

CITY OF LIBBY SUBDIVISION REGULATIONS

**Prepared to comply with the
Montana Subdivision and Platting Act**

Adopted: _____, 2024

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I. GENERAL PROVISIONS

I.A. TITLE

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

I.B. AUTHORITY

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

I.C. PURPOSE

These regulations are intended to comply with the Montana Subdivision and Platting Act (76-3, MCA) and are created to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development to minimize costs to local citizens by promoting effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey. The word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

I.D. JURISDICTION

These regulations govern the subdivision of land within the jurisdictional area of the City of Libby.

If a proposed subdivision lies within the Planning Area Boundary as defined in the City of Libby Growth Policy and is proposed for annexation, the City will combine hearings on annexation (with applicable zoning) and subdivision review.

If a proposed subdivision is located in a rural school district, the City shall provide a summary of the information contained in the subdivision application and preliminary plat to school district trustees.

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

I.E. 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.

I.F VIOLATIONS

Any person, firm, corporation, or other entity that 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.

I.G TRANSFERS OF TITLE – ENFORCEMENT

Except as provided in 76-3-303, MCA, 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. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval in proper form. 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.

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 pursuant to provisions set forth in 76-3-303, MCA.

I.H APPEALS

A preliminary or final plat decision made by the governing body may be appealed to the district court within thirty (30) days of such decision. The application shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within City of Libby who can establish a likelihood of material injury to property or its value, or the City Council. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest has been or is likely to be specifically and injuriously affected by the decision.

I.I 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 county not less than 15 days or more than 30 days before the date of the hearing.

II. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

II.A PURPOSE

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

II.B GENERAL CRITERIA TO DETERMINE WHETHER A PROPOSAL IS AN ATTEMPT TO EVADE THE MONTANA SUBDIVISION AND PLATTING ACT (MSPA) [76-3-201, MCA]

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

The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided.

II.C DIVISIONS OF LAND EXEMPT FROM THE MSPA REQUIREMENTS AND THESE REGULATIONS

1. Condominiums constructed on land previously subdivided in compliance with these regulations; or on lots within incorporated cities/towns are exempt from review if:
 - a. The approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements have been met; or
 - b. The condominium proposal is in conformance with applicable local zoning regulations.
2. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.
3. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
 - a. Statement of Intent

The intended purpose of this exemption is to allow a landowner to temporarily segregate a smaller parcel from a tract of land for the express purposes of securing financing.

b. Use of Exemption:

This exemption only applies if the land that is divided is conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. Any other such transfer or conveyance is considered an evasion of the MSPA.

c. Required Materials

When this exemption is to be used, the landowner must submit to the subdivision administrator (hereafter, Administrator):

- i the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
- ii a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and
- iii a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

d. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA and will be subject to subdivision review if:

- i it will create more than one new building site;
- ii the financing is not for construction or improvements on the exempted parcel, or for re-financing;
- iii the person named in the “statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed” is anyone other than the borrower of funds for construction;
- iv title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
- v there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
- vi it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose.

II.D DIVISIONS OF LAND EXEMPT FROM REVIEW BUT SUBJECT TO SURVEY REQUIREMENTS AND ZONING REGULATIONS

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder shall notify the Administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Clerk and Recorder prior to the survey being submitted to the Administrator for evasion review.

1. II-D-1. Relocation of Common Boundary [76-3-207(1)(a), MCA]
 - a. Statement of Intent – The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow transfer of a tract to effect that relocation or elimination without subdivision review.
 - b. Required Information – Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.
 - c. Use of Exemption – The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.
 - d. Rebuttable Presumptions – The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation.
2. A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]
 - a. Statement of Intent – This exemption allows a landowner to convey one parcel ~~outside of a platted subdivision~~ to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. **An immediate family member includes family members of any age and may be owned jointly with that immediate family member’s spouse.** This exemption may be used only by grantors who are natural persons, and not by non-corporal legal entities such as corporations, partnerships, and trusts. **An immediate family member who receives a division of land may not transfer or otherwise convey the division of land for up to two years after the date of the division unless City Council sets a period of less than two years, or City Council authorizes a variance from these requirements to address hardship situations.**
 - i. **Outside Platted Subdivisions**
 1. **For the purposes of II-D-2.a.i, if the property is within a zoning district, each family transfer parcel shall be at least five acres in size unless the zoning district allows for smaller parcel sizes.**
 - ii. **Inside Platted Subdivisions**

1. Division must be within a subdivision that has been approved by City Council; and
 2. Creates parcels of a size allowed within the subdivision.
- b. Required Information – A Certificate of Survey, Amended Plat, if the division is within a platted subdivision, or recording of an instrument of conveyance that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certification of compliance [ARM 24.183.1104(1)(f)]. Also, the certificate of survey, amended plat, or instrument of conveyance must be accompanied by a deed or other conveying document.
 - c. Use of Exemption – See Statement of Intent above.
 - d. Rebuttable Presumptions –The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA and will be subject to subdivision review if:
 - i Use of this exemption is being applied to divide a tract that was previously created through the use of an exemption;
 - ii Use of this exemption to divide tracts that appear to have been created as part of an overall development plan with such characteristics as common roads, utility easements, protective covenants, open space or common marketing or promotional plan;
 - iii A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption;
 - iv The grantee attempts to sell the property back to the original owner.
3. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]
 - a. Statement of Intent – This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.
 - b. Required Information – A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-
 - c. 3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey [ARM 24.183.1104(f)(iii)]. The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.
 - d. Use of Exemption –
 - i "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products.
 - ii The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial

buildings have been or will be built on it, by entering into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.

- iii Any change in use of the land for anything other than agricultural purposes subjects the parcel to subdivision review.
 - iv Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.
4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]
- a. Statement of Intent
 - i This exemption addresses the relocation of common boundaries within subdivisions platted since July 1, 1973, or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.
 - ii If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the clerk and recorder.
 - b. Use of exemption – Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.
 - c. Rebuttable presumption – The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA and will be subject to subdivision review if
 - i the resulting lots are inconsistent with the approved subdivision and the uses in it;
 - ii the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions.

II.E PROCEDURES AND EXAMINATION OF SUBDIVISION EXEMPTIONS

1. Submittal

Any person seeking exemption from the requirements of the MSPA shall submit to the Administrator (1) a certificate of survey (or, if a survey is not required, an instrument of conveyance); and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms

“property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)

2. Examination

When a division of land for which an exemption is claimed is submitted to the Administrator, she/he shall cause the documents to be examined by the designated agents of the governing body (e.g., county attorney, sanitarian, treasurer, and clerk and recorder). The Administrator and governing body agents shall examine 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.

- a. Landowners or their agents are encouraged to meet with the Administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section.
- b. The Administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant’s business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.
- c. If the Administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the Administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or
- d. record the instrument of conveyance and accompanying documents. If the Administrator finds that the proposed use of the exemption does not comply with the statutes and criteria, the Administrator shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.
- e. Within ~~30 calendar~~ 20 working days of receipt of an application containing all materials and information required by the governing body to conduct its review under these regulations, the Administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.

3. Appeals

- a. Any person whose proposed use of an exemption has been denied by the Administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the Administrator’s 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 or these regulations, and thereby rebut a presumption.
- b. If the governing body concludes that the evidence and information overcome the presumption that the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of

survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the 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.

- c. If the person proposing to use an exemption chooses not to rebut a presumption when the Administrator deems the use of the exemption an attempt to evade the MSPA and these regulations, or if the governing body determines that the proposed use of an exemption was for the purpose of evading the MSPA or these regulations, the governing body shall inform the landowner proposing to use the exemption of their decision and inform the landowner they may submit a subdivision application for the proposed land division.

II.F IDENTIFICATION CODES

To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder may cause the following identification codes to be added to the numbering of recorded certificates of survey filed after the effective date of these regulations.

- CO ... Court Order [76-3-201(1)(a), MCA]
- ME ... Mortgage Exemption [76-3-201(1)(b), MCA]
- LE ... Life Estate [76-3-201(1)(e), MCA]
- RB ... Relocation of Common Boundary [76-3-207(1)(a), CA]
- FC ... Family Conveyance [76-3-207(1)(b), MCA]
- AE ... Agricultural Exemption [76-3-207(1)(c), MCA]
- AL ... Aggregation of Lots [76-3-207(e), CA]

III. PRELIMINARY PLAT PROCESS

The following charts summarize the preliminary plat process for minor, subsequent minor, administrative minor, and major subdivisions:

BASIC PROCEDURE FOR (FIRST) MINOR SUBDIVISION REVIEW		
Step 1	Pre-Application meeting between subdivider and City of Libby Planning staff.	Within 30 days of receipt of pre-application request and materials.
Step 2	<u>Element Review:</u> Subdivider submits a complete subdivision application to the Administrator for element review within 180 days of pre-application meeting (otherwise a new pre-application meeting is required).	Maximum five (5) working days.
Step 3	<u>Sufficiency Review:</u> After all elements of the application are determined to be contained within the application, the subdivider submits the application to Planning staff for Sufficiency Review. Reviewing agencies, appropriate neighborhood organizations, and other entities identified by the planning office will be contacted for comment by Planning staff.	Maximum fifteen (15) working days.
Step 4	<u>Governing Body Review:</u> After the subdivision application is deemed sufficient, the subdivider submits three (3) copies [or 2 copies and a CD] of the complete application and supporting materials to the planning office for governing body review.	Maximum thirty-five (35) working days, statutory limit.
Step 5	Planning Staff Report	
Step 6	Governing Body Public Meeting and Decision	
Step 7	Written Decision	Within 30 working days of Governing Body action

BASIC PROCEDURE FOR SUBSEQUENT MINOR SUBDIVISION REVIEW		
Step 1	Pre-Application meeting between subdivider and City of Libby Planning staff.	Within 30 days of receipt of pre-application request and materials.
Step 2	<u>Element Review:</u> Subdivider submits a complete subdivision application to the Administrator for element review within 180 days of pre-application meeting (otherwise a new pre-application meeting is required).	Maximum five (5) working days.
Step 3	<u>Sufficiency Review:</u> After all elements of the application are determined to be contained within the application, the subdivider submits the application to Planning staff for Sufficiency Review. Reviewing agencies, appropriate neighborhood organizations, and other entities identified by the planning office will be contacted for comment by Planning staff, including adjacent property owners.	Maximum fifteen (15) working days.
Step 4	<u>Governing Body Review:</u> After the subdivision application is deemed sufficient, the subdivider submits three (3) copies [or 2 copies and a CD] of the complete application and supporting materials to the planning office for governing body review.	Maximum forty-five (45) working days
Step 5	Planning Staff Report.	
Step 6	Governing Body Review and Decision.	
Step 7	Written Decision	Within 30 working days of Governing Body action

BASIC PROCEDURE FOR EXPEDITED SUBDIVISION REVIEW		
Step 1	Pre-Application meeting between subdivider and City of Libby Planning staff.	Within 30 days of receipt of pre-application request and materials.
Step 2	<u>Element Review:</u> Subdivider submits a complete subdivision application to the Administrator for element review within 180 days of pre-application meeting (otherwise a new pre- application meeting is required).	Maximum five (5) working days.
Step 3	<u>Sufficiency Review:</u> Upon determination that the application is element complete, Planning staff reviews the application to determine sufficiency of the application materials. Upon determination that the application is sufficient for review, each adjoining property owner of record and each purchaser under contract of property adjoining must be notified by first- class mail of the pending application.	Maximum fifteen (15) working days.
Step 4	<u>Governing Body Review:</u> The governing body shall approve, conditionally approve, or deny an expedited subdivision and issue a written statement of the decision.	Within 35 working days of a determination that the application is sufficient for review or 45 working days if a variance is included.

BASIC PROCEDURE FOR ADMINISTRATIVE MINOR SUBDIVISION REVIEW		
Step 1	Pre-Application meeting between subdivider and City of Libby Planning staff.	Within 30 days of receipt of pre-application request and materials.
Step 2	<u>Element Review:</u> Subdivider submits a complete subdivision application to the Administrator for element review within 180 days of pre-application meeting (otherwise a new pre- application meeting is required).	Maximum five (5) working days.
Step 3	<u>Sufficiency Review:</u> Upon determination that the application is element complete, Planning staff reviews the application to determine sufficiency of the application materials. Upon determination that the application is sufficient for review, each adjoining property owner of record and each purchaser under contract of property adjoining must be notified by first- class mail of the pending application.	Maximum fifteen (15) working days.

Step 4	<u>Administrative Review/Written Decision:</u> The subdivision administrator shall approve, conditionally approve, or deny an administrative minor subdivision and issue a written statement of the decision.	Within 30 working days of a determination that the application is sufficient for review.
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BASIC PROCEDURE FOR MAJOR SUBDIVISION REVIEW		
Step 1	Pre-Application meeting between subdivider and City of Libby Planning staff.	Within 30 days of receipt of pre-application request and
Step 2	<u>Element Review:</u> Subdivider submits a complete subdivision application to the Administrator for element review within 180 days of pre-application meeting (otherwise a new pre-application meeting is required).	Maximum five (5) working days.
Step 3	<u>Sufficiency Review:</u> After all elements of the application are determined to be contained within the application, the subdivider submits the application to Planning staff for Sufficiency Review. Reviewing agencies, appropriate neighborhood organizations, and other entities identified by the planning office will be contacted for comment by Planning staff.	Maximum fifteen (15) working days.
Step 4	<u>Governing Body Review:</u> After the subdivision application is deemed sufficient, the subdivider submits twelve (12) copies [or 11 copies and a CD] of the complete application and supporting materials to the planning office for governing body review.	Maximum sixty (60) working days for subdivisions of 6-49 lots; eighty (80) working days for subdivisions of 50 lots or more (M.C.A. 76-3-604(4)).
Step 5	Planning Staff Report.	
Step 6	Planning Board Review – Public Meeting	
Step 7	Governing Body Public Hearing and Decision.	
Step 8	Written Decision	Within 30 working days of Governing Body action

III.A PRE-APPLICATION

1. Prior to submittal of a subdivision application, the subdivider shall provide a written request for a pre-application meeting with the Administrator. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the Administrator.
2. At the time of the pre-application meeting request, the subdivider shall provide to the Administrator a completed pre-application form and the following information:
 - a. An Existing Conditions Map drawn to a scale of 1 inch to 200 feet or larger showing information on the current status of the site, including:
 - i Location;
 - ii Approximate boundaries of existing parcels of record;
 - iii Description of general terrain;
 - iv Natural features, e.g., lakes, streams, and riparian vegetation;
 - v Existing structures and improvements;
 - vi Approximate location of existing utility lines and facilities;
 - vii Approximate location of existing easements and rights-of-way; and
 - viii Parks and open space.
 - b. A preliminary drawing at a scale of 1 inch to 200 feet or larger showing information on the proposed subdivision including:
 - i Approximate lot boundaries;
 - ii Building/lot layout. **If a phased development is proposed, each phase should include this data per phase;**
 - iii Proposed access, including approximate location of easements and rights-of-way;
 - iv Proposed public improvements;
 - v General location of proposed utility lines and facilities and;
 - vi Parks and open space, if applicable. **If a phased development is proposed, each phase should include this data per phase;**
 - c. General maps and information including:
 - i A brief narrative of the project;
 - ii Zoning map with site identified, if applicable;
 - iii Floodplain map with site identified, if applicable;
 - iv Vicinity sketch showing adjacent uses with site identified;
 - v USGS Topographic map with site identified;
 - vi Most current aerial photograph with site identified.
3. At the pre-application meeting:
 - a. the Administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations, floodplain regulations, Wildland Urban Interface Guidelines, access standards, Living with Wildlife guidelines, and Best Management Practices construction guidelines;

- b. the Administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the Administrator on the subdivision application. The Administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
 - c. the Administrator shall provide the subdivider with information on how to obtain a copy of the preliminary plat application forms and identify particular additional information the Administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the Administrator to request additional information at a later time.
4. Unless the subdivider submits a subdivision application within 180 days of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

5. Permission to Enter

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

6. Construction

- a. Timing – No construction, development or alteration of the site, including grading or excavation relating to improvements on a proposed subdivision shall proceed from the time the application has been submitted until the governing body has granted preliminary approval of the proposed subdivision plat. With the exception of fuels reduction and timber harvesting, all historic, cultural, archaeological and natural resources on the site shall remain unaltered. Riparian vegetation and wetlands may not be damaged or removed. Nothing in this section should be construed to prevent the following:
 - i Work related to testing, analytical or monitoring activities that may be required by these regulations or are relevant to the processing of the subdivision application, OR
 - ii Previously scheduled work, unrelated to the subdivision proposal described in the application, related to utility maintenance or utility construction, OR
 - iii The construction of a single residence which would otherwise be a permitted use and the construction of any necessary improvements and closely related outbuildings that are necessary to serve the single residence, OR
 - iv Activities identified by the subdivider as being likely to occur after the subdivision application has been submitted and which have been approved in writing by the Planning Director.

- b. Enforcement – Construction or alteration of resources on site as described above will render a subdivision application insufficient for failure of the application to accurately describe the current status of the land proposed for subdivision and must be addressed through submission of an amended application pursuant to Section III-A-4.c prior to further processing of the application. Restoration of any resource alteration, as described above, may be required as a condition of subdivision approval for an amended application.

7. Review Process

Upon submittal of a complete preliminary plat and subdivision application pursuant to Section IV of these regulations the following review process begins. In the event an application is not resubmitted during the Element or Sufficiency review periods within 180 days of receiving the Administrator's letter of deficiency, a new application and associated review fees will be required.

a. Element Review

- i Within 5 working days of receipt of a subdivision application preliminary plat and review fee, the Administrator shall determine whether the application contains all of the applicable materials required by these regulations and shall give written notice to the subdivider of the Administrator's determination.
- ii If the Administrator determines that elements are missing from the application, the Administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the Administrator until the application is resubmitted.
- iii The subdivider may correct the deficiencies and resubmit the application.
- iv If the subdivider corrects the deficiencies and resubmits the application the Administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the applicable materials required.
- v This process shall be repeated until the subdivider submits an application containing all the applicable materials required, or the application is withdrawn.

b. Sufficiency Review

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

- iv If the subdivider corrects the deficiencies and resubmits the application. The Administrator shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
- v This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.
- vi A determination that an application contains sufficient information for review does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the Administrator, planning board, or the governing body to request additional information during the review process.
- vii A determination of sufficiency by the Administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. Amended Applications

If the subdivider changes the subdivision application or preliminary plat after the planning office makes a determination of sufficiency but before the governing body has rendered a decision, the subdivider shall submit the amended application to the Administrator for review. Changes made by the subdivider in response to the Administrator, agencies or public comment will not force a suspension of the review period by more than ten (10) working days.

- i Within five (5) working days of receiving the amended application or preliminary plat, the Administrator shall determine whether the changes to the subdivision application or preliminary plat are material.
- ii The review period is suspended while the Administrator considers whether the changes to the subdivision application or preliminary plat are material.
- iii If the Administrator determines the changes are not material, the review period resumes when the Administrator mails notice of the decision to the subdivider.
- iv If the Administrator determines the changes are material, it 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 review period.
- v By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period.
- vi The following changes, although not an exhaustive list, may be considered material:
 1. Configuration or number of lots;
 2. Road layout;
 3. Water and/or septic proposals;
 4. Configuration of park land or open spaces;

5. Easement provisions; and
 6. Designated access.
- d. **Determination of Amended Applications – Appeal Process**
- A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the planning office 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.
- i The review period is suspended until the governing body decision on the appeal is made.
 - ii If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted.
 - iii If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the review period resumes as of the date of the decision.
 - iv By appealing the decision of the planning office, the subdivider agrees to suspension of the review period.
- e. **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.
- f. **Statutory Deadlines – Governing Body Decision**
- Once the Administrator has given notice to the subdivider that the application is determined to be sufficient for review, the review period for minor or major subdivisions begins (see tables above). Notification constitutes the date when the Administrator sends notice to the subdivider. Subsequent minor subdivisions will be reviewed pursuant to the major subdivision process.
- g. **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 35-, 45-, 60- or 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 Administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the Administrator shall notify the subdivider of the contact and the timeframe for response.

h. Subdivider's Preference for Mitigation

No later than ten (10) days before the meeting or hearing at which the governing body is to consider the subdivision application and preliminary plat, the subdivider may submit in writing to the governing body comments on and responses to the planning board or staff recommendations. This document may include the subdivider's alternative proposals, if any, for mitigating the impacts identified in the recommendations. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference.

i. Mitigation of Impacts

- i The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review process of the subdivision application without unreasonably restricting a landowner's ability to develop the land. **The governing body may not require a set-aside of land or monetary contribution for the loss of agricultural soils.** The governing body shall issue written findings to justify the reasonable mitigation required under this section.
- ii The governing body shall consider the following in determining the appropriate mitigation:
 - 1. Whether unmitigated impacts of a proposed development are unacceptable, precluding approval of the plat.
 - 2. The expressed preference of the subdivider.
- iii Although a governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, it may require mitigation of impacts created by the subdivision.

j. Governing Body Decision and Documentation

i Prerequisites to Approval:

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

- 1. Provides easements for the location and installation of any planned utilities;
- 2. Provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- 3. Assures that all required public improvements will be installed before final plat approval, or that such installation after final plat approval will be guaranteed as provided by these Regulations; and
- 4. Will comply with the requirements of 76-3-504, MCA, regarding the disclosure and disposition of water rights.

ii Consideration – Standards

In approving, conditionally approving or denying a subdivision application and preliminary plat, the governing body and/or planning board shall consider whether the proposed subdivision complies with:

1. These regulations;
2. Any other applicable regulations; and
3. The Montana Subdivision and Platting Act Primary Review Criteria:
 - a. Impact on agriculture;
 - b. Impact on agricultural water user facilities;
 - c. Impact on local services;
 - d. Impact on natural environment;
 - e. Impacts on wildlife;
 - f. Impacts on wildlife habitat; and
 - g. Impacts on public health and safety; and
 - h. **excluding any consideration of whether the proposed subdivision will result in a loss of agricultural soils.**

iii **Consideration – Evidence**

In making its decision to approve, conditionally approve or deny a proposed subdivision, the governing body and/or planning board may consider the following, as applicable:

1. The subdivision application and preliminary plat;
2. The Primary Review Criteria Report (EA), when applicable;
3. The Summary of Probable Impacts and Mitigation;
4. The City of Libby Growth Policy;
5. Comments, evidence and discussions at the public hearing(s);
6. The planning staff report and recommendation;
7. Planning Board recommendation; and
8. Water and sanitation information provided or public comment received regarding the water and sanitation information only if the conditional approval or denial is based on existing subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.
9. Any additional information authorized by law.
10. **The City Council may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcel.**

iv **Documentation of Governing Body Decision**

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 subsection (ii) and (iii) above. Additionally, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

1. Contain information regarding the appeal process for the denial or imposition of conditions;
2. Identify the regulations and statutes that are used in reaching the decision to approve, deny or impose conditions and explain how they apply to the decision;
3. Provide the facts and conclusions that the governing body relied on in making its decision and reference documents, testimony or other materials that form the basis of the decision;
4. Provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved;
5. Include public comment relative to water and sanitation issues; and
6. If the City Council conditionally approves the proposed subdivision, each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in Section ii.c. above that forms the basis for the condition.

8. Governing Body Hearing

- a. Upon receipt of the planning board's recommendations on major subdivisions and subsequent minors, the governing body shall hold a hearing to review the subdivision application.
- b. All comments and documents regarding the subdivision shall be submitted to the Administrator, rather than to the governing body directly, to be forwarded to the governing body.
- c. The governing body shall determine whether public comments or documents presented for consideration at the governing body's review constitute either:
 - i information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the governing body shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii new information or analysis of information that has never been submitted as evidence or considered by the planning board at a meeting on the subdivision application, in which case the governing body shall proceed as set forth in subsection (d) below.
- d. If the governing body determines that public comments or ~~documents other information~~ presented at the hearing constitute ~~new relevant, information or an~~

~~analysis of new information regarding the subdivision application or a substantial change to the design of the subdivision that has never been submitted as evidence or considered by the governing body or its agents or agency planning board at the public hearing on the subdivision application and has a substantial effect on the governing body's consideration of the application, the governing body may: determines the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections (e) and (f) below.~~

- i If the governing body determines the information or analysis of information is either not relevant or not credible or the change to the design of the subdivision does not substantially impact the analysis of the potential significant adverse impacts, then the governing body shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - ii If the governing body determines the new information or analysis of information is relevant and credible or the change to the design of the subdivision does substantially impact the analysis of the potential significant adverse impacts, then the governing body shall schedule a subsequent public hearing.
 - iii At the subsequent hearing the governing body shall consider only the new information ~~or analysis of information that may have an impact on the findings and conclusions~~, including a substantial change to the design of the subdivision for the purpose 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~~ on in making its decision on the proposed subdivision.
- e. New information or analysis of information is considered to be relevant if it constitutes a substantial change to the design of the subdivision for the purpose of considering its findings of fact and conclusions and any proposed conditions of approval in light of the new information ~~may have an impact on the findings and conclusions~~ that the governing body will rely on in making its decision on the proposed subdivision.
- f. New information or analysis of information is considered to be credible if it is based on one or more of the following:
- i physical facts or evidence;
 - ii documented personal observations, e.g. photographs;
 - iii evidence provided by a person with professional competency in the subject matter, e.g. professional engineer, doctorate; or
 - iv documented and submitted scientific data.

9. Subsequent Public Hearing

- a. If a subsequent public hearing is held, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. The governing body shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

- i The governing body shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearings.
 - ii At least 15 days prior to the dates of the hearings, the Administrator shall give notices of the hearings by certified mail to the subdivider.
 - iii At least 15 days prior to the dates of the hearings, the Administrator shall give notices of the hearings by certified mail to, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- b. If a subsequent public hearing is held, the review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The review period resumes on the date of the governing body's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

10. Effect of Approval of Application and Preliminary Plat.

- a. Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be for 3 calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.
- b. 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. However, clarification, modification, or elimination of conditions may be made as warranted provided they are consistent with the original intent of the findings of facts for the subdivision.
- c. The governing body may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

III.B REVIEW PROCEDURE FOR SUBDIVISIONS CREATED FOR LEASE/RENT OR CONDOMINIUMS

(Applies to 2 or more dwelling units)

1. Review and Approval

Subdivisions created for lease or rent and condominium subdivisions (not exempt pursuant to Section II above) are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act but must be submitted for review and approved by the

governing body before portions thereof may be rented or leased or before a Declaration of Condominium may be filed. Review and approval will be as outlined above.

2. Improvements

Before any portion of a rental or lease subdivision may be rented or leased the subdivider shall have installed all required improvements.

3. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a plan conforming to the requirements for preliminary plats specified in Section IV. The plan shall show the lot layout and the typical location of the manufactured home, recreational vehicle or other unit on the lot. The subdivider shall submit the plan to the Planning Department for review to ensure that it conforms to the approved preliminary plan.

4. DEQ License

Manufactured housing communities and recreational vehicle parks are required to be licensed by the Montana Department of Environmental Quality under the provision of Title 50, Chapter 52, MCA.

III.C PLANNED UNIT DEVELOPMENTS

The intent of this section is to provide flexibility in certain subdivision standards, allowing the subdivider creativity in subdivision design using a concept which clusters development, so that the cost of installing and maintaining roads, water and sewer lines, and utility services is minimized while open space, the natural terrain including natural drainages and vegetation, and unique natural features are preserved to the maximum extent possible. The PUD concept promotes the planning of land to allow for an individual use such as residential or for a harmonious combination such as a mixture of residential and commercial uses.

1. Designation as PUD – A PUD development must comply with the provisions of these regulations, except as outlined below. To obtain designation of a subdivision as a PUD, the subdivider shall submit to the planning office the following:
 - a. A written request that the plan of the proposed subdivision be reviewed as a PUD;
 - b. A layout plan showing the proposed location and use of lots and structures and, if appropriate, the location and number of parking spaces;
 - c. A sketch plan of the proposed subdivision containing all information requested in Section III-A, Pre-application Procedures;
 - d. A description of open space, recreational facilities, roads, and other facilities proposed to be under common ownership;
 - e. Proposed restrictive covenants, if any;
 - f. A description of proposed form of property ownership within the development;
 - g. A statement describing measures to be taken to assure permanence and maintenance of open space and other facilities to be held in common ownership;

- h. A schedule showing street and utility improvement completion dates;
 - i. A description of all proposed variations from the requirements and provisions of Section VI: Subdivision Design Standards; and
 - j. Any additional information that the Planning Department may reasonably require.
2. Criteria for Designation – The Planning Department shall review the information and proposed plan and, before designating the subdivision a PUD, shall determine that the development plan promotes the clustering of individual building sites, conforms to the definition and intent of this section, and accomplishes at least four of the following:
- a. Preserves, to the maximum extent possible, the natural characteristics of the land, including topography, vegetation, and streams or other bodies of water;
 - b. Provides for economical development of streets and other public improvements;
 - c. Protects important wildlife habitat or important historic sites or structures, and preserves productive agricultural land, open space, or riparian areas.
 - d. Provides for dedication and development of common open space for recreational purposes.
 - e. Provides developed facilities for recreational purposes.

III.D PHASED DEVELOPMENT

If a project is proposed to be phased it must meet the applicable requirements identified below.

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

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

~~A project may be phased over a period which exceeds three (3) years if the developer provides a detailed plan for the future phases of the subdivision and the proposed timing of the phasing. The governing body reserves the right to impose additional conditions, which require compliance with regulations in existence at the time that each phase is brought before the governing body for review.~~

- ~~1. The subdivider may propose, as part of the preliminary plat approval process, phasing of two (2) or more final plats. If phasing of the final plats is proposed, the preliminary plat must be accompanied by a phasing plan which designates which lots and improvements shall be filed with each specific phase and a legend that lists each phase and the specific final plat filing deadline for each phase.~~
- ~~2. Each phase must be fully capable of functioning with all the required improvements in place in the event the future phases are not completed or completed at a much later time.~~
- ~~3. When phasing is not indicated on the preliminary plat, the final plat shall be submitted for the entire area shown on the preliminary plat. If the subdivider desires to establish phases following approval of the preliminary plat, a new preliminary plat delineating the phases and establishing the schedule must be submitted and approved by the governing body.~~
- ~~4. Modifications to an approved phasing plat or schedule shall require the approval of the governing body.~~
- ~~5. Final plats of subdivisions approved for phased development shall be filed in accordance with the approval.~~

~~Final plat approval for each subsequent phase will be contingent upon the completion of all improvements in each preceding phase and acceptance of those improvements by the governing body.~~

III.E EXPEDITED REVIEW

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

1. Expedited Review Requirements

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

- a. Is within the City of Libby corporate limits.
- b. Complies with City of Libby Zoning Regulations and complies with design standards and other regulations outlined within the City of Libby Subdivision Regulations; and
- c. Includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.
- d. Expedited Review Application Exemptions

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

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

a. Review Process

On submission for expedited review under this section, the subdivision application must be reviewed for required elements and sufficiency of information as provided in II-A-4 above. The subdivision administrator shall determine whether the application complies with the City of Libby Zoning Regulations and complies with the design standards and other regulations outlined within the Libby Subdivision Regulations. The subdivision administrator shall ensure the application includes in its proposal plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations. The application may include a request for variance or deviation from the City of Libby Subdivision Regulations and must follow the variance procedures outlined in these regulations.

4. Governing Body Review

- a. The City Council shall hold a hearing and approve, approve with conditions, or deny the subdivision application within 35 working days of a determination by the subdivision administrator that the application contains required elements and sufficient information for review. If the subdivision application includes a request for variance or deviation from the subdivision regulations, the time for holding a hearing must be extended to a total of 45 working days.
- b. Provide notice for the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.

- 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 including the criteria for granting variances and deviations from the subdivision regulations; and
 - ii Adopted ordinances or regulations for the onsite development of or extension to public infrastructure.
- 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.
- e. The City Council may do the following as it relates the expedited review:
 - i With the agreement of the applicant, grant one extension of the review period allowed in subsection 1 above, not to exceed 180 calendar days; and
 - ii Adopt conditions of approval only to ensure an approved subdivision application is completed in accordance with the approved application and any applicable requirements of the City of Libby Subdivision Regulations.

5. Subdivision Located Outside City Limits

A subdivision located outside of the boundaries of incorporated limits of the City of Libby 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.

III.F. ADMINISTRATIVE MINOR SUBDIVISION REVIEW PROCEDURE.

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

1. Applicability

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

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

2. Exemptions to Administrative Minor Subdivision Application Requirements.

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

- a. Review of the subdivision based on the primary review criteria and submittal of the summary of probable impacts based on the primary review criteria.
- b. Preparation of an environmental assessment.
- c. Public hearing requirements.
- d. Parkland dedication.

3. Process

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

4. Appeal

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

IV. PRELIMINARY PLAT SUBMITTAL REQUIREMENTS

Along with the requisite fees, the following information shall be submitted for preliminary plat review (NOTE: If a manufactured housing community, RV Park or condominium development is proposed, provide a plan with all applicable information required on a preliminary plat.):

1. Completed Subdivision Application
2. Preliminary Plat clearly labeled "Preliminary Plat" conforming to the following:
 - a. Format: one (1) standard format (24x36 with 1 ½ inch margin on binding side); and one reduced to 11x17. Each sheet of the preliminary plat shall be numbered and the total number of sheets noted.
 - b. Identifying Information
 - i Subdivision/Development name
 - ii Legal description
 - iii North arrow
 - iv Scale used on the plat
 - v Names of owner(s) of record and sub-divider(s)
 - vi Date preliminary plat was drawn
3. Survey Information
 - a. Exterior boundaries of the property to be subdivided
 - b. Approximate location of all section or legal subdivision corners pertinent to the subdivision.
 - c. Approximate dimensions and area of each lot. Lots and blocks shall be designated by number and area, as applicable.
 - d. All streets, alleys, avenues, roads, and highways including proposed street names.
 - e. The area, locations, boundaries, and dimensions of all parks, common areas, and other areas dedicated for public use.
 - f. Total gross area of the subdivision and total net area of lots
 - g. Ground elevations of the subject property, including elevations and benchmarks.
 - h. Contour intervals shall be vertical intervals of two feet where the average slope of the subdivision is less than 10% and at intervals of five feet where the average slope of the subdivision is 10% or greater.
 - i. Approximate location and identification of all existing and proposed private and public easements and rights-of-way, including descriptions of their widths and purposes.
 - j. Existing and/or proposed irrigation ditch easements
 - k. Proposed locations of all intersections, driveway approaches and other access points in relation to existing and proposed roads.

- I. Identified hazard areas shall be prominently shown on the subdivision plat and in other records of conveyance.
 - m. Any proposed “No-Build-No Disturbance” areas.
 - n. The area of the subdivision within the FEMA-designated floodway and/or flood fringe, if applicable.
4. Project Summary fully describing existing site conditions and project proposal.
5. Primary Review Criteria Questionnaire (Environmental and Community Assessment) pursuant to MCA 76-3-603 & 608(3) and a report describing the probable impacts resulting from the proposed subdivision and proposed mitigation for each criteria listed below [*First minor subdivisions must provide a Summary of Probable Impacts, which can be incorporated into the Project Summary, for each of the criteria. Administrative Minors are exempt from this requirement*]:
 - a. Agriculture: Demonstrate that the subdivision proposal will have no adverse impacts on agriculture; or identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts.
 - b. Agricultural Water User Facilities: In areas where agricultural water user facilities exist on the subject property or adjoin the property, identify the agricultural water user, describe any proposed changes to the agricultural water use and describe alterations to the availability of water.
 - c. Local Services: Identify the services and evaluate the impacts on those services including transportation elements, utilities, water supply, sewage disposal, solid waste disposal, schools, emergency services, and information pertaining to residential units and taxation.
 - d. Natural Environment: Identify the resources and evaluate the impacts on those resources including adjacent public lands, cultural resources, hydrological characteristics, soil characteristics and vegetative cover types.
 - e. Wildlife: Identify species of fish and wildlife which use the area to be affected by the proposed subdivision and describe measures to minimize or mitigate conflicts between residents and wildlife.
 - f. Wildlife Habitat: Habitat consists of an animal’s home or range that includes food, water, shelter (or cover), and space in order for them to survive. Identify any known critical or key wildlife areas and travel corridors. Describe any proposed measures to protect or enhance wildlife habitat or to minimize degradation of habitat.
 - g. Public Health and Safety: Demonstrate that the proposed subdivision will not have adverse impact on conditions that relate to the public health and safety including emergency services; environmental health; flooding, rock falls or landslides, unstable soils, steep slopes, wildfire and other natural hazards, high voltage lines or high pressure gas lines; on-site or nearby off-site land uses that create a nuisance (e.g. noise, dust, smoke, unpleasant odors), and air or vehicular traffic safety hazards.

6. Supplemental Maps **and additional relevant information as necessary** (some of which may be combined or the information can be included on the preliminary plat)
 - a. A vicinity map showing the subject property and the area within 1000 feet of it.
 - b. A map showing the relationship of the proposed subdivision to adjacent property and roads to include:
 - i. the names of platted subdivisions and certificates of survey numbers;
 - ii. ownership of adjacent lands, including those across public/private rights-of-way
 - c. An aerial photograph showing the location of the proposed subdivision and areas located within three hundred (300) feet of the subject property.
 - d. Survey history of the subject property
 - e. A USGS topographic map with the subject property clearly indicated.
 - f. An Existing Conditions Map as required in Section III-A and updated to reflect any new information such as fire chimneys and other hazards, slopes over 30%, floodplains, etc.
 - g. Other maps as a result of addressing the Primary Review Criteria
 - h. **Title report or subdivision guarantee for the property to be subdivided.**

7. Phasing Plan (as applicable):

- a. When a tract of land is subdivided in phases, an overall development plan indicating the subdivider's intentions for development of the entire tract, including incremental provisions for utilities and estimated timing of construction. A subdivider applying for a phased development shall submit with the subdivision application an overall phased development preliminary plat on which independent platted development phases must be shown. Each phase must include a minimum of 6 lots and the date of completion of each phase. Each phase must include:
 - i. a separate preliminary plat with the number of lots in that phase;
 - ii. the location of proposed water and wastewater infrastructure needed to serve that phase and demonstrate how these systems can function independently and will provide for future connectivity;
 - iii. the location of proposed storm water infrastructure needed to serve that phase and demonstration how these facilities can function independently and will provide for future connectivity;
 - iv. the location of proposed streets and nonmotorized infrastructure needed to serve that phase and demonstration how the proposed motorized and nonmotorized transportation network can function independently and will provide for future connectivity; and
 - v. the proposed parkland dedication and demonstration how the dedicated parkland can function independently.

~~1.—Date each phase will be submitted for final plat review~~

~~2.—Improvements to be completed with each phase~~

~~3.—Amount of parkland dedication required for each phase and amount provided.~~

8. Street and Road Plans (as applicable)
 - a. Typical cross-sections for each type of road proposed or road improvement;
 - b. Road profiles and cross-sections for all proposed streets and roads which have grades exceeding seven (7) percent or cuts and fills exceeding three (3) feet;
 - c. Grades, surface and base thickness, and width;
 - d. Drainage facilities
 - e. Street names;
 - f. Minimum site distances and curb radii at corners;
 - g. Locations and characteristics of bridges and culverts; and
 - h. For cul-de-sac streets, provide the widths of turn-around radii, minimum right-of-way widths at turnarounds, minimum surface widths at turnarounds, and total length.
9. Utility Plan showing existing and proposed infrastructure on and within five hundred (500) feet of the property including:
 - a. Approximate location, size and depth of nearest sewer and water mains;
 - b. Approximate location and size of wells and fire hydrants;
 - c. Approximate location of nearest electric and telephone services
 - d. For administrative Minor Subdivisions, a will serve letter from the City of Libby that each lot will be served by existing water and sewer.
10. Water and Sanitation (Administrative minors are exempt from these requirements)

The State of Montana [MCA 76-3-622] requires subdividers to provide the following water and sanitation information for any new subdivision that will include a new water supply system or new wastewater facilities. In compliance with this law, attach a separate document entitled "Water & Sanitation Report" which contains the following:

 - a. A vicinity map or plan that shows:
 - i The location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of flood plains; surface water features; springs; irrigation ditches;
 - ii Existing, previously approved and proposed water wells and wastewater treatment systems including mixing zones for the subdivision;
 - iii The representative drain-field site used for the soil profile description; and
 - iv The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities
11. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or

public as those systems are defined in rules published by the Department of Environmental Quality;

12. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the Department of Environmental Quality pursuant to 76-4-104, MCA;
13. Evidence of suitability for new on-site wastewater treatment systems that, at a minimum, include:
 - a. A soil profile description from a representative drain-field site identified on the vicinity map that complies with standards published by the department of environmental quality;
 - b. Demonstration that the soil profile contains a minimum of four (4) feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - c. In cases in which the soil profile or other information indicates that ground water is within seven (7) feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance of four (4) feet.
14. For new water supply systems, unless cisterns are proposed, evidence of adequate water availability:
 - a. obtained from well logs or testing of onsite or nearby wells;
 - b. obtained from information contained in published hydro-geological reports; or
 - c. as otherwise specified by rules adopted by the department of environmental quality pursuant to 76-4-104, MCA;
15. Evidence of sufficient water quality in accordance with rules adopted by the Department of Environmental Quality pursuant to 76-4-104, MCA.
16. Preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301, MCA and 75-5-303, MCA related to standard mixing zones for ground water, source specific mixing zones, and non- significant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis, the sub- divider may perform a complete non-degradation analysis in the same manner as is required for an application that is reviewed under Title 76, Chapter 4.
17. Slope Map showing slopes greater than 30%
18. Additional Material (as applicable):
 - a. In areas where there is potential for landslides, slope instability or high ground water, provide a report by a qualified soil or geotechnical engineer indicating the locations, character and extent of all areas subject to said hazards.

- b. When evidence of high groundwater or unstable soil is present provide a groundwater drainage mitigation plan prepared by a licensed professional engineer (PE) to mitigate the problem.
- c. Floodplain Analysis
- d. Noxious Weed Assessment/Inventory
- e. Fire Risk Assessment
- f. Traffic Impact Analysis, if the proposed project generates 400 or more ADT on any one road based on a trip distribution analysis.
- g. If access to the subdivision is across private property not owned by the subdivider, provide evidence of legal access or describe how it will be obtained prior to filing the final plat.
- h. Existing covenants
- i. Variance requests.

19. Covenants

- a. Common property is to be deeded to a property owners' association. The covenants and by-laws which govern the association must, at a minimum, provide for the:
 - i Transition of control of the association from the Declarant to the homeowners.
 - ii Formation of a property owners' association and filing of Articles of Incorporation with the Secretary of State's office;
 - iii 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;
 - iv Perpetual reservation of the common property when required under 76-3-621(6)(a), MCA;
 - v Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
 - vi Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
 - vii Adjustment of assessments to meet changing needs;
 - viii Means of enforcing the covenants, and of receiving and processing complaints;
 - ix Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
 - x Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.
- b. The governing body may require that some or all protective covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the governing body, be set forth in a separate heading identifying them as plat approval covenants and indicating: "These covenant(s) may not be repealed or amended without prior written consent of the City of Libby." Such provisions may include:

- i Noxious Weed Plan
- ii WUI Guidelines
- iii Visibility of Address Signs from Street
- iv Riparian Buffer

20. Road Maintenance Agreement

A preliminary road maintenance agreement (RMA) is required for all private roads and common accesses providing legal access to lots within the subdivision and must address the following provisions:

- a. Description of the parcels that are subject to the agreement;
- b. Sections of the road(s) or access locations subject to the RMA;
- c. The RMA is binding to any person having an interest in a parcel subject to the RMA;
- d. Any person providing public utilities may use the utility easements for such purposes;
- e. Decisions to undertake any road maintenance is the responsibility of the landowners and shall be based on a majority vote (over 50%, or in accordance with the HOA provisions) of the parties to the agreement;
- f. Parties eligible to cast a vote (one vote per parcel);
- g. How the costs of maintenance will be assessed (equally or disproportionately) to the parties in the RMA;
- h. The amount to be assessed in the event that a party subdivides a parcel that is subject to the RMA;
- i. In the event that an assessment becomes delinquent, the assessment and interest and the cost of collection shall become a continuing lien on the lot;
- j. The RMA is perpetual and cannot be rescinded unless the county or state agrees to maintain the roadway described in the agreement;
- k. Maintenance of dust control, snow removal, maintenance of storm water drainage facilities, ordinary maintenance and reconstruction if necessary. The RMA shall also include on-street parking enforcement provisions, in accordance with on-street parking provided for in the road design, because failure to enforce on-street parking may result in the inability of emergency services providers to provide service to lots along this road(s);
- l. The agreement may be amended, except that it may not be amended to be less strict or less inclusive; and
- m. Notary statement.

The RMA shall be filed (prior to or concurrent with the filing of the final plat) with the Clerk & Recorder's Office as a single document and shall not include other provisions not related to road maintenance. The subdivider may choose to include the RMA in the covenants provided there is a statement that the road maintenance section cannot be amended to be less strict or less inclusive.

V. FINAL PLAT PROCESS AND SUBMITTAL REQUIREMENTS

All final plats must be prepared by a professional land surveyor licensed to practice in the State of Montana; must conform to the preliminary plat as previously reviewed and approved by the governing body; must incorporate all required modifications; and must comply with all conditions of preliminary plat approval. Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

V.A FINAL PLAT REVIEW

1. Final Plan Check

Prior to submitting a final plat and accompanying documentation, the subdivider shall submit a draft final plat for review. The final plan check submittal shall include:

- a. Two (2) copies of the final plat
- b. Surveyor closure sheets
- c. Final Plan Check fee

2. Review by Administrator

- a. The Administrator shall send a copy of the final plat, along with the closure sheets, to Lincoln County's Examining Land Surveyor (ELS).
- b. The Administrator shall review a copy of the final plat for compliance with preliminary plat approval.
- c. Upon receipt of the ELS-reviewed plat, both copies will be sent to the surveyor of record for corrections prior to final plat submittal.

3. Final Plat Submittal

The final plat and all supplementary documents must be submitted to the Administrator prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- a. the final plat application;
- b. the final plat review fee;
- c. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;
- d. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
- e. the DEQ or local Environmental Health Department approval;
- f. all final state or local encroachment permits,
- g. certification by the designing (or observing) PE that all road and utility improvements have been constructed in accordance with the approved plans.
- h. all record engineering plans;

- i. covenants and associated attachments;
- j. Road Maintenance Agreement
- k. Final Plat(s) with appropriate signatures and notarization seals including two 18" x 24" copy of the final plat.
- l. 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 all public utility companies as such are defined and established by Montana Law, an easement for the purpose of construction, maintenance, repair and removal of their lines; under the areas designated on this plat as “utility easement”.

4. Review by Administrator

- a. The Administrator shall review the final plat submittal to ascertain that all conditions and requirements for final plat approval have been met. The Administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete until all conditions of preliminary approval have been satisfied.
- b. The final plat shall incorporate all modifications required as a result of the preliminary plat review. The governing body, however, may approve a final plat which has been modified to reflect improvements in design or changes which have occurred in the natural surroundings and environment since the time of the preliminary plat review and approval.
- c. If the Administrator determines that the final plat differs materially from the approved or conditionally approved preliminary plat pursuant to Section III-A-4.c. Amended Applications, the applicant may be required to submit an amended application pursuant to said provisions
- d. A determination of the Administrator may be appealed to Libby City Council.

V.B SUBDIVISION 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 (SIA) guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA].

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, real property or other acceptable form of collateral, an opinion of probable costs for the installation of the public improvements shall be prepared by a PE. The amount of the guarantee shall be calculated by multiplying 125% of the estimate. The governing body may require that a certain percentage of improvements be completed prior to entering into an SIA.

V.C FINAL PLAT APPROVAL

- 1. Review of Final Plat.

- a. The governing body shall examine each final subdivision plat and shall approve the plat only if:
 - i it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and
 - ii the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.
- b. Final subdivision plats and certificates of survey shall be reviewed for errors and omissions in calculation or drafting and signed by the County ELS prior to recording with the County Clerk and Recorder pursuant to MCA 76-3-611(2)(a).

V.D FINAL PLAT FILING

After it is approved, the final plat shall not be altered in any manner except as provided in II-B-8. The county clerk and recorder shall 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 shall file an approved plat only if it is accompanied by the documents specified in the Uniform Standards for Monumentation of the Administrative Rules of Montana.

V.E AMENDING FILED PLATS

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 and must be reviewed and approved by the governing body. Any alteration which changes the approved use or increases the number of lots or modifies six or more lots or abandons or alters a public road right-of-way or parkland dedication is subject to a review as a major subdivision per these regulations and the MCA.
2. The governing body may not approve an amended final plat without the written consent of the owners and lien holders of all lots which will be modified by the proposed amendment.
3. The governing body may not approve an amendment that will place a lot in non-conformance with the standards contained in either:
 - a. Section VI of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section VI-V, Variances.
 - b. Local zoning regulations unless the governing body follows the steps required by the regulations necessary to grant a variance, conditional use permit or amendment to the zoning regulations.
4. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats of the ARMs.

VI. DESIGN AND IMPROVEMENT STANDARDS

These standards apply to subdivisions inside the city limits of Libby and areas planned for annexation. All subdivisions approved by the governing body must comply with the provisions of this section, except where granted a variance pursuant to Section VI-V, Variances. The governing body may not grant variances from the provisions of Section VI-D, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to sections VI-R, VI-S, VI-T and VI-U of these regulations.

VI.A CONFORMANCE WITH REGULATIONS

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

VI.B NATURAL ENVIRONMENT

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

VI.C LANDS UNSUITABLE FOR SUBDIVISION

The following lands are unsuitable for subdivision:

1. Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
2. Land for which no building sites can be identified on slopes less than 30% or for which no building site can be identified outside of fire chimneys and more than 150 feet from the apex of fire chimneys.
3. 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.

VI.D FLOODPLAIN PROVISIONS

1. Purpose

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

2. Applicability

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

3. Standards

a. General Criteria

- i Base Flood Elevation and Boundary - The Base Flood Elevations and boundary of the 100-Year Floodplain area must be determined and considered during lot layout and building location design;
- ii Locations of Structures - Locations for future structures and development must be reasonably safe from flooding;
- iii Surface Water Drainage - Adequate surface water drainage must be provided to reduce exposure to flood hazards;
- iv Utilities - Public utilities and facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage; and
- v Permits - Flood Plain permits must be obtained according to these regulations before development occurs that is within the Regulated Flood Hazard Area.

4. Determining Extent of Flood Hazard Area

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

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

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

- b. Areas with Watercourses Not Identified in Local Floodplain Regulations: The area subject to flooding shall be determined by either option #1 or #2 below:
 - i Option #1: The flood hazard area shall be the area:
 1. Within 2,000 horizontal feet and less than 20 vertical feet above the Ordinary High-Water Mark of a watercourse draining an area of 20 square miles or more; or,
 2. Within 1,000 horizontal feet and less than 10 vertical feet above the Ordinary High-water Mark of a watercourse draining an area between 10 and 20 square miles.

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

c. Methodology for Determining Base Flood Elevations

The subdivider shall provide to the Subdivision Administrator, Local Floodplain Administrator, and the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC) the Base Flood Elevations and the 100 year100-year floodplain boundaries, and include a written narrative of methodology, and details of data and calculations used to determine the Base Flood Elevation. The preliminary and final plat shall show the boundary of the area where the Base Flood Elevations intersect site-specific surveyed ground elevations. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The governing body shall provide a written request to the DNRC Floodplain Management Section to review and comment upon the adequacy of the methodology and data used to establish Base Flood Elevations.

If DNRC is unable to provide the review, the governing body or Floodplain Administrator may request the subdivider pay for independent peer review of the Base Flood Elevations and 100 year100-year floodplain boundaries. Any additional subdivision review fees and any independent peer review fees shall be assessed at the rate established by the governing body’s fee schedule.

d. Design Standards

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

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

e. Plat Requirements

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

f. Notice to Lot Purchasers

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

- i Compliance with Restrictions on Development and Artificial Obstructions in the Flood Hazard Area; and

- ii Flood Insurance - The notice should advise the lot purchaser that flood insurance is available only through FEMA and should provide a recent indication of anticipated costs of obtaining such insurance.
- g. No Variance Allowed on Restrictions within the Flood Hazard Area

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

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

 - i Jurisdiction's Locally Adopted Floodplain Ordinance
 - ii Conservation District 310 Permit - 310 permit from a conservation district when a private, nongovernmental individual or entity proposes work in or near a stream on public or private land (Statute: 76-15-701, et seq., MCA (land use regulations) and 75-7-101, et seq., MCA (stream preservation).
 - iii State Land Use License - A land use license or easement is required for an entity proposing a project on lands below the low water mark of navigable waters as designated by the Montana Department of Natural Resources and Conservation (DNRC).
 - iv 318 Authorization (formerly 3A) - Permit must be obtained from the DEQ prior to initiating a short-term activity that may cause unavoidable short-term violations of state water quality standards (). FWP may also issue 318 authorizations during the 310 or 124 permitting process.
 - v Federal Rivers and Harbors Act - Under section 10, federal Rivers and Harbors Act, any structure or work on, over, under or affecting navigable waters requires authorization from the U.S. Department of the Army, Corps of Engineers.
 - vi Clean Water Act - Under section 404 of the federal Clean Water Act, a permit is required from the U.S. Department of the Army, Corps of Engineers, for the placement of dredged or fill materials in United States' waters.
 - vii 401 Water Quality Permit - The Montana Department of Environmental Quality must provide 401 water quality certification prior to issuance of Corps of Engineers permits. The certification process is handled internally through agreements between the agencies.
 - viii Pollutant Discharge Elimination System (MPDES) - Permits issued by DEQ.
 - ix Storm Water Discharge Permit Program for Construction Activity - Permit issued by DEQ. Requires submission of a Storm Water Pollution Prevention Plan (SWPP).
 - x Streamside Management Zone Laws in Chapter 5, Title 77 of MCA.

- xi Natural Streambed and Land Preservation Act, Chapter 7, Title 75 of MCA, which authorizes the 310 permitting process.
- xii Stream Protection Act, Part 5, Chapter 5, Title 87 of MCA, which authorizes the 124 Permit issued by Montana FWP.

5. Applicable Plans

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

~~Land identified within the 100-year floodplain shall be subject to Lincoln County Floodplain Regulations as administered by the Lincoln County Floodplain Administrator.~~

~~If any portion of a proposed subdivision is within 1,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide a floodplain analysis establishing the base flood elevations for the stream. The analysis must be performed by a PE and reviewed and approved by the Floodplain Administrator in consultation with the Montana Department of Natural Resources (DNRG) Regional Engineer.~~

VI.E LOTS

Each lot must contain a building site that conforms to applicable zoning regulations and the following:

1. No lot may be divided by a municipal or county boundary line.
2. No lot may be divided by a public road, alley, right-of-way or easement.
3. Each lot shall abut and have access to a public or private street or road.
4. Corner lots shall have driveway access off the lower classification road.
5. Corner lots must be designed to provide minimum sight distances for safe vehicular movement, based on AASHTO standards for the posted road speed.
6. No lot of less than five acres may have an average depth greater than three times its average width.
7. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
8. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arterials or to overcome specific disadvantages of topography or orientation.
9. All lots must be designed such that homes may be located on the lot in accordance with
10. Firewise standards (see the National Fire Protection Association [NFPA] publication 1144).

VI.F BLOCKS

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.

2. Block length shall not be greater than 600 ft in urban/suburban subdivisions; or they shall match adjacent block lengths, whichever is less.

VI.G STREETS AND ROADS.

NOTE: In order to meet the standards set forth in this section, upgrades to existing roads serving proposed subdivisions may be necessary.

1. Design

All roads must be designed by a PE to be in compliance with standards established in Table 1. Certification by a PE that roads have been designed and constructed as such shall be required prior to final plat approval. As a general guide to geometric design, applicants shall use A Policy on Geometric Design of Highways and Streets, 5th Edition (or later), also known as the “Green Book”, by the American Association of State Highway Transportation Officials (AASHTO).

- a. 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.
- b. Residential driveways must access from the lowest classification road. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation (MDT).
- c. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- d. Intersections. The following requirements apply to intersections:
 - i Streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
 - ii A minimum distance of 125 horizontal feet from centerlines is required between road approaches and intersections, and 50 feet between driveway approaches.
 - iii No more than two streets may intersect at one point (unless roundabouts meeting AASHTO standards are incorporated into the design).
 - iv The grade of approaches to major highways shall be in accordance with MDT standards.
- e. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names nor be named after an individual, unless approved by the governing body.
- f. Cul-de-sacs and other dead-end streets are not permitted unless no other design alternatives can be achieved, or when there is no opportunity for future road connections due to topographical features such as ravines or steep hills.

- g. Proposed road engineering, plans, profiles, and calculations as required may be subject to review by an independent consultant, as may be required by the governing body or Administrator.
- h. All subdivisions shall be designed to ensure that fire apparatus have access to within
 - i. 150 feet of all portions of the proposed residential building sites.

2. Improvements

Applicable road sections shall be designed according to the procedures outlined in AASHTO's 1993 Guide for Design of Pavement Structures and 1998 Supplement (or later versions), and in conformance with the technical specifications of the Montana Public Works Standard Specifications (MPWSS). Documentation that the material conforms to these specifications is required prior to final plat approval.

- a. All roads shall be constructed with 3" of minus sub-base material and paved with 4" of asphalt and designed in accordance with the standards set forth in Table 1.
- b. All street sections shall be constructed to either an urban standard or suburban standard as shown in Table 2. The required section will depend on the proposed subdivision's proximity to existing urban or suburban streets and will be subject to the approval of the governing body. Streetlights will be required at all intersections. Additional lighting may be required for the protection of public health and safety. All street lighting shall be designed with downward directional lighting to minimize light pollution.
- c. Street or road signs and traffic control devices may be required at certain intersections.
- d. All traffic control devices must be of non-combustible, reflective material and must conform to the standards contained in the *Manual on Uniform Control Devices* available at: <http://mutcd.fhwa.dot.gov/>.
- e. The developer may be required to provide an off-street area for cluster mailboxes based on recommendations from the local Post Office.
- f. All culverts in new roads must be constructed of non-combustible materials.

TABLE 1. Libby Residential Road Design Standards*

DESIGN ELEMENTS	STANDARD
Minimum right-of-way / easement width	64 ft.
Minimum driving surface ^(a/b/)	36 ft (back of curb to back of curb)
Shoulders (when applicable)	3 ft min.; 6 ft for travel speed greater than 35 mph.
Maximum grades	8%, 4% at switchback landings (point of curvature to tangent).
Intersections ^(c/)	
Curvature/ no super-elevation ^(c/)	
Horizontal Alignment ^(c/)	
Vertical Alignment ^(c/)	
Cul-de-sacs (when permitted)	
Maximum road length	600 ft. up to 1000 ft. if emergency access provided and with Governing Body approval.
Minimum outside right-of-way radius	54 ft.
Minimum outside roadway radius	48 ft.
Hammerheads (when permitted)	See Appendix I for approved alternatives
New bridges	
Driving widths Design load Vertical clearance	Same as street width H-20 (per AASHTO) 14.5 ft.
Center radius (switchback)	50 ft from centerline
Driveways	Serve no more than two (2) dwelling units
Minimum easement	20 ft.
Maximum grade	Per Road Standards
Minimum width	12 ft.
Surface	8" compacted pit run
For lots that do not abut a public road: Turnouts	One (1) approximately every 400 ft measuring 14 ft (w) x 50 ft (l)
Turnaround	Required for driveways in excess of 150 ft in length – Hammerhead or Cul-de-Sac, per design standards above, must be within 150 ft of dwelling
Emergency Access	Same as Driveways

* Subdivisions that are designed with commercial uses may have additional requirements.

a/ This street section provides for two 9.5-foot driving lanes and parking on both sides.

b/ All driving lanes are required to maintain a 14.5 vertical feet overhead clearance.

c/ Based on the design speed of the road (refer to AASHTO Guidelines).

TABLE 2. Typical Street Sections

<u>STANDARD</u>	<u>URBAN STREETS</u>	<u>SUBURBAN STREETS</u>
Drainage*	Curb and Gutter in accordance with City specifications (see Appendix __)	Swales
Pedestrian Access	Sidewalks in conformance with Title 12 of the City of Libby Municipal Code.	Hard-surfaced paths – a minimum of 8’ wide.**
Landscaping	Boulevards shall be a minimum of seven (7) feet from the back of curb to the edge of sidewalk; are to be vegetated with weed-free grass seed and appropriate urban trees (as approved by the Libby Tree Board) are to be planted on center in the boulevard at intervals no less than 30 feet, leaving 30 feet from corners for clear vision triangles.	Appropriate vegetation for swale design including weed-free grass seed and low growing shrubs.

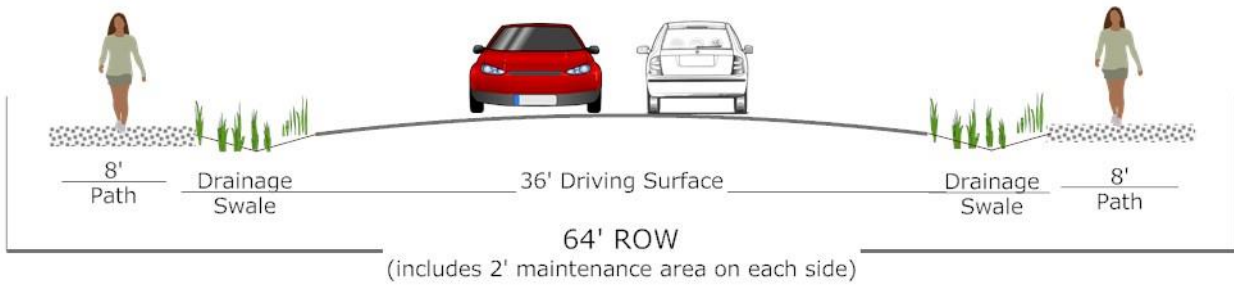
*Bioengineering is encouraged in all street designs to capture stormwater runoff.

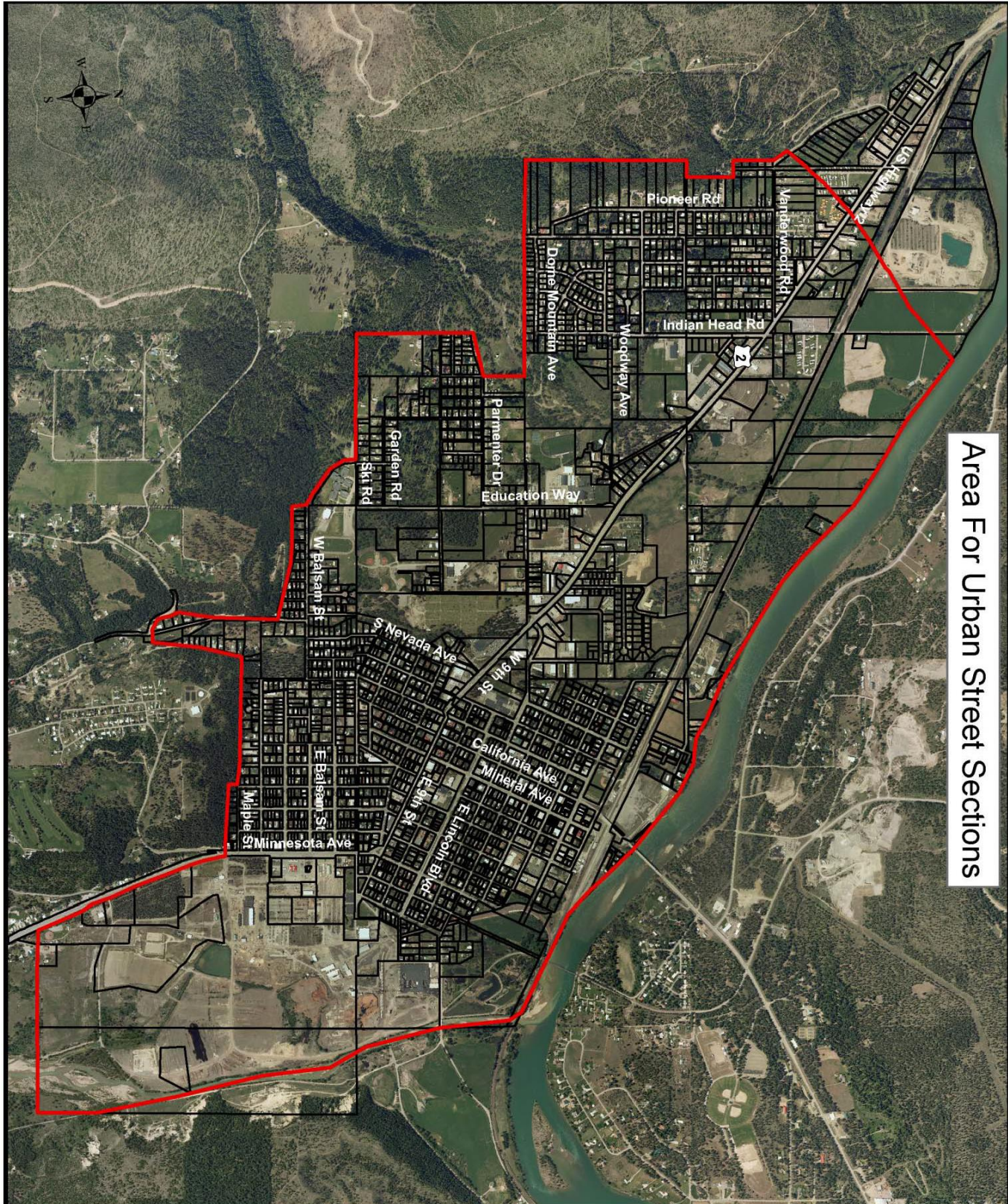
** The developer may propose cash-in-lieu of path construction (see VI-M.1. and 2.)

Typical Urban Street Section



Typical Suburban Street Section





Area For Urban Street Sections

3. Maintenance

All roads must be maintained by a public or private entity. If maintenance is to be by a private entity Road Maintenance Agreement (RMA) that ensures adequate and continued maintenance (snow removal, chip seal, etc.) must be filed with the final plat.

4. Warranty of Improvements

Required improvements shall be warranted by the Subdivider for both materials and workmanship for one (1) year following their acceptance by the City. Such a warranty provision shall be included in all final plat submittals and/or Subdivision Improvement Agreements.

Where all required improvements will be completed before a final plat is approved and the development is offered for lease, sale, or occupancy, a separate warranty agreement shall be submitted for approval. Enforcement of the warranty shall be ensured by:

- a. Retention of ten percent (10%) of an escrow account established to comply with V-B
- b. An amount not to exceed ten percent (10%) of the continuing letter of credit, as provided in V-B.
- c. Opening a new escrow account or providing a new letter of credit in an amount equal to ten percent (10%) of the cost of all required improvements.
- d. These warranty funds shall be released upon expiration of the warranty period, or, if necessary, used to remedy defects that have not been remedied by the Developer during said period.

VI.H GRADING AND DRAINAGE

1. Swales, storm sewers or some accepted method of storm water management shall be required, taking into account the character of the area, density of development, and adjoining properties. Unless onsite mitigation options are available, the subdivider shall extend the storm drain if the subdivision is located within five hundred (500) feet of an existing storm drain facility that has easements or public right-of-way and authorization from the operator to connect to the facility.
2. All drainage systems shall meet the minimum standards of the Montana Department of Environmental Quality, as required by M.C.A. Title 76, Chapter 4, Part 1, Circular DEQ 8 and all applicable state and local regulations.
3. Storm drainage facilities shall be installed prior to or concurrent with other improvements and be designed to divert surface water away from cut faces or sloping surfaces of a fill. All storm drainage facilities shall be protected from erosion or silt deposition during construction of both public and private improvements.
4. Drainage easements shall be drawn on the plat.

5. Storm drainage facilities and any associated easements may not be encroached upon or disrupted, and shall remain free of obstructions (fences, structures, etc.).
6. Natural drainage ways shall be preserved and accommodated at necessary crossings to access subdivision lots. Lots shall be arranged to preserve and maintain these drainage channels.
7. Graded slopes shall be planted with a vegetative ground cover, and, if applicable, consistent with the Wildland Urban Interface (WUI) requirements.
8. Landowners shall replant areas of disturbance no later than the first growing season to prevent erosion and weed invasion, in consultation with the Lincoln County Weed Department. Where site grading is necessary, top soil shall be salvaged or imported to redistribute on areas to be re-vegetated.
9. Use of retention facilities within rights-of-way shall be minimized unless it significantly reduces grading or eliminates long cuts or fills.
10. A method of maintenance and designation of responsible parties must be provided for storm drainage facilities.

VI.I WATER SUPPLY, SEWAGE DISPOSAL, AND SOLID WASTE

Water supply, sewage disposal, and solid waste systems must meet the minimum standards of the Montana Department of Environmental Quality, as required by MCA Title 76, Chapter 4 and 5, as amended, and all applicable local regulations promulgated by the Lincoln County Environmental Health Department and City of Libby. Sewage disposal systems must be permitted, installed, operated and maintained in accordance with the Administrative Rules of Montana. The means for water supply is subject to approval by the Lincoln County Environmental Health Department, the Libby Fire Department, and the City Council. The means for sewage and solid waste disposal is subject to the approval of the City Council. Water supply for fire protection purposes must be provided by one of the following and are subject to approval by the fire chief:

1. Public or community water system with 1,000 gallons per minute (gpm) minimum; or
2. Residential sprinkler systems.

VI.J UTILITIES

1. Basic utilities such as water, sewer, electrical power and telephone service must abut and be available to each lot in the subdivision.
2. If utilities are not installed adjacent to the lots prior to the filing of the final plat, the subdivider shall either enter into a subdivision improvements agreement guaranteeing the installation of those utilities or the subdivider shall provide the governing body with signed contracts from all pertinent utility companies guaranteeing that the utilities will be installed when residential dwelling units are constructed on the subject lots. The subdivider shall bear the cost of installing the trunk line utilities. Purchasers of individual lots shall be responsible for the installation of the utilities from the trunk line to a service destination.

3. All new utilities shall be installed underground, unless otherwise required by the specific utility, and in accordance with local utility provider requirements.
4. All subdivisions shall show utility easements and they shall be 15 feet wide unless otherwise specified by a utility company or governing body.

VI.K WATER COURSE AND IRRIGATION EASEMENTS

1. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements that:
 - a. 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;
 - b. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - c. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
2. The subdivider need not establish irrigation easements as provided above if:
 - a. 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
 - b. 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
 - c. 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.
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 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

VI.L WATERCOURSES, WATER BODIES AND WETLANDS

1. Watercourses, water bodies, and wetlands are a vital natural resource. These water systems provide animal, aquatic and plant habitat and facilitate recharging aquifers. Vegetative buffers, riparian setback areas, and wetlands are crucial in maintaining these water systems which filter contaminants and sediments to improve water quality, provide wildlife habitat, space for watercourse migration, and natural flood control. Subdivisions adjacent to these features can have an impact on these functions.
2. A minimum of fifty (50) feet of vegetative buffer is required on each side of a perennial stream or wetland, pond, lake, reservoir, or intermittent stream which is tributary to a perennial stream as measured from the ordinary high-water mark on a horizontal plane. Existing vegetation in those areas may not be disturbed or removed, except as needed to control noxious weeds, reduce accumulated fuels for fire protection, to remove individual trees that pose an imminent physical danger to people or property, or to construct city approved public infrastructure.
3. Buildings, structures, or any impervious area may not be placed or constructed within seventy-five (75) feet from the ordinary high-water mark of a perennial stream or wetland, pond, lake, reservoir, or intermittent stream which is tributary to a perennial stream as measured from the ordinary high-water mark on a horizontal plane.
4. Where wetlands are present, the subdivider must retain a qualified wetland professional to determine the wetland's boundary in accordance with the most current wetlands delineation manual sanctioned by the U.S. army corps of engineers - Omaha district.
5. Permitted Uses Within the Setback:
 - a. On-site stormwater treatment facilities as approved by the City Engineer.
 - b. Trails and trail-related improvements (benches, trail signage, bridges and other crossings) subject to the following provisions:
 - i Improvements must be constructed with natural, pervious materials only.
 - ii Improvements must be constructed to minimize bank instability, sedimentation, nutrient and pollution runoff.
 - iii Trails shall be aligned to minimize damage to plant and wildlife habitat; and
 - iv Trails crossing water courses must receive appropriate local, State and Federal permits.
 - c. Control of noxious weeds and activities required within limits outlined in an approved noxious weed control plan.
 - d. Park lands, park play facilities, open space and associated recreational facilities.
 - e. Agricultural fences, irrigation facilities and other ag-related activities.
 - f. In the event there is no alternative to providing access to the proposed lots, streets, sidewalks, utility lines or similar public construction for the purpose of crossing a water-course may be permitted subject to the following provisions:
 - i Crossings shall be minimized to the greatest extent feasible;

- ii Crossings with direct angles (90 degrees) shall be used to the greatest extent feasible instead of oblique crossing angles;
 - iii Construction shall be capable of withstanding 100 year flood events;
 - iv A bank stabilization plan shall be prepared and approved by the City prior to site preparation and installation of the improvement(s)
6. Prohibited Uses Within the Setback:
- a. Fill material.
 - b. Parking lot development.
 - c. Streets, except for circumstances identified above in 5f.
 - d. Storage of construction materials.

VI.M DISPOSITION OF WATER RIGHTS

1. If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:
- a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to 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;
 - b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
 - c. reserved and severed all surface water rights from the land proposed for subdivision.

VI.N PARK LAND DEDICATION

1. Except as provided below, a subdivider of a wholly residential subdivision creating two (2) or more lots shall dedicate to the governing body a cash or land donation equal to:
- a. 11 % of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - b. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
 - c. 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
 - d. 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.
2. Construction of paths/trails in conformance with Table 2 of these regulations may count towards the parkland dedication requirements.

3. Park land must be:
 - a. Owned by a property owners' association; or
 - b. Dedicated to public use, if acceptable to the governing body; or c. A combination of the above.
4. The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. "Cash donation" is the fair market value of the unsubdivided, unimproved land.
 - a. In accordance with the provisions outlined below, the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.
 - i. The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:
 1. the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and
 2. the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.
 - b. The governing body may not use more than 50% of the dedicated money for park maintenance.
5. The governing body shall waive the park dedication requirement if:
 - a. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required;
 - b. the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and the area of the land proposed to be subdivided, by virtue of providing long-term protection is reduced by an amount equal to or exceeding the area of the dedication required;
 - c. the area of the land proposed to be subdivided, by virtue of a combination of the above provisions, is reduced by an amount equal to or exceeding the area of the dedication required; or
 - d. 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.

6. The governing body may waive the park dedication requirement if:
 - a. the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
 - b. the area of the land to be subject to long-term protection, as provided in subsection (f)(i), equals or exceeds the area of the dedication required under subsection (a).
7. Subject to the approval of the governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation to a school district, adequate to be used for school facilities or buildings. Such dedication must meet the requirements above.

VI.O WILDLAND FIRE PROTECTION

1. Purpose
 - a. In order to reduce threats to life safety, property and resources, these standards for new subdivisions in wildland urban interface areas are intended to:
 - i Improve access to and defensibility of developments, homes and other property in wildland/urban interface areas;
 - ii Minimize the potential spread of fire from wildland areas to structures and from structure fires to wildland areas
 - iii Permit efficient suppression of fires;
 - iv Ensure that new subdivisions in the Wildland Urban Interface (WUI) provide water supply systems with suitable access for firefighting crews and apparatus, with the intent to increase the resources available to such crews and minimize the spread of a wildland or structure fire.
 - v Educate property owners, residents, and people that they have a responsibility for prevention of wildland fire on their own property pursuant to §76-13-115 (6), MCA and §76-13-212, MCA.
 - b. Therefore, all subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire. This can be achieved by working closely with the Libby Fire Department and heeding recommendations of the Fire Risk Evaluators, as applicable.

2. Fire Risk Assessment

An analysis of the wildfire hazards on the subdivision site, as influenced by existing vegetation and topography, may be required to accompany the submission of an application for preliminary plat approval. (See Appendix F: Fire Risk Assessment [FRA])

3. Water Supply Maintenance

Water sources, draft sites, hydrants and other fire protection equipment that is not owned by the City of Libby shall comply with the NFPA 25. All such equipment installed under the provisions of these guidelines shall be maintained in an operative condition at all times and

should be repaired or replaced where defective. Additions, repairs, alterations, and servicing of such fire protection equipment and resources should be in accordance with standards approved by the Libby Fire Department.

VI.P. NOXIOUS WEEDS

Pursuant to Title 7, Chapter 22, Part 21 of the MCA, a weed control plan shall be developed and implemented for every new subdivision. A noxious weed plan, or other such agreement for weed treatment, shall be approved by the Lincoln County Weed Board, signed and notarized by the subdivider, recorded with the final plat and incorporated with the Covenants, Conditions and Restrictions of the Homeowners Association.

VI.Q. DESIGN STANDARDS FOR SUBDIVISIONS CREATED FOR RENT OR LEASE

Subdivisions created by rent or lease must comply with the provisions of Section VI. The governing body may require provisions for:

1. storage facilities on the lot or in compounds located within a reasonable distance;
2. a central area for storage or parking of boats, trailers, or other recreational vehicles;
3. landscaping or fencing to serve as a buffer between the development and adjacent properties;
4. an off-street area for mail delivery; and
5. street lighting.

VI.R. DESIGN STANDARDS FOR MOBILE/MANUFACTURED HOME PARKS

1. Mobile/Manufactured Home Spaces
 - a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
 - b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
 - c. The mobile/manufactured home pad must be located at least 10 feet from the street that serves it.
 - d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
 - e. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.

- f. The governing body may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.
 - g. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
 - h. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.
 - i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home and be a minimum of 10 feet wide.
 - j. One guest parking space must be provided for each 10 mobile/manufactured home spaces. Group parking may be provided.
 - k. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. The location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
 - l. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire- resistant material similar to that of the mobile/manufactured home exterior.
2. Mobile/Manufactured Home Streets

Streets within a mobile/manufactured home park must meet the standards specified in Section VI-G, Streets and Roads.

- a. Streets must be designed to allow safe placement and removal of mobile homes.
- b. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking.
- c. One-way road surface widths must be at least 16 feet wide; two-way roads must have at least 24 feet wide driving surface with 2 feet shoulders.

VI.S DESIGN STANDARDS FOR RECREATIONAL VEHICLE (RV) PARKS

- 1. RV Spaces [see Libby Municipal Code 14.28 for specifications]
 - a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
 - b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
 - c. Recreational vehicles must be separated from each other and from other structures by at least 10 feet. Any accessory structures such as attached awnings must, for

purposes of this separation requirement, be considered part of the recreational vehicle.

- d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

2. RV Density

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

VI.T DESIGN STANDARDS FOR CONDOMINIUM DEVELOPMENTS

Condominium developments must comply with applicable standards contained in Section VI, Design and Improvement Standards; AND must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA.

VI.U VARIANCES

1. Variances Authorized

The governing body may grant variances from Section VI, 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:

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

2. Variances from Floodway Provisions Not Authorized

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

3. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The applicant can request that the variance request be heard prior to submittal of the preliminary plat application, in which

case, the Planning Department will follow public noticing procedures for variances associated with major subdivisions. The planning board will consider the requested variance and recommend its approval or denial to the governing body.

4. Conditions

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

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

VI.V PAYMENT FOR EXTENSION OF PUBLIC IMPROVEMENTS

1. The Council shall require the subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities or construct required improvements for extending capital facilities related to the public, health, and safety, including but not limited to public roads and transportation facilities, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision (76-3-510, MCA):
 - a. The Council may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending the capital facilities related to education;
 - b. If capital facilities do not exist to serve the proposed subdivision, the subdivider is solely responsible for the cost associated with extending capital facilities to serve the proposed subdivision to a connection point approved by the Council;
 - c. All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.
 - d. The extent of required off-site improvements shall be determined by acceptable engineering methods such as Traffic Impact Studies, Engineering Reports, Engineering Plans, etc. that analyze existing offsite systems that serve the proposed subdivision and the impact the proposed subdivision has on those systems. The analysis shall include information on improvements required to existing systems to serve the proposed subdivision, costs associated with required improvements, and proportion of cost directly attributable to the proposed subdivision.
2. A statement must be included on the subdivision plat that acceptance of a deed for a lot within the subdivision constitutes the assent of the owners to any future SID/RSID, based on benefit, for upgrading and/or maintaining the streets within the subdivision, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening, and drainage facilities and may be used in lieu of their signatures on an SID/RSID petition. This assent shall constitute a waiver of right to protest creation of a special improvement district for any specifically identified capital improvements, pursuant to MCA 76-3-608(7). This waiver of the right to protest formation of a SID/RSID for capital improvement projects expires 20 years after the date the final subdivision plat is recorded with the County Clerk and Recorder. The

required SID waiver statement must be provided on the plat and on each instrument of conveyance indicating that the purchasers of any lots in the subdivision will be required to waive the right to protest the creation of an SID for the subject improvements.

VII. 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.

1. **ACCESS (LEGAL AND PHYSICAL):** Legal access means that each lot in a subdivision abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties from a public road to each lot in the subdivision. Proof of legal access can be either documented legal access from landowner(s), court judgment, or a certification of a licensed title abstractor. Physical access means that the street or road conforming to the subdivision design standards which provides all weather normal vehicular access from a public street or road to each lot in the subdivision.
2. **ACCESSORY BUILDING OR STRUCTURE:** Any building or structure used incidentally to another building or structure. It may be unenclosed, without a complete exterior wall system enclosing the area under roof or floor above.
3. **ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.
4. **ADMINISTRATOR:** See Subdivision Administrator
5. **AGRICULTURE:** All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
6. **AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water for irrigation or stock watering to agricultural lands for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.
7. **BLOCK:** A group of lots, tracts or parcels within well-defined and fixed boundaries.
8. **BUILDING ENVELOPE:** The designated area of a lot within which a structure or structures can be built and which is depicted or described on a site plan or final subdivision plat.
9. **CANYON:** A deep valley with steep slopes carved from the landscape by a river or a stream.
10. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.

11. **COMBUSTIBLE:** Any material that, in the form in which it is used and under conditions anticipated will ignite and burn (see Noncombustible).
12. **COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY:** means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999, or a policy that was adopted pursuant to Title 76, Chapter 1, MCA, on or after October 1, 1999.
13. **CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.
14. **COVENANT (PROTECTIVE COVENANT):** A limitation contained in a deed or other document that restricts or regulates the use of the real property.
15. **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].
16. **DEVELOPMENT:** Land use development or construction projects that involve substantial property improvement and usually a change in the land-use character within a subject property or properties. Such development generally involves using land for residential or commercial purposes.
17. **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].
18. **DRIVEWAY:** A vehicular ingress and egress route that serves no more than two dwelling units.
19. **DWELLING UNIT:** Any structure or portion thereof providing complete, independent and permanent living facilities for one household.
20. **EASEMENT:** Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.
21. **ENGINEER (PROFESSIONAL ENGINEER):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.
22. **FIRE CHIMNEY:** Topographical features, usually canyons, gulches or valleys, which tend to funnel or otherwise concentrate fire toward the top of steep slopes. Fire Chimneys are generally less than ½ mile in length, have slopes of 20% or steeper, are less than 600 feet wide, and are at least 120 feet deep as measured from the bottom of the ravine to the crest of either adjacent ridge or slope.

23. FIRE HAZARD: A fuel complex, defined by kind, arrangement, volume, condition, and location, which determines the ease of ignition and/or resistance to fire control.
24. FIRE HYDRANT: A valved connection on a year-round water supply system having one or more outlets that is used to supply water for fire departments.
25. FIRST MINOR SUBDIVISION: A proposed subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA or will not result in a tract of record that creates more than five parcels under 160 acres in size [76-3-609(2), MCA].
26. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA].
27. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude which has a one percent chance of occurring in any given year or is a flood magnitude which is expected to recur on the average of once every 100 years [76-5-103 (9), MCA].
28. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100-year frequency [76-5-103 (10), MCA].
29. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [76-5-103 (11), MCA].
30. GOVERNING BODY: The governing authority of a county, city, town, or consolidated local government organized pursuant to law [76-3-103 (7), MCA].
31. IMPROVED PROPERTY: A piece of land or real estate upon which a structure has been placed, a marketable crop is growing (including timber), or other property improvement has been made.
32. IMPROVEMENT AGREEMENT: A contractual agreement that may be required by the governing body to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.
33. LAND USE: The type or degree of activity occurring or intended to occur on a piece of land.
34. LANDOWNER: All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.
35. LIFE SAFETY: Actions taken to prevent the endangerment of people threatened by emergency incidents or by activities associated with the management.

36. LOCAL SERVICES: Local services are defined as any and all services that local governments, public or private utilities are authorized to provide for the benefit of their citizens.
37. LOT: A parcel, plot, or other land area created by subdivision for sale, rent, or lease.
38. 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.
39. LOT TYPES:
- a. Corner Lot – A lot located at the intersection of two streets.
 - b. Interior/Perimeter Lot – A lot with frontage on only one street.
 - c. Through or Double-Frontage Lot – A lot whose front and rear lines both abut on streets.
 - d. Flag Lot – A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.
40. MAJOR SUBDIVISION: A subdivision that creates six or more lots.
41. MINOR SUBDIVISION: ~~A subdivision that results in five or fewer lots from a tract of land which was not originally created through subdivision.~~ **A subdivision that creates five or fewer lots from a tract that has not been subdivided or created by subdivision or has not resulted from a tract of record that has had five or fewer parcels created from that tract of record since October 1, 2003.**
42. MOBILE (MANUFACTURED) HOME: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailer homes,” “house trailers,” and “manufactured homes” whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes and are transported to the site for final assembly on a permanent foundation.
43. MOBILE (MANUFACTURED) HOME SPACE: A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.
44. MOBILE (MANUFACTURED) HOME PARK: A parcel of land that provides or will provide spaces for three or more mobile homes.
45. MOBILE (MANUFACTURED) HOME PAD: That area of a mobile home space which has been prepared for the placement of a mobile home.

46. 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.
47. MONUMENT (PERMANENT MONUMENT): Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
48. NATURAL ENVIRONMENT: The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.
49. NON-COMBUSTIBLE: A material that, in the form in which it is used and under the conditions anticipated, will not aid combustion or add appreciable heat to an ambient fire.
50. OBSTRUCTIONS: Any object or collection of objects that may deter, hinder or block access.
51. OCCUPANCY: The purpose for which a building or portion thereof is used or intended to be used.
52. OPEN SPACE: Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
53. OVERALL DEVELOPMENT PLAN: The plan of a subdivision design proposed to be subdivided in stages.
54. PLANNED UNIT DEVELOPMENT (PUD): A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].
55. PLANNING BOARD: A planning board formed pursuant to Title 76, Chapter 1, MCA.
56. 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, or any lots within a filed platted subdivision.

- d. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.
57. PRIVATE IMPROVEMENT: Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.
58. PRIVATE ROAD: A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.
59. PUBLIC HEALTH AND SAFETY: The prevailing healthful, sanitary condition of well-being for the community at large. Conditions that relate to public health and safety include but are not limited to disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high-pressure gas lines; and air or vehicular traffic safety hazards.
60. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.
61. PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use, including alleys.
62. RISK: The measure of the potential and severity of adverse effects to persons or property that results from an exposure to a wildland fire (direct flames, radiant heat, or firebrands).
63. 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.
64. RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.
65. RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.
66. REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.
67. RIGHTS-OF-WAY: A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

68. SLOPE: Upward or downward incline or slant, usually calculated as a percent of slope (rise or fall per 100 ft (30.45m) of horizontal distance).
69. STATE: The State of Montana.
70. STREET OR ROAD: Any access, not including a driveway, providing access to more than two parcels and primarily intended for vehicular access.
71. STREET TYPES: For purposes of these regulations, street types are defined as follows:
- a. Alley: A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
 - b. Arterial: A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
 - c. Collector: A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
 - d. Local Streets: A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
 - e. Half-Street: A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
 - f. Cul-de-sac: A street having only one outlet for vehicular traffic and terminating in a turn-around area.
 - g. Loop: A local street which begins and ends on the same street, generally used for access to properties.
 - h. Frontage Access (Service Road): A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
72. STRUCTURE: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.
73. SUBDIVIDER: Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

74. **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 and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA]¹.
75. **SUBDIVISION ADMINISTRATOR:** The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.
76. **SUBSEQUENT MINOR SUBDIVISION:** A proposed subdivision from a tract of record that has been subdivided or created by a subdivision under the MSPA or will result in a tract of record that creates more than five parcels under 160 acres in size. [76-3-609(2), MCA].
77. **SURVEYOR (PROFESSIONAL LAND SURVEYOR):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
78. **SURVEYOR (EXAMINING LAND SURVEYOR):** A professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.
79. **SWALE:** A drainage channel or depression designed to direct surface water flow.
80. **TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT):** A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.
81. **TOPOGRAPHY:** General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.
82. **TOWNHOUSE LOT:** Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.
83. **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].
84. **TRAFFIC LANE:** That portion of a roadway that provides a single lane of vehicle travel in one direction.
85. **TURNAROUND:** A portion of a street or road, unobstructed by parking, that allows for a safe reversal of direction for emergency equipment.
86. **TURNOUT-PULLOUT:** An area along the edge of a street or road that provides a space for a vehicle to safely move out of a traffic lane in order to permit the passage of emergency or other types of vehicles.
87. **URBAN/SUBURBAN:** Residential density greater than two (2) dwelling units per acre.

88. VALLEY: An elongated depression of the earth's surface, usually found between ranges of hills or mountains.
89. VEGETATION: Any plant, native or planted, living or dead; tree, shrub, bush, grass, flower, etc.
90. 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.
91. WILDLIFE: Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.
92. WILDLIFE HABITAT: The place or area where wildlife naturally lives or travels through.
93. WILDLAND: An area in which development is essentially nonexistent except for roads, railroads, power lines, and similar facilities.
94. WILDLAND FIRE OR WILDFIRE: An unplanned and uncontrolled fire spreading through vegetative fuels, at times involving structures.
95. WILDLAND FIRE PROTECTION: Any non-structure fire protection that occurs in the wildland with the primary responsibility of protecting natural resources and watersheds from damage. State and federal forestry or land management and some local government agencies normally provide wildland fire protection.
96. WILDLAND/URBAN INTERFACE (WUI): The presence of structures in locations in which the Fire Risk Evaluator determines that topographical features, vegetation fuel types, local weather conditions, and prevailing winds, in conjunction with structural ignitability, may result in the potential for ignition of the structures within the area from flames and firebrands of a wildland fire.

LIST OF ACRONYMS

AASHTO – American Association of Highway Transportation Officers

ADT – Average Daily Trips for vehicles based on the Institute of Transportation Engineers land use code

ARM – Administrative Rules of Montana

DEQ – Montana Department of Environmental Quality.

DNRC – Montana Department of Natural Resources and Conservation

EA – Environmental Assessment

ELS – Examining Land Surveyor

FEMA – Federal Emergency Management Agency

MCA – Montana Code Annotated

MDT – Montana Department of Transportation

MPWSS – Montana Public Works Standard Specifications

MSPA – Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA. NFPA – National Fire Protection Association

PE – Professional Engineer

PUD – Planned Unit Development

RMA – Road Maintenance Agreement

SIA – Subdivision Improvement Agreement

USGS – United States Geological Service