
d. minimum grade for 50'	1%	1%
6. Curvature ³		
a. design speed	30 mph	20 mph
b. maximum curve	23	53.5
c. minimum radius	249 ft.	107 ft.
7. Cul-de-sacs/Turnarounds (see Figure 1)		
a. maximum road length		800 ft.
b. cul-de-sac: minimum outside right-of-way radius	-	40 ft.
c. cul-de-sac: minimum outside roadway radius	-	35 ft.
d. "T" " " turnaround: backup lengths (2 required)		30 ft. ea.
e. "T" turnaround: inside turning radius	-	26 ft.
f. "T" turnaround: outside turning radius	-	38 ft.
8. New bridges ⁴		
a. curb-to-curb widths ⁵	26 ft	24 ft.
b. design load capacity	HS-20-44	HS-20-44
c. vertical clearance	14.5 ft	14.5 ft.

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

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

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

4 Bridges shall be designed and constructed in accordance with any adopted Sweet Grass County Bridge Standard.

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

6.1.10 Drainage Facilities

- a) A complete grading and drainage plan shall be submitted for subdivisions requiring public improvements or new roads. Storm drainage design shall be performed in accordance with the MDEQ Standards for Subdivision Storm Drainage. Drainage improvements shall accommodate potential runoff from the entire upstream drainage area and shall be designed to prevent increases in downstream flooding. The use of control methods such as retention or detention ponds, and/or the construction of offsite drainage improvements to mitigate impacts of the proposed development may be required by the governing body.
- b) The grading and drainage plan shall include profiles and cross sections of proposed grades of new streets, roads, bridges, storm drainage ditches, culverts and other drainage improvements. Ground contours shall be provided with contour intervals of 2 feet where the average slope is under 10% and 5 foot contour intervals where the average slope is 10 % or greater. A USGS topographic map with 20 foot contour intervals may be used to show ground contours for minor subdivisions which are not within or planned for annexation into the City of Big Timber. The grading and drainage plan shall also include:
 - Information describing the ultimate destinations of storm runoff waters from the subdivision and the effect of the runoff on downslope drainage structures.
 - Rainfall records or hydrographs that were used to determine runoff quantities along with a description of the design procedures used to prepare the drainage plan.
 - A description of construction procedures, slope protection, rip rap and reseeding methods that may be used to minimize erosion.
- c. The drainage system and facilities required for any surface run-off affecting the subdivision is subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size must meet the minimum drainage standards of the Montana Department of Environmental Quality.
- d. Curbs and gutters or swales shall be required by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities.
- e. Culverts or bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards.
- f. Culverts or other drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas. The size of the culvert is calculated by computing the quantity of flow (acreage of watershed by average coefficient of runoff). The minimum grade is 0.5 percent and the maximum grade is 8 percent. Uses grade of existing channel wherever possible. A minimum of 1 foot of fill is required to cover culverts. Where this is not possible, a swale should be considered. All culverts shall be corrugated metal pipe 16 gauge or thicker or the equivalent. Annular pipe is preferred over spiral pipe. Wing walls or aprons on inlets and outlets shall be required on all culverts 24" in diameter or larger to prevent erosion. Other erosion control measures may be required as necessary.
- g. 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.
- h. Drainage systems shall not discharge into any sanitary sewer facility.
- i. Drainage systems must be designed and certified by a professional engineer.

- j. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat.

6.1.11 Sidewalks

Concrete or paved sidewalks may be a required subdivision improvement if the subdivision is or will be located within the City of Big Timber or is in an area which has an existing sidewalk network in place. An improvements agreement guaranteeing the completion of any required sidewalks shall be submitted which guarantees completion of the sidewalks within three years of recording the final plat. The governing body may accept a completed “Waiver of Right to Protest the Creation of a Special Improvement District” as an alternate method of providing financing for these sidewalk improvements.

6.1.12 Water Supply Systems

- a. The proposed method of supplying domestic water to each lot in the subdivision, regardless of lot size, must comply with the design standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.328 through 17.36.336, and 17.36.340 or as hereafter amended. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA. Before the governing body will approve final plats of subdivisions containing lots which are 20 acres or greater in size, the subdivision must be approved by the County Sanitarian.
- c. Any central water supply system must provide adequate and accessible water for fire protection.

6.1.13 Sewage Treatment Systems

- a. The proposed method of disposing of sewage from each lot in the subdivision, regardless of lot size, must comply with the design standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.312, 17.36.320 through 17.36.328 and 17.36.340 or as hereafter amended. By this reference these DEQ standards are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA. Before the governing body will approve final plats of subdivisions containing lots which are 20 acres or greater in size, the subdivision must be approved by the County Sanitarian.
- c. In areas deemed by the governing body to have existing or potentially high density development which are serviced by individual sewage disposal systems, the subdivider shall provide a waiver of right to protest participation in water quality studies for the area so that groundwater quality may be monitored as recommended by the governing body. The subdivider shall also provide a waiver of right to protest inclusion of the subdivision property in a rural special improvement district which would provide sewage disposal services. These waivers shall be shown on the face of the subdivision plat.

6.1.14 Solid Waste

- a. The proposed method of storing and disposing of solid waste generated within the subdivision must comply with the standards adopted by the Montana Department of Environmental Quality (DEQ) and contained in the Administrative Rules of Montana (ARM) 17.36.309. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. Before the governing body will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the Montana Department of Environmental Quality or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA. Before the governing body will approve final plats of subdivisions containing lots which are 20 acres or greater in size, the subdivision must be approved by the County Sanitarian.

6.1.15 Weed Control

In accordance with the Montana Noxious Weed Control Act, Title 7, MCA and the Sweet Grass County Weed Management Plan, the subdivider must demonstrate that noxious weeds are controlled and will continue to be controlled after the subdivision is approved. In order to comply with the Montana County Weed Control Act, Title 7, Chapter 22, Part 21, MCA, all proposed County subdivisions must enter into a weed management plan agreement with the Sweet Grass County Weed Board. Approval of the final plat will be contingent on an approved weed management plan on file with the Sweet Grass County Weed Department.

- A. County subdivision weed management plans require completion of application forms obtained from the Sweet Grass County Weed Control Department, a site map that will allow for inspection of the proposed development, and payment of the inspection fee prior to performance of the required inspection.
- B. Mitigation of any identified existing noxious weed species will be required as well as planned re-vegetation of any and all disturbed areas within the proposed subdivision.
- C. A subdivision improvements agreement may be required along with financial guarantees to ensure noxious weed control. Required financial guarantees shall have a minimum duration of three years.
- D. Subdivision covenants will require lot owners to adhere to the terms and conditions of any approved weed management plan, and home owners' association documents must enable the charge of fees or liens to enforce the terms of the weed control measures.
- E. After subdivision approval, if the County Noxious Weed Coordinator determines that the property owners within the subdivision are not adequately meeting the requirements for weed control, the Weed Coordinator may take the necessary action for weed control. The cost of such action may be levied against the real property within the subdivision and may be foreclosed in any matter allowed by law. This authority runs with the land and will be stipulated as such in the Sweet Grass County Weed Management Plan.

6.1.16 Utilities

a. Easements

- 1) The subdivider must provide adequate and appropriate easements for the construction of utilities within the subdivision. The subdivider must bring utilities within the subdivision boundary. 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.

- 2) Utility easements must be 20 feet wide unless otherwise specified by a utility company or governing body.
- 3) When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, local or state highway department.
- 4) In addition to showing the location of the utility easement on the plat with dashed lines, the following statement must be on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever. Those persons or agencies utilizing this easement shall notify the local governing body prior to installation of a utility and shall abide by the requirements of Section 7-22-2152, MCA."

2019 MCA Reference:

7-22-2152. Revegetation of rights-of-way and areas that have potential for noxious weed infestation. (1) Any person or state agency proposing a mine, a major facility under Title 75, chapter 20, an electric, communication, gas, or liquid transmission line, a solid waste facility, a highway or road, a subdivision, a commercial, industrial, or government development, or any other development that needs state or local approval and that results in the potential for noxious weed infestation within a district shall notify the board at least 15 days prior to the activity.

(2) Whenever any person or agency constructs a road, an irrigation or drainage ditch, a pipeline, an electric, communication, gas, or liquid transmission line, or any other development on an easement or right-of-way, the board shall require that the areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3) (a) The person or agency committing the action shall submit to the board a written plan specifying the methods to be used to accomplish revegetation at least 15 days prior to the activity. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. The activity for which notice is given may not occur until the plan is approved by the board and signed by the presiding officer of the board and by the person or a representative of the agency responsible for the action. The signed plan constitutes a binding agreement between the board and the person or agency. The plan must be approved, with revisions if necessary, within 10 days of receipt by the board.

b. Installation

- 1) Power and phone utilities shall be installed to each lot within the subdivision prior to filing the final plat unless otherwise recommended by the Planning Board and authorized, in writing, by the governing body.
- 2) New utilities within the subdivision must be placed underground, unless overhead installation is recommended by the Planning Board and approved by the governing body at the time the governing body approves the subdivision application. Overhead utilities will only be considered where the terrain and the topography is not suitable for buried utilities. Underground utilities, if placed in the street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Such underground facilities must be installed after the street has been brought to grade and before it is surfaced, to eliminate so far as practicable the necessity for disturbing such surfacing for the connection of individual services.
- 3) New overhead utility lines within the subdivision, if approved by the governing body, must be located at the rear property line, unless otherwise authorized by the governing body.
- 4) Utility facilities must be designed by utility firms in cooperation with the subdivider, subject, however, to all applicable laws and all rules and regulations of any appropriate regulatory

authority having jurisdiction over such facilities.

6.1.17 Water Course and Irrigation Easements

- a. Where a subdivision is traversed by a drainage way, channel, ditch, or where other ditch facilities such as a headgate or diversion structure are located within or near the subdivision, easements may be required at a sufficient width to allow for maintenance. Easements shall also be shown on the face of the plat for known existing access routes to agricultural water user facilities located within or near the subdivision.
- b. The subdivider shall establish within the subdivision ditch easements in accordance with requirements set out in 76-3-504(1)(k), MCA. The following statement shall be shown on the face of the plat along any required ditch easement, unless a specific ditch easement is provided by existing documentation or 76-3-504, MCA;

“Ditch easement width is as required for maintenance, repair and use”

6.1.18 Disposition of Water Rights

The subdivider shall comply with the provisions of 76-3-504(1)(i), MCA in reserving or allocating water rights related to the subdivision.

2019 MCA Reference: 76-3-504 when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

- (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
- (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- (iii) reserve and sever all surface water rights from the land;
- (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:
 - (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:
 - (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may

continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

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

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

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

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

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

6.1.19 Park Land

The subdivider shall meet park dedication requirements as specified under 76-3-621, MCA.

2019 MCA Reference

76-3-621 Park dedication requirement. (1) Except as provided in [76-3-509](#) or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

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

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

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

- (b) subdivision into parcels that are all nonresidential;
- (c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums;
- (d) a subdivision in which only one additional parcel is created; or
- (e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in [76-3-609\(2\)](#).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in [76-3-609\(3\)](#); or

(ii) a first minor subdivision from a tract of record as described in [76-3-609\(2\)](#) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

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

(10) For the purposes of this section:

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

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

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

6.1.20 Fire Protection

Subdivisions shall 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.

6.1.20.1 Subdivider obtains a BTVFD Report of Fire Protection Review

A Report of the Big Timber Volunteer Fire Department (BTVFD) Fire Protection Review shall be obtained by the subdivider prior to submitting an application for subdivisions to be located outside the Big Timber city limits. The subdivider shall request this report directly from the BTVFD. The Planning Office will then be copied with any correspondence and report from the BTVFD's review and inspection. A fee will be charged to defray plan review and inspection expenses incurred by the BTVFD. The fee shall be paid when the subdivider submits its subdivision application in accordance with the Fee Schedule listed in Appendix L. The purpose of this report is to investigate whether additional fire protection requirements other than those required by this section are recommended by the BTVFD due to access or other conditions related to the location and design of the subdivision. The minimum requirements for fire protection in subdivisions are listed below.

6.1.20.2 Minimum Requirements

Subdivisions within the City of Big Timber:

Subdivisions located within the City of Big Timber shall meet requirements specified in the Standards for Public Works Improvements for the City of Big Timber.

Subdivision located outside the City of Big Timber:

Minimum requirements for fire water supply facilities for subdivisions located outside the City of Big Timber are:

- 1) A subdivision containing any lots under 40 acres in size which is either a subsequent one-lot subdivision or a subdivision containing two or more lots shall provide one of the following:
 - i. A water supply either on-site or within two miles of the exterior boundary of the subdivision, available year round, and capable of maintaining a minimum flow of 250 GPM for two hours for major subdivisions and for 20 minutes for a minor subdivision. Examples of suitable water supplies include streams, lakes, ponds, or springs which have historically been capable of providing the flows required by this section, or, supply from the City of Big Timber if authorized by the City of Big Timber. New ponds may also be

constructed for this purpose if all permitting requirements are met and a sufficient water supply is available. These water supplies shall have access routes and landings for fire department trucks which allow reach to the water flows within distances that the fire department pumps are capable of drawing from. **Or;**

- ii. A water supply with approved dry-hydrant type fittings with a minimum capacity as follows:
 - A. *One 6,000 gallon supply for a subdivision with one to five lots,*
 - B. *One 10,000 gallon supply for a subdivision with six to 10 lots,*
 - C. *One 15,000 gallon supply for subdivisions with 11 to 20 lots,*
 - D. *One 30,000 gallon supply for subdivisions with more than 20 lots, **or;***
 - iii. A Fire Protection Services Fee of \$2,500 per lot, which will be dedicated to the improvement of the firefighting capability of the county.
- 2) The installation of a fire water supply within or for a subdivision shall be tested and approved by the BTVFD prior to filing the final plat.
 - 3) Efficient access for firefighting equipment shall be provided to and within the subdivision.
 - 4) Fire water supply tank installations installed to meet the requirements of 2.ii shall be designed by a licensed engineer and shall have a dedicated fill source capable of maintaining the tank as full. Tanks under 10,000 gallons in size shall be fully buried and at least one third of larger tanks shall be placed below grade to insure live water supply. Supply capacities may be furnished as a combination of tanks as long as individual tanks are not smaller than 5,000 gallons in size and the design and arrangement are approved by the governing body. Tanks shall be designed for a minimum 30-year life and provisions for replacement or maintenance shall be included in the Homeowners' Association bylaws or covenants. The inlet and outlet of tanks shall include freeze protection measures if necessary. Necessary easements for access routes to tank inlets and outlets shall be defined on the final plat.
 - 5) New subdivisions with an exterior boundary within two miles from the exterior boundary of an existing subdivision which has a fire water supply or tank, may enter into an agreement with that existing subdivision to utilize its fire water supply system. If subdivisions combine to use a common tank, the combined number of lots for the subdivisions shall not exceed the maximum number of lots specified above in 2.ii of this section, *i.e. only five lots total may claim coverage from a 6,000 gallon tank.* The agreement for joint usage of a fire water supply by a new subdivision must be prepared by an attorney and in a format approved by the governing body. All titleholders to the existing fire water supply system, including access routes, shall be properly represented by the agreement. The agreement shall include provisions that require the governing body's approval for any amendments to the agreement. The agreement shall be filed with the final plat and shall be incorporated into the covenants and bylaws of the subdivision's Homeowners' Association.

- 6) A Homeowners' Association shall be required for all subdivisions required to have a fire water supply system or utilizing a supply system from another subdivision. The bylaws shall assign the responsibility of maintaining the subdivision's fire water supply system to the Homeowners Association. Covenants or bylaws shall include provisions for annual inspection of the fire water supply system and for assessment of fees to property owners within the subdivision which will be used to maintain the system and access to it.
- 7) All subdividers shall submit a "Waiver of Right to Protest" form for the purpose of providing inclusion of the subdivision property in any future Rural Special Improvement District for Fire Protection Services and Facilities that may be created by Sweet Grass County. This "Waiver of Right to Protest" form shall be provided with the final plat application.

6.1.21 Additional Special Standards for Subdivisions Proposed in Areas of High Fire Hazard

High fire hazard areas include heads of draws, excessive slopes, dense forest growth or other hazardous wildfire components. For subdivisions proposed in areas subject to high wildfire hazard as determined by the local fire protection authority, U.S. Forest Service or the Forestry Division of the Montana Department of Lands, the following standards apply:

- a. At least two entrance-exit roads must be provided to assure more than one escape route for residents and access routes by fire fighting vehicles. Road right-of-way must be cleared of slash. Bridges must be built to meet the minimum requirements required by the County Road Supervisor in the Sweet Grass County Bridge Standards.
- b. Building sites must be prohibited on slopes greater than 25 percent and 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).
- c. 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.
- d. A Fire Protection and Control Plan shall be required for all subdivision locations deemed as within an area of high fire potential by the Big Timber Volunteer Fire Department. The Fire Protection and Control Plan must be submitted with the subdivision application and shall include the following items:
 - i. An analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
 - ii. A map showing the areas that are to be cleared of dead, dying or severely diseased vegetation;
 - iii. A map of the areas that are to be thinned to reduce the interlocking canopy of trees;
 - iv. The identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.
- e. Subdivisions which are required to submit a Fire Protection and Control Plan shall be required to create a Homeowners' Association and submit bylaws and covenants which will assign responsibility to maintain provisions included in the Fire Protection and Control Plan. The covenants shall also include requirements for home construction in accordance with the commended guidelines included in the "Fire Protection Guidelines for Wildland Residential Interface Development", published by the Montana Department of State Lands (now the Montana

Department of Natural Resource Conservation, Fire Prevention Division).

6.2 Common Property and Designated Open Space Property

Subdivision proposals containing designated open space areas or parks shall submit measures to be implemented to maintain the quality of the open space or park. Subdivisions which include common property or facilities shall have a property owners' association which meets the requirements of these regulations or an alternate agreement approved by the governing body.

6.3 Property Owner Associations Bylaws and Covenants

- a) If a Property Owners' Association is proposed by the subdivider in the subdivision application, required by these regulations or required as a condition of approval intended to reduce the impact of a subdivision with regard to the Primary Review Criteria listed in Chapter 4 of these regulations, the bylaws and covenants for that Property Owners' Association shall be prepared by an attorney qualified to perform such duties.
- b) The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, contain the following language: This (These) covenant(s) may not be repealed or amended without the prior written consent of the (name of governing body).
- c) The governing body may require that restrictive covenants it has required as a condition of plat approval contain the following language: "The (name of governing body) is a party to this restrictive covenant and may enforce its terms."
- d) If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
 - i) Formation of a property owners' association concurrently with the filing of the final subdivision plat;
 - ii) Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
 - iii) Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
 - iv) Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
 - v) Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
 - vi) Adjustment of assessments to meet changing needs;
 - vii) Method of enforcing weed control measures, including assessments and levies;
 - viii) Means of enforcing the covenants, and of receiving and processing complaints;
 - ix) Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
 - x) Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

6.4 Public Improvements Agreement; Guaranty

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 maintenance of all such improvements. A model improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing the agreements, and suggested conditions for maintenance are provided in the Appendices.

7 SUBDIVISIONS CREATED BY RENT OR LEASE OF LANDS OR MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES AND CONDOMINIMUMS

7.1 Procedures for Review

7.1.1 Definition

A subdivision created by rent or lease, including a mobile home or recreational vehicle park, or condominium, is any tract of land divided by renting or leasing portions thereof. The underlying fee title is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common).

Subdivisions for Rent or Lease do not include Buildings for Lease or Rent (BLRs), which are governed by separate procedures as adopted in the Sweet Grass County BLR regulations.

7.1.2 Exemptions

The Montana Subdivision and Platting Act and these regulations do not apply to rent or lease arrangements described below:

- a. Lease or rent agreements for farming and agricultural purposes, including camp sites or housing units provided by an employer for persons who are actively employed to perform agricultural duties on a ranch or farm. (76-3-201, MCA). These may be governed by Building for Rent or Lease regulations.
- b. Lease or rent agreements for rights-of-way or utility sites including:
 - i. Cell tower lease agreements provided that no buildings are part of the lease.
 - ii. Wind tower lease agreements, provided that no buildings are part of the lease.

Pursuant to Federal law, a local government may not deny, and shall approve, any eligible facilities request for a modification on an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

- c. The lease or rent of property for the purpose of a movie production.
- d. Lease or rent agreements that create interests in oil, gas, minerals, or water, or their development, including associated facilities construction if exempt as a utility site.
- e. Rent or lease or other fee arrangements for residential use of private land for activities such as hunting, fishing and hiking. Rent or lease of buildings may fall under Sweet Grass County BLR regulations.

7.1.3 Review

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased. The subdivider shall submit a completed application for the proposed development in accordance with the requirements of Chapter 1 through 6 of these regulations. Subdivisions created by rent or lease shall be reviewed as described in Chapters 1

through 6 of these regulations.

7.1.4 Improvements

Before any portion of a rental or lease subdivision may be rented or leased the subdivider shall have installed all required improvements. Preliminary plans, profiles, tentative grades and specifications for proposed improvements shall be submitted to the governing body for its approval prior to the construction of improvements. The governing body may provide for inspection of all required improvements in order to assure conformance with the approved construction plans and specifications. If buildings are part of the rent or lease of land, then the applicant must comply with the Sweet Grass County BLR regulations, if applicable.

7.1.5 Final Plan Review and Approval

Upon completion of all required improvements and upon meeting the requirements of any conditions of preliminary approval for the subdivision, the subdivider shall submit a Final Plan to the Subdivision Administrator for review. The plan shall show the lot layout and the typical location of the mobile home, recreational vehicle, or other unit on the lot. The plan will be reviewed to assure that it conforms to the approved preliminary plan and then submitted to the governing body for approval. The approved plan shall be maintained in the office of the county clerk and recorder.

7.1.6 DPHHS License

Mobile home and recreational vehicle parks are required to be licensed by the Montana Department of Environmental Quality under the provision of Title 50, Chapter 52, MCA. The governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA. Mobile home and RV Parks are reviewed as major subdivisions.

7.2 Design Standards for Subdivisions Lots Created by Rent or Lease

Subdivisions created by rent or lease must comply with the provisions of Chapter 6, Design and Improvements Standards. In addition, the following standards apply to each type of development, as set forth below in Sections 7, 8 and 9:

7.2.1 MOBILE HOME PARK STANDARDS

7.2.1.1 *Miscellaneous Provisions*

The governing body may require provision for:

- a. Storage facilities on the lot or in compounds located within a reasonable distance.
- b. A central area for storage or parking of boats, trailers, or other recreational vehicles.
- c. Landscaping or fencing to serve as a buffer between the development and adjacent properties.
- d. An off-street area for mail delivery.
- e. Street lighting.

7.2.1.2 *Mobile Home Spaces*

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

- b) All mobile homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
- c) The mobile home pad must be located at least 10 feet from the street that serves it.
- d) The size of the mobile home pad must be suitable for the general market to be served and must fit the dimensions of manufactured homes anticipated.
- e) A mobile home pad may not occupy more than one-third (1/3) of the area of its lot. 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 lot.
- f) The governing body may require that the mobile home stand be improved to provide adequate support for the placement and tie-down of the mobile home.
- g) No mobile home or its attached structures, such as awning or carports, may be located within 20 feet of any other mobile home or its attached structures.
- h) No detached structure, such as a storage shed, may be located within five feet of any mobile home or its attached structures.
- i) A minimum of two off-street parking spaces must be provided on or adjacent to each mobile home lot. The driveway must be located to allow for convenient access to the mobile home, and be a minimum of 10 feet wide.
- j) One guest parking space for each ten mobile home lots must be provided. Group parking may be provided.
- k) The limits of each mobile home lot must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of lot limits on the ground must be approximately the same as shown on the acceptable plans. The degree of accuracy obtainable with an engineer's scale and a tape is acceptable. Precise engineering of lot limits is not required either on the plans or on the ground.
- l) Each mobile home must be skirted within 60 working days after said mobile home is moved upon a lot within the mobile home park. The skirting must be of a fire-resistant material similar to that of the mobile home exterior.

7.2.1.3 Streets

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

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile home park must be designed to provide safe traffic circulation and parking.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

7.2.1.4 Electrical Systems

Electrical system installation 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 installations must be designed and constructed in accordance with the applicable state electrical standards.

7.2.1.5 Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the appropriate provisions of the "National Fuel Gas Code" (NFPA Pamphlet

54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).

- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- c. Each mobile home lot must have an accessible, listed gas shutoff installed. Such valve must not be located under a mobile home. Whenever the mobile home lot outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

7.2.2. Recreational Vehicle Park Standards

7.2.1.1 *Recreational Vehicle Spaces*

- a. Spaces in recreational vehicle parks must be arranged to permit safe parking and removal of recreational vehicles.
- b. 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.
- c. All recreational vehicle spaces must be located at least 25 feet from a public street or highway right-of-way.
- d. The density must not exceed 25 recreational vehicle spaces per acre of gross site area.

7.2.1.2 *Streets*

- a. Streets must be designed to provide safe access to public roads, including approaches with sufficient width to allow safe turning onto public roads.
- b. Roads within the recreational vehicle park must be designed to provide safe parking and removal of recreational vehicles, and safe circulation within the park.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

8 PLANNED UNIT DEVELOPMENTS

8.1 Purpose

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider 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.”

8.2 Designation as PUD

8.2.1 Obtain Designation

The development must be in compliance with PUD provisions in local zoning regulation. Where such provisions do not exist, the proposed subdivision must be recommended for designation as a PUD by the planning board and approved for the designation by the governing body before being reviewed under this Section. To obtain designation of a subdivision as a PUD, the subdivider, before submitting a subdivision application, shall submit to the subdivision administrator, the following:

- a. A written request that the plan of the proposed subdivision is to be reviewed as a PUD
- b. A layout plan showing the proposed location and use of lots and structures, and the location and number of parking spaces, if appropriate
- c. A sketch plan of the proposed subdivision, containing all information requested in Section 3.3, Preapplication Procedures
- d. A description of open space, recreational parks and facilities, roads and other facilities proposed to be under common ownership
- e. Proposed restrictive covenants, if any
- f. A description of proposed forms for property ownership within the development
- g. A statement describing measures to be taken to assure permanence and maintenance of open space, parks and other facilities to be held in common ownership
- h. A schedule showing street and utility improvement completion dates
- i. A description of all proposed variances from Chapter 6, Design and Improvement Standards
- j. Any additional reasonable information that the Subdivision Administrator may require

8.2.2 Criteria for Designation

The planning board shall review the information and proposed plan and make a recommendation on whether the subdivision’s development plan promotes the clustering of individual building sites, conforms to the definition and intent of this section, and does one or more of the following:

- Preserves to the maximum extent possible the natural characteristics of the land including topography, vegetation, streams and other bodies of water.
- Provides economies in the provision of roads and other public improvements

- Preserves productive agricultural land, open space, or riparian areas
- Protects areas of important wildlife habitat or important historic sites or structures
- Provides developed facilities for recreational purposes.

Upon receiving a recommendation from the planning board, the local governing body shall then consider whether the subdivision should be designated as a PUD by evaluating the subdivision proposal based on the above criteria.

8.2.3 Notification of Subdivider

Within 10 days of the decision by the local governing body, the local governing body shall notify the subdivider in writing of its decision, stating that the plan has or has not been designated a PUD. If designation as a PUD is disapproved, the reasons for disapproval shall be stated in the letter.

8.2.4 Designation is not Approval

Designation as a PUD does not constitute approval of the specific details or design variances proposed by the plan.

8.3 Procedures

If the governing body authorizes designation of the development plan as a PUD, the subdivision application may then be submitted for review as a PUD subdivision. Submittal must comply with requirements and procedures contained in Chapters 1 through 6.

8.4 Standards

8.4.1 Design Standards

PUD's must comply with the standards contained in Chapter 6 DESIGN AND IMPROVEMENT STANDARDS FOR SUBDIVISIONS, except that the governing body may modify the design and improvement standards contained in 6.1.6 Lots, 6.1.7 Blocks, 6.1.8 Streets, Roads, Bridges and Approaches Within the Subdivision, and 6.1.19 Park Land upon request of the subdivider where the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air and open space where such standards are not practical or reasonable in respect to the overall P.U.D. subdivision design. In such cases, an application for a variance under Section 10.2 ,Variances, contained in these regulations, is not required.

8.4.2 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.

8.4.3 Park Land

The governing body shall waive park dedication or cash in lieu requirements when the PUD subdivision proposal provides land permanently set aside for park and recreation uses sufficient to meet the needs of the persons who will ultimately reside in the development, and; the area of the land and any

improvements set aside for park and recreational purposes equals or exceeds the area of dedication required under Section 6.1.19 of these regulations and 76-3-621(1), MCA.

9 CONDOMINIUMS

9.1 Procedures

All condominium developments are subdivisions subject to the terms of the Montana Subdivision and Platting Act as follows:

9.1.1 Exemption from Review

The construction of condominium buildings or installation of related public improvements is not subject to subdivision review and approval procedures if the condominiums or improvements are to be constructed in a subdivision approved and filed after July 1, 1973, and if the approval of the subdivision was based on the anticipated construction of the condominiums and improvements.

2019 MCA Reference: 76-4-111. Exemption for certain condominiums, townhomes, and townhouses.
76-4-111. Exemption for certain condominiums, townhomes, and townhouses. (1) Condominiums, townhomes, or townhouses, as those terms are defined in [70-23-102](#), constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part. (2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension.

9.1.2 CONDOMINIUMS, TOWNHOMES, OR TOWNHOUSES

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

1. If no division of land will be created by a condominium, townhome, or townhouse subdivision, the development must be reviewed under the procedures contained in the Sweet Grass County Building for Lease or Rent regulations, available through the Planning Office.
2. If a proposed condominium, townhome, or townhouse development will involve a division of land, the subdivision must be reviewed under the procedures contained in these subdivision regulations for a major or minor subdivision.
3. Condominium, townhome, or townhouse developments must comply with applicable standards contained herein (Design and Improvement Standards).

9.1.3 Review Where Land Will Not be Divided

If no division of land is created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Chapter 7, Procedures for Subdivisions Created by Rent or Lease. Final

approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement

Condominium developments shall meet the minimum standards of the MDEQ, adopted pursuant to sections 76-4-101 through 76-4-128, MCA.

9.1.4 Condominium Subdivisions Involving Land Divisions

Where divisions of land in a condominium subdivision are proposed, a subdivision application shall be submitted and reviewed as required by these regulations.

9.2 Standards

9.2.1 Design Standards

Condominium developments shall comply with those standards contained in Chapter 6, Design and Improvement Standards.

9.2.2 Additional Standards

Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA and any regulations adopted pursuant thereto.

The subdivider shall comply with all other standards and requirements of these Regulation and other applicable local or state regulations. Condominium applications shall show the proposed location of buildings, parking and internal access.

10 ADMINISTRATIVE PROVISIONS

10.1 Subdivision Review Fees

The Subdivision Administrator shall collect fees as listed in Appendix L. The purpose of these fees are to cover the costs of reviewing subdivision applications and final plats, advertising, holding public hearings, and other expenses related to the processing of subdivision applications. The subdivider shall pay a non-refundable fee at the time of application for review of a subdivision application or a final plat review application. Subdivision fees shall be payable to Sweet Grass County at the rates shown in Appendix L.

10.2 Variances

10.2.1 Variances Authorized

As authorized under 76-3-506, MCA, the governing body may grant variances from Chapter 6, Design and Improvement Standards, of these regulations when, because of the particular physical surroundings, shape, or topographical conditions of a specific property, or because of other factors unique to the property or the subdivision proposal, strict compliance would result in undue hardship and when it would not be essential to the public welfare. Such variances must not have the effect of nullifying the intent and purpose of these regulations. The governing body shall not approve variances unless it makes findings based upon the evidence in each specific case that:

- a. The granting of the variance will not pose a significant:
 - i. threat to the natural environment;
 - ii. detriment to the public health, safety, or general welfare, or
 - iii. potential injury to other adjoining properties;
- b. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, or because of other factors unique to the property or the subdivision proposal (that are not self-imposed), an undue hardship to the owner would result if the strict letter of these regulations is enforced;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations, unless a variance under those regulations is granted by the governing body pursuant to the proper zoning variance procedure.

2019 MCA Reference: Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in [76-3-609](#)(2) is not subject to the public hearing requirement of this section

10.2.2 Variances from Floodway Provisions Not Authorized

The governing body may 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.

10.2.3 Procedure

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

10.2.4 Conditions

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

10.2.5 Statement of Facts

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

10.3 Amendment of The Sweet Grass County/ Big Timber Subdivision Regulations

Before the governing body amends these regulations it shall hold a public hearing and shall give public notice of its intent to amend these regulations and of the public hearing by publishing notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 days nor more than 30 days prior to the date of the hearing.

10.4 Administration

10.4.1 Enforcement

Except as provided in 76-3-303, MCA, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. 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.

10.4.2 Violation and Penalties

Any person, firm, corporation, or other entity that violates any of the provisions of the Montana Subdivision and Platting Act 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 Montana Subdivision and Platting Act or these regulations shall be deemed a separate and distinct offense.

10.4.3 Appeals

A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in 76-3-625, MCA.

2019 MCA Reference: 76-3-625, MCA Violations -- actions against governing body.

(1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days from the date of the written 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. The governing body's decision, based on the record as a whole, must be sustained unless the decision being challenged is arbitrary, capricious, or unlawful.

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

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

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

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

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

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

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.