



# Special Livingston City Commission Agenda

December 04, 2025

5:30 PM

City – County Complex, Community Room

<https://us02web.zoom.us/j/86105812926?pwd=6LLlalllKnRf6q6HAXJO5Krw6YidAU.1>

Meeting ID: 861 0581 2926

Passcode: 453998

1. Call to Order

2. Roll Call

3. Pledge of Allegiance

"I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

4. Public Comment

*Individuals are reminded that public comments should be limited to item over which the City Commission has supervision, control, jurisdiction, or advisory power (MCA 2-3-202)*

5. Consent Items

6. Proclamations

7. Scheduled Public Comment

8. Action Items

**A. (CONTINUED FROM DECEMBER 2, 2025 MEETING) ORDINANCE 3065: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 29 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "FLOODPLAIN REGULATIONS" BY REPEALING THE ENTIRETY OF CHAPTER 29 AND REPLACING IT WITH REVISED REGULATIONS. PG.4**

**B. (CONTINUED FROM DECEMBER 2, 2025 MEETING) ORDINANCE NO. 3066: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 28 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "SUBDIVISION REGULATIONS" TO COMPLY WITH STATE LAW, ALIGN WITH THE GROWTH POLICY, AND REFLECT COMMUNITY BEST PRACTICE AND EXPERIENCE. PG.89**

9. City Manager Comment

10. City Commission Comments

11. Adjournment

Calendar of Events

Supplemental Material

## Notice

- **Public Comment:** The public can speak about an item on the agenda during discussion of that item by coming up to the table or podium, signing-in, and then waiting to be recognized by the Chair. Individuals are reminded that public comments should be limited to items over which the City Commission has supervision, control, jurisdiction, or advisory power (MCA 2-3-202).

The Chair shall have the discretion to solicit comments from the public in the following order: (1) residents of the City, (2) business owners or operators in the City, (3) other organizations conducting operations in the City, and (4) residents, businesses or organizations from outside the City. The Chair may limit each person's comment period to not less than three (3) minutes.

- **Meeting Recording:** An audio and/or video recording of the meeting, or any portion thereof, may be purchased by contacting the City Clerk. The City does not warrant the audio and/or video recording as to content, quality, or clarity.
- **Special Accommodation:** If you need special accommodations to attend or participate in City meetings, please contact the City Clerk at least 24 hours in advance of the specific meeting you are planning on attending.

**File Attachments for Item:**

**A. (CONTINUED FROM 12/2 MEETING) ORDINANCE 3065: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 29 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "FLOODPLAIN REGULATIONS" BY REPEALING THE ENTIRETY OF CHAPTER 29 AND REPLACING IT WITH REVISED REGULATIONS.**



LivingstonMontana.org | PublicComment@LivingstonMontana.org | 406.823.6000

**DATE:** December 2, 2025  
**TO:** Chair Schwarz and City Commissioners  
**FROM:** Jennifer Severson, Planning Director  
**RE:** **Staff Report for Livingston Floodplain Regulations Amendments**

---

### **Recommendation and Summary**

Staff requests the City Commission approve the proposed amendments to the City of Livingston Floodplain Regulations in Chapter 29 of the Livingston Municipal Code by adopting the following motion:

"I move to approve the second reading of Ordinance 3065 amending the Floodplain Regulations of the City of Livingston Municipal Code by repealing the entirety of Chapter 29 and replacing it with the proposed "Floodplain Hazard Management Regulations", and authorize the Chair to sign Ordinance 3065."

The reasons for the recommendation are as follows:

- The Montana Department of Natural Resources (MT DNRC) recently updated its Community Floodplain Hazard Management Model Regulations to align with the National Flood Insurance Program (NFIP) requirements.
- The City's Floodplain Regulations have not been updated since 2011.
- MT DNRC requires the City to revise its Floodplain Regulations to comply with the new Community Floodplain Hazard Management Model Regulations.
- MT DNRC has reviewed and given preliminary approval to the revised Floodplain Regulations as presented (Attachment A, Exhibit A).

### **Introduction and History**

In February 2025, Montana DNRC finalized Model Regulations for Floodplain Hazard Management in local communities to align with the current requirements of the NFIP that is managed by FEMA. To be eligible to participate in the NFIP, the City must maintain updated regulations for managing

*Livingston, Montana*



development in the floodplain that complies with the Code of Federal Regulations 44, Section 76-5 of Montana Code Annotated, and Section 36-15 of the Administrative Rules of Montana. The City of Livingston last updated its Floodplain Regulations in 2011 at the time the City's current floodplain maps were adopted by the Federal Emergency Management Agency (FEMA). To bring the Floodplain Regulations in Chapter 29 of the LMC into conformance with NFIP requirements, MT DNRC has advised the City to adapt its model Community Floodplain Hazard Management Regulations for use by the City of Livingston and to adopt those regulations to manage development in federally designated flood hazard areas (floodway + flood fringe = 100-year regulatory floodplain).

### Analysis

The proposed Floodplain Hazard Management Regulations are intended to replace Chapter 29 in its entirety. For reference, Staff has attached the current iteration of Chapter 29, the City's current adopted Floodplain Regulations (see Attachment B). Although the majority of the revised regulations are taken directly from the MT DNRC Community Floodplain Hazard Management Model Regulations, there are a few regulations that exceed FEMA's minimum standards for participation in the NFIP. These higher standards have been reviewed and approved by MT DNRC and are listed below:

- Section 6. Prohibited Uses, Activities and Structures Within the Regulated Flood Hazard Area
  - Sec 6.1.6 - Floodway - *Cemeteries, mausoleums, or any other burial grounds*
  - Sec 6.2.3 & 4 - Flood Fringe/ Regulated Flood Hazard Area without a Floodway - *The construction or storage of an artificial obstruction subject to flotation or movement during flood level periods; Cemeteries, mausoleums, or any other burial grounds*
- Section 9. Development Requirements in the Floodway
  - Sec 9.2.3 - An application for a Floodplain permit must also demonstrate the following factors are considered and incorporated into the design of the use or artificial obstruction in the Floodway
    - 9. The safety of access to property in times of flooding for ordinary and emergency services*
  - Sec 9.10 – Public and Private Campgrounds
    - 5. There is no large-scale clearing of riparian vegetation within 10 feet of the mean annual high-water mark or edge of stream channel*
  - Sec 9.11 – Structures Accessory or Appurtenant
    - 10. There is no clearing of riparian vegetation within 10 feet of the mean annual high-water mark or edge of stream channel*
- Section 10. Development Requirements in the Floodplain



*Sec 10.2.8 - Access - Structures must have safe access during times of flooding up to the Base Flood for ordinary and emergency services provided there are no reasonable alternate locations or structures; For manufactured homes, access for a manufactured home hauler is also provided.*

As noted above, Staff are proposing to exceed the minimum standards required by the NFIP by restricting the clearance of riparian vegetation within 10 feet of the mean annual high-water mark or edge of stream channel. Recent discussions during the adoption process for the Zoning Code update (Chapter 30) emphasized the importance of including restrictions on development within riparian corridors along waterways in Livingston. During the November 4, 2025 City Commission meeting, Staff recommended removing the requirement for riparian buffers from the Zoning Code update and, instead, initiate a scientific study and analysis to support specific riparian buffer widths along Livingston's unique stream reaches. Because the City's Floodplain Ordinance must be updated to comply with current NFIP requirements, Staff recommends the Commission adopt the recommended 10-foot riparian vegetation protection zone identified in Sections 9.10 & 9.11 of the new Floodplain Regulations, with the understanding that restrictions on development in riparian areas will be revised in accordance with a future riparian corridor study.

### **Fiscal Impact**

No direct fiscal impact to the City of Livingston is anticipated as a result of adopting the Floodplain Hazard Management Regulations as proposed by Staff.

### **Strategic Alignment**

Although the revised Floodplain Regulations are necessary to comply with MT DNRC and FEMA NFIP requirements, the revised regulations also support the following strategies and objectives identified in the City's adopted Growth Policy:

Strategy 4.2.1.1: Improve the quality of waterbodies, including but not limited to the Yellowstone River, Fleshman Creek, watersheds, wetlands, floodplains, groundwater aquifers, and all other waterways and riparian areas.

Objective 4.3.2: Protect the riparian corridors to preserve unique wildlife, promote water quality, and provide for public trails and open space.

Strategy 4.3.2.1: Continue to limit development in the floodplain through the application of the Livingston Floodplain Regulations.

Strategy 4.3.2.2: Protect the Yellowstone River's natural flow and flood cycles to promote the health of the riparian area and associated wildlife.



Strategy 4.3.2.3: Explore regulatory options for protecting the riparian area and waterway corridors.

**Staff Recommendation**

Based on the reasons stated above, Staff finds the proposed amendments to Chapter 29 comply with the requirements federal and state statutes for floodplain management, and support the goals, objectives and strategies identified in the Growth Policy. Therefore, Staff recommends the City Commission adopt the proposed amendments to Chapter 29 and replace the current Floodplain Regulations with the “Floodplain Hazard Management Regulations” as proposed by Staff.

**Attachments**

- A. Draft Ordinance 3065 (includes Exhibit A: Draft Floodplain Hazard Management Regulations)
- B. Current Floodplain Regulations, Chapter 29

**ORDINANCE NO. 3065**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 29 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "FLOODPLAIN REGULATIONS" BY REPEALING THE ENTIRETY OF CHAPTER 29 AND REPLACING IT WITH REVISED REGULATIONS.**

\* \* \* \* \*

**Purpose**

The purpose of this Ordinance is to promote public health, safety and general welfare of the City by regulating the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location of buildings, structures, and land for trade, industry, residence or other purposes.

\*\*\*\*\*

**WHEREAS**, the City of Livingston has the authority to adopt, enforce and administer regulations to manage federally- designated flood hazard areas within the City in accordance with Section 76-5-102 of Montana Code Annotated;

**WHEREAS**, the City is responsible for maintaining Floodplain Regulations compliant with Code of Federal Regulations 44, Section 76-5 of Montana Code Annotated, Section 36.15 of Administrative Rules of Montana to be eligible for participating in the National Flood Insurance Program (NFIP); and

**WHEREAS**, the City's Floodplain Regulations in Chapter 29 of the Livingston Municipal Code have not been updated since 2011; and

**WHEREAS**, the Montana Department of Natural Resources and Conservation (DNRC) updated its Community Floodplain Management Model Regulations to align with NFIP requirements; and

**WHEREAS**, the DNRC requires the City to update its current Floodplain Regulations to comply with the updated Community Floodplain Management Model Regulations;

**NOW, THEREFORE, BE IT ORDAINED** by the City Commission that Chapter 29 of the Livingston Municipal Code entitled Floodplain Regulations, be hereby amended as follows:



## **SECTION 1**

**THE ENTIRETY OF CHAPTER 29 SHALL BE REPEALED AND REPLACED WITH THE REVISED FLOODPLAIN REGULATIONS AS SHOWN IN THE ATTACHED ‘REVISED FLOODPLAIN REGULATIONS’ EXHIBIT.**

## **SECTION 2**

### **Statutory Interpretation and Repealer:**

Any and all resolutions, ordinances and sections of the Livingston Municipal Code and parts thereof in conflict herewith are hereby repealed.

## **SECTION 3**

### **Severability:**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court having competent jurisdiction, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and to this end, the provisions of this ordinance are declared to be severable.

## **SECTION 4**

### **Savings provision:**

This ordinance does not affect the rights or duties that mature, penalties and assessments that were incurred or proceedings that begun before the effective date of this ordinance.

## **SECTION 5**

### **Effective date:**

This ordinance will become effective 30 days after the second reading and final adoption.

**PASSED** by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the \_\_\_\_ day of November, 2025.

\_\_\_\_\_  
**QUENTIN SCHWARZ, CHAIR**

**ATTEST:**

\_\_\_\_\_  
**Emily Hutchinson**  
**City Clerk**

\*\*\*\*\*

**PASSED, ADOPTED AND APPROVED**, by the City Commission of the City of Livingston, Montana, on a second reading at a regular session thereof held on the \_\_\_\_\_ day of December, 2025.

\_\_\_\_\_  
**QUENTIN SCHWARZ, CHAIR**

**ATTEST:**

**APPROVED TO AS FORM:**

\_\_\_\_\_  
**EMILY HUTCHINSON**  
**City Clerk**

\_\_\_\_\_  
**JON HESSE**  
**City Attorney**

# CITY OF LIVINGSTON

## FLOODPLAIN HAZARD MANAGEMENT REGULATIONS

CHAPTER 29  
LIVINGSTON MUNICIPAL CODE

Effective Date: xxxx

# TABLE OF CONTENTS

## **SECTION 1. TITLE, PURPOSE, AUTHORITY AND GENERAL PROVISIONS**

- 1.1 Floodplain Hazard Management Regulations
- 1.2 Statutory Authority
- 1.3 Findings of Fact
- 1.4 Purpose
- 1.5 Methods to Reduce Losses
- 1.6 Regulated Area
- 1.7 Floodplain Administrator
- 1.8 Compliance
- 1.9 Abrogation and Greater Responsibility
- 1.10 Regulation Interpretation
- 1.11 Warning and Disclaimer of Liability
- 1.12 Severability
- 1.13 Disclosure Provision
- 1.14 Amendment of Regulations
- 1.15 Public Records
- 1.16 Subdivision Review
- 1.17 Disaster Recovery

## **SECTION 2. DEFINITIONS**

## **SECTION 3. FORMS AND FEES**

- 3.1 Forms
- 3.2 Fees

## **SECTION 4. REGULATED FLOOD HAZARD AREAS**

- 4.1 Regulated Flood Hazard Areas
- 4.2 Interpretation of Regulated Flood Hazard Area Boundaries
- 4.3 Alteration of Regulated Flood Hazard Area

## **SECTION 5. USES ALLOWED WITHOUT A PERMIT WITHIN THE REGULATED FLOOD HAZARD AREA**

- 5.1 General
- 5.2 Open Space Uses

## **SECTION 6. PROHIBITED USES, ACTIVITIES AND STRUCTURES WITHIN THE REGULATED FLOOD HAZARD AREA**

- 6.1 Floodway
- 6.2 Flood Fringe or Regulated Flood Hazard Area Without a Floodway

## **SECTION 7. FLOODPLAIN PERMIT APPLICATION REQUIREMENTS**

- 7.1 General
- 7.2 Required Floodplain Permit Application Information

## **SECTION 8. APPLICATION EVALUATION**

- 8.1 Floodplain Permit Application Review
- 8.2 Notice Requirements for Floodplain Permit Applications
- 8.3 Floodplain Permit Criteria
- 8.4 Decision
- 8.5 Floodplain Permit Conditions and Requirements

## **SECTION 9. DEVELOPMENT REQUIREMENTS IN THE FLOODWAY**

- 9.1 Uses Requiring Permits
- 9.2 General Requirements
- 9.3 Mining Of Material Requiring Excavation From Pits Or Pools
- 9.4 Railroad, Highway And Street Stream Crossings
- 9.5 Limited Filling For Road And Railroad Embankments
- 9.6 Buried Or Suspended Utility Transmission Lines
- 9.7 Storage Of Materials And Equipment
- 9.8 Domestic Water Supply Wells
- 9.9 Buried And Sealed Vaults For Sewage Disposal in Campgrounds and Recreational Areas
- 9.10 Public and Private Campgrounds
- 9.11 Structures Accessory Or Appurtenant
- 9.12 Construction Of Or Modifications To Surface Water Diversions
- 9.13 Flood Control And Stream Bank Stabilization Measures
- 9.14 Stream and Bank Restoration
- 9.15 Existing Residential and Nonresidential Buildings

## **SECTION 10. DEVELOPMENT REQUIREMENTS IN THE FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITH NO FLOODWAY**

- 10.1. Uses Requiring Permits
- 10.2. General Requirements
- 10.3. Residential Building, Exceptions and Additional Requirements
- 10.4. Non-Residential Building, Exceptions and Additional Requirements

## **SECTION 11. EMERGENCIES**

- 11.1 General
- 11.2 Emergency Notification and Application Requirements

**SECTION 12. VARIANCES**

- 12.1 General
- 12.2 Variance Application Requirements
- 12.3 Notice Requirements for Floodplain Variance Application
- 12.4 Evaluation of Variance Application
- 12.5 Decision
- 12.6 Judicial Review

**SECTION 13. ADMINISTRATIVE APPEALS**

- 13.1 General
- 13.2 Appeals Requirements
- 13.3 Notice and Hearing
- 13.4 Decision
- 13.5 Judicial Review

**SECTION 14. ENFORCEMENT**

- 14.1. Investigation Request
- 14.2. Notices To Enter And Investigate Lands Or Waters
- 14.3. Notice To Respond And Order To Take Corrective Action
- 14.4. Administrative Review
- 14.5. Appeal of Administrative Decision
- 14.6. Failure to Comply With Order to Take Corrective Action
- 14.7. Other Remedies

**SECTION 15. PENALTIES**

- 15.1 Misdemeanor
- 15.2 Declaration to the Federal Flood Insurance Administrator

## **SECTION 1. TITLE, PURPOSE, AUTHORITY AND GENERAL PROVISIONS**

### **1.1 FLOODPLAIN HAZARD MANAGEMENT REGULATIONS**

These regulations are known and may be cited as the “Floodplain Hazard Management Regulations;” hereinafter referred to as “these regulations.”

### **1.2 STATUTORY AND REGULATORY AUTHORITY**

1. Floodplain and Floodway Management is codified at Montana Code Annotated (MCA) Title 76, Chapter 5 and describes the authority, procedures and minimum standards for local regulations. Regulation for Floodplain Management established by the Montana Department of Natural Resources and Conservation (DNRC) are located in Administrative Rules of Montana (ARM), Chapter 36.15.
2. The authority to regulate development in specifically identified flood hazard areas has been accepted pursuant to 76-5-301, MCA.

### **1.3 FINDINGS OF FACT**

1. Flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas have been delineated and designated by order or determination of the DNRC pursuant to 76-5-201, MCA et seq.
2. These regulations have been reviewed by Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency. The Montana Department of Natural Resources and Conservation has found the regulations acceptable in meeting the Department minimum standards. The Federal Emergency Management Agency finds that these regulations are adequate and consistent with the comprehensive criteria for land management and use pursuant to the standards established in 44 CFR 60.3. (76-5-302, MCA, ARM 36.15.202, 44 CFR 60.1(b), 42 USC 4022)

### **1.4 PURPOSE**

The purpose of these regulations is to promote public health, safety and general welfare of the residents and minimize public and private losses due to flood conditions in Regulated Flood Hazard Areas. These Regulations are intended to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business and public service interruptions;

5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood disruptions; and
7. Ensure compliance with the minimum standards for the continued participation in the National Flood Insurance Program for the benefit of the residents.

### **1.5 METHODS TO REDUCE LOSSES**

In accordance with 76-5-102, MCA, these regulations are intended to reduce flood losses through the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flooding or that may cause excessive increases in flood heights or velocities;
2. Require that uses of land vulnerable to floods, including public facilities, be developed or constructed to at least minimum standards or to otherwise minimize flood damage;
3. Regulate the alteration of natural floodplains, stream channels, and natural protective barriers which are needed to accommodate floodwaters;
4. Regulate filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will impact other land, flood water depth or velocity of floodwaters;
6. Distinguish between the land use regulations applied to the floodway within the Regulated Flood Hazard Area and those applied to that portion of the Regulated Flood Hazard Area not contained in the floodway;
7. Apply more restrictive land use regulations within the floodway of the Regulated Flood Hazard Area; and
8. Ensure that regulations and minimum standards balance the greatest public good with the least private injury.

### **1.6 REGULATED AREA**

These regulations apply only to the flood hazard areas specifically adopted herein as Regulated Flood Hazard Areas which are more fully and specifically described in Section 4. Requirements and approvals for alterations to the Regulated Flood Hazard Area are specified in Section 4. The Regulated Flood Hazard Area includes areas specifically identified, labeled and illustrated on maps such as Floodplain, Floodway, or Flood Fringe that have differing uses allowed and minimum building standards that apply. The Regulated Flood Hazard Area is the geographic area inundated by the Flood of 100-year Frequency illustrated and depicted in the referenced studies and maps.

The Regulated Flood Hazard Area supporting study and maps illustrating the regulatory area are based on studies and maps that have been specifically adopted pursuant to 76-5-201et.seq. The maps and accompanying study become the Regulated Flood



Hazard Area only when formally adopted by DNRC and subsequently by the political subdivision by these regulations. The original source of studies and data may be from a Flood Insurance Study by FEMA, or other studies by Corps of Engineers, Soil Conservation, United States Geological Service or other federal or state agency.

### **1.7 FLOODPLAIN ADMINISTRATOR**

A Floodplain Administrator is hereby the responsibility of the City of Livingston Planning Department. The Floodplain Administrator's duty is to administer and implement the provisions of these regulations. The Floodplain Administrator must serve to meet and maintain the commitments pursuant to 44 CFR 59.22(a) to FEMA to remain eligible for National Flood Insurance for individuals and businesses within the political subdivision. ((44 CFR 59.22(b)(1)) (ARM 36.15.204(2)(h))

**1.8 COMPLIANCE** Development, New Construction, Alteration or Substantial Improvement may not commence without full compliance with the provisions of these regulations.

### **1.9 ABROGATION AND GREATER RESPONSIBILITY**

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, zoning or other regulations in effect. However, where these regulations impose greater restrictions, the provision of these regulations must prevail. (44 CFR 60.1(d))

### **1.10 REGULATION INTERPRETATION**

In the interpretation and application of these regulations, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under state statute or regulation. (44 CFR 60.1)

### **1.11 WARNING AND DISCLAIMER OF LIABILITY**

These regulations do not imply that land outside the Regulated Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

### **1.12 SEVERABILITY**

If any section, clause, sentence, or phrase of these regulations is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way affect the validity of the remaining portions of these regulations.

### **1.13 DISCLOSURE PROVISION**

All property owners or their agents in the Regulated Flood Hazard Areas shall notify potential buyers or their agents that such property, including any permitted uses transferred, is located within the Regulated Flood Hazard Area and is subject to regulation and any permitted uses that are transferred. Information regarding

Regulated Flood Hazard Area and the repository for Floodplain maps is available in the Floodplain Administrator's office.

(ARM 36.15.204(2)(g))

#### **1.14 AMENDMENT OF REGULATIONS**

These regulations may be amended after notice and public hearing in regard to the amendments to these regulations. The amendments must be found adequate and acceptable by DNRC and FEMA to be effective and must be submitted for review at least 30 days prior to official adoption.

#### **1.15 PUBLIC RECORDS**

Records, including permits and applications, elevation and floodproofing certificates, certificates of compliance, fee receipts, and other matters relating to these regulations must be maintained by the Floodplain Administrator and are public records and must be made available for inspection and for copies upon reasonable request. A reasonable copying cost for copying documents for members of the public may be charged and may require payments of the costs before providing the copies. (44 CFR 60.3(b)(5)(iii) & 44 CFR 59.22 (a)(9)(iii))

#### **1.16 SUBDIVISION REVIEW**

The requirements of the City of Livingston Subdivision Regulations, in addition to those established in these regulations, apply to subdivisions within the Regulated Flood Hazard Area, including but not limited to new or expansion of existing Manufactured Home Parks, must be designed to meet the following criteria:

1. The Base Flood Elevations and boundary of the Regulated Flood Hazard area must be determined and considered during lot layout and building location design;
2. Locations for future structures and development must be reasonably safe from flooding; (44CFR 60.3(a)(4))
3. Adequate surface water drainage must be provided to reduce exposure to flood hazards; (44 CFR 60.3 (a)(4)(iii))
4. Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage; and (44 CFR 60.3(a)(4)(ii))
5. Floodplain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area. (44 CFR 60.3(b))

### **1.17 DISASTER RECOVERY**

In the event of a natural or man-made disaster, the Floodplain Administrator should participate in the coordination of assistance and provide information to structure owners concerning Hazard Mitigation and Recovery measures with the Federal Emergency Management Agency, Montana Disaster Emergency Services, Montana Department of Natural Resources and Conservation, and other state, local and private emergency service organizations.

Upon completion of cursory street view structure condition survey of the Regulated Flood Hazard Area, the Floodplain Administrator shall notify property owners that a permit may be necessary for an alteration or substantial improvement before repair or reconstruction commences on damaged structures. These permitting requirements apply even when structures are damaged by natural or man-made disasters such as floods, earthquakes, fires or winds.

Owners should be advised that structures that have suffered substantial damage and will undergo substantial improvements require a floodplain application and permit and must be upgraded to meet the minimum building standards herein during repair or reconstruction. ((MCA 76-5-404(3)(b) (ARM 36.15.702) (44 CFR 60.3(c) (2 and 3))

## SECTION 2. DEFINITIONS

Unless specifically defined below, words or phrases used in these regulations shall be interpreted as to give them the meaning they have in common usage and the most reasonable application. For the purpose of these regulations, the following definitions are adopted:

**100-year Flood** – One percent (1%) annual chance flood. See Base Flood

Act – Montana Floodplain and Floodway Management Act, Sections 76-5-101 through 406 MCA.

**Adjacent Landowner** – An Owner of property whose property shares a common boundary with the property in which an Application under these Regulations has been submitted. For purposes of these Regulations an Adjacent Landowner also includes property that has a common boundary across a water course, road or right-of-way.

**Alteration** – Any change or addition to an artificial obstruction that either increases its external dimensions or increases its potential flood hazard. (ARM 36.15.101(2))

**Appeal** – A request for a review of the Floodplain Administrator's order, decision to grant, condition or deny a Floodplain Permit, Variance or interpretation of the Flood Hazard Area boundary which was made under the authority of these Regulations.

**Applicant** – The property owner, and/or their authorized agent, as listed on the Application form.

**Appurtenant Structure** – A structure in which the use is incidental or accessory to the use of a principal structure. (44 CFR 59.1)

**Artificial Obstruction** – Any obstruction which is not natural and includes any development, dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, road, bridge, conduit, culvert, building, refuse, automobile body, fill or other analogous structure or matter in, along, across, or projecting into any Regulated Flood Hazard Area that may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property. See also Development. (ARM 36.15.101(3) & MCA 76-5-103(1))

**Base Flood (Flood of 100 Year Frequency)** – A flood having a one percent (1%) chance of being equaled or exceeded in any given year (ARM 36.15.101(4) & (44 CFR 59.1)

**Base Flood Elevation (BFE)** – The elevation above sea level of the Base Flood in relation to the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988 or unless otherwise specified. (ARM 36.15.101(5))

**Basement** – Any area of a building, except a crawl space, as having its Lowest floor below ground level on all sides. (44 CFR 59.1) (NFIP Insurance Manual, Rev. May 2013)

**Building** – A walled and roofed structure, including a gas or liquid storage tank that is principally above ground, as well as a manufactured or mobile home. (44 CFR 59.1)

**Channel** – The geographical area within either the natural or artificial banks of a watercourse or drainway. (MCA 76-5-103(2))

**Crawl Space** – An enclosure that has its interior floor area no more than 5 feet below the top of the next highest floor. See Enclosure and Sub grade Crawlspace. (NFIP Insurance Manual, Rev. May 2013)

**DNRC** – Montana Department of Natural Resources and Conservation

**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. See also Artificial Obstruction. (44 CFR 59.1)

**Elevated Building** – A building that has no Basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns. A building on a crawlspace may be considered an elevated building.

**Enclosure** – That portion below the lowest elevated floor of an elevated building that is either partially or fully shut in by rigid walls including a crawlspace, sub grade crawlspace, stairwell, elevator or a garage below or attached.

**Encroachment** – Activities or construction within the Regulated Flood Hazard Area including fill, new construction, substantial improvements, and other development.

**Encroachment Analysis** – A hydrologic and hydraulic analysis performed by a licensed, qualified engineer to assess the effects of the proposed artificial obstruction or nonconforming use on Base Flood Elevation, flood flows and flood velocities.

**Establish** – To construct, place, insert, or excavate. (MCA 76-5-103(7) (ARM 36.15.101(9))

**Existing Artificial Obstruction or Nonconforming Use** – An artificial obstruction or nonconforming use that was established before land use regulations were adopted pursuant to Section 76-5-301(1), MCA. (MCA 76-5-404(3))

**FEMA** – Federal Emergency Management Agency

**Flood or Flooding** – A general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Fringe** – The identified portion of the Floodplain of the Regulated Flood Hazard Area outside the limits of the Floodway. (ARM 36.15.101(10))

**Flood of 100 Year Frequency (Base Flood)** – A flood magnitude expected 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. (MCA 76-5-103(9)) (44 CFR 59.1)

**Flood Insurance Rate Map (FIRM)** - Official map of a community on which FEMA has delineated the Special Flood Hazard Areas (SFHAs), the Base Flood Elevations (BFEs), and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** - A compilation and presentation of flood risk data for specific watercourses, lakes, and coastal flood hazard areas within a community. When a flood study is completed for the NFIP, the information and maps are assembled into an FIS. The FIS report contains detailed flood elevation data in flood profiles and data tables.

**Floodplain** – The area of the Regulated Flood Hazard Area including and adjoining the watercourse or drainway that would be covered by the floodwater of a Base Flood. The area is partitioned into a Flood Fringe and Floodway where specifically designated. See Regulated Flood Hazard Area.

**Floodway** – The identified portion of the Floodplain of the Regulated Flood Hazard Area that is the channel and the area adjoining the channel that is reasonably required to carry the discharge of the Base Flood without cumulatively increasing the water surface by more than one half foot. (MCA 76-5-103(11)) (MCA 76-5-103(5))

**Floodplain Administrator** – Community official or representative appointed to administer and implement the provisions of this ordinance.

**Floodplain Permit** – The permit issued by the Floodplain Administrator that confirms a proposed Development, New Construction, Alteration or Substantial Improvement in the Regulated Flood Hazard Area is designed to comply with the requirements of these Regulations.

**Flood Proofing** – Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, electrical, plumbing, HVAC

systems, structures and their contents. The term includes wet flood proofing, dry flood proofing and elevation of structures. ((44 CFR 59.1)

**Historic Structure-** *means any structure that is:*

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

**Letter of Map Change (LOMC)** – An official response from FEMA that amends or revises the FEMA Special Flood Hazard Area and FEMA Flood Insurance Study for flood insurance purposes and/or flood risk hazard. FEMA Letters of Map Change specific to an amendment or revision include:

**Letter of Map Amendment (LOMA)** – A letter of determination from FEMA issued in response to a request that a property or structure is not subject to the mandatory flood insurance requirement because it was inadvertently located in the effective FEMA Special Flood Hazard Area. The material submitted and response from FEMA may be considered by the Floodplain Administrator for determining if a property or structure is within the Regulated Flood Hazard area and subject to these regulations.

**Letter of Map Revision Based on Fill (LOMR-F)** – A letter of approval from FEMA removing the mandatory requirement for flood insurance on property based on placement of fill or an addition. Placement of fill or an addition must be preceded by a permit pursuant to these regulations. Placement of fill does not remove the development from the Regulated Flood Hazard Area or these regulations.

**Letter of Map Amendment Floodway (LOMR-FW)** – A letter of determination from FEMA issued in response to a request that a property or Structure mapped as being within the Floodway is not subject to the mandatory flood insurance requirement because it was inadvertently located in the effective FEMA Special Flood Hazard Area.

**Letter of Map Revision (LOMR)** – An official FEMA amendment to the currently effective FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map based on a physical change to the floodplain of the Special Flood Hazard Area. It is issued by FEMA and changes flood zones, delineations, and elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may

amend the FEMA Flood Insurance Study. It must be preceded by an approved alteration of the designated floodplain from DNRC and subsequently an amendment to the Regulated Flood Hazard Area.

**Conditional Letter of Map Revision (CLOMR)** – A FEMA letter of approval for a proposed physical change that when completed would propose to change the flood zones, delineation or elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study through a subsequent LOMR. The CLOMR may be considered in an evaluation by DNRC and the Floodplain Administrator during consideration of a proposed alteration to the Regulated Flood Hazard Area.

**Conditional Letter of Map Revision – Based on Fill (CLOMR-F)** – A FEMA letter of approval for a proposed physical change that when completed would propose to change the flood zones, delineation or elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study through a subsequent LOMR. The CLOMR may be considered in an evaluation by DNRC and the Floodplain Administrator during consideration of a proposed alteration to the Regulated Flood Hazard Area.

**Conditional Letter of Map Amendment (CLOMA)** – A FEMA letter of approval for a proposed physical change that when completed would propose to change the flood zones, delineation or elevations on the FEMA Flood Insurance Rate Map or FEMA Flood Boundary Map and may amend the FEMA Flood Insurance Study through a subsequent LOMR. The CLOMA may be considered in an evaluation by DNRC and the Floodplain Administrator during consideration of a proposed alteration to the Regulated Flood Hazard Area.

**Levee** – A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water to provide protection from temporary Flooding.

**Levee System** – A Flood protection system that consists of a Levee, or Levees, and associated Structures, such as drainage and closure devices, which are constructed and operated in accordance with sound engineering practices.

**Lowest Floor** – Any unfinished or finished floor of a building which may include a basement or crawlspace. ((ARM 36.15.101(14)) (44 CFR 59.1))

**Maintenance** - Any routine or regularly scheduled activity undertaken to repair or prevent the deterioration, impairment, or failure of any feature, component, or material referenced in these regulations, so long as the work substantially conforms to the most recent approved design or regulatory hydraulic model, whichever is newer. Maintenance does not include expansion, enlargement, replacement, reconstruction, Substantial Modification, or Substantial Improvement of a building, Artificial Obstruction, or structure, including hydraulic structures. Maintenance does not include changing the use of a property or Artificial Obstruction.



**Manufactured Home Park or Subdivision** – Includes the construction of facilities for servicing the manufactured home lots and at a minimum includes the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads. (44 CFR 59.1)

**Manufactured or Mobile Home** – A building that may be residential or non-residential, is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities and includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. The terms Manufactured and Mobile Homes are used interchangeably in these regulations. (ARM 36.15.101(15))

**New Construction** – Structures for which the commencement of clearing, grading, filling, or excavating to prepare a site for construction occurs on or after the effective date of these regulations and includes any replacements and subsequent improvements to such structures. (ARM 36.15.101(20)) (44 CFR 59.1)

**New Manufactured Home Park Or Subdivision** – A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed includes at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads and is completed on or after the effective date of floodplain management regulations adopted by a community. (44 CFR 59.1)

**Nonconforming Use** – Development, use, or improvements that were lawful prior to the adoption, revision, or amendment to these Regulations, but that fails by reason of such adoption, revision or amendment to conform to the present requirements of these Regulations.

**Non-Residential**– Buildings including manufactured homes that are not residential including commercial, agricultural, industrial buildings and accessory buildings. See Residential.

**Owner** – Any person who has dominion over, control of, or title to an artificial obstruction. (MCA 76-5-103(13))

**Person** – Includes any individual, or group of individuals, corporation, partnership, association or any other entity, including State and local governments and agencies. (44 CFR 59.1)

**Recreational Vehicle** – A park trailer, travel trailer, or other similar vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towable by a motorized vehicle; and (d) designed primarily for use as temporary living quarters for recreation, camping, travel, or seasonal use, not for use as a permanent dwelling. (44 CFR 59.1)

**Regulated Flood Hazard Area** – A Floodplain whose limits have been designated pursuant to Part 2, Chapter 5 of Title 76, MCA, and is determined to be the area adjoining the watercourse that would be covered by the floodwater of a Base Flood. The Regulated Flood Hazard Area consists of the Floodway and Flood Fringe where specifically designated. (MCA 76-5-103(4)), (MCA 76-5-103(10), (ARM 36-15-101(11))

**Residential Building** – A dwelling or building for living purposes or place of assembly or permanent use by human beings and including any mixed use of residential and non-residential use. All other buildings are **non-residential**.

**Riprap** – Stone, rocks, concrete blocks, or analogous materials that are placed along the bed or banks of a watercourse or drainway for the purpose of preventing or alleviating erosion. (ARM 36.15.101(18))

**Scour Depth** – The maximum depth of streambed scour caused by erosive forces of the Base Flood.

**Special Flood Hazard Area** – Land area which has been specifically identified by the Federal Emergency Management Agency as the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. It is useful for the purposes of identifying flood hazards by local subdivisions of government for regulatory purposes as well as use by the National Flood Insurance Program for establishing risk zones and is used in helping to establish flood insurance premium rates. The FEMA flood hazard area zone designation or flood risk potential is as illustrated on FEMA's Flood Hazard Boundary Map or Flood Insurance Rate Map.

|               |  |
|---------------|--|
| Zone A        | -No Base Flood Elevations determined.  |
| Zone AE       | -Base Flood Elevations determined.   |
| Zone AH       | -Flood depths of 1 to 3 feet (example areas of ponding); BFE determined  |
| Zone AO       | -Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.   |
| Zone A99      | -Area to be protected from 1% annual chance flood by a Federal flood protection system under construction. No BEFs determined.   |
| Zone C        | -See Zone X  |
| Shaded Zone X | - Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depts of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood. |
| Zone X        | -Areas determined to be outside the 0.2% annual chance floodplain.   |
| Zone D        | -Areas in which flood hazards are undetermined, but possible.  |

**Start of Construction**- for purposes of these rules means the start of any substantial improvement, replacement of existing structure, or new construction, or the

commencement of clearing, grading, filling or excavation for the purposes of preparing a site for construction.

**Structure** – Any Artificial Obstruction.

**Sub grade Crawlspace** – A crawlspace foundation enclosure that has the lowest interior floor elevation no more than 5 feet below the top of the next higher floor and no more than 2 feet below the lowest adjacent grade, proper flood openings, and constructed with flood resistant materials. A foundation exceeding either dimension or lacking proper flood openings and not constructed with flood resistant materials could be considered a Basement.

**Substantial Damage** – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. (44 CFR 59.1)

**Substantial Improvement** – Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50) of the market value of the structure either before the start of construction of the improvement, including substantial damage structures regardless of the actual repair work performed.

1. Substantial improvement is considered to occur when the first construction of any wall, ceiling, floor or other structural part of the building commences;
2. For the purpose of Substantial Improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimension of the building.
3. The term does not include:
  - a) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
  - b) Any alteration of a structure listed on the national register of historic places or state inventory of historic places provided that the property owner(s) submits evidence to the floodplain administrator, for review and approval, that they have done as much as they can to mitigate the flood risk and bring the structure into compliance to the maximum extent possible while maintaining the historic nature and determination of the structure. (ARM 36.15.101(21)) (44 CFR 59.1))

**Suitable Fill** – Fill material which is stable, compacted, well graded, and pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, tree

stumps or other organic material; and is fitting for the purpose of supporting the intended use and/or permanent structure. (ARM 36.15.101(22))

**Variance** – Means a grant or relief from the development requirements of these regulations which would permit construction in a manner that would be otherwise prohibited by these regulations. (ARM 36.15.101(23))

**Violation** – A finding and order pursuant to the regulations against the owner or responsible party of the failure of a structure or other development to be fully compliant with these regulations. (44 CFR 59.1)

## SECTION 3. FORMS AND FEES

**3.1 Forms** The following forms may be required by the Floodplain Administrator:

- 1. Floodplain Permit Application Form** –The “Joint Application for Proposed Work in Montana’s Steams, Wetlands, Regulated Flood Hazard Areas, and Other Water Bodies”, or other designated application form. A completed FEMA MT-1 form may be required to accompany the application when required by the Floodplain Administrator.
- 2. Floodplain Permit Compliance Report** – A report required to be submitted by the Applicant to the Floodplain Administrator once the permitted project in the Regulated Flood Hazard Area is completed or within the designated time stipulated on the Floodplain permit. A compliance report including an elevation and or flood proofing certificate may be required where specified for the purpose of documenting compliance with the requirements of the permit.
- 3. Floodplain Variance Application Form** – An application submitted by the Applicant to the Floodplain Administrator to initiate a proposed variance from the requirements of these regulations as described in Section 12.
- 4. Floodplain Appeal Notice Form**– A form submitted by the Applicant or an aggrieved party to initiate the appeal process described in Section 13.
- 5. Floodplain Emergency Notification Form**– A written notification form required pursuant to Section 11 of these regulations.
- 6. Official Complaint Form** – A form that may be used by any person to notify the Floodplain Administrator of an activity taking place that appears to be noncompliant with the requirements of these regulations.

### **3.2 Fees**

A reasonable application fee for processing of permit applications may be imposed (see City of Livingston adopted Fee Schedule). Fees may be adopted for costs of permit applications, notices, variances, inspections, certifications or other administrative actions required by these regulations. (ARM 36.15.204(3)(b))

## SECTION 4. REGULATED FLOOD HAZARD AREA

### **4.1 REGULATED FLOOD HAZARD AREAS**

1. The Regulated Flood Hazard Areas are the floodplains of the 100-year flood, illustrated and referenced in the following specific studies and reports described as follows:
  - a) The Flood Insurance Study (FIS) and Flood Insurance Rate Maps (FIRMs) for Park County, Montana and incorporated Areas specific to the City of Livingston, Effective date October 18, 2011.
2. The Regulated Flood Hazard Areas specifically described above have been delineated, designated and established pursuant to 76-5-201 et.seq., MCA.
3. The Floodplain Administrator may obtain, review, and reasonably use any Base Flood Elevation or Floodway data available from a Federal, State, or other reliable source to administer and enforce these Regulations.
  - a) However, when special flood hazard area designations and water surface elevations have been furnished by the Federal Insurance Administrator, the more restrictive shall apply.
4. Sections 5, 6, 9, and 10 of these regulations establish allowable uses and requirements for projects depending on the specific location within the Regulated Flood Hazard Area. (e.g. Floodway, Flood Fringe, etc.)

### **4.2 INTERPRETATION OF REGULATED FLOOD HAZARD AREA BOUNDARIES**

1. The mapped boundaries of the Floodplain illustrated in the referenced studies and maps in this Section are a guide for determining whether property is within the Regulated Flood Hazard Area. Base Flood Elevations and other supporting documentation in the flood study, if such documentation exists, take precedence over any map illustrations. Requirements for determining the exact boundaries of the Regulated Flood Hazard Area and Floodway are provided below.
2. The Regulated Flood Hazard Area boundary is delineated by the Base Flood Elevation. The physical regulatory boundary of the Regulated Flood Hazard Area is the actual intersection of the applicable study Base Flood Elevation with the existing adjacent terrain of the watercourse or drainway. (ARM 36.15.501(6))
3. The Floodway boundary, where identified within the Regulatory Flood Hazard Area, is as illustrated on the referenced maps and studies. The location of the Floodway boundary may be physically located by referencing the study data to a

ground feature. The Floodplain Administrator's interpretation of the boundary and decision may be appealed as set forth in Section 13.

4. The Floodplain Administrator may require an applicant to provide additional information described below to determine whether or not the proposed development, use, or artificial obstruction is within the Regulated Flood Hazard Area:

- a) Where Base Flood Elevations exist, the property owner and/or applicant may provide additional information which may include elevation information provided by an engineer or land surveyor in order to determine if the proposed development, use, or artificial obstruction is subject to these regulations. (ARM 36.15.501(6))
- b) Where Base Flood Elevations do not exist, the property owner and/or applicant may provide additional information to be considered to determine the location of the regulatory boundary or alternatively provide a computed Base Flood Elevation provided by an engineer.
- c) The Floodplain Administrator's interpretation of the boundaries and decision may be appealed as set forth in Section 13.

Any owner or lessee of property who believes their property has been inadvertently included in the Regulated Flood Hazard Area including the Floodway or Flood Fringe may submit scientific and/or technical information to FEMA in the form of an application for a Letter of Map Change. Scientific or technical information submitted to FEMA for insurance purposes may be considered by the Floodplain Administrator, although a determination by the Floodplain Administrator whether a property is located within the Regulated Flood Hazard Area and subject to these regulations is independent of any determination made by FEMA.

### **4.3 ALTERATION OF REGULATED FLOOD HAZARD AREA**

1. The Regulated Flood Hazard Area may be altered pursuant to Section 76-5-201 et. seq. MCA and the requirements of these regulations. Alterations to FEMA studies and maps can only be approved by FEMA through the Letter of Map Change (LOMC) process.
2. Any change to the Regulated Flood Hazard Area shall only become effective upon amendment to Section 4.1.1 of these regulations.
3. Substantial physical change or new technical or scientific flood data showing that the Base Flood Elevation has or may be changed or was erroneously

established shall be brought to the attention of DNRC and FEMA; (ARM 36.15.505(1)(a)) (44 CFR 65.3)

4. Any Floodplain permit application for a proposed development or artificial obstruction that will result in an increase of 0.5 feet or more to the Base Flood Elevation of a Regulated Flood Hazard Area without a Floodway, or an increase of more than 0.00 feet to the Base Flood Elevation of a Floodway, shall not be approved by the Floodplain Administrator until a Conditional Letter of Map Revision (CLOMR) is approved by FEMA. When applying to FEMA for a CLOMR, the following information must be included:
  - a. Certification that no buildings are located in the areas which would be impacted by the increased Base Flood Elevation; (44 CFR 65.12(a)(5))
  - b. Evidence of notice to all property and landowners of the proposed impacts to their properties explaining the proposed impact on their property; (44 CFR 65.12(a)(3))
  - c. Information that demonstrates that alternatives are not feasible; (44 CFR 65.12(2))
  - d. The Floodplain Administrator may represent the permit authority for any necessary applications, approvals or endorsements such as the FEMA Community Acknowledgement Form to FEMA where affecting the FEMA Special Flood Hazard Area;
  - e. Any other supporting information and data as needed for approvals. ((ARM 36.15.505) (44 CFR 60.3(c)(10)) (44 CFR 60.3(d)(3)) (44 CFR 65.7(3)) (44 CFR 65.12))
5. The Regulated Flood Hazard Areas is not officially altered until a Letter of Map Revision (LOMR) has been approved by FEMA. See Sec 4.a-e above for information to include in request to FEMA for a LOMR.
6. For Regulated Flood Hazard Areas not designated by FEMA, alterations of the Regulated Flood Hazard Area shall meet ARM 36.15.505.
7. A determination by the Floodplain Administrator that land areas located within the Regulated Flood Hazard Area are naturally above the Base Flood Elevation as proven by a certified elevation survey does not constitute or require an alteration of the Regulated Flood Hazard Area and may be maintained as a public record that more explicitly defines the Regulated Flood Hazard Area boundary. (ARM 36.15.505(2))



8. The material submitted and response from FEMA may be considered by the Floodplain Administrator for determining if a property or structure is within the Regulated Flood Hazard area and subject to these regulations.
9. Elevating with suitable fill as permitted does not alter the Regulated Flood Hazard Area or remove the elevated area from the Regulated Flood Hazard Area.

When property located within the Regulated Flood Hazard area is naturally above the Base Flood Elevation as proven by a certified elevation survey provided by an engineer or land surveyor, the property owner may submit a Letter of Map Amendment (LOMA) to FEMA in order to affect the flood risk designation for insurance purposes. Information on the process and requirements are available through FEMA.

## SECTION 5. USES ALLOWED WITHOUT A PERMIT WITHIN THE REGULATED FLOOD HAZARD AREA

**5.1 - GENERAL** Within the Regulated Flood Hazard Area established by these Regulations, there are Existing Artificial Obstructions and uses that were lawful prior to the adoption or amendment of these Regulations, but no longer conform to the present requirements of these Regulations. It is the intent of these Regulations to allow such Artificial Obstructions and nonconforming uses to remain in the state and location to which they existed at the time of adoption or amendment of these Regulations without need for a permit. However, Alteration or Substantial Improvement of an Existing Artificial Obstruction or Nonconforming Use requires a Floodplain Permit.

**5.2 OPEN SPACE USES** The following open space uses shall be allowed without a permit in the Regulated Flood Hazard Area, provided that such uses are not prohibited by any other regulation or statute, do not require structures, do not require a No-Rise if in the floodway, and do not require fill, grading, excavation or storage of materials or equipment: ((ARM 36.15.601) (ARM 36.15.701) (1) (MCA 76-5-401) (MCA 76-5-404(3)))

1. Agricultural uses, not including related structures, such as tilling, farming, irrigation, ranching, harvesting, grazing, etc.; ((ARM 36.15.601(1)(a)) (MCA 76-5-401(1)))
2. Accessory uses, not including structures, such as loading and parking areas, or emergency landing strips associated with industrial or commercial facilities; ((ARM 36.15.601(1)(b)) (MCA 76-5-401(2),))
3. Forestry, including processing of forest products with portable equipment; ((ARM 36.15.601(1)(d)) (MCA 76-5-401(4)))
4. Recreational vehicle use provided that the vehicle is on the site for fewer than 180 consecutive days and the vehicle is fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; (44 CFR 60.3(c)(14))
5. Residential uses such as lawns, gardens, parking areas, and play areas; ((ARM 36.15.601(1)(e)) (MCA 76-5-401(5)))
6. Routine or regularly scheduled maintenance of the existing state of an existing open space uses including preventive maintenance activities such as bridge deck rehabilitation and roadway pavement preservation activities if not in the regulatory floodway. Maintenance cannot increase the external size or increase the hazard potential of the existing open space use; (MCA 76-5-404(3)(b))

7. Public or private recreational uses not requiring structures such as picnic grounds, swimming areas, boat ramps, parks, campgrounds, golf courses, driving ranges, archery ranges, wildlife management and natural areas, alternative livestock ranches (game farms), fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking and horseback riding trails; (ARM 36.15.601(a)(c)) (MCA 76-5-401,))
8. Fences that have a low impact to the flow of water such as barbed wire fences and wood rail fences, and not including permanent fences crossing channels. Fences that have the potential to stop or impede flow or debris such as a chain link or privacy fence requires a floodplain permit and meet the requirements of Section 9.11; (ARM 36.15.601(2)(b)) (MCA 76-5-401))
9. Addition of highway guard rail, signing and utility poles that have a low impact to the flow of water along an existing roadway if not located within a regulatory floodway.
10. Irrigation and livestock supply wells, provided that they are located at least 500 feet from domestic water supply wells and with the top of casing 18" above the Base Flood Elevation. ((ARM 36.15.601(2)(a)) (MCA 76-5-401) (ARM 36.21.647))

## SECTION 6. PROHIBITED USES, ACTIVITIES AND STRUCTURES WITHIN THE REGULATED FLOOD HAZARD AREA

**6.1 FLOODWAY** The following artificial obstructions and nonconforming uses are prohibited in the Floodway of the Regulated Flood Hazard Area, except for those established before land use regulations pursuant to Section 76-5-301, MCA have been adopted: (MCA 76-5-404(3))

1. A building for residential or non-residential purposes; (MCA 76-5-403(1), (ARM 36.15.605) (1a)), (ARM 36.15.605(2b), (ARM 36.15.605(2)(a)).
2. An artificial obstruction (e.g. structure, fill, recreational vehicle, etc.), or excavation that would cause water to be diverted from the Floodway, cause erosion, obstruct the natural flow of waters or reduce the carrying capacity of the Floodway. Notwithstanding these requirements, excavation or fill may be allowed subject to floodplain permit approval when it is a component to a permitted use allowed in these regulations and complies with all applicable requirements of these regulations; (MCA 76-5-403(2)).
3. The construction or storage of an object (artificial obstruction) subject to flotation or movement during flood level periods; (MCA 76-5-403(3) and ARM 36.15.605(1)(c))
4. Solid and hazardous waste disposal and individual and multiple family sewage disposal systems unless the systems meet the local health and sanitation regulations and when permitted pursuant to these regulations and are designed to minimize or eliminate infiltration of flood waters and avoid impairment or contamination; ((ARM 36-15-605(2c)) (44 CFR 60.3(a)(3)))
5. Storage of toxic, flammable, hazardous or explosive materials; and (ARM 36.15.605(2d))
6. Cemeteries, mausoleums, or any other burial grounds.

**6.2 FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITHOUT A FLOODWAY** The following artificial obstructions and nonconforming uses are prohibited in the Flood Fringe or Regulated Flood Hazard Area without a Floodway, except for those established before land use regulations have been adopted: (MCA 76-5-404(3))

1. Solid and hazardous waste disposal and individual and multiple family sewage disposal systems unless the systems meet the local health and sanitation regulations and when permitted pursuant to these regulations and are designed

to minimize or eliminate infiltration of flood waters and avoid impairment or contamination; ((ARM 36-15-703(1)) (44 CFR 60.3(a)(3)))

2. Storage of toxic, flammable, hazardous or explosive materials; (ARM 36-15-703(2))
3. The construction or storage of an artificial obstruction subject to flotation or movement during flood level periods; and
4. Cemeteries, mausoleums, or any other burial grounds.

## **SECTION 7. FLOODPLAIN PERMIT APPLICATION REQUIREMENTS**

### **7.1 GENERAL**

1. A Floodplain permit is required for a person to establish, alter or substantially improve an artificial obstruction, nonconforming use or development within the Regulated Flood Hazard Area; ((44 CFR 60.1) (MCA 76-5-404) (ARM 36.15.204(2)(a)))
2. A Floodplain permit is required for artificial obstructions, developments and uses not specifically listed in Sections 9 and 10, except as allowed without a Floodplain permit in Section 5, or as prohibited as specified in Section 6, within the Regulated Flood Hazard Area;
3. Artificial obstructions and nonconforming uses in a Regulated Flood Hazard Area not exempt under Section 5 are public nuisances unless a Floodplain permit has been obtained; (MCA 76-5-404(1))
4. A Floodplain permit is required for an alteration of an existing artificial obstruction or nonconforming use that increases the external size or increases its potential flood hazard and not exempt under Section 5; ((MCA 76-5-404(3)(b)) (ARM 36.15.204(2)(a)))
5. A Floodplain permit is required to reconstruct or repair an existing artificial obstruction that has experienced substantial damage and will undergo substantial improvement; and
6. Maintenance of an existing artificial obstruction or use that is a substantial improvement or an alteration requires a Floodplain permit. (MCA 76-5-404(3)(b))

### **7.2 REQUIRED FLOODPLAIN PERMIT APPLICATION INFORMATION**

1. A Floodplain permit application shall include, but is not limited to the following:
  1. A completed and signed Floodplain Permit Application;
  2. The required review fee;
  3. Plans in duplicate drawn to scale showing the location, dimensions, and elevation of the proposed project including landscape alterations, existing and proposed structures, and the location of the foregoing in relation to the

- Regulated Flood Hazard Areas and if applicable the Floodway boundary; ((MCA 76-5-405) (ARM 36.15.216))
4. A copy of other applicable permits or pending applications required by Federal or State law as submitted which may include but are not limited to a 310 permit, SPA 124 permit, Section 404 Permit, 318 Authorization, 401 Certification or a Navigable Rivers Land Use License or Easement for the proposed project; and the applicant must show that the Floodplain permit application is not in conflict with the relevant and applicable permits; and (44 CFR 60.3(a)(2))
  5. Additional information related to the specific use or activity that demonstrates the design criteria and construction standards are met or exceeded as specified in Sections 9 and 10. ((MCA 76-5-405) (ARM 36.15.216))

## **SECTION 8. FLOODPLAIN PERMIT APPLICATION EVALUATION**

### **8.1 FLOODPLAIN PERMIT APPLICATION REVIEW**

1. The Floodplain Administrator shall review and evaluate the Floodplain permit application and shall approve, approve with conditions, or deny the application within (180 days or a time specified) of receipt of a correct and complete application. (MCA 76-5-405(2))
2. The Floodplain Administrator shall determine whether the Floodplain permit application contains the applicable elements required in these regulations and shall notify the applicant of the Floodplain Administrator's determination.
3. If the Floodplain permit application is found to be missing the required elements and if the applicant corrects the identified deficiencies and resubmits the Floodplain application, the Floodplain Administrator shall notify the applicant whether the resubmitted Floodplain application contains all the elements required by these regulations, as applicable.
4. This process shall be repeated until the applicant submits a completed Floodplain permit application containing all the elements required by these regulations, or the application is withdrawn.
5. If after a reasonable effort the Floodplain Administrator determines that the Floodplain application remains incomplete, the Floodplain Administrator shall deny the Floodplain permit application and notify the applicant of missing elements. No further action shall be taken on the Floodplain permit application by the Floodplain Administrator until the Floodplain permit application is resubmitted.
6. A determination that a Floodplain permit application is correct and complete for review does not ensure that the Floodplain permit application will be approved or conditionally approved and does not limit the ability of the Floodplain Administrator to request additional information during the review process.

### **8.2. NOTICE REQUIREMENTS FOR FLOODPLAIN PERMIT APPLICATIONS:**

1. Upon receipt of a complete application for a Floodplain permit, the Floodplain Administrator shall prepare a notice containing the facts pertinent to the Floodplain permit application and shall:
  1. Publish the notice at least once in a newspaper of general circulation in the area; (ARM 36.15.204(2)(c))



2. Serve notice by first-class mail upon adjacent property owners; (ARM 36.15.204(2)(c))
  3. Serve notice to the State National Flood Insurance Program Coordinator located in DNRC by the most efficient method. Notice to other permitting agencies or other impacted property owners may be provided; and
  4. Prior to any alteration or relocation of a watercourse in the Regulated Flood Hazard Area, additionally provide notice to FEMA and adjacent communities. (44 CFR 60.3 (b)(6))
2. The notice shall provide a reasonable period of time, not less than 15 days, for interested parties to submit comments on the proposed activity. (ARM 36.15.204(2)(c))

### **8.3 FLOODPLAIN PERMIT CRITERIA**

1. Floodplain permit applications shall be approved provided the proposed new construction, substantial improvement, or alteration of an artificial obstruction meets the requirements of the minimum standards and criteria in Sections 9 and 10 and other requirements of these regulations. ((MCA 76-5-406) (44 CFR 60.3))
2. A Flood Plain permit application for a development that will cause an increase of more than 0.00 feet to the Base Flood Elevation of the Floodway or more than 0.50 feet to the Base Flood Elevation of the Regulated Flood Hazard Area without a Floodway shall not be approved until approval for an Alteration pursuant to Section 4.3 has been approved, the Regulated Flood Hazard Area is amended and a FEMA CLOMR where required is issued.
3. The Floodplain Administrator shall determine that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendment of 1972, 36 U.S.C. 1334. (44 CFR 60.3(a)(2))

### **8.4 DECISION**

1. The Floodplain Administrator shall approve, conditionally approve, or deny the proposed Floodplain permit application. The Floodplain Administrator shall notify the applicant of their action and the reasons thereof within (180 days or time specified) of receipt of a correct and complete Floodplain permit application unless otherwise specified. A copy of the approved Floodplain permit must be provided to DNRC. ((MCA 76-5-405(2)) (ARM 36.15.204(2)(e))

2. The approval of a Floodplain permit application does not affect any other type of approval required by any other statute or ordinance of the state or any political subdivision or the United States, but is an added requirement. (MCA 76-5-108)

## **8.5 FLOODPLAIN PERMIT CONDITIONS AND REQUIREMENTS**

1. Upon approval or conditional approval of the Floodplain permit application, the Floodplain Administrator shall provide the applicant with a Floodplain permit with applicable specific requirements and conditions including but not limited to the following:
  1. The Floodplain permit will become valid when all other necessary permits required by Federal or State law are in place;(44 CFR 60.3(a)(2)
  2. Completion of the development pursuant to the Floodplain permit shall be completed within one year from the date of Floodplain permit issuance or a time limit commensurate with the project construction timeline for completion of the project or development. The applicant may request an extension for up to an additional year. The request must be made at least 30 days prior to the permitted completion deadline;
  3. The applicant shall notify subsequent property owners and their agents and potential buyers of the Floodplain development permit issued on the property and that such property is located within a Regulated Flood Hazard Area and shall record the notice with the Floodplain Administrator; (ARM 36.15.204(2)(g))
  4. The applicant shall maintain the artificial obstruction or use to comply with the conditions and specifications of the permit;
  5. The applicant shall allow the Floodplain Administrator to perform onsite inspections at select intervals during construction or completion;
  6. The applicant shall provide periodic engineering oversight and/or interim reports during the construction period to be submitted to the Floodplain Administrator to confirm constructed elevations and other project elements;
  7. The applicant shall submit a compliance report including certifications where required and applicable including flood proofing, elevation, surface drainage, proper enclosure openings and materials to the Floodplain Administrator within 30 days of completion or other time as specified;
  8. The applicant shall submit an annual performance and maintenance report on bank stabilization or other projects utilizing maturing vegetative components to the Floodplain Administrator for a period of 5 years or a time specified in the permit; or

9. The applicant shall submit evidence of a submittal of a FEMA Letter of Map Revision (LOMR) to FEMA and applicable fees within 6 months of project completion and proceed with due diligence for acceptance of the document and necessary supporting materials by FEMA. (44 CFR 65.3)

## SECTION 9. DEVELOPMENT REQUIREMENTS IN THE FLOODWAY

**9.1 USES REQUIRING PERMITS** Artificial obstructions including alterations and substantial improvements specifically listed in Sections 9.3 to 9.15 may be allowed by permit within the Floodway, provided the General Requirements in Section 9.2 and the applicable requirements in Sections 9.3 to 9.15 are met.

**9.2 GENERAL REQUIREMENTS** An application for a permit shall meet the following requirements:

1. All projects shall be designed and constructed to ensure that they do not adversely affect the flood hazard on other properties and are reasonably safe from flooding;
2. All projects shall assure that the carrying capacity of the Floodway is not reduced. All projects in the Floodway shall meet the following:
  1. Demonstrate that the project does not increase the Base Flood Elevation by conducting an encroachment analysis certified by an engineer. A minimal or qualitative encroachment analysis may be accepted when the project or development does not require a structure, alteration of the Floodway, involve fill, grading, excavation or storage of materials or equipment but is also certified by an engineer to not exceed the allowable encroachment to the Base Flood Elevation; and
  2. The allowable encroachment to the Base Flood Elevation is 0.00 feet, and no significant increase to the velocity or flow of the stream or water course unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Section 4.3 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance; and  
((ARM 36.15.604) (ARM 36.15.505) (ARM 36.15.605(b)) (44 CFR 60.3(a) (3 and 4)) (44CFR 65.12(a))
3. An application for a Floodplain permit must also demonstrate the following factors are considered and incorporated into the design of the use or artificial obstruction in the Floodway:
  1. The danger to life and property due to backwater or diverted flow caused by the obstruction or use; ((MCA 76-5-406(1)) (ARM 36.15.216(2)(a)))
  2. The danger that the obstruction or use may be swept downstream to the injury of others; ((MCA 76-5-406(2)) (ARM 36.15.216(2)(b)))
  3. The availability of alternative locations; ((MCA 76-5-406(3)) (ARM 36.15.216(2)(c)))

4. Construct or alter the obstruction or use in such manner as to lessen the flooding danger; ((MCA 76-5-406(4)) (ARM 36.15.216(2)(d)))
5. The permanence of the obstruction or use and is reasonably safe from flooding; ((MCA 76-5-406(5)) (ARM 36.15.216(2e)))
6. The anticipated development in the foreseeable future of the area which may be affected by the obstruction or use; ((MCA 76-5-406(6)) (ARM 36.15.216(2f)))
7. Relevant and related permits for the project have been obtained; (44 CFR 60.3(a)(2))
8. Such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the accompanying Administrative Rules of Montana; and ((MCA 76-5-406(7)) (ARM 36.15.216(2)(g)))
9. The safety of access to property in times of flooding for ordinary and emergency services. (44CFR 60.22 (c)(7))

### **9.3 MINING OF MATERIAL REQUIRING EXCAVATION FROM PITS OR POOLS**

provided, in addition to the requirements of Section 9.2, that:

1. A buffer strip of undisturbed land of sufficient width as determined by an engineer to prevent flood flows from channeling into the excavation is left between the edge of the channel and the edge of the excavation; (ARM 36.15.602(1)(a))
2. The excavation meets all applicable laws and regulations of other local and state agencies; and (ARM 36.15.602(1)(b))
3. Excavated material may be processed on site but is stockpiled outside the Floodway. (ARM 36.15.602(1)(c))

**9.4 RAILROAD, HIGHWAY AND STREET STREAM CROSSINGS**, including other transportation related crossings provided, in addition to the requirements of Section 9.2, that:

1. Crossings are designed to offer minimal obstructions to the flood flow; (ARM 36.15.602(2))
2. Where failure or interruption of public transportation facilities would result in danger to public health or safety and where practicable and in consideration of FHWA Federal-Aid Policy Guide 23CFR650A:

1. Bridge lower chords shall have freeboard to at least two (2) feet above the Base Flood Elevation to help pass ice flows, the base flood discharge and any debris associated with the discharge; and
2. Culverts shall be designed to pass the Base Flood discharge and maintain at least two (2) feet freeboard on the crossing surface;
3. Normal overflow channels, if possible are preserved to allow passage of sediments to prevent aggradations; and
4. Mid-stream supports for bridges, if necessary, have footings buried below the maximum scour depth.

**9.5 LIMITED FILLING FOR ROAD AND RAILROAD EMBANKMENTS**, including other transportation related embankments not associated with stream crossings and bridges provided, in addition to the requirements of Section 9.2, that:

1. The fill is suitable fill;
2. Reasonable alternate transportation routes outside the floodway are not available; and (ARM 36.15.602(3))
3. The encroachment is located as far from the stream channel as possible. (ARM 36.15.602(3))

**9.6 BURIED OR SUSPENDED UTILITY TRANSMISSION LINES** provided, in addition to the requirements of Section 9.2, that:

1. Suspended utility transmission lines are designed such that the lowest point of the suspended line is at least six (6) feet higher than the Base Flood Elevation; (ARM 36.15.602(4))
2. Towers and other appurtenant structures are designed and placed to withstand and offer minimal obstruction to flood flows; (ARM 36.15.602(4))
3. Alternatives such as alternative routes, directional drilling, and aerial crossings are considered when technically feasible; and
4. Utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum scour depth determined by an engineer for the Base Flood. (ARM 36.15.602(4))

**9.7 STORAGE OF MATERIALS AND EQUIPMENT** provided, in addition to the requirements of Section 9.2, that:

1. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent flotation or downstream movement; or (ARM 36.15.602(5)(a))
2. The material or equipment is readily removable within the limited time available after flood warning. Storage of flammable, toxic or explosive materials shall not be permitted. (ARM 36.15.602(5)(b))

**9.8 DOMESTIC WATER SUPPLY WELLS** provided, in addition to the requirements of Section 9.2, that:

1. They are driven or drilled wells located on ground higher than surrounding ground to assure positive drainage from the well; (ARM 36.15.602(6))
2. They require no other structures (e.g. a well house); (ARM 36.15.602(6))
3. Well casings are water tight to a distance of at least twenty-five (25) feet below the ground surface and the well casing height is a minimum of two (2) feet above the Base Flood Elevation or capped with a watertight seal and vented two (2) feet above the Base Flood Elevation; ((ARM 36.15.602(6)))
4. Water supply lines have a watertight seal where the lines enter the casing; (ARM 36.15.602(6))
5. All pumps and electrical lines and equipment are either of the submersible type or are adequately flood proofed; and (ARM 36.15.602(6))
6. Check valves are installed on main water lines at wells and at all building entry locations. ((44 CFR 60.3 (a)(5)) (ARM 36.15.602(6)))

**9.9 BURIED AND SEALED VAULTS FOR SEWAGE DISPOSAL IN CAMPGROUNDS AND RECREATIONAL AREAS** provided, in addition to the requirements of Section 9.2, demonstrate approval by Montana Department of Environmental Quality and local health and sanitation permits or approvals. ((44 CFR 60.3(a)(6)) (ARM 36.15.602(7)))

**9.10 PUBLIC AND PRIVATE CAMPGROUNDS** provided, in addition to the requirements of Section 9.2, that:

1. Access roads require only limited fill and do not obstruct or divert flood waters; (ARM 36.15.602(8))
2. The project meets the accessory structures requirements in this Section;
3. No dwellings or permanent mobile homes are allowed; (ARM 36.15.602(8))

4. Recreational vehicles and travel trailers are ready for highway use with wheels intact, with only quick disconnect type utilities and securing devices, and have no permanently attached additions; and (44 CFR 60.3(c)(14))
5. There is no large-scale clearing of riparian vegetation within 10 feet of the mean annual high-water mark or edge of stream channel.

**9.11 STRUCTURES ACCESSORY OR APPURTENANT** to permitted uses such as boat docks, loading and parking areas, marinas, sheds, airstrips, permanent fences crossing channels that may impede or stop flows or debris, picnic shelters and tables and lavatories, that are incidental to a principal structure or use, provided in addition to the requirements of Section 9.2, that:

1. The structures are not intended for human habitation or supportive of human habitation; (ARM 36.15.602(9))
2. The structures will have low flood damage potential; (ARM 36.15.602(9))
3. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible; (ARM 36.15.602(9))
4. The structures will be constructed and placed so as to offer a minimal obstruction to flood flows; (ARM 36.15.602(9))
5. Only those wastewater disposal systems that are approved under health and sanitation regulations are allowed;
6. Service facilities within these structures such as electrical, heating and plumbing are flood proofed according to the requirements in Section 10; (ARM 36.15.602(9))
7. The structures are firmly anchored to prevent flotation; (ARM 36.15.602(9))
8. The structures do not require fill and/or substantial excavation;
9. The structures or use cannot be changed or altered without permit approval; and
10. There is no clearing of riparian vegetation within 10 feet of the mean annual high-water mark or edge of stream channel.

**9.12 CONSTRUCTION OF OR MODIFICATIONS TO SURFACE WATER DIVERSIONS** provided, in addition to the requirements of Section 9.2, that the design is reviewed and approved by an engineer and includes:



1. Measures to minimize potential erosion from a Base Flood; and (ARM 36.15.603(3)(b))
2. Designs and plans that demonstrate any permanent structure in the stream is designed to safely withstand up to the Base Flood considering the forces associated with hydrodynamic and hydrostatic pressures including flood depths, velocities, impact, ice buoyancy, and uplift forces associated with the Base Flood. ((ARM 36.15.603(3)(c) ((CFR 60.3(a)(3) (CFR 60.3(d)(3)))

### **9.13 FLOOD CONTROL AND STREAM BANK STABILIZATION MEASURES**

provided, in addition to the requirements of Section 9.2, that the design is reviewed and approved by an engineer and constructed to substantially resist or withstand the forces associated with hydrodynamic and hydrostatic pressures, including flood depths, velocities, impact, ice, buoyancy, and uplift associated with the Base Flood. The design must also show compliance with the following applicable criteria: ((CFR 60.3(a)(3) (CFR 60.3(d)(3)) (ARM 36.15.606))

#### **1. LEVEE AND FLOODWALL construction or alteration:**

1. Must be designed and constructed with suitable fill and be designed to safely convey a Base Flood; (ARM 36.15.606(1)(a))
2. Must be constructed at least 3 feet higher than the elevation of the Base Flood unless the levee or floodwall protects agricultural land only; (ARM 36.15.606(2)(a))
3. Must meet state and federal levee engineering and construction standards and be publicly owned and maintained if it protects structures of more than one landowner; and (ARM 36.15.505(1)(c)(ii) and (iii))
4. For any increase in the elevation of the Base Flood, an alteration of the Regulated Flood Hazard Area requires approvals pursuant to Section 4.3.

#### **2. STREAM BANK STABILIZATION, PIER AND ABUTMENT PROTECTION projects:**

1. Must be designed and constructed using methods and materials that are the least environmentally damaging yet practicable and should be designed to withstand a Base Flood once the project's vegetative components are mature within a period of up to 5 years or other time as required by the Floodplain Administrator. Once vegetation is mature and established it should not require substantial yearly maintenance after the initial period;
2. Materials for the project may be designed to erode over time but not fail catastrophically and impact others. Erosion, sedimentation, and transport of

the materials may be designed to be at least similar in amount and rate of existing stable natural stream banks during the Base Flood;

3. Must not increase erosion upstream, downstream, across from or adjacent to the site in excess of the existing stable natural stream bank during the Base Flood; and (ARM 36.15.606(1)(b))
4. Materials for the project may include but are not limited to riprap, root wads, brush mattresses, willow wattles, natural woody debris or combinations of analogous materials.

**3. CHANNELIZATION PROJECTS** where the excavation and/or construction of a channel is for the purpose of diverting the entire or a portion of the flow of a stream from its established course, the project must:

1. Not increase the magnitude, velocity, or elevation of the Base Flood; and
2. Meet the requirements of Section 9.13.2.  
(ARM 36.15.101(7)) (ARM 36.15.606(1)(c))

**4. DAMS:**

1. The design and construction shall be in accordance with the Montana Dam Safety Act and applicable safety standards; and
2. The project shall not increase flood hazards downstream either through operational procedures or improper hydrologic/hydraulic design. (ARM 36.15.606(1)(d))

**9.14 STREAM AND BANK RESTORATION** projects intended to reestablish the terrestrial and aquatic attributes of a natural stream and not for protection of a structure or development provided, in addition to the requirements of Section 9.2, that:

1. The project will not increase velocity or erosion upstream, downstream, across from or adjacent to the site; (ARM 36.15.606(1)(b))
2. Materials may include but are not limited to boulders, rock cobble, gravel, native stream bed materials, root wads, brush mattresses, willow wattles, natural woody debris or combinations of analogous materials and that reasonably replicates the bed and bank of the natural stream;
3. Erosion, sedimentation, and transport of the materials are not more than the amount and rate of existing natural stream banks during the Base Flood; and
4. The project may be designed to allow vegetative materials to mature within a period up to 5 years or other time as required by the Floodplain Administrator.

Once vegetation is mature and established it should not require substantial yearly maintenance after the initial period.

**9.15 EXISTING RESIDENTIAL AND NON-RESIDENTIAL BUILDINGS IN THE FLOODWAY** any alteration or substantial improvement to an existing building must meet the requirements of Section 9.2 and the applicable requirements in Section 10 for residential or non-residential buildings. (MCA76-5-404(3)(b))

## SECTION 10. DEVELOPMENT REQUIREMENTS IN THE FLOOD FRINGE OR REGULATED FLOOD HAZARD AREA WITH NO FLOODWAY

**10.1 USES REQUIRING PERMITS** – All uses allowed by permit in the Floodway shall also be allowed by permit within the Flood Fringe or Regulated Flood Hazard Area with no Floodway. Such uses are subject to the requirements in Section 9, with the exception of the encroachment limit of Section 9.2.2. Instead, such uses are subject to the encroachment limits of this Section 10.2.9.

Except for prohibited artificial obstructions in Section 6.2, all other artificial obstructions including new construction, substantial improvements, alterations to residential, and nonresidential structures including manufactured homes, and related suitable fill or excavation shall be allowed by permit and are subject to the requirements in this Section and General Requirements of Section 9.2, with the exception of the encroachment limit of Section 9.2.2.

(ARM 36.15.701(2))

**10.2 GENERAL REQUIREMENTS** An application for a Floodplain permit must demonstrate or meet the following applicable requirements:

1. **Base Flood Elevation** Where necessary to meet the appropriate elevation requirement in these regulations, the Base Flood Elevation(s) must be determined by an engineer and utilized in the design and layout of the project demonstrating the design and construction criteria herein are met. For Regulated Flood Hazard Areas that do not have computed and published Base Flood Elevations in the adopted flood hazard study referenced in Section 4, a Base Flood Elevation must be determined or obtained from a reliable source, utilizing appropriate engineering methods and analyses;
2. **Flood Damage** Structures must be constructed by methods and practices that minimize flood damage and structures must be reasonably safe from flooding; ((44 CFR 60.3(a)) (44 CFR 60.3(a)(3)(iii)))
3. **Surface Drainage** Adequate surface drainage must be provided around structures;
4. **Materials** Structures must be constructed with materials resistant to flood damage; ((44 CFR 60.3(a)) (44 CFR 60.3(a)(3)(ii)))
5. **Artificial Obstructions** Structures, excavation or fill must not be prohibited by any other statute, regulation, ordinance, or resolution; and must be compatible with subdivision, zoning and any other land use regulations, if any; (ARM 36.15.701(3)(a)) ((ARM 36.15.701(3)(b)))

- 6. Anchoring** All construction and substantial improvements must be designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;(44CFR 60.3(a)(3))
- 7. Certification** Certification by an engineer, architect, land surveyor, or other qualified person must accompany the application where required including for an encroachment analysis, adequacy of structural elevations, Base Flood Elevation determinations, flood-proofing, enclosure flood openings and design and construction to withstand the hydrodynamic forces and hydrostatic pressures of flood depths, velocities, impact, buoyancy, uplift forces associated with the Base Flood and surface drainage. A certification is not intended to constitute a warranty or guarantee of performance, expressed or implied;  
((ARM 36.15.606(1) (ARM 36.15.702(2)(c)) (ARM 36.15.801(3)(b)) (44 CFR 60.3(c) (3 &4)) (44 CFR 60.3 (d)(3)))
- 8. Access** Structures must have safe access during times of flooding up to the Base Flood for ordinary and emergency services provided there are no reasonable alternate locations for structures; For manufactured homes, access for a manufactured home hauler is also provided.

## **9. Encroachment Analysis**

1. All applications in the Regulated Flood Hazard Area without a Floodway must be supported by an encroachment analysis of the proposed use, a thorough hydrologic and hydraulic analysis except as provided in following paragraph 4, Section 10.2.9.4, prepared by an engineer to demonstrate the effect of the structure on flood flows, velocities and the Base Flood Elevation; ((ARM 36.15.604) (44 CFR 60.3(a)(3))
2. The maximum allowable encroachment is certified to be at or less than 0.5 feet increase to the Base Flood Elevation unless approval of an alteration of the Regulated Flood Hazard Area pursuant to Section 4 and an approved FEMA Conditional Letter of Map Revision occurs before permit issuance; ((ARM 36.15.604) (ARM 36.15.505) (44 CFR 60.3(c)(13)))
3. An encroachment analysis is not required for any development in the Flood Fringe where an accompanying Floodway has been designated within the Regulated Flood Hazard Area; and
4. Although all other development standards herein apply, a minimal or qualitative encroachment analysis may be accepted when the project or development does not require a structure, alteration of the Floodplain, involve fill, grading, excavation or storage of materials or equipment and also is certified by an engineer to not exceed the allowable encroachment.

**10. Electrical Systems Flood Proofing** All electrical service materials, equipment and installation for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. All incoming power service equipment including all metering equipment, control centers, transformers, distribution and lighting panels and all other stationary equipment must be located at least two feet above the Base Flood Elevation; (ARM 36.15.901(1)(a))
2. Portable and movable electrical equipment may be placed below the Base Flood Elevation, provided that the equipment can be disconnected by a single plug and socket assembly of the submersible type; (ARM 36.15.901(1)(b))
3. The main power service lines must have automatically operated electrical disconnect equipment or manually operated electrical disconnect equipment located at an accessible remote location outside the Regulated Flood Hazard Area or two feet above the Base Flood Elevation; and (ARM 36.15.901(1)(c))
4. All electrical wiring systems installed below the Base Flood Elevation must be suitable for continuous submergence and may not contain fibrous components. (ARM 36.15.901(1)(d))

**11. Heating and Cooling Systems Flood Proofing** Heating and cooling systems for uses in a Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Float operated automatic control valves must be installed so that fuel supply is automatically shut off when flood waters reach the floor level where the heating and cooling systems are located; (ARM36.15.902(1)(a))
2. Manually operated gate valves must be installed in gas supply lines. The gate valves must be operable from a location above the Base Flood Elevation; (ARM36.15.902(1)(b))
3. Electrical Systems flood proofing must be met; and (ARM36.15.902(1)(c))
4. Furnaces and cooling units must be installed at least two (2) feet above the Base Flood Elevation and the ductwork installed above the Base Flood Elevation.

**12. Plumbing Systems Flood Proofing** Plumbing systems for uses in the Regulated Flood Hazard Area must be certified to meet the following requirements:

1. Sewer lines, except those to a buried and sealed vault, must have check valves installed to prevent sewage backup into permitted structures; and (ARM 36.15.903(1)(a))
2. All toilets, stools, sinks, urinals, vaults, and drains must be located so the lowest point of possible flood water entry is at least two (2) feet above the Base Flood Elevation. (ARM 36.15.903(1)(b))

**13. Structural Fill Flood Proofing** Fill used to elevate structures, including but not limited to residential and non-residential buildings must be certified to meet the following requirements:

1. The filled area must be at or above the Base Flood Elevation and extend at least fifteen (15) feet beyond the structure in all directions;
2. Fill material must be suitable fill, that is stable, compacted, well graded, and pervious, not adversely affected by water and frost, devoid of trash or similar foreign matter, tree stumps or other organic material; and is fitting for the purpose of supporting the intended use and/or permanent structure. (ARM 36.15.101(22))
3. The fill must be compacted to minimize settlement and compacted to 95 percent of the maximum density. Compaction of earthen fill must be certified by an engineer;
4. No portion of the fill is allowed within the floodway;
5. The fill slope must not be steeper than 1 ½ horizontal to 1 vertical unless substantiating data justifying a steeper slope is provided and adequate erosion protection is provided for fill slopes exposed to floodwaters; and

**14. Wet Flood Proofing** Building designs with an enclosure below the lowest floor must be certified to meet the following:

1. Materials used for walls and floors are resistant to flooding to an elevation two (2) feet or more above the Base Flood Elevation; (ARM 36.15.702(2)(a))
2. The enclosure must be designed to equalize hydrostatic forces on walls by allowing for entry and exit of floodwaters. Opening designs must either be certified by an engineer or architect or meet or exceed the following:
  1. Automatically allow entry and exit of floodwaters through screens, louvers, valves, and other coverings or devices;
  2. Have two (2) or more openings with a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area below the

Lowest Floor, except if the enclosure is partially subgrade, a minimum of 2 openings may be provided on a single wall; and

3. Have the bottom of all openings no higher than one (1) foot above the higher of the exterior or interior adjacent grade or floor immediately below the openings.  
(44 CFR 60.3(c)(5))

**15. Dry Flood Proofing** Building designs that do not allow internal flooding must be certified according to these regulations to meet the following:

1. Building use must be for non-residential use only and does not include mixed residential and non-residential use;
2. Be Flood Proofed to an elevation no lower than two (2) feet above the Base Flood Elevation;
3. Be constructed of impermeable membranes or materials for floors and walls and have watertight enclosures for all windows, doors and other openings; and
4. Be designed to withstand the hydrostatic pressures and hydrodynamic forces resulting from the Base Flood and the effects of buoyancy.  
((ARM 36.15.702(2)(b)) (44 CFR 60.3(c)(3))

**16. Elevation of the Lowest Floor** Elevating the lowest floor may be by either suitable fill, foundation wall enclosure, stem walls, pilings, posts, piers, columns or other acceptable means; ((MCA 76-5-402(2)(b)) (44 CFR 60.3(b)(8)) (44 CFR 60.3(c)(6)))

**17. Crawl Spaces** Crawl space foundation enclosures including sub grade crawlspace enclosures below the lowest floor must meet the wet flood proofing requirements and be designed so that the crawl space floor is at or above the Base Flood Elevation. Crawl space foundations must have an inside dimension of not more than five (5) feet from the ground to the top of the living floor level and a sub grade crawlspace must also have the interior ground surface no more than two (2) feet below the exterior lowest adjacent ground surface on all sides. A sub grade foundation exceeding either dimension is a basement;

**18. Manufactured Home Anchors** For new placement, substantial improvement or replacement of manufactured homes for residential or nonresidential use including additions, the chassis must be secure and must resist flotation, collapse or lateral movement by anchoring with anchoring components capable of carrying a force of 4,800 pounds and as follows:



1. For manufactured homes less than fifty (50) feet long, over-the-top ties to ground anchors are required at each of the four (4) corners of the home, with two additional ties per side at intermediate locations; or
2. For manufactured homes more than fifty (50) feet long, frame ties to ground anchors are required at each corner of the home with five (5) additional ties per side at intermediate points; and  
((CFR 60.3(b)(8)) CFR 60.3(c)(6)))

### **10.3 RESIDENTIAL BUILDING, EXCEPTIONS OR ADDITIONAL REQUIREMENTS**

New construction, alterations, and substantial improvements of residential dwellings, manufactured homes, including replacement of manufactured homes, must be constructed such that:

1. **Elevation of the Lowest Floor** The Lowest Floor of the building including an attached garage or basement must be two (2) feet or more above the Base Flood Elevation; (ARM 36.15.701(3))
2. **Enclosure** Enclosures of elevated buildings cannot be dry flood proofed. Use for an enclosure is limited to facilitating building component access. The enclosure including a crawlspace must be wet flood proofed and the enclosure floor must be at or above the Base Flood Elevation. An attached garage floor must be two (2) or more feet above the Base Flood Elevation; and
3. **Recreation Vehicles** Recreational vehicles on site for more than 180 days or not ready for highway use must meet the requirements for manufactured homes for residential use.

### **10.4 NON-RESIDENTIAL BUILDING, EXCEPTIONS OR ADDITIONAL REQUIREMENTS**

New construction, alterations, and substantial improvements of non-residential including agricultural, commercial and industrial buildings and residential and non-residential accessory buildings must be constructed such that:

1. **Elevation of the Lowest Floor** The Lowest Floor of the building must be elevated two (2) feet above the Base Flood Elevation or adequately dry flood proofed according to Section 10.2.15. ((ARM 36.15.702(2) (44 CFR 60.3(c)(3)(ii) (44 CFR 60.3(c)(3) & (4)))
2. **Enclosure** Enclosures below the Lowest Floor on elevated buildings must be wet flood proofed according to Section 10.2.14 and the use must be limited to parking, access or storage or must be adequately dry flood proofed according to this Section 10.2.15;
3. **Manufactured homes** Manufactured homes proposed for use as non-residential buildings cannot be dry flood proofed; and

**4. Agricultural structures** The following additional requirements and exceptions from the requirements of Section 10.4 apply to agricultural structures not intended to be insurable, used solely for agricultural purposes, having low flood damage potential, used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities including raising of livestock and animal confinement facilities, and not intended for human habitation:

1. Such structures may be exempted by the Floodplain Administrator from the Lowest Flood Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structures is elevated to at least the Base Flood Elevation or adequately dry floodproofed in conformance with the requirements of Section 10.2.15; and
2. Such Structures shall comply with the requirements of Section 9.11.  
((ARM 36.15.602(9) (ARM 36.15.701(3)(e))

**5. Additional Accessory Structures including Detached Garages** Accessory structures that are on the same parcel of property as a principal structure, the use of which is incidental to the use of the principal structure. Accessory structures must be used for parking or storage, be small and represent a minimal investment by owners, and have low damage potential. Small structures referenced in FEMA Technical Bulletin P-2140 means not larger than a one-story two-car garage.

1. Such structures may be exempted by the Floodplain Administrator from the Lowest Flood Elevation requirements established in Section 10.4.1 provided the Lowest Floor of the structure is elevated to at least the Base Flood Elevation and adequately wet floodproofed in conformance with requirements of parts 1 and 2 of Section 10.2.14 or adequately dry floodproofed in conformance with the requirements of Section 10.2.15; and
2. Such structures shall comply with the requirements of Section 9.11.

## **SECTION 11. EMERGENCIES**

### **11.1 GENERAL**

1. Emergency repair and replacement of severely damaged artificial obstructions and development in the Regulated Flood Hazard Area, including public transportation facilities, public water and sewer facilities, flood control works, and private projects are subject to the permitting requirements of these regulations. (ARM 36.15.217)
2. The provisions of these regulations are not intended to affect other actions that are necessary to safeguard life or structures during periods of emergency.

### **11.2 EMERGENCY NOTIFICATION AND APPLICATION REQUIREMENTS**

1. The property owner and or the person responsible for taking emergency action must notify the Floodplain Administrator prior to initiating any emergency action in a Regulated Flood Hazard Area normally requiring a Floodplain permit. An Emergency Notification Form must be submitted to the Floodplain Administrator within five (5) days of the action taken as a result of an emergency.
2. Unless otherwise specified by the Floodplain Administrator, within 30 days of initiating the emergency action, a person who has undertaken an emergency action must submit a Floodplain Permit Application that describes what action has taken place during the emergency and describe any additional work that may be required to bring the project in compliance with these regulations.
3. A person who has undertaken an emergency action may be required to modify or remove the project in order to meet the permit requirements.

## SECTION 12. VARIANCES

**12.1 GENERAL** A variance from the minimum development standards of these regulations may be allowed. An approved variance would permit construction in a manner otherwise as required or prohibited by these regulations. ((44 CFR 59.1) (ARM 36.15.218))

### **12.2 VARIANCE APPLICATION REQUIREMENTS:**

1. Prior to any consideration of a variance from any development standard in these regulations, a completed Floodplain Permit application and required supporting material must be submitted.
2. Additionally, supporting materials in a Variance application specific to the variance request including facts and information addressing the criteria in this Section must be submitted.
3. If the Floodplain permit application and Variance application is deemed not correct and complete, the Floodplain Administrator shall notify the applicant of deficiencies within a reasonable time not to exceed 30 days. Under no circumstances should it be assumed that the variance is automatically granted.

### **12.3 NOTICE REQUIREMENTS FOR FLOODPLAIN VARIANCE APPLICATION**

Public Notice of the Floodplain permit application and Variance application shall be given pursuant to Section 8.2.

### **12.4 EVALUATION OF VARIANCE APPLICATION**

1. A Floodplain permit and Variance shall only be issued upon a determination that the variance is the minimum allowance necessary, considering the flood hazard, to afford relief from these regulations and provided all of the following criteria are met:
  1. There is a good and sufficient cause. Financial hardship is not a good and sufficient cause; (44 CFR 60.6(a)(3))
  2. Failure to grant the variance would result in exceptional hardship to the applicant; (44 CFR 60.3(a)(3)) & ARM 36.15.218(b))
  3. Residential and nonresidential buildings are not in the Floodway except for alterations or substantial improvement to existing buildings. Residential dwellings including basements and attached garages do not have the lowest floor elevation below the Base Flood Elevation;

4. Any enclosure including a crawl space must meet the requirements of Section 10.2.14, Wet Flood Proofing if the enclosure interior grade is at or below the Base Flood Elevation;
5. Granting of a variance will not result in increased flood heights to existing buildings, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other existing local laws or ordinances; (44 CFR 60.6 (a)(3) & (ARM 36.15.218(a))
6. The proposed use is adequately flood proofed; (ARM 36.15.218(c))
7. The variance is the minimum necessary, considering the flood hazard, to afford relief; (44 CFR 60.6(a)(4))
8. Reasonable alternative locations are not available; (MCA 76-5-406(3) & ARM 36.15.218(d))
9. An encroachment does not cause an increase to the Base Flood Elevation that is beyond that allowed in these regulations; and (44 CFR 60.6(a)(1))
10. All other criteria for a Floodplain permit besides the specific development standard requested by variance are met.

**2. An exception to the variance criteria may be allowed as follows:**

1. For either new construction of a structure outside of the Floodway only or for substantial improvements or an alteration of a structure, on a lot of one-half acres or less that is contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation; or (44 CFR 60.6(a).
2. For Historic Structures – variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum relief necessary to preserve the historic character and design of the structure. The historic nature of the building must be designated as a preliminary or historic structure by U.S. Secretary of Interior or an approved state or local government historic preservation program. (44 CFR 60.6(a))

## **12.5 DECISION**

**1. The Livingston City Commission shall:**

1. Evaluate the Floodplain permit application and Variance application using

the criteria in Section 12.4, and the application requirements and minimum development standards in Section 9 and 10;

2. Make findings, and approve, conditionally approve or deny a Floodplain permit and variance within 180 days or a time specified of a complete application.
3. If approved, attach conditions to the approval of Floodplain permit and Variance including a project completion date and inspections during and after construction.
4. Notify the applicant that the issuance of a Floodplain permit and Variance to construct a structure not meeting the minimum building requirements in these regulations may result in increased premium rates for flood insurance and that flood insurance premiums are determined by actuarial risk and will not be modified by the granting of a variance. (44CFR 60.6(a))
5. Submit to the Floodplain Administrator a record of all actions involving a Floodplain permit and variance, including the findings and decision and send a copy of each variance granted to DNRC.(44 CFR 60.6(a)(6) & MCA 76-5-405)

## **12.6 JUDICIAL REVIEW**

Any person or persons aggrieved by the Floodplain permit and variance decision may appeal such decision in a court of competent jurisdiction.

## SECTION 13. ADMINISTRATIVE APPEALS

**13.1 GENERAL** An administrative appeal may be brought before the Livingston City Commission for review of the Floodplain Administrator's order, decision to grant, condition or deny a floodplain permit or interpretation of the Regulated Flood Hazard Area boundary.

**13.2 APPEALS REQUIREMENTS** The following provisions apply to administrative appeals:

1. An appeal shall include the basis of the appeal and supporting information including specific findings and conclusions of the Floodplain Administrator's decision being appealed;
2. An appeal may be submitted by an applicant and/or anyone who may be aggrieved by the Floodplain Administrator's decision or order;
3. Appeals must be received within 30 days of the date of the decision or order of the Floodplain Administrator; and
4. Additional information specific to the appeal request may be requested by the review panel.

### **13.3 NOTICE AND HEARING**

1. Notice of the pending appeal and hearing shall be provided pursuant to Section 8.2. The Floodplain Administrator may notify DNRC and FEMA of pending appeals.
2. A public hearing on the appeal must be held within 30 days of the Notice unless set otherwise.

### **13.4 DECISION**

A judgment on an appeal shall be made within 30 days of the hearing unless set otherwise. The decision may affirm, modify, or overturn the Floodplain Administrator's decision. A decision on an appeal of a permit cannot grant or issue a variance. A decision may support, reverse or remand an order or determination of a boundary of the Regulated Flood Hazard Area by the Floodplain Administrator.

### **13.5 JUDICIAL REVIEW**

Any person or persons aggrieved by the decision on an administrative appeal may appeal such decision in a court of competent jurisdiction.

## SECTION 14. ENFORCEMENT

**14.1 INVESTIGATION REQUEST** An investigation to determine compliance with these regulations for an artificial obstruction or nonconforming use within the Regulated Flood Hazard Area may be made either on the initiative of the Floodplain Administrator or on the written request of three titleholders of land which may be affected by the activity. The names and addresses of the persons requesting the investigation shall be released if requested. (MCA 76-5-105) (2)

**14.2 NOTICE TO ENTER AND INVESTIGATE LANDS OR WATERS** The Floodplain Administrator may make reasonable entry upon any lands and waters for the purpose of making an investigation, inspection or survey to verify compliance with these regulations. (MCA 76-5-105(1))

1. The Floodplain Administrator shall provide notice of entry by mail, electronic mail, phone call, or personal delivery to the owner, owner's agent, lessee, or lessee's agent whose lands will be entered.
2. If none of these persons can be found, the Floodplain Administrator shall affix a copy of the notice to one or more conspicuous places on the property.

**14.3 NOTICE TO RESPOND AND ORDER TO TAKE CORRECTIVE ACTION** When the Floodplain Administrator determines that a violation may have occurred, the Floodplain Administrator may issue written notice to the owner or an agent of the owner, either personally or by certified mail. Such notice shall cite the regulatory offense and include an order to take corrective action within a reasonable time or to respond by requesting an administrative review by the Floodplain Administrator.

**14.4 ADMINISTRATIVE REVIEW** The order to take corrective action is final, unless within five (5) working days or any granted extension, after the order is received, the owner submits a written request for an administrative review by the Floodplain Administrator. A request for an administrative review does not stay the order.

**14.5 APPEAL OF ADMINISTRATIVE DECISION** Within ten (10) working days or any granted extension of receipt of the Floodplain Administrator's decision concluding the administrative review, the property owner or owner's agent may appeal the decision pursuant to Section 13.

**14.6 FAILURE TO COMPLY WITH ORDER TO TAKE CORRECTIVE ACTION** If the owner fails to comply with the order for corrective action, remedies may include administrative or legal actions, or penalties through court.

**14.7 OTHER REMEDIES** This section does not prevent efforts to obtain voluntary compliance through warning, conference, or any other appropriate means. Action



under this part shall not bar enforcement of these regulations by injunction or other appropriate remedy.

## SECTION 15. PENALTIES

**15.1 MISDEMEANOR** Violation of the provisions of these regulations or failure to comply with any of the requirements, including failure to obtain permit approval prior to development in the Regulated Flood Hazard Area except for an emergency, shall constitute a misdemeanor and may be treated as a public nuisance.

Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100 or imprisoned for not more than 10 days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense. (MCA 76-5-110)

### **15.2 DECLARATION TO THE FEDERAL FLOOD INSURANCE ADMINISTRATOR**

Upon finding of a violation and failure of the owner to take corrective action as ordered, the Floodplain Administrator may submit notice and request a 1316 Violation Declaration to the Federal Insurance Administrator. The Federal Insurance Administrator has the authority to deny new and renewal flood insurance for a structure upon finding a valid violation declaration. (44 CFR 73.3)

The Floodplain Administrator shall provide the Federal Insurance Administrator the following:

1. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;
2. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;
3. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
5. A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

---

## Chapter 29

# FLOODPLAIN REGULATIONS<sup>1</sup>

### Article I. Title and Purpose

#### Sec. 29-1. Title.

These regulations shall be known and cited as Livingston Floodplain Regulations. These regulations are in accordance with exercising the authority of the laws of the State of Montana.

(Ord. No. 2033, § I, 8/16/11)

#### Sec. 29-2. Purpose.

To promote the public health, safety, and general welfare, to minimize flood losses in areas subject to flood hazards, and to promote wise use of the floodplain. These regulations have been established with the following purposes intended:

- A. To guide development of the one-hundred-year floodplain within local jurisdiction consistent with the enumerated findings by:
  - 1. Recognizing the right and need of water courses to periodically carry more than the normal flow of water;
  - 2. Participating in coordinated efforts of federal, state, and local management activities for one-hundred-year floodplains; and
  - 3. Ensuring the regulations and minimum standards adopted, insofar as possible, balance the greatest public good with the least private injury.
- B. Specifically it is the purpose of these regulations to:
  - 1. Restrict or prohibit uses that are dangerous to health, safety, and property in times of flood, or that cause increased flood heights and velocities;
  - 2. Require that uses vulnerable to floods, including public facilities, be provided with flood protection at the time of initial construction;
  - 3. Identify lands unsuitable for certain development purposes because of flood hazards;
  - 4. Minimize the need for rescue and relief efforts associated with flooding undertaken at the expense of the general public;

---

<sup>1</sup>Editor's note(s)—Ord. No. 2033, adopted Aug. 16, 2011, repealed the former floodplain regulations of the city, which derived from Ord. No. 1687, adopted Feb. 19, 1991, and enacted new floodplain regulations as set out herein.

5. Ensure potential buyers are notified that property is within a one-hundred-year floodplain and subject to the provisions of these regulations; and
6. Ensure that those who occupy one-hundred-year floodplains assume responsibility for their actions.

(Ord. No. 2033, § I, 8/16/11)

## **Article II. Definitions**

### **Sec. 29-3. Definitions.**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to give them the meaning they have in common usage and to give these regulations the most reasonable application.

"Act" means the Montana Floodplain and Floodway Management Act 76-5-101 through 406, MCA.

"Alteration" means any change or addition to a structure that either increases its external dimensions or increases its potential flood hazard.

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provisions of these regulations or a request for a variance.

"Area of special flood hazard" means the land in the floodplain within the community subject to inundation by a one (1) percent or greater chance of flooding in any given year, i.e., the one-hundred-year floodplain.

"Artificial Obstruction-Development" means any obstruction which is not natural and includes any dam, diversion, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any one-hundred-year floodplain which may impede, retard, or alter the pattern of flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of water would carry the same downstream to the damage or detriment of either life or property.

"Base flood" means a flood having one (1) percent chance of being equaled or exceeded in any given year. A base flood is the same as a one-hundred-year flood.

"Base flood elevation" means the elevation above sea level of the base flood in relation to North American Vertical Datum of 1988 unless otherwise specified in the flood hazard study.

"Channelization project" means the excavation and/or construction of an artificial channel for the purpose of diverting the entire flow of a stream from its established course.

"Development" means any human-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. (44 CFR 59.1)

"Establish" means to construct, place, insert, or excavate.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision where the construction of facilities for servicing the manufactured homes lots is completed before the effective date of the floodplain management regulations. This includes, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including

the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads). (44 CFR 59.1)

"FEMA" means the Federal Emergency Management Agency.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry lands from the overflow of a stream, or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood insurance rate map" means the map on which FEMA has dedicated both the one-hundred year floodplains and the risk premium zones.

"Flood insurance study" means the report in which FEMA has provided flood profiles, as well as the flood boundary/floodway map and the water surface profiles.

"Floodplain" means the areas subject to these regulations, generally adjoining a stream, that would be covered by floodwater of a base flood except for designated shallow flooding areas that receive less than one (1) foot of water per occurrence. The floodplain consists of a floodway and floodway fringe.

"Floodway" means the channel of a stream and the adjacent over bank areas that must be reserved in order to discharge a base flood without cumulatively increasing the water surface elevation more than one-half (½) foot.

"Floodway fringe" means that portion of the floodplain outside the limits of the floodway.

"Levee" means a humanmade embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

"Levee system" means a flood protection system that consists of a levee, or levees, and associated structures, such as drainage and closure devices, which are constructed and operated in accordance with sound engineering practices.

"Lowest floor" means any floor used for living purposes, storage, or recreation. This includes any floor that could be converted to such a use.

"Manufactured home" means a structure that is transportable in one (1) or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. This does not include "recreational vehicles."

"Manufactured home park or subdivision" means a parcel or contiguous parcels of land divided into two (2) or more manufactured home lots for rent or sale.

"Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum to which base flood elevations are referenced.

"New construction" means structures for which construction, substantial improvement, or alteration commences on or after the effective date of these regulations.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community. (44 CFR 59.1)

"Official floodplain maps" means the flood insurance rate maps and flood boundary/floodway maps provided by FEMA for Livingston, dated October 18, 2011.

"One-hundred-year flood" means a flood having a one (1) percent chance of being equaled or exceeded in any given year. A one-hundred-year flood has nearly a twenty-three (23) percent of occurring in a twenty-five-year period. A one-hundred-year is the same as a base flood.

"Permit issuing authority" means the City of Livingston.

"Recreational vehicle" means a vehicle which is:

- A. Built on a single chassis;
- B. Four hundred (400) square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light duty truck; and
- D. Designed primarily for use as a temporary living quarters for recreation, camping, travel, or seasonal use, not for use as a permanent dwelling.

"Riprap" means stone, rocks, concrete blocks, or analogous material that is placed along the banks or bed of a stream to alleviate erosion.

"Start of construction" means commencement of clearing, grading, filling, or excavating to prepare a site for construction.

"Structure" means a walled and roofed building, manufactured home, a gas or liquid storage tank, bridge, culvert, dam, diversion, wall, revetment, dike, or other projection that may impede, retard, or alter the pattern of flow of water.

"Substantial damage" means damage sustained by a structure where the cost of restoring the structure to its condition before damage would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:

- A. Before the improvement or repair is started; or
- B. If the structure has been damaged, and is being restored, before the damage occurred. For the purpose of this definition, substantial improvement is considered to occur when the first construction to any wall, ceiling, floor, or other structural part of the building commences. The term does not include:
  - 1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
  - 2. Any alteration of a structure listed on the national register of historic places or state inventory of historic places.

"Suitable fill" means fill material which is stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and is fitting for the purpose of supporting the intended use and/or permanent structure.

"Variance" means a grant of relief from the requirements of these regulations that would permit construction in a manner otherwise prohibited by these regulations.

"Violation" means the failure of a structure or other development to be fully compliant with these regulations. A structure or other development without elevation certificate, certification by a licensed engineer or architect of compliance with these regulations, or other evidence of compliance is presumed to be in violation until such time as documentation is provided.

(Ord. No. 2033, § 1, 8/16/11; Ord. No. 2034, § 1, 10/4/11; Ord. No. 3005, § 2, 4/20/21)

---

## Article III. General Provisions

### Sec. 29-4. Jurisdictional area.

These regulations shall apply to all lands within the jurisdiction of the City of Livingston, State of Montana, shown on the official floodplain maps as being located within a one-hundred-year floodplain district.

(Ord. No. 2033, § I, 8/16/11)

### Sec. 29-5. Floodplain district establishment.

The floodplain districts established are defined by the base flood elevations and one-hundred-year floodplains as delineated in the flood insurance study. The basis for the Flood Insurance Study is a scientific and engineering report entitled, "The Flood Insurance Study for Livingston, Montana," dated October 18, 2011, with accompanying flood insurance rate maps and flood boundary/floodway maps. The official floodplain maps and study are on file in the office of the Floodplain Administrator.

(Ord. No. 2033, § I, 8/16/11)

### Sec. 29-6. Floodplain administrator.

The Livingston Floodplain Administrator has been designated to be the Director of Building and Planning. The responsibilities of this position are outlined in Article IV of these regulations.

(Ord. No. 2033, § I, 8/16/11)

### Sec. 29-7. Rules for interpretation of floodplain district boundaries.

The boundaries of the one-hundred-year floodway shall be determined by scaling distances on the official floodplain maps and using the floodway data table contained in the flood insurance study report. The maps may be used as a guide for determining the one-hundred-year floodplain boundary, but the exact location of the floodplain boundary shall be determined where the base flood elevation intersects the natural ground. For unnumbered A Zones and AO Zone floodplains, where there is a conflict between mapped floodplain boundary and actual field conditions, the Floodplain Administrator may interpret the location of the one-hundred-year floodplain boundary based on field conditions or available historical flood information.

(Ord. No. 2033, § I, 8/16/11)

### Sec. 29-8. Compliance.

No structure or land use shall be located, extended, converted, or structurally altered without full compliance with the provisions of these regulations and other applicable regulations. these regulations meet the minimum floodplain development requirements as set forth by the Montana Board of Natural Resources and Conservation and the National Flood Insurance Program.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-9. Abrogation and greater responsibility.**

It is not intended by these regulations to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or underlying zoning. However, where these regulations impose greater restrictions, the provisions of these regulations shall prevail.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-10. Regulation interpretation.**

The interpretation and application of the provisions of these regulations shall be considered minimum requirements and liberally constructed in favor of the governing body and not deemed a limitation or repeal of any other powers granted by State statute.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-11. Warning and disclaimer of liability.**

These regulations do not imply that areas outside the delineated floodplain boundaries or permitted land uses will always be totally free from flooding or flood damages. These regulations shall not create a liability or cause of action against Livingston, or any officer or employee thereof for flood damages that may result from reliance upon these regulations.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-12. Severability.**

If any section, clause, provision, or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-13. Disclosure provision.**

All owners of property in an identified one-hundred-year floodplain as indicated on the official floodplain maps must notify potential buyers or their agents that such property is subject to the provisions of these regulations.

(Ord. No. 2033, § I, 8/16/11)

## **Article IV. Administration**

### **Sec. 29-14. Administration.**

- A. As provided in Section 29-6 of these regulations, the Floodplain Administrator has been designated by the Livingston City Commission, and has the responsibility of such position as outlined in these regulations.
- B. The Floodplain Administrator is hereby appointed with the authority to review floodplain development permit applications, proposed uses, and construction to determine compliance with these regulations. The



Floodplain Administrator is required to assure all necessary permits have been received from those governmental agencies from which approval is required by federal and state law and local codes, including Section 404 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1334, and under the provisions of the Natural Streambed and Land Preservation Act.

1. Additional Factors. Floodplain development permits shall be granted or denied by the Floodplain Administrator on the basis of whether the proposed establishment, alteration, or substantial improvement of an artificial obstruction meets the requirements of these regulations. Additional factors that shall be considered for every permit application are:
  - a. The danger to life and property due to increased flood heights, increased flood water velocities, or alterations in the pattern of flood flow caused by encroachments;
  - b. The danger that materials may be swept onto other lands or downstream to the injury of others;
  - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
  - d. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual owner;
  - e. The importance of the services provided by the facility to the community;
  - f. The requirement of the facility for a waterfront location;
  - g. The availability of alternative locations not subject to flooding for the proposed use;
  - h. The compatibility of the proposed use with existing development and anticipated development in the foreseeable future;
  - i. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area;
  - j. The safety of access to property in times of flooding for ordinary and emergency services; and
  - k. Such other factors as are in harmony with the purposes of these regulations, the Montana Floodplain and Floodway Management Act, and the National Flood Insurance Program.
- C. A floodplain development permit application is considered to have been automatically granted sixty (60) days after the date of receipt of the application by the Floodplain Administrator unless the applicant has been notified that the permit is denied, conditionally approved, or additional information pertinent to the permit review process is required.
- D. The Floodplain Administrator shall adopt such administrative procedures as may be necessary to efficiently administer the provision of these regulations.
- E. The Floodplain Administrator shall maintain such files and records as may be necessary to document nonconforming uses, base flood elevations, floodproofing and elevation certifications, fee receipts, the issuance of permits, agenda, minutes, records of public meetings, and other matters related to floodplain management in the Office of Building and Planning. Such files and records shall be open for public inspection. In matters of litigation, the City attorney may restrict access to specific records.
- F. The Floodplain Administrator may require whatever additional information is necessary to determine whether the proposed activity meets the requirements of these regulations. Additional information may include hydraulic calculations assessing the impact on base flood elevations or velocities; level survey; or certification by a registered land surveyor, professional engineer, or licensed architect that the requirements of these regulations are satisfied.

- G. Upon receipt of an application for a permit or a variance, the Floodplain Administrator shall prepare a notice containing the facts pertinent to the application and shall publish the notice at least once in a newspaper of general circulation in the area. Notice shall also be served by first-class mail upon adjacent property owners and the DNRC Floodplain Management Section. The notice shall provide a reasonable period of time, not less than fifteen (15) days, for interested parties to submit comments on the proposed activity.
- H. Copies of all permits granted must be sent to the Department of Natural Resources and Conservation in Helena, Montana.
- I. In riverine situations, notification by the Floodplain Administrator must be made to adjacent communities, the Floodplain Management Section (DNRC), and FEMA prior to any alteration or relocation of a stream. The flood-carrying capacity within the altered or relocated portion of any stream must be maintained. Erosion control measures shall be incorporated to ensure stability of altered channels and stream banks.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-14.1. Subdivision review.**

Within regulated flood hazard areas, applicants shall submit subdivision, manufactured home park and other development proposals to the City of Livingston Floodplain Administrator ensuring such proposals, including utilities, will be reasonably safe from flooding. (44 CFR 60.3(a)(4)(i))

- 1. All subdivision proposals, manufactured home parks and other development proposals reviewed under the Montana Sanitation in Subdivisions Act, MCA 76-4 Part 1 and the rules adopted by the Department of Environmental Quality (DEQ) under this act shall be submitted. (44 CFR 60.3(b)(3))
  - a. All subdivision proposals including the placement of manufactured home parks and subdivisions must have adequate drainage provided to reduce exposure to flood hazards. (44 CFR 60.3(a)(4)(iii))
  - b. All subdivision proposals including the placement of manufactured home parks and subdivisions must have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage. (44 CFR 60.3(a)(4)(ii))
- 2. Within Zone A floodplains, applicants shall generate base flood elevation data for subdivision proposals, manufactured home parks and other development proposals greater than fifty (50) lots or five (5) acres. (44 CFR 60.3(b)(3))

All development within the regulated flood hazard area must apply for and be granted a permit before development occurs on the individual lots within the subdivision.

(Ord. No. 2034, § 1, 10/4/11)

### **Sec. 29-15. Permit application.**

- A. Activities or uses that require the issuance of a permit, including the expansion or alteration of such uses, shall not be initiated, established, or undertaken until a permit has been issued by the Floodplain Administrator.
- B. Permit applications shall be required to furnish the following information as deemed necessary by the Floodplain Administrator for determining the suitability of the particular site for the proposed use.
  - 1. Plans in duplicate drawn to scale (including dimensions) showing the nature, location, and elevation of the lot; existing and proposed structure locations; fill, storage, or materials site; floodproofing measures; mean sea level elevation of first floor of proposed structures; and location of the channel.

2. A plan view of the proposed development indicating external dimensions of structures, street or road finished grade elevations, well locations, individual sewage treatment and disposal sites, excavation and/or fill quantity estimates, and site plan and/or construction plans.
  3. Specifications for floodproofing, filling, excavating, grading, riprapping, storage of materials, and location of utilities.
  4. A professional engineer's or registered architect's design calculations and certification that the proposed activity has been designed to be in compliance with these regulations.
  5. Certification of floodproofing and/or elevation shall be provided on a standard form available from the floodplain administrator.
- C. To determine that the permit specifications and conditions have been completed, applicants who have received permits are required to furnish the following at the time of an on-site conformance inspection.
1. Certification by a registered professional engineer or licensed land surveyor of the actual mean sea level elevation of the lowest floor (including basement) of all new, altered, or substantially improved buildings.
  2. If floodproofing techniques were used for buildings, the mean sea level elevation to which the floodproofing was accomplished must be certified by a structural engineer or licensed architect in the same manner.
  3. Certification shall also be required, for artificial obstructions other than buildings, that the activity was accomplished in accordance with these regulations and the design plans submitted with the application for the permit activity. This certification may be waived by the floodplain administrator if it can be clearly ascertained by a site inspection that the activity was accomplished in accordance with these regulations.
  4. Certification of floodproofing and/or elevation shall be provided on a standard form available from the floodplain administrator.

(Ord. No. 2033, § I, 8/16/11)

## **Sec. 29-16. Emergency waiver.**

- A. Emergency repair and replacement of severely damaged public transportation facilities, public water and sewer facilities, and flood control works may be authorized. Floodplain development permit requirements may be waived if:
1. Upon notification and prior to the emergency repair and/or replacement, the Floodplain Administrator determining that an emergency condition exists warranting immediate action; and
  2. The Floodplain Administrator agrees upon the nature and type of proposed emergency repair and/or replacement.
- B. Authorization to undertake emergency repair and replacement work may be given verbally if the Floodplain Administrator feels that such a written authorization would unduly delay the emergency works. Such verbal authorization must be followed by a written authorization describing the emergency condition, and the type of emergency work agreed upon, and stating that a verbal authorization had been previously given.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-17. Review—Variances—Appeals.**

- A. There is hereby created a local Floodplain Management Board of Adjustment, the membership, administration, and rules of procedure of which are identical to a zoning board of adjustment.
- B. The Board of Adjustment may, by variance, grant a permit that is not in compliance with the minimum standards contained in these regulations according to the following procedures:
  - 1. Variances shall not be issued for areas within a floodway if any additional increase in flood elevations or velocities after allowable encroachments into the floodway fringe would result;
  - 2. Variances shall only be issued upon:
    - a. A showing of good and sufficient cause;
    - b. A determination that refusal of a permit due to exceptional circumstances would cause a unique or undue hardship on the applicant or community involved;
    - c. A determination that the granting of a variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create nuisances, cause fraud, victimize the public, or conflict with existing state and local laws;
    - d. A determination that the proposed use would be adequately flood-proofed;
    - e. A determination that a reasonable alternate location outside the floodplain is not available;
    - f. A determination that the variance requested is the minimum necessary to afford relief, considering the flood hazard; and
    - g. Approval of the Montana Department of Natural Resources and Conservation, upon request from the permit issuing authority, prior to formally approving any permit application that is in variance to these regulations.
  - 3. Variances shall be issued in writing from the permit issuing authority and shall notify the applicant that:
    - a. A specific variance is granted, and certain conditions may be attached;
    - b. The issuance of a variance to construct a building below the one-hundred-year floodplain elevation will result in increased premium rates; and
    - c. Such construction below the one-hundred-year flood elevation increases risks to life and property. The Floodplain Administrator shall maintain records of the variance notification and actions, including justification for their issuance, and forward copies of all variance actions to the Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency.
- C. Appeal of any decision of the Permit Issuing Authority, its officers, or agencies may be taken by an aggrieved person or persons, jointly or separately, to a court of record.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-18. Fees.**

A processing fee shall be set by the City Commission by separate resolution and shall be submitted with each permit application.

(Ord. No. 2033, § I, 8/16/11; Ord. No. 3045, § 1, 10/3/23)

---

**Sec. 29-19. Violation notice.**

The Floodplain Administrator shall bring any violation of these regulations to the attention of the local governing body; its legal council; and the Montana Department of Natural Resources and Conservation.

(Ord. No. 2033, § I, 8/16/11)

**Sec. 29-20. Compliance.**

Any use, arrangement, or construction not in compliance as authorized by permit, shall be deemed a violation of these regulations and punishable as provided in Section 29-21. An applicant is required to submit certification by a registered professional engineer, architect, land surveyor, or other qualified person designated by the Floodplain Administrator that finished fill and lowest building floor elevations, floodproofing, hydraulic design, or other flood protection measures were accomplished in compliance with these regulations.

(Ord. No. 2033, § I, 8/16/11)

**Sec. 29-21. Penalties.**

Violation of the provisions of these regulations or failure to comply with any of the requirements, including permit approval prior to development of flood prone lands and conditions and safeguards established shall constitute a misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction, be fined not more than one hundred dollars (\$100.00) or imprisoned in jail for not more than ten (10) days or both. Each day's continuance of a violation shall be deemed a separate and distinct offense.

(Ord. No. 2033, § I, 8/16/11)

**Sec. 29-22. Emergency preparedness planning.**

In formulating community development goals, the community shall consider the development of a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas. this plan should be developed, filed with, and approved by appropriate community emergency management authorities.

(Ord. No. 2033, § I, 8/16/11)

## **Article V. Specific Standards**

**Sec. 29-23. Applications.**

The minimum floodplain development standards listed in this Chapter apply to the floodway and floodway fringe portions of the one-hundred-year floodplain as delineated on the flood hazard area maps.

(Ord. No. 2033, § I, 8/16/11)

## Sec. 29-24. Floodway.

- A. Uses Allowed Without Permits. The flowing open-space uses shall be allowed without a permit within the floodway, provided that such uses conform to the provisions of Article VII of these regulations; are not prohibited by any other ordinance, resolution, or statute; and do not require fill, excavation, permanent storage of materials, or equipment or structures other than portable structures:
1. Agricultural uses;
  2. Accessory uses such as loading and parking areas, or emergency landing strips associated with industrial and commercial facilities;
  3. Private and public recreational uses such as golf courses, driving ranges, archery ranges, picnic grounds, boat-launching ramps, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, and hiking or horseback riding trails;
  4. Forestry, including processing of forest products with portable equipment;
  5. Residential uses such as lawns, gardens, parking areas, and play areas;
  6. Irrigation and livestock supply wells, provided that they are located at least five hundred (500) feet from domestic water supply wells;
  7. Fences, except permanent fences crossing channels; and
  8. Recreational vehicles provided that they be on the site for fewer than one hundred eighty (180) consecutive days, or be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system with wheels intact, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.
- B. Uses Requiring Permits. The following artificial obstructions may be permitted in the floodway subject to the issuance of a permit by the Floodplain Administrator:
1. Excavation of material from pits and pools provided that:
    - a. A buffer strip of undisturbed land is left between the edge of the channel and the edge of the excavation. This buffer strip must be of sufficient width to prevent flood flows from channeling into the excavation;
    - b. The excavation meets all applicable laws and regulations of other local and state agencies; and
    - c. Excavated material is disposed of or stockpiled outside the floodway.
  2. Railroad, highway, and street stream crossings provided the crossings are designed to offer minimal obstruction to flood flow. Stream crossings shall not increase the elevation of the one-hundred-year flood more than one-half ( $\frac{1}{2}$ ) foot nor cause a significant increase in flood velocities.
    - a. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the bottom of bridge spans shall have freeboard to at least two (2) feet above the BFE.
    - b. Stream crossings shall not increase the elevation of the one-hundred-year flood nor cause a significant increase in flood velocities. The applicant shall provide a "No-Rise" certification signed by a registered professional engineer. However, if the applicant receives a CLOMR from FEMA and LOMR, a half foot rise may be permitted.
  3. Limited filling for highway, street, and railroad embankments not associated with stream crossings, provided that:

- a. A reasonable alternate transportation routes outside the designated floodway are not available; and
  - b. Such floodway encroachment is located as far from the stream channel as possible and shall not result in a cumulative increase in base flood elevations, after allowable encroachments into the floodway fringe, exceeding one-half (½) foot;
  - c. Measures are provided to mitigate the impact to property owners and the natural stream function; and
  - d. The encroachment shall not result in a cumulative increase in base flood elevation, after the allowable encroachment into the floodway. A "No-Rise" certification signed by a registered professional engineer shall be provided by the applicant. However, if the applicant receives a CLOMR from FEMA and LOMR, a half foot rise may be permitted.
4. Buried or suspended utility transmission lines, provided that:
  - a. suspended utility transmission lines are designed so the lowest point of the suspended line is at least six (6) feet higher than the base flood elevation;
  - b. towers and other appurtenant structures are designed and placed to withstand and minimally obstruct flood flows; and utility transmission lines carrying toxic or flammable materials are buried to a depth of at least twice the calculated maximum depth of scour for a one-hundred-year flood. The maximum depth of scour shall be determined by hydraulic engineering methods acceptable to the Floodplain Administrator.
5. Storage of materials and equipment, provided that:
  - a. The material or equipment is not subject to major damage by flooding and is properly anchored to prevent floatation or downstream movement; or
  - b. The material or equipment is readily movable within the limited time available after flood warning. Storage of flammable, toxic, hazardous, or explosive materials shall not be permitted.
6. Domestic water supply wells, provided that:
  - a. They are driven or drilled wells located on ground higher than the surrounding ground to assure positive drainage from the well;
  - b. Well casings are water tight to a distance of at least twenty-five (25) feet below the ground surface;
  - c. Water supply and electrical lines have a waterfront seal where the lines enter the casing;
  - d. All pumps, electrical lines, and equipment are either submersible or adequately flood-proofed; and
  - e. Check valves are installed on main water lines at wells and at all building entry locations.
7. Buried and sealed vaults for sewage disposal in recreational areas, provided they meet applicable laws and standards administered by the Montana Department of Health and Environmental Sciences.
8. Public or private campgrounds, provided that:
  - a. Access roads require only limited fill and do not obstruct or divert flood waters; and
  - b. Recreational vehicles and travel trailers are licensed and ready for highway use. They are ready for highway use if on wheels or jacking system with wheels intact, are attached to the site with only quick disconnect type utilities and securing devices, and have no permanently attached additions.

- 
9. Structures accessory to the uses permitted in this Section such as boat docks, marinas, sheds, picnic shelters, tables, and toilets provided that:
    - a. The structures are not intended for human habitation;
    - b. The structures will have a low flood damage potential;
    - c. The structures will, insofar as possible, be located on ground higher than the surrounding ground and as far from the channel as possible;
    - d. The floodproofing standards of Article VII are met; and
    - e. The structures will be constructed and placed so as to offer minimal construction to flood flows and are anchored to prevent floatation.
  10. Substantial improvements to any structure provided that the provisions of Section 29-25B.3., 4. or 5. of these regulations are met. In the floodway the structure must be flood-proofed or elevated on a permanent foundation rather than on fill.
  11. All other artificial obstructions, substantial improvements, or nonconforming uses not specifically listed or prohibited by these regulations.
- C. Permits for Flood Control Works.
1. Flood control works shall be allowed within floodways subject to the issuance of a permit by the Floodplain Administrator with the following conditions:
    - a. Levees and floodwalls are permitted if flood control measures are designed by a registered professional engineer to comply with the conditions set forth (structural flood control works often significantly obstruct and affect floodway flow capacity);
    - b. The proposed levee or floodwall is designed and constructed to safely convey a one-hundred-year flood; and
    - c. The cumulative effect of the levee or floodwall combined with allowable floodway fringe encroachments does not increase the unobstructed base flood elevation more than one-half (0.5) foot. The Floodplain Administrator may establish either a lower or higher permissible increase in the base flood elevation for individual levee projects only with concurrence from the Montana Department of Natural Resources and Conservation and the Federal Emergency Management Agency based upon consideration of the following criteria:
      1. The estimated cumulative effect of any anticipated future permissible uses; and
      2. The type and amount of existing flood-prone development in the affected area.
    - d. The proposed levee or floodwall, except those to protect agricultural land, are constructed at least three (3) feet higher than the base flood elevation.
  2. Riprap, except that which is hand-placed, if:
    - a. The riprap is designed to withstand a one-hundred-year flood;
    - b. The riprap does not increase the base flood elevation; and
    - c. The riprap will not increase erosion upstream, downstream, or adjacent to the riprap site.
  3. Channelization projects if they do not significantly increase the magnitude, velocity, or base flood elevation in the proximity of the project.
  4. Dams, provided that:



- a. They are designed and constructed in accordance with the Montana Dam Safety Act and applicable safety standards; and
  - b. They will not increase flood hazards downstream, either through operational procedures or improper hydrologic/hydraulic design.
5. New surface water diversions and changes in place of diversion for agricultural uses and other uses, designed by a registered engineer to meet the following requirements:
  - a. A copy of the water right permit or change authorization permit from MTDNRC Water Rights Bureau for new surface water diversions and changes in place of diversion.
  - b. Documentation that the proposed diversion or modification will not increase the upstream elevation of the base flood to the detriment of a neighboring property. Any increase to the BFE will require a CLOMR and LOMR.
  - c. The proposed diversion is designed and constructed to minimize potential erosion from a base flood.
- D. Permits for Water Diversions. Permits for the establishment of a water diversion or change in place of diversion shall not be issued if, in the judgment of the Floodplain Administrator:
  1. The proposed diversion will significantly increase the upstream base flood elevation to the detriment of neighboring property;
  2. The proposed diversion is not designed and constructed to minimize potential erosion from a one-hundred-year flood; and
  3. Any permanent diversion structure crossing the full width of the stream channel is not designed and constructed to safely withstand a one-hundred-year flood.
- E. Prohibited Uses. The following artificial obstructions and nonconforming uses are prohibited within the floodway:
  1. New construction of any residential, commercial, or industrial structure;
  2. Encroachments including fill, new construction, alterations, substantial improvements, and other development within the adopted regulatory floodway that would result in erosion of the embankment, obstruction of the natural flow of waters, or increase in flood levels within the community during the occurrence of the one-hundred-year flood;
  3. The construction or permanent storage of an object subject to floatation or movement during flooding;
  4. Solid and hazardous waste disposal, sewage treatment, and sewage disposal systems;
  5. Storage of toxic, flammable, hazardous, or explosive materials; and
  6. Alterations of structures unless it can be shown the alteration won't raise flood heights;
  7. Manufactured homes.

(Ord. No. 2033, § I, 8/16/11; Ord. No. 2034, § 1, 10/4/11)

## **Sec. 29-25. Floodway fringe.**

- A. Uses Allowed Without Permits. All uses in the floodway, according to the provisions of Section 29-24A. of these regulations shall also be allowed without a permit in the floodway fringe. In addition, individual or multiple family subsurface sewage disposal systems are allowed only when they are reviewed and approved

under laws and regulations administered by the Department of Health and Environmental Sciences or the local health board.

- B. Uses Requiring Permits. All uses allowed in the floodway subject to the issuance of a permit, according to the provisions of Section 29-24B., C. and D. of these regulations, shall also be allowed by permit within the floodway fringe. In addition, new construction, substantial improvements, and alterations to structures are allowed by permit. This includes but is not limited to residential, commercial, and industrial construction and suitable fill to be allowed by permit from the Floodplain Administrator, subject to the following conditions:
1. Such structures or fill must not be prohibited by any other statute, or regulation, ordinance, or resolution;
  2. Such structures or fill must be compatible with local comprehensive plans;
  3. The new construction, alterations, and substantial improvements of residential structures including manufactured homes must be constructed on suitable fill such that the lowest floor elevation (including basement) is two (2) feet or more above the base flood elevation. The suitable fill shall be at an elevation no lower than the base flood elevation and shall extend for at least fifteen (15) feet, at that elevation, beyond the structure(s) in all directions:
    - a. Crawl space must be designed to allow internal flooding and must be limited to storage of equipment or materials not appreciably affected by floodwaters. The floors and walls shall be designed and constructed of materials resistant to flooding to an elevation no lower than two (2) feet above the BFE. Walls shall be designed to equalize hydrostatic forces by allowing for entry and exit of floodwaters. Openings may be equipped with screens, louvers, valves, and other coverings or devices which permit the automatic entry and exit of floodwaters.
    - b. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
      - (1) A minimum of two (2) openings;
      - (2) Openings shall have a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
      - (3) The bottom of all openings shall be no higher than one (1) foot above grade;
      - (4) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  4. The new construction, alteration, and substantial improvement of commercial and industrial structures can be constructed on suitable fill as specified in subsection (B)(3) of these regulations. If not constructed on fill, commercial and industrial structures must be adequately flood-proofed to an elevation no lower than two (2) feet above the base flood elevation. Floodproofing must be designed by a registered professional engineer or architect that the floodproofing methods are adequate to withstand the flood depths, hydrodynamic and hydrostatic pressures, velocities, impact, buoyancy, and uplift forces associated with the one-hundred-year flood.
    - a. If the structure is designed to allow internal flooding of areas below the lowest floor, use of this space shall be limited to parking, loading areas, building access, and storage of equipment or materials not appreciably affected by flood waters. The floors and walls shall be designed and constructed of materials resistant to flooding to an elevation no lower than two (2) feet above the base flood elevation. Walls shall be designed to automatically equalize hydrostatic forces by

- allowing for entry and exit of floodwaters. Openings may be equipped with screens, louvers, valves, other coverings, or devices which permit the automatic entry and exit of floodwaters.
- b. Structures whose lower floors are used for a purpose other than parking, loading, or storage of materials resistant to flooding shall be floodproofed to an elevation no lower than two (2) feet above the base flood elevation. Floodproofing shall include impermeable membranes or materials for floors and walls and watertight enclosures for all windows, doors, and other openings. These structures shall also be designed to withstand the hydrostatic, hydrodynamic, and buoyancy effects of a one-hundred-year flood.
  - c. Floodproofing of electrical, heating, and plumbing systems shall be accomplished in accordance with Article VII of these regulations.
5. All manufactured homes placed in the floodway fringe must have the chassis securely anchored to a foundation system that will resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, over-the-top or frame ties to ground anchors. The following conditions also apply;
- a. When a manufactured home is (1) altered, (2) replaced because of substantial damage as a result of a flood, or (3) replaced on an individual site, the lowest floor must be elevated two (2) feet above the base flood elevation. The home can be elevated on fill or raised on a permanent foundation of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.
  - b. Replacement of substantial improvement of manufactured homes in an existing manufactured home park or subdivision must be raised on a permanent foundation. The lowest floor must be two (2) feet above the base flood elevation. The foundation must consist of reinforced concrete, reinforced mortared block, reinforced piers, or other foundation elements of at least equivalent strength.
  - c. Manufactured homes proposed for use as commercial or industrial structures must be elevated and anchored, rather than floodproofed.
6. Fill material placed in the floodway fringe must be stable, compacted, well graded, pervious, generally unaffected by water and frost, devoid of trash or similar foreign matter, devoid of tree stumps or other organic material, and appropriate for the purpose of supporting the intended use and/or permanent structure.
7. Roads, streets, highways, and rail lines shall be designed to minimize increase in flood heights. Where failure or interruption of transportation facilities would result in danger to the public health or safety, the facility shall be located two (2) feet above the base flood elevation;
8. Agricultural structures that have a low damage potential, such as sheds, barns, shelters, and hay or grain storage structures must be adequately anchored to prevent floatation or collapse and all electrical facilities shall be placed above the base flood elevation; and
9. Recreational vehicles, if they are on the site for more than one hundred eighty (180) consecutive days or are ready for highway use, must meet the elevating requirements of subsection (B)(3).
- C. Except an encroachment is not required for development in the designated flood fringe.
- a. The allowable encroachment increase for developments in the designated floodplain without a floodway and with or without a base flood elevation is one-half (0.5) feet unless a lesser amount is specified in the specific supporting hydraulic analysis supports the floodplain designation study adopted herein.
- D. General Standards. In all areas of special flood hazard, the following standards are required:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
  2. Construction Materials and Methods:
    - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
    - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
    - c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  3. Utilities:
    - a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
    - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
    - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- E. Prohibited Uses. The following artificial obstructions and nonconforming uses are prohibited within the floodway fringe:
1. Solid and hazardous waste disposal; and
  2. Storage of highly toxic, flammable, hazardous, or explosive materials. Storage of petroleum products may be allowed by permit if stored on compacted fill at least two (2) feet above the base flood elevation and anchored to a permanent foundation to prevent downstream movement.

(Ord. No. 2033, § I, 8/16/11; Ord. No. 2034, § 1, 10/4/11)

## **Sec. 29-26. Floodplain areas with flood elevations and no delineated floodway.**

- A. A development proposed for a one-hundred-year floodplain, where water surface elevations are available but no floodway is delineated, may not significantly increase flood velocities or depths or generally alter patterns of flood flow. The provisions of Section 29-25, Floodway fringe, shall apply to these areas. The Floodplain Administrator may require a permit applicant to furnish additional hydraulic data before acting on a permit application for such a floodplain. The data may include, but are not limited to, any of the following:
  1. a hydraulic study documenting probable effect on upstream, downstream, or adjacent property owners caused by the proposed development; or
  2. the calculated increase in the one-hundred-year flood water surface profile caused by the proposed development.
- B. Permits for such proposed development may be modified or denied if the additional information shows that the proposed use would cause an additional flood hazard to adjacent property or significantly increase flood heights. A significant increase in flood heights is one-half (½) foot unless existing or anticipated development in the area dictates a lesser amount of allowable increase.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-27. Shallow flooding (AO zones).**

- A. Shallow flooding areas are delineated as AO Zone floodplains on the flood insurance rate maps. The provisions of Section 29-25, Floodway fringe, of these regulations shall apply to any AO Zone floodplains. The depth of the one-hundred-year flood is indicated as the depth number on the Flood Insurance Rate Maps. The one-hundred-year flood depth shall be referenced to the highest adjacent grade or stream flow line in determining which fill or floodproofing heights to use in applying the provisions of Section 29-25B.3. and Section 29-25B.4. of these regulations. In the absence of depth or elevation information, a minimum two-foot flood depth shall be used.
- B. Adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures is required within AO Zones.
- C. Floodplain Boundary Interpretation. The Floodplain Administrator shall make interpretations where needed as to the exact location of an AO Zone floodplain boundary and actual field conditions.

(Ord. No. 2033, § I, 8/16/11; Ord. No. 2034, § 1, 10/4/11)

## **Article VI. General Standards**

### **Sec. 29-28. Applications.**

The minimum floodplain development standards listed in this Chapter apply to the one-hundred-year floodplains delineated by approximate methods and identified as unnumbered A Zones on the flood insurance rate maps.

- A. Uses Allowed Without Permits. All uses allowed in a floodway, according to the provisions of Section 29-24A. of these regulations, shall also be allowed without a permit in unnumbered A-Zone floodplains.
- B. Uses Requiring Permits. All uses allowed in the floodway and floodway fringe subject to the issuance of a permit, according to the provisions of Section 29-25B., shall require permits from the Floodplain Administrator for unnumbered A-Zone floodplains. Also, the provisions of Section 29-25B. apply to the A-Zone floodplains with no floodway delineated or water surface profile computed. Since there are no one-hundred-year flood water surface profiles computed for A-Zone floodplains, the following conditions also apply:
  - 1. Elevation data on the one-hundred-year flood shall be provided for subdivision proposals according to the definitions and rules of the Montana Sanitation in Subdivisions Act, MCA 76-4 Part 1 and the rules adopted by DHES Act, MCA 76-4 Part 1 and the rules adopted by DHES under this Act. These data shall be used in applying Section 29-25B.3., 4. and 5. of these regulations. Subdivision proposals shall also provide for adequate drainage to minimize potential flood hazards.
  - 2. The Floodplain Administrator may obtain, review, and reasonably use any base flood elevation and floodway data available from federal, state, or other sources, until such data have been provided by FEMA, to enforce Section 29-25B.3. and 4. of these regulations; and
  - 3. The Floodplain Administrator may use historical flood elevations to determine suitable fill or floodproofing elevations as required by Section 29-25B.3. and 4. of these regulations;
  - 4. If historical flood evidence is not available, then the Floodplain Administrator shall determine, from a field review at the proposed development site, an appropriate fill or floodproofing

elevation to use in applying Section 29-25B.3. of these regulations. In the absence of depth or elevation information, a minimum of two-foot flood depth shall be used; and

5. Proposed structures must be anchored to prevent floatation or collapse and must be located as far from stream channels as practical.
- C. Prohibited Use. Those uses prohibited in the floodway fringe, in accordance with Section 29-25C. of these regulations, shall also be prohibited within the A-Zone floodplain boundaries.
- D. Floodplain Boundary Interpretation. The Floodplain Administrator shall make interpretations where needed as to the exact location of the unnumbered A-Zone floodplain boundary when there is a conflict between a mapped boundary and actual field conditions.

(Ord. No. 2033, § I, 8/16/11)

## **Article VII. Floodproofing Requirements**

### **Sec. 29-29. Certification.**

If the following floodproofing requirements are to be applied to a proposed structure, as stipulated by the Floodplain Administrator in accordance with these regulations, the methods used must be certified as adequate by a registered professional engineer or architect.

(Ord. No. 2033, § I, 8/16/11)

### **Sec. 29-30. Conformance.**

Permitted flood-proof systems shall conform to the conditions listed below and the floodproofing standards listed in Section 29-25B.4. of these regulations for commercial and industrial structures.

- A. Electrical Systems.
  1. All incoming power service equipment, including all metering equipment, control centers, transformers, distribution and lighting panels, and all other stationary equipment must be located at least two (2) feet above the base flood elevation;
  2. Portable or movable electrical equipment may be placed below the base flood elevation, if the equipment can be disconnected by a single submersible plug-and-socket assembly;
  3. The main power service line shall have automatic or manually operated electrical disconnect equipment located at an accessible location outside the one-hundred-year floodplain and above the base flood elevation; and
  4. All electrical wiring systems installed at or below the elevation of the one-hundred-year flood shall be suitable for continuous submergence and may not contain fibrous components.
- B. Heating Systems.
  1. Float operated automatic control valves must be installed in gas furnace supply lines so that the fuel supply is automatically shut off when flood waters reach the floor level where the furnace located;
  2. Manually operated gate valves must be installed in gas supply lines. The gate valves must be operable from a location above the elevation of the one-hundred-year flood;

- 
3. Electric heating systems must be installed in accordance with the provisions of subsection (A) of this Section.
- C. Plumbing Systems.
1. Sewer lines, except those to be buried and sealed in vaults, must have check valves installed to prevent sewage backup into permitted structures; and
  2. All toilet stools, sinks, urinals, and drains must be located so the lowest point of possible water entry is at least two (2) feet above the elevation of the one-hundred-year flood.

(Ord. No. 2033, § I, 8/16/11)

**File Attachments for Item:**

**B. (CONTINUED FROM 12/2 MEETING) ORDINANCE NO. 3066: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 28 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "SUBDIVISION REGULATIONS" TO COMPLY WITH STATE LAW, ALIGN WITH THE GROWTH POLICY, AND REFLECT COMMUNITY BEST PRACTICE AND EXPERIENCE.**





LivingstonMontana.org | PublicComment@LivingstonMontana.org |  
406.823.6000

**DATE:** December 2, 2025  
**TO:** Chair Schwarz and City Commissioners  
**FROM:** Jennifer Severson, Planning Director  
**RE:** Staff Report **City of Livingston Subdivision Regulations Update**

---

### Recommendation and Summary

Staff requests the City Commission approve the proposed amendments to the City of Livingston Subdivision Regulations in Chapter 28 of the Livingston Municipal Code by adopting the following motion:

"I move to approve the first reading of Ordinance 3066 to amend the City of Livingston Subdivision Regulations in Chapter 28 of the Livingston Municipal Code, and authorize the Chair to sign Ordinance 3066."

The reasons for the recommendation to adopt Ordinance 3066 (Attachment A) are as follows:

- The City last comprehensively updated its subdivision regulations in 2007.
- The City should amend its Subdivision Regulations for the following reasons:
  - To enact technical and conforming amendments to comply with state laws and to facilitate consistency and organization within the regulations
  - To align with the recommendations in the City's adopted Growth Policy
  - To reflect best practices and community experience to ensure responsible administration of the regulations

### Introduction and History

Part 5 of Chapter 3 of Title 76 of Montana Code Annotated (MCA 76-3-501 et seq.) requires cities to adopt regulations and provide for the enforcement and administration of the subdivision of land. The City of Livingston adopted its current subdivision regulations in 2007. Although the state has



mandated changes to the Subdivision Regulations and the City adopted its current Growth Policy since 2007, the City's Subdivision Regulations have not been updated in response.

In early 2025, Staff presented the City Commission with updates to the Subdivision Regulations in Chapter 28 of the LMC. The proposed updates focused on three main areas: Technical and Conforming amendments to comply with state law and improve consistency and organization within the City's code; Growth Policy recommendations; and, Community Experiences and Best Practices. The proposed updates to the Subdivision Regulations (Attachment XX) are based on feedback and direction provided by the Commission during those initial discussions.

### **Analysis**

The 2023 Montana State Legislature enacted several bills (Attachment C) that require the City to update its subdivision regulations including:

- HB 211 which made changes to phased subdivision approval processes as well as other general changes.
- SB 131 which affected the process and timeline for certain subdivisions of land.
- SB 170 which affected the process and timeline for certain subdivisions of land.
- SB 331 which revised certain requirements for townhome and condominium approval processes.

Although the City adheres to state laws related to Subdivision Regulations, the City's Municipal Code has not been updated to reflect the current Subdivision Regulations in the MCA. It is necessary for the City to update Chapter 28 in the Livingston Municipal Code to reflect compliance with current state subdivision laws. City Staff has also included recommendations for technical and conforming updates not directly related to those revisions mandated by the State to improve organization and consistency within the City's code.

Additionally, the 2021 Growth Policy included several recommendations for updates to the Subdivision Regulations in Chapter 28. In the years since the Growth Policy was adopted, Livingston has experienced increasing pressure from growth and development. The proposed updates to the Subdivision Regulations reflect best practices that resulted from the community's experience adjusting to new development.

A version of the proposed updates to the City's subdivision regulations, showing language to be removed from (red strikethrough) and added to (blue underline), is attached (Attachment B). Text is highlighted to identify amendments related to Growth Policy Recommendations (Green), Community Experience (Yellow), and additional updates made after the early 2025 Commission discussions (Blue).



### **Fiscal Impact**

No direct fiscal impact to the City is anticipated as a result of adopting the proposed updates to the Subdivision Regulations.

### **Strategic Alignment**

The proposed updates to the Subdivision Regulations support Land Use Recommendations for Subdivisions identified in Chapter 11 in the Growth Policy, including, but not limited to, the following:

- Update regulations to add language from the Subdivision and Platting Act (i.e. MSPA).
- Include definitions within document (i.e. Subdivision Regulations in Chapter 28).
- All definitions should be updated to meet the intent of the zoning code, subdivision regulations, recommendations of the Growth Policy and compliance with state, county, and local laws.
- Ensure references to MCA and MSPA are up to date.
- Ensure all fees are included and cover staff and City resource costs to process each application.

### **Staff Recommendation**

Based on the reasons discussed above, Staff finds the proposed amendments to Chapter 28 comply with the requirements of State statute, support the goals, objectives and strategies identified in the Growth Policy, and reflect recent community experiences and best practices. Staff recommends the City Commission adopt the amendments to the Livingston Subdivision Regulations as proposed by Staff.

### **Attachments**

- A. Draft Ordinance 3066
- B. Redlined Proposed Amendments to Subdivision Regulations in Chapter 28
- C. 2023 State Legislative bills that require updates to the Subdivision Regulations
- D. List of Growth Policy Recommended Changes to Subdivision Regulations

**ORDINANCE NO. 3066**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING CHAPTER 28 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "SUBDIVISION REGULATIONS" TO COMPLY WITH STATE LAW, ALIGN WITH THE GROWTH POLICY, AND REFLECT COMMUNITY BEST PRACTICE AND EXPERIENCE.**

\* \* \* \* \*

**Purpose**

The purpose of this Ordinance is to promote public health, safety and general welfare of the City by regulating the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location of buildings, structures, and land for trade, industry, residence or other purposes.

\*\*\*\*\*

**WHEREAS**, the State of Montana requires that local Subdivision regulations be consistent with the Montana Subdivision and Platting Act as set forth in Montana Code Annotated Section 76-3; and

; **WHEREAS**, the State grants local governments the authority to adopt local Subdivision regulations as set forth in Montana Code Annotated Section 76-25-4; and

**WHEREAS**, the City is required to update the Subdivision Regulations in Chapter 28 of the Livingston Municipal Code to comply with legislative changes at the State level; and

**WHEREAS**, the City also desires to update Chapter 28 of the Livingston Municipal Code to better align with the Growth Policy and to reflect best practices and experience of the local community;

**NOW, THEREFORE, BE IT ORDAINED** by the City Commission that the text in Chapter 28 of the Livingston Municipal Code entitled Official Subdivision Regulations, including Appendices, be hereby amended as follows:

**SECTION 1**

**THE CURRENT REGULATIONS IN CHAPTER 28 ARE AMENDED AS SHOWN IN THE REVISED SUBDIVISION REGULATIONS IN THE ATTACHED ‘EXHIBIT A’ .**

## SECTION 2

### **Statutory Interpretation and Repealer:**

Any and all resolutions, ordinances and sections of the Livingston Municipal Code and parts thereof in conflict herewith are hereby repealed.

## SECTION 3

### **Severability:**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by a court having competent jurisdiction, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and to this end, the provisions of this ordinance are declared to be severable.

## SECTION 4

### **Savings provision:**

This ordinance does not affect the rights or duties that mature, penalties and assessments that were incurred or proceedings that begun before the effective date of this ordinance.

## SECTION 5

### **Effective date:**

This ordinance will become effective 30 days after the second reading and final adoption.

**PASSED** by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the \_\_\_\_ day of December, 2025.

---

**QUENTIN SCHWARZ, CHAIR**

**ATTEST:**

\_\_\_\_\_  
**Emily Hutchinson**  
**City Clerk**

\*\*\*\*\*

**PASSED, ADOPTED AND APPROVED,** by the City Commission of the City of Livingston,  
Montana, on a second reading at a regular session thereof held on the \_\_\_\_\_ day of December,  
2025.

\_\_\_\_\_  
**QUENTIN SCHWARZ, CHAIR**

**ATTEST:**

**APPROVED TO AS FORM:**

\_\_\_\_\_  
**EMILY HUTCHINSON**  
**City Clerk**

\_\_\_\_\_  
**JON HESSE**  
**City Attorney**

## EXHIBIT A

### Chapter 28 – SUBDIVISION REGULATIONS

*Insert Table of Contents Here*

#### 28.1. DEFINITIONS

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

**AGRICULTURE:** The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticulture crops that are raised, grown, or produced for commercial purposes.

**AGRICULTURAL WATER USER FACILITIES:** Any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

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

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

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

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

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

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

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

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

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

**FIRE RESISTANT LANDSCAPING:** vegetation types and placement that are intended to minimize ignition potential during a fire event. Native, deciduous trees and shrubs are preferred over coniferous vegetation. Decorative rocks, stone, or other non-flammable or flame-resistant materials are encouraged

**FLOOD:** The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.

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

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

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

**GOVERNING BODY:** The governing authority of a county, city, town, or consolidated local government organized pursuant to law.

**GROWTH POLICY:** A comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to Title 76, MCA, on or after October 1, 1999.

**LOCAL SERVICES:** All services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

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

**LOT MEASUREMENT:**

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

**LOT TYPES:**

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.



c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.

MAJOR SUBDIVISION: A subdivision that creates six (6) or more lots from a tract of record.

MINOR SUBDIVISION: A subdivision that creates five (5) or fewer lots from a tract of record.

MOBILE HOME: A trailer or semitrailer, constructed prior to June 15, 1976, which is designed, constructed and equipped as a dwelling place, living abode, or sleeping place and is and is equipped for movement on streets or highways and exceeds twenty-five (25) feet in length exclusive of trailer hitch. A mobile home does not include a manufactured home or modular home.

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

MOBILE HOME PARK: A tract of land that provides or will provide spaces for two (2) or more mobile homes.

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

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

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

NATURAL ENVIRONMENT: The physical conditions that exist within a given area.

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

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

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

PLANNED UNIT DEVELOPMENT (P.U.D.): A land development project consisting of a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

PLANNING BOARD: The City of Livingston Consolidated Land Use Board.

PLANNING DEPARTMENT: The City Planning Director or any designee of the Planning Director who is charged with administering the subdivision review process.

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

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA.
- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
- c. Amended Plat: The final drawing of any change to a filed platted subdivision.

**PUBLIC HEALTH AND SAFETY:** A condition of well-being wherein risk of injury to the community at large is minimized.

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

**PUBLIC ROAD OR STREET:** A road or street which has been dedicated for public use.

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

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

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

**STATE:** The State of Montana.

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

- a. Alley: A public right-of-way that can be used to provide secondary vehicular access to the rear of a property that has its primary access from a public street. An alley is not intended to be used for general through traffic.
- b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two (2) to four (4) lanes of moving traffic and should provide only limited access to abutting property.
- c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two (2) moving traffic lanes and up to two (2) parking lanes.

- d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two (2) moving lanes of traffic, up to two (2) parking lanes, and provide access to abutting properties.
- e. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- f. Loop: A local street which begins and ends on the same street, generally used for access to properties.
- g. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

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

**SUBDIVISION:** A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed. 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 manufactured homes will be placed [76-3-103(16), MCA].

**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 governing body to review surveys and plats submitted for filing.

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

**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(17)(a), MCA].

**VEGETATIVE FUELS REDUCTION:** Vegetation management that reduces the availability of vegetation that can ignite during a fire event. This includes reducing the amount of brush, grass, and vegetative detritus in an area. Grasses must be maintained at or below 12 inches in height. Shrubs and trees must be spaced and pruned to minimize ignition risk.

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

**WILDLAND URBAN INTERFACE (WUI):** The line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels, as delineated in the *Western Montana Regional Hazard Mitigation Plan*.

**WILDLIFE:** Those animals that are not domesticated or tamed.

**WILDLIFE HABITAT:** The physical surroundings required for the existence of wildlife.

## **28.2. GENERAL PROVISIONS**

### **28.2.1. Title**

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

### **28.2.2. Authority**

Authorization for these regulations is contained in the MSPA. (Title 76, Chapter 3, MCA.).

### **28.2.3. Purpose**

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

These regulations are intended to comply with part five of the MSPA, and are intended to promote:

- a. The orderly development of the jurisdictional area.
- b. The coordination of roads within subdivided land with other roads, both existing and planned.
- c. The dedication of land for roadways and for public utility easements.
- d. The improvement of roads.
- e. The provision of adequate open spaces for travel, light, air, and recreation.
- f. The provision of adequate transportation, water, and drainage. Subject to the provisions of 76-3-511, the regulation of sanitary facilities.
- g. The avoidance or minimization of congestion.
- h. The avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire or the lack of water, drainage,

access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

#### 28.2.4. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of the City of Livingston.

28.2.4.1. If a proposed subdivision lies within two (2) miles of the city limits, the county governing body must submit the preliminary plat to the City of Livingston Planning Department. If a proposed subdivision lies partly within the City of Livingston, the preliminary plat must be submitted to, and approved by, both the City of Livingston and Park County.

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

#### 28.2.5. Severability

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

### **28.3. GENERAL PROCEDURES**

#### 28.3.1. Construction Timing

The subdivider 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 approval of the proposed subdivision plat.

#### 28.3.2. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to 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):

28.3.2.1. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;

28.3.2.2. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.

28.3.2.3. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years

of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;

28.3.2.4. 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;”

28.3.2.5. That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

28.3.2.6. A copy of the contracts and escrow agreement described above must be submitted to the Planning Department.

### 28.3.3. 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 subdivision application constitutes a grant of permission by the subdivider to enter the subject property.

### 28.3.4. Appeals

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

28.3.4.2. A party identified in section 28.3.4.3 below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within thirty (30) days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

28.3.4.3. The following parties may appeal as provided above:

28.3.4.3.1. The subdivider;

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

28.3.4.3.3. The county commissioners of the county where the subdivision is proposed; and

28.3.4.3.4. The City of Livingston if within 2 miles of the city limits.

28.3.4.4. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal or legal interest, as distinguished from a general interest, who has been or is likely to be specifically and injuriously affected by the decision.

#### 28.3.5. Expedited Review

28.3.5.1. Subdivisions under the jurisdiction of these regulations are entitled to the expedited review process provided for in 76-3-623, MCA at the applicant’s request. Applications for expedited review shall be subject to the review process contained in Appendix A.

### 28.4. MAJOR SUBDIVISIONS

#### 28.4.1. Review and Approval Procedures for Major Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six (6) or more lots, or subdivisions of five (5) or fewer lots that do not otherwise qualify for review as minor subdivisions under 76-3-609, MCA and these regulations.

#### 28.4.2. Pre-application Process

28.4.2.1. Prior to submittal of the subdivision application, the subdivider shall request a pre-application meeting with the Planning Department. The meeting shall occur within thirty (30) days after the subdivider submits a written request for the meeting to the Planning Department.

28.4.2.2. At the time of the pre-application meeting request, the subdivider shall provide the Planning Department with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:

##### 28.4.2.2.1. Information on the current status of the site, including:

- a. location;
- b. approximate tract and lot boundaries of existing tracts of record;
- c. description of general terrain;
- d. natural features;
- e. existing structures and improvements;
- f. existing utility lines and facilities;
- g. existing easements and rights of way.

##### 28.4.2.2.2. Information on the proposed subdivision, including:

- a. tract and lot boundaries;
- b. proposed public improvements;
- c. location of utility lines and facilities;
- d. easements and rights of way;
- e. parks and open space.

28.4.2.3. At the pre-application meeting, the following will occur:

28.4.2.3.1. The Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

28.4.2.3.2. The Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision

28.4.2.3.3. The Planning Department shall identify particular additional information the Department anticipates will be required for review of the subdivision application pursuant to Section 28.4.4. This does not limit the ability of the City to request additional information at a later time.

28.4.2.3.4. Unless the subdivider submits the subdivision application as provided in Section 28.4.3 of these regulations within 180 working days of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

#### 28.4.3. Subdivision Applications

The subdivider shall submit to the Planning Department a subdivision application containing the following materials:

28.4.3.1. Two (2) copies of the completed Subdivision Application form and the supplements required therein (see Appendix C), including the required Environmental Assessment.

28.4.3.2. The required review fee ;

28.4.3.3. Three (3) copies of the preliminary plat of the proposed subdivision which:

28.4.3.3.1. Contains the information required for preliminary plats;

28.4.3.3.2. Conforms to the Design and Improvement Standards set forth in Section 28.7;

28.4.3.3.3. Proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and

28.4.3.3.4. Such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting pursuant to Section 28.4.2.3 that is pertinent to the required elements of this Section.



28.4.3.3.5. One electronic copy of the subdivision application and all listed supporting material.

28.4.3.4 For all Major Subdivisions, a Traffic Impact Study, certified by a licensed, qualified Engineer, must be included with the application.

#### 28.4.4. Review Process

##### 28.4.4.1. Element Review

28.4.4.1.1. Within five (5) working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable elements and materials required by Section 28.4.3 of these regulations and shall give written notice to the subdivider of the Department's determination.

28.4.4.1.2. If the Planning Department determines that elements are missing from the application, those elements shall be identified in the notification and the Department shall take no further action on the application until the missing elements are submitted.

28.4.4.1.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required.

##### 28.4.4.2. Sufficiency Review

28.4.4.2.1. Within fifteen (15) working days after the Planning Department notifies the subdivider that the application contains all of the required elements as provided in Section 28.4.4.1, the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of the MSPA and these regulations and shall give written notification to the subdivider of the Department's determination.

28.4.4.2.2. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the notification shall identify the insufficient information and the Department shall take no further action on the application until the material is resubmitted.

28.4.4.2.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.

28.4.4.2.4. A determination that an application contains sufficient information for review as provided in this Section does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the Planning Department, Planning Board, or the governing body to request additional information during the review process.

#### 28.4.4.3. Applicable Regulations

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

#### 28.4.4.4. Time Period for Approval, Conditional Approval, or Denial

Within sixty (60) working days, the governing body shall approve, conditionally approve or deny the proposed subdivision, unless the subdivider and the Department agree to an extension or suspension of the review period. The review period of sixty (60) working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. If the subdivision application contains 50 or more lots, the review period is increased to 80 working days. Notification constitutes the date when the Planning Department sends the notice to the subdivider.

#### 28.4.4.5. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the sixty (60) or eighty (80) working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Planning Department shall notify the subdivider of the contact and the timeframe for response.

### 28.4.5. Planning Board Hearing, Consideration and Recommendation

#### 28.4.5.1. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, the Planning Board shall hold a public hearing on the subdivision application.

#### 28.4.5.2. Notice

Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the County not less than fifteen (15) days prior to the meeting date.

At least fifteen (15) days prior to the date of the hearing, notice shall be given by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

#### 28.4.5.3. Consideration Standards

In recommending approval, conditional approval or denial of the subdivision application, the Planning Board shall base its recommendation on compliance of the subdivision application with the following:

28.4.5.3.1. These regulations, including but not limited to the design standards set forth in Section 28.7;

28.4.5.3.2. Applicable zoning regulations;

28.4.5.3.3 The MSPA, including but not limited to 76-3-608(3), MCA, as delineated in Section 28.4.7.2.3 of these regulations; and

28.4.5.3.3. Other applicable regulations;

#### 28.4.5.4. Recommendation

The planning board shall evaluate the proposed subdivision under the review criteria in Section 28.4.7 taking into consideration the preliminary plat application, staff report, variance request(s) (when applicable), any additional information submitted and all public comments received. Within ten (10) working days after the public hearing, the planning board shall make a recommendation to the governing body to approve, conditionally approve, or deny the subdivision based on established findings of fact that

support the recommendation. The board's recommendation shall be provided in writing to the applicant and the governing body and include:

28.4.5.4.1. Recommended findings of fact that describe the factual evidence and analysis of compliance with the submittal requirements and review criteria;

28.4.5.4.2. Recommended conditions and mitigation measures;

28.4.5.4.3. Disclosure of any preferences for mitigation expressed by the applicant to the planning board;

28.4.5.4.4. A recommendation for approval or denial of any variance requests, including any conditions of approval and a summary of facts forming the basis for the recommendation;

28.4.5.4.5. An account of all agency and public comments received during the review process;

28.4.5.4.6. The staff report as submitted to the planning board.

#### 28.4.6. Subdivider's Preference for Mitigation

No later than ten (10) days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body the subdivider's 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 will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

#### 28.4.7. Governing Body Decision and Documentation

##### 28.4.7.1. Prerequisites to Approval

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

28.4.7.1.1. Provides easements for the location and installation of any planned utilities;

28.4.7.1.2. Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;

28.4.7.1.3. Assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section 28.4.9.5 of these regulations; and

28.4.7.1.4. Complies with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights.

28.4.7.1.5 The governing body shall determine whether public comments or other information presented to the governing body at a hearing held pursuant to MCA 76-3-605:

Constitutes relevant, new information regarding a subdivision application or substantial change to the design of the subdivision that has never been submitted as evidence or considered by the governing body or its agent or agency and has a substantial effect on the governing body's consideration of the application.

The governing body may:

Approve, conditionally approve or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible or the change in design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts; or

Schedule or direct its agent or agency to schedule a subsequent hearing for consideration of only the new information, including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information that the governing body will rely on in making its decision on the proposed subdivision.

If a subsequent hearing is held, the 60 or 80-day review period is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60 or 80-day time limit resumes at the governing body's next scheduled public meeting for which proper notice can be provided for the consideration of the subdivision.

#### 28.4.7.3. Evidence

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, staff report, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of the Montana Subdivision and Platting Act. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145 M.C.A.

A governing body may not withhold, deny, or impose conditions on any land use approval based solely on compliance with an adopted growth policy. A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by adopted law or regulations. §76-1-605 M.C.A.

#### 28.4.7.4. Water and Sanitation

##### 28.4.7.2. Consideration

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider section 28.4.7.1 above, and whether the proposed subdivision complies with:

28.4.7.2.1. These regulations, including, but not limited to, the design standards set forth in Section 28.7;

28.4.7.2.2. Applicable zoning regulations;

28.4.7.2.3. Other applicable regulations; and

28.4.7.2.4 The MSPA, including but not limited to the following factors that are representative of, but not an exhaustive list of impacts on the criteria identified in 76-3-608(3)(a), MCA:

##### 28.4.7.2.3.1. Impacts on agriculture

Agriculture is defined as the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes.

- (1) Would the subdivision remove agricultural or timberlands with significant existing or potential production capacity?
- (2) Would the subdivision remove from production agricultural lands that are critical to the area's agricultural operations?
- (3) Would the subdivision create significant conflict with nearby agricultural operations (e.g. creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds, applying pesticides or would the subdivision generate nuisance complaints due to nearby agricultural operations)?

##### 28.4.7.2.3.2. Impact on agricultural water user facilities

Agricultural water user facilities are defined as any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

- (1) Would the subdivision create a significant conflict with agricultural water user facilities (e.g. creating problems for operating and maintaining irrigation systems, including physical access or easements for those systems, or creating nuisance complaints due to safety concerns, noise, etc.)?
- (2) Would the subdivision impact availability or movement of water with respect to bridges, culverts or other crossings?

#### 28.4.7.2.3.3. Impact on local services

Local services are defined as all services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

- (1) What additional or expanded public services and facilities would be demanded to serve this subdivision?
  - a. What additional costs would result for services such as streets, law enforcement, parks and recreation, fire protection, water, sewer and solid waste, schools and busing (including additional personnel, equipment, construction and maintenance costs)?
  - b. Who would bear these costs?
  - c. Can the service providers meet the additional costs given legal and other constraints?
  - d. Will required additional or expanded public services be completed before build out of the subdivision?
- (2) Would the subdivision allow existing services, through expanded use, to operate more efficiently or make the installation or improvement of services feasible?
- (3) What are the present tax revenues received from the unsubdivided land by the County, City and Schools?
- (4) What would be the approximate revenues received by each above taxing authority when the subdivision is improved and built upon?
- (5) Would new taxes generated from the subdivision cover additional public costs?
- (6) Would any special improvement districts be created which would obligate the City fiscally or administratively?

#### 28.4.7.2.3.4. Impact on natural environment

The natural environment is defined as the physical conditions that exist within a given area.

- (1) How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features, scenic resources within the subdivision or on adjacent lands?
  - a. Would any streambanks be altered, streams rechanneled or surface water quality be negatively impacted from run-off carrying sedimentation or other pollutants?
  - b. Would riparian or wetland areas be negatively impacted?
  - c. Would groundwater supplies be contaminated or depleted as a result of the subdivision?
  - d. Would construction of streets or building sites result in excessive cuts and fills on steep slopes or cause erosion on unstable soils?
  - e. Would significant vegetation be removed causing soil erosion or bank instability?
  - f. Is there a plan in place to prevent infestation by noxious weeds?
  - g. Would significant historical or archaeological features or significant natural habitats be damaged or destroyed by the subdivision?

#### 28.4.7.2.3.5. Impacts on wildlife and habitat

Wildlife and wildlife habitat are defined as living things that are neither human nor domesticated and the physical surroundings required for their existence.

- (1) Would the subdivision impact any species protected by the Endangered Species Act or that are identified as being of special interest or concern to the state of Montana?
- (2) How would the subdivision affect critical wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, aquatic, or other important habitat?
- (2) How would pets or human activity affect wildlife?

#### 28.4.7.2.3.6. Impacts on public health and safety

Public health and safety is defined as a condition of well-being wherein risk of injury to the community at large is minimized.

- (1) Would the subdivision be subject to, result in the creation of, or impact public health and safety concerns including, but not limited to, those listed below?
  - a. Flooding
  - b. Geologic Hazards
  - c. Air Quality



- d. Wildfires
  - e. High Water Table/ Groundwater
  - f. High Voltage Transmission Lines
  - g. Hazardous Waste Exposure
  - h. Industrial Uses
  - i. Surface Transportation
  - j. Wildlife
- (2) Would the provision of city-wide emergency services, including access, be adversely impacted?

All subdivisions under the jurisdiction of these regulations will be serviced by the City's municipal water and sanitary sewer utilities. The City will also review and approve storm water plans to ensure adequate storm water drainage. Subdividers will be required to submit, to the Department of Environmental Quality, a Municipal Facilities Exclusion application after the City has approved the utility and storm water design for the subdivision and prior to final plat approval.

#### 28.4.7.5. Documentation of Governing Body Decision

28.4.7.5.1. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written Findings of Fact that discuss and weigh the proposed subdivision's compliance with section 28.4.7.1 and 28.4.7.2 above...

28.4.7.5.2. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall within 30 working days of its decision, prepare a written statement that must be provided to the applicant, that must be made available to the public, and that must:

28.4.7.5.2.1.-Include information regarding the appeal process for the denial or imposition of conditions;

28.4.7.5.2.2. Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

28.4.7.5.2.3. Provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and

28.4.7.5.2.4. Provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

#### 28.4.7.6. Subdivision Application and Preliminary Plat Approval Period

28.4.7.6.1. Approval or conditional approval of a preliminary plat shall be in effect for two (2) calendar years from the date the subdivider is notified of the

governing body action. 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-. The governing body may issue more than one extension.

28.4.7.6.2. Except when reviewing a Phased Development under 76-3-617, M.C.A., after the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.

28.4.7.6.3. The governing body may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

#### 28.4.8. Amended Applications

28.4.8.1. If the subdivider changes the subdivision application or preliminary plat after the Planning Department makes a determination of sufficiency pursuant to Section 28.4.4.2 but before the Planning Board hearing, the subdivider shall submit the amended application to the Planning Department for review.

28.4.8.1.1. Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.

28.4.8.1.2. The sixty (60) or eighty (80) working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.

28.4.8.1.3. If the Planning Department determines the changes are not material, the sixty (60) or eighty (80) working day review period resumes when the Planning Department mails notice of the decision to the subdivider.

28.4.8.1.4. If the Planning Department determines the changes are material, the Department may either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the sixty (60) or eighty (80) working day review period.

28.4.8.2. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body review, the subdivider shall submit the amended application or preliminary plat to the Planning Department.

28.4.8.2.1. Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.

28.4.8.2.2. The sixty (60) or eighty (80) working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.

28.4.8.2.3. If the Planning Department determines the changes are not material, the sixty (60) or eighty (80) working day review period resumes when the Department mails notice of the decision to the subdivider.

28.4.8.2.4. If the Planning Department determines the changes are material, the Department shall:

28.4.8.2.4.1. Schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the new Planning Board hearing shall be provided as set forth in Section 28.4.5.2. . A supplemental staff report shall be prepared to address the changes to the original application.

28.4.8.2.4.2. The subdivider will be assessed an additional fee for reviewing the amendment according to the current Subdivision Review Fee Schedule.

28.4.8.2.5. When a new Planning Board hearing is held pursuant to 28.4.8.2.4.1 above, the sixty (60) or eighty (80) working day review period is suspended until ten (10) working days after the date of the second Planning Board hearing.

28.4.8.3. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in 28.4.8.1.2 and 28.4.8.2.2.

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

28.4.8.4.1. Configuration or number of lots;

28.4.8.4.2. Road layout;

28.4.8.4.3. Water and/or sewer proposals;

28.4.8.4.4. Configuration of park land or open spaces;

28.4.8.4.5. Easement provisions; and

28.4.8.4.6. Designated access.

28.4.8.5. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planning Department may appeal the decision to the governing body by written notice within ten (10) working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

28.4.8.5.1. The sixty (60) or eighty (80) working day review period is suspended until the governing body decision on the appeal is made.

28.4.8.5.2. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall order that the subdivision application be rescheduled for rehearing in front of the Planning Board pursuant to 28.4.8.2.4.1.

28.4.8.5.3. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the sixty (60) or eighty (80) working day review period resumes as of the date of the decision.

28.4.8.5.4. By appealing the decision of the Planning Department, the subdivider agrees to suspension of the sixty (60) or eighty (80) working day review period provided 28.4.8.5.1 above.

## 28.4.9. Final Plats

### 28.4.9.1 Final Plat Submittal

The final plat must be submitted to the Planning Department before the expiration of the subdivision application and preliminary plat approval period described in 28.4.7.6. All required documents shall be submitted to the Planning Department at least thirty (30) working days prior to the expiration of preliminary plat approval or an extension thereto, and no less than ten (10) working days prior to the date the final plat is presented to the governing body for approval. The submittal shall include, as applicable:

- 28.4.9.1.1 A final plat application;
- 28.4.9.1.2. The final plat as described in 28.4.9.2;
- 28.4.9.1.3. The appropriate fee;
- 28.4.9.1.4. All required information;
- 28.4.9.1.5. A written explanation of how each of the conditions of the preliminary plat approval has been satisfied.

### 28.4.9.2. Final Plat Contents

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

### 28.4.9.3. Final Plat Review

28.4.9.3.1. The Planning Department shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The Planning Department will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received.

Final plat applications will not be considered complete until all conditions of preliminary approval have been satisfied.

28.4.9.3.2. The City may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped certificate on the plat. The certificate must be signed by the surveyor.

#### 28.4.9.4. Restrictive Covenants – Approval and Content

If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:

28.4.9.4.1. Formation of a property owners' association concurrently with the filing of the final subdivision plat;

28.4.9.4.2. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;

28.4.9.4.3. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;

28.4.9.4.4. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;

28.4.9.4.5. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;

28.4.9.4.6. Adjustment of assessments to meet changing needs;

28.4.9.4.7. Means of enforcing the covenants, and of receiving and processing complaints;

28.4.9.4.8. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and

28.4.9.4.9. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

Covenants must comply with all state regulations and shall not be more restrictive than local zoning regulations.

#### 28.4.9.5. Public Improvements Agreement; Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required

improvements (76-3-507, MCA). Bonding and Financial Guaranty requirements are included in forms in Appendix C.

#### 28.4.9.6. Final Plat Approval/Denial

The governing body shall examine every final subdivision plat and, within thirty (30) working days of its submission to the Planning Department, shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations or deny it.

28.4.9.6.1. Approval. The governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.

28.4.9.6.2. Denial. If the final plat is denied, the governing body shall provide written notice to be sent to the subdivider stating the reason for denial. The governing body will return the final plat to the subdivider within ten (10) working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

#### 28.4.9.7. Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in 28.4.10. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats.

#### 28.4.10. Amending Filed Plats

28.4.10.1. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six (6) or more lots, or abandons a public dedicated road right-of-way must be reviewed and approved by the governing body.

28.4.10.2. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners (or lenders) of all lots that will be modified by the proposed amendment.

28.4.10.3. The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in 28.7 of these regulations unless the governing body issues a written variance from the standards pursuant to 28.10.2.1, Variances.

28.4.10.4. The final amended plat submitted for approval must comply with the Montana Uniform Standards for Final Subdivision Plats-.

## **28.5. MINOR SUBDIVISIONS**

Subdivisions containing five (5) or fewer parcels shall be reviewed as set forth in this Section- All minor subdivisions that do not require variance(s) from the standards of these regulations shall be reviewed as Administrative Minor Subdivisions in accordance with 28.5.1., below. If an application for a first minor subdivision contains a request for variance from any of the standards contained in these regulation, the application will be reviewed under 76-3-609(2) through (5), MCA. Applications for subsequent minor subdivisions that contain a request for variance shall be reviewed using the procedures contained in Section 28.4 of these regulation.

### **28.5.1 Administrative Minor Subdivisions**

#### **28.5.1.1 Pre-application Process**

28.5.1.1.1. Prior to submittal of the subdivision application, the subdivider may request a pre-application meeting with the Planning Department. The meeting shall occur within thirty (30) days after the subdivider submits a written request for the meeting.

28.5.1.1.2. At the time of the pre-application meeting request, the subdivider shall provide the Planning Department with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:

28.5.1.1.3. Information on the current status of the site, including:

- a. Location;
- b. Approximate tract and lot boundaries of existing tracts of record;
- c. Description of general terrain;
- d. Natural features;
- e. Existing structures and improvements;
- f. Existing utility lines and facilities; and
- g. Existing easements and rights of way.

28.5.1.1.4. Information on the proposed subdivision, including:

- a. tract and lot boundaries;
- b. proposed public improvements;
- c. location of utility lines and facilities;
- d. easements and rights of way;
- e. parks and open space

28.5.1.1.5. At the pre-application meeting:

28.5.1.1.5.1. The Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

28.5.1.1.5.2. The Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision; and

28.5.1.1.5.3. The Planning Department shall identify additional information the Department anticipates will be required for review of the subdivision application pursuant to 28.5.1.4. This does not limit the ability of the Planning Department to request additional information at a later time.

28.5.1.1.6. The pre-application process described above may be waived by the mutual consent of the Applicant and the Planning Department.

#### 28.5.1.2. Application and Preliminary Plat Submittal

The subdivider shall submit to the Planning Department a subdivision application containing the following materials:

28.5.1.2.1. Two (2) copies of the completed Subdivision Application form, and the supplements required by therein-;

28.5.1.2.2. The required review fee;

28.5.1.2.3. Three (3) copies of the preliminary plat of the proposed minor subdivision which:

28.5.1.2.3.1. Contains the information and supplements required;

28.5.1.2.3.2. Conforms to the Design and Improvement Standards set forth in 28.7 of these regulations.

28.5.1.2.4. Proof that the subdivider has submitted for review copies of the subdivision application to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and

28.5.1.2.5. Such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting pursuant to 28.5.1.1.5.3 that is pertinent to the required elements of this Section.

28.5.1.2.6. One electronic copy of the subdivision application and all listed supporting material.



#### 28.5.1.3. Plat Form and Contents

The subdivider shall submit a preliminary plat that conforms to the Montana Uniform Standards for Monumentation and Subdivision Plats. The minor subdivision plat must conform to the design standards set forth in 28.7 of these regulations.

#### 28.5.1.4. Administrative Minor Subdivision Exceptions

The following do not apply to Administrative minor subdivisions:

28.5.1.4.1. Preparation of an environmental assessment;

28.5.1.4.2. Public hearing requirements;

28.5.1.4.3. Review of the subdivision application for the impact on the primary review criteria found in 76-3-608(3)(a), MCA.

#### 28.5.1.5. Review Process

##### 28.5.1.5.1. Element Review

Within five (5) working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable materials required by these regulations, as applicable, and shall give written notice to the subdivider of the Department's determination.

28.5.1.5.1.1. If the Planning Department determines that elements are missing from the application, the Department shall identify those elements in the notification and no further action shall be taken on the application until the missing elements are submitted.

28.5.1.5.1.2. The subdivider may correct the deficiencies and resubmit the application.

28.5.1.5.1.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required by these regulations, as applicable.

28.5.1.5.1.4. This process shall be repeated until the subdivider submits an application containing all the materials required by these regulations as applicable.

##### 28.5.1.5.2. Sufficiency Review

Within fifteen (15) working days after the reviewing agent or agency notifies the subdivider that the application contains all of the required elements as provided in 28.5.1.4.1, the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of the MSPA and these regulations and give written notification, to the subdivider of this determination.

28.5.1.5.2.1. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the Department shall identify the insufficient information in its notification and no further action shall be taken on the application until the material is resubmitted.

28.5.1.5.2.2. The subdivider may correct the deficiencies and resubmit the application.

28.5.1.5.2.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.

28.5.1.5.2.4. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of the MSPA and these regulations.

28.5.1.5.2.5. A determination that an application contains sufficient information for review as provided in this subsection does not ensure that the proposed subdivision will be approved or conditionally approved and does not limit the ability of the Planning Department, to request additional information during the review process.

28.5.1.5.2.6. Upon determination that the application is sufficient for review, the Planning Department shall notify, by first-class mail, each property owner of record whose property is immediately adjoining the land in the preliminary plat and each purchaser under contract for deed of property immediately adjoining the land in the preliminary plat of the pending application. This notice will inform the recipient that the decision to approve, conditionally approve or deny the subdivision will be posted to the City's official website within 30 days and that protests of the decision pursuant to section 28.5.1.11 will be accepted for 30 days thereafter.

#### 28.5.1.5.3. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations [§76-3-604(9)].

#### 28.5.1.5.4. Time Period for Approval, Conditional Approval, or Denial

Within thirty (30) working days, the Planning Department shall approve, conditionally approve or deny the proposed subdivision ~~a~~. The review period of thirty (30) working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the reviewing agent or agency sends the notice to the subdivider.

#### 28.5.1.5.5. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the Planning Department's action on the subdivision application beyond the thirty (30) working day review period. The Planning Department will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Planning Department shall notify the subdivider of the contact and the timeframe for response.

#### 28.5.1.6. Consideration and— Decision

In rendering its decision to approve, conditionally approve or deny the subdivision application, the Planning Department shall base its decision on compliance of the subdivision application with the following:

28.5.1.6.1. These regulations, including but not limited to the design standards set forth in Section 28.7;

28.5.1.6.2. Applicable zoning regulations;

28.5.1.6.3. Other applicable regulations.

#### 28.5.1.7. Water and Sanitation

All subdivisions under the jurisdiction of these regulations will be serviced by the City's municipal water and sanitary sewer utilities. The City will also review and approve storm water plans to ensure adequate storm water drainage. Subdividers will be required to submit, to the Department of Environmental Quality, a Municipal Facilities Exclusion application after the City has approved the utility and storm water design for the subdivision and prior to final plat approval.

28.5.1.8. When the Planning Department approves, denies, or conditionally approves the proposed subdivision, it shall, within 30 working days of its determination that the subdivision is sufficient for review, prepare a written

statement that must be provided to the applicant, that must be made available to the public, and that:

28.5.1.8.1. Includes information regarding the appeal process for the denial or imposition of conditions;

28.5.1.8.2. Identifies the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

28.5.1.8.3. Provides the facts and conclusions that the Planning Department relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;

28.5.1.8.4. Provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

#### 28.5.1.9. -Application and Preliminary Plat Approval Period

28.5.1.9.1. Approval or conditional approval of a preliminary plat shall be in effect for two (2) calendar years from the date of the Planning Department action.

28.5.1.9.2. At the end of this period the Planning Department may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time.

#### 28.5.1.10.-Minor Subdivision Final Plat

The Planning Department shall approve Minor Subdivision final plats after determining that the plat meets the requirements of these regulations, any conditions placed upon preliminary approval and all requirements of the Montana Subdivision and Platting Act. All final plats will be signed by the Chair of the Governing Body.

28.5.1.11. If a party identified in 76-3-625(3), MCA objects to subdivision administrator'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.

Protests under this section (28.5.1.11) will be accepted for a period of 30 days after the Final Administrative Decision on the subdivision is posted to the City's official website.

## **28.6. -EXEMPTIONS FROM SUBDIVISION REVIEW**

### **28.6.1. Exemption Submittal**

Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Planning Department (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption.

### **28.6.2. Review**

When a claimed exemption is submitted to the Planning Department, the Department shall cause the documents to be reviewed. The Planning Department shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

28.6.2.1. Landowners or their agents are encouraged to meet with the Planning Department to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

28.6.2.2. Within five (5) working days of submittal the Planning Department shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.

28.6.2.3. If the Planning Department finds that the proposed use of the exemption complies with the statutes and these criteria, the Department shall notify and advise the Chair of the City Commission to sign the certificate of survey or authorize the recording of the instrument of conveyance and accompanying documents. If the Planning Department finds that the proposed use of the exemption does not comply with the statutes and these criteria, the Department shall advise the Chair not to ~~file~~-sign or authorize the recording the documents, and shall return the materials to the landowner.

28.6.2.4. The Planning Department, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

### **28.6.3. Appeals.**

28.6.3.1. Any person whose proposed use of an exemption has been denied by the Planning Department because the proposed division of land has been deemed an attempt to evade the MSPA and/or these regulations may appeal the 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 MSPA and/or these regulations.

28.6.3.2. If the governing body concludes that the evidence and information demonstrate that the exemption is not being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

28.6.3.3. If the governing body determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may submit a subdivision application for the proposed land division.

## **28.7. DESIGN AND IMPROVEMENT STANDARDS**

### **28.7.1. General Standards**

All subdivisions approved by the governing body must comply with the provisions of this Section, except where granted a variance pursuant to 28.10.2, Variances. The governing body may not grant variances from the provisions of 28.7.5, Floodplain Provisions.

### **28.7.2. Conformance with Zoning**

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

### **28.7.3. Natural Environment**

The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, and existing topsoil, trees and other vegetation; it must also, to the extent possible, avoid disturbing historical, archaeological and scenic resources

If the subdivision is located within an area identified by the State Historic Preservation Office (SHPO) as containing significant cultural or archaeological resources, efforts to mitigate impacts to these resources must be included in project plans.

### **28.7.4. Lands Unsuitable for Subdivision**

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

If the subdivision will encroach into an area identified as Crucial Habitat by the Montana Department of Fish, Wildlife and Parks (FWP) Crucial Areas Planning System, ~~as being a wildlife migration corridor~~, efforts to mitigate impacts to this resource must be included in project plans.

This may include, but is not limited to, incorporating fencing that is considered “wildlife friendly” under FWP guidance.

If the subdivision will encroach into an area identified by the US Army Corps of Engineers as a wetland, efforts to mitigate impacts to this resource must be included in project plans.

#### 28.7.5. Floodplain Provisions

Land within a proposed subdivision located in the regulatory floodplain (100-year floodplain, including the floodway), as defined by Title 76, Chapter 5, MCA, is subject to requirements and restrictions stated in Chapter 29 of the Livingston Municipal Code for Floodplain Hazard Management Regulations.

#### 28.7.6. Improvement Design

28.7.6.1. 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 a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

28.7.6.2. All subdivision improvements must be designed to comply with the City of Livingston Public Works Design Standards and Specification Policy; the City’s Modification to the Montana Public Works Standards, and Table 1 in Appendix B.

28.7.6.3. All subdivisions under the jurisdiction of these regulations will be serviced by the City’s municipal water and sanitary sewer utilities. The City will also review and approve storm water plans to ensure adequate storm water drainage. Subdividers will be required to submit, to the Department of Environmental Quality, a Municipal Facilities Exclusion application after the City has approved the utility and storm water design for the subdivision and prior to final plat approval.

#### 28.7.7. Lots

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

28.7.7.2 No lot may be divided by a municipal or county boundary line.

28.7.7.3 No lot may be divided by a public road, alley or utility right-of-way or easement.

28.7.7.4 Each lot must abut and have access to a public street or road. Alleys may not be used to provide the primary access to a lot.

28.7.7.5 Corner lots must have driveway access to the same street or road that provides access to interior lots.

28.7.7.6 Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.

---

28.7.7.7 Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.

28.7.7.8 Through lots are prohibited, except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

#### 28.7.8. Blocks

28.7.8.1. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

28.7.8.2., block length must not be more than 1,000 feet nor less than 400 feet.

28.7.8.3 Blocks must be at least 300 feet wide to allow for two tiers of lots separated by a twenty-foot-wide alley.

28.7.8.4. All blocks will be oriented in the same direction, creating a street grid with intersections at or very near ninety degrees.

#### 28.7.9. Streets and Roads

##### 28.7.9.1. Design

28.7.9.1.1. Streets must be designed to comply with the City of Livingston Public Works Design Standards and Specification Policy; the City's Modification to the Montana Public Works Standards, and Table 1 in Appendix B

28.7.9.1.2 The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

28.7.9.1.3 The use of a cul-de-sac or "T" turnaround may only be approved by variance.

28.7.9.1.4. Unless a variance is granted, all streets must be dedicated to the public.

##### 28.7.9.3 Improvements



28.7.9.3.1 All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage, street lighting, signage and pavement markings must be constructed to comply with the City of Livingston Public Works Design Standards and Specification Policy; the City's Modification to the Montana Public Works Standards, and Table 1 in Appendix B

28.7.9.3.6 A minimum of one (1) boulevard tree planting is required for each lot frontage. See Appendix XX for recommended species. A Tree Plan must be provided by for all boulevard plantings prior to final plat. The plan must identify tree type and planting locations and it must be approved by the City Arborist. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.

28.7.9.3.8 Alleys, designed in accordance with Table 1 in Appendix B, shall be provided in all subdivisions. .

28.7.9.3.10 When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

#### 28.7.10. Drainage Facilities

All storm water and drainage facilities shall be designed and constructed according to the City of Livingston Public Works Design Standards, the City's Modification to the Montana Public Works Standards, and Montana DEQ Standards.

b.

g. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

#### 28.7.11. Water Supply Systems

All water supply systems shall be designed and constructed according to the City of Livingston Public Works Design Standards and Specification Policy, the City's Modifications to the Montana Public Works Standards, and Montana DEQ Standards.

#### 28.7.12. Wastewater Collection Systems

All wastewater collection systems shall be designed and constructed according to the City of Livingston Public Works Design Standards and Specification Policy, the City's Modifications to the Montana Public Works Standards, and Montana DEQ Standards.

### 28.7.13. Solid Waste

28.7.13.1. The subdivider shall assure that the provisions for collection and disposal of solid waste meet the requirements of the City of Livingston and Montana DEQ Standards.

28.7.13.2. The location and means for solid waste collection and disposal shall be subject to approval by the City Public Works Director. For areas ~~where bear activity is a concern,~~ within the designated as the Wildland Urban Interface (WUI), the City may require that all trash be stored in bear-proofed containers or else be stored ~~inside~~ within an enclosed structure until it is scheduled for pick up.

28.7.13.3. If solid waste disposal is not individual, curbside pick-up for individual lots, the subdivider shall provide an off street area for solid waste collection which will be aesthetically screened from general public view, protected from the elements to reduce blowing and scattering of waste, and conveniently accessible to collection vehicles subject to approval by the City Public Works Director. For areas within the designated WUI, the City may require that common solid waste facilities be designed to be bear-resistant or else be stored within an enclosed structure until it is scheduled for pick up.

### 28.7.14. Non-Municipal Utilities

28.7.14.1. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.

28.7.14.2. Utilities must be placed underground,. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is paved.

~~Overhead utility lines must be located within the rear property line of each lot and parallel to the adjacent alley.~~

28.7.14.3. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.

28.7.14.4. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.

28.7.14.5. Utility easements must be fifteen (15) feet wide unless otherwise specified by a utility company or governing body.

28.7.14.6. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.

28.7.14.7. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

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

#### 28.7.15. Water Course and Irrigation Easements

28.7.15.1. Except as noted in 28.7.15.2, below, the subdivider shall establish within the subdivision ditch easements that:

28.7.15.1.1. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

28.7.15.1.2. Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

28.7.15.1.3. Prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner;

28.7.15.2. The subdivider need not establish irrigation easements as provided above if:

28.7.15.2.1. 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

28.7.15.2.2. The water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and

28.7.15.2.3. The fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider’s intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

28.7.15.3. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record

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

#### 28.7.16. Disposition of Water Rights

If a subdivision will create lots averaging less than five (5) acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

28.7.16.1. Reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;

28.7.16.2. If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

28.7.16.3. Reserved and/or severed all surface water rights from the land proposed for subdivision.

#### 28.7.17. Park Land Dedication – Cash in Lieu – Waivers -- Administration

28.7.17.1. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:

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

28.7.17.1.2. Seven and one-half percent (7.5%) of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;

28.7.17.1.3. Five percent (5%) of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three (3) acres; and

28.7.17.1.4. Two and one-half percent (2.5%) of the area of the land proposed to be subdivided into parcels larger than three (3) acres and not larger than five (5) acres.

28.7.17.2. Parks and open space types and standards. Parks, open space and common area dedication shall meet at least one of the following criteria:

28.7.17.2.1. Provides for the preservation of a physical amenity such as a meadow, a stand of trees, significant wildlife habitat or a wildlife corridor, a

scenic hillside with slopes of less than 25%, a stream or significant water body, an area of riparian resource or some other natural feature that the governing body determines is significant enough for parkland dedication. Open space shall be managed to remain in a near natural state when it has been dedicated for preservation or conservation purposes and managed for weeds and public safety concerns such as wild land fire and hazardous trees. Public trail connections are permitted if deemed appropriate by the governing body; or

28.7.17.2.2. Provides a site for active recreation and public gathering (neighborhood park) which shall substantially conform to the following standards:

28.7.17.2.2.1. Five acres or greater in size unless the opportunity for this size is not feasible or required;

28.7.17.2.2.2. Centrally located within the proposed subdivision or adjacent to other planned or existing park or open space;

28.7.17.2.2.3. Adjacent to public streets on at least 50% of the park's perimeter;

28.7.17.2.2.4. Accessible to bicycle and pedestrian trails where possible;

28.7.17.2.2.5. At least 50% of the park shall have 2% or less slope to accommodate playing fields; or

28.7.17.2.3. Establishes a pedestrian/bicycle greenway corridor if such corridor is determined by the city to have a primarily recreational and/or commuter function; or

28.7.17.2.4. Creates a courtyard of less than one-half ( $\frac{1}{2}$ ) acre, provided the courtyard shall be part of a common area dedicated to a private homeowner's association; or

28.7.17.2.5. Provides for other parks, open space, or common area designs which meet the intent of this section, support the goals of the Growth Policy, and is consistent with the City's adopted plans for Parks and Recreation and Trails and Active Transportation..

28.7.17.3. Unless the governing body determines otherwise, the following areas within a subdivision will not count toward the parkland dedication:

28.7.17.3.1. Hillsides over 25% slope;

28.7.17.3.2. Areas of riparian resource and adjacent buffers associated with irrigation or roadside ditches;

28.7.17.3.3. Monument entry areas and central landscaped boulevards;

28.7.17.3.4. Storm water retention or detention ponds that are designed to hold storm water runoff from less than 100-year events.

#### 28.7.17.3.5. Public utility easements.

28.7.17.4. Provide as part of the required parkland, twenty (20) foot wide pedestrian access easements to parkland or common area from public streets. Pedestrian access easements on hillsides may require additional width to accommodate switchbacks for trails, etc. Setbacks for structures other than fences adjacent to the access easement shall be a minimum of ten (10) feet. The governing body may require that the developer construct a trail leading into park or common areas.

28.7.17.5. At least twenty-five percent (25%) of the required parkland dedication shall be developed for active use as defined in 28.7.17.2.2. No more than seventy-five percent (75%) of the required parkland dedication shall be for passive use as defined in 28.7.17.2.1.

28.7.17.5. A park dedication is not required for:

28.7.17.5.1. Minor subdivisions;

28.7.17.5.2. Subdivision lots larger than five (5) acres;

28.7.17.5.3. Nonresidential subdivision lots;

28.7.17.5.4. Subdivisions in which parcels of land will not be created, except when the subdivision will provide permanent multiple spaces for recreational camping vehicles, mobile homes; or

28.7.17.5.5. Subdivisions which will create only one additional parcel.

28.7.17.6. The governing body, in consultation with the subdivider and the Planning Board, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

28.7.17.7. The governing body will waive the park dedication requirement if it determines that:

28.7.17.7.2. The proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and The provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under 28.7.17.1 above;

28.7.17.7.3. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of 28.7.17.1 and 28.7.17.7.2 above, is reduced by an

amount equal to or exceeding the area of the dedication required under 27.7.17.1;  
or

28.7.17.7.4. The subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

The area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under 27.7.17.1.

28.7.17.8. The local governing body may waive the park dedication requirement if:

28.7.17.8.1. The subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

The area of land to be subject to long-term protection, as provided in 28.7.17.7.2, equals or exceeds the area of dedication required under 27.7.17.1.

28.7.17.8.2. The City may also waive some, or all, of the park land dedication requirement if the subdivider provides land for trails or paths which enhance the City's trail system as guided by the City's adopted plans for Parks and Recreation and Trails and Active Transportation.

28.7.17.9. The governing body will administer funds dedicated to the public under this Section in accordance with Section 76-3-621, MCA. For the purposes of this park dedication requirement:

28.7.17.9.1. "Cash donation" means the fair market value of the unsubdivided, unimproved land;

28.7.17.9.2. Fair market value must be determined by a Montana State certified general real estate appraiser (as provided under MCA 37-54-201) hired and paid for by the subdivider. For the purposes of this regulation, appraisals are valid if prepared within six (6) months of the date of submittal of an application for final subdivision approval.

## 28.7.18 Fire Protection

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

28.7.18.1.1 The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.

28.7.18.1.2 The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.

28.7.18.1.3 The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

28.7.18.1.4 Building sites may not be located on slopes greater than twenty-five (25) percent or at the apex of “fire chimneys” (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).

28.7.18.1.5 Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.

28.7.18.1.6 The address of all residential buildings shall be plainly visible and legible from the primary access road adjacent to the lot on which the building resides.

28.7.18.2 Special Requirements for Major Subdivisions Proposed within the designated Wildland Urban Interface (WUI). The following apply:

28.7.18.2.1 A Fire Prevention and Control Plan (FPC Plan) must be developed in coordination with the Fire Department and must be included with the application for preliminary plat approval. The FPC plan must include the following information:

28.7.18.2.1.1 An analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;

28.7.18.2.1.2 A map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation, as well as any tree canopy that will be thinned to reduce the potential for a crown fire

28.7.18.2.1.3 The identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided..

28.7.18.2.1.4 Emergency access and evacuation procedures. For phased subdivisions, these procedures must be updated prior to issuance of Certificates of Occupancy for each phase and must include all completed phases

28.7.18.2.2 At least two (2) entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of thirty (30) tons and constructed of non-flammable materials.

28.7.18.2.3 Fire-Resistant Landscaping materials must be used in all common areas that are maintained by the HOA, including the areas along roads, rights-



of-way and easements.. Vegetative Fuels Reduction must be practiced within a minimum 10-foot wide corridor surrounding the outer edge of the subdivision.

28.7.18.2.4 The FPC Plan must be implemented prior to issuance of Certificates of Occupancy and will be considered part of the subdivider's obligations for land development. The Fire Chief, or designee, will inspect and approve the implementation of the FPC Plan, and notify the Building Official that implementation of the plan is complete...

28.7.18.2.5 Provisions for the maintenance of the FPC Plan shall be included in the covenants, conditions, and restrictions for the development.

## **28.8. SUBDIVISIONS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES – LAND SUBDIVISIONS CREATED BY RENT OR LEASE**

### **28.8.1. Subdivisions Created by Rent or Lease -- Definition**

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

28.8.1.1. Land subdivision created by rent or lease will be reviewed under the procedures described in Section 28.4, Major Subdivisions, Section 28.5, Minor Subdivisions, or Appendix A, Expedited Review, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat.

28.8.1.2. Land subdivisions created by rent or lease are subject to the applicable design and improvement standards contained in Section 28.7, Design and Improvement Standards.

### **28.8.2. Procedures for Review**

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. These subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased. The subdivider shall submit to the governing body the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the lot layout and the proposed location of the mobile home, recreational camping vehicle, or other unit on the lot.

#### **28.8.2.1. Improvements**

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

#### 28.8.2.2. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats contained in Appendix C and . The subdivider shall submit the plan to the Planning Department. The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the office of the Planning Department.

#### 28.8.2.3. DPHHS License

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

### **28.9. PHASED DEVELOPMENT**

#### 28.9.1. Application

A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to 28.4.3 of these regulations for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

#### 28.9.2. Preliminary Plat Review

The phased development overall preliminary plat will be reviewed according to 28.4.4. through 28.4.7. of these regulations. If approved or conditionally approved, the entire phased development will be deemed to be granted preliminary plat approval.

#### 28.9.3. Phase Review

Each individual phase will, according the approved schedule, be reviewed by the governing body as an application for final plat approval pursuant to 28.4.9 of these regulations. For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary approval of the subdivision, the subdivider shall provide written notice to the governing body not more than 1 year or less than 90 calendar days in advance of submitting the final plat application. The governing body shall hold a public hearing within 30 working days after receipt of the written notice from the subdivider to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval. The governing body may amend or impose additional conditions of approval only if it

determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances. The governing body shall issue supplemental written findings of fact within 20 working days of the hearing. Any additional conditions must be met before final plat approval for each remaining phase and the approval is in force for not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in Section 28.9.4, below.

#### 28.9.4. Time Limit Extension

The governing body may approve phased developments that extend beyond the time limits set forth in 28.4.7.6. of these regulations but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

#### 28.9.5. Periodic Fees

The governing body may impose a reasonable periodic fee for the review of the individual phases in the phased development.

### **28.10. ADMINISTRATIVE PROVISIONS**

#### 28.10.1. Subdivision Fees

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the City, shall be established by separate resolution of the Livingston City Commission.

#### 28.10.2. Variances

##### 28.10.2.1. Variances Authorized

The governing body may grant variances from Section 28.7, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The governing body will not approve a variance unless it finds that:

28.10.2.1.1. It will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

28.10.2.1.2 It is necessary because of unique physical conditions on the site;

28.10.2.1.3. It will not cause a substantial increase in public costs; and

28.10.2.1.4. It will not place the subdivision in nonconformance with any adopted zoning regulations.

28.10.2.1.5 The area of the subdivision affected by the variance and the overall extent of the variance is the least accommodation that will alleviate the hardship.

#### 28.10.2.2. Variances from Floodway Provisions Not Authorized

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

#### 28.10.2.3. Variance Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. It is the burden of the applicant to prove that, because of unique topography or other exceptional conditions on the property, the strict application of these regulations would result in an undue hardship rectified only through approval of a variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

#### 28.10.2.4. Variance Conditions

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

#### 28.10.2.5. Variance Statement of Facts

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

### 28.10.3. Amendment of Regulations

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

### 28.10.4. Enforcement

Except as provided in 76-3-303, MCA, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing. §76-3-301 M.C.A.

#### 28.10.5. Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense. §76-3-105 M.C.A.

#### 28.10.6. Appeals

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

APPENDIX

## APPENDIX A

### Procedure for Expedited Review

#### Pre-application Process

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

At the pre-application meeting, the subdivider shall provide the Planning Department with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:

Information on the current status of the site, including:

- location;
- approximate tract and lot boundaries of existing tracts of record;
- description of general terrain;
- natural features;
- existing structures and improvements;
- existing utility lines and facilities;
- existing easements and rights of way.

Information on the proposed subdivision, including:

- tract and lot boundaries;
- proposed public improvements;
- location of utility lines and facilities;
- easements and rights of way;
- parks and open space.

At the pre-application meeting, the following will occur:

The Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

The Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision.

The Planning Department shall identify particular additional information the Department anticipates will be required for review of the subdivision application. This does not limit the ability of the City to request additional information at a later time.

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

Applications for expedited review are exempt from:

- the preparation of an environmental assessment as required in 76-3-603, MCA.; and
- the review criteria listed in 76-3-608(3)(a), MCA.

#### Subdivision Application for Expedited Review

The subdivider shall submit to the Planning Department a subdivision application containing the following materials:

- Two (2) copies of the completed Subdivision Application form and the supplements required therein;
- The required review fee;
- Three (3) copies of the preliminary plat of the proposed subdivision which:
  - Contains the information required for preliminary plats and;
  - Conforms to the Design and Improvement Standards set forth in Section 28.7;
- Proof that the subdivider has submitted for review copies of the subdivision application to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and
- Such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting that is pertinent to the required elements of this Section.
- One electronic copy of the subdivision application and all supporting material.

#### Expedited Review Process

Applications for expedited review must provide evidence that the proposed subdivision complies with the applicable zoning regulations, local subdivision regulations, including the local design standards, and must include a proposal for the extension of public infrastructure in accordance with adopted ordinances and regulations.

The application will be reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3), MCA to verify that the application complies with local zoning and subdivision regulations, including local design standards and to verify



that a plan for the extension of public infrastructure is provided. The application may include a request for variance from the design standards contained in these regulations.

Upon determination by the Planning Department that the application contains the required elements and is sufficient for review, the City shall have thirty-five (35) working days to approve, conditionally approve or deny the subdivision application. The review period shall be forty-five (45) working days if the application contains any request(s) for variance from any of the requirements of these regulations.

**Public Hearing:** The City Commission shall hold a public hearing on the application and shall approve, conditionally approve or deny the subdivision application. Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the County not less than fifteen (15) days prior to the meeting date.

#### City Commission Decision

The City Commission shall approve the subdivision unless public comment or other information demonstrates that the application does not comply with:

- adopted zoning regulations, design standards, and other requirements of the adopted subdivision regulations, including the criteria for granting variances from the subdivision regulations; or
- adopted ordinances or regulations for the extension of public infrastructure.

The City Commission shall adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4, MCA.

The City Commission shall provide to the applicant and the public a written statement within 30 days of the decision to approve or deny the subdivision that includes:

- The facts and conclusions that the City Commission relied on in making its decision; and
- The conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved, as applicable.

Section 28.3.4 of these regulations applies to this Section as it pertains to the appeal process.

#### Preliminary Plat Approval Period and Final Plat

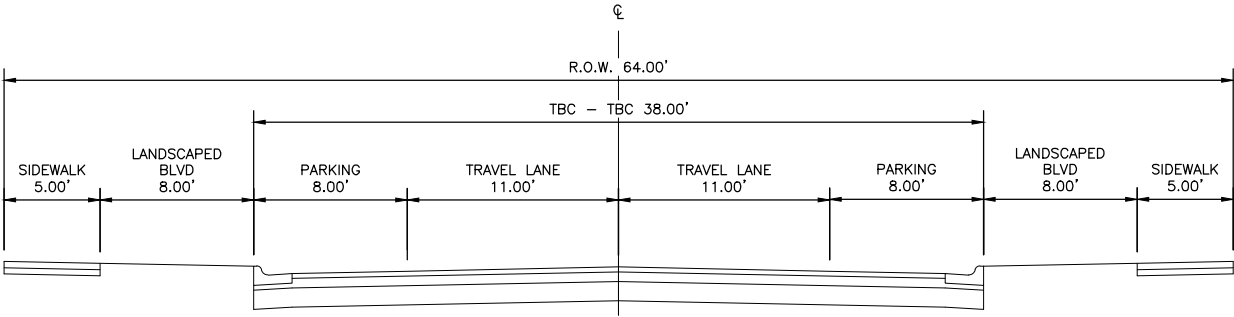
- The approved preliminary plat is subject to Section 28.4.7.6.1 through 28.4.7.6.3 of these regulations.
- Final plats are subject to Sections 28.4.9.1 through 28.4.9.7 of these regulations.

## *APPENDIX B*

***TABLE 1: Street Design Standards for Subdivisions***

|  |                 |
|--|-----------------|
| 1. Right-of-way width                        | 64 ft.          |
| 2. Minimum roadway width                     |                 |
| a. Curbs, back to back                       | 38 ft.          |
| b. Alleys                                    | 20 ft.          |
| c. Boulevards                                | 8 ft.           |
| d. Sidewalks                                 | 5 ft.           |
| 3. Maximum grade, distance less than 100 ft. | 10 %            |
| 4. Maximum grade, distance more than 100 ft. | 8 %             |
| 5. Approaches onto Public Roads              |                 |
| a. Minimum sight distance                    | 200 ft.         |
| b. Maximum grade for 20'                     | 5%              |
| 6. Turning radius                            | 50 ft.          |
| 7 Bridges                                    |                 |
| a. curb-to-curb widths                       | same as roadway |
| b. design load capacity                      | 30 tons         |
| c. vertical clearance                        | 15 ft.          |

***FIGURE 1. Subdivision Street Design Typical Section***



CITY OF LIVINGSTON

STANDARD SECTION - LOCAL STREET  
WITH ON-STREET PARKING



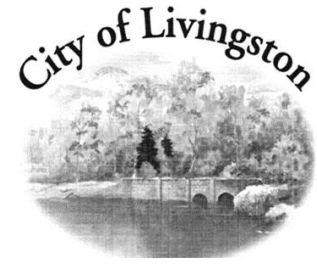
|                |            |
|----------------|------------|
| DRAWN BY:      | JRG        |
| DESIGNED BY:   |            |
| QUALITY CHECK: | MRM        |
| DATE:          | 11/25/2025 |
| JOB NO.        |            |

FIGURE

#

## APPENDIX C

City of Livingston  
 Department of Planning  
 220 E. Park St.  
 Livingston, MT 59047  
 (406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)



## City of Livingston Subdivision Preliminary Plat Instructions

Subdivision review is required to divide any parcel of land within the City of Livingston that does not meet the criteria for a subdivision exemption as listed in 76-3-2 MCA. Subdivisions require a three-step application process prior to final approval:

- Pre-Application
- Preliminary Plat Application
- Final Plat Application

Preliminary Plats require a public hearing before the Planning Board for a recommendation to the City Commission, and are approved or denied by the City Commission. All subdivision applications are evaluated by the Planning Board and City Commission based upon the following criteria listed in Section III.B.6 of the Subdivision Regulations for major subdivisions or Section IV.B.6 for minor subdivisions:

- Provides easements for the location and installation of any planned utilities.
- Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.
- Assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed.
- Complies with the requirements of 76-3-504 MCA, regarding the disclosure and disposition of water rights.
- Complies with the Subdivision Regulations.
- Complies with the applicable Zoning Regulations.
- Complies with the Montana Subdivision and Platting Act.

The Preliminary Application shall be submitted to the Planning Department. The Planning Department may forward the application to local, state, and federal agencies as necessary to ensure a comprehensive review of the project. **It is required that you submit and receive an approved Subdivision Pre-Application prior to submitting a Preliminary Plat Application.**

### Submittal Requirements (listed in Section III.B.1 of the Subdivision Regulations for major subdivisions or Section IV.B.1 for minor subdivisions):

- ☐ Two (2) copies of the Completed Application Form.
- ☐ Three (3) copies of the Preliminary Plat, which:
  - Contains the required information for preliminary plats..
  - Conforms to the Design and Improvement Standards in Section VI of the Subdivision Regulations.
  - Conforms to the requirements of the Zoning Regulation.

- Conforms to the requirements of the Public Works Design Standards and Specifications Policy.
- ☐ A summary of probable impacts of the Subdivision.
  - ☐ Proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision.
  - ☐ Additional relevant and reasonable information as identified by the Development Review Committee during the pre-application meeting:
  - ☐ The Preliminary Plat Application Review Fee.

All documents other than the preliminary plat shall be submitted on either 8 ½" x 11" or 11" x 17" paper. Additionally, digital copies of the submittal in PDF file format are required.

City of Livingston  
Department of Planning  
220 E. Park St.  
Livingston, MT 59047  
(406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)



**City of Livingston Subdivision Preliminary Plat Application**

**1. Property Owner Name:** \_\_\_\_\_

**2. Location of Property**

General Location: \_\_\_\_\_

Address: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Zoning District: \_\_\_\_\_

**3. Contact Information**

*Property Owner*

Home Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Primary Contact/ Applicant*

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Secondary Contact*

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_



**4. Project Information**

Type of Subdivision: ☐ Major ☐ Subsequent Minor ☐ Minor

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

Brief Description of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Proposed Use(s): \_\_\_\_\_

Number of Lots: \_\_\_\_\_ Number of Phases: \_\_\_\_\_

**I hereby certify that the information included in this application is true and accurate.**

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

City of Livingston  
 Department of Planning  
 220 E. Park St.  
 Livingston, MT 59047  
 (406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)



## City of Livingston Subdivision Final Plat Instructions

Subdivision review is required to divide any parcel of land within the City of Livingston that does not meet the criteria for a subdivision exemption as listed in 76-3-2 MCA. Subdivisions require a three-step application process prior to final approval:

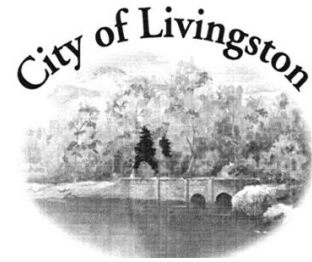
- Pre-Application
- Preliminary Plat Application
- Final Plat Application

Final Plat applications shall be submitted to the Planning Department and require a public hearing and are approved or denied by the City Commission. **All preliminary plat conditions of approval and required improvements must be completed or guaranteed prior to application for final plat.**

**Submittal Requirements (listed in Section III.C.3 of the Subdivision Regulations for major subdivisions or Section IV.C.3 for minor subdivisions):**

- ☐ The Completed Application Form.
- ☐ A letter explaining how each of the preliminary plat conditions of approval have been met.
- ☐ All required City or County attorney approvals..
- ☐ Additional relevant and reasonable information as identified by the Planning Department.
- ☐ The Final Plat Application Review Fee.

All documents other than the plat shall be submitted on either 8 ½" x 11" or 11" x 17" paper. Additionally, digital copies of the submittal in PDF file format are required.



City of Livingston  
Department of Planning  
220 E. Park St.  
Livingston, MT 59047  
(406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)

---

## City of Livingston Subdivision Final Plat Application

1. **Property Owner Name:** \_\_\_\_\_

2. **Location of Property**

General Location: \_\_\_\_\_

Address: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Zoning District: \_\_\_\_\_

3. **Contact Information**

*Property Owner*

Home Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Primary Contact/ Applicant*

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Secondary Contact*

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

4. **Project Information**

Type of Subdivision: ☐ Major ☐ Subsequent Minor ☐ Minor

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

Brief Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposed Use(s): \_\_\_\_\_

Number of Lots: \_\_\_\_\_ Number of Phases: \_\_\_\_\_

**I hereby certify that the information included in this application is true and accurate.**

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

**Certificate of Surveyor – Final Plat**

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

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

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

(Seal)

(Signature of Surveyor)

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

(Address)

**Certificate of Dedication – Final Plat**

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

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

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

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

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

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

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

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

(Acknowledged and notarized signatures of all encumbrancers of record)

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

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

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

(Seal)

(Signature of Clerk)

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

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

(Date)

(Notarized Signature of Subdivider)



**Certificate of Filing by Clerk and Recorder**

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

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

(Signature of Clerk and Recorder)  
County Clerk and Recorder, \_\_\_\_\_ County, Montana



## APPENDIX D

### SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

The parties to this Subdivision Improvements Agreement ("this agreement") are \_\_\_\_\_ ("the subdivider") and \_\_\_\_\_ ("the City").

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

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

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

#### Subdivider's Obligations

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

8. Compliance with Law: The Subdivider will comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

#### City's Obligations

9. Inspection and Certification:

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

#### Other Provisions

13. Events of Default: The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:
- a. failure to complete construction of the improvements within two years of final subdivision plat approval;
  - b. failure to remedy the defective construction of any improvement within the remedy period;
  - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
  - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.

14. **Measure of Damages:** The measure of damages for breach of this Agreement is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment ( ) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Subdivider's liability. The City may complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.
15. **Local Government Rights Upon Default:**
  - a. Upon the occurrence of any event of default, the City may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost [as shown in Attachment ( )] of all improvements previously certified by the City. The City may complete improvements itself or contract with a third party for completion, or the City may assign the proceeds of the letter of credit to a subsequent subdivider who has acquired the Subdivision and who has the same rights of completion as the City if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.
  - b. In addition, the City may suspend final plat approval. During this suspension the Subdivider may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City until the improvements are completed and certified by the City.
16. **Indemnification:** The Subdivider agrees to indemnify and hold the City harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Subdivider is not an employee or agent of the City.
17. **Amendment or Modification:** The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City and by the Subdivider.
18. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each will bear its own costs in their entirety.
19. **Third Party Rights:** No person or entity who is not party to this Agreement has any right of action under this Agreement, except that if the City does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City to exercise its rights.
20. **Scope:** The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
21. **Time:** For the purpose of computing the commencement and completion periods, and time periods for City action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the City from performing the obligations under this Agreement.

22. Assigns: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of the City. Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City to assign its rights under this Agreement.

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

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

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

\_\_\_\_\_  
City Official

\_\_\_\_\_  
Subdivider

## ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

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

### 1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

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

### 2. Escrow Account

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

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

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

### 3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

#### 4. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

#### 5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of \_\_\_\_\_. The bond must be in effect until the completed improvements are accepted by the governing body.

#### 6. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

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

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

**MODEL**  
**IRREVOCABLE LETTER OF CREDIT**

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

Name of Local Government  
Address

Date

Gentlemen:

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

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

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

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

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

(Lending Institution)

(Signature and Title of Official)

## GRANT OF ACCESS EASEMENT

THE GRANTOR does hereby give, grant and convey unto the Grantee, its successor and assigns, the right, privilege and authority to construct, reconstruct, maintain, operate, repair, improve, and to travel upon and use, a road and its necessary fixtures and appurtenances through, over, and across a corridor, 60 feet wide, shown on the attached certificate of survey, extending across the following described tract(s) of land:

THIS GRANT of right and authority shall run with the said property and be binding on the Grantor, its successors, all subsequent owners and any parties having right, title, or interest in the said property.

## Grantor

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires \_\_\_\_\_



|   |
|---|
| GREEN- changes made to align with Growth Policy   |
| YELLOW- changes made as result of Community Experience (i.e. lessons learned) since GP adoption   |
| BLUE- new updates based on last direction from Commission in Feb 2025 and additional staff review |
| Changes NOT HIGHLIGHTED are housekeeping or are mandated by state                                 |

**Chapter 28 – SUBDIVISION REGULATIONS**

**Insert Table of Contents Here**

**28.1. DEFINITIONS**

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

**AGRICULTURE:** The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticulture crops that are raised, grown, or produced for commercial purposes.

**AGRICULTURAL WATER USER FACILITIES:** Any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

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

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

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

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

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

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

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

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

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

**FIRE RESISTANT LANDSCAPING:** vegetation types and placement that are intended to minimize ignition potential during a fire event. Native, deciduous trees and shrubs are preferred over coniferous vegetation. Decorative rocks, stone, or other non-flammable or flame-resistant materials are encouraged

**FLOOD:** The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage.

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

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

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

**GOVERNING BODY:** The governing authority of a county, city, town, or consolidated local government organized pursuant to law.

**GROWTH POLICY:** A comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to Title 76, MCA, on or after October 1, 1999.

**LOCAL SERVICES:** All services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

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

**LOT MEASUREMENT:**

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

**LOT TYPES:**

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

**MAJOR SUBDIVISION:** A subdivision that creates six (6) or more lots from a tract of record.

**MINOR SUBDIVISION:** A subdivision that creates five (5) or fewer lots from a tract of record.

**MOBILE HOME:** A trailer or semitrailer, constructed prior to June 15, 1976, which is designed, constructed and equipped as a dwelling place, living abode, or sleeping place and is and is equipped for movement on streets or highways and exceeds twenty-five (25) feet in length exclusive of trailer hitch. A mobile home does not include a manufactured home or modular home.

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

**MOBILE HOME PARK:** A tract of land that provides or will provide spaces for two (2) or more mobile homes.

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

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

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

**NATURAL ENVIRONMENT:** The physical conditions that exist within a given area.

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

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

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

**PLANNED UNIT DEVELOPMENT (P.U.D.):** A land development project consisting of a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

**PLANNING BOARD:** The City of Livingston Consolidated Land Use Board.

**PLANNING DEPARTMENT:** The City Planning Director or any designee of the Planning Director who is charged with administering the subdivision review process.

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

- a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body as more specifically set forth in these regulations and the MSPA.
- b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
- c. Amended Plat: The final drawing of any change to a filed platted subdivision.

**PUBLIC HEALTH AND SAFETY:** A condition of well-being wherein risk of injury to the community at large is minimized.

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

**PUBLIC ROAD OR STREET:** A road or street which has been dedicated for public use.

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

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

**RECREATIONAL [CAMPING](#) VEHICLE SPACE:** A designated portion of a recreational [camping](#) vehicle park designed for the placement of a single recreational [camping](#) vehicle and the exclusive use of its occupants.

**STATE:** The State of Montana.

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

- a. Alley: A public right-of-way that can be used to provide secondary vehicular access to the rear of a property that has its primary access from a public street. An alley is not intended to be used for general through traffic.
- b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two (2) to four (4) lanes of moving traffic and should provide only limited access to abutting property.

- c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two (2) moving traffic lanes and up to two (2) parking lanes.
- d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two (2) moving lanes of traffic, up to two (2) parking lanes, and provide access to abutting properties.
- e. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
- f. Loop: A local street which begins and ends on the same street, generally used for access to properties.
- g. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.

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

**SUBDIVISION:** A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed. 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 manufactured homes will be placed [76-3-103(16), MCA].

**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 governing body to review surveys and plats submitted for filing.

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

**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(17)(a), MCA].

**VEGETATIVE FUELS REDUCTION:** Vegetation management that reduces the availability of vegetation that can ignite during a fire event. This includes reducing the amount of brush, grass,

and vegetative detritus in an area. Grasses must be maintained at or below 12 inches in height. Shrubs and trees must be spaced and pruned to minimize ignition risk.

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

WILDLAND URBAN INTERFACE (WUI): The line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels, as delineated in the *Western Montana Regional Hazard Mitigation Plan*.

WILDLIFE: Those animals that are not domesticated or tamed.

WILDLIFE HABITAT: The physical surroundings required for the existence of wildlife.

## **28.2. GENERAL PROVISIONS**

### 28.2.1. Title

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

### 28.2.2. Authority

Authorization for these regulations is contained in the MSPA. (Title 76, Chapter 3, MCA.).

### 28.2.3. Purpose

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

These regulations are intended to comply with part five of the MSPA, and are intended to promote:

- a. The orderly development of the jurisdictional area.
- b. The coordination of roads within subdivided land with other roads, both existing and planned.
- c. The dedication of land for roadways and for public utility easements.
- d. [The improvement of roads.](#)
- e. The provision of adequate open spaces for travel, light, air, and recreation.
- f. The provision of adequate transportation, water, and drainage. [Subject to the provisions of 76-3-511, the regulation of sanitary facilities.](#)
- g. The avoidance or minimization of congestion.

- h. The avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services.

#### 28.2.4. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the governing body of the City of Livingston.

28.2.4.1. If a proposed subdivision lies within two (2) miles of the city limits, the county governing body must submit the preliminary plat to the City of Livingston Planning Department. If a proposed subdivision lies partly within the City of Livingston, the preliminary plat must be submitted to, and approved by, both the City of Livingston and Park County.

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

#### 28.2.5. Severability

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

### **28.3. GENERAL PROCEDURES**

#### 28.3.1. Construction Timing

The subdivider 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 approval of the proposed subdivision plat.

#### 28.3.2. Transfers of Title

Except as noted below, a final subdivision plat must be filed for record with the county clerk and recorder before title to 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):

28.3.2.1. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;

28.3.2.2. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.

28.3.2.3. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;

28.3.2.4. 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;"

28.3.2.5. That the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

28.3.2.6. A copy of the contracts and escrow agreement described above must be submitted to the Planning Department.

### 28.3.3. 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 subdivision application constitutes a grant of permission by the subdivider to enter the subject property.

### 28.3.4. Appeals

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

28.3.4.2. A party identified in section [28.3.4.3](#) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within thirty (30) days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

28.3.4.3. The following parties may appeal [as provided](#) above:

28.3.4.3.1. The subdivider;

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

28.3.4.3.3. The county commissioners of the county where the subdivision is proposed; and



28.3.4.3.4. The City of Livingston if within 2 miles of the city limits.

28.3.4.4. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal or legal interest, as distinguished from a general interest, who has been or is likely to be specifically and injuriously affected by the decision.

#### 28.3.5. Expedited Review

28.3.5.1. Subdivisions under the jurisdiction of these regulations are entitled to the expedited review process provided for in 76-3-623, MCA at the applicant’s request. Applications for expedited review shall be subject to the review process contained in Appendix A.

### **28.4. MAJOR SUBDIVISIONS**

#### 28.4.1. Review and Approval Procedures for Major Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six (6) or more lots, or subdivisions of five (5) or fewer lots that do not otherwise qualify for review as minor subdivisions under 76-3-609, MCA and these regulations.

#### 28.4.2. Pre-application Process

28.4.2.1. Prior to submittal of the subdivision application, the subdivider shall request a pre-application meeting with the [Planning Department](#). The meeting shall occur within thirty (30) days after the subdivider submits a written request for the meeting to the Planning Department.

28.4.2.2. At the time of the pre-application meeting request, the subdivider shall provide the [Planning Department](#) with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:

##### 28.4.2.2.1. Information on the current status of the site, including:

- a. location;
- b. approximate tract and lot boundaries of existing tracts of record;
- c. description of general terrain;
- d. natural features;
- e. existing structures and improvements;
- f. existing utility lines and facilities;
- g. existing easements and rights of way.

##### 28.4.2.2.2. Information on the proposed subdivision, including:

- a. tract and lot boundaries;
- b. proposed public improvements;
- c. location of utility lines and facilities;

- d. easements and rights of way;
- e. parks and open space.

28.4.2.3. At the pre-application meeting, the following will occur:

28.4.2.3.1. The [Planning Department](#) shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

28.4.2.3.2. The [Planning Department](#) shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision

28.4.2.3.3. The [Planning Department](#) shall identify particular additional information the [Department](#) anticipates will be required for review of the subdivision application pursuant to Section [28.4.4](#). This does not limit the ability of the City to request additional information at a later time.

28.4.2.3.4. Unless the subdivider submits the subdivision application as provided in Section [28.4.3](#) of these regulations within 180 working days of the pre-application meeting, the subdivider must request a second pre-application meeting prior to submitting the application.

#### 28.4.3. Subdivision Applications

The subdivider shall submit to the Planning Department a subdivision application containing the following materials:

28.4.3.1. Two (2) copies of the completed Subdivision Application form and [the](#) supplements required [therein \(see Appendix C\), including the required Environmental Assessment](#).

28.4.3.2. The required review fee ;

28.4.3.3. Three (3) copies of the preliminary plat of the proposed subdivision which:

28.4.3.3.1. Contains the information required for preliminary plats;

28.4.3.3.2. Conforms to the Design and Improvement Standards set forth in Section [28.7](#);

28.4.3.3.3. Proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and

28.4.3.3.4. Such additional relevant and reasonable information as identified by the [Planning Department](#) during the pre-application meeting pursuant to Section [28.4.2.3.3](#) that is pertinent to the required elements of this Section.

[28.4.3.3.5. One electronic copy of the subdivision application and all listed supporting material.](#)

28.4.3.4 For all Major Subdivisions, a Traffic Impact Study, certified by a licensed, qualified Engineer, must be included with the application.

#### 28.4.4. Review Process

##### 28.4.4.1. Element Review

28.4.4.1.1. Within five (5) working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable elements and materials required by Section [28.4.3](#) of these regulations and shall give written notice to the subdivider of the Department's determination.

28.4.4.1.2. If the Planning Department determines that elements are missing from the application, those elements shall be identified in the notification and the Department shall take no further action on the application until the missing elements are submitted.

28.4.4.1.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required.

##### 28.4.4.2. Sufficiency Review

28.4.4.2.1. Within fifteen (15) working days after the Planning Department notifies the subdivider that the application contains all of the required elements as provided in Section [28.4.4.1](#), the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of the MSPA and these regulations and shall give written notification to the subdivider of the Department's determination.

28.4.4.2.2. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the notification shall identify the insufficient information and the Department shall take no further action on the application until the material is resubmitted.

28.4.4.2.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.

28.4.4.2.4. A determination that an application contains sufficient information for review as provided in this Section does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the Planning Department, Planning Board, or the governing body to request additional information during the review process.

#### 28.4.4.3. Applicable Regulations

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

#### 28.4.4.4. Time Period for Approval, Conditional Approval, or Denial

Within sixty (60) working days, the governing body shall approve, conditionally approve or deny the proposed subdivision, unless the subdivider and the Department agree to an extension or suspension of the review period. The review period of sixty (60) working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. [If the subdivision application contains 50 or more lots, the review period is increased to 80 working days.](#) Notification constitutes the date when the Planning Department sends the notice to the subdivider.

#### 28.4.4.5. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the governing body's action on the subdivision application beyond the sixty (60) [or eighty \(80\)](#) working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Planning Department shall notify the subdivider of the contact and the timeframe for response.

### 28.4.5. Planning Board Hearing, Consideration and Recommendation

#### 28.4.5.1. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, the Planning Board shall hold a public hearing on the subdivision application.

#### [28.4.5.2. Notice](#)

Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the County not less than fifteen (15) days prior to the meeting date.

At least fifteen (15) days prior to the date of the hearing, notice shall be given by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

#### 28.4.5.3. Consideration Standards

In recommending approval, conditional approval or denial of the subdivision application, the Planning Board shall base its recommendation on compliance of the subdivision application with the following:

28.4.5.3.1. These regulations, including but not limited to the design standards set forth in Section [28.7](#);

28.4.5.3.2. Applicable zoning regulations;

28.4.5.3.3 The MSPA, including but not limited to 76-3-608(3), MCA, as delineated in Section [28.4.7.2.3](#) of these regulations; and

28.4.5.3.3. Other applicable regulations;

#### 28.4.5.4. Recommendation

The planning board shall evaluate the proposed subdivision under the review criteria in Section 28.4.7 taking into consideration the preliminary plat application, staff report, variance request(s) (when applicable), any additional information submitted and all public comments received. Within ten (10) working days after the public hearing, the planning board shall make a recommendation to the governing body to approve, conditionally approve, or deny the subdivision based on established findings of fact that

support the recommendation. The board's recommendation shall be provided in writing to the applicant and the governing body and include:

28.4.5.4.1. Recommended findings of fact that describe the factual evidence and analysis of compliance with the submittal requirements and review criteria;

28.4.5.4.2. Recommended conditions and mitigation measures;

28.4.5.4.3. Disclosure of any preferences for mitigation expressed by the applicant to the planning board;

28.4.5.4.4. A recommendation for approval or denial of any variance requests, including any conditions of approval and a summary of facts forming the basis for the recommendation;

28.4.5.4.5. An account of all agency and public comments received during the review process;

28.4.5.4.6. The staff report as submitted to the planning board.

#### 28.4.6. Subdivider's Preference for Mitigation

No later than ten (10) days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body the subdivider's 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 will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

#### 28.4.7. Governing Body Decision and Documentation

##### 28.4.7.1. Prerequisites to Approval

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

28.4.7.1.1. Provides easements for the location and installation of any planned utilities;

28.4.7.1.2. Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;

28.4.7.1.3. Assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section [28.4.9.5](#) of these regulations; and

28.4.7.1.4. Complies with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights.

28.4.7.1.5 The governing body shall determine whether public comments or other information presented to the governing body at a hearing held pursuant to MCA 76-3-605:

Constitutes relevant, new information regarding a subdivision application or substantial change to the design of the subdivision that has never been submitted as evidence or considered by the governing body or its agent or agency and has a substantial effect on the governing body's consideration of the application.

The governing body may:

Approve, conditionally approve or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible or the change in design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts; or

Schedule or direct its agent or agency to schedule a subsequent hearing for consideration of only the new information, including a substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information that the governing body will rely on in making its decision on the proposed subdivision.

If a subsequent hearing is held, the 60 or 80-day review period is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60 or 80-day time limit resumes at the governing body's next scheduled public meeting for which proper notice can be provided for the consideration of the subdivision.

#### 28.4.7.3. Evidence

The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, staff report, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of the Montana Subdivision and Platting Act. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145 M.C.A.

A governing body may not withhold, deny, or impose conditions on any land use approval based solely on compliance with an adopted growth policy. A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by adopted law or regulations. §76-1-605 M.C.A.

#### 28.4.7.2. Consideration

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider section [28.4.7.1](#) above, and whether the proposed subdivision complies with:

28.4.7.2.1. These regulations, including, but not limited to, the design standards set forth in Section [28.7](#);

28.4.7.2.2. Applicable zoning regulations;

28.4.7.2.3. Other applicable regulations; and

28.4.7.2.4 The MSPA, including but not limited to the following factors that are representative of, but not an exhaustive list of impacts on the criteria identified in 76-3-608(3)(a), MCA:

##### 28.4.7.2.3.1. Impacts on agriculture

Agriculture is defined as the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes.

- ~~(1) Does the proposed subdivision include soils defined as having prime, statewide or local importance by the USDA Natural Resources Conservation Service?~~
- (2) Would the subdivision remove agricultural or timberlands with significant existing or potential production capacity?
- (3) Would the subdivision remove from production agricultural lands that are critical to the area's agricultural operations?
- (4) Would the subdivision create significant conflict with nearby agricultural operations (e.g. creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds, applying pesticides or would the subdivision generate nuisance complaints due to nearby agricultural operations)?

##### 28.4.7.2.3.2. Impact on agricultural water user facilities



Agricultural water user facilities are defined as any part of an irrigation system used to produce an agricultural product on property used for agricultural purposes.

- (1) Would the subdivision create a significant conflict with agricultural water user facilities (e.g. creating problems for operating and maintaining irrigation systems, including physical access or easements for those systems, or creating nuisance complaints due to safety concerns, noise, etc.)?
- (2) Would the subdivision impact availability or movement of water with respect to bridges, culverts or other crossings?

#### 28.4.7.2.3.3. Impact on local services

Local services are defined as all services provided by any local government unit having jurisdiction over the subdivision as well as those commonly provided by private entities to similar properties in the vicinity.

- (1) What additional or expanded public services and facilities would be demanded to serve this subdivision?
  - a. What additional costs would result for services such as streets, law enforcement, parks and recreation, fire protection, water, sewer and solid waste, schools and busing (including additional personnel, equipment, construction and maintenance costs)?
  - b. Who would bear these costs?
  - c. Can the service providers meet the additional costs given legal and other constraints?
  - d. Will required additional or expanded public services be completed before build out of the subdivision?
- (2) Would the subdivision allow existing services, through expanded use, to operate more efficiently or make the installation or improvement of services feasible?
- (3) What are the present tax revenues received from the unsubdivided land by the County, City and Schools?
- (4) What would be the approximate revenues received by each above taxing authority when the subdivision is improved and built upon?
- (5) Would new taxes generated from the subdivision cover additional public costs?
- (6) Would any special improvement districts be created which would obligate the City fiscally or administratively?

#### 28.4.7.2.3.4. Impact on natural environment

The natural environment is defined as the physical conditions that exist within a given area.

- (1) How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features, scenic resources within the subdivision or on adjacent lands?
  - a. Would any streambanks be altered, streams rechanneled or surface water quality be negatively impacted from run-off carrying sedimentation or other pollutants?
  - b. Would riparian or wetland areas be negatively impacted?
  - c. Would groundwater supplies be contaminated or depleted as a result of the subdivision?
  - d. Would construction of streets or building sites result in excessive cuts and fills on steep slopes or cause erosion on unstable soils?
  - e. Would significant vegetation be removed causing soil erosion or bank instability?
  - f. Is there a plan in place to prevent infestation by noxious weeds?
  - g. Would significant historical or archaeological features or significant natural habitats be damaged or destroyed by the subdivision?

#### 28.4.7.2.3.5. Impacts on wildlife and habitat

Wildlife and wildlife habitat are defined as living things that are neither human nor domesticated and the physical surroundings required for their existence.

- (1) Would the subdivision impact any species protected by the Endangered Species Act or that are identified as being of special interest or concern to the state of Montana?
- (2) How would the subdivision affect critical wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, aquatic, or other important habitat?
- (2) How would pets or human activity affect wildlife?

#### 28.4.7.2.3.6. Impacts on public health and safety

Public health and safety is defined as a condition of well being wherein risk of injury to the community at large is minimized.

- (1) Would the subdivision be subject to, result in the creation of, or impact public health and safety concerns including, but not limited to, those listed below?
  - a. Flooding

- b. Geologic Hazards
  - c. Air Quality
  - d. Wildfires
  - e. High Water Table/ Groundwater
  - f. High Voltage Transmission Lines
  - g. Hazardous Waste Exposure
  - h. Industrial Uses
  - i. Surface Transportation
  - j. Wildlife
- (2) Would the provision of city-wide emergency services, including access, be adversely impacted?

All subdivisions under the jurisdiction of these regulations will be serviced by the City's municipal water and sanitary sewer utilities. The City will also review and approve storm water plans to ensure adequate storm water drainage. Subdividers will be required to submit, to the Department of Environmental Quality, a Municipal Facilities Exclusion application after the City has approved the utility and storm water design for the subdivision and prior to final plat approval.

#### 28.4.7.5. Documentation of Governing Body Decision

28.4.7.5.1. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the governing body shall issue written Findings of Fact that discuss and weigh the proposed subdivision's compliance with section [28.4.7.1](#) and [28.4.7.2](#) above..

28.4.7.5.2. When the governing body approves, denies, or conditionally approves the proposed subdivision, it shall within 30 working days of its decision, prepare a written statement that must be provided to the applicant, that must be made available to the public, and that must:

28.4.7.5.2.1. Include information regarding the appeal process for the denial or imposition of conditions;

28.4.7.5.2.2. Identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

28.4.7.5.2.3. Provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and

28.4.7.5.2.4. Provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

#### 28.4.7.6. Subdivision Application and Preliminary Plat Approval Period

28.4.7.6.1. Approval or conditional approval of a preliminary plat shall be in effect for two (2) calendar years from the date the subdivider is notified of the governing body action. 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](#). [The governing body may issue more than one extension.](#)

28.4.7.6.2. [Except when reviewing a Phased Development under 76-3-617, M.C.A.](#), after the application and preliminary plat are approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.

28.4.7.6.3. The governing body may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

#### 28.4.8. Amended Applications

28.4.8.1. If the subdivider changes the subdivision application or preliminary plat after the Planning Department makes a determination of sufficiency pursuant to [Section 28.4.4.2](#) but before the Planning Board hearing, the subdivider shall submit the amended application to the Planning Department for review.

28.4.8.1.1. Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.

28.4.8.1.2. The sixty (60) [or eighty \(80\)](#) working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.

28.4.8.1.3. If the Planning Department determines the changes are not material, the sixty (60) [or eighty \(80\)](#) working day review period resumes when the Planning Department mails notice of the decision to the subdivider.

28.4.8.1.4. If the Planning Department determines the changes are material, the Department may either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the sixty (60) [or eighty \(80\)](#) working day review period.

28.4.8.2. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the governing body review, the subdivider shall submit the amended application or preliminary plat to the Planning Department.

28.4.8.2.1. Within five (5) working days of receiving the amended application or preliminary plat, the Planning Department shall determine whether the changes to the subdivision application or preliminary plat are material.

28.4.8.2.2. The sixty (60) [or eighty \(80\)](#) working day review period is suspended while the Planning Department considers whether the changes to the subdivision application or preliminary plat are material.

28.4.8.2.3. If the Planning Department determines the changes are not material, the sixty (60) [or eighty \(80\)](#) working day review period resumes when the Department mails notice of the decision to the subdivider.

28.4.8.2.4. If the Planning Department determines the changes are material, the Department shall:

28.4.8.2.4.1. Schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the new Planning Board hearing shall be provided as set forth in Section [28.4.5.2](#). A supplemental staff report shall be prepared to address the changes to the original application.

28.4.8.2.4.2. The subdivider will be assessed an additional fee for [reviewing the amendment according to the current Subdivision Review Fee Schedule](#).

28.4.8.2.5. When a new Planning Board hearing is held pursuant to [28.4.8.2.4.1](#) above, the sixty (60) [or eighty \(80\)](#) working day review period is suspended until ten (10) working days after the date of the second Planning Board hearing.

28.4.8.3. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in [28.4.8.1.2 and 28.4.8.2.2](#).

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

28.4.8.4.1. Configuration or number of lots;

28.4.8.4.2. Road layout;

28.4.8.4.3. Water and/or sewer proposals;

28.4.8.4.4. Configuration of park land or open spaces;

28.4.8.4.5. Easement provisions; and

28.4.8.4.6. Designated access.

28.4.8.5. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Planning Department may appeal the decision to the governing body by written notice within ten (10) working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

28.4.8.5.1. The sixty (60) [or eighty \(80\)](#) working day review period is suspended until the governing body decision on the appeal is made.

28.4.8.5.2. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall order that the subdivision application be [rescheduled](#) for rehearing in front of the Planning Board pursuant to [28.4.8.2.4.1](#).

28.4.8.5.3. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the sixty (60) [or eighty \(80\)](#) working day review period resumes as of the date of the decision.

28.4.8.5.4. By appealing the decision of the Planning Department, the subdivider agrees to suspension of the sixty (60) [or eighty \(80\)](#) working day review period provided [28.4.8.5.1](#) above.

## 28.4.9. Final Plats

### 28.4.9.1 Final Plat Submittal

The final plat must be submitted to the Planning Department before the expiration of the subdivision application and preliminary plat approval period described in [28.4.7.6](#). [All required documents](#) shall be submitted to the Planning Department at least thirty (30) working days prior to the expiration of preliminary plat approval or an extension thereto, and no less than ten (10) working days prior to the date the final plat is presented to the governing body for approval. The submittal shall include, as applicable:

- 28.4.9.1.1 A final plat application;
- 28.4.9.1.2. [The final plat as described in 28.4.9.2](#);
- 28.4.9.1.3. The appropriate fee;
- 28.4.9.1.4. All required information;
- 28.4.9.1.5. A written explanation of how each of the conditions of the preliminary plat approval has been satisfied.

### 28.4.9.2. Final Plat Contents

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

### 28.4.9.3. Final Plat Review

28.4.9.3.1. The [Planning Department](#) shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The [Planning Department](#) will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee have been received. Final plat applications will not be considered complete until all conditions of preliminary approval have been satisfied.

28.4.9.3.2. The City may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped certificate on the plat. The certificate must be signed by the surveyor.

#### 28.4.9.4. Restrictive Covenants – Approval and Content

If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:

28.4.9.4.1. Formation of a property owners' association concurrently with the filing of the final subdivision plat;

28.4.9.4.2. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;

28.4.9.4.3. Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;

28.4.9.4.4. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;

28.4.9.4.5. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;

28.4.9.4.6. Adjustment of assessments to meet changing needs;

28.4.9.4.7. Means of enforcing the covenants, and of receiving and processing complaints;

28.4.9.4.8. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and

28.4.9.4.9. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

Covenants must comply with all state regulations and shall not be more restrictive than local zoning regulations.

#### 28.4.9.5. Public Improvements Agreement; Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements (76-3-507, MCA). **Bonding and Financial Guaranty requirements are included in forms in Appendix C.**

#### 28.4.9.6. Final Plat Approval/Denial

The governing body shall examine every final subdivision plat and, within thirty (30) working days of its submission to the Planning Department, shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations or deny it.

28.4.9.6.1. Approval. The governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.

28.4.9.6.2. Denial. If the final plat is denied, the governing body shall provide written notice to be sent to the subdivider stating the reason for denial. The governing body will return the final plat to the subdivider within ten (10) working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

#### 28.4.9.7. Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in 28.4.10. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats.

#### 28.4.10. Amending Filed Plats

28.4.10.1. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six (6) or more lots, or abandons a public dedicated road right-of-way must be reviewed and approved by the governing body.

28.4.10.2. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners (or lenders) of all lots that will be modified by the proposed amendment.

28.4.10.3. The governing body may not approve an amendment that will place a lot in non-conformance with the design standards contained in 28.7 of these regulations unless



the governing body issues a written variance from the standards pursuant to [28.10.2.1](#), Variances.

28.4.10.4. The final amended plat submitted for approval must comply with the [Montana Uniform Standards for Final Subdivision Plats](#).

## **28.5. MINOR SUBDIVISIONS**

Subdivisions containing five (5) or fewer parcels shall be reviewed as set forth in this Section. ~~All minor subdivisions that do not require variance(s) from the standards of these regulations shall be reviewed as Administrative Minor Subdivisions in accordance with 28.5.1., below. If an application for a first minor subdivision contains a request for variance from any of the standards contained in these regulation, the application will be reviewed under 76-3-609(2) through (5), MCA. Applications for subsequent minor subdivisions that contain a request for variance shall be reviewed using the procedures contained in Section 28.4 of these regulation.~~

### 28.5.1 [Administrative](#) Minor Subdivisions

#### 28.5.1.1 Pre-application Process

28.5.1.1.1. Prior to submittal of the subdivision application, the subdivider [may](#) request a pre-application meeting with the Planning Department. The meeting shall occur within thirty (30) days after the subdivider submits a written request for the meeting.

28.5.1.1.2. At the time of the pre-application meeting request, the subdivider shall provide the Planning Department with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:

28.5.1.1.3. Information on the current status of the site, including:

- a. Location;
- b. Approximate tract and lot boundaries of existing tracts of record;
- c. Description of general terrain;
- d. Natural features;
- e. Existing structures and improvements;
- f. Existing utility lines and facilities; and
- g. Existing easements and rights of way.

28.5.1.1.4. Information on the proposed subdivision, including:

- a. tract and lot boundaries;
- b. proposed public improvements;
- c. location of utility lines and facilities;
- d. easements and rights of way;
- e. parks and open space

28.5.1.1.5. At the pre-application meeting:

28.5.1.1.5.1. The Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

28.5.1.1.5.2. The Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision; and

28.5.1.1.5.3. The Planning Department shall identify additional information the Department anticipates will be required for review of the subdivision application pursuant to [28.5.1.4](#). This does not limit the ability of the Planning Department to request additional information at a later time.

[28.5.1.1.6. The pre-application process described above may be waived by the mutual consent of the Applicant and the Planning Department.](#)

28.5.1.2. Application and Preliminary Plat Submittal

The subdivider shall submit to the [Planning Department](#) a subdivision application containing the following materials:

28.5.1.2.1. Two (2) copies of the completed Subdivision Application form, and [the](#) supplements required by [therein](#);

28.5.1.2.2. The required review fee;

28.5.1.2.3. Three (3) copies of the preliminary plat of the proposed minor subdivision which:

28.5.1.2.3.1. Contains the information and supplements required;

28.5.1.2.3.2. Conforms to the Design and Improvement Standards set forth in [28.7](#) of these regulations.

28.5.1.2.4. Proof that the subdivider has submitted for review copies of the subdivision application to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and

28.5.1.2.5. Such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting pursuant to [28.5.1.1.5.3](#) that is pertinent to the required elements of this Section.

[28.5.1.2.6. One electronic copy of the subdivision application and all listed supporting material.](#)

#### 28.5.1.3. Plat Form and Contents

The subdivider shall submit a preliminary plat that conforms to the Montana Uniform Standards for Monumentation and Subdivision Plats. The minor subdivision plat must conform to the design standards set forth in [28.7](#) of these regulations.

#### 28.5.1.4. [Administrative](#) Minor Subdivision Exceptions

The following do not apply to [Administrative](#) minor subdivisions:

28.5.1.4.1. Preparation of an environmental assessment;

28.5.1.4.2. Public hearing requirements;

28.5.1.4.3. Review of the subdivision application for the impact on [the primary review criteria found in 76-3-608\(3\)\(a\), MCA.](#)

#### 28.5.1.5. Review Process

##### 28.5.1.5.1. Element Review

Within five (5) working days of receipt of a subdivision application and fee, the Planning Department shall determine whether the application contains all of the applicable materials required by these regulations, as applicable, and shall give written notice to the subdivider of the Department's determination.

28.5.1.5.1.1. If the Planning Department determines that elements are missing from the application, the Department shall identify those elements in the notification and no further action shall be taken on the application until the missing elements are submitted.

28.5.1.5.1.2. The subdivider may correct the deficiencies and resubmit the application.

28.5.1.5.1.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required by these regulations, as applicable.

28.5.1.5.1.4. This process shall be repeated until the subdivider submits an application containing all the materials required by [these regulations](#) as applicable.

##### 28.5.1.5.2. Sufficiency Review

Within fifteen (15) working days after the reviewing agent or agency notifies the subdivider that the application contains all of the required elements as provided in [28.5.1.4.1](#), the Planning Department shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the

provisions of the MSPA and these regulations and give written notification, to the subdivider of this determination.

28.5.1.5.2.1. If the Planning Department determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the Department shall identify the insufficient information in its notification and no further action shall be taken on the application until the material is resubmitted.

28.5.1.5.2.2. The subdivider may correct the deficiencies and resubmit the application.

28.5.1.5.2.3. If the subdivider corrects the deficiencies and resubmits the application, the Planning Department shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the MSPA and these regulations.

28.5.1.5.2.4. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of the MSPA and these regulations.

28.5.1.5.2.5. A determination that an application contains sufficient information for review as provided in this subsection does not ensure that the proposed subdivision will be approved or conditionally approved and does not limit the ability of the Planning Department, to request additional information during the review process.

28.5.1.5.2.6. Upon determination that the application is sufficient for review, the Planning Department shall notify, by first-class mail, each property owner of record whose property is immediately adjoining the land in the preliminary plat and each purchaser under contract for deed of property immediately adjoining the land in the preliminary plat of the pending application. This notice will inform the recipient that the decision to approve, conditionally approve or deny the subdivision will be posted to the City's official website within 30 days and that protests of the decision pursuant to section 28.5.1.11 will be accepted for 30 days thereafter.

### 28.5.1.5.3. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations [[§76-3-604\(9\)](#)].

#### 28.5.1.5.4. Time Period for Approval, Conditional Approval, or Denial

Within thirty (30) working days, the [Planning Department](#) shall approve, conditionally approve or deny the proposed subdivision ~~a~~. The review period of thirty (30) working days begins once the Planning Department has given notice to the subdivider that the subdivision application is sufficient for review. Notification constitutes the date when the reviewing agent or agency sends the notice to the subdivider.

#### 28.5.1.5.5. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the [Planning Department's](#) action on the subdivision application beyond the thirty (30) working day review period. The [Planning Department](#) will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the Planning Department contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Planning Department shall notify the subdivider of the contact and the timeframe for response.

#### 28.5.1.6. Consideration and ~~—~~ [Decision](#)

In ~~rendering its decision to approve, conditionally approve or deny~~ the subdivision application, the Planning [Department](#) shall base its [decision](#) on compliance of the subdivision application with the following:

28.5.1.6.1. These regulations, including but not limited to the design standards set forth in Section [28.7](#);

28.5.1.6.2. Applicable zoning regulations;

28.5.1.6.3. Other applicable regulations.

#### 28.5.1.7. Water and Sanitation

All subdivisions under the jurisdiction of these regulations will be serviced by the City's municipal water and sanitary sewer utilities. The City will also review and approve storm water plans to ensure adequate storm water drainage. Subdividers will be required to submit, to the Department of Environmental Quality, a Municipal Facilities Exclusion application after the City has approved the utility and storm water design for the subdivision and prior to final plat approval.

28.5.1.8. When the Planning Department approves, denies, or conditionally approves the proposed subdivision, it shall, within 30 working days of its

determination that the subdivision is sufficient for review, prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

28.5.1.8.1. Includes information regarding the appeal process for the denial or imposition of conditions;

28.5.1.8.2. Identifies the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

28.5.1.8.3. Provides the facts and conclusions that the Planning Department relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision;

28.5.1.8.4. Provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

#### 28.5.1.9. -Application and Preliminary Plat Approval Period

28.5.1.9.1. Approval or conditional approval of a preliminary plat shall be in effect for two (2) calendar years from the date of the Planning Department action.

28.5.1.9.2. At the end of this period the Planning Department may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. ~~governing body and the subdivider, provided for in Section IV A 10.~~

#### 28.5.1.10.-Minor Subdivision Final Plat

The Planning Department shall approve Minor Subdivision final plats after determining that the plat meets the requirements of these regulations, any conditions placed upon preliminary approval and all requirements of the Montana Subdivision and Platting Act. All final plats will be signed by the Chair of the Governing Body.

28.5.1.11. If a party identified in 76-3-625(3), MCA objects to subdivision administrator'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.

Protests under this section (28.5.1.11) will be accepted for a period of 30 days after the Final Administrative Decision on the subdivision is posted to the City's official website.

## **28.6. -EXEMPTIONS FROM SUBDIVISION REVIEW**

### **28.6.1. Exemption Submittal**

Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Planning Department (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption.

### **28.6.2. Review**

When a claimed exemption is submitted to the Planning Department, the Department shall cause the documents to be reviewed. The Planning Department shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

28.6.2.1. Landowners or their agents are encouraged to meet with the Planning Department to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

28.6.2.2. Within five (5) working days of submittal the Planning Department shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.

28.6.2.3. If the Planning Department finds that the proposed use of the exemption complies with the statutes and these criteria, the Department shall notify and advise the Chair of the City Commission to sign the certificate of survey or authorize the recording of the instrument of conveyance and accompanying documents. If the Planning Department finds that the proposed use of the exemption does not comply with the statutes and these criteria, the Department shall advise the Chair not to ~~file-sign~~ or authorize the recording the documents, and shall return the materials to the landowner.

28.6.2.4. The Planning Department, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

### **28.6.3. Appeals.**

28.6.3.1. Any person whose proposed use of an exemption has been denied by the Planning Department because the proposed division of land has been deemed an attempt to evade the MSPA and/or these regulations may appeal the 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 MSPA [and/or](#) these regulations.

28.6.3.2. If the governing body concludes that the evidence and information [demonstrate](#) that the exemption is [not](#) being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

28.6.3.3. If the governing body determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may submit a subdivision application for the proposed land division.

## **28.7. DESIGN AND IMPROVEMENT STANDARDS**

### 28.7.1. General Standards

All subdivisions approved by the governing body must comply with the provisions of this Section, except where granted a variance pursuant to [28.10.2](#), Variances. The governing body may not grant variances from the provisions of [28.7.5](#), Floodplain Provisions.

### 28.7.2. Conformance with Zoning

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

### 28.7.3. Natural Environment

The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the [natural terrain, natural drainage, and existing topsoil, trees and other vegetation](#); it must also, to the extent possible, avoid disturbing historical, archaeological and scenic resources

[If the subdivision is located within an area identified by the State Historic Preservation Office \(SHPO\) as containing significant cultural or archaeological resources, efforts to mitigate impacts to these resources must be included in project plans.](#)

### 28.7.4. Lands Unsuitable for Subdivision

Land that the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

[If the subdivision will encroach into an area identified as Crucial Habitat by the Montana Department of Fish, Wildlife and Parks \(FWP\) \[Crucial Areas Planning System\]\(#\), as being a wildlife](#)



~~migration corridor~~, efforts to mitigate impacts to this resource must be included in project plans. This may include, but is not limited to, incorporating fencing that is considered “wildlife friendly” under FWP guidance.

If the subdivision will encroach into an area identified by the US Army Corps of Engineers as a wetland, efforts to mitigate impacts to this resource must be included in project plans.

#### 28.7.5. Floodplain Provisions

Land within a proposed subdivision located in the regulatory floodplain (100-year floodplain, including the floodway), as defined by Title 76, Chapter 5, MCA, is subject to requirements and restrictions stated in Chapter 29 of the Livingston Municipal Code for Floodplain Hazard Management Regulations.

#### 28.7.6. Improvement Design

28.7.6.1. 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 a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

28.7.6.2. All subdivision improvements must be designed to comply with the City of Livingston Public Works Design Standards and Specification Policy; the City’s Modification to the Montana Public Works Standards, and Table 1 in [Appendix B](#).

28.7.6.3. All subdivisions under the jurisdiction of these regulations will be serviced by the City’s municipal water and sanitary sewer utilities. The City will also review and approve storm water plans to ensure adequate storm water drainage. Subdividers will be required to submit, to the Department of Environmental Quality, a Municipal Facilities Exclusion application after the City has approved the utility and storm water design for the subdivision and prior to final plat approval.

#### 28.7.7. Lots

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

28.7.7.2 No lot may be divided by a municipal or county boundary line.

28.7.7.3 No lot may be divided by a public road, alley or utility right-of-way or easement.

28.7.7.4 Each lot must abut and have access to a public street or road. Alleys may not be used to provide the primary access to a lot.

28.7.7.5 Corner lots must have driveway access to the same street or road that provides access to interior lots.

28.7.7.6 Corner lots must be designed to provide acceptable sight distances for safe vehicular movement.

28.7.7.7 Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.

28.7.7.8 Through lots are prohibited, except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

#### 28.7.8. Blocks

28.7.8.1. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

28.7.8.2., block length must not be more than 1,000 feet nor less than 400 feet.

28.7.8.3 Blocks must be at least 300 feet wide to allow for two tiers of lots separated by a twenty-foot-wide alley.

28.7.8.4. All blocks will be oriented in the same direction, creating a street grid with intersections at or very near ninety degrees.

#### 28.7.9. Streets and Roads

##### 28.7.9.1. Design

28.7.9.1.1. Streets must be designed to comply with the City of Livingston Public Works Design Standards and Specification Policy; the City's Modification to the Montana Public Works Standards, and Table 1 in Appendix B

28.7.9.1.2 The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

28.7.9.1.3 The use of a cul-de-sac or "T" turnaround may only be approved by variance.

28.7.9.1.4. Unless a variance is granted, all streets must be dedicated to the public.

##### 28.7.9.3 Improvements

28.7.9.3.1 All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage, [street lighting, signage and pavement markings](#) must be constructed to comply with the City of Livingston Public Works Design Standards and Specification Policy; the City's Modification to the Montana Public Works Standards, and Table 1 in Appendix B

28.7.9.3.6 A minimum of one (1) boulevard tree planting is required for each lot frontage. See Appendix XX for recommended species. A Tree Plan must be provided by for all boulevard plantings prior to final plat. The plan must identify tree type and planting locations and it must be approved by the City Arborist. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the governing body.

28.7.9.3.8 Alleys, designed in accordance with Table 1 in Appendix B, shall be provided in all subdivisions. .

28.7.9.3.10 When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

#### 28.7.10. Drainage Facilities

[All storm water and drainage facilities shall be designed and constructed according to the City of Livingston Public Works Design Standards, the City's Modification to the Montana Public Works Standards, and Montana DEQ Standards.](#)

b.

g. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

#### 28.7.11. Water Supply Systems

[All water supply systems shall be designed and constructed according to the City of Livingston Public Works Design Standards and Specification Policy, the City's Modifications to the Montana Public Works Standards, and Montana DEQ Standards.](#)

#### 28.7.12. [Wastewater Collection Systems](#)

All [wastewater](#) collection systems shall be designed and constructed according to [the City of Livingston Public Works Design Standards and Specification Policy, the City's Modifications to the Montana Public Works Standards, and Montana DEQ Standards.](#)

### 28.7.13. Solid Waste

28.7.13.1. The subdivider shall assure that the provisions for collection and disposal of solid waste meet the requirements of the City of Livingston and Montana DEQ Standards.

28.7.13.2. The location and means for solid waste collection and disposal shall be subject to approval by the City Public Works Director. For areas where bear activity is a concern, within the designated as the Wildland Urban Interface (WUI), the City may require that all trash be stored in bear-proofed containers or else be stored inside within an enclosed structure until it is scheduled for pick up.

28.7.13.3. If solid waste disposal is not individual, curbside pick-up for individual lots, the subdivider shall provide an off street area for solid waste collection which will be aesthetically screened from general public view, protected from the elements to reduce blowing and scattering of waste, and conveniently accessible to collection vehicles subject to approval by the City Public Works Director. For areas within the designated WUI, the City may require that common solid waste facilities be designed to be bear-resistant or else be stored within an enclosed structure until it is scheduled for pick up.

### 28.7.14. Non-Municipal Utilities

28.7.14.1. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.

28.7.14.2. Utilities must be placed underground. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is paved.

Overhead utility lines must be located within the rear property line of each lot and parallel to the adjacent alley.

28.7.14.3. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.

28.7.14.4. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.

28.7.14.5. Utility easements must be fifteen (15) feet wide unless otherwise specified by a utility company or governing body.

28.7.14.6. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.

28.7.14.7. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

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

#### 28.7.15. Water Course and Irrigation Easements

28.7.15.1. Except as noted in [28.7.15.2](#), below, the subdivider shall establish within the subdivision ditch easements that:

28.7.15.1.1. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

28.7.15.1.2. Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

28.7.15.1.3. Prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner;

28.7.15.2. The subdivider need not establish irrigation easements as provided above if:

28.7.15.2.1. 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

28.7.15.2.2. The water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and

28.7.15.2.3. The fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider’s intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

28.7.15.3. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record

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

#### 28.7.16. Disposition of Water Rights

If a subdivision will create lots averaging less than five (5) acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

28.7.16.1. Reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;

28.7.16.2. If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

28.7.16.3. Reserved and/or severed all surface water rights from the land proposed for subdivision.

#### 28.7.17. Park Land Dedication – Cash in Lieu – Waivers -- Administration

28.7.17.1. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:

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

28.7.17.1.2. Seven and one-half percent (7.5%) of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;

28.7.17.1.3. Five percent (5%) of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three (3) acres; and

28.7.17.1.4. Two and one-half percent (2.5%) of the area of the land proposed to be subdivided into parcels larger than three (3) acres and not larger than five (5) acres.

28.7.17.2. Parks and open space types and standards. Parks, open space and common area dedication shall meet at least one of the following criteria:

28.7.17.2.1. Provides for the preservation of a physical amenity such as a meadow, a stand of trees, significant wildlife habitat or a wildlife corridor, a

scenic hillside with slopes of less than 25%, a stream or significant water body, an area of riparian resource or some other natural feature that the governing body determines is significant enough for parkland dedication. Open space shall be managed to remain in a near natural state when it has been dedicated for preservation or conservation purposes and managed for weeds and public safety concerns such as wild land fire and hazardous trees. Public trail connections are permitted if deemed appropriate by the governing body; or

28.7.17.2.2. Provides a site for active recreation and public gathering (neighborhood park) which shall substantially conform to the following standards:

28.7.17.2.2.1. Five acres or greater in size unless the opportunity for this size is not feasible or required;

28.7.17.2.2.2. Centrally located within the proposed subdivision or adjacent to other planned or existing park or open space;

28.7.17.2.2.3. Adjacent to public streets on at least 50% of the park's perimeter;

28.7.17.2.2.4. Accessible to bicycle and pedestrian trails where possible;

28.7.17.2.2.5. At least 50% of the park shall have 2% or less slope to accommodate playing fields; or

28.7.17.2.3. Establishes a pedestrian/bicycle greenway corridor if such corridor is determined by the [city](#) to have a primarily recreational and/or commuter function; or

28.7.17.2.4. Creates a courtyard of less than [one-half](#) ( $\frac{1}{2}$ ) acre, provided the courtyard shall be part of a common area dedicated to a private homeowner's association; or

28.7.17.2.5. Provides for other parks, open space, or common area designs which meet the intent of this section, [support the goals of the Growth Policy, and is consistent with the City's adopted plans for Parks and Recreation and Trails and Active Transportation.](#)

28.7.17.3. Unless the governing body determines otherwise, the following areas within a subdivision will not count toward the parkland dedication:

28.7.17.3.1. Hillsides over 25% slope;

28.7.17.3.2. Areas of riparian resource and adjacent buffers associated with irrigation or roadside ditches;

28.7.17.3.3. Monument entry areas and central landscaped boulevards;

28.7.17.3.4. Storm water retention or detention ponds that are designed to hold storm water runoff from less than 100-year events.

#### 28.7.17.3.5. Public utility easements.

28.7.17.4. Provide as part of the required parkland, twenty (20) foot wide pedestrian access easements to parkland or common area from public streets. Pedestrian access easements on hillsides may require additional width to accommodate switchbacks for trails, etc. Setbacks for structures other than fences adjacent to the access easement shall be a minimum of ten (10) feet. The governing body may require that the developer construct a trail leading into park or common areas.

28.7.17.5. At least twenty-five percent (25%) of the required parkland dedication shall be developed for active use as defined in 28.7.17.2.2. No more than seventy-five percent (75%) of the required parkland dedication shall be for passive use as defined in 28.7.17.2.1.

28.7.17.5. A park dedication is not required for:

28.7.17.5.1. Minor subdivisions;

28.7.17.5.2. Subdivision lots larger than five (5) acres;

28.7.17.5.3. Nonresidential subdivision lots;

28.7.17.5.4. Subdivisions in which parcels of land will not be created, except when the subdivision will provide permanent multiple spaces for recreational camping vehicles, mobile homes; or

28.7.17.5.5. Subdivisions which will create only one additional parcel.

28.7.17.6. The governing body, in consultation with the subdivider and the Planning Board ~~or~~, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

28.7.17.7. The governing body will waive the park dedication requirement if it determines that:

28.7.17.7.2. The proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and The provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under [28.7.17.1](#) above;



28.7.17.7.3. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of [28.7.17.1](#) and [28.7.17.7.2](#) above, is reduced by an amount equal to or exceeding the area of the dedication required under [27.7.17.1](#); or

28.7.17.7.4. The subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

The area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under [27.7.17.1](#).

28.7.17.8. The local governing body may waive the park dedication requirement if:

28.7.17.8.1. The subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

The area of land to be subject to long-term protection, as provided in [28.7.17.7.2](#), equals or exceeds the area of dedication required under [27.7.17.1](#).

28.7.17.8.2. The City may also waive some, or all, of the park land dedication requirement if the subdivider provides land for trails or paths which enhance the City's trail system as guided by the **City's adopted plans for Parks and Recreation and Trails and Active Transportation**.

28.7.17.9. The governing body will administer funds dedicated to the public under this Section in accordance with Section 76-3-621, MCA. For the purposes of this park dedication requirement:

28.7.17.9.1. "Cash donation" means the fair market value of the unsubdivided, unimproved land;

28.7.17.9.2. Fair market value must be determined by a Montana State certified general real estate appraiser (as provided under MCA 37-54-201) hired and paid for by the subdivider. For the purposes of this regulation, appraisals are valid if prepared within six (6) months of the date of submittal of an application for final subdivision approval.

## 28.7.18 Fire Protection

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

28.7.18.1.1 The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.

28.7.18.1.2 The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.

28.7.18.1.3 The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.

28.7.18.1.4 Building sites may not be located on slopes greater than twenty-five (25) percent or at the apex of “fire chimneys” (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).

28.7.18.1.5 Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.

28.7.18.1.6 The address of all residential buildings shall be plainly visible and legible from the primary access road adjacent to the lot on which the building resides.

28.7.18.2 Special Requirements for Major Subdivisions Proposed within the designated Wildland Urban Interface (WUI). The following apply:

28.7.18.2.1 A Fire Prevention and Control Plan (FPC Plan) must be developed in coordination with the Fire Department and must be included with the application for preliminary plat approval. The FPC plan must include the following information:

28.7.18.2.1.1 An analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;

28.7.18.2.1.2 A map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation, as well as any tree canopy that will be thinned to reduce the potential for a crown fire

28.7.18.2.1.3 The identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided..

28.7.18.2.1.4 Emergency access and evacuation procedures. For phased subdivisions, these procedures must be updated prior to issuance of Certificates of Occupancy for each phase and must include all completed phases

28.7.18.2.2 At least two (2) entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of thirty (30) tons and constructed of non-flammable materials.

28.7.18.2.3 Fire-Resistant Landscaping materials must be used in all common areas that are maintained by the HOA, including the areas along roads, rights-

of-way and easements.. Vegetative Fuels Reduction must be practiced within a minimum 10-foot wide corridor surrounding the outer edge of the subdivision.

28.7.18.2.4 The FPC Plan must be implemented prior to issuance of Certificates of Occupancy and will be considered part of the subdivider's obligations for land development. The Fire Chief, or designee, will inspect and approve the implementation of the FPC Plan, and notify the Building Official that implementation of the plan is complete..

28.7.18.2.5 Provisions for the maintenance of the FPC Plan shall be included in the covenants, conditions, and restrictions for the development.

## **28.8. SUBDIVISIONS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES – LAND SUBDIVISIONS CREATED BY RENT OR LEASE**

### 28.8.1. Subdivisions Created by Rent or Lease -- Definition

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

28.8.1.1. Land subdivision created by rent or lease will be reviewed under the procedures described in Section 28.4, Major Subdivisions, Section 28.5, Minor Subdivisions, or Appendix A, Expedited Review, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat.

28.8.1.2. Land subdivisions created by rent or lease are subject to the applicable design and improvement standards contained in Section 28.7, Design and Improvement Standards.

### 28.8.2. Procedures for Review

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. These subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased. The subdivider shall submit to the governing body the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the lot layout and the proposed location of the mobile home, recreational camping vehicle, or other unit on the lot.

#### 28.8.2.1. Improvements

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

#### 28.8.2.2. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats contained in Appendix C and . The subdivider shall submit the plan to the Planning Department. The plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the office of the Planning Department.

#### 28.8.2.3. DPHHS License

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

### **28.9. PHASED DEVELOPMENT**

#### 28.9.1. Application

A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to 28.4.3 of these regulations for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

#### 28.9.2. Preliminary Plat Review

The phased development overall preliminary plat will be reviewed according to 28.4.4. through 28.4.7. of these regulations. If approved or conditionally approved, the entire phased development will be deemed to be granted preliminary plat approval.

#### 28.9.3. Phase Review

Each individual phase will, according the approved schedule, be reviewed by the governing body as an application for final plat approval pursuant to 28.4.9 of these regulations. For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary approval of the subdivision, the subdivider shall provide written notice to the governing body not more than 1 year or less than 90 calendar days in advance of submitting the final plat application. The governing body shall hold a public hearing within 30 working days after receipt of the written notice from the subdivider to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval. The governing body may amend or impose additional conditions of approval only if it

determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances. The governing body shall issue supplemental written findings of fact within 20 working days of the hearing. Any additional conditions must be met before final plat approval for each remaining phase and the approval is in force for not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in Section 28.9.4, below.

#### 28.9.4. Time Limit Extension

The governing body may approve phased developments that extend beyond the time limits set forth in 28.4.7.6. of these regulations but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

#### 28.9.5. Periodic Fees

The governing body may impose a reasonable periodic fee for the review of the individual phases in the phased development.

### **28.10. ADMINISTRATIVE PROVISIONS**

#### 28.10.1. Subdivision Fees

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the City, shall be established by separate resolution of the Livingston City Commission.

#### 28.10.2. Variances

##### 28.10.2.1. Variances Authorized

The governing body may grant variances from Section 28.7, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The governing body will not approve a variance unless it finds that:

28.10.2.1.1. It will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

**28.10.2.1.2 It is necessary because of unique physical conditions on the site;**

28.10.2.1.3. It will not cause a substantial increase in public costs; and

28.10.2.1.4. It will not place the subdivision in nonconformance with any adopted zoning regulations.

28.10.2.1.5 The area of the subdivision affected by the variance and the overall extent of the variance is the least accommodation that will alleviate the hardship

#### 28.10.2.2. Variances from Floodway Provisions Not Authorized

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

#### 28.10.2.3. Variance Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. It is the burden of the applicant to prove that, because of unique topography or other exceptional conditions on the property, the strict application of these regulations would result in an undue hardship rectified only through approval of a variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

#### 28.10.2.4. Variance Conditions

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

#### 28.10.2.5. Variance Statement of Facts

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

### 28.10.3. Amendment of Regulations

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

### 28.10.4. Enforcement

Except as provided in 76-3-303, MCA, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing. §76-3-301 M.C.A.

#### 28.10.5. Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense. §76-3-105 M.C.A.

#### 28.10.6. Appeals

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

## APPENDIX



## APPENDIX A

### Procedure for Expedited Review

#### Pre-application Process

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

At the pre-application meeting, the subdivider shall provide the Planning Department with a sketch plan of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch plan may be a freehand sketch drawn directly on a print of the topographic map and should include the following:

Information on the current status of the site, including:

- location;
- approximate tract and lot boundaries of existing tracts of record;
- description of general terrain;
- natural features;
- existing structures and improvements;
- existing utility lines and facilities;
- existing easements and rights of way.

Information on the proposed subdivision, including:

- tract and lot boundaries;
- proposed public improvements;
- location of utility lines and facilities;
- easements and rights of way;
- parks and open space.

At the pre-application meeting, the following will occur:

The Planning Department shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process;

The Planning Department shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have a substantial interest in the proposed subdivision.

The Planning Department shall identify particular additional information the Department anticipates will be required for review of the subdivision application. This does not limit the ability of the City to request additional information at a later time.

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

Applications for expedited review are exempt from:

- the preparation of an environmental assessment as required in 76-3-603, MCA.; and
- the review criteria listed in 76-3-608(3)(a), MCA.

### Subdivision Application for Expedited Review

The subdivider shall submit to the Planning Department a subdivision application containing the following materials:

- Two (2) copies of the completed Subdivision Application form and the supplements required therein;
- The required review fee;
- Three (3) copies of the preliminary plat of the proposed subdivision which:
  - Contains the information required for preliminary plats and;
  - Conforms to the Design and Improvement Standards set forth in Section 28.7;
- Proof that the subdivider has submitted for review copies of the subdivision application to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision; and
- Such additional relevant and reasonable information as identified by the Planning Department during the pre-application meeting that is pertinent to the required elements of this Section.
- One electronic copy of the subdivision application and all supporting material.

### Expedited Review Process

Applications for expedited review must provide evidence that the proposed subdivision complies with the applicable zoning regulations, local subdivision regulations, including the local design standards, and must include a proposal for the extension of public infrastructure in accordance with adopted ordinances and regulations.

The application will be reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3), MCA to verify that the application complies with

local zoning and subdivision regulations, including local design standards and to verify that a plan for the extension of public infrastructure is provided. The application may include a request for variance from the design standards contained in these regulations.

Upon determination by the Planning Department that the application contains the required elements and is sufficient for review, the City shall have thirty-five (35) working days to approve, conditionally approve or deny the subdivision application. The review period shall be forty-five (45) working days if the application contains any request(s) for variance from any of the requirements of these regulations.

Public Hearing: The City Commission shall hold a public hearing on the application and shall approve, conditionally approve or deny the subdivision application. Notice of the time and date of the hearing shall be given by publication in a newspaper of general circulation in the County not less than fifteen (15) days prior to the meeting date.

#### City Commission Decision

The City Commission shall approve the subdivision unless public comment or other information demonstrates that the application does not comply with:

- adopted zoning regulations, design standards, and other requirements of the adopted subdivision regulations, including the criteria for granting variances from the subdivision regulations; or
- adopted ordinances or regulations for the extension of public infrastructure.

The City Commission shall adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4, MCA.

The City Commission shall provide to the applicant and the public a written statement within 30 days of the decision to approve or deny the subdivision that includes:

- The facts and conclusions that the City Commission relied on in making its decision; and
- The conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved, as applicable.

Section 28.3.4 of these regulations applies to this Section as it pertains to the appeal process.

#### Preliminary Plat Approval Period and Final Plat

- The approved preliminary plat is subject to Section 28.4.7.6.1 through 28.4.7.6.3 of these regulations.

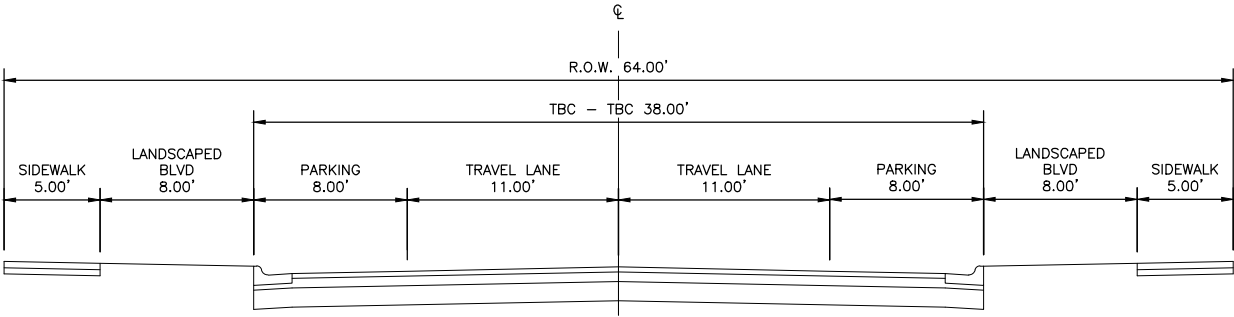
- [Final plats are subject to Sections 28.4.9.1 through 28.4.9.7 of these regulations.](#)

APPENDIX B

TABLE 1: *Street Design Standards for Subdivisions*

|    |   |                 |
|----|---|-----------------|
| 1. | Right-of-way width                        | 64 ft.          |
| 2. | Minimum roadway width                     |                 |
|    | a. Curbs, back to back                    | 38 ft.          |
|    | b. Alleys                                 | 20 ft.          |
|    | c. Boulevards                             | 8 ft.           |
|    | d. Sidewalks                              | 5 ft.           |
| 3. | Maximum grade, distance less than 100 ft. | 10 %            |
| 4. | Maximum grade, distance more than 100 ft. | 8 %             |
| 5. | Approaches onto Public Roads              |                 |
|    | a. Minimum sight distance                 | 200 ft.         |
|    | b. Maximum grade for 20'                  | 5%              |
| 6. | Turning radius                            | 50 ft.          |
| 7. | Bridges                                   |                 |
|    | a. curb-to-curb widths                    | same as roadway |
|    | b. design load capacity                   | 30 tons         |
|    | c. vertical clearance                     | 15 ft.          |

***FIGURE 1. Subdivision Street Design Typical Section***



CITY OF LIVINGSTON

STANDARD SECTION - LOCAL STREET  
WITH ON-STREET PARKING



|                |            |
|----------------|------------|
| DRAWN BY:      | JRG        |
| DESIGNED BY:   |            |
| QUALITY CHECK: | MRM        |
| DATE:          | 11/25/2025 |
| JOB NO.        |            |

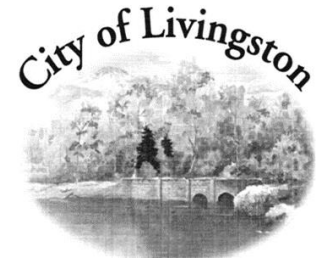
FIGURE

#

## APPENDIX C



City of Livingston  
 Department of Planning  
 220 E. Park St.  
 Livingston, MT 59047  
 (406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)



## City of Livingston Subdivision Preliminary Plat Instructions

Subdivision review is required to divide any parcel of land within the City of Livingston that does not meet the criteria for a subdivision exemption as listed in 76-3-2 MCA. Subdivisions require a three-step application process prior to final approval:

- Pre-Application
- Preliminary Plat Application
- Final Plat Application

Preliminary Plats require a public hearing before the Planning Board for a recommendation to the City Commission, and are approved or denied by the City Commission. All subdivision applications are evaluated by the Planning Board and City Commission based upon the following criteria listed in Section III.B.6 of the Subdivision Regulations for major subdivisions or Section IV.B.6 for minor subdivisions:

- Provides easements for the location and installation of any planned utilities.
- Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.
- Assures that all required public improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed.
- Complies with the requirements of 76-3-504 MCA, regarding the disclosure and disposition of water rights.
- Complies with the Subdivision Regulations.
- Complies with the applicable Zoning Regulations.
- Complies with the Montana Subdivision and Platting Act.

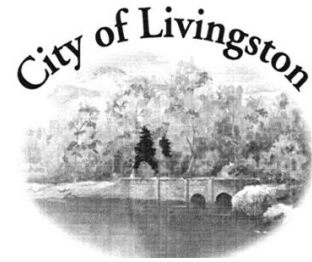
The Preliminary Application shall be submitted to the Planning Department. The Planning Department may forward the application to local, state, and federal agencies as necessary to ensure a comprehensive review of the project. **It is required that you submit and receive an approved Subdivision Pre-Application prior to submitting a Preliminary Plat Application.**

### Submittal Requirements (listed in Section III.B.1 of the Subdivision Regulations for major subdivisions or Section IV.B.1 for minor subdivisions):

- ☐ Two (2) copies of the Completed Application Form.
- ☐ Three (3) copies of the Preliminary Plat, which:
  - Contains the required information for preliminary plats..
  - Conforms to the Design and Improvement Standards in Section VI of the Subdivision Regulations.
  - Conforms to the requirements of the Zoning Regulation.

- Conforms to the requirements of the Public Works Design Standards and Specifications Policy.
- ☐ A summary of probable impacts of the Subdivision.
  - ☐ Proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of local, state, and federal government identified during the pre-application meeting or subsequently identified as having a substantial interest in the proposed subdivision.
  - ☐ Additional relevant and reasonable information as identified by the Development Review Committee during the pre-application meeting:
  - ☐ The Preliminary Plat Application Review Fee.

All documents other than the preliminary plat shall be submitted on either 8 ½" x 11" or 11" x 17" paper. Additionally, digital copies of the submittal in PDF file format are required.



City of Livingston  
Department of Planning  
220 E. Park St.  
Livingston, MT 59047  
(406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)

---

## City of Livingston Subdivision Preliminary Plat Application

1. **Property Owner Name:** \_\_\_\_\_

2. **Location of Property**

General Location: \_\_\_\_\_

Address: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Zoning District: \_\_\_\_\_

3. **Contact Information**

*Property Owner*

Home Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Primary Contact/ Applicant*

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Secondary Contact*

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**4. Project Information**

Type of Subdivision: ☐ Major ☐ Subsequent Minor ☐ Minor

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

Brief Description of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

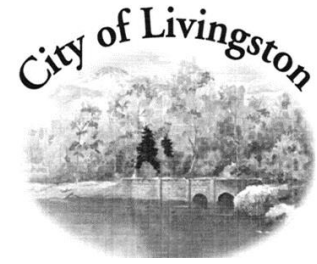
Proposed Use(s): \_\_\_\_\_

Number of Lots: \_\_\_\_\_ Number of Phases: \_\_\_\_\_

**I hereby certify that the information included in this application is true and accurate.**

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date



City of Livingston  
 Department of Planning  
 220 E. Park St.  
 Livingston, MT 59047  
 (406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)

---

## City of Livingston Subdivision Final Plat Instructions

Subdivision review is required to divide any parcel of land within the City of Livingston that does not meet the criteria for a subdivision exemption as listed in 76-3-2 MCA. Subdivisions require a three-step application process prior to final approval:

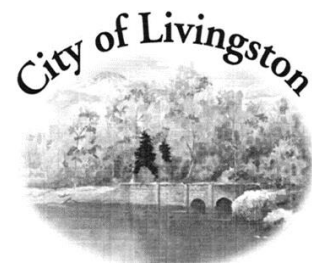
- Pre-Application
- Preliminary Plat Application
- Final Plat Application

Final Plat applications shall be submitted to the Planning Department and require a public hearing and are approved or denied by the City Commission. **All preliminary plat conditions of approval and required improvements must be completed or guaranteed prior to application for final plat.**

**Submittal Requirements (listed in Section III.C.3 of the Subdivision Regulations for major subdivisions or Section IV.C.3 for minor subdivisions):**

- ☐ The Completed Application Form.
- ☐ A letter explaining how each of the preliminary plat conditions of approval have been met.
- ☐ All required City or County attorney approvals..
- ☐ Additional relevant and reasonable information as identified by the Planning Department.
- ☐ The Final Plat Application Review Fee.

All documents other than the plat shall be submitted on either 8 ½" x 11" or 11" x 17" paper. Additionally, digital copies of the submittal in PDF file format are required.



City of Livingston  
Department of Planning  
220 E. Park St.  
Livingston, MT 59047  
(406)222-4903  
[planning@livingstonmontana.org](mailto:planning@livingstonmontana.org)

---

## City of Livingston Subdivision Final Plat Application

1. **Property Owner Name:** \_\_\_\_\_

2. **Location of Property**

General Location: \_\_\_\_\_

Address: \_\_\_\_\_

Subdivision: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_

Zoning District: \_\_\_\_\_

3. **Contact Information**

*Property Owner*

Home Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Primary Contact/ Applicant*

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

*Secondary Contact*

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

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**4. Project Information**

Type of Subdivision: ☐ Major ☐ Subsequent Minor ☐ Minor

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

Brief Description of Project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposed Use(s): \_\_\_\_\_

Number of Lots: \_\_\_\_\_ Number of Phases: \_\_\_\_\_

**I hereby certify that the information included in this application is true and accurate.**

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

**Certificate of Surveyor – Final Plat**

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

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

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

(Seal)

(Signature of Surveyor)

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

(Address)

**Certificate of Dedication – Final Plat**

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

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

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

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

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

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

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

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

(Acknowledged and notarized signatures of all encumbrancers of record)



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

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

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

(Seal)

(Signature of Clerk)

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

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

(Date)

(Notarized Signature of Subdivider)

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

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

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

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

**Certificate of County Treasurer**

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

(legal description of land)

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

(seal)

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

**Certificate of Final Plat Approval – City**

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

by    (Signature of City or Town Clerk)  
         Clerk

(Signature of Mayor)  
Mayor

**Certificate of Filing by Clerk and Recorder**

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

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

(Signature of Clerk and Recorder)  
County Clerk and Recorder, \_\_\_\_\_ County, Montana

## APPENDIX D

### SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY

The parties to this Subdivision Improvements Agreement ("this agreement") are \_\_\_\_\_ ("the subdivider") and \_\_\_\_\_ ("the City").

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

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

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

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

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

#### Subdivider's Obligations

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

8. Compliance with Law: The Subdivider will comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

#### City's Obligations

9. Inspection and Certification:

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

#### Other Provisions

13. Events of Default: The following conditions, occurrences or actions constitute a default by the Subdivider during the completion period:
- a. failure to complete construction of the improvements within two years of final subdivision plat approval;
  - b. failure to remedy the defective construction of any improvement within the remedy period;
  - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
  - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.

14. **Measure of Damages:** The measure of damages for breach of this Agreement is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment ( ) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Subdivider's liability. The City may complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.
15. **Local Government Rights Upon Default:**
  - a. Upon the occurrence of any event of default, the City may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost [as shown in Attachment ( )] of all improvements previously certified by the City. The City may complete improvements itself or contract with a third party for completion, or the City may assign the proceeds of the letter of credit to a subsequent subdivider who has acquired the Subdivision and who has the same rights of completion as the City if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.
  - b. In addition, the City may suspend final plat approval. During this suspension the Subdivider may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City until the improvements are completed and certified by the City.
16. **Indemnification:** The Subdivider agrees to indemnify and hold the City harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Subdivider is not an employee or agent of the City.
17. **Amendment or Modification:** The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City and by the Subdivider.
18. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each will bear its own costs in their entirety.
19. **Third Party Rights:** No person or entity who is not party to this Agreement has any right of action under this Agreement, except that if the City does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City to exercise its rights.
20. **Scope:** The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
21. **Time:** For the purpose of computing the commencement and completion periods, and time periods for City action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the City from performing the obligations under this Agreement.

22. Assigns: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of the City. Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City to assign its rights under this Agreement.

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

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

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

\_\_\_\_\_  
City Official

\_\_\_\_\_  
Subdivider

## ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

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

### 1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

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

### 2. Escrow Account

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

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

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

### 3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:



- a. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the governing body an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the governing body.

#### 4. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

#### 5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of \_\_\_\_\_. The bond must be in effect until the completed improvements are accepted by the governing body.

#### 6. Special Improvements District

The governing body may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to Title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

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

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

**MODEL**  
**IRREVOCABLE LETTER OF CREDIT**

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

Name of Local Government  
Address

Date

Gentlemen:

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

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

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

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

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

(Lending Institution)

(Signature and Title of Official)

## GRANT OF ACCESS EASEMENT

THE GRANTOR does hereby give, grant and convey unto the Grantee, its successor and assigns, the right, privilege and authority to construct, reconstruct, maintain, operate, repair, improve, and to travel upon and use, a road and its necessary fixtures and appurtenances through, over, and across a corridor, 60 feet wide, shown on the attached certificate of survey, extending across the following described tract(s) of land:

THIS GRANT of right and authority shall run with the said property and be binding on the Grantor, its successors, all subsequent owners and any parties having right, title, or interest in the said property.

Grantor

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they executed the same.

Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires \_\_\_\_\_



AN ACT GENERALLY REVISING THE LOCAL SUBDIVISION REVIEW PROCEDURE; REVISING THE INFORMATION A GOVERNING BODY MAY CONSIDER WHEN DETERMINING IF SUBSEQUENT HEARINGS ARE REQUIRED FOR A SUBDIVISION APPLICATION; REVISING THE REQUIREMENTS FOR A PHASED SUBDIVISION; PROVIDING TIMELINES AND AMENDED CONDITIONS OF A FINAL PLAT APPROVAL; REVISING THE EXPEDITED SUBDIVISION REVIEW PROCESS; AMENDING SECTIONS 76-3-615, 76-3-617, AND 76-3-623, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-615, MCA, is amended to read:

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

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

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

~~(b) constitutes relevant, new information regarding a subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by either the governing body or its agent or agency at a hearing during which the subdivision application was considered and has a substantial effect on the governing body's consideration of the application.~~

(3) If the governing body determines that the ~~public comments or documents constitute information~~ presented to the governing body constitutes the information described in subsection (2)(b), the governing body

may:

(a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible or the change to the design of the subdivision does not substantially impact the analysis of potentially significant adverse impacts; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information ~~that may have an impact on the findings and conclusions, including a~~ substantial change to the design of the subdivision for purposes of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information that the governing body will ~~rely upon~~ rely on in making its decision on the proposed subdivision.

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

**Section 2.** Section 76-3-617, MCA, is amended to read:

**"76-3-617. Phased development -- application requirements -- hearing required.** (1) A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to parts 5 and 6 of this chapter for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development. The subdivider may change the schedule for review of each phase of the development upon approval of the governing body after a public hearing as provided in subsection (4) if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

(2) Except as otherwise provided by this section, the phased development application must be

reviewed in conformity with parts 5 and 6 of this chapter. In addition, each phase of the phased development must be reviewed as provided in subsection (4).

(3) The governing body may approve phased developments that extend beyond the time limits set forth in 76-3-610 but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat is approved by the governing body.

(4) ~~Prior to the commencement of each phase~~ For any phase of the approved subdivision submitted for final plat approval more than 5 years after the date of preliminary approval of the subdivision, the subdivider shall provide written notice to the governing body not more than 1 year or less than 90 calendar days in advance of submitting the final plat application. The governing body shall hold a public hearing pursuant to 76-3-605(3) within 30 working days after receipt of the written notice from the subdivider to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval. The governing body may amend or impose additional conditions of approval only if it determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances. ~~After the hearing, the governing body shall determine whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases.~~ Notwithstanding the provisions of 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing ~~and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information.~~ Any additional conditions must be met before final plat approval for each ~~particular remaining~~ phase and the approval in accordance with 76-3-611 is in force for not more than 3 calendar years or less than 1 calendar year within the maximum timeframe provided in subsection (3).

(5) The governing body may impose a reasonable periodic fee for the review under subsection (4) of the phases in the phased development."

**Section 3.** Section 76-3-623, MCA, is amended to read:

**"76-3-623. Expedited review for certain subdivisions.** (1) Except as provided in subsection (9), a

subdivision application, regardless of the number of lots, that meets the requirements provided in subsection (3) is entitled to the expedited review process provided in this section at the applicant's request.

(2) A subdivision application that meets the requirements provided in subsection (3) is exempt from:

- (a) the preparation of an environmental assessment as required in 76-3-603; and
- (b) the review criteria listed in 76-3-608(3)(a).

(3) A subdivision qualifies for the expedited review process provided in this section if the proposed subdivision:

- (a) is within:
  - (i) an incorporated city or town or consolidated city-county government and is subject to an adopted growth policy pursuant to Title 76, chapter 1, and adopted zoning regulations pursuant to Title 76, chapter 2, part 3; or
  - (ii) ~~a county water and/or sewer district created under 7-13-2203 that provides both water and sewer services~~ a county water and/or sewer district created under 7-13-2203 that provides both water and sewer services or an area outside the boundaries of an incorporated city, town, county, or consolidated city-county that is served by city, town, county, or consolidated city-county water and sewer services and is subject to an adopted growth policy as provided in Title 76, chapter 1, and zoning regulations pursuant to Title 76, chapter 2, part 2, that, at a minimum, address development intensity through minimum lot sizes or densities, bulk and dimensional requirements, and use standards;
- (b) complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 ~~without the need for variances or other deviations to adopted standards~~; and
- (c) includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

(4) On submission for expedited review under this section, the subdivision application must be reviewed for required elements and sufficiency of information as provided in 76-3-601(1) through (3) to determine whether the application complies with zoning regulations adopted pursuant to 76-2-203 or 76-2-304 and complies with the design standards and other subdivision regulations adopted pursuant to 76-3-504 ~~without~~

~~the need for variances or other deviations to adopted standards~~ and includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.

The application may include a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-504 and in accordance with the provisions of 76-3-506.

(5) The governing body shall:

(a) hold a hearing ~~on and approve, conditionally approve, or deny~~ the subdivision application within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in subsection (3). If the subdivision application includes a request for variance or deviation from subdivision regulations adopted pursuant to 76-3-504, the time for holding a hearing as required in this subsection (5) must be extended to a total of 45 working days.

(b) provide notice for the hearing required in subsection (5)(a) by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing;

(c) approve the application unless public comment or other information demonstrates the application does not comply with:

(i) adopted zoning regulations, design standards, and other requirements of subdivision regulations adopted pursuant to 76-3-504 ~~without the need for variances or other deviations to adopted standards~~, including any criteria for granting variances or deviations from subdivision regulations adopted pursuant to 76-3-504; or

(ii) adopted ordinances or regulations for the onsite development of or extension to public infrastructure; and

(d) provide to the applicant and the public a written statement within 30 days of the decision to approve or deny a proposed subdivision for expedited review as allowed in this section that provides:

(i) the facts and conclusions that the governing body relied on in making its decision to approve or deny the application; and

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

(6) The governing body may:



(a) with the agreement of the applicant, grant one extension of the review period allowed in subsection (5)(a) not to exceed 180 calendar days;

(b) adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements pursuant to Title 76, chapter 4; or

(c) delegate to its reviewing agent or agency the requirement to hold a public hearing on the subdivision application as required in this section.

(7) A local governing body may not adopt zoning regulations pursuant to 76-2-203 or 76-2-304, subdivision regulations pursuant to 76-3-504, or other ordinances or regulations that restrict the use of the expedited subdivision review process as provided in this section.

(8) (a) Except as modified in this section, subdivision applications meeting the requirements for an expedited review remain subject to the provisions of 76-3-608(3)(b) through (3)(d) and 76-3-608(6) through (10), 76-3-610 through 76-3-614, 76-3-621, and 76-3-625.

(b) The provisions of this section supersede any provision of this chapter that is in conflict with any provision of this section.

(9) A subdivision located outside of the boundaries of an incorporated city or town may not utilize the expedited review process provided in this section unless the board of county commissioners of the county where the subdivision is located has voted to allow the provisions of this section to apply to subdivisions located outside the boundaries of an incorporated city or town.

(10) An incorporated city, town, or consolidated city-county shall implement the expedited review provided for in this section for a proposed subdivision that meets the criteria in subsection (3)(a)(i) regardless of whether the city, town, or consolidated city-county has incorporated the provisions of this section into the city, town, or consolidated city-county's local subdivision regulations."

**Section 4. Applicability.** [Section 2] applies to subdivision applications that are approved on or after October 1, 2023.

- END -

I hereby certify that the within bill,  
HB 211, originated in the House.

---

Chief Clerk of the House

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

## HOUSE BILL NO. 211

INTRODUCED BY L. BREWSTER, M. MALONE, S. KERNS, J. SCHILLINGER, C. KNUDSEN, S. VINTON, K.  
SEEKINS-CROWE, M. YAKAWICH, J. FITZPATRICK, J. ETCHART, J. KASSMIER, B. PHALEN

AN ACT GENERALLY REVISING THE LOCAL SUBDIVISION REVIEW PROCEDURE; REVISING THE INFORMATION A GOVERNING BODY MAY CONSIDER WHEN DETERMINING IF SUBSEQUENT HEARINGS ARE REQUIRED FOR A SUBDIVISION APPLICATION; REVISING THE REQUIREMENTS FOR A PHASED SUBDIVISION; PROVIDING TIMELINES AND AMENDED CONDITIONS OF A FINAL PLAT APPROVAL; REVISING THE EXPEDITED SUBDIVISION REVIEW PROCESS; AND AMENDING SECTIONS 76-3-615, 76-3-617, AND 76-3-623, MCA; AND PROVIDING AN APPLICABILITY DATE.”



AN ACT REVISING LOCAL GOVERNMENT REVIEW REQUIREMENTS OF EXEMPT DIVISIONS AND AGGREGATIONS OF LAND; REQUIRING THE GOVERNING BODY TO COMPLETE REVIEWS WITHIN 20 WORKING DAYS; PROHIBITING THE IMPOSITION OF CERTAIN NEW CRITERIA FOR APPROVAL; AND AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-201, MCA, is amended to read:

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

- (a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;
- (b) subject to subsection (4), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- (c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- (d) creates cemetery lots;
- (e) is created by the reservation of a life estate;
- (f) is created by lease or rental for farming and agricultural purposes;
- (g) is in a location over which the state does not have jurisdiction; or
- (h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) An exempt division of land as provided in subsection (1)(a) is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.

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

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

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

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Except as provided in subsection (5), a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (4)(b) subjects the division of land to the requirements of this chapter.

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

(5) If a parcel of land was divided pursuant to subsection (1)(b) and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of this chapter.

(6) The governing body:

(a) may examine a division of land to determine whether or not the requirements of this chapter apply to the division ~~and;~~

(b) may establish reasonable fees, not to exceed \$200, for the examination;

(c) shall complete the examination and approve or deny the application for a division of land under this section within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the examination under regulations adopted pursuant to 76-3-504(1)(p); and

(d) may not impose conditions on the approval of a division of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4."

**Section 2.** Section 76-3-207, MCA, is amended to read:

**"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

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

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

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

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

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

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1), within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder.

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

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

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

(4) The governing body:

(a) may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation ~~and~~;

(b) may establish reasonable fees, not to exceed \$200, for the examination;

(c) shall complete the examination and approve or deny the application for a division or aggregation of land under this section within 20 working days of the receipt of an application containing all materials and information required by the governing body to conduct its review under regulations adopted pursuant to 76-3-504(1)(p); and

(d) may not impose conditions on the approval of a division or aggregation of land under this section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4."

- END -

I hereby certify that the within bill,  
SB 131, originated in the Senate.

---

Secretary of the Senate

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.



## SENATE BILL NO. 131

INTRODUCED BY F. MANDEVILLE, G. HERTZ, C. FRIEDEL, D. ZOLNIKOV, J. TREBAS

AN ACT REVISING LOCAL GOVERNMENT REVIEW REQUIREMENTS OF EXEMPT DIVISIONS AND AGGREGATIONS OF LAND; REQUIRING THE GOVERNING BODY TO COMPLETE REVIEWS WITHIN 20 WORKING DAYS; PROHIBITING THE IMPOSITION OF CERTAIN NEW CRITERIA FOR APPROVAL; AND AMENDING SECTIONS 76-3-201 AND 76-3-207, MCA.



AN ACT PROVIDING AN ALTERNATIVE ADMINISTRATIVE PROCESS FOR CERTAIN MINOR SUBDIVISIONS; PROVIDING CRITERIA AND EXEMPTIONS FOR CERTAIN MINOR SUBDIVISIONS; GRANTING A SUBDIVISION ADMINISTRATOR DECISION-MAKING AUTHORITY; PROVIDING A PROCESS FOR APPEAL; PROVIDING A DEFINITION; AND AMENDING SECTION 76-3-609, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-609, MCA, is amended to read:

**"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations.** (1) Except as provided in subsections (6) through (8), ~~Minor~~ minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

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

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

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

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

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

- (i) the requirement to prepare an environmental assessment; and
- (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

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

- (i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and
  - (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.
- (3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

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

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

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

sufficient information must be based on the new regulations.

(6) First and subsequent minor subdivisions must be reviewed using the administrative process provided for in subsection (7) if the proposed subdivision:

(a) is located in an area that is subject to and complies with zoning regulations adopted pursuant to Title 76, chapter 2, part 2 or 3, that, at a minimum, address development intensity through densities, bulk and dimensional requirements, and use standards;

(b) has a will-serve letter from a municipal water and sewer service or by a county water and/or sewer district created under 7-13-2203 that supplies both water and sewer services;

(c) has existing legal and physical access to each lot; and

(d) does not require a variance to any of the contents of the subdivision regulations required in 76-3-504(1)(g).

(7) An administrative minor subdivision meeting the requirements of subsection (6) is exempt from:

(a) submitting the summary of probable impacts based on criteria described in 76-3-608(3) and the environmental assessment required in 76-3-603;

(b) the review criteria described in 76-3-608(3)(a); and

(c) the requirements of subsections (2) through (5) of this section.

(8) (a) For administrative minor subdivisions, the subdivision administrator appointed by the governing body shall:

(i) assume all decision-making authority of the governing body provided in 76-3-608;

(ii) approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement pursuant to 76-3-620 within 30 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review as provided in 76-3-604(1) through (3); and

(iii) immediately on a determination that the application meets the requirements of 76-3-604(1) through (3), notify by first-class mail of the pending application:

(A) each property owner of record whose property is immediately adjoining the land included in the preliminary plat; and

(B) each purchaser under contract for deed of property immediately adjoining the land included in

the preliminary plat.

(b) If a party identified in 76-3-625(3) objects to a subdivision administrator'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.

(9) As used in this section, "administrative minor subdivision" means a subdivision meeting the requirements of subsection (6). All the requirements of Title 76, chapter 3, except those exempt in subsections (7) and (8), apply to an administrative minor subdivision."

- END -

I hereby certify that the within bill,  
SB 170, originated in the Senate.

---

Secretary of the Senate

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

## SENATE BILL NO. 170

INTRODUCED BY F. MANDEVILLE

AN ACT PROVIDING AN ALTERNATIVE ADMINISTRATIVE PROCESS FOR CERTAIN MINOR SUBDIVISIONS; PROVIDING CRITERIA AND EXEMPTIONS FOR CERTAIN MINOR SUBDIVISIONS; GRANTING A SUBDIVISION ADMINISTRATOR DECISION-MAKING AUTHORITY; PROVIDING A PROCESS FOR APPEAL; PROVIDING A DEFINITION; AND AMENDING SECTION 76-3-609, MCA.



AN ACT REVISING EXEMPTION LAW FOR CERTAIN CONDOMINIUMS AND TOWNHOUSES; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-203, MCA, is amended to read:

**"76-3-203. Exemption for certain condominiums and townhouses.** (1) Condominiums, townhomes, townhouses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1)(a) 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 are complied with; or

(2)(b) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations pertaining to land use, density, bulk and dimensional requirements, landscaping, and parking requirements when local zoning regulations are in effect.

(2) A determination whether the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter must be made by the governing body or the agent or agency designated by the governing body within 20 working days of the receipt of an application containing all materials and information required by the governing body to complete the determination.

(3) The governing body may not enact regulations prohibiting the townhome form of ownership or impose conditions on a determination that the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter, and may not require the condominium, townhome, townhouse, or conversion proposal to undergo a conditional use permit or other quasi-judicial governmental review process



pursuant to regulations adopted pursuant to Title 76, chapter 2, as a prerequisite to determining eligibility for an exemption from the provisions of this chapter."

**Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 331, originated in the Senate.

---

Secretary of the Senate

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

SENATE BILL NO. 331  
INTRODUCED BY G. HERTZ

AN ACT REVISING EXEMPTION LAW FOR CERTAIN CONDOMINIUMS AND TOWNHOUSES; AMENDING SECTION 76-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

| GROWTH POLICY- RECOMMENDED UPDATES TO SUBDIVISION REGULATIONS   |                      |  |
|---|----------------------|--|
| Recommendation  | Included in Updates? | Notes  |
| Carefully evaluate transportation impacts of greenfield development as part of the development review process.  | Y                    | Assessed through Traffic Impact Study; TIS requirement added for all major subdivision applications (Appendix C)                           |
| Require sidewalks, and trail connections where possible, with new subdivisions.   | Y                    | Allowed under current sub regs 28.7.17.4; added to Appendix B  |
| Create Public Works Infrastructure Design Standards to incorporate into the Subdivision Regulations.  | N                    | Completed in August 2022   |
| Explore requiring boulevard tree plantings with all subdivisions.   | Y                    | See 28.7.9.3   |
| Explore watercourse and wetland setbacks.   | N                    | Setbacks will be addressed through future Riparian Corridor study  |
| Require a flood study if proposed development is to be located within a 100-year floodplain.  | N                    | Floodplain Development Permit restricts impacts to regulatory floodplain; development in mapped floodway is prohibited                     |
| Investigate updating subdivision regulations to consider lifetime cost to the taxpayer, <i>tax revenue projections</i> , greenhouse gas emissions, water use reduction, solid waste reduction, reuse of current resources, and <i>coordination of project work to reduce disruption and waste</i> . | N                    | Tax revenue projections already evaluated under current subdivision regs. Reduce disruption/ waste during project is under purview of DEQ. |
| Update regulations to add language from the Subdivision and Platting Act.   | Y                    | Revisions included MCA changes   |
| Include definitions within document   | Y                    | Revisions included MCA changes   |
| All definitions should be updated to meet the intent of the zoning code, subdivision regulations, recommendations of the Growth Policy and compliance with state, county, and local laws.   | Y                    | Updated with MCA changes. Will be updated again for consistency with new zoning code.  |
| Ensure references to MCA and MSPA are up to date.   | Y                    | Revisions included MCA changes   |
| Procedure should be reviewed by staff and legal counsel to ensure proper administration of regulations  | Y                    | Revisions included in MCA changes  |
| Consider removing professional land surveyor and have all plans certified by a professional engineer.   | N                    | Certain design aspects required to be certified by engineers but state law allows survey of subdivision plats by licensed surveyor         |
| Prohibit cul-de-sacs in subdivision development.  | Y                    | Cul-de-sacs only allowed by variance- see 28.7.9.1.3   |
| Require gridded street networks that promote active transportation.   | Y                    | See 28.7.8.4   |
| Consider requiring a tree preservation ordinance to regulate the preservation of desirable trees.   | N                    | Current regs (28.7.9.3.6) encourage tree and vegetation preservation where appropriate; evaluated on case basis.                           |
| Street light electric bill should be the responsibility of the homeowner's association.   | N                    | These are managed through the City's light maintenance districts.  |

| GROWTH POLICY- RECOMMENDED UPDATES TO SUBDIVISION REGULATIONS   |                      |   |
|---|----------------------|---|
| Recommendation  | Included in Updates? | Notes   |
| An engineer should review Table 1 to consider reducing the impact streets have on water runoff and other environmental and fiscal considerations.   | N                    | Design must be consistent with Pub Works Design Standards; impacts to stormwater will be evaluated when MS4 requirements are established                                |
| Table 1 should be updated to meet more modern street sections and give sections for different types of streets (arterial, collector, local).  | Y                    | Table 1 moved to Appendix B and a typical road section was added. Additional street section illustrations to be included in future update to Pub Works Design Standards |
| Explore working with Public Works Department to create city-wide transportation standards for all development.  | N                    | Transportation standards and design are regulated Pub Works Design Standards.   |
| The City should strengthen the drainage facilities requirements. This is often a source of water pollution both during and after construction of the development.   | N                    | This is evaluated during subdivision review by Public Works and MT DEQ.   |
| Evaluate utilizing underground stormwater drainage systems rather than allowing surface gutters along curbs and through intersections for new developments.   | N                    | This is evaluated during subdivision review by Public Works and MT DEQ.   |
| Often developers choose to pay the City for park land dedication. The City often loses green space and other scenic views. Consider requiring park land dedication first and payment in-lieu-of park land as a second option approved by City Commission. | N                    | This is inconsistent with PUD ordinance Sec 30.47.D.4. (created after Growth Policy adopted)  |
| Consider adopting a ridgeline or viewshed ordinance.  | Y                    | requirement to preserve natural terrain- see 28.7.3   |
| Communities often shy away from mobile homes. Review to make sure this is acceptable to the City Commission.  | N                    | Addressed in zoning ordinance, Ch. 30   |
| Ensure all fees are included and cover staff and City resource costs to process each application.   | N                    | Review fees updated annually by separate Resolution   |
| The City should strengthen the variance section.  | Y                    | Variance language is more robust - See Sec. 28.10.2   |
| Add language on evaluation of subdivisions.   | Y                    | Sec 28.4.7.2 includes language to assist evaluating development impacts with respect to seven subdivision review criteria under MCA.                                    |