

The following 2024 Amended City of Billings Subdivision Regulations were adopted under Ordinance #24-5896 on October 28, 2024. They were originally adopted under Ordinance #06-5359 on January 9, 2006, and also subsequently amended under City Ordinance #06-5380 on July 24, 2006, under City Ordinance #07-5399 on January 22, 2007, under Ordinance #11-5543 on October 11, 2011, under City Ordinance #12-5589 on October 22, 2012, and City Ordinance #14-5617 on January 13, 2014, and City Ordinance #15-5654 on July 27, 2015

City of Billings Subdivision Regulations

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CHAPTER 23

SUBDIVISION REGULATIONS

Article 23-100. GENERAL PROVISIONS.

Section 23-101. Title.

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

Section 23-102. Authority.

Authorization for these Regulations is contained in the Montana Subdivision and Platting Act (MSPA) (Title 76, Chapter 3, Montana Code Annotated (MCA)). The reviewing authority is the City-County Planning and Community Services Department.

Section 23-103. Purpose.

The purposes of these Regulations are to promote the public health, safety and general welfare of the citizens of the City of Billings by regulating the subdivision of land and to promote a vision for the development of the lands within the City for the best possible environment in which to enjoy life, experience natural features, raise a family, earn a living, conduct business, obtain an adequate education, have access to health care facilities, and to be adequately protected from crime and disasters.

These Regulations are intended to comply with Part 5 of the MSPA, and are intended to provide for:

- A. The orderly development of the jurisdictional area in accordance with adopted growth policies, neighborhood plans, motorized and non-motorized transportation plans, park plans, capital improvement plans, and other adopted policies and plans.
- B. The public health, safety and general welfare of existing and future residents by avoiding danger or injury by reason of natural hazard or the lack of drainage, access, emergency services or other public services.
- C. The coordination of roads within subdivided land with the existing and planned transportation network and avoid and minimize traffic congestion.
- D. The dedication of land for roadways and for public utility easements.
- E. Proper physical and legal road access, including obtaining of necessary easements and rights of way.

- F. The promotion of adequate open spaces for travel, light, air, and recreation.
- G. Adequate transportation, water, drainage, and sanitary facilities.
- H. The conservation of natural resources and development in harmony with the natural environment.
- I. The promotion of cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services.
- J. The efficient expenditure of public funds for the supply of public services.
- K. The standardization of making and filing of any plat for subdivided lands.
- L. The protection of the rights of all documented property owners affected by the proposed subdivision including water, mineral, and air.
- M. 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.

Section 23-104. Jurisdiction.

These Regulations govern the subdivision of land within the City of Billings. These Regulations do not cover the Town of Broadview, and the unincorporated areas of Yellowstone County, or the City of Laurel and the four and one-half (4 ½) mile Laurel Planning Jurisdiction as shown on the map filed with the Yellowstone County Clerk and Recorder's Office (see Appendix A for jurisdiction map).

If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the City and the County governing bodies (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to a municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports and other requirements, whenever possible (76-3-601(2)(d), MCA).

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

Section 23-105. Exemptions for Certain Divisions of Land.

The Montana Subdivision and Platting Act provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the method of disposition is adopted for the purpose of evading the requirements of Title 76, Chapter 3, MCA.

The procedures, criteria and requirements provided in Appendix B shall be used to review an exemption from subdivision review and to evaluate whether the division of land is for the purpose of evading the Montana Subdivision and Platting Act.

Section 23-106. Construction Timing.

The applicant or his/her contractors may not proceed with any construction work on a proposed subdivision, including grading and excavation relating to public improvements, until the governing body has given preliminary plat approval of the proposed subdivision plat. If improvements are initiated prior to final plat approval, the subdivider shall assume all risks and liability for error in improvement placement and the improvements must comply with the conditions and agreements of the preliminary plat approval.

Section 23-107. Transfers of Title.

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

- A. That under the terms of the contracts the purchasers of lots in the proposed subdivision make all payments to an escrow agent, which must be a bank, savings and loan association, or title/escrow company chartered to do business in the State of Montana;
- B. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder;
- C. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the County Clerk and Recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- D. That the County Treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and
- E. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the County Clerk and Recorder, title to the property cannot be transferred in any manner."

Section 23-108. Suitability of Land.

If the Yellowstone County Board of Planning after review, finds any portion of a parcel of land proposed to be subdivided unsuitable for subdivision because of potential hazards such as flooding, land-slides, steep slopes, rock falls, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, danger from fire or explosion or other features which may be detrimental to the health, safety, or general welfare of existing or future residents, they will not recommend approval of the subdivision unless the hazards can be eliminated or overcome through approved design and construction.

Section 23-109. Permission to Enter.

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

Section 23-110. Severability.

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

Section 23-111. Regulations in Effect.

Review and approval or disapproval of a subdivision under these Regulations may occur only under those Regulations in effect at the time an application for approval of a preliminary plat or an extension of preliminary plat approval is submitted to the governing body

Article 23-200. DEFINITIONS.

Section 23-201. Definitions.

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. 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 documented, adequate, and appropriate 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.

ACTIVE TRANSPORTATION PLAN: Refers to the current bike and trail master plan adopted by City Council.

ADJOINING PROPERTY OWNERS: Persons who are owners of record and/or owners under contract for deed of properties adjoining the land being proposed for subdivision platting.

AGRICULTURE: Montana Code Annotated definitions for “agriculture” and “agricultural” will apply as follows:

41-2-103, MCA. Definitions. As used in this part, the following definitions apply: (1) “Agriculture” means: (a) all aspects of farming, including the cultivation and tillage of the soil; (b)(i) dairying; and (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act [12 U.S.C. 1141j(g)]; (c) the raising of livestock, bees, fur-bearing animals, or poultry; and (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

81-8-701, MCA. Definitions. The following definitions apply: (1) “Agricultural and food product” includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

AGRICULTURAL WATER USER FACILITIES: Those facilities which convey water for agricultural land as defined in 15-7-202, MCA, or which provide water for the production of agricultural products as defined in 15-1-101, MCA, including, but not limited to, ditches, drains, pipes, and head gates.

AGRICULTURAL WATER USER: Persons and lands legally entitled to 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.

APPLICANT: The owner of land proposed for subdivision or the owner's legally designated representative for the purposes of submitting a request to subdivide (See SUBDIVIDER).

BLOCK: A group of lots, tracts or parcels within well-defined and fixed boundaries. Such boundaries may include streets, railroads, irrigation ditches, streams, platted lands or a combination thereof.

BOARD OF COUNTY COMMISSIONERS: The governing body for Yellowstone County, Montana.

BOULEVARD: An area of public right-of-way or private easement between the paved edge of the street or road and the private property line. The boulevard provides for the opportunity to separate vehicle traffic from pedestrian travel. Boulevards often have sidewalks in them and often are landscaped. A parkway median is a landscaped area located in the middle of the street or road.

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

CONSERVATION SUBDIVISION: A development in a rural setting that is characterized by compact lots and common open space, and where the natural features of land are maintained to the greatest extent possible.

CHECKPRINT: A paper copy of the final plat submitted by the subdivider for review of errors and omissions, and compliance with Administrative Rules of Montana and conditions of approval by staff prior to submitting the final plat on mylar.

CITY COUNCIL: The governing body for the City of Billings, Montana.

CLUSTER DEVELOPMENT: A subdivision of land with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped (76-3-103(2), MCA). (See Section 23-711 for example)

CONDOMINIUM: The ownership of single units with common elements located on property submitted to the provisions of 70-23-101, et seq., MCA. The term does not include townhome or townhouse.

COVENANT (DEED RESTRICTION): A limitation contained in a deed that restricts or regulates the use of the real property, and are not enforced by the governing body.

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

CITY-COUNTY PLANNING DIRECTOR: The Director of the Planning and Community Services Department or an authorized reviewing authority.

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

DRIVEWAY: A vehicular access serving no more than 2 lots or 5 dwelling units.

DWELLING UNIT: Any building or portion thereof providing complete, independent and permanent living facilities. A building designed exclusively for residential purposes, including single-unit, two-unit, and multiple-unit dwellings, but not including hotels or motel units, bed and breakfast guest rooms, boarding or lodging houses, tourist homes, or travel trailers and/or vehicles.

EASEMENT: Authorization by a property owner for another to use the property for a specified purpose, in which the owner agrees not to build, or otherwise obstruct or interfere with the specified purpose.

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

EXPEDITED REVIEW FOR CERTAIN SUBDIVISIONS: A subdivision application, regardless of the number of lots, that meets the requirements of subsection 3 of MCA 76-3-623 is entitled to the expedited review process.

FLOOD: When water from any watercourse or drainage rises above the bank or moves outside the channel of that watercourse or drainage (76-5-103, MCA).

100-YEAR FLOOD: A flood magnitude expected to recur on the average of once every 100 years, or a flood magnitude which has a 1% chance of occurring in any given year (76-5-103, MCA).

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

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

LINEAR PARK: Corridors of protected open space managed for conservation and recreation purposes as designated by the governing body. They often follow natural land or water features and link nature reserves, parks, cultural features and historic sites with each other and with populated areas. These corridors may be privately or publicly owned.

GROWTH POLICY: The City of Billings Growth Policy and any version of this policy adopted by the Billings City Council pursuant to 76-1-601, MCA.

LOCAL SERVICES: Any and all services or facilities that local government entities are authorized to provide.

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

LOT MEASUREMENTS:

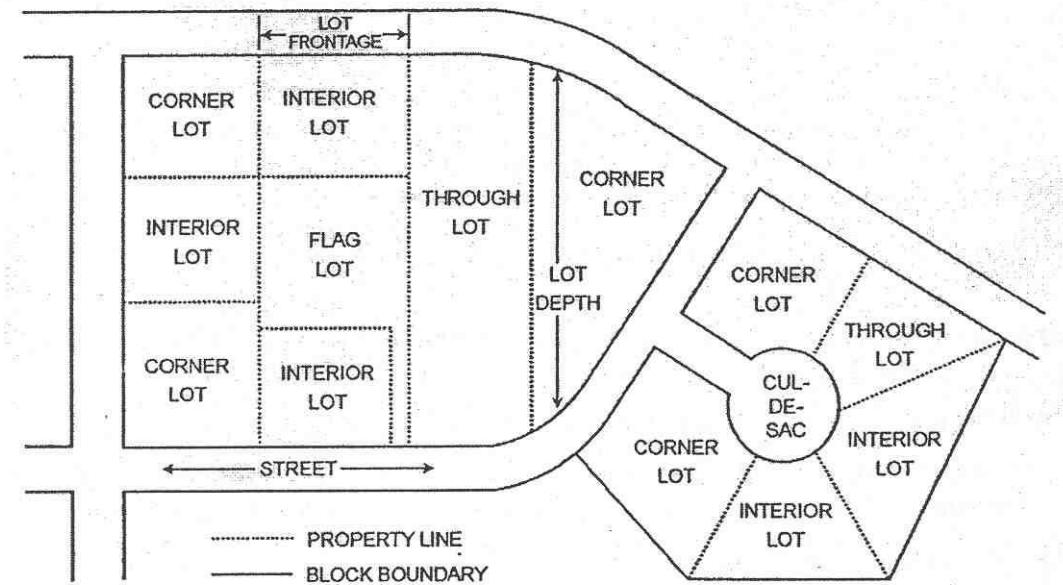
- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the lot line that fronts a public street right-of-way or public road easement where the lot usually has a driveway access.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way.

LOT TYPES: (See Figure 23.200.1)

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

MANUFACTURED HOME: A detached residential dwelling unit, constructed on a non-removable steel chassis or frame. Each transportable unit of a manufactured home has a red certification label on the exterior section and is built according to the Manufacture Home Construction and Safety Standards (HUD Code). A manufactured homes does not include a mobile home or house-trailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976. (See MCA 15-1-101(m)).

Figure 23.200.1. Lot Types



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

MANUFACTURED HOME PARK: A single parcel of land or a lot that is designed or used for temporary or permanent spaces for 2 or more manufactured homes where either the space for a manufactured home or a manufactured home itself is available to the general public for residential use.

MANUFACTURED HOME PAD: That area of a manufactured home space that has been prepared for the placement of a manufactured home.

MASTER PLAN (Overall Plan; Sequential Development): The plan of a subdivision designed for a single tract and proposed to be subdivided in various stages, phases or configurations.

MEDIAN: A raised divider made of dirt, concrete or other material located in the middle of a street or road between travel lanes that is often landscaped (See BOULEVARD).

MOBILE HOME OR TRAILER: See MANUFACTURED HOME.

MODULAR HOME: A dwelling unit constructed in accordance with the standards set forth in the International Residential/Building Code and bearing the insignia of the State of Montana, applicable to site-built homes, and composed of components assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

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

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

MULTI-MODAL TRAIL TYPES:

- a. Bike Lane: A portion of the roadway that has been designated by striping, signage, and pavement markings for the preferential or exclusive use of bicyclists. (NACTO)
- b. Buffered Bike Lane: Conventional bicycle lanes that are paired with a designated buffer space separating the bicycle lane from the adjacent motor vehicle travel lane and/or parking lane (NACTO).
- c. Cut-through: A linking trail through the end of a cul-de-sac or from street to street between lots within a subdivision. It can encourage diverse types of transportation. It can reduce travel time and distance for pedestrians and bicyclists to areas in and out of neighborhoods, thereby reducing vehicle trips. By increasing connectivity with cut-throughs, it can reduce the time it takes to get from point A to point B and promote mobility for people in the subdivision.
- d. Neighborhood Bikeway: A local street or series of contiguous street segments that have been modified to function as a through street for bicyclists, while discouraging through automobile travel. (AASHTO Guide for the Development of Bicycle Facilities 4th Edition)
- e. Neighborhood Trail: A paved path located outside of the right of way of between 7-9.9 feet in width.
- f. Separated Bike Lane: A separated bike lane is a facility for exclusive use by bicyclists that is located within or directly adjacent to the roadway and is physically separated from motor vehicle traffic. A separated bike lane can be configured for one- or two-way travel. (Small Town and Rural Design Guide)
- g. Shared Lane Markings (also known as sharrows): Road symbol used to indicate a shared lane environment for bicycles and automobiles. The shared lane marking is a pavement marking with a variety of uses to support a complete bikeway network; it is not a facility type and should not be considered a substitute for bike lanes or other separation treatments where these types of facilities are otherwise warranted or space permits. Sharrows consist of a double chevron and a bike symbol. The Manual on Uniform Traffic Control Devices (MUTCD) outlines guidance for shared lane markings in section 9C.07. (NACTO)
- h. Shared Use Path: a multi-use facility outside the traveled way and physically separated from motorized vehicular traffic by an open space or barrier and either within the right-of-way or within an independent alignment. Shared-use paths are used by pedestrians (including skaters, users of manual and motorized wheelchairs, and joggers), bicyclists, and other authorized motorized and non-motorized users. (AASHTO Guide for Pedestrian Facilities 2nd Edition)
- i. Sidewalk: The portion of a street that is between the curb lines or the lateral lines of a

roadway and the adjacent property lines and that is intended for use by pedestrians. Sidewalks are paved in concrete. (MCA)

j. Traffic Calming: Traffic Calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users and area residents (ITE)

NATURAL ENVIRONMENT: The physical conditions that exist within a given area, including land, air, water, minerals, plants, animals, and objects of aesthetic significance.

NO ACCESS EASEMENT: A line designated on a subdivision plat for the purpose of restricting vehicular access from a public right-of-way to a lot.

OPEN SPACE: Any land which is provided or preserved for park or recreational purposes as designated by the governing body; conservation of land or other natural resources; historic or scenic purposes; or assisting in the shaping of the character, direction, and timing of community development. Open space may be privately or publicly owned and shall designate through the plat or an easement whether or not the land is publicly accessible.

PARK: Land that is dedicated to the City through MCA 76-3-621 or acquired through a donation or purchase by the City and designated on a plat as a park. In order to be platted as a park the land must be owned by a public entity and public access is allowed. A park must be classified as defined by the City of Billings Comprehensive Parks Plan.

Private parkland dedication may be provided instead of public when it meets the requirements of 76-3-621 (1) a b d (6)(a)(ii).

PARKLAND AMENITIES: Amenities within a park allow passive or programmed space. Amenities will be considered if they add value to parkland. Below is a short, non-exclusive list of passive and active parkland amenities:

- Shade structure.
- Sensory playground equipment.
- Park benches and other park furnishings.
- Water play areas, splash pads.
- Picnic tables and trash cans.
- Challenge course.
- Slides, swings and ziplines.

PHASED DEVELOPMENT: Where a subdivision is platted in whole but developed in phases, a phasing plan shall be prepared and included in the Subdivision Improvement Agreement by the subdivider, and reviewed and approved by the City of Billings with the preliminary plat. Phased developments are further defined in MCA 76-3-103.

PLANNED NEIGHBORHOOD DEVELOPMENT (PND): See BMCC 27-800.

PLANNED UNIT DEVELOPMENT (PUD): A subdivision consisting of a planned mixture of land uses such as residential clusters, industrial parks, shopping centers, and/or

office building parks built in a prearranged relationship to each other and having open space and community facilities in common ownership or use (76-3-103(10), MCA).

PLANNING BOARD: The Yellowstone County Board of Planning.

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

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnishes a basis for review by a governing body.
- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the County Clerk and Recorder containing all elements and requirements set forth in these regulations and the Montana Subdivision and Platting Act (76-3, MCA).
- c. Amended Plat: The final drawing of any change to a filed platted subdivision.
- d. Exempt Plat: The final drawing of a plat that is exempt from subdivision review but subject to survey requirements in accordance with 76-3-201 and 76-3-207, MCA.

PUBLIC HEALTH AND SAFETY: A condition of optimal well-being, free from danger, risk, or injury for a community at large, a small class of persons or a specific individual.

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

PUBLIC ROAD OR STREET: A road, street or easement that has been dedicated for public use.

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

RECREATIONAL VEHICLE PARK: Any area or tract of land containing two (2) or more spaces that are available for rent to the general public for parking or placement of temporary recreational vehicles. This term does not include a parcel composed of individually platted lots.

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

REVIEWING AUTHORITY: City-County Planning Department.

STATE: The State of Montana.

STREET TYPES: For purposes of these regulations, street types are defined using the Institute

of Transportation Engineers Manual as follows:

- a. Alley: Minor rights-of-way used primarily for vehicular access to the back or side of properties that abut on and are otherwise served by public roads.
- b. Arterial: Any major carrier of traffic which generally terminates at both ends at a location that will produce more than 2,000 vehicles per day traffic, or upon which the nature of the traffic is such that more than 60% of the vehicles are using the street for mobility rather than land access. They are typically located no more than 1 mile apart.
 - 1. Principal Arterial: A street which serves the major centers of a metropolitan area, the highest traffic volume corridors, and the longest trip desires, and which carries a high proportion of the total urban area travel on a minimum of mileage.
 - 2. Minor Arterial: A street that interconnects with and augments the principal arterials, provides service to trips of moderate length at a lower level of travel mobility than principal arterials, and distributes travel to geographic areas smaller than those identified as principal arterials.
- c. Collector: A street that generally terminates at both ends at an arterial or collector but because of location, curvilinear design, or limited feeder area will not generally serve more than 2,000 vehicles per day, or the nature of the traffic is such that approximately 50% of the traffic is using the street for land access and 50% for mobility. They are typically located between arterial streets at no more than ½ -mile from an arterial street.
- d. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- e. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
- f. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
- g. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic.
- h. Loop: A local street which begins and ends on the same street, generally used for access to properties.

SUBDIVIDER: Any person or entity that owns or buys land, divides it into usable lots and develops or rents the lots, or sells the lots to others for development.

SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United

States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold or otherwise transferred and includes any re-subdivision and a condominium or townhome created in accordance with the Unit Ownership Act (70-23-101, et seq., MCA). The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes (76-3-103(15), MCA). However, condominiums or townhomes constructed on land divided in compliance with the Montana Subdivision and Platting Act are exempt from the provisions of the Act (76-3-203, MCA).

SUBDIVISION, MAJOR: A subdivision that does not qualify for review as a minor subdivision.

SUBDIVISION, FIRST MINOR: A subdivision of a parcel that has never been subdivided or created by a subdivision, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973 (76-3-609(2), MCA). Furthermore, the first minor subdivision contains five or fewer lots, and legal and physical access to all lots is provided.

SUBDIVISION, SUBSEQUENT MINOR: Divisions of land creating five (5) or fewer lots that are not first minor subdivisions from a tract of record.

SUBDIVISION QUALIFYING FOR EXPEDITED REVIEW: An expedited review and approval process for subdivision plats. It must meet the requirements of Section 23-306 of these subdivision regulations

SUBDIVISION QUALIFYING FOR ABBREVIATED REVIEW: A subdivision qualifying for an abbreviated review and approval process when it meets the definition of a first minor subdivision that contains one or two parcels, proper access to all lots is provided, no land in the subdivision will be dedicated to public use for parks or playgrounds, and the plat has been approved by the Montana Department of Environmental Quality whenever approval is required.

SUBDIVISION, ADMINISTRATIVE MINOR: A subdivision qualifying for an administrative review and approval process when it meets the definition of a first minor or subsequent minor subdivision from a tract of record, is within zoning, proper access to all lots is provided, has a will-serve letter from a municipal or county water and sewer service, and does not require a variance.

SURVEYOR (REGISTERED LAND SURVEYOR): A person licensed in conformance with the Montana Professional Engineer's Registration Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.

SURVEYOR (EXAMINING LAND SURVEYOR): A registered land surveyor duly appointed by the City of Billings or Yellowstone County to review surveys and plats submitted for filing.

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

TOWNHOME/TOWNHOUSE: Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under

which they may jointly own the common areas and facilities (70-23-103(16)(a), MCA).

TRACT OF RECORD: An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's office (76-3-103(16)(a), MCA).

TRAFFIC CONTROL DEVICES: All signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or multi-use trail by authority of a public agency having jurisdiction.

TRANSPORTATION PLAN: Currently adopted Billings Urban Area Transportation Plan, or any newer transportation planning document adopted by the Billings City Council and Board of County Commissioners and Policy Coordinating Committee (PCC) for the Billings urban area.

UTILITY: A service to the public including, but not limited to, sanitary and storm sewers, water, electric power, gas, telephone, cable television, and other communication means.

VICINITY SKETCH: A map included with a site plan or placed on a plat that enables the viewer to clearly determine the location of a proposed subdivision in the City.

WILDLIFE: Non-domesticated animals.

WILDLAND-URBAN INTERFACE: Areas where wildland vegetation meets urban developments, or where forest fuels meet urban fuels (such as homes). These areas encompass not only the interface (areas immediately adjacent to urban development) but also the continuous slopes and fuels that lead directly to a risk to urban developments, and are generally mapped in the Yellowstone County WUI Community Wildfire Protection Plan.

WILDLIFE HABITAT: A place frequented by wildlife or a site where wildlife lives.

Article 23-300. SUBDIVISION REVIEW PROCEDURES.

Section 23-301. Compliance with Local Regulations and State Law.

No subdivision of any lot, tract or parcel of land shall be undertaken; no street, sanitary sewer, storm sewer, water main, or other facilities in connection therewith shall be constructed, opened or extended for public use and travel, or for the common use of occupants of buildings except in strict accordance with the provisions of this Chapter and related state statutes.

Section 23-302. Major Subdivisions.

Divisions of land creating six (6) or more parcels must be reviewed as a major subdivision. The major subdivision shall be reviewed by the governing body of the jurisdiction where the subdivision is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and county governing body (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to any municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports, and other requirements whenever possible (76-3-601(2)(d), MCA).

A. Preapplication Meeting. The purpose of the preapplication meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A pre-application meeting must be requested no later than seven (7) working days and no earlier than one hundred and twenty (120) working days prior to submittal of a major preliminary plat application for completeness review.

At the time of request, the subdivider shall provide the Planning Director or designee with electronically submitted sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See online 'Pre-application form' for recommended pre-application sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the pre-application meeting to occur within fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The pre-application meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

B. Pre-application Completeness Review. One (1) month prior to submittal deadline for major preliminary plat applications, the subdivider shall submit one (1) electronic copy of the application including the preliminary plat and supporting documents to the Planning Director or designee for review accompanied by the applicable fee. After receipt of the electronic copy the Planning Director or designee shall notify the subdivider within five (5) working days as to the completeness of the application. A complete application will include all those items listed online “Preliminary Plat Requirements”, where applicable, and any additional information identified at the pre-application meeting. If the Planning Director or designee determines the application complete, the subdivider may submit the application, plat and supporting documentation for sufficiency review. If the Planning Director or designee determines the application is incomplete, the subdivider must correct the deficiencies and resubmit the application.

C. Preapplication Sufficiency Review. Within fifteen (15) working days after notifying the applicant that the application is complete, the Planning Director or designee will determine that the information in the application is sufficient to allow for review of the proposed subdivision. If the Planning Director or designee determines the information is sufficient, the applicant will be notified that the complete and sufficient application may be submitted at the application submittal deadline. If the Planning Director or designee determines the information is insufficient, the subdivider must correct the deficiencies prior to the next submittal deadline or postpone submittal to a future submittal deadline.

D. Major Preliminary Plat Application Submittal.

- 1. Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a preliminary plat of the proposed major subdivision which conforms to the requirements of these Regulations. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana, as their respective licensing laws allow.
- 2. Application submittal.** Complete and sufficient application for major preliminary plat approval shall be made to the Planning Director or designee on or before 3:00 p.m. of the first day of any given month. When the date of submittal falls on a weekend or holiday, the submittal shall be on the following working day by 3:00 p.m. The application form is provided online “Preliminary Plat Application” and must be accompanied by the required preliminary plat, and supporting documents and applicable fee.
- 3. Review period.** Upon receipt of a complete and sufficient application, the governing body has sixty (60) working days to approve, conditionally approve, or deny the preliminary plat application. For subdivisions containing fifty (50) or more lots the review period is eighty (80) working days. The review period may be extended upon written consent from the subdivider.

E. Preliminary Plat Contents and Submittal Copies.

1. **Content.** The preliminary plat shall clearly show the information listed in online “Preliminary Plat Requirements.”
2. **Copies.** The subdivider shall provide one electronic copy of all required documents for the preliminary plat to the Planning Director or designee. All plats shall be 24 inch by 36-inch size and/or 11 inch by 17-inch size as specified by the Planning Director or designee.

F. Supporting Documentation.

1. **Required documents.** The supporting information shall include those documents listed online “Required Supporting Documents for Major Preliminary Plat Applications.”
2. **Required copies.** The subdivider shall provide one electronic copy of the supporting documents to the Planning Director or designee. All documents shall be typed and, in a format, specified by the Planning Director or designee.

G. Staff and Agency Review.

1. **Review procedure schedule.** Upon receipt of a complete and sufficient major preliminary plat application, the Planning Director or designee shall develop a schedule for the review period. The schedule shall include the dates, times and location of all key meetings, hearings and actions, and the dates of all key deadlines.
2. **Submittal distribution.** Planning staff shall distribute the application to all affected City Departments, local, state, and federal agencies, school districts and public utilities for review, and include a copy of the review procedure schedule. These affected entities shall determine what effect the proposed subdivision may have on their ability to provide services and submit recommendations for mitigation of those impacts. The affected entities shall respond to the Planning staff within approximately fifteen (15) working days. A public utility or agency review may not delay the governing body’s action on the plan beyond the sixty (60) or eighty (80) working day review period. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the governing body (76-3-504(1)(i), MCA).
3. **Department Plat Review Meeting.** Planning staff shall arrange a department plat review meeting to publicly review comments from the affected entities and inform the subdivider of revisions or additions required to bring the application into compliance with local regulations and state law. The subdivider and their representative are required to attend the department plat review meeting and shall be given a copy of all comments received to date from the affected entities.

4. **Application resubmittal.** The Planning staff shall notify the subdivider, in writing, of the resubmittal requirements within one (1) working day of the department plat review meeting. The subdivider shall revise the plat and supporting documents as required and submit one electronic copy of the revised application and documents as determined by the Planning Director or designee within five (5) working days of receipt of the resubmittal notice.
5. **Final staff comments.** Affected departments shall provide the Planning staff with final written comments regarding the resubmitted documents within five (5) working days of receipt of resubmittal.
6. **Hearing notice.** The Planning Board shall hold a public hearing on all major preliminary plat applications. Planning staff shall place a notice in a newspaper of general circulation in the County not less than fifteen (15) days prior to the date of a public hearing. The Planning staff shall also notify the subdivider and each property owner of record, and each purchaser under contract for deed of property immediately adjoining land included in the plat by certified mail not less than fifteen (15) days prior to the date of hearing (76-3-605(3), MCA).
7. **Staff report.** Planning staff shall prepare staff reports and presentations for the Planning Board plat review meeting and public hearing. A copy of each staff report shall be provided electronically to the subdivider at least five (5) working days prior to the Board or governing body meeting. Each staff report shall provide a recommendation for approval, conditional approval or denial of the application and draft findings of fact as basis for the recommendation. The Planning staff shall also prepare a report forwarding the recommendation of the Planning Board to the governing body including the Board's recommendation for approval, conditional approval or denial of the applications and draft findings of fact as basis for the recommendation.

H. Planning Board Plat Review. The Planning Board, as the authorized agent of the governing body shall conduct a plat review of the major preliminary plat application at a regularly scheduled meeting prior to the scheduled public hearing. The purpose of the plat review meeting is to consider the following relevant review criteria:

1. The environmental assessment and all criteria discussed therein, unless the plat is exempted from the requirement of submitting an environmental assessment pursuant to 76-3-616, MCA; and
2. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and

3. Compliance with:
 - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608(3)(b), MCA); and
 - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
 - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
 - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
 - e. Local zoning requirements; and
4. Consistency with the currently adopted Growth Policy¹, Transportation Plan, and the Active Transportation Plan.
5. **Determination.** The Planning Board shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate recommended conditions to reasonably minimize those impacts.

In reviewing a subdivision and when requiring mitigation, the Planning Board 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 recommendation of approval of the plat.

- I. **Public Hearing.** The Planning Board shall conduct the public hearing and consider all relevant evidence as related to the proposed plat before preparing its written findings of fact and recommendation to the governing body. The subdivider or their agent shall be given the opportunity to object to any testimony given. The subdivider shall be allowed to submit in writing his or her own proposed findings of fact to the Board and the governing body following the hearing.

The relevant evidence considered at the public hearing on the preliminary plat shall include the criteria listed above in Section H. of this Article.

After holding the public hearing and reviewing the evidence concerning the plat, the Planning Board shall submit its recommendations to the governing body to approve, conditionally approve or deny the major preliminary plat in writing no later than ten (10) days after the public hearing (76-3-605(4), MCA).

¹ A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy (76-1-605(2)(b), MCA).

J. Subsequent Hearing. Before acting on the subdivision application, the governing body shall determine whether public comments or documents presented at the Planning Board public hearing constitute:

1. Information that the public has not had a reasonable opportunity to examine and comment, or
2. New information never submitted or considered by the Planning Board or staff.

If the governing body determines that public comments or documents meets at least one (1) of the criteria listed above, it may act on the subdivision application in accordance with this Article or schedule a subsequent public hearing for consideration of the new information only. The subsequent public hearing shall be held by the Planning Board at the Planning Board's next scheduled meeting for which proper notice for the public hearing on the subdivision application can be provided.

If a subsequent hearing is held, the sixty (60) or eighty (80) working day review period is suspended and the new hearing must be noticed and held within forty-five (45) days of the governing body's determination to hold a subsequent public hearing. The sixty (60) or eighty (80) working day review period will resume from the date of the subsequent public hearing. The governing body may not consider any information that is presented after the subsequent hearing (76-3-615, MCA).

K. Subdivider's Preference for Mitigation. No later than ten (10) days before the meeting when the governing body is to consider the Planning Board's recommendation on the preliminary plat, the subdivider may submit in writing to the governing body comments on and responses to the Planning Board's recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the Planning Board's recommendations. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA).

L. Governing Body Action. The governing body's decision to approve, conditionally approve, or deny a subdivision is based on the preliminary plat, applicable environmental assessment, public hearing, Planning Board recommendations, or additional information that demonstrates the development of the subdivision meets the requirements of the Montana Subdivision and Platting Act and these Regulations. A governing body may not deny approval of a 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, MCA (76-3-608(1), MCA), or solely on compliance with a Growth Policy (76-1-605(2)(b), MCA).

The governing body shall issue written findings of fact that weigh the criteria as listed in Section 23-302 H. of this Article. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).

In reviewing a subdivision and when requiring mitigation, the 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 plat (76-3-608(5)(a), MCA).

The governing body shall approve, conditionally approve or deny the preliminary plat within sixty (60) or eighty (80) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send the subdivider a letter within thirty (30) working days of its decision stating the reasons for the denial or enumerating the conditions which must be met to assure approval of the final plat along with written findings of fact (76-3-608(4), MCA).

M. Preliminary Plat Approval Period. The approval or conditional approval shall be valid for not more than three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing, dated, and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

When considering a request for an extension of the preliminary plat approval period, the governing body may use the following criteria to evaluate the request:

1. Changes to the subdivision regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;
2. Progress to date in completing the subdivision as a whole and any phases;
3. Phasing of the subdivision and the ability for the existing development to operate without the delayed development;
4. Dependence of infrastructure development on the subdivision;
5. Duration of the requested extension;
6. Demonstrated ability of the subdivider to complete the subdivision;
7. Such other factors or criteria as deemed material in the discretion of the governing body.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

- N. **Appeal Process.** A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in Section 23-1105 of these Regulations and 76-3-625, MCA.
- O. **Final Plat.** A final plat application shall be submitted for review and approval following the procedures outlined in Section 23-307 of this Article prior to the expiration of the preliminary plat approval period.

Section 23-303. First Minor Subdivisions from a Tract of Record.

Divisions of land creating five (5) or fewer lots from a tract of record that has not been subdivided or created by a subdivision under the Montana Subdivision and Platting Act, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since October 1, 2003 shall be reviewed as first minor subdivisions from a tract of record, hereafter referred to as a “first minor” (76-3-609, MCA).

The requirement of holding a public hearing does not apply to the first minor subdivision created from a tract of record (76-3-609(2)(d)(ii), MCA).

The first minor subdivision shall be reviewed by the governing body of the jurisdiction where the subdivision is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and county governing body (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to any municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports, and other requirements when possible (76-3-601(2)(d), MCA).

- A. **Pre-application Meeting.** The purpose of the pre-application meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A pre-application meeting must be requested no later than seven (7) working days and no earlier than one hundred and twenty (120) working days prior to submittal of a minor preliminary plat application for completeness review. At the time of request, the subdivider shall provide the Planning Director or designee with electronic sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See the online application for recommended pre-application sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the pre-application meeting to occur within fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The pre-application meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

- B. **Pre-application Completeness Review.** One (1) month prior to a submittal deadline for minor preliminary plat applications, the subdivider shall submit one (1) electronic copy of documents to the Planning Director or designee for review accompanied by the applicable fee. After receipt of the copies the Planning Director or designee shall notify the subdivider within five (5) working days as to the completeness of the application. A complete application will include all those items listed online as "Preliminary Plat Requirements", where applicable, and any additional information identified at the pre-application meeting. If the Planning Director or designee determines the application complete, the subdivider may submit the application, plat and supporting documentation for sufficiency review. If the Planning Director or designee determines the application is incomplete, the subdivider must correct the deficiencies and resubmit the application.
- C. **Pre-application Sufficiency Review.** Within fifteen (15) working days after notifying the applicant that the application is complete, the Planning Director or designee will determine that the information in the application is sufficient to allow for review of the proposed subdivision. If the Planning Director or designee determines the information is sufficient, the applicant will be notified that the complete and sufficient application may be submitted at the application submittal deadline. If the Planning Director or designee determines the information is insufficient, the subdivider must correct the deficiencies prior to the next submittal deadline or postpone submittal to a future submittal deadline.
- D. **First Minor Preliminary Plat Application Submittal.**
 1. **Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a preliminary plat of the proposed first minor subdivision, which conforms to the requirements of these Regulations. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana as their respective licensing laws allow.
 2. **Application submittal.** Complete and sufficient application for first minor preliminary plat approval shall be made to the Planning Director or designee on or before 3:00 p.m. of the first or fifteenth day of any given month. When the date of submittal falls on a weekend or holiday, the submittal shall be on the following working day by 3:00 p.m. The application form is provided online "Preliminary Plat Application" and must be accompanied by the required preliminary plat, supporting documents and applicable fee.

3. **Review period.** Upon receipt of a complete application, the governing body has thirty-five (35) working days to approve, conditionally approve, or deny the preliminary plat application. The review period may be extended upon written consent from the subdivider.

E. Preliminary Plat Contents and Submittal Copies.

1. **Content.** The preliminary plat shall clearly show the information listed online “Preliminary Plat Requirements.”
2. **Copies.** The subdivider shall provide one electronic copy of the preliminary plat . All plats shall be 24 inches by 36 inches in size or 11 inches by 17 inches in size as specified by the Planning Director or designee. One (1) electronic copy of all supporting documents shall be provided.

F. Supporting Documentation.

1. **Required documents.** The supporting information shall include those documents listed online “Required Supporting Documents for First Minor Preliminary Plat Applications.”
2. **Required copies.** The subdivider shall provide one copy of each supporting documents as determined by the Planning Director or designee. All documents shall be typed and, in a format, specified by the Planning Director or designee.

G. Staff and Agency Review.

1. **Review procedure schedule.** Upon receipt of a complete and sufficient first minor preliminary plat application, the Planning Director or designee shall develop a schedule for the review period. The schedule shall include the dates, times and location of all key meetings and actions and the dates of all key deadlines.
2. **Submittal distribution.** Planning staff shall distribute the application to all affected City Departments, local, state, and federal agencies, school districts and public utilities for review, and include a copy of the review procedure schedule. These affected entities shall determine what effect the proposed subdivision may have on their ability to provide services and submit recommendations for mitigation of those impacts. The affected entities shall respond to the Planning staff within approximately fifteen (15) working days. A public utility or agency review may not delay the governing body’s action on the plan beyond the thirty-five (35) working day review period. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the governing body (76-3-504(1)(i), MCA).

3. **Staff report.** Planning staff shall prepare a staff report and presentation for the governing body. An electronic copy of the report shall be provided to the subdivider at least five (5) working days prior to the governing body meeting. The staff report shall provide a recommendation for approval, conditional approval or denial of the applications and draft findings of fact to justify the recommendation.

H. Governing Body Action. At a regularly scheduled meeting the governing body shall consider the following information in deciding whether to approve, conditionally approve, or deny a preliminary plat:

1. Unless the subdivision is proposed in an area that is zoned, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and
2. Compliance with:
 - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608 (3)(b), MCA); and
 - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
 - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
 - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
 - e. Local zoning requirements; and
3. Consistency with the currently adopted Growth Policy, Transportation Plan, and the Active Transportation Plan (76-1-606, MCA); and
4. A summary of probable impacts prepared in accordance with Section 23-904 of these Regulations.
5. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a 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, MCA (76-3-608(1), MCA), or solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).
6. The governing body shall issue written findings of fact that weigh the criteria listed in this section. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).

7. In reviewing a subdivision and when requiring mitigation, the 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 plat (76-3-608(5)(a), MCA).
8. The governing body shall approve, conditionally approve or deny the preliminary plat within thirty-five (35) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send to the subdivider a letter within thirty (30) working days of its decision stating the reasons for the denial or enumerating the conditions which must be met to assure approval of the final plat, along with written findings of fact (76-3-608(4), MCA).

I. **Preliminary Plat Approval Period.** The approval or conditional approval shall be valid for not more than three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing, dated, and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

When considering a request for an extension of the preliminary plat approval period, the governing body may use the following criteria to evaluate the request:

1. Changes to the subdivision regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;
2. Progress to date in completing the subdivision as a whole and any phases;
3. Phasing of the subdivision and the ability for the existing development to operate without the delayed development;
4. Dependence of infrastructure development on the subdivision;
5. Duration of the requested extension;
6. Demonstrated ability of the subdivider to complete the subdivision.
7. Such other factors or criteria as deemed material in the discretion of the governing body.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

J. **Appeal Process.** A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in Section 23-1105 of these Regulations and 76-3-625, MCA.

K. Final Plat. A final plat application shall be submitted for review and approval following the procedures outlined in Section 23-307 of this Article prior to the expiration of the preliminary plat approval period.

Section 23-304. Subsequent Minor Subdivisions.

Divisions of land creating five (5) or fewer lots that are not first minor subdivisions from a tract of record shall be reviewed as first minor subdivisions in accordance with Section 23-303 of this Article (76-3-609(4), MCA). The subsequent minor subdivision will be reviewed by the governing body where the jurisdiction in which it is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

Section 23-305. Subdivisions Qualifying for Abbreviated Review.

A. Eligibility. Subdivisions, hereafter referred to as “abbreviated review plats” containing one (1) or two (2) parcels are eligible for abbreviated review when:

1. They meet the definition of a first minor subdivision from a tract of record; and
2. Legal and physical access to all lots is provided; and
3. No land in the subdivision will be dedicated to public use for parks or playgrounds; and
4. The plat has been approved by the Montana Department of Environmental Quality or County Environmental Health whenever approval is required or the plat has been approved by the City of Billings Public Works Department for sanitary water, sewer and storm water facilities²; and
5. No public improvements are required.

If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and county governing body (76-3-601(2)(c), MCA).

When a proposed subdivision is also proposed to be annexed to any municipality, the subdivision review and annexation procedures will be coordinated to minimize duplications of hearings, reports, and other requirements when possible (76-3-601 (2)(d), MCA).

² If MDEQ or County Health approval has not yet been obtained, the applicant may submit a checkprint for review and approval to the Planning Department. The applicant may submit the checkprint approval to MDEQ or County Health as required as proof of preliminary plat approval. Proof of MDEQ or County Health approval must be submitted with the final plat and supplemental documents prior to recording the final plat.

B. Pre-application Meeting. The purpose of the pre-application meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A pre-application meeting must be requested no later than twenty (20) working days and no earlier than one hundred and twenty (120) working days prior to final plat submittal. At the time of request, the subdivider shall provide the Planning Director or designee with electronically submitted sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See Appendix C for recommended pre-application sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the pre-application meeting to occur with fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The pre-application meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

C. Abbreviated Review Plat Application Submittal.

- 1. Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a final plat of the proposed minor subdivision, which conforms to the requirements of Section 23-307 of this Article. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana, as their respective licensing laws allow.
- 2. Checkprint.** Prior to submitting the final plat on mylar, a subdivider must submit electronic copies of a final plat application, electronic draft copies of the supporting documents and one (1) copy of the survey closure calculations to the Planning Director or designee for review. The electronic final plat application form is provided online “Final Plat Application” and the form and content of the checkprint and the supporting documents are described online “Final Plat Requirements”. The final plat review fee and the subdivision title commitment or title report are also required at this stage.

Reviewing departments shall be notified of and provided electronic copies of the checkprint, supporting documents and survey closure calculations have been submitted. City Public Works Billings Fire Department, City Legal, County Treasurer and County Clerk and Reorder shall be asked for review and comment. These reviewers shall notify Planning staff of any changes required to conform to the local regulations and state law within ten (10) working days after receipt of the checkprint. Planning staff shall notify the subdivider no later than fifteen (15) working days after receipt of the checkprint of any changes required. A red-lined copy of the checkprint shall be returned to the subdivider along with the reviewer’s comments.

3. **Application submittal.** Application for abbreviated plat approval shall be submitted to the Planning Director or designee on or before 3:00 p.m. at least twenty-five (25) working days prior to the date of the City Council memo deadline. The electronic application form is provided online “Abbreviated Final Plat Application” and must be accompanied by the required final plat, supporting documents and applicable fee.
- D. **Final Plat and Supporting Documents Contents and Submittal Copies.** The subdivider shall submit one (1) electronic copy. The subdivider must also submit two (2) signed mylar originals of the final plat. The form and content of final plat is provided online “Final Plat Requirements.” The final plat must be accompanied by a complete abbreviated review plat application form as provided online “Abbreviated Final Plat Application”, a subdivision title commitment or title guarantee prepared within the previous six (6) months, all supporting documents and the required review fee.
- E. **Review Procedure.** Planning staff shall route the application, final plat and supporting documents to the appropriate departments and officials for their signatures within sufficient time to assure the documents are placed on the first available agenda of the governing body for their consideration and authorized signatures.
- F. **Governing Body Action.** At a regularly scheduled meeting, the governing body shall consider the following information in deciding whether to approve or deny a final plat:
 1. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety (76-3-608 (3)(a), MCA); and
 2. Compliance with:
 - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608 (3)(b), MCA); and
 - b. The provision of easements for the location and installation of any planned utilities(76-3-608(3)(c), MCA); and
 - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
 - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
 - e. Local zoning requirements; and
 3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan.
 4. The governing body shall give due weight and consideration to the subdivider’s expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a 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, MCA (76-3-608(1), MCA), or based solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).

5. In the event the governing body denies the final plat, it shall send a letter to the subdivider stating the reasons for the denial along with written findings of fact (76-3-608(4), MCA).
- G. **Approval Period.** Final plat approval shall be in force not more than twelve (12) months from the date of the governing body's approval. At the end of the period the governing body may, at the request of the subdivider, after review and recommendation of the Planning Board, extend its approval for no more than twelve (12) months.

After all required signatures have been obtained; the plat shall be recorded with the County Clerk and Recorder within the twelve (12) months of the date of approval.

Section 23-306. Expedited Review for Certain Subdivisions.

- A. **Eligibility.** Subdivisions, hereafter referred to as "expedited review plats" as defined in MCA 76-3-623
 1. Requested by applicant; and
 2. Within an incorporated city and is subject to an adopted growth policy and adopted zoning regulations; and
 3. Complies entirely with locally adopted zoning regulations; and
 4. Complies entirely with the design standards and all other requirements of these regulations; and
 5. Includes in its proposal plans for on-site development or extension of public infrastructure in accordance with locally adopted ordinances and regulations.

B. Expedited Review Plat Application Submittal.

1. **Pre-application Meeting.** The purpose of the pre-application meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A pre-application meeting must be requested no later than seven (7) working days and no earlier than one hundred and twenty (120) working days prior to submittal of a major preliminary plat application for completeness review.

At the time of request, the subdivider shall provide the Planning Director or designee with electronically submitted sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch =

400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See online ‘Pre-application application’ for recommended pre-application sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the pre-application meeting to occur within fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The pre-application meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

2. **Pre-application Completeness Review.** One (1) month prior to submittal deadline for major preliminary plat applications, the subdivider shall submit one electronic copy of the entire application including the preliminary plat and completed supporting documents to the Planning Director or designee for review accompanied by the applicable fee. After receipt of the electronic copy the Planning Director or designee shall notify the subdivider within five (5) working days as to the completeness of the application. An application complete in its entirety will include all those items listed online “Preliminary Plat Requirements”, where applicable, and any additional information identified at the pre-application meeting. If the Planning Director or designee determines the application complete, the subdivider may submit the application, plat and supporting documentation for sufficiency review. If the Planning Director or designee determines the application is incomplete, the subdivider must correct the deficiencies and resubmit the application.
3. **Pre-application Sufficiency Review.** Within fifteen (15) working days after notifying the applicant that the application is complete, the Planning Director or designee will determine that the information in the application is sufficient to allow for review of the proposed subdivision. If the Planning Director or designee determines the information is sufficient, the applicant will be notified that the complete and sufficient application may be submitted at the application submittal deadline. If the Planning Director or designee determines the information is insufficient, the subdivider must correct the deficiencies prior to the next submittal deadline or postpone submittal to a future submittal deadline.
4. **Department Plat Review Meeting.** Upon completeness and sufficiency review, Planning staff shall arrange a department plat review meeting to publicly review comments from the affected entities and inform the subdivider of revisions or additions required to bring the application into compliance with local regulations and state law. The subdivider and their representative are required to attend the department plat review meeting and shall be given a copy of all comments received to date from the affected entities.

C. Preliminary Plat Expedited Application Submittal.

1. **Required.** The subdivider shall submit to the Planning Director or designee, for review and recommendation, a preliminary plat of the proposed major subdivision, which conforms to the requirements of these Regulations. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana, as their respective licensing laws allow.
2. **Application submittal.** Complete and sufficient application for major preliminary plat approval shall be made to the Planning Director or designee on or before 3:00 p.m. of the first day of any given month. When the date of submittal falls on a weekend or holiday, the submittal shall be on the following working day by 3:00 p.m. The application form is provided on line “Preliminary Plat Application” and must be accompanied by the required preliminary plat, and supporting documents and applicable fee.
3. **Review period.** Upon receipt of a complete and sufficient application, the governing body’s designee has thirty-five (35) working days to hold a public hearing. Subsequently, the Governing Body must approve, conditionally approve, or deny the preliminary plat application within thirty-five (35) working days. The review period may be extended upon written consent from the subdivider one time up to one hundred and eighty (180) calendar days.

D. Preliminary Plat Contents and Submittal Copies.

1. **Content.** The preliminary plat shall clearly show the information listed online “Preliminary Plat Requirements.”
2. **Copies.** The subdivider shall provide one electronic copy of all the required documents for the preliminary plat to the Planning Director or designee. All plats shall be 24 inch by 36-inch size and/or 11 inch by 17-inch size as specified by the Planning Director or designee.

E. Supporting Documentation.

1. **Required documents.** The supporting information shall include those documents listed online “Required Supporting Documents for Major Preliminary Plat Applications.”
2. **Required copies.** The subdivider shall provide one electronic copy of the supporting documents to the Planning Director or designee. All documents shall be typed and, in a format, specified by the Planning Director or designee.

F. Planning Board Review

1. **Hearing notice.** The Planning Board shall hold a public hearing on all major preliminary plat applications. Planning staff shall place a notice in a newspaper of general circulation in the County not less than fifteen (15) days prior to the date of a

public hearing. The Planning staff shall also notify the subdivider and each property owner of record, and each purchaser under contract for deed of property immediately adjoining land included in the plat by certified mail not less than fifteen (15) days prior to the date of hearing (76-3-605(3), MCA).

2. **Staff report.** Planning staff shall prepare staff reports and presentations for the Planning Board plat review meeting and public hearing. A copy of each staff report shall be provided electronically to the subdivider at least five (5) working days prior to the Board or governing body meeting. Each staff report shall provide a recommendation for approval, conditional approval or denial of the application and draft findings of fact as basis for the recommendation. The Planning staff shall also prepare a report forwarding the recommendation of the Planning Board to the governing body including the Board's recommendation for approval, conditional approval or denial of the applications and draft findings of fact as basis for the recommendation.
3. **Public Hearing.** The Planning Board shall conduct the public hearing and consider all relevant evidence as related to the proposed plat before preparing its written findings of fact and recommendation to the governing body. The subdivider or their agent shall be given the opportunity to object to any testimony given. The subdivider shall be allowed to submit in writing his or her own proposed findings of fact to the Board and the governing body following the hearing.

The relevant evidence considered at the public hearing on the preliminary plat shall include the criteria listed above in Section H. of this Article.

After holding the public hearing and reviewing the evidence concerning the plat, the Planning Board shall submit its recommendations to the governing body to approve, conditionally approve or deny the major preliminary plat in writing no later than ten (10) days after the public hearing (76-3-605(4), MCA).

- G. **Governing Body Action.** The governing body's decision to approve or conditionally approve a subdivision is based on the preliminary plat application, public hearing, Planning Board recommendations, or additional information that demonstrates the development of the subdivision meets the requirements of the Montana Subdivision and Platting Act and these Regulations, local zoning ordinances, subdivision design standards and regulations, and all other adopted City of Billings regulations.

In reviewing a subdivision and when requiring mitigation, the governing body may only place conditions to ensure an approved subdivision application is completed in accordance with the applicable local requirements or survey requirements pursuant to Title 76 Chapter 4 of the Montana Subdivision and Platting Act.

The governing body shall approve, conditionally approve or deny the preliminary plat within thirty-five (35) working days of the submittal deadline and when the application was considered complete and sufficient.

- H. **Preliminary Plat Approval Period.** The approval or conditional approval shall be valid

for not more than three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing, dated and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

When considering a request for an extension of the preliminary plat approval period, the governing body may use the following criteria to evaluate the request:

1. Changes to the subdivision regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;
2. Progress to date in completing the subdivision as a whole and any phases;
3. Phasing of the subdivision and the ability for the existing development to operate without the delayed development;
4. Dependence of infrastructure development on the subdivision;
5. Duration of the requested extension;
6. Demonstrated ability of the subdivider to complete the subdivision;
7. Such other factors or criteria as deemed material in the discretion of the governing body.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

- I. **Appeal Process.** A decision of the governing body regarding a proposed subdivision may be appealed to the district court, as provided in Section 23-1105 of these Regulations and 76-3-625, MCA.
- J. **Final Plat.** A final plat application shall be submitted for review and approval following the procedures outlined in Section 23-307 of this Article prior to the expiration of the preliminary plat approval period.

Section 23-307 Minor Subdivisions Qualifying for Administrative Review

- A. **Eligibility.** Subdivisions, hereafter referred to as "administrative review plats" are eligible for administrative review when:
 1. They meet the definition of a first minor subdivision from a tract of record or a subsequent minor subdivision from a tract of record; and

2. Legal and physical access to all lots is provided; and
3. Complies entirely with locally adopted zoning regulations; and
4. Complies entirely with the design standards and all other requirements of these regulations; and
5. Does not require a variance to any subdivision regulations

B. Administrative Review Plat Application Submittal.

Pre-application Meeting. The purpose of the pre-application meeting is to provide the subdivider with requirements of local subdivision regulations and the Montana Subdivision and Platting Act. A pre-application meeting must be requested no later than seven (7) working days and no earlier than one hundred and twenty (120) working days prior to submittal of a major preliminary plat application for completeness review.

At the time of request, the subdivider shall provide the Planning Director or designee with electronically submitted sketch plans of the proposed subdivision for review and discussion. The sketch plan should be legibly drawn to scale no greater than 1 inch = 400 feet (1:4,800), showing in simple form the layout of proposed features in relation to existing conditions. The sketch plan may be a freehand sketch made directly on a print of a topographic map. See online ‘Pre-application application’ for recommended pre-application sketch plan contents and other meeting recommendations.

The Planning Director or designee will schedule the pre-application meeting to occur within fifteen (15) working days of the receipt of the sketch plan, and shall notify the subdivider and any affected City Departments of the time and place of the meeting.

The pre-application meeting shall not constitute approval of a preliminary or final plat. Rather, it shall be deemed an expression of general acceptance of the sketch plan submitted.

C. Administrative Review Plat Review.

1. Required. The subdivider shall submit to the Planning Director or designee, for review and recommendation, a preliminary plat of the proposed minor subdivision, which conforms to the requirements of these Regulations. Information required in submittal of plats and supporting documents shall be performed by or under the supervision of a registered land surveyor or professional engineer licensed to practice in the State of Montana, as their respective licensing laws allow.
2. Application submittal. Complete and sufficient application for minor preliminary plat approval shall be made to the Planning Director or designee on or before 3:00 p.m. of the first day of any given month. When the date of submittal falls on a weekend or holiday, the submittal shall be on the following working day by 3:00 p.m. The application form is provided online “Preliminary Plat Application” and must be accompanied by the required preliminary plat, and supporting documents and applicable fee.

3. Review period. Upon receipt of a complete and sufficient application, the Planning Director or designee has thirty (30) working days to approve, conditionally approve, or deny the preliminary plat application. Subsequently, upon receipt of a complete and sufficient application, the governing body's designee must notify, by first-class mail, 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.

D. Appeal.

If, and only if, a party identified in Section 23-307.C.3 of this article objects to the Planning Director or designee's decision to approve, conditionally approve, or deny an administrative minor subdivision, the party may request in writing that the subdivision administrator forward the application on to the governing body. The governing body shall sustain the subdivision administrator's decision based on the record as a whole unless the decision was arbitrary, capricious, or unlawful. The governing body has 15 working days from the receipt of the request to review a decision to approve, conditionally approve, or deny the administrative minor subdivision and make a final determination.

Section 23-308. Amended Plats.

- A. **Required.** A division of lots within a platted subdivision filed with the County Clerk and Recorder that results in an increase in the number of lots, or that redesigns or rearranges six (6) 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 (76-3-207(2)(a), MCA).
- B. **Eligibility.** Amended plats shall be processed as first minor subdivisions, as described in Section 23-303, if they meet the following criteria:
 1. Legal and physical access to all lots is provided; and
 2. No land in the subdivision will be dedicated to public use for parks or playgrounds; and
 3. The plat has been approved by the Montana Department of Environmental Quality or County Environmental Health whenever approval is required or the plat has been approved by the City of Billings for sanitary water, sewer and stormwater facilities or no public improvements are required; and
 4. The amended plat creates no more than five additional lots.Amended plats not meeting these criteria shall be reviewed as major subdivisions.
- C. **Form and Content.** An amended plat shall be entitled "Amended Plat" and follow the form and content shown online "Preliminary Plat Requirements."

Section 23-309. Final Plat Submittal Requirements.

- A. **Required.** After receiving a preliminary plat approval for a major, first minor or subsequent minor, the subdivider may submit a final plat of the proposed subdivision as required by this Article. The final plat shall incorporate all required conditions and changes and conform to the approved preliminary plat and this Section.
- B. **Checkpoint.** Prior to submitting the final plat on mylar, a subdivider must submit electronic copies of a final plat application, paper prints of the final plat, draft copies of the supporting documents and a copy of the survey closure calculations to the Planning Director or designee for review. The final plat application form is provided online “Final Plat Application” and the form and content of the checkpoint and the supporting documents are described online “Final Plat Requirements”. The final plat review fee and the subdivision title commitment or title report are also required at this stage. The Planning Director or designee may require additional documentation to ascertain whether the conditions of preliminary plat approval have been met.

Copies of submitted documents will be available to reviewers electronically. Reviewing departments shall notify Planning staff of any changes required to conform to the conditions of final plat approval or local regulations and state law within ten (10) working days after receipt of the checkpoint.

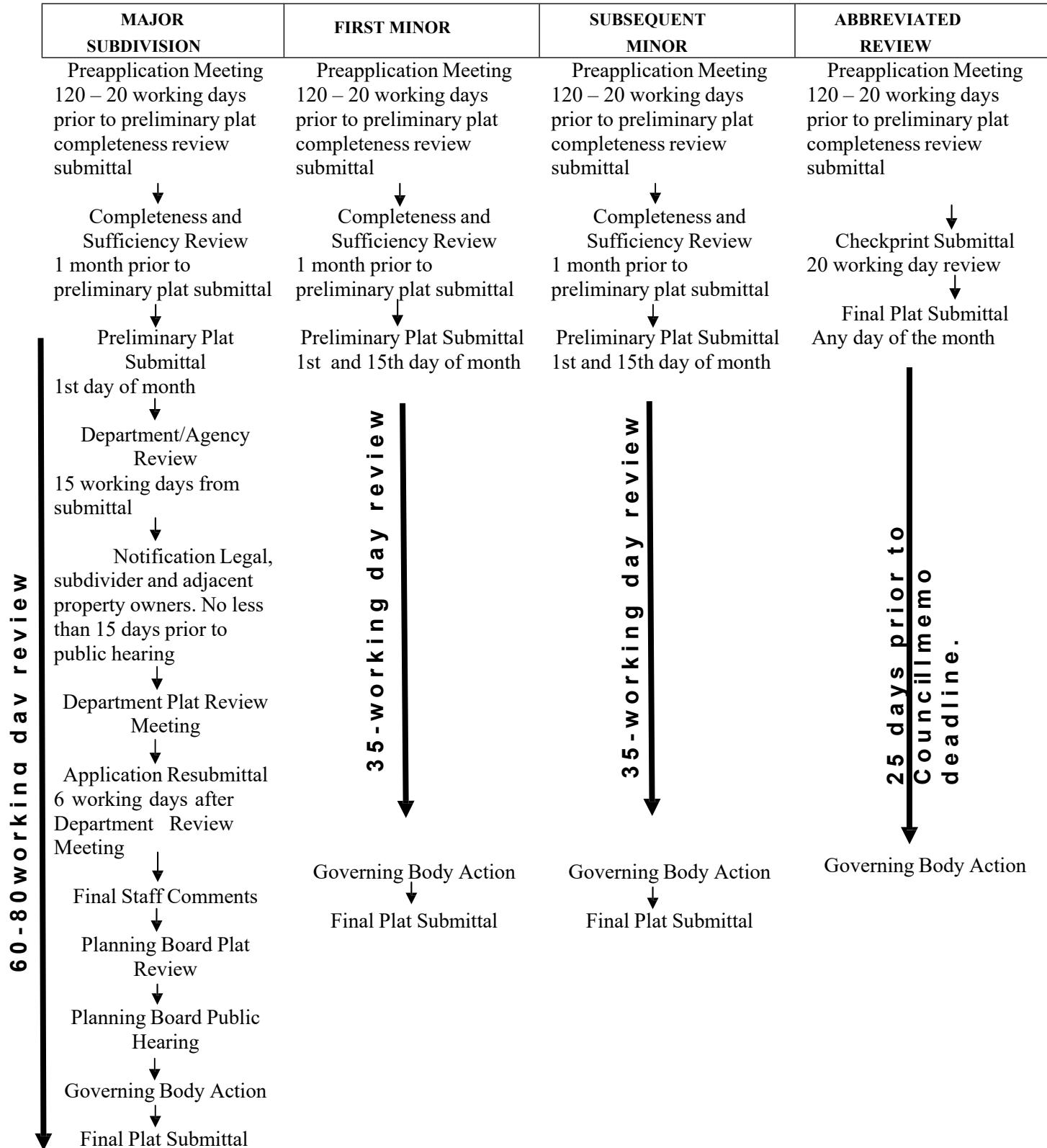
Planning staff shall notify the subdivider no later than fifteen (15) working days after receipt of the checkpoint of any changes required. A red-lined copy of the checkpoint shall be returned to the subdivider along with the reviewer’s comments.

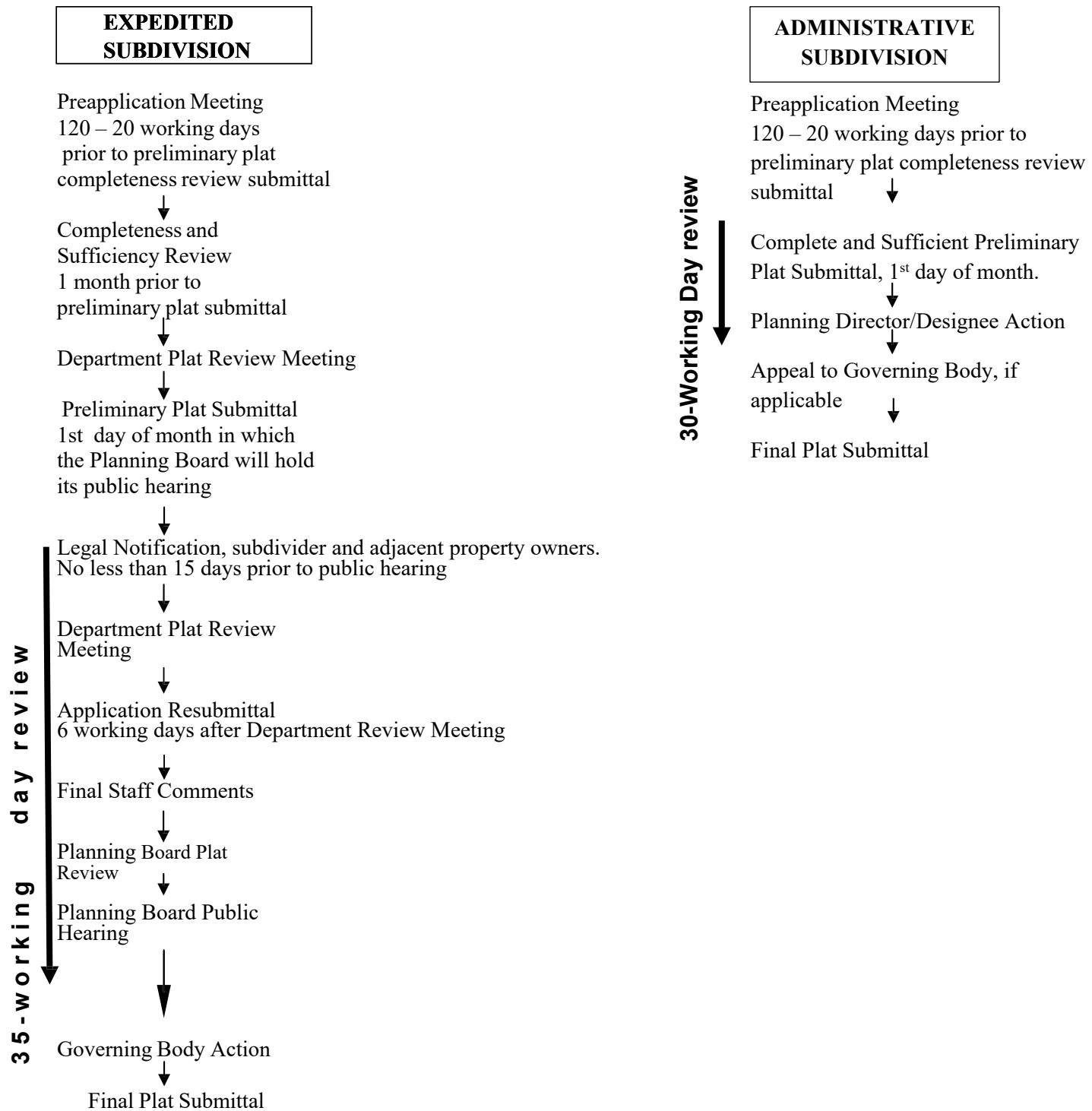
- C. **Final Mylar Submittal.** Application for final plat approval shall be submitted to the Planning Director or designee on or before 3:00 p.m. at least twenty-five (25) working days prior to the City Council memo deadline. The subdivider shall submit one (1) electronic copy. The subdivider must also submit two (2) signed mylar originals of the final plat. The form and content of final plat is provided online “Final Plat Requirements.” The final plats must be accompanied by a complete final plat application form as provided online “Final Plat Application”, a subdivision title commitment or title guarantee prepared within the previous six (6) months, all supporting documents and the required review fee.
- D. **Review Procedure.** Planning staff shall route the application, final plat and supporting documents to the appropriate departments and officials for their signatures within sufficient time to assure the documents are placed on the first available agenda of the governing body for their consideration and authorized signatures.
- E. **Approval Period.** Final plat approval shall be in force not more than twelve (12) months from the date of the governing body’s approval. At the end of the period the governing body may, at the request of the subdivider, after review and recommendation of the Planning Board, extend its approval for no more than twelve (12) months.

After all required signatures have been obtained; the plat shall be recorded with the County Clerk and Recorder within the twelve (12) months of the date of approval.

Section 23-310.

Flowchart of Subdivision Procedures.



Section 23-310.**Flowchart of Subdivision Procedures. Continued**

Article 23-400. DEVELOPMENT REQUIREMENTS.

Section 23-401. General.

All subdivisions approved by the governing body must comply with the provisions of this Article, except where granted a variance pursuant to Section 23-1101, Variances, of these Regulations. The requirements contained in this Article apply to subdivisions within the City of Billings as outlined in Section 23-104 of these Regulations.

Section 23-402. Conformance with Zoning.

In addition to the standards outlined in this Article, the design and development of a subdivision must conform to any applicable zoning regulations as found in the Zoning Regulations (Article 27, BMCC).

Section 23-403. Improvement Design.

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared by a professional engineer or professional land surveyor as their respective licensing laws allow in accordance with the Montana Subdivision and Platting Act (MSPA) and these Regulations. Subdivisions must meet the current Access Management Plan adopted by the City.

Section 23-404. Lots.

- A. **Regulation of Lots:** Each lot must contain a building site that can be designed to meet applicable building codes, site development standards, driveway slope standards, and zoning requirements of the Zoning Regulations.
- B. **Dimensions, Orientation and Topography:** The lot size, depth, shape and orientation shall be appropriate for the location, contemplated use of the subdivision and the zoning of the property. Flag lots shall be prohibited except in cases where zoning districts allow flag lots.

Slopes of more than 25% are excessive for building sites and shall be subject to a geotechnical analysis. Areas within the subdivision with a slope of 25% or greater shall be identified on the face of the preliminary and final plats.

- C. **Frontage:** Residential lots shall provide the minimum lot width as required by the existing or proposed zone, as defined in BMCC 27-300 and shall be on a public right of way or private easement. Lots in commercial and industrial subdivisions shall have a minimum lot width, as defined in BMCC 27-400, on a public right of way or private easement, or through a reciprocal access easement.
- D. **Division by Rights-of-Way:** No single lot may be divided by a public road, alley, or access easement.

E. **Corner Lots:** Design of corner lots must meet the following requirements:

1. Corner lots must be of sufficient size to provide a building site while meeting the clear vision requirements specified in Section 27-618 of the Zoning Regulations.
2. All residential corner lots adjacent to a street identified as a Principal or Minor Arterial must have vehicular access only to an internal street in the subdivision identified as a Collector or Residential street.

F. **Double Frontage Lots:** Double frontage lots (See Figure 23.200.1.) are allowable where they are necessary due to topography and when a one (1) foot wide no-access easement is provided for separation of residential development from railroad or street rights-of-way.

1. Residential Areas: For any residential subdivision where an Arterial street abuts or runs through any portion of the subdivision, the subdivision plan shall provide for the rear lot line to be adjacent to the arterial street and provide a one (1) foot wide no-access easement to prevent vehicle access to the arterial street.
2. Commercial Areas: For any commercial subdivision where an Arterial street abuts or runs through any portion of the subdivision, the subdivision plan shall provide for shared accesses to the arterial street or access via internal roads with a one (1) foot wide no-access easement to prevent uncontrolled vehicle access to the Arterial street.

Section 23-405. Blocks.

A. **Size and Orientation Blocks:** Block Length, Section, and Perimeter shall be provided in accordance with Table 23-405.1.

TABLE 23-405.1 REQUIRED BLOCK DESIGN

Zone District	Block Length			Block Perimeter		Block Section	
	Max.	Min.	Preferred	Max.	Preferred	Max.	Preferred
N1/NX1	780'	160'	600'	1,900'	1,480'	797'	622'
N2	950'	160'	720'	2,200'	1,700'	960'	740'
N3	1,000'	200'	780'	2,400'	1,900'	1,029'	806'
NX2/NX3	700'	100'	500'	1,200'	800'	708'	510'
RMH	750'	200'	570'	2,000'	1,600'	777'	605'
NO/NMU	780'	160'	600'	1,900'	1,480'	797'	622'
CMU1	700'	160'	500'	1,900'	1,400'	720'	525'
CMU2	1,400'	300'	700'	4,200'	2,800'	1,432'	762'
CX	N/A	N/A	N/A	N/A	N/A	N/A	N/A
I1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
I2	N/A	N/A	N/A	N/A	N/A	N/A	N/A
EBURD/CBD/DX	600'	300'	160'	1,800'	1,200'	622'	340'
Public 1-3	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Block Length means the measurement along the property lines of all lots that share the same street frontage until another street intersects (see Figure 23-405.2.). A block length continues until the street frontage changes from one cardinal direction to another.

1. Block Perimeter means the aggregated measurement along all perimeter property lines contained within a Block (see Figure 23-405.3.).
 - a. Block Perimeter excludes portions of lots along a project boundary where connections cannot be made because of physical obstacles, such as prior platting of property, existing structures or other barriers, steep slopes, wetlands and other water bodies, railroad and utility rights-of-way, existing highway rights-of-way, and parks and dedicated open space (see Figure 23-405.4.).
2. Block Section measures the greatest straight-line distance between any two points around the perimeter of an area enclosed by streets (see Figure 23-405.5.).
3. Block Length and Block Perimeter preferred measurements are not minimums. Less than the preferred measurement is also acceptable if the design enhances the connectivity of the subdivision.
4. Breaks in Block Length or Block Section such as, a dedicated pedestrian right-of-way of at least 30 feet in width, or a dedicated public park or open space area with at least 30 feet of street frontage (see Figure 23-405.6.) can substitute for an intersecting street. Alleys and similar service corridors will not count as a break in the block perimeter.
5. When designing new roads and streets, curvilinear streets are still required to follow the basic block layout as outlined in Section 23-405.
6. When Block Lengths exceed 500 feet, traffic calming shall be included in the design.

Figure 23-405.2. Block Length



Figure 23-405.3. Block Perimeter



Figure 23-405.4. Block Obstructions



Figure 23-405.5. Block Section

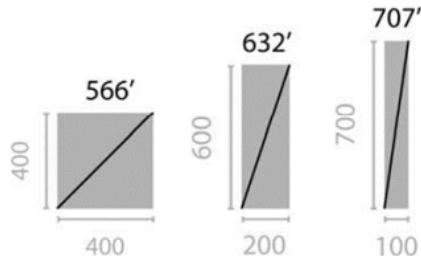


Figure 23-405.6. Breaks in Block Length



B. Rights-Of-Way for Internal Non-motorized Connections: Public rights-of-way for internal non-motorized connections within blocks will be required to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities. Pathways shall also be installed at the end of cul-de-sacs.

C. Block Numbering: All blocks shall be identified with Arabic numerals.

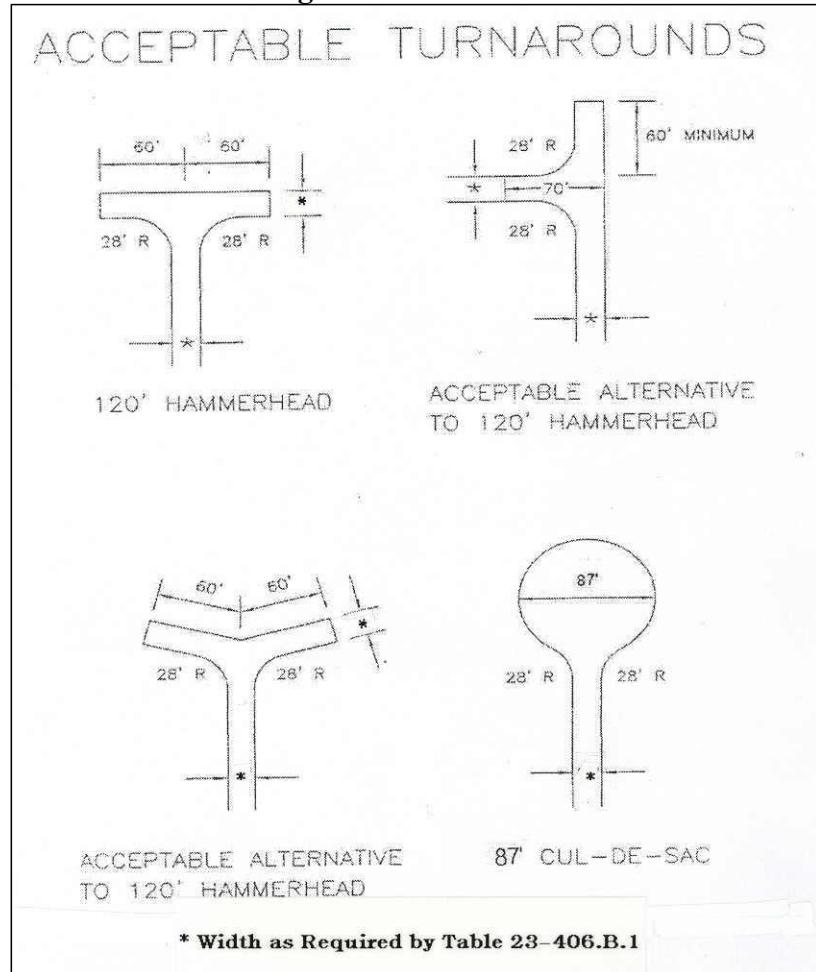
Section 23-406. Streets and Roads.

A. Streets and Roads, General: The arrangement, type, extent, width, grade, and location of all streets shall conform to any adopted area plans including, but not limited to, the Growth Policy and Transportation Plan, and must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

1. **Relation to Undeveloped Areas:** When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land this may require multiple connections to multiple adjacent undeveloped parcels. The maximum distance between connections to undeveloped lands shall not exceed 600 feet. Streets within the proposed subdivision shall be constructed to the boundary lines of the tract to be developed, unless prevented by topography or other physical conditions or granted by a variance. A variance may not be requested to eliminate connectivity to any street proposed on the most recently adopted Functional Classification Map.
2. **Relation to Developed Areas:** The subdivider shall arrange the streets to provide for the continuation of streets between adjacent developed properties, to provide effective provision of emergency services and efficient provision of utilities. Such provision may be waived when prevented by topography or other physical conditions.
3. **Separation of Through and Local Traffic:** Whenever a subdivision abuts or contains an existing or proposed highway, Arterial street or Collector street, the subdivider may be required, as a condition of approval, to provide frontage roads, reverse frontage lots with a no-access strip preventing access along the rear property lines, planting or fencing screens, shared accesses, or other treatment as may be necessary to adequately protect residential properties and to separate through and local traffic.
4. **Distance between Parallel Right-of-Way:** Where a subdivision borders on or contains a railroad, limited access highway, canal, stream or ditch right-of-way, the subdivider may be required to provide a street or easement approximately parallel to and on each side of the right-of-way at a distance sufficient to allow for the operations and maintenance of the intervening land. Such distances shall also be determined with regard for the requirements of approach grades and future grade separation.
5. **Second Access:** To facilitate traffic movement, the provision of emergency services, and the placement of utilities, all major subdivisions and subsequent minor subdivisions shall provide at least two means of vehicular access built to the standards of this Chapter and designed to ensure public health and safety.

- a. Exceptions to the requirement to provide at least two means of vehicular access may be made for major and subsequent minor subdivisions that meet all of the following criteria:
 - 1. Access is provided by a cul-de-sac with an approved turnaround that is 1000 feet or less in length; and
 - 2. The subject cul-de-sac is served by a local, collector, or arterial street that is not classified as a dead-end street; and
 - 3. The subject cul-de-sac serves no more than 20 lots, and no more than 30 dwelling units, when residential development is proposed.
- b. Provision of a second means of vehicular access may be required for any subdivision when deemed necessary for public health, safety or welfare.
- c. When not otherwise exempt, if a second means of vehicular access built to City street standards cannot be provided for reasons of topography or other physical conditions, the subdivider shall provide an emergency access road, built to the standards detailed in Section 23-413 of these Regulations.
- d. Variance requirement in relation to Emergency Access Roads (EAR).
 - 1. If a full city standard access road is required, and the developer proposes to build an EAR, a variance shall be required showing the hardship encountered.
- 6. Dead-end Roads: Dead-end access roads or driveways in excess of one hundred fifty (150) feet shall not be permitted without an approved turnaround at the terminus. Where streets terminate, the subdivider shall provide a “cul-de-sac” or “hammerhead-T” turnaround conforming to the design standards outlined in Figure 23.406.A.1. The maximum allowable length of a dead-end road is six hundred (600) one thousand (1000) feet. In cases where a dead-end road may be extended in the future, a right-of-way easement or dedication may be required to be provided.

Figure 23.406.A.1.
ACCEPTABLE TURNAROUNDS



7. Half Streets: Half streets are prohibited except when they are essential to the subdivision, are beneficial to the City, or when the City Public Works Department is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
8. Street Continuity: Streets that are a continuation of streets in contiguous territory shall be so aligned as to assure that their centerlines shall coincide and shall have matching names. In cases where straight continuations are not physically possible, such centerline shall be continued by a centerline offset of not less than one hundred twenty-five (125) feet.
9. Tangent for Reverse Curves: A tangent shall be introduced where necessary as determined by City Engineering between reverse curves on arterial and collector streets.

10. Deflected Street Lines to be Curved: When continuing street lines deflect from each other at any one point by more than five (5) degrees, they shall be connected by a curve with a radius adequate to ensure adequate stopping sight distance at the center line of a street in accordance with the most current American Association of State Highway and Transportation Officials (AASHTO) Manual guidelines.
11. Intersections: Local streets shall be laid out to intersect as nearly as possible at right angles and no local street shall intersect any other local street at less than eighty (80) degrees. Such angle of eighty (80) degrees or greater shall be retained for at least fifty (50) feet back from the intersection. Any street intersection involving an arterial and/or collector street, shall intersect at ninety (90) degrees, shall be retained for at least one hundred (100) feet back from the intersection. Not more than two (2) streets shall intersect at any one point unless specifically approved by the City Public Works Department.
12. Lot Corners at intersections: Lot corners at all street intersections shall be designed to accommodate public infrastructure and the requirements of the American Disabilities Act (ADA)
13. Sight distance: The alignment of all streets and roads must provide adequate sight distances in accordance with Section 27-1802 H, Visibility at Intersections, Billings Zoning Code.
14. Approach Permits: The subdivider shall obtain the applicable approach or curb cut permits for all new accesses to City streets. The subdivider shall obtain an approach permit approved by the Montana Department of Transportation (MDT) for any vehicular access onto a state highway.
15. Street/Road Names and Lot Addresses: New streets/roads aligned with existing streets/roads shall have the same name as the existing street/road. All new street names and lot addresses shall be approved by the City GIS / Land Management prior to final plat approval in order to avoid duplication and confusion with names of existing roads.
16. Street/Road Signs and Traffic Control Devices: Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the Manual on Uniform Traffic Control Devices.
17. Central Mail Delivery: When required by the United States Postal Service, the developer shall provide a cluster/gang mailbox area for mail delivery. All access provided to these mail delivery systems shall be ADA compliant.

B. Streets and Roads Design and Improvement Standards:

1. General: The design and improvement standards contained in this section shall apply to all construction, reconstruction of streets and roads, public or private, dedicated to the public within the City limits.
2. Improvement Design: All street improvements shall be designed by and constructed under the supervision of a professional Civil Engineer, registered in the State of Montana, and shall meet or exceed the right-of-way and construction standards for the type of street to be constructed found within these regulations, the adopted Transportation Plan, and adopted policies of the City Public Works Department.
3. Plans and Specifications approval: Plans and specifications for all streets shall be provided to and approved by City Engineering. The subdivider shall provide professional engineering services for construction inspections, and post-construction certifications. The plans and specifications shall be approved by the City Engineer prior to initiation of any street improvement construction. In addition, a copy of the road plans and specifications for any emergency access roads shall be reviewed and approved by the City Fire Department prior to construction.
4. Traffic Impact Study: At the time of preliminary plat submittal, a traffic impact study shall be prepared and stamped by a Professional Engineer and approved by the City Engineer for any new residential, institutional, commercial or industrial subdivision or development which will generate one thousand (1,000) or more vehicle trips per day or 100 peak-hour trips, as referenced in the Trip Generation Report of the Institute of Transportation Engineers. The Professional Engineer shall certify "that the Traffic Impact Study has been prepared by me or under my immediate supervision and that I have experience and training in the field of traffic and transportation engineering." The report shall be stamped by a Professional Traffic Operations Engineer for five thousand (5,000) or more vehicle trips per day.

The traffic generation threshold shall apply to any development or cumulative phases of development.

A vehicular trip is defined as a one-way journey of a person in an automobile or a transit vehicle. If the study indicates a need for the installation of traffic signals, intersection improvements, or other off-site street improvements to facilitate traffic flow generated by the entire proposed development, the identified improvement shall be installed or a financial contribution for the subdivision's proportional share shall be made prior to final plat approval of the subdivision, as determined by City Engineering. The financial contribution for proportionate share shall be by cash contribution, traffic system development fee, or traffic impact fee, whichever is in effect at the time of final plat approval. The applicant shall meet and discuss elements of the study with City Engineering to determine the general extents of the study at the time of the pre-application meeting.

All developments generating less than 100 peak-hour trips or 1000 average daily trips shall analyze and design for the following basic street design elements. The applicant shall review these elements with City Engineering at the time of a preapplication meeting to determine what elements may apply. In addition, the applicant shall provide an explanation of how each element applies or does not apply, and that summary shall be included with the preliminary plat or development application.

- a. Location of approaches (access management);
- b. Sight distance review;
- c. Turn lane analysis;
- d. Connectivity and Circulation review
- e. On-street parking impacts;
- f. Review of impacts to adjacent property streets, accesses, and intersections with site generated pedestrian and vehicular traffic;
- g. Truck circulation, including solid waste pick-up;
- h. Location and type of traffic-control devices;
- e. Traffic Calming

City Engineering reserves the right to require applicant analysis and review of a specific traffic impact due to known traffic or adjacent access issues for a subdivision or development generating less than 100 peak-hour or 1000 trips per day.

5. Street and Road Dedication: All streets providing access to the proposed subdivision shall be dedicated to the public.
6. Right-of-Way and Street Widths: Street right-of-way and surface widths shall be provided as shown in Table 23.406.B.1, below. Street widths (b-b curb width) and lane widths shall be determined and approved by City Engineering Right-of-Way dedications at intersections shall be determined by City Engineering, and may include chamfered corners in order to accommodate ADA or future roundabout.

Table 23-406.B.1. Required Dedications and Street Improvements for Subdivisions within the City Limits

Street Type	Right-of-Way	B-B Curb Width Range	Parking Width** *	Boulevard Width	Sidewalk Width	Shared Use Path Width
Principal Arterial	120'	*	---	10'	5' / **	10'
Minor Arterial	100'	*	---	10'	5' **	10'
Collector	74'	39'-53'*	8'	5'	5'	
Commercial Local Access	70'	39'-45'	8'	5'	5'	
Residential Local Access	56'	34' min. §	n/s	5'	5'	
Cul-de-Sac 100-1000	56'	34' min.	n/s	5'	5'	
Cul-de-Sac <100 feet	40'	29' min.	n/s	---	---	

* As approved by City Engineering.

** Sidewalk is 5' on one side with a 10-foot multi-use trail on the other side.

*** Lane Width measured from lip of curb. Parking width measured from face of curb.

§ Street sections that (a) do not require parking or allow for parking on both sides, (b) must be signed no parking, and (c) are approved by City Engineering, City Planning, and City Fire Marshal, may be reduced to 24-feet back of curb to back of curb. For example, a street through a golf course that is fronted by a golf course on both sides or an entry road into a subdivision.

§ Street sections with less than 120 average daily trips (ADT), for local residential streets with two street connections or street sections, or that have a block length of 300-feet or less may reduce the back of curb to back of curb width street requirement to 31-feet.

§ Street sections that (a) do not require parking or allow for parking on one side, (b) must be signed no parking, and (c) are approved by City Engineering, City Planning, and City Fire Marshal, may be reduced to 29-feet back of curb to back of curb. For example, a street that is fronted on one side by a golf course, drainage, or ditch.

7. Alleys: Proposed alleys in both residential and commercial subdivision shall meet the following standards:

- The width of an alley shall be a minimum of twenty (20) feet.
- Alley intersections and sharp changes in alignment shall be avoided, but where necessary, corners shall be designed to permit single unit truck movement.

- c. Dead-end alleys shall be avoided where possible, but if unavoidable, shall be provided with adequate turnaround facilities at the end.
- 8. Grading/Cut and Fill: All streets and alleys with adjacent to the subdivision shall be excavated or filled to the grade established and shall provide for surface water drainage as specified by City Public Works according to City specifications.
- 9. Base Construction: The type of base required will vary depending on the nature of the existing material and with the particular type of traffic to be accommodated, and shall be approved by City Public Works according to a geotechnical analysis.
- 10. Street Surfacing: A pavement surface shall be required on all streets as specified by City Public Works.
- 11. Street Grades: All street grades shall conform to the requirements of the City. Street grades shall not exceed the following, with due allowance for reasonable vertical curves and intersection treatment. Street centerline horizontal curves shall be designed for the following maximum speeds:

Street Type	Percent Grade	Speed (M. P. H.)
Collector	7	25-35
Local Access	12	25
- 12. Curbs and Gutters: Standard integral curb and gutter shall be placed on all arterial, collector and commercial streets. Standard integral curb and gutter is required on local residential streets, but ribbon curb may be approved by City Engineering as part of the storm drain design for the subdivision.
- 13. Sidewalks: Boulevard-style sidewalks shall be installed on both sides of all streets, except cul-de-sacs less than one hundred (100) feet in length. Arterial and Collector streets may have a multi-use trail on one side in lieu of one of the required boulevard sidewalks. City Engineering may recommend to the City Council that it waive or modify the requirement for boulevard walks on both sides of a local residential street when the subdivision constructs an approved multi-use bicycle/pedestrian path connected and ADA accessible to all lots in combination with or in lieu of sidewalks. Required sidewalk and boulevard widths shall follow those listed in Table 23-406.B.1, above.
- 14. Street Lights: Street lights shall be installed within residential subdivisions. Residential street lights shall be designed by a licensed professional engineer in accordance with the American National Standard Practice for Roadway Lighting RP-8, current edition.
 - a. New Street Lighting
 - 1. Residential Light Fixture Configuration: Street light fixtures installed after the effective date of these regulations shall be equipped with full cutoff optics,

and positioned to minimize any glare source and not create light spillover.

2. Mercury Vapor Bulbs or Lamps: Mercury Vapor bulbs or lamps may not be used in Residential street lights installed after the effective date of this ordinance. LED type luminaires shall be utilized in new street lights.
3. Residential Street light mounting Height: Residential Street Light fixtures installed after the effective date of this ordinance shall not be mounted higher than 25 feet above grade.
4. Exceptions to the requirements of 23-406.B.14.
 - a. Traffic signals and other traffic safety and control devices
 - b. Historic streetlights
15. Access Driveways: Access driveways to new lots shall be allowed as regulated by the City's Curb Cut Regulations found in Article 6-1208, BMCC.
16. Permanent cul-de-sac streets may not represent more than 20% of total roadway miles in a subdivision unless approved by a variance.
 - a. Exceptions to this do not require a variance but can be approved administratively. Exception provisions are:
 1. Infill projects where a dead-end cul-de-sac is the only viable road option.
 2. Long narrow lots that are not wide enough for more than a single road that is less than 1,000 feet long. Future connections to adjacent properties shall be provided as outlined in Section 23-406.A.1. and Section 23-406.A.2.
 3. Topography that does not allow for a grid system as outlined in the subdivision regulations.
 - b. Developments with cul-de-sacs must provide non-motorized access easements that connect the ends of these streets with each other or provide non-motorized access to existing or reasonable expected future streets, schools, shopping, parks, trails or open space, bus stops and community facilities.

C. **Multi-Use Trails, General:** All subdivisions must be reviewed for compliance with the currently adopted Active Transportation Plan to provide multi-use trail and greenway corridors for safe, convenient non-motorized transportation routes throughout the City and County.

1. To comply with the currently adopted Active Transportation Plan, all subdivisions shall provide a thirty (30) foot wide multi-use trail easement across the property if:
 - a. The currently adopted Active Transportation Plan indicates that a proposed multi-use trail corridor crosses the subdivision property; or

2. If the currently adopted Active Transportation Plan indicates that a proposed trail crosses the subdivision property, and a segment of the trail has already been provided on adjacent property, then the subdivision shall connect the trail at the property lines to provide for a continuous trail corridor.
3. Trail infrastructure identified and designated as Neighborhood Bikeways, Bike Lanes, Shared Use Path in the currently adopted Active Transportation Plan are required to be constructed by the developer when the trail is in the adjacent right of way or within the development itself. This is considered a public improvement.

Section 23-407. Storm Drainage Facilities.

A. **General: Facilities** and design for storm water drainage shall be provided in accordance with standards set by the City of Billings Storm Water Management Manual (SWMM) and the Montana Department of Environmental Quality (MDEQ). The subdivider shall provide a storm water collection and conveyance system which is designed and constructed in accordance with applicable City standards and which is connected to an existing storm drainage system. If there is no existing storm drainage system in the area or if the existing system has insufficient capacity to carry the additional discharge, the subdivider shall provide an onsite area for retention or detention with controlled outlet capacity, if needed. Such on-site retention or detention and controlled outlet shall be utilized only if specifically approved by the City.

B. **Drainage Discharge: Discharge** of storm drainage is subject to the following:

1. Storm drain systems shall not discharge into sanitary sewer facilities.
2. Storm drain systems shall not discharge into agricultural water user's facilities without the written permission of the appropriate irrigation district.
3. Stormwater detention or retention ponds in parkland, reference Section 23-1005 Stormwater Detention / Retention Ponds in Parks of these regulations.

C. **Easements:** Easements may be required between lots and along public right-of-way to manage storm drainage in subdivisions.

Section 23-408. Sanitary Sewer Systems.

A. The subdivider shall install complete sanitary sewer system facilities in accordance with the requirements of the City and the Montana Department of Environmental Quality (MDEQ).

An application for extension of sanitary sewer services shall be submitted for review and approval by the City. The subdivider shall submit plans and specifications for the proposed facilities to the City and to MDEQ and shall obtain necessary approvals prior to construction.

Section 23-409. Water Supply Systems.

- A. The subdivider shall install complete water system facilities in accordance with the requirements of the City and the Montana Department of Environmental Quality (MDEQ). Additionally, the City may as a condition of approval require two water feeds into dead-end roads.

An application for extension of water service shall be submitted for review and approval by the City. The subdivider shall submit plans and specifications for the proposed facilities to the City and to the MDEQ and shall obtain necessary approvals prior to construction.

- B. If the subdivision is within the County Water District of Billings Heights (CWDBH), the subdivider shall install complete water system facilities in accordance with the requirements of the CWDBH and the MDEQ.

An application for extension of water service shall be submitted for review and approval by the CWDBH. The subdivider shall submit plans and specifications for the proposed facilities to the CWDBH and to the MDEQ and shall obtain necessary approvals prior to final plat approval.

Section 23-410. Utilities.

- A. All new utilities serving the subdivision including electricity, cable television, and telephone shall be placed underground, with the exception of fire hydrants, cable closures, alignment markers, etc. Easements for utilities shall be clearly indicated on the plat.
 1. Easements shall be provided for public and private utilities where requested by the city and private utility companies. The width of an easement may vary depending upon the utility company serving the subdivision.
 2. Utility facilities shall be designed by utility firms in cooperation with the subdivider, subject to applicable laws and rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities. The subdivider shall have the construction of all private utilities inspected by a licensed professional engineer prior to final plat approval or release of the financial guarantee for improvements.
- B. Where a subdivision is proposed in part or in whole within an airport influence area and noise zone, as defined in BMCC, Article 5-400, a perpetual air rights easement shall be executed.

Section 23-411. Watercourse and Irrigation Easements (76-3-504(1)(j), (k), MCA).

A. Easements for irrigation facilities WITHIN the subdivision: Easements are required to be shown on the face of the preliminary and final plats for all drainage ways, irrigation canals/ditches and their laterals, and belowground pipelines that traverse the property to be subdivided, providing for irrigation within the subdivision, except as noted in Section 23-411.B., below. In addition, an easement document shall be filed with the final plat. The easements provided shall meet the following standards:

1. Easements shall be provided in locations of appropriate topography and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
2. Easements of a sufficient width to allow for construction, repair, maintenance, and inspection of the ditch shall be provided. The easement width shall be based on the policy of the appropriate irrigation district; and
3. The easement document shall prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the water users.
4. Irrigation or ditch easements may be located within parkland but shall not be used to satisfy parkland dedication requirements.

B. Exclusion of easement requirements for irrigation within the subdivision: The subdivider need not establish irrigation easements as provided in Section A. above if one of the following is met:

1. The average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
2. The water rights are removed from the property being subdivided or evidence is provided by the subdivider that the appropriate legal or administrative process has been initiated to remove the water rights from the land within the subdivision. Furthermore, the fact the water rights have been or will be removed from the land within the subdivision shall be denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

C. Easements through the subdivision for the benefit of downstream water users:

Easements are required to be shown on the face of the preliminary and final plats for all drainage ways, irrigation canals/ditches and their laterals, and below-ground pipelines on the property being subdivided 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. In addition, an easement document shall be recorded with the final plat. The easements provided shall meet the following standards:

1. Easements shall be provided in locations of appropriate topography and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
2. Easements of a sufficient width to allow for construction, repair, maintenance, and inspection of the ditch shall be provided. The easement width shall be based on the policy of the appropriate irrigation district; and
3. The easement document shall prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the water users.

D. Additional Provisions:

1. The realignment or relocation of active irrigation ditches or pipelines is discouraged. If an irrigation facility is proposed to be realigned or relocated, the developer shall receive written permission of the appropriate irrigation district and/or water user and the subdivider's Professional Engineer shall certify prior to final plat approval that the water entering and exiting the realigned or relocated irrigation facility is the same quality and amount of water that entered or exited the facility prior to realignment or relocation.
2. New storm water generated from a subdivision shall not be discharged into an irrigation facility unless the subdivider receives written approval from the appropriate irrigation district and/or water user prior to final plat approval.

Section 23-412. Disposition of Water Rights (76-3-504(1) (j), MCA).

The subdivider shall submit evidence with the final plat indicating that either A. and B., below, or C., below, has been provided:

- A. Reservation and transfer of water rights:** The subdivider shall reserve all of the water rights on the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water; and
- B. Establish landowner's water use agreement:** If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water

right on the subdivision lots, the subdivider shall establish a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

C. **All rights severed and granted to the City:** All surface water rights and/or ditch shares shall be severed from the land proposed for subdivision and granted to the City.

Section 23-413. Fire Protection Requirements.

To ensure a reasonable level of fire protection and life-safety for the public and firefighters, fire apparatus access roads and an approved water supply capable of providing the required water flow for fire protection shall be provided in accordance with this section and the adopted fire code to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction.

A. **Definitions.**

Approved: Acceptable to the fire department having jurisdiction.

Fire Department having jurisdiction: Fire Department or Fire District serving the area in which the subdivision is located.

B. **Major, Minor, and Subsequent Minor Subdivisions:** For all subdivisions, the subdivider shall provide the following minimum mechanism for fire suppression: A pressurized fire hydrant system meeting the flow requirements of the adopted Fire Code, National Fire Protection Association (NFPA) 1142, and the City of Billings Public Utilities Department Rules and Regulations.

C. **Emergency Secondary Access Roads:** In the event that an emergency secondary access road is approved, through the variance process, as a means of providing a second access to a subdivision, as required by Section 23-406.A.5. of these Regulations, it shall be built to the following standards:

1. Emergency access roads shall be designed to a minimum unobstructed surface width of not less than twenty (20) feet and shall be constructed to support a forty (40) ton vehicle with a surface that provides all weather driving capabilities. The road shall be constructed to City standards. The emergency access road shall be maintained throughout the year including the removal of snow and ice. Where required by the Fire Department having jurisdiction, gates or other approved barricades shall be required at either end of the road to restrict through traffic. A sign shall be fixed to each gate in a conspicuous manner. The sign shall read "EMERGENCY ACCESS ONLY" using black letters not less than two (2) inches wide and six (6) inches high on a white retro reflective background.
2. Prior to construction, a cross-sectional design of the road including location, section, surfacing, and drainage, and design of gates or barriers shall be submitted to and approved by the Billings Fire Department and the City Engineer's Office. The storm drain design shall accommodate runoff during a ten (10) year storm event to ensure

that there is no blockage of the roadway in the event of an emergency. The drainage shall not encroach into the travel way.

3. Emergency access roads will be assigned a name by City GIS / Land Management. In order to ensure the roads are entered into and reflected on the County GIS mapping system, the road shall be shown on the plat along with the name assigned to the road. Emergency access roads will not have conventional street signs identifying them by the assigned name.

Two (2) sets of final plans showing corrections/revisions after review and approval shall be submitted to City GIS / Land Management. City GIS will forward one (1) set of plans to County GIS to ensure that the emergency access road and road name are entered into the GIS mapping system.

Section 23-414. Flood Hazard Evaluation.

If any portion of a proposed subdivision is within the floodway of a flood of one hundred (100) year frequency as defined by Title 75, Chapter 5, MCA and the Federal Emergency Management Agency (FEMA), or deemed subject to flooding by the City, or if any portion of a proposed subdivision is within two thousand (2,000) horizontal feet and less than twenty (20) vertical feet of a live stream draining an area of twenty-five (25) square miles or more, the flood hazard evaluation criteria found in Appendix O shall be applied, as applicable.

Article 23-500. GUARANTEE OF PUBLIC IMPROVEMENTS.

Section 23-501. Subdivision Improvements Agreement.

Prior to granting approval of the final plat by the governing body the subdivider shall have installed all of the required improvements as stipulated in these regulations, or shall, prior to receiving approval of the final plat, provide a financial guarantee in accordance with Section 23-502 and enter into a written subdivision improvement agreement (SIA) with the governing body guaranteeing the construction and installation of all required improvements in conformance with all policies, standards and ordinances adopted by the City. The agreement shall stipulate, among other things, which type of security arrangements acceptable to the governing body the subdivider elects to use, the time schedule acceptable to the City, the subdivider's plans for accomplishing the required improvements and an agreement that the subdivider shall guarantee all improvements for a period of two (2) years from the date of acceptance by the City.

Section 23-502. Security Guarantee. (MCA 76-3-507).

The subdivider shall provide a monetary security guarantee from the following listed methods in the amount of one hundred twenty-five (125) percent of the estimated total cost or actual construction contract amount of installing all required improvements including engineering and administration fees, as estimated by a Professional Engineer and approved by the Public Works Department.

- A. **Escrow account.** The subdivider shall deposit cash, or other instrument readily convertible into cash at face value, either with the City, or in escrow with a financial institution. The use of any instrument other than cash, and in the case of an escrow account, the financial institution with which the funds are to be deposited, shall be subject to the approval of the governing body or designee. In the case of an escrow account, the subdivider shall file with the City an agreement between the financial institution and the subdivider guaranteeing the following:
 1. That the funds of the escrow account shall be held in trust until released by the governing body or designee and may not be used or pledged by the subdivider as security in any other matter during that period; and
 2. That in the case of a failure on the part of the subdivider to complete the improvements, then the financial institution shall immediately make the funds in the account available to the City for use in the completion of those improvements.
- B. **Irrevocable letter of credit.** The subdivider shall provide, from a financial institution or other reputable institution subject to the approval of the governing body or designee, an irrevocable letter of credit. This letter shall be deposited with the City and shall certify the following:

1. That the creditor does guarantee funds of the required amounts, as estimated by the subdivider and approved by the Public Works Department, for completing all required improvements; and
2. That, in the case that the subdivider fails to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, such funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter; and
3. That the letter of credit may not be withdrawn, or reduced in amount, until released by the governing body or designee; and
4. That the letter of credit shall be renewed from year to year until such time the improvements are completed.

C. **Bond.** The subdivider shall provide a surety bond to guarantee the funds to complete improvements, subject to any requirements of the bonding company. The bond shall be payable to the City and shall remain in effect until the improvements have been completed and accepted by the City. The subdivider shall bear all costs associated with the provision of the guarantee.

D. **Phased Development.** Where a subdivision is to be developed in phases, a phasing plan shall be prepared by the developer, and reviewed and approved by the governing body with the preliminary plat. The phasing plan shall be included in the SIA and shall describe which lots are included in each phase, and what improvements shall be completed with each phase. Improvements included in the first phase shall be constructed or guaranteed using one of the acceptable monetary security guarantees prior to final plat approval by the governing body. Lots within subsequent phases shall be restricted from being transferred or developed. A “Restrictions on Transfers and Conveyances” contract shall be entered into for subsequent phases by the subdivider and the governing body and shall be filed with the final plat documents with the Clerk & Recorder

A release on the restrictions on transfers and conveyances may be filed with the Clerk & Recorder only after the necessary improvements for each particular phase are constructed, approved and accepted by the City, or guaranteed using one of the acceptable monetary security guarantees.

The subdivider shall set a future date that each phase is proposed to commence. Should the date set be passed or the developer determines they are unable to meet the set date a new public hearing will be scheduled to set new dates for future phases. When the developer prepares to release a new phase in the subdivision the developer shall submit to the Planning Department the existing SIA, an updated Environmental Assessment addressing any changes, an updated TIS accounting for growth in the area, and any updates to the MDEQ requirements for the development. Should there be no changes to

the above-mentioned submittal requirements the applicant shall submit documents justifying that finding. A public hearing shall be held to review the proposed phase and its' impacts on the surrounding area with the possibility of additional conditions of approval being added should the findings of fact determine they are needed. A public hearing is required prior to any 'future phase' being released for public sale of lots. (76-3-617 MCA)

All phases included within the phasing plan, if completed within 5 years of final plat approval, are not required to go through the public hearing process as outlined above in paragraph D. They will only be required to obtain a "Release and Certificate" to open each phase. If the subdivider applies to open any phase after 5 years of the approval of the final plat, then the governing body will hold a public hearing in order to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval as outlined above in paragraph D.

- E. Provision for security requirement to ensure construction of public improvements.** Any other method specified in MCA 76-3-507 that is also acceptable to the governing body. In all circumstances the guarantee method shall provide the City of Billings as the beneficiary.

Section 23-503. Reduction of Guarantees.

In those cases where improvement guarantees have been made by the method in Sections 23-502 the amount of the guarantee may be reduced upon installation and acceptance by the City of the required improvements. The amount of the reduction shall not exceed the percentage that the accepted improvements made up of all originally required improvements.

Section 23-504. Release of Guarantee.

Upon completion of required improvements by the subdivider and acceptance of them by the City, all in conformance with this Chapter, the City shall authorize the release of any remaining portion of the improvement guarantee of ninety percent (90%) of the original amount. The remaining ten percent (10%) will be released after any deficiencies are corrected after the two-year warranty inspection. The acceptance of improvements by the City shall initiate the two-year warranty period.

Article 23-600. DEVELOPMENTS PROVIDING MULTIPLE SPACES FOR RENT OR LEASE FOR RECREATIONAL VEHICLES, MOBILE HOMES, AND MANUFACTURED HOMES

Section 23-601. General.

- A. Definition.** A development providing multiple spaces for rent or lease for recreational vehicles (RVs) and/or mobile or manufactured homes is created when any portion of a parcel is rented or leased for the purposes of situating a temporary or permanent RV, mobile or manufactured home for residential or commercial use owned by the renter or lessee. The rented/leased land is owned as one parcel under single ownership, which can include a number of persons owning the property in common. These developments are commonly known as mobile home parks, manufactured home parks, and recreational vehicle parks.
- B. Review & approval required.** Manufactured home parks, mobile home parks and RV parks must be submitted for review and approval by the governing body before portions may be rented or leased (76-3-504(s), MCA). Approval must be based on the criteria found in Article 23-300 of these Regulations.

The number of spaces available for rent or lease shall determine the level of review under Article 23-300 (i.e. major, minor, or expedited) as follows:

- a. Two spaces for rent/lease meeting all other criteria found in Section 23-305.A. of these regulations shall be reviewed as a subdivision qualifying for expedited review under Section 23-305.
- b. Two spaces for rent/lease not meeting one or more of the criteria found in Section 23-305.A. of these regulations shall be reviewed as a first minor subdivision under Section 23-303.
- c. Three to five (3-5) spaces for rent/lease shall be reviewed as a first minor subdivision under Section 23-303.
- d. Six or more (6+) spaces for rent/lease shall be reviewed as a major subdivision under Section 23-302.

- C. Zoning requirements.** Manufactured home parks, mobile home parks and RV parks shall follow all applicable requirements outlined in the Zoning Regulations (Article 27, BMCC).

Section 23-602. Review Procedures

A. Submittal requirements.

1. Manufactured home parks, mobile home parks and RV parks require submittal of those requirements outlined in Article 23-300 of these Regulations except that the subdivider shall submit un-surveyed plans drawn to scale, rather than plats.
2. Supplementary materials. In addition to the submittal requirements outlined in Article 23-300, preliminary and final plans and submittals for manufactured home parks, mobile home parks and RV parks shall include the following:
 - a. A layout of all spaces, buildings, or structures proposed for rent or lease.
 - b. Location of common areas and facilities.
 - c. Parks and/or recreation areas, if required by Article 23-1000, of these Regulations.
 - d. Landscaping plan, required by Section 27-1200 as applicable.
 - e. A Traffic Impact Analysis, if required by Section 23-406.B.4., BMCC.
 - f. A Stormwater Pollution Protection Plan (SWPPP) for developments disturbing one acre or more.

B. Final Approval. Manufactured home parks, mobile home parks and RV parks shall follow the applicable review procedures outlined in Article 23-300 of these Regulations. In lieu of a final plat, a final plan drawn to scale shall be submitted for approval by the governing body. The approved final plan shall be filed with the Yellowstone County Clerk & Recorder as an exhibit, not as a final plat.

Section 23-603. Manufactured and/or Mobile Home Park Development Requirements.

A. Manufactured or mobile home spaces.

1. The number of allowed spaces is limited to what is approved on the final plan.
2. Manufactured or mobile home spaces must be arranged to permit the safe and practical placement and removal of manufactured homes.
3. All manufactured or mobile homes must meet the minimum setback requirements of Section 27-309, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Section 27-303 J, BMCC. In addition, all manufactured or mobile homes must meet the requirements of fire code separations. Any additional detached building must

meet all requirements from building.

4. A minimum of two (2) off-street parking spaces must be provided on or adjacent to each manufactured or mobile home space. The driveway must be located to allow for convenient access to the manufactured home, and be a minimum of ten (10) feet wide.

B. Streets.

1. Streets within a manufactured or mobile home park or recreational vehicle park shall be private and built to city standards.
2. Private streets shall be designed to provide access to all sites. No site shall have vehicular access to a public street. The streets shall be laid out to discourage through traffic and intersections with public streets shall be kept to a minimum.
3. Streets, pedestrian, and bicycle facilities shall be designed and built to meet current City Standards.
4. Curvilinear streets shall have no centerline curve with less than a one hundred (100) foot radius. At intersections, the inside edge of the paved street shall have a minimum of a twenty (20) foot radius.
5. All streets shall intersect at an angle of ninety (90) degrees except where the subdivider can show just cause not to and with the approval of the governing body.
6. The layout near street intersections shall be such that a clear vision area is maintained. Stopping sight distance on curves shall be as required on subdivision streets.
7. All traffic-control devices used shall comply with the current edition of the Manual on Uniform Traffic Control Devices, published by the U.S. Department of Transportation.

C. Fire protection. The manufactured or mobile home park shall provide an adequate water supply for fire suppression needs, following the requirements as found in Section 23-413 of these Regulations. The means for fire protection shall be subject to approval by the local fire district and the governing body.

D. Health standards/license requirement. In addition to the criteria of this Section, manufactured or mobile home parks must also meet the minimum standards of the Montana Department of Public Health and Human Services (MDPHHS) under Title 50, Chapter 52, MCA and the requirements of the Montana Department of Environmental Quality (MDEQ) under Title 50, Chapter 60, MCA. The governing body shall not grant final approval of a manufactured home, mobile home, and/or recreational vehicle park until the subdivider first obtains the applicable licenses and approvals for the facility from MDPHHS and MDEQ.

E. Additional provisions

1. Manufactured or mobile home parks shall meet the parkland dedication requirements as outlined in Article 23-1000 of these Regulations.
2. Manufactured or mobile home parks located adjacent to industrial, commercial or lower-density residential land uses shall provide screening such as fences or natural growth along the property boundary lines separating the community from such adjacent uses.
3. All manufactured or mobile home parks shall have a sign near the main entrance showing the park layout.
4. Centralized mail delivery shall be provided at one or more locations within the park. Location and design of such group mail collection site(s) shall be reviewed and approved by the United States Postal Service. .
5. It shall be unlawful to operate a manufactured or mobile home park without holding a valid license issued by the Montana Department of Environmental Quality (MDEQ), to be renewed annually.

Section 23-604. Recreational Vehicle Park Development Requirements.

A. Recreational vehicle spaces.

1. Recreational vehicle spaces must be arranged to allow for the safe movement of traffic and access to spaces.
2. Recreational vehicles must be separated from each other and from other structures by at least fifteen (15) feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
3. No recreational vehicle space may be located less than twenty (20) feet from any public street or highway right-of-way.
4. The density of a recreational vehicle park may not exceed twenty five (25) recreational vehicle spaces per acre of gross site area.

B. Streets.

1. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
2. Design of the streets within a recreational vehicle park shall follow those guidelines on street design for manufactured home parks above (Section 23-603.B.).

C. Additional standards.

Recreation vehicle parks shall also follow the guidelines listed in Section 23-603.C. **Fire protection**; Section 23-603.D. **Health standards/license requirement**; and Section 23-603.E. **Additional provisions**.

Section 23-605. Timing of Improvements.

- A. The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or designated agent will inspect all required improvements in order to ensure conformance with the approved construction plans and specifications. The subdivider shall guarantee all improvements for a period of two years from the date of written approval by the governing body or designated agent.
- B. If the subdivider seeks approval of the final plan prior to the installation and completion of all required improvements, the subdivider shall enter into a written agreement with the governing body guaranteeing the construction and installation of all required improvements. This agreement shall specify which type of security arrangements the subdivider elects to use and the time schedule proposed for accomplishing the required improvements. Acceptable monetary security guarantees are described in Article 23-500 of these Regulations.

Article 23-700. CLUSTER DEVELOPMENTS (MCA 76-3-509)

Section 23-701. Purpose.

The purpose of this Article is to promote maximum flexibility in the design of new developments within the City of Billings and to encourage innovation within a framework of timely, efficient and flexible design review. Developments that utilize innovative, progressive planning and site design techniques and methods to allow a mixture of land uses, densities, setbacks and building heights are encouraged. Cluster Developments are encouraged where community resources are present and desirable for protection or preservation. Those areas include but are not limited to wildlife habitat, river and stream corridors, wetlands, historical or archeological sites or prime agricultural lands. Planned Neighborhood Developments are encouraged where the proposed development is in excess of twenty acres and diversity in land uses is desirable.

Section 23-702. Definitions.

For the purposes of this Article the following definitions shall apply:

Cluster Development: A Cluster Development is a subdivision creating five (5) or more lots clustered in a group that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped. A minimum of thirty percent (30%) of the area within the subdivision shall be reserved for open space owned by common ownership (76-3-103(2), MCA).

Master Plan: A master plan is a site plan for a Planned Neighborhood Development that shows lots, blocks, streets, alleys and areas for various land uses including open space within the development. The master plan shall be part of the subdivision approval and any significant change to such master plan shall be considered an amended subdivision.

Section 23-703. Cluster Development General Requirements.

- A. Cluster development may be applied to any residential subdivision of five (5) or more lots. The subdivision shall generally conform to the Growth Policy and the underlying zoning district(s) although the lots may be smaller in area than required in the underlying zoning district.
- B. The maximum size of any developed parcel or lot within a cluster development is 175,000 square feet.
- C. A minimum of 30% of the total area within the subdivision shall remain undeveloped in a cluster development. The undeveloped parcel must be protected in perpetuity and prohibit further division of the parcel. (See Section 23-708)
- D. Cluster developments are exempt from the review criteria in Section 23-302.H. of these Regulations (76-3-509(e)(ii), MCA).

- E. Cluster developments are exempt from the parkland dedication requirements in Article 23-1000 in so far as the cluster development meets or exceeds parkland dedication requirements of Section 23-1002 of these Regulations.
- F. Cluster developments shall comply with all other requirements of these Regulations.

Section 23-704. Design Standards and Applications for Cluster Developments.

- A. The Cluster development subdivision shall follow all applicable review procedures, as outlined in Article 23-300 of these Regulations.
- B. **Site Analysis Map.** A site analysis map shall be submitted with the preliminary plat application including the following information:
 1. Property boundaries;
 2. All streams, rivers, lakes, wetlands and other hydrologic features;
 3. Topographic contours with a minimum of 5-foot intervals; where lots are proposed on slopes 10% or less, contours must be shown at 2-foot intervals.
 4. All proposed open space areas;
 5. General vegetation characteristics;
 6. General soil types;
 7. The planned location of protected open space;
 8. Existing roads and structures;
 9. Potential connections with existing open space, parks and trails.
- C. **Open Space Management Plan.** An open space management plan, as described in Section 23-707 of this Article, shall be prepared and submitted with the preliminary plat application. The management plan will be reviewed as a supporting document of the preliminary plat. Review and recommendations to the governing body on the proposed open space management plan will be prepared by the Planning Board.
- D. **Instrument of Permanent Protection Required.** An irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, shall be placed on the open space concurrent with the application for final plat approval.

Section 23-705. Open Space.

- A. At least thirty percent (30%) of the gross area of a cluster development shall be reserved as open space.
- B. **Resource Protection Areas:** The following are considered resource protection areas and are required to be included within the open space when present. These resource areas must be mapped and shown on the preliminary plat.
 - 1. The 100-year floodplain.
 - 2. Riparian zones of at least seventy five (75) feet in width along all perennial and intermittent streams.
 - 3. Areas of at least 5,000 square feet with percent grade of twenty five percent (25%) or greater.
 - 4. Wetlands that meet the definition used by the Army Corps of Engineers pursuant to the Clean Water Act.
 - 5. Populations of endangered or threatened species, or habitat for such species.
 - 6. Archaeological sites, cemeteries and burial grounds or historic sites listed as such with any state or federal agency.
- C. **Other Resource Areas.** The following are considered important resource areas and may or may not be included within the open space at the discretion of the applicant.
 - 1. Historic sites or structures not listed as such with state or federal agencies.
 - 2. Existing native forests or prairie of at least one (1) acre contiguous area.
 - 3. Other significant natural features and scenic view sheds such as ridge lines, peaks and rock outcrops, particularly those that can be seen from public roads.
 - 4. Prime agricultural lands of at least two (2) acres contiguous area.
 - 5. Existing trails that connect the tract to neighboring areas.
 - 6. Areas at the base of any ridge line or rimrock of at least one (1) contiguous acre.
- D. Above-ground utility rights-of-way and small areas of impervious surface may be included within the protected open space. Such areas shall make up not more than five percent (5%) of the required open space area.
- E. At least seventy five percent (75%) of the open space shall be in a contiguous tract of a minimum size of 45,000 square feet. The open space should adjoin any neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected open space.
- F. The open space should be directly accessible to the largest practicable number of lots within the subdivision. Non-adjacent lots shall be provided with safe, convenient access to the open space.

Section 23-706. Permitted Uses of Open Space.

- A. Uses of Open Space may include the following:

1. Conservation of natural, archeological or historical resources;
2. Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
3. Walking, bicycle trails or other multi-use trails as defined in the currently adopted Active Transportation Plan;
4. Passive recreation areas, such as open fields;
5. Active recreation areas;
6. Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are adhered to;
7. Landscaped storm water management facilities approved by the governing body, community wastewater disposal systems and individual wastewater disposal systems located on soils particularly suited to such uses;
8. Easements for drainage, access, and underground utility lines;
9. Other conservation-oriented uses compatible with the purposes of this Article.

B. Prohibited uses of Open Space.

1. Golf courses;
2. Roads, parking lots and impervious surfaces, except as specifically authorized in the previous sections;
3. Agricultural and forestry activities not conducted according to accepted Best Management Practices;
4. Impoundments;
5. Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection.

Section 23-707. Ownership and Management of Open Space.

A. Ownership of Open Space. Open space shall be owned by one of the following entities:

1. The open space can be provided as allowed per MCA 76-3-621. Acceptance of the open space shall be at the discretion of the governing body, as recommended by the City's Park and Recreation Department's staff. Open space must allow public access through a plat dedication or easement; or
2. A Homeowners' Association representing residents of the subdivision may own the open space. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The Homeowners' Association shall have lien authority to ensure the collection of dues from all members. Open space owned by a Homeowners' Association must indicate through a plat dedication or easement, whether or not there is public access to the open space. The park will display signs indicating public or private use.

B. Management Plan. The applicant shall submit a Plan for Management of Open Space and Common Facilities (Management Plan) that:

1. Allocates responsibility and guidelines for the maintenance and operation of the open space and any facilities located thereon, including provisions for ongoing

- maintenance and for long-term capital improvements;
- 2. Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the open space and outlines the means by which such funding will be obtained or provided;
- 3. Provides that any changes to the Management Plan be approved by the Planning Department, or in the case of publicly accessible open space, approved by the Parks and Recreation Department ; and
- 4. Provides for enforcement of the Management Plan.

C. Maintenance.

- 1. Open space dedicated to the public shall be maintained according to the Management Plan by a Park Maintenance District (PMD) to be established prior to final plat approval.
- 2. Maintenance of open space owned by a Homeowner's Association shall be the responsibility of the Homeowner's Association. In the event the party responsible for maintenance of the open space fails to maintain all or any portion in reasonable order and condition the City of Billings may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the Homeowners' Association, or to the individual property owners that make up the Homeowners' Association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

Section 23-708. Legal Instrument for Permanent Protection of Open Space.

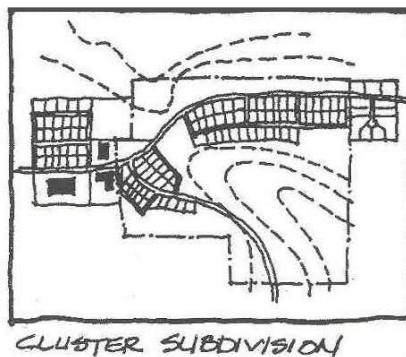
- A. **Legal Instrument.** Privately owned open space shall be protected in perpetuity by an irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this Chapter, as well as any further restrictions the applicant chooses to place on the use of the open space.
- B. **Tax Assessment of Open Space.** Once a legal instrument for permanent protection has been placed upon the open space, the Yellowstone County Board of Assessment shall be directed to reassess the open space at a lower value to reflect its more limited use. If the Open Space is used purely for passive recreational purposes and the terms of the instrument for permanent protection effectively prohibit any type of significant economic activity, then the assessment shall be at a value of zero.

Section 23-709. Planned Neighborhood Developments General Requirements.

A Planned Neighborhood Development (PND) project is intended to encourage the use of improved techniques for the development and arrangement of a mixture of land uses more than is available under conventional zoning regulations or land restrictions that separate land uses into distinct zones. It is further the intent of PNDs to allow for the integration of housing, business, and community facilities, and to allow for the preservation of the natural environment through efficient utilization of open space. PND requirements are outlined in City of Billings

Zoning Article 27-800.

Section 23-710. Examples of Cluster Development Designs.



Article 23-800. CONDOMINIUMS AND TOWNHOMES.

Section 23-801. Condominium and Townhome or Townhouse Development.

- A. Exemptions.** All condominium, townhome, or townhouse developments are subdivisions subject to the terms of these Regulations and the Montana Subdivision and Platting Act (MSPA), except those exempted by 76-3-203, MCA, as described below.
 - 1. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses, and any applicable park dedication requirements in 76-3-621, MCA are complied with; or
 - 2. The condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.
- B. Procedures.** All condominium, townhome, or townhouse developments which are not exempt from subdivision review, are subject to the applicable procedures contained in Article 23-300, Subdivision Review Procedures or Article 23-600, Subdivisions for Rent or Lease. The applicable subdivision procedure will be based on:
 - 1. Whether a division of land is to be created.
 - 2. The number of proposed units.
 - 3. Whether the land is a first or subsequent minor subdivision.

Section 23-802. Condominium and Townhome Standards.

- A.** Condominium and townhome developments shall comply with those standards contained in Article 23-400, Development Requirements and Article 23-1000, Parks, Trails and Open Space.
- B.** All buildings and structures in a condominium or townhome development shall meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.
- C.** Condominium, townhome, or townhouse developments shall comply with all applicable provisions of the Unit Ownership Act – Condominiums, Title 70, Chapter 23, MCA, as amended.

Article 23-900. ENVIRONMENTAL ASSESSMENT.

Section 23-901. Purpose.

The environmental assessment is a tool by which to evaluate a proposed subdivision's impact on the natural environment, adjacent properties, local services, and the community as a whole. From this evaluation the most appropriate course of action can be determined to mitigate any negative impacts created by the subdivision. The environmental assessment is required by 76-3-603, MCA, unless otherwise exempted.

Section 23-902. General Requirements.

- A. Major Subdivision.** The subdivider shall provide an environmental assessment with the submittal of the preliminary plat containing the following information:
 1. A description of the surface and ground water, geology and soils, vegetation, and wildlife use within the area of the proposed subdivision, as required by Section 23-903. **Environmental Description Contents**, of these Regulations.
 2. A community impact report containing an analysis of anticipated impacts of the proposed subdivision on the community and local services as required by Section 23-904. **Community Impact Report Contents**, of these Regulations.
 3. A summary of probable impacts of the proposed subdivision based on the criteria described in 76-3-608, MCA, as required by Section 23-905. **Summary of Probable Impacts**, of these Regulations.
 4. Additional relevant and reasonable information related to the applicable regulatory criteria per 76-3-501, MCA as may be required by the governing body or designee.
- B. Subsequent Minor Subdivision.** An environmental assessment must accompany the preliminary plat and shall include only the summary of probable impacts of the proposed subdivision based on the criteria described in 76-3-608, MCA, as required by Section 23-905. **Summary of Probable Impacts**, of these Regulations.
- C. Exemptions.** The following subdivisions shall not be required to submit an environmental assessment:
 1. A first minor subdivision from a tract of record (76-3-609(3), MCA).
 2. A subdivision qualifying for expedited review as described in Section 23-305 of these Regulations.
 3. Other subdivisions that satisfy all of the following criteria (76-3-616(2), MCA):
 - a. The proposed subdivision is completely within an area adopted by the Growth Policy pursuant to 76-1-601, et seq., MCA;

- b. The proposed subdivision is located within zoning pursuant to 76-2-203 or 76-2-304, MCA, that avoids significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and
- c. The proposed subdivision is located within an area where a long-range public works development program (i.e. Capital Improvements Plan) has been adopted pursuant to 76-1-601(4), MCA.

Section 23-903. Environmental Description Contents.

A. Surface Water.

1. Locate on a plat overlay or sketch map all surface water and the delineated floodways that may affect or be affected by the proposed subdivision including natural water systems (streams, lakes, rivers, or marshes), artificial water systems (canals, ditches, aqueducts, reservoirs, irrigation or drainage systems), and land subject to flooding (see also Section 23-414 —Flood Hazard Evaluation).
2. Describe all surface water that may affect or be affected by the proposed subdivision including name, approximate size, present use, and time of year that water is present.
3. Describe the proximity of proposed construction (such as buildings, sewer systems, roads) to surface water.
4. Describe any existing or proposed stream bank or shoreline alterations and/or any proposed construction or modification of lakebeds or stream channels. Provide information on the location, extent, type, and purpose of any proposed alteration.
5. Please indicate which of the following water quality permits have been or will be applied for and describe the reasons why these permits are required.

<u>PERMIT</u>	<u>AGENCY</u>
310 Permit	Local Conservation District
SPA 124 Permit	Department of Fish, Wildlife and Parks
Floodplain Permit	County Floodplain Administrator
Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers
318 Authorization	Department of Environmental Quality
Navigable Rivers Land Use License or Easement	Department of Natural Resources and Conservation

B. Groundwater.

1. Using available information, provide the estimated seasonal minimum and maximum depth to the water table, dates on which these depths were determined, and the location and depth of all known aquifers that may be affected by the proposed subdivision.

2. Provide a description of any steps necessary to avoid the degradation of groundwater and groundwater recharge areas.

C. Geology/Soils/Slopes.

1. Using available information locate on a plat or overlay any known geologic hazards affecting the proposed subdivision which could result in property damage or personal injury due to any of the following: rock falls or slides; land, mud or snow slides; high water table, unstable or expansive soil conditions, slopes greater than twenty five percent (25%).
2. Explain the measures that will be taken to prevent or materially lessen the danger of future property damage or injury due to existing geologic hazards.
3. Provide a statement describing any unusual soil, topographic or geologic conditions on the property, which may limit the capability for construction or excavation using ordinary and reasonable techniques. The statement should address conditions such as shallow bedrock, high water table, unstable or expansive soil conditions, and slope. Describe the location and amount of any cut or fill three (3) or more feet in depth. Where cuts or fills are necessary, describe prevention of erosion and the promotion of revegetation, such as replacement of topsoil and grading.
4. Include soil reports obtained from the USDA, Natural Resource and Conservation Service (NRCS) containing the physical properties and engineering indexes for each soil type, the soil limitations for sanitary facilities, building site development, and water features for each soil type. Describe any special design methods planned to overcome the soil limitations.

D. Vegetation.

1. Indicate the distribution of the major vegetation types and identify critical plant communities as identified by the NRCS.
2. Describe measures to preserve trees and critical plant communities (e.g., design and location of roads, lots and open spaces).

E. Wildlife.

1. Describe species of fish and wildlife that inhabit the area affected by the proposed subdivision.
2. Identify on an exhibit map any known critical or "key" wildlife areas, such as big game winter range, migration routes, waterfowl nesting areas, habitat for rare or endangered species, and wetlands.

3. Submit the impacts of the proposed development on fish and wildlife as identified by the Montana Department of Fish, Wildlife and Parks (MFWP). Provide a written statement outlining any recommendation of MFWP and any mitigation efforts to mitigate adverse impacts.

Section 23-904. Community Impact Report Contents.

A. Impact on agriculture and agricultural water user facilities.

1. Describe the number of acres in crop production and whether the property is in whole or in part a viable farm unit, e.g. was the property under production during the last regular season.
2. Describe the uses of land within the vicinity of the proposed subdivision.
3. Describe existing irrigation rights on the property and whether the rights will be transferred, retained by the original owner, or severed.
4. Explain any modification or relocation of ditches or any easements to be provided with the subdivision. The subdivider shall notify the affected ditch company of the subdivision and shall obtain permission to reroute or alter the ditch in any way.

B. Impact on local services and public health and safety.

1. Water Supply.

- a. Describe how water will be provided for domestic use and fire protection.
- b. Indicate the number of gallons per day of water the proposed subdivision will require and whether the water supply is sufficient to meet the needs of the anticipated population of the subdivision. Describe any anticipated effects on existing water systems or wells within the area.
- c. Based on available information, specify whether the proposed water supply satisfies the standards set forth by MDEQ for quality, quantity and construction criteria.
- d. If connection to an existing public, community, or shared water system is proposed, identify and describe the existing system and approximate distance to the connection from the proposed subdivision.
 - i. Provide written evidence that permission to connect to that system has been obtained.
 - ii. Provide information regarding the capacity of the existing water system and its adequacy for serving the proposed subdivision.

- e. If a new community or shared water system is proposed, identify who will install that system, and how the system will be maintained.
- f. If individual water systems are proposed, describe the adequacy of supply of groundwater for individual wells or cisterns and the method used to determine adequacy.

2. Sewage Disposal.

- a. Describe the proposed method of sewage disposal.
- b. Indicate the number of gallons of effluent per day that will be generated by the proposed subdivision at full occupancy, whether the proposed method of sewage disposal is sufficient to meet the anticipated needs of the subdivision, and whether it meets the standards of MDEQ.
- c. If connection to an existing public sewer system is proposed, provide a description of the system and the approximate distance from proposed subdivision.
 - i. Provide written evidence from the appropriate sewer jurisdiction granting permission to connect to that system shall be submitted with the preliminary plat.
 - ii. Provide information regarding the installation, maintenance and phasing of any proposed public sewage disposal system.
- d. If a new community or shared sewer system is proposed, identify who will install that system, and how the system will be maintained.
- e. If individual septic systems are proposed, describe the location and specifications of septic systems.

3. Solid Waste Disposal.

- a. Provide evidence that there is an existing solid waste collection and disposal system available that can accommodate the anticipated additional volume.
- b. If no existing collection and disposal system is available, describe the proposed method of solid waste collection and disposal.
- c. Describe how the proposed system satisfies the standards set forth by MDEQ.

4. Storm water.

- a. Provide calculations indicating how much storm water run-off will be generated as a result of the proposed development.

- b. Provide a description of the proposed storm water collection and drainage systems that satisfy the standards set forth by Section 23-407.

5. Roads.

- a. Describe any proposed access roads or substantial improvements to existing public or private access roads.
- b. If connections to any existing roads are proposed, identify all access permits that are necessary from the city, county or state.
- c. Discuss whether any of the individual lots or tracts have access directly to arterial roads.
- d. Explain any proposed closure or modification of existing roads.
- e. Describe provisions considered for dust control on roads.
- f. Explain how road maintenance will be provided to meet MDEQ guidelines for prevention of water pollution and erosion.
- g. Indicate who will pay the cost of installing and maintaining the roads.
- h. Discuss how much daily traffic will be generated on existing local and neighborhood roads and main arterials when the subdivision is fully developed.
- i. Indicate the capacity of existing and proposed roads and if they are capable of safely handling the increased traffic resulting from the proposed subdivision. Describe any additional maintenance that will be necessary due to increased traffic and who will pay the cost of maintenance.
- j. Indicate ownership of any private access to the subdivision, including private driveway easements.

6. Utilities.

- a. Indicate which utility companies are proposed to serve the subdivision.
- b. State the method of furnishing electric, natural gas or telephone service, where provided, the extent to which these utilities will be placed underground, and the estimated completion of each utility installation.
- c. Indicate if there are any existing utility lines on the property such as transmission lines, pipelines, etc. and if so, describe the impacts they may have on the proposed subdivision.

7. Emergency Services.

- a. Describe the emergency services available to the subdivision including fire protection, police protection, ambulance, and medical services
- b. Provide an estimate of the number of responses generated by the subdivision, and the method of determining those numbers.
- c. Describe roads to the subdivision and provide information on compaction standards and widths that satisfy the requirements set forth for emergency vehicle access.
- d. In the event that the proposed subdivision is located within the Wildland Urban Interface (WUI), the subdivider shall submit a plan to mitigate fire hazard in accordance with the fire department having jurisdiction.
- e. Describe any health or safety hazards on or near the subdivision, such as mining activity, high-pressure gas lines, dilapidated structures or high voltage power lines. These conditions should be accurately described and their origin and location identified and any proposed mitigation.

8. Schools.

- a. Describe the available educational facilities that would service this subdivision.
- b. Provide an estimate of the number of school children that will be generated from the proposed subdivision and provide the basis for the estimate.
- c. Provide information regarding whether increased enrollment can be accommodated by the present personnel, facilities and the existing school bus system. This should include any recommendations of the administrator(s) and plans to mitigate adverse impacts of the proposed development on the provision of educational services.

9. Parks and Recreation Facilities.

- a. Describe any park and recreation facilities to be provided within the proposed subdivision and other recreational facilities that may serve the subdivision.
- b. State how the required parkland dedication is being satisfied.

C. Land Use.

1. Indicate compliance with zoning encompassing all or part of the proposed subdivision.

2. Describe how the subdivision will affect access to any public lands. Where public lands are adjacent to or near the proposed development, describe present and anticipated uses for those lands.
3. Describe the effect of the subdivision on adjacent land uses.
4. Describe any on-site or off-site land uses creating a nuisance, such as unpleasant odors, unusual noises, dust or smoke.

D. Historical Features.

Provide a letter from the State Historic Preservation Office (SHPO) indicating whether any historic features such as paleontological, archeological or cultural sites, structures, or objects are present on the subject property. If such features are present, provide a written statement outlining any recommendations of SHPO and any plans for inventory, study and/or preservation and mitigation for any adverse impacts.

E. Visual Impact.

1. Describe any efforts to visually blend development activities with natural surroundings.
2. If the subdivision is located near the Yellowstone River or the Rimrocks, describe any potential impacts to these natural amenities. Discuss any mitigation efforts to preserve the views.
3. Provide information regarding revegetation after construction and any proposed landscaping to be provided along streetscapes.

Section 23-905. Summary of Probable Impacts

A. Describe the effects the proposed subdivision has on the following:

1. Agriculture
2. Agricultural water user facilities
3. Local services
4. The natural environment
5. Wildlife and wildlife habitat
6. Public health and safety

- B. Describe how the proposed subdivision complies with the following:
 - 1. Survey requirements provided in Part 4 of the MSPA
 - 2. These subdivision regulations
 - 3. The subdivision review process as described in Article 23-300 of these Regulations
- C. Describe how the proposed subdivision provides for easements for the location and installation of any planned utilities.
- D. Describe how the proposed subdivision provides for legal and physical access to each lot and the required notation of that access on the plat.

Article 23-1000. DEDICATION OF PARKS, TRAILS AND OPEN SPACE

Section 23-1001. Purpose.

The purpose of parkland dedication is to: Meet the objectives associated with adopted City plans and policies.

Section 23-1002. Park Land Dedication Requirements (76-3-621, MCA).

- A. Except as provided in Sections 23-1008 and 23-1009, a subdivider shall dedicate to the City a cash or land donation equal to:
 1. 11% of the area of the net land proposed to be subdivided into parcels of one-half acre or smaller;
 2. 7.5% of the area of the net land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
 3. 5% of the area of the net land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
 4. 2.5% of the area of the net land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.
- B. Park dedication requirements for subdivisions that provide for multi-family and condominium developments, and that provide permanent, multiple spaces for recreational camping vehicles or manufactured homes shall be in lieu of those provided in Section 23-1002(A) and are as follows:
 1. 11% of the area of the net land proposed to be developed at a density of one dwelling unit per half acre or less;
 2. 7.5% of the area of the net land proposed to be developed at a density of between one dwelling unit per half acre and one dwelling unit per one acre;
 3. 5% of the area of the net land proposed to be developed at a density of between one dwelling unit per one acre and one dwelling unit per 3 acres; and

4. 2.5% of the area of the net land proposed to be developed at a density of between one dwelling unit per 3 acres and one dwelling unit per 5 acres.
1. C. The governing body, in consultation with the Planning Board, Parks and Recreation Department and the subdivider may determine suitable locations for parks. Land dedicated for park purposes shall:
 - a. Be usable land;
 - b. Street frontage requirements for parks is 200 continuous, linear, feet for each park of one acre, and 30 feet of frontage for every acre after that. The 30 feet segments are not required to be continuous with the original 200 feet. Example: 5-acre park requires 200 linear feet for first acre and $4 \times 30 = 120$ for the others for a total of 320 linear feet. The developer shall coordinate park street frontage openings with the City of Billings Parks Department before the preliminary plat is completed. Minimum width for additional accesses into parkland shall be 30 feet. If the parkland dedication requirement is under 1 acre the required street frontage will be a percentage of the one acre minimum. Minimum street frontage is 60 linear feet for parks less than 1 acre.

For example: If 20,000 square feet is what is required by sub regs, 20,000 divided by 43,560 equals 46%. 200 times 46% equals 92 feet of frontage.

- c. Accessible to bicycle and pedestrian facilities where possible;
- d. At least 50% of the park must have slopes under 5%.

2. Land not suitable to meet parkland dedication:
 - a. More than 5% of the area has grades 25% or higher;
 - b. Riparian resources and areas adjacent to or within irrigation, floodway or wetlands unless it includes a programmable space.
 - c. Monument entry areas and central landscaped boulevards;
 - d. Exclusively stormwater facilities;
 - e. Street lights, cell towers, overhead power, major transmission lines, or other similar uses;
- D. A Park Maintenance District shall be formed or expanded with any new parkland dedication. If a developer provides cash in lieu, but is located directly adjacent to an existing public park maintained by a PMD, the PMD shall be expanded to include the newly subdivided lots.
- E. Irrigation of public and private parkland are encouraged to be provided by ditches or wells when possible. If neither of these methods is possible, city treated water is an alternative.

Section 23-1003. School Land Dedication in lieu of Park Land Dedication (76-3-621(8), MCA).

Subject to the approval of the governing body and acceptance by the School Board of Trustees that serves the subdivision, a subdivider may dedicate land as required by Section

23-1002 to a school district if the land is adequate to be used for school facilities or buildings.

Section 23-1004. Linear Park Land Dedication for Trail Corridors.

To be consistent with the adopted active transportation plans and parks and recreation plans, and if reviewed and approved by the review authority, linear park land can be dedicated to the city to provide corridors for trails and satisfy park land dedication requirements.

- A. Maintenance of the linear park is required as per Section 23-1002.D
- B. The linear park shall not be used as a substitute for sidewalks or shared use paths adjacent to streets.
- C. The linear park shall serve as a connection to other parks or shared use trails.
- D. A linear park cannot be dedicated over an irrigation ditch or canal easement.
- E. At a minimum, any linear parkland shall be at least 30 feet in width. Privacy fencing in excess of 4' adjacent to linear park is prohibited. When applicable, wording associated with this restriction shall be included within the Subdivision Improvements Agreement.

Section 23-1005. Stormwater Detention/Retention Ponds in Parks.

Stormwater detention or retention ponds may be located within public park land, but such areas shall not count toward the park land dedication requirement unless they are designed and constructed to serve as an amenity to the park and fit into the planned uses and improvements to the park. An example of a stormwater detention area that is an amenity to a park could be several ponds with water features connecting them designed to have a trail around them with picnic shelters. The developer, at the time of preliminary plat application, shall include documents detailing the amenity improvements. The SIA shall also include language regarding the improvements and the maintenance shall occur through the use of a PMD.

- A. A stormwater facility maintenance agreement as per the stormwater management manual must be submitted to the parks department for any ponds located on dedicated park land prior to this regulation.

Section 23-1006. Determining Cash Contribution for Park Land.

Upon submittal of a final plat application, the subdivider shall provide one of the following to verify the fair market value of the land being subdivided that supports the cash contribution for park land the subdivider is providing. All of the below methods shall be completed by a third party. In addition, all methods shall assume the new zoning of the property:

- A. A Comparative Market Analysis performed by a licensed realtor that meets the following criteria:
 1. It provides the per acre sale price of at least three (3) comparable parcels of land.
 2. The comparable sales must have occurred within one (1) year of the date of the

subdivision final plat application submittal.

3. The comparable sales must be within two (2) miles of the subdivision.

- B. A raw land appraisal by a licensed appraiser.

Section 23-1007. Use of Dedicated Money or Land for Parks (76-3-621(5), MCA).

The governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision and community as follows:

- A. The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas, or use the money for the purchase of public open space or conservation easements only if:
 1. The park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and
 2. The City Council has formally adopted a park plan that establishes the needs and procedures for use of the money.
 3. The governing body may not use more than 25% of the dedicated money for park maintenance.

Section 23-1008. When Park Land Dedication May Not Be Required (76-3-621(3(c), MCA).

The following subdivisions may not require parkland dedication:

- A. A minor subdivision.
- B. Land proposed for subdivision into parcels larger than 5 acres.
- C. Subdivision into parcels that are all nonresidential.
- D. A subdivision in which parcels are not created, except for condominiums and when that subdivision provides permanent multiple spaces for recreational camping vehicles or mobile homes (See Section 23-1002.B. of this Article).
- E. A subdivision in which only one additional parcel is created.
- F. Cluster Developments (See Sections 703.E. and 709.E. of these Regulations).

Section 23-1009. Waiving Park Land Dedication Requirement (76-3-621(6), MCA).

The governing body shall waive the park dedication requirement if:

- A. The subdivision provides for a planned 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 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 Section 23-1002 of this Article.
- B. The subdivision provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the area of the land proposed to be subdivided, by virtue of providing long-term protection is reduced by an amount equal to or exceeding the area of the dedication required under Section 23-1002 of this Article.
- C. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of Sections 23-1009.A. and B. of this Article, is reduced by an amount equal to or exceeding the area of the dedication required under Section 23-1002 of this Article.
- D. The subdivider dedicates 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 the area of the land equals or exceeds the area of the dedication required under Section 23-1002 of this Article.

Article 23-1100. ADMINISTRATIVE PROVISIONS.

Section 23-1101. Variances.

The City Council may grant reasonable variances from the design and improvement standards of these Regulations when strict compliance would result in undue hardship and the result would not negatively affect public health and safety. The granting of a variance shall not have the effect of nullifying the intent and purpose of these Regulations or justifying submission of an incomplete application. The City Council may not approve a variance that would permit structures within the floodway of the 100-year floodplain, as defined in 76-5-101, MCA.

- A. Requesting a Variance.** The subdivider shall include with the submission of the variance request, a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee shall be required. Information addressing each of the following findings shall accompany the application. The Planning Board shall review the submitted findings and make a recommendation to the City Council. The City Council shall not approve variances unless the subdivider has demonstrated that the request satisfies the following findings:
 1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
 2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;
 3. The variance will not result in an increase in taxpayer burden;
 4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy; and
 5. The subdivider must prove that the alternative design is equally effective and the objectives of the improvements are satisfied.
- B.** In granting variances, the City Council may require conditions of approval that will, in their judgment, secure the objectives of these Regulations.
- C.** When any such variance is granted, the motion of approval of the proposed subdivision shall contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

Section 23-1102. Amendments to Subdivision Regulations.

- A. These Regulations may be amended by the City Council by their own motion or upon recommendation of the Planning Board to the City Council.
- B. Prior to amending these Regulations, the governing bodies shall conduct a public hearing and public notice shall be given of the intent to amend these Regulations and of the public hearing by publication of the time and place of the hearing in a newspaper of general circulation in the County not less than 15 days prior to the date of the hearing.

Section 23-1103. Corrections or Vacations of Recorded Final Plats and Supporting Documents.

- A. Corrections to recorded final plats shall be processed as exempt plats pursuant to the requirements, provided that there is evidence of at least one of the following:
 1. There is a discrepancy in the map.
 2. Material evidence is provided that does not appear on any map filed by the Yellowstone County Clerk and Recorder.
 3. There is evidence that suggests alternate locations of lines or points.
 4. The recorded plat does not positively show the location, size of lots or blocks, or the location or width of any street or alley.
- B. Corrections to a recorded Subdivision Improvements Agreement (SIA) or other supporting document of the final plat to which the City Council is party, may be submitted provided that they do not significantly alter the original approval. Requests to alter a recorded SIA or supporting document shall follow these procedures:
 1. A written request to amend the recorded document shall be submitted to the Planning Department.
 2. The request will be circulated for review by the agencies affected by the proposed amendment. The Planning Department will, in consultation with the affected agencies, submit a recommendation to the City Council.
 3. A public hearing may be required based on the information received by the reviewing agencies. Notice of the public hearing shall be given in accordance with these Regulations.
 4. The City Council may approve the request if it does not significantly alter the original approval and does not conflict with the review criteria set forth in these Regulations.

- C. Any plat prepared and recorded in accordance with these Regulations may be vacated, either in whole or in part.
 - 1. If the vacation affects five (5) or fewer lots it shall be processed as an exempt plat pursuant to the requirements. .
 - 2. If the vacation affects twelve (12) or more lots it shall be reviewed as an amended plat pursuant to Section 23-307 of these Regulations.
 - 3. If the vacation includes public rights-of-way, the applicant must first obtain approval for the right-of-way vacation from the governing body in accordance with the applicable procedures. Title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions, as determined by the City Council or designee.
 - 4. When any utility lines or any other public or private facility are located in a vacated street or alley, at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility shall be granted an easement over the vacated land to continue the operation and maintenance of the public or private utility facility.

Section 23-1104. Corrections or Adjustments to Plats, Conditions and Supporting Documents after Preliminary Plat Approval.

- A. Minor adjustments may be approved by the City Council or designee, in consultation with the appropriate agencies, prior to the filing of the final plat. Minor adjustments are those changes, which, in the opinion of the City Council or designee, does not affect the basic character of lots or blocks, does not affect the open space requirements or amount provided, and does not affect the original street design. Minor adjustments shall not change existing Conditions of Approval or require additional conditions. Minor adjustments may require that a new plat be drawn; however, they do not require that the plat be re-submitted for preliminary plat review.
- B. Major adjustments are those which, in the opinion of the City Council or designee, substantially alter the basic design, or change open space requirements or amount provided for the subdivision. Changes to conditions of approval placed on the preliminary plat shall be considered major adjustments unless otherwise determined using the criteria in Section 23-1204.C., below. Any changes which constitute a major adjustment shall require that a new plat be drawn and the plat be re-submitted for preliminary plat review as specified in Article 23-300.
- C. **Requested Amendments to Conditions.** Upon written request of the subdivider, the City Council may amend conditions of preliminary plat approval where it can be found that errors or changes beyond the control of the subdivider have rendered a condition unnecessary, impossible or illegal. Requests to amend a condition of approval shall follow these procedures:

1. The request to amend the condition shall be submitted in writing to the Planning Department.
2. The request will be circulated for review by the agencies affected by the proposed amendment. The Planning Department will, in consultation with the affected agencies, submit a recommendation to the City Council.
3. A public hearing may be required based on the information received by the reviewing agencies. Notice of the public hearing shall be given in accordance with these Regulations.
4. The City Council may approve the request if it can be found that the original condition is unnecessary, impossible or illegal and does not conflict with the review criteria set forth in these Regulations.

D. Once the preliminary plat is approved, unless inaccurate or incomplete information has been found or a change to a condition has been requested, the City Council may not impose any additional conditions as a prerequisite to final plat approval, providing that approval is obtained within the original or extended approval period as provided in these Regulations.

Section 23-1105. Appeals.

- A. A person who has filed with the City Council an application for a subdivision under these Regulations may bring an action in district court to sue the City Council to recover actual damages caused by a final action, decision, or order of the City Council or these Regulations that is arbitrary or capricious.
- B. A party who is aggrieved by a decision of the City Council to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within thirty (30) days after the date of the written decision, appeal to the district court. The petition must specify the grounds upon which the appeal is made.
- C. The following parties may appeal under the provisions of Section 23-1105.B.:
 1. The subdivider;
 2. A landowner with a property boundary contiguous to the proposed subdivision or a 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;

D. For 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.

Section 23-1106. Schedule of Fees.

The required fee shall accompany the preliminary plat, final plat, exempt surveys, and any proposed variances. A schedule of fees for plats shall be established by the City Council by resolution, fee information is available online.

Section 23-1107. Penalty for Violation.

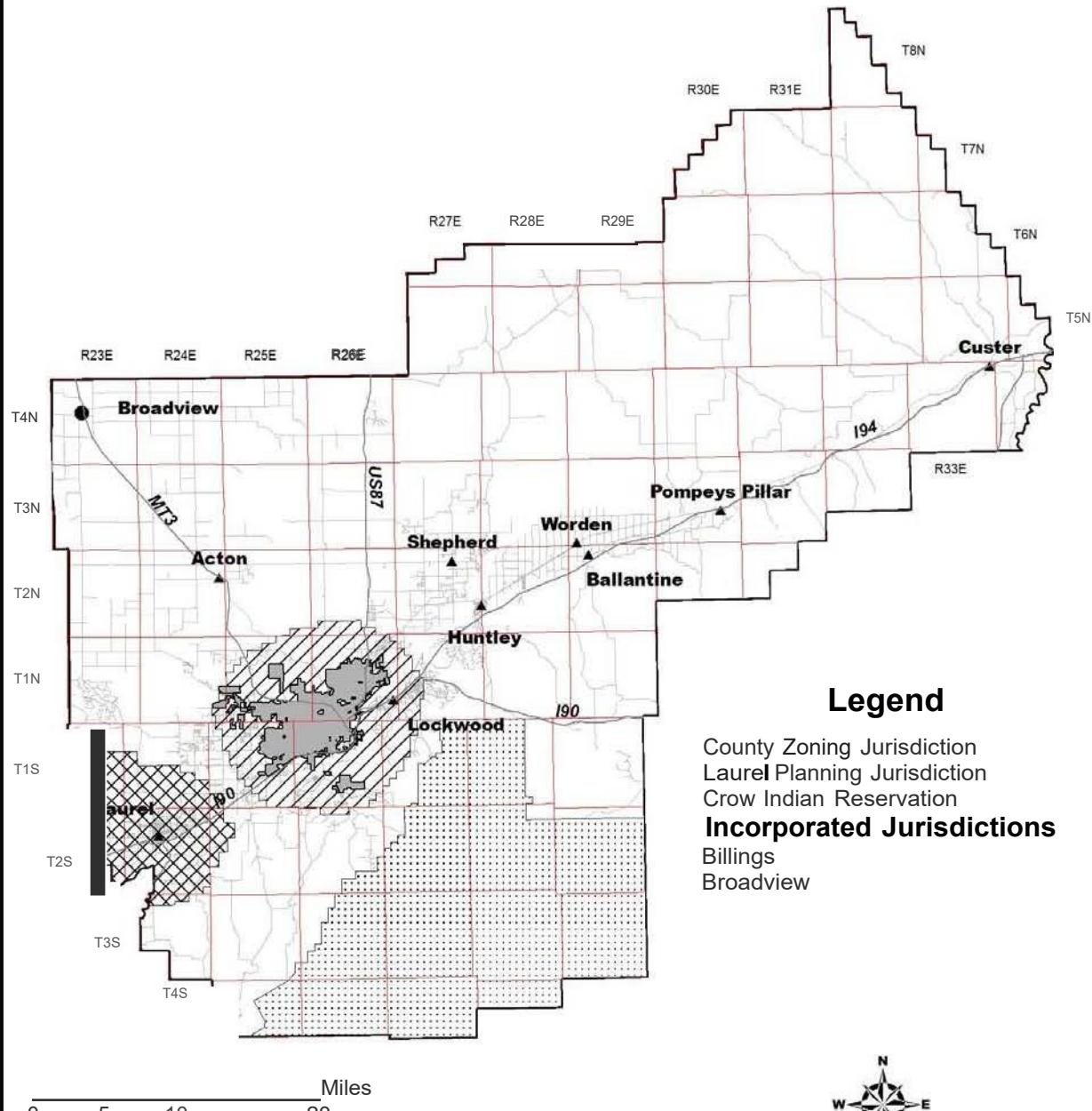
A. Except as provided in 76-3-303, MCA, every final subdivision plat shall be filed with the County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. If illegal transfers are completed, the City Attorney shall commence action to enjoin further sales or transfers and compel compliance with the provisions of the Montana Subdivision and Platting Act (76-3-101 et seq., MCA) and these Regulations. The cost of such action shall be imposed against the person transferring the property.

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.

B. Any person who violates any of the provisions of the Montana Subdivision and Platting Act (76-3-101 et seq., MCA) or these Regulations is guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or by imprisonment in jail for not more than three (3) months or by both fine and imprisonment.

APPENDIX A
Jurisdictional Map

Yellowstone County Board of Planning Planning Jurisdiction



Prepared by the Planning & Community Services Department
November, 2005 (PudServ3/Maps/Planning/Planning Jurisdiction)

APPENDIX B **Evasion Criteria**

City of Billings Evasion Criteria

A. Purpose.

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the development is an attempt to evade the Montana Subdivision and Platting Act (MSPA), 76-3-101, et. seq., MCA.

The following procedures, criteria and requirements shall be used to review an exemption from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

B. Procedures and General Requirements.

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey, exempt amended plat, or where a survey is not required an instrument of conveyance, and (2) evidence of, and a notarized statement affirming, entitlement to the claimed exemption signed by the landowner.
2. When a certificate of survey, exempt amended plat, or instrument of conveyance is submitted to the Planning Department, the Planning Department shall cause the documents to be examined by the designated agents of the governing body: (the City or County Public Works Department, City or County Attorney, Sanitarian, Treasurer, and Clerk and Recorder). The agents shall examine the proposed land division to determine whether it complies with the requirements set forth in this Resolution, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act (76-4-101, et seq., MCA).
3. After the review to evaluate compliance with the requirements contained in this section, the agents shall submit written comments as to whether the use of the exemption is intended to evade the purposes of the Act, after which a written recommendation will be presented to the governing body for its review.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall recommend to the Clerk and Recorder to file the certificate of survey, exempt amended plat, or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder of their determination and recommend whether or not to file or record the documents, and upon his/her concurrence, the Clerk shall return the materials to the landowner with an explanation as to why the recordation was declined.

APPENDIX B **Evasion Criteria**

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

If the governing body concludes that the information provided by the developer overcomes the recommendation by staff that the exemption is being used to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an exempt amended plat or an instrument of conveyance recorded) if the governing body has signed a certificate of an exemption as provided in these regulations.

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

The agents may issue an advisory opinion only, and the opinion does not constitute a commitment by the local officials when the documents creating the proposed land division are submitted to the Clerk and Recorder.

7. The governing body and its agents, when determining whether an exemption is claimed for the purpose of evading MSPA, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: (1) the nature of the use of the parcel, (2) the prior history of uses of the particular tract in question, (3) the proposed configuration of the tracts if the proposed exempt transaction is completed, and (4) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr. 454, 1993).
8. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever three (3) or more parcels of less than 160 acres each with common covenants or facilities pertaining to each parcel have been divided from the original tract.
9. If the use of an exemption is determined to be an evasion of MSPA, the landowner may submit a subdivision application for the proposed land division.

C Exemption as a Gift or Sale to a Member of the Immediate Family (76-3-207(1)(b), MCA).

1. **Statement of Intent:** The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.

APPENDIX B **Evasion Criteria**

2. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7), MCA).
3. Any certificate of survey filed that would use this exemption to create a parcel for conveyance to a family member must clearly identify the name of the grantee, the grantee's relationship to the landowner, and the parcel to be conveyed under this exemption, and be accompanied by, or contain, the landowner's written certification of compliance. The certificate of survey or other instrument must also cite the exemption claimed and include the proper language. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review. However, the use of the exemption may not result in more than one remaining parcel of less than 160 acres.
5. Any proposed use of the family conveyance exemption to divide a tract that was previously created through use of an exemption shall be presumed to be an evasion of the Act if it creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility easements, restrictive covenants, open space or common marketing. This presumption will not be rebutted by previous ownership of the tracts, and pertains to remaining tracts of less than 160 acres as well as to those tracts that were previously created through the use of one or more of the exemptions.
6. The use of the family conveyance exemption to divide tracts that were created with the subdivision process are allowed as long as they can also meet the requirements of zoning.
7. An immediate family member or the spouse of an immediate family member who receives a division of land as part of a gift or sale may not transfer or otherwise convey the division of land for a period of up to 2 years after the date of the division. The governing body may authorize variances from these requirements to address hardship situations.

D. Exemption to Provide Security for a Construction Mortgage, Lien or Trust Indenture (76-3-201(1)(b) MCA).

1. **Statement of Intent:** Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or a contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
2. When claiming this exemption, the landowner shall submit the following documents to the City-County Planning Department:

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- a. A signed statement from both the landowner and the lending institution that the creation of the exempted parcel is necessary for the owner to secure construction financing through a construction mortgage, lien or trust indenture on the exempted parcel.
- b. Any certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Section H. of this Chapter.
3. The use of this exemption is presumed to have been adopted for the purpose of evading MSPA if:
 - a. It will create a site for more than one dwelling unit;
 - b. The loan is for someone other than the owner of record or the recorded contract purchaser of the parcel to be divided.
 - c. It will create a pattern of development which is equivalent to a subdivision with characteristics such as common roads, sewer, water, utility easements, restrictive covenants, open space or a common marketing or promotional plan.

E. Exemption for Agricultural Purposes (76-3-207 (1)(c), MCA).

1. **Statement of Intent:** The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.
2. "Agricultural Purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the Montana Department of Environmental Quality (MDEQ), provided the applicable exemption is properly invoked by the property owner.
3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading MSPA:
 - a. The parties to the transaction by gift, sale, or agreement, must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the governing body. An example of a covenant is provided in Section H. of

APPENDIX B **Evasion Criteria**

this Chapter.

- b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
- c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to full review as a subdivision.
- d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed under MCA Title 76, Chapter 3.
- e. A certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in Section H. of this Chapter.

F. Relocation of Common Boundary (76-3-207(1) (a, d and e), MCA).

1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to affect that change in location without subdivision review.
2. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision. If a temporary tract is created, language shall be added to indicate that the temporary tract is merged forever with the adjacent tract.
3. Within a platted subdivision, a division of lots that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk and Recorder in accordance with Section 306 of these Regulations.
4. Certificates of survey or amended plats claiming this exemption must be clearly distinguished between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey as provided in Section H. of this Chapter.

G. Remainder Parcels.

Statement of Intent: Any part of an original tract of record, less than 160 acres that is left following the segregation of other parcels from the tract for the purpose of transfer shall be reviewed as part of the subdivision.

APPENDIX B Evasion Criteria

H. Certification.

1. **Exemption Certificates.** The following represents examples of certificates to be used on certificates of surveys for the following types of exemptions: relocation of common boundaries, land gift or sale to family member, agricultural exemption, and security for constructions.

CERTIFICATE OF EXEMPTION (RELOCATION OF COMMON BOUNDARY)

I (We) certify that the purpose of this survey is to relocate common boundaries between adjoining properties existing outside of a platted subdivision. Therefore, this survey is exempt from review as subdivision pursuant to Section 76-3-207 (1)(a), (d), or (e), MCA.

DATED THIS _____ day of _____, 20_____.

(Signature) _____
Property
Owner(s)

CERTIFICATE OF EXEMPTION (FAMILY GIFT OR SALE)

I (We) certify that the purpose of this survey is to create Tract # _____ for transfer of ownership as a family gift or sale and that no prior family sale has been conveyed to ((name), our(my) (relationship) and that this exemption complies with all conditions imposed on its use. Therefore this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(b), MCA, and the City of Billings Subdivision Regulations.

DATED THIS _____ day of _____, 20_____.

(Signature) _____
Property
Owner(s)

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Evasion Criteria

**CERTIFICATE OF EXEMPTION
(FOR AGRICULTURAL PURPOSES)**

I (We) certify that the purpose of this survey is to create Tract #_____, as shown on this certificate of survey, for gift or sale, which is to be used for agricultural purposes only, and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(c), MCA and the City of Billings Subdivision Regulations.

I also hereby enter a covenant, to run with the land, that Tract _____ as shown hereon, will be used exclusively for agricultural purposes only. No building or structure requiring water or sewer facilities shall be utilized on Tract _____. This covenant is revocable only by the mutual consent of the governing body and the property owner.

DATED THIS _____ day of _____, 20_____.

(Signature) _____
Property Owner(s)

**CERTIFICATE OF EXEMPTION
(SECURITY FOR CONSTRUCTION)**

I certify that the purpose of this survey is to create a parcel of land to provide security for construction or loan purposes and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-201(1)(b) MCA and from review by the Montana Department of Environmental Quality (16.16.605(1)(b)).

DATED THIS _____ day of _____, 20_____.

(Signature) _____
Property Owner(s)

APPENDIX B Evasion Criteria

2. **Governing Body Certification.** If the exemption is approved after appeal to the Governing Body, the Governing Body shall so certify in a printed certificate on the Certificate of Survey.

I, Mayor of the City of Billings, do hereby certify that the use of the exemption claimed on the accompanying Certificate of Survey has been duly reviewed, and has been found to conform to the requirements of the MSPA, Section 76-3-101, et. seq., MCA, and the City of Billings Subdivision Regulations.

DATED THIS _____ day of _____, 20_____.

(Signature) _____
Mayor, City of Billings

Attest: *(Signature)* _____

APPENDIX C **Flood Hazard Evaluation**

A. Definitions. (Sec. 76-5-103, MCA) Whenever the following words and phrases are used in this Appendix, they shall be given the meaning attributed to them by this section.

1. Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.
2. Flood Fringe: the identified portion of the floodplain outside of the floodway.
3. Flood of 100-year Frequency: A flood magnitude expecting to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year.
4. Floodplain: The area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheet flood areas that receive less than 1 foot of water per occurrence and are considered "shaded X zone" by the federal emergency management agency.

B. Floodway: The channel of a watercourse or drainway and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway.

1. Land located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, MCA, may not be subdivided for building purposes, or other uses that may be prohibited by state or local floodplain regulations.
2. Where the 100-year floodway has been delineated by a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), or a City- or County-approved study on land in a subdivision, the 100-year floodway boundary and 100-year floodplain boundary shall be shown on the plat of the subdivision and the area within the 100-year floodway shall be labeled as a "No-Build Zone."
3. Any development of land that is in the flood fringe, a Zone A as shown on a FIRM, or an identified flood prone area is subject to the requirements of the City of Billings Floodplain Regulations.

APPENDIX C
Flood Hazard Evaluation
Flood Hazard Area
(100-Year Floodplain)

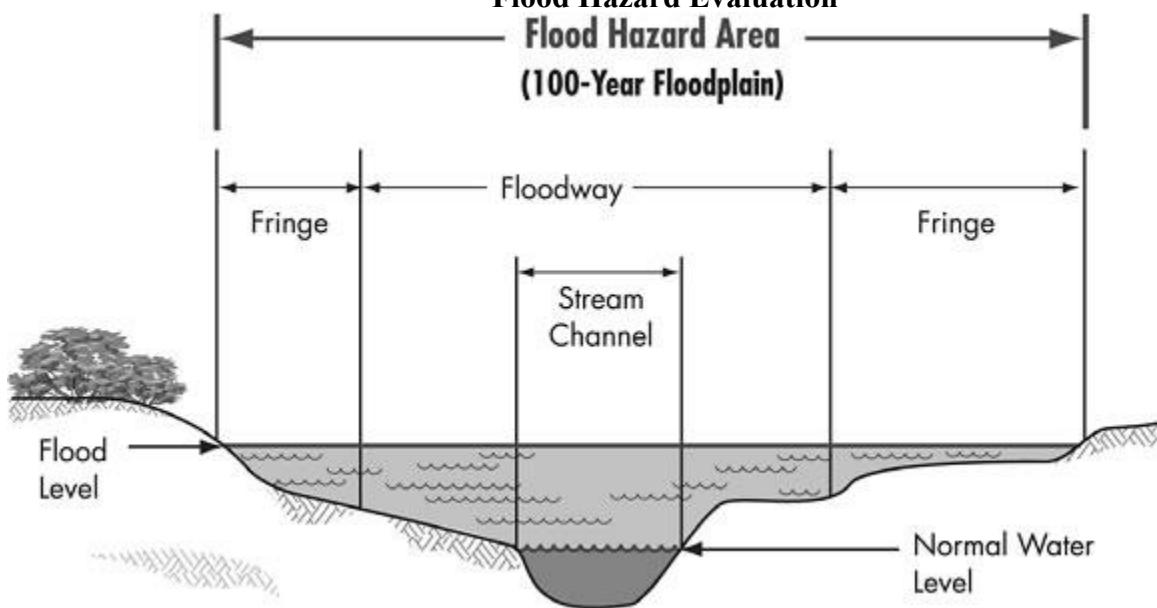


Figure 1. 100-Year Floodplain Cross-Section Diagram