

**ORDINANCES**  
MILES CITY, MONTANA

**ORDINANCE NO. 1173**

AN ORDINANCE REPEALING SECTIONS 21-8, 21-10, 21-11, 21-12, 21-13 AND ARTICLES II AND III (SECTIONS 21-36 THROUGH 21-41 AND SECTION 21-61) OF CHAPTER 21 OF THE MILES CITY CODE OF ORDINANCES REGARDING REGULATION OF SUBDIVISIONS, AMENDING SECTIONS 21-1 THROUGH 21-7 AND SECTION 21-9 OF THE MILES CITY CODE OF ORDINANCES REGARDING REGULATION OF SUBDIVISIONS, ENACTING ADDITIONAL REGULATIONS FOR SUBDIVISIONS, ADOPTING UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY, AND FINAL SUBDIVISION PLATS, AND PROVIDING FOR PUBLIC HEARING THEREON

BE IT ORDAINED by the City Council of the City of Miles City, Montana as follows:

Section 1. Sections 21-8, 21-10, 21-11, 21-12, 21-13 and Articles II and III of Chapter 21 (Sections 21-36 through 21-41 and Sec. 21-61) of the Miles City Code of Ordinances are hereby repealed:

Section 2. Section 21-1 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-1. Title of chapter.

This chapter will be known and may be cited as "The Subdivision Regulations of the City of Miles City, hereinafter referred to as "these regulations."

Section 3. Section 21-2 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-2. Authority.

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

Section 4. Section 21-3 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-3. Purposes.

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote 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

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to a plat or certificate of survey (76-3-102, MCA).

These regulations are intended to comply with Part 5 of the MSPA, and are intended to promote:

- the orderly development of the jurisdictional area;
- the coordination of roads within subdivided land with other roads, both existing and planned;
- the dedication of land for roadways and for public utility easements;
- the improvement of roads;
- the provision of proper physical and legal access, including obtaining necessary easements;
- the provision of adequate open spaces for travel, light, air, and recreation;
- the provision of adequate transportation, water, drainage, and sanitary facilities;
- the avoidance or minimizing of congestion;
- the avoidance of subdivisions which would involve unnecessary environmental degradation;
- the avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public improvements;
- the avoidance of excessive expenditure of public funds for the supply of public improvements and services;
- the manner and form of making and filing of any plat for subdivided lands;
- the administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions."

**Section 5.** Section 21-4 of the Miles City Code of Ordinances is hereby amended to read as follows:

### **"Sec. 21-4. Jurisdiction.**

These regulations govern the subdivision of land within the jurisdictional area of the City of Miles City and the City/County Planning Board.

If a proposed subdivision lies within one mile of a third class city or town or within two miles of a second-class city or within three miles of a first class city, the county governing body must submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If a proposed subdivision lies partly within an incorporated city or town, the preliminary plat must be submitted to, and approved by, both the city or town and the county governing bodies.

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

When a proposed subdivision is also proposed to be annexed to a municipality, the affected governing bodies will combine public hearings and otherwise coordinate the subdivision review process

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and annexation procedures whenever possible.

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

Section 6. Section 21-5 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-5. Definitions.

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

**ACCESS (LEGAL AND PHYSICAL):** Legal access means that each lot in a subdivision either 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, whether or not a road has been constructed on that property, and has dedicated the easement or private road for public use or for the benefit of the property owner. Physical access means that a street or road conforming to the subdivision design standards provides vehicular access to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which are dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.

**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, water course or deeded right-of-way.

**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.

**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.

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

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

**CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].

**COMPREHENSIVE PLAN, MASTER PLAN, OR GROWTH POLICY:** means a comprehensive development plan, master plan, or comprehensive plan or a growth policy that was adopted pursuant to Title 76, Chapter 1, MCA, before October 1, 1999.

**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.

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

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

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

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

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

**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.

**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

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State of Montana.

**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].

**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].

**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].

**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].

**GOVERNING BODY:** The governing authority of a county, city, or town organized pursuant to 76-3-103 (7), MCA].

**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.

**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.

**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.

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

**LOT MEASUREMENT:**

- a. *Lot Depth* -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. *Lot Width*-- The average width of the lot.
- c. *Lot Frontage* -- The width of the front lot line.
- d. *Lot Area* -- The area of a lot determined exclusive of street,

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highway, alley, road, or other rights-of-way or access easements.

**LOT TYPES:**

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

**MAJOR SUBDIVISION:** A subdivision that creates six or more lots.

**MINOR SUBDIVISION:** A subdivision that creates five or fewer lots.

**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.

**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.

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

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

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

**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.

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

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**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.

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

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

**PLANNED UNIT DEVELOPMENT (P.U.D.):** 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].

**PLANNING BOARD:** A planning board formed pursuant to Title 76, Chapter 1, MCA.

**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..
- 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, 7-14-2617, 7-14-4114, and 7-14-3115, as applicable.

**PRE-APPLICATION SKETCH (OR DRAWING):** A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision.

**PRIVATE IMPROVEMENT:** Private improvements are the same types of improvements as defined under PUBLIC

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IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

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.

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.

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.

PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use.

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

RECREATIONAL 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.

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

REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

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.

STATE: The State of Montana.



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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.

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(14)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.

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

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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(15), MCA].

**SUBDIVISION ADMINISTRATOR:** The person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.

**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.

**SURVEYOR (EXAMINING LAND SURVEYOR):** A professional land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

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

**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.

**TOPOGRAPHY:** General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

**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.

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

**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.

**WILDLIFE:** Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.

**WILDLIFE HABITAT:** The place or area where wildlife naturally

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lives or travels through."

Section 7. Section 21-6 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-6. Violations and penalties.

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations (Chapter 21) 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 (Chapter 21) shall be deemed a separate and distinct offense."

Section 8. Section 21-7 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-7. 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."

Section 9. Section 21-9 of the Miles City Code of Ordinances is hereby amended to read as follows:

"Sec. 21-9. Fees.

Fees, charges and expenses to be paid by subdividers to defray the expenses of subdivision review and any inspections necessary for plat approval shall be set from time to time by resolution of the City Council. The fees, charges and expenses set by the City Council by Resolution No. 3140 shall apply until changed by subsequent resolution or ordinance of the City Council. Applications for subdivision approval shall not be accepted unless accompanied by all applicable fees."

Section 10. There is added a Section 21-14 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-14 General procedures.

*A. Preliminary Plats*

*A-1. Construction Timing*

Construction work shall not occur on a proposed subdivision until the governing body has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility the work will have to be redone or removed. In addition, 76-4-121,

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MCA, regulates subdivision activities.

*A-2. Transfers of Title*

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

- a. That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;
- c. That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments made under the contract;
- d. That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner;"
- e. That 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; and
- f. A copy of the contracts and escrow agreement described above must be submitted to the planning board (or subdivision administrator) within 10 days of the last signature. The purchase price may be blacked out.

*A-3. 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

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attending a noticed public meeting for a site visit.

### *A-4. Pre-application Process*

- a. Prior to submittal of a subdivision application, the subdivider shall request a pre- application meeting with the subdivision administrator. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.
- b. At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
  1. Information on the current status of the site, including:
    - a. site location;
    - b. approximate tract and lot boundaries of existing tracts of record;
    - c. description of general terrain;
    - d. natural features including water bodies, floodplains geologic hazards, and soil types;
    - e. existing structures and improvements;
    - f. existing utility lines and facilities serving the area to be subdivided;
    - g. existing easements and rights of way;
    - h. existing zoning or development regulation standards;
    - i. existing conservation easements;
    - j. existing covenants or deed restrictions;
  2. Documentation on the current status of the site, including:
    - a. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
    - b. water rights, including location of Agricultural Water User Facilities; and
    - c. any special improvement districts.
  3. Information on the proposed subdivision, including:

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- a. tract and proposed lot boundaries;
  - b. proposed public and private improvements;
  - c. location of utility lines and facilities;
  - d. easements and rights of way; and
  - e. parks and open space and proposed conservation easements.
- c. At the pre application meeting:
- 1. the subdivision 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 and floodplain regulations.
  - 2. the subdivision 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 subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
  - 3. the subdivision administrator may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the subdivision administrator to request additional information at a later time.
- d. Unless the subdivider submits a subdivision application within 6 months of this pre- application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

*A 5. Subdivision Application and Preliminary Plat Submittal*

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the subdivision administrator, as applicable:

- a completed and signed Subdivision Application Form;
- the required review fee;
- a preliminary plat;
- a vicinity sketch;
- a topographic map;
- a grading and drainage plan;

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- engineering plans for all public and private improvements;
- overall development plan if development is in phases;
- abstract of title (or title report);
- lienholders' acknowledgment of subdivision;
- documentation of legal and physical access;
- documentation of existing easements, including those for agricultural water user facilities;
- existing covenants and deed restrictions;
- existing water rights;
- existing mineral rights;
- names and addresses of all adjoining property owners;
- proposed road plans and profiles;
- encroachment permits from Montana Department of Transportation or the local jurisdiction;
- proposed easements;
- proposed disposition of water rights;
- proposed disposition of mineral rights;
- parkland dedication calculations;
- environmental assessment and/or summary of probable impacts;
- transportation impact analysis or transportation plan;
- fire risk rating analysis and fire prevention plan;
- noxious weed management plan and re-vegetation plan;
- property owners' association documents, including draft articles of incorporation, declaration and bylaws;
- FIRM or FEMA panel map and letter identifying floodplain status;
- required water and sanitation information
- a form of Subdivision Improvements Agreement, if proposed;
- letter requesting a revocation of agricultural covenants;
- letter indicating locations of cultural or historic resources;
- variance request or approval;
- re-zoning application or approval;
- flood hazard evaluation;
- letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
- such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

*A-6. Review Process*

For both minor and major subdivisions, the initial review process is as follows:

a. Element Review

Within five (5) working days of receipt of a subdivision application and fee, the subdivision administrator shall determine whether the application contains all of the applicable materials required by subsection A-5, and shall give written notice to the subdivider of the subdivision administrator's determination.

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1. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator may return the application and identify those elements in the notification. No further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
2. The subdivider may correct the deficiencies and resubmit the application.
3. If the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have five (5) working days to notify the subdivider whether the resubmitted application contains all the materials required by subsection A-5, above, as applicable.
4. This process shall be repeated until the subdivider submits an application containing all the materials required by subsection A-5, above, or the application is withdrawn.

b. Sufficiency Review

Within fifteen (15) working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in Subsection a, above, the subdivision 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 notice to the subdivider of the subdivision administrator's determination.

1. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision 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 subdivision administrator until the material is resubmitted.
2. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
3. If the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have fifteen (15) working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
4. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision

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under the provisions of these regulations, or the application is withdrawn.

- a. 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 subdivision administrator, planning board, or the governing body to request additional information during the review process.
- b. A determination of sufficiency by the subdivision administrator does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.
- c. 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 s?fficieD: Y.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.

### *B. Final Plats*

#### *B-1. Final Plat Contents*

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the governing body and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats (Section 21-62) Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

#### *B-2. Final Plat Initial Review*

- a. Final Plat Submittal  
The final plat approval application form, which can be obtained from the subdivision administrator, and all supplementary documents must be submitted to the subdivision administrator at least 30 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:
  - 1. the final plat application;
  - 2. the final plat review fee;
  - 3. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;

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4. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
5. the DEQ or local Environmental Health Department approval;
6. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if required);
7. all engineering plans;
8. any homeowner association documents, including bylaws, covenants, and declarations;
9. county attorney approvals; and
10. one 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats set forth in Section 21-62.

b. Review by Subdivision Administrator

1. The subdivision administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The subdivision 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 by the subdivision administrator until all conditions of preliminary approval have been satisfied.
2. If the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to subsection B-5, above.
3. The subdivision administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

*B-3. Restrictive Covenants, Approval, Content and Enforcement by Governing Body*

- a. The governing body may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the

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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 (name of the governing body)."

- b. The governing body may require that all restrictive covenants it has required as a condition of plat approval contain the following language: "The (name of the governing body) is a party to this restrictive covenant and may enforce its terms."
- c. If common property is to be deeded to a property owners' association, the covenants and by-laws which govern the association must, at a minimum, provide for the:
  - 1. Formation of a property owners' association concurrently with the filing of the final subdivision plat. Articles of Incorporation shall be filed with the Secretary of State's office;
  - 2. Mandatory membership for each property owner. Purchasers of property may also be required to sign a waiver of right to protest the formation of a maintenance district to maintain improvements;
  - 3. Perpetual reservation of the common property when required under 76-3- 621(6)(a), MCA;
  - 4. Payment of liability insurance premiums, local taxes, and the cost of maintaining recreational or other facilities;
  - 5. Placement of liens on the property of lot owners who are delinquent in the payment of association fees and assessments;
  - 6. Adjustment of assessments to meet changing needs;
  - 7. Means of enforcing the covenants, and of receiving and processing complaints;
  - 8. Transition of control of the association from the Declarant to the homeowners.
  - 9. Dissolution of the association and modification of the covenants and restrictions after obtaining the governing body's approval of the change; and
  - 10. Regular maintenance of roads, parks, buildings, drainage facilities, and other facilities controlled by the association.

*B-4. Public Improvements Agreement, Guaranty*

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

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improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or fire fighting facilities, have been installed and engineering plans have been filed. A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are available from the Subdivision Administrator.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the governing body indicating such, and including a copy of the engineered plans. The county engineer or consulting engineer designated by the governing body may review and certify all public improvements have been installed in conformance with the plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the project surveyor or engineer in accordance with their licensing provisions, shall be filed in the clerk and recorder's office with reference to the final subdivision plat.

### *B-5. Amending Approved Preliminary Plats Before Final Plat Approval*

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
  1. Within 5 working days of receiving the proposed changes, the subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.
  2. If the subdivision administrator determines the changes are material, the subdivision administrator may either require the subdivider to submit the changed plat to the Planning Board, for a meeting or hearing prior to making its recommendation to the governing body, or, if the changes are extensive, the subdivision administrator may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
  3. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes, notify the subdivider and the governing body of that decision, and the governing body shall approve of those changes in a meeting for which notice has been given of non-material changes to the final plat.

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- b. 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;
  6. designated access;
  7. changes to the proposed covenants; or
  8. changes to conditions of approval.
- c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 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.
- d. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the governing body through a properly noticed public hearing in order to determine if the condition may be waived or amended.

## *B-6. Final Plat Approval*

- a. Approval by the Governing Body

The governing body shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to (2) below.

  1. If the final plat is approved, the governing body shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
  2. If the final plat is denied, the governing body shall write a letter stating the reason for denial and forward a copy to the subdivider. The governing body will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

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### b. Inaccurate Information

The governing body may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

### B-7. Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in subsection B-8, above. The county clerk and recorder may not accept any plat for filing that does not bear the governing body's approval in proper form or that has been altered. The clerk and recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation, and Final Subdivision Plats, contained in Section 21-62.

### B-8. Amending Filed Plats

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the governing body.
- b. An amended plat may be subject to the procedures for reviewing major or minor subdivisions, as appropriate. The governing body may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.
- c. The governing body may not approve an amendment that will place a lot in non-conformance with the Design and Improvement Standards contained in Sec. 21-18 of these regulations or with local zoning regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to Sec. 21-22 A, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Sec. 21-62)."

Section 11. There is added a Section 21-15 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-15. Review and approval procedures for minor subdivisions.

Subdivisions containing five or fewer parcels shall be reviewed as set forth in this section.

Generally, minor subdivisions shall be reviewed pursuant to subsection A, below, as provided for in 76-3-609(4), MCA. Expedited minor



subdivisions shall be reviewed pursuant to subsection B, below.

#### *A. Minor Subdivision Review*

The pre-application process and initial review process set forth in Sec. 21-14, General Procedures, apply to this section.

##### *A-1. Minor Subdivision Application and Preliminary Plat Submittal*

The subdivider shall submit to the governing body or to the agent or agency designated by the governing body a subdivision application containing the materials identified in section Sec. 21-14(A)(5) and in the pre-application meeting.

##### *A-2. Minor Subdivision Exceptions*

The following do not apply to minor subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication; and
- c. public hearing requirements.

##### *A-3. Minor Subdivision Review Process*

- a. Time Period for Approval, Conditional Approval, or Denial  
Within 35 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to subsection (A)(6); below, of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent that the subdivision application is sufficient for review.
- b. 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-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 subdivision 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 subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

##### *A-4. Minor Subdivision Planning Board Consideration and Recommendation*

- a. Recommendation

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1. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application and preliminary plat with the following:

- a. these regulations, including but not limited to the standards set forth in Sec. 21-18;
- b. applicable zoning regulations;
- c. the MSPA, including but not limited to 76-3-608(3); and
- d. other applicable regulations.

2. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable): . . . .

- a. the subdivision application and preliminary plat;
- b. the summary of probable impacts and proposed mitigation;
- c. an officially adopted growth policy;
- d. subdivision administrator's staff report and recommendation; and
- e. any additional information authorized by law.

3. Written Recommendation

Within 10 working days after the public meeting, the planning board shall submit the following, to the subdivider and the governing body:

- a. recommended findings of fact based on the evidence in subsection (A)(2), above, that discuss and consider the subdivision's compliance with and impact on the items listed in subsection (A)(1), above, of these regulations;
- b. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
- c. a recommendation for approval or denial of any requested variances.

b. Water and Sanitation Information

The planning board or subdivision administrator shall forward

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public comment regarding the water and sanitation information required by the MSPA and these regulations to the governing body.

### *A-5. Subdivider's Preference for Mitigation*

No later than two working days before the meeting at which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations, as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences regarding mitigation [76-3-608(5)(b), MCA].

### *A-6. Minor Subdivision Governing Body Decision and Documentation*

#### *a. Prerequisites to Approval*

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

1. provides easements for existing utilities and for the location and installation of any planned utilities, both on and off site;
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 or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section 21-14(B)(4) of these regulations; and
4. 3.\$Sures that the requirements of76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section 21-18(N) have been considered and will be accomplished before the final plat is submitted; and
5. assures that the requirements of76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section 21-18(N) have been considered and will be accomplished before the final plat is submitted.

#### *b. Consideration Standards*

Upon approving, conditionally approving, or denying a first minor subdivision application, the governing body shall consider subsection (A) above and whether the proposed subdivision complies with:

1. these regulations, including but not limited to, the Design and Improvement Standards set forth in Section 21-18;

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2. applicable zoning regulations;
  3. other applicable regulations;
  4. the MSPA, including but not limited to the following impacts:
    - a. impact on agriculture;
    - b. impact on agricultural water user facilities;
    - c. impact on local services;
    - d. impact on the natural environment;
    - e. impact on wildlife and wildlife habitat; and
    - f. impact on public health and safety.
  5. proposed mitigation.
- c. Consideration Evidence
- In making its decision to approve, conditionally approve, or deny a proposed minor subdivision the governing body may consider and weigh the following, as applicable:
1. the subdivision application and preliminary plat;
  2. the summary of probable impacts and mitigation;
  3. an officially adopted growth policy;
  4. the subdivision administrator's staff report and recommendations;
  5. the planning board recommendation; and
  6. any additional information authorized by law.
- d. Water and Sanitation-Special Rules
1. Water and sanitation information provided in the application and public comment given about this information during the review process may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or submitted during public comment indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
  2. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of

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lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

3. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and one area for a replacement drain field for each lot in order to obtain final plat approval. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are developed.
  4. The governing body shall collect public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.
  5. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
    - a. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; or
    - b. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.
- e. Documentation of Governing Body Decision
1. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the governing body shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
  2. When the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
    - a. contain information regarding the appeal process for the denial or imposition of conditions;
    - b. 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;

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- c. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
- d. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
- e. set forth the time limit for approval, pursuant to subsection (f), below.
- f. Subdivision Application and Preliminary Plat Approval Period
  - 1. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
    - a. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.
    - b. The governing body may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, provided for in Sec. 21-14(B)(4).
  - 2. 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.
  - 3. 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.

### *A-7. Minor Subdivisions Amended Applications*

- a. If the subdivider changes the subdivision application or preliminary plat before the governing body makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
  - I. Within five (5) workdays of receipt of the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in Subsection c, below.
- 2. The 35-working day review period is suspended while the

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subdivision administrator considers the amended application or preliminary plat.

3. If the subdivision administrator determines the changes are not material, the 35-working day review period resumes when the subdivision administrator issues notice of the decision to the subdivider.
  4. If the subdivision administrator determines the changes are material, the subdivision administrator may require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application.
- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection A-7(a)(2), above.
- c. 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;
  6. changes to proposed covenants; or
  7. designated access.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
1. The 35-working day review period is suspended until the governing body decision on the appeal is made.
  2. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection A-7(a)(4) above.
  3. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the

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35-working day review period resumes as of the date of the decision.

4. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided in Subsection A-7(d)(l), above.

*A-8. Minor Subdivision Final Plat*

The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Sec. 21-14 B, Final Plats.

*B. Expedited Review of a Minor Subdivision*

*B-1 Criteria*

A minor subdivision application qualifies for expedited review if the proposed subdivision meets the following criteria:

- a. no more than one additional lot is created and the remaining land is greater than 160 acres in size or two lots are created from a tract of record;
- b. no land is dedicated to the public for parkland, playgrounds, or other public uses and no additional streets will be dedicated to public use;
- c. each lot has suitable access pursuant to City or County standards;
- d. the proposed subdivision does not pose significant issues concerning public health, safety or welfare;
- e. approval from the DEQ, as applicable, has already been obtained and is submitted as part of the application; and
- f. the proposed subdivision complies with these regulations and any applicable zoning laws.

*B-2 Procedures*

- a. The applicant shall request, in writing, consideration for expedited review at the time a preapplication meeting is requested.
- b. The subdivision administrator shall initially determine whether the application qualifies for expedited review at the pre-application meeting. If the subdivision administrator later determines that the subdivision application does not meet the expedited review criteria, the subdivision administrator shall notify the subdivider of the decision within five (5) working days of making that determination.
- c. After the pre-application meeting the subdivision administrator shall provide a letter to DEQ, if appropriate, advising it that the



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application qualifies for expedited review, so no public hearing is required and no public comments are available.

- d. After receiving DEQ approval, if required, the applicant shall submit all required application materials identified in Section Sec. 21-14 A-5 of these regulations along with the DEQ approval, for element review in accordance with the application deadline in these regulations.
- e. The application will be reviewed for the required elements and sufficient information, as identified in Section 21-14 A-6.
- f. The day after the subdivision administrator notifies the subdivider or the subdivider's agent that the subdivision application is sufficient for review, the review period begins. The subdivision administrator shall review the application and make a recommendation for approval, conditional approval, or denial. The recommendation shall be forwarded to the applicant and the governing body no more than fifteen (15) days after the application is deemed sufficient for review.

### *C Approval*

After receiving the recommendation from the subdivision administrator, the governing body shall adopt findings of fact for approval, conditional approval, or denial no later than 35 working days after the application is deemed sufficient for review. The governing body decision shall be documented pursuant to subsection A-6(e), above. A dated and signed statement of approval shall be provided to the subdivider pursuant to subsection A-6(±), above.

### *D. Final Plat Filing*

Once an application has been approved by the governing body, or all conditions have been met if conditional approval was granted, the final plat can be prepared and filed in accordance with Section 21-14 Band subsection A-6(±), above."

Section 12. There is added a Section 21-16 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec.21-16. Review and approval procedures for major subdivisions.

### *A. Application.*

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots. The pre-application process and initial review process set forth in Sec. 21-14, General Procedures, apply to this section.

### *A-1. Subdivision Application and Preliminary Plat Submittal*

- a. The subdivider shall submit to the governing body or its agent a subdivision application containing the materials identified in Sec. 21-14 A-5 and in the pre-application meeting.

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- b. The requirement for preparing an environmental assessment, does not apply, pursuant to 76-3-210, MCA, when:
  - 1. The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA; and
  - 2. The governing body has adopted zoning regulations pursuant to sections 76-2-301 through 76-2-328, MCA; or sections 76-2-201 through 76-2-228, MCA; and
  - 3. The governing body has adopted a strategy for development, maintenance, and replacement of public infrastructure pursuant to section 76-1-601(3)(e), MCA.
- c. The planning board or governing body may waive the requirement for preparing any portion of the environmental assessment when the proposed subdivision is in an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-606, MCA, and the proposed subdivision will be in compliance with the policy.
- d. When an exemption from preparing any portion of the environmental assessment is sought, the applicant shall meet with the planning board, explain why the exemption is appropriate, and if granted the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement must accompany the preliminary plat of the subdivision when it is submitted for review and shall be filed with the final plat.

### *A-2. Time Period for Approval, Conditional Approval, or Denial*

- a. Within 60 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to subsection A-8, below, of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to subsection A-7, below, of these regulations. The review period of 60 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.
- b. 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 60-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 subdivision 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 subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

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*A-3. Public Hearing and Notice In General*

- a. Hearing  
The planning board shall hold a public hearing on the subdivision application when a hearing is required by these regulations.
- b. Notice
  - 1. The planning board shall give notice of the time, date and location of the hearing by publication in a newspaper of general circulation in the county not less than 15 days prior to the dates of the hearing.
  - 2. At least 15 days prior to the date of the hearing, the planning board shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, ;md each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
  - 3. The subdivider shall post notices at conspicuous places on the site of the proposed subdivision, if required.

*A-4. Planning Board Hearing, Consideration and Recommendation*

- a. Hearing  
After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.
- b. Recommendation
  - 1. Consideration-Standards  
In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:
    - a. these regulations, including but not limited to the standards set forth in Sec. 21-18;
    - b. applicable zoning regulations;
    - c. The MSPA, including but not limited to 76-3-608(3); and
    - d. other applicable regulations.

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### 2. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- a. the subdivision application and preliminary plat;
- b. the environmental assessment;
- c. the summary of probable impacts and proposed mitigation;
- d. an officially adopted growth policy;
- e. information provided at public hearing(s);
- f. subdivision administrator's staff report and recommendation; and
- g. any additional information authorized by law.

### 3. Written Recommendation

Within 10 working days after the public hearing, the planning board shall submit the following, in writing, to the subdivider and the governing body:

- a. recommended findings of fact based on the evidence in subsection A-4(b)(2) above that discuss and consider the subdivision's compliance with and impact on the items listed in 76-3-608(3) MCA; and
- b. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- c. a recommendation for approval or denial of any requested variances.

### c. Water and Sanitation Information

The planning board staff shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The planning board shall forward all comments regarding water and sanitation to the governing body. Water and sanitation information provided by the developer during the application review process, including public comment, may be used as a basis for a conditional approval or denial of an application only if the governing body finds that the application does not comply with previously adopted subdivision, zoning floodplain or other regulations.

### *A-5. Subdivider's Preference for Mitigation*

No later than two working days before the meeting or hearing at

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which the governing body is to consider the subdivision application and preliminary plat, the subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's comments on and responses to the planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation. [76-3-608(5)(b), MCA].

### *A-6. Governing Body Meeting*

- a. After the planning board makes its recommendation, the governing body shall hold a public meeting on the subdivision application.
- b. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the governing body directly, to be forwarded to the governing body.
- c. Upon objection made at its meeting, the governing body shall determine whether public comments or documents presented for consideration at the governing body's public meeting constitute either:
  1. 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
  2. new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the governing body shall proceed as set forth in subsection A-6(d) below.
- d. If the governing body determines that public comments or documents presented at the meeting constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the governing body shall determine whether the public comments or documents are relevant and credible with regard to the governing body's decision, pursuant to subsections A-6(e) and A-6(f) below.
  1. If the governing body determines the information or analysis of information is either not relevant or not credible, 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

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2. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall direct the planning board to schedule a subsequent public hearing pursuant to subsection A-7, below.
  3. At the subsequent hearing the planning board 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.
- e. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the governing body will rely upon 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:
    1. physical facts or evidence;
    2. supported personal observations;
    3. evidence provided by a person with professional competency in the subject matter; or
    4. scientific data supported by documentation.

### *A-7. Subsequent Public Hearing*

- a. If a subsequent public hearing is held pursuant to subsection A-6, above, it must be held within 45 days of the governing body's determination to schedule a subsequent hearing. The planning board 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.
  1. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
  2. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing shall be given by certified mail to the subdivider, 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.
  3. The governing body may require that notice be posted at a conspicuous place on the site of the proposed subdivision.
- b. If a subsequent public hearing is held, the 60-working day

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review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. The 60-working day 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.

*A-8. Governing Body Decision and Documentation*

a. 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 existing utilities and 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 PU: li or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Sec. 21-14 B-4 of these regulations;
4. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Sec. 21-18 O have been considered and will be accomplished before the final plat is submitted;
5. assures that the requirements of 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in Section 21-18 N have been considered and will be accomplished before the final plat is submitted; and
6. provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection A-8(a) above, and whether the proposed subdivision complies with:

1. these regulations, including, but not limited to, the Design and Improvement Standards set forth in Sec. 21-18;
2. applicable zoning regulations;
3. other applicable regulations;
4. the MSPA, including but not limited to the following impacts:
  - a. impact on agriculture;

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- b. impact on agricultural water user facilities;
- c. impact on local services;
- d. impact on the natural environment;
- e. impact on wildlife and wildlife habitat; and
- f. impact on public health and safety.

### 5. proposed mitigation.

### c. Consideration-Evidence

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

- 1. the subdivision application and preliminary plat;
- 2. the environmental assessment;
- 3. the summary of probable impacts and mitigation;
- 4. an officially adopted growth policy;
- 5. comments, evidence and discussions at the public hearing;
- 6. subdivision administrator's staff report and recommendations;
- 7. planning board recommendation; and
- 8. any additional information authorized by law.

Notwithstanding the foregoing, the governing body may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

### d. Water and Sanitation-Special Rules

- 1. Water and sanitation information provided in the application and public comment given about this information during the review process may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or submitted during public comment indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- 2. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall



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obtain approval by the DEQ as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.

3. For a proposed subdivision that will create one or more parcels containing 20 acres or more, the subdivider shall demonstrate that there is an adequate water source and at least one area for a septic system and a replacement drain field for each lot. This demonstration to the local reviewing authority is to evaluate the ability to develop lots at the platting stage and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed.
4. The governing body shall collect public comments submitted regarding water and sanitation information and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and Preliminary plat.
5. The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:
  - a. reviewing authority provided in Montana Code Annotated, Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and
  - b. local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

e. Documentation of Governing Body Decision

- I. 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 the preceding subsections.
2. When the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
  - a. contain information regarding the appeal process for the denial or imposition of conditions;
  - b. 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;

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- c. provide the facts and conclusions that the governing body relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
- d. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
- e. set forth the time limit for approval, pursuant to subsection A-S(f) below.

### £ Subdivision Application and Preliminary Plat Approval Period

1. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
  - a. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, at its discretion and at the Written request of the subdivider, extend its approval for a period of one additional year.
  - b. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in Section 21-14 B-4.
2. 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, at which time a new application shall be required.
3. 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.

### *A-9. Amended Applications*

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to Section 21-14 A-6 but before the Planning Board hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
  1. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision

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application or preliminary plat are material, pursuant to subsection A-9(d) below.

2. The 60-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
  3. If the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
  4. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or proceed with the 60-working day review period upon certification from the subdivision administrator that the application is sufficient for review.
- b. If the subdivider changes the subdivision application or preliminary plat after the PlanningBoard hearing but before the governing body meeting, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
1. Upon receipt of the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material pursuant to subsection A-9(d) below.
  2. The 60-working day review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
  3. If the subdivision administrator determines the changes are not material, the 60-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
  4. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:
    - a. require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee; or
    - b. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat Notice of the subdivision administrator's determination to schedule a new planning board hearing shall be provided as set forth in subsection A-3, above. A supplemental staff report shall be prepared to address the changes to the original application.

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5. If a new Planning Board hearing is held pursuant to subsection A-9(b)(4)(b), above, the 60-working day review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections A-9(a)(2) and A-9(b)(2), above.
- d. 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 public land open spaces;
  5. easement provisions;
  6. changes to proposed covenants; or
  7. designated access;
- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the governing body by written notice within 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.
  1. The 60-working day review period is suspended until the governing body decision on the appeal is made.
  2. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board.
  3. If the governing body concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the 60-working day review period resumes as of the date of the decision.
  4. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 60-working day

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review period provided in subsection A-9(e)(l) above.

*B. Major Final Plats*

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Sec. 21-14 B, Final Plats."

Section 13. There is added a Section 21-17 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-17. Divisions of land exempt from subdivision review.

*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.

*B. General Criteria to Determine Whether A Proposal is an Attempt to Evade the MSPA..*

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.

*C Divisions of Land Exempt from the Requirements of These Regulations and the MSPA [76-3-201,MCA]*

The governing body will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in a fee schedule adopted by the local government. 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, when:

- a. 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.

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- b. 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.
  1. This exemption applies:
    - a. to a division of land of any size;
    - b. if the land that is divided is only 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. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations.
    - c. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.
  2. Statement of Intent- Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a person who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
  3. Use of Exemption- This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.
  4. Required Materials - When this exemption is to be used, the landowner must submit to the subdivision administrator:
    - a. a statement of how many interests within the original tract will be created by use of the exemption;
    - b. 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);

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- c. 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
  - d. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.
5. Rebuttable Presumptions- The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:
- a. it will create more than one new building site;
  - b. the financing is not for construction or improvements on the exempted parcel, or for re-financing;
  - c. 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;
  - d. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
  - e. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
  - £ 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; or
  - g. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
  - d. A division of land creates cemetery lots;
  - e. A division of land is created by the reservation of a life estate;
  - f. A division of land is created by lease or rental for farming and agricultural purposes;
  - g. A division of land is in a location over which the state does not have jurisdiction; or
  - h. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a

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residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

### *D. Divisions of Land Which May be Exempt from Review and Surveying*

- a. Generally condominiums are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land divided in compliance with these regulations and the MSPA, and:
  1. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621, MCA, is complied with; or
  2. The condominium proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.
- b. Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of the MSPA and these regulations, but must be submitted for review and approved by the governing body before portions may be rented or leased.
  1. When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the MSPA or these regulations;
  2. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these regulations.
- c. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
- d. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
- e. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- f. Instruments of transfer of land which is acquired for state



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highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [ 44 A.G. Op. 25 (1992)]. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

### *E. Divisions of Land Exempt from Review hut 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 subdivision 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 subdivision administrator for evasion review.

#### *E-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 a one-time 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 (F) [as adopted by Miles City Code Sec. 21-62(B)] 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. If the same owner owns both parcels affected by the relocation, documentation showing the need or reason for the relocation (for example: structure encroachment or surveyor error) shall be recorded and may be entitled "Notice of Boundary Line

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Relocation with No Transfer."

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:

1. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
2. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

*E-2. A Gift or Sale to a Member Of the Immediate Family  
[76-3-207(1)(b), MCA]*

a. Statement of Intent

The intent of this exemption is to allow 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]. 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.

b. Required Information

A certificate of survey (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(F)]. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. Use of Exemption

One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

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### d. Access

In order to protect the public health and safety, physical and legal access must be provided to each parcel created by this exemption.

### e. Rebuttable Presumptions

1. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
2. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
3. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
4. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

### *E-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 76-3-207(1,C) MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(F)] The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

#### c. Use of Exemption.

1. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or

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timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.

2. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
  3. 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.
- d. Rebuttable Presumptions.
- The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:
1. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.
  2. 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.
  3. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

*E-4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (J)(d), (e) and (2)(a), MCA]*

- a. Statement of Intent
1. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision 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.
  2. 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.

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### 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

1. If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
2. If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

## *F. Procedures and Examination of Subdivision Exemptions*

### *F-1. Submittal*

Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision 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)

### *F-2. Examination*

When a division of land for which an exemption is claimed is submitted to the subdivision administrator, the subdivision administrator 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 subdivision 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 subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Sec. 21-17.
- b. The subdivision administrator shall make a written determination of whether the use of the exemption is intended

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to evade the purposes of the MSPA, explaining the reasons for the determination.

- c. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the subdivision administrator shall notify the governing body and advise the clerk and recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and the criteria in this Sec. 21-17, the subdivision administrator shall advise the clerk and recorder not to file or record the documents, and the materials will be returned to the landowner.
- d. The subdivision 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.

### *F-3. Appeals*

- a. Any person whose proposed use of an exemption has been denied by the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the subdivision administrator's decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the 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 subdivision 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 landowner proposing to use the exemption may submit a subdivision application for the

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proposed land division.

### *G. Remaining Parcels of Land*

The term "remainder" is used to refer to that portion of an original tract which is not itself created for transfer, but which is left after other parcels are segregated for transfer. A "remainder" less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in the proposed subdivision. A landowner claiming that a parcel is a "remainder" to avoid review shall present evidence that the parcel is, in fact, intended to be retained and not to be transferred.

Parcels less than 160 acres that were created as a remainder must be reviewed prior to being transferred or developed.

Section 14. There is added a Section 21-18 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-18. Design and improvement standards.

All subdivisions approved by the governing body must comply with the provisions of this section; except where granted a variance pursuant to Sec. 21-22 A, Variances. The governing body may not grant variances from the provisions of subsection D, Floodplain Provisions, below. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Sec. 21-19, Sec. 21-20 and Sec. 21-21 of these regulations.

#### *A. Conformance with Regulations*

The design and development of a subdivision must conform with any applicable zoning or other regulations. Where no zoning regulations are in effect, maximum density and minimum lot size must be established in consultation with local and state health authorities.

#### *B. Natural Environment*

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

#### *C Lands Unsuitable for Subdivision*

The governing body may find land to be unsuitable for subdivision because of potential hazards such as flooding, snow avalanches, rock falls, land slides, adverse soil types, steep slopes in excess of 25 percent slope, high potential for wildfire, subsidence, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds,

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environmental degradation, or other features which may be detrimental to the health, safety, or general welfare of existing or future residents. These lands must not be subdivided for building or residential purposes unless the hazards are eliminated or will be mitigated by approved design and construction plans. Lands that exhibit a combination of characteristics that when considered together create a potential hazard may be deemed unsuitable for development by the governing body.

### *D. Floodplain Provisions*

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.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and the 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The evaluation must follow the "guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas" which may be found at the following website: [www.mtfloods.org](http://www.mtfloods.org).

The subdivider shall be responsible for assuring the DNRC submits its report to the subdivision administrator, prior to the hearing or meeting on the subdivision application.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.

### *E. Improvement Design*

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

### *F. Lots*



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

- a. No single lot may be divided by a municipal or county boundary line.
- b. No single lot may be divided by a public road, alley or utility right of-way or easement.
- c. Each lot must abut and have access to a public or private street or road. Alleys may not be used to provide the primary means of access to a lot.
- d. Comer lots must have driveway access to the same street or road as interior lots.
- e. Comer lots must be of sufficient area to provide acceptable visibility for traffic safety.
- f. No lot may have an average depth greater than three times its average width.
- g. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
- h. Through lots are prohibited except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

*G. Blocks*

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 1,000 feet.
- c. Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul de-sacs.
- d. Rights of-way for pedestrian walks, not less than six feet wide, must be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.

*H. Streets and Roads*

- a. General Design

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### 1. Roadways

The arrangement, type, extent, width, grade, materials, and location of all roadways shall be considered in their relationship to existing and planned streets and roads, to topographical conditions, maintenance considerations, the delivery of emergency services, to public convenience and safety, in their relation to the proposed uses of the land to be served by them, and to impacted lands outside the subdivision.

### 2. Relation to Subdivided Areas

The developer shall arrange the roadways to provide for the continuation of roadways between adjacent parcels when such continuation is necessary for the convenient movement of traffic, effective provision of emergency services, and the efficient provision of utility easements.

### 3. Relation to Adjoining Lands

Developing subdivisions shall provide access and utility easements to adjoining lands when access to those lands must pass through the subdivision. The developer shall provide legal rights-of-way and the access must be constructed in accordance with these road standards.

### 4. Separation of Through and Local Traffic

Where a subdivision abuts or contains an existing or proposed arterial or collector road, the subdivider may be required to provide frontage roads, reverse frontage roads with a reservation prohibiting access along the rear property line, with screen planting or other such treatment as may be necessary for the protection of residential properties and to afford separation of through and local traffic.

### 5. Distance Between Parallel Rights-of-Way

Where a subdivision borders on or contains a railroad, limited access highway, canal, ditch, or stream right-of-way, the developer may be required to provide a road approximately parallel to and on each side of such right-of-way at a distance suitable to allow for appropriate use of the intervening land. Such distances shall be determined with regard for the requirements of approach grades and future grades.

### 6. Dead-End Roadways

No dead-end roadways shall be permitted without an approved turnaround. Where roadways terminate, the developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Where it is planned that a dead-end roadway will be extended in the future, a temporary cul-de-sac or "T" turnaround shall be provided. Cul-de-sacs and "T" turnarounds must also conform to the design specifications in Table 1, below.

Cul-de-sacs shall have a minimum turning radius of 35 feet.

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"T" turnarounds shall include two backup legs of a minimum of 30 feet each, with an inside turning radius of 26 feet and an outside turning radius of 38 feet.

7. Half Roadways

Half roadways are prohibited except when it is shown that they are beneficial to the governing body and that they provide for access by emergency service vehicles.

8. Second or Emergency Access

To facilitate access by emergency vehicles and to allow an escape route for residents in emergency situations, the developer shall provide a second access in major subdivisions and all subdivisions located in high fire hazard areas.

9. Road Design Standards

The design standards contained in these regulations shall apply to all safety standards, construction, reconstruction, and paving of:

- a. roadways by easement,
- b. roadways dedicated to the public,
- c. city streets/alleys,
- d. roadways accepted into the County Road System, and
- e. roadways within any special improvement districts.

10. Roadway Dedication and Easements

All roadways serving a proposed subdivision or neighboring lands shall be dedicated to the public or shall have easements providing for access. Dedicated roadways are not designated as county roads until the conditions immediately below are met. Easements provide for legal access while the property remains under private ownership.

11. Subdivision roadways constitute a public roadway easement when all of the following conditions are met:

- a. the easement is approved by the governing body;
- b. the approved easement is recorded in the Office of the Clerk and Recorder and files with the County Road Department or City Engineering Department;
- c. the easement clearly grants to the public an unrestricted right of ingress and egress from a public roadway to the parcels within the subdivision; and
- d. documented proof of construction or reconstruction and maintenance of the roadway is provided to the governing body.

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*NOTE: The county does not accept the responsibility for safety standards, construction, reconstruction, or maintenance of any roadway that is not officially accepted into the county road system.*

*Public roadways become county roads only when they are officially accepted by county resolution with specific roadway survey, metes and bounds description, or by reference to a plat on file with the clerk and recorder.*

*NOTE: Approval of a subdivision plat by the County Commission shall not be construed as acceptance of the subdivision roadways or easements into the county road system.*

b. Roadway Maintenance

Roadway maintenance shall include, but is not limited to: blading, pavement patching, graveling road surfaces, graveling or fabric placement in soft areas, snow removal, mowing roadside vegetation, guardrail repair, bridge repair, culvert repair and clean out, auto gate repair and clean out, pavement patching, paint striping on paved roads, repair or replacement of traffic control devices, repair and replacement of rural addressing signs or city' street signage, and controlling erosion of borrow areas and roadway side slopes.

c. Drainage Channels and Waterways

Bridges and culverts shall be provided and installed by the developer where drainage channels and waterways intersect any road right-of-way or approach. Bridges and culverts shall be appropriately sized in accordance with the drainage area. Bridges and culverts shall be designed by a registered engineer. Bridges shall be constructed to HS25 load standards and shall be the same width as the roadway. Guard rails shall also be installed. All bridge installations shall be approved by the County Road Department.

Culverts shall be a minimum of 18 inches in diameter and shall extend across the entire width of the roadway including side slope toes. Culvert material, type, gauge and depth of cover shall be included in the design. All culvert installations shall be approved by the respective governing body.

d. Intersections

The following requirements shall apply to roadway intersections:

1. The intersection of more than two roads at one point shall be avoided.
2. Roads shall be laid out so as to intersect as nearly as possible at right angles. No road shall intersect any other road at less than a 75-degree angle.
3. Two roads meeting a third road from opposite sides shall meet at the same point or their centerlines shall be offset by

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a minimum of 200 feet.

- 4. Any road, which intersects a paved roadway, shall be paved for a minimum of 30 feet from paved road.
- 5. Intersection design shall conform to the specifications in Table 1, below.
- 6. Intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual roadways.
- 7. Hilltop intersections are prohibited, except where no alternatives exist. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited.
- 8. Maximum grade of approaches to major highways must not exceed three percent.

e. Road Names  
New roads aligned with existing roads shall have the same name as the existing road. All road names must be approved by the respective governing body.

f. Road Signs  
All traffic signs shall be installed by the developer. Traffic signs shall be of the size, shape, height, and placement in accordance with the Manual of Uniform Traffic Control Devices. Traffic sign plans shall be approved by the respective governing body.

g. Rural Addressing  
All subdivisions shall conform to the Custer County Rural Addressing System or the City of Miles City addressing system requirements. All road intersection, mileage markers, and residence number signs shall be installed by the developer. The addressing plan shall be approved by the County Road Department or the City Engineering Department.

h. Improvements

- 1. All roadway improvements including pavement, curbs, gutters, sidewalks, utilities, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations, using materials approved by the governing body.
- 2. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, or other substandard materials. Subgrades must be properly rolled, shaped and compacted and subject to approval by the governing body.
- 3. Streets and roads must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.

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4. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain property easements, at least 60 feet wide, from each property owner or the appropriate administrator of public lands. Each easement must allow construction and perpetual maintenance of a road accessing the property and allow vehicular travel on the road.
  - a. Adequate and appropriate easements must be granted by each property owner through a signed and notarized document that grants the easement in conformance with the design.
  - b. The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.
5. Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body. Borrow areas for roads must be seeded with approved plant materials to reduce erosion.
6. Street light installation may be required by the governing body on all streets within the subdivision or may be included as part of the public improvements agreement.
7. If postal service will not be provided to each individual lot within the subdivision, the subdivider must provide an off-street area for mail delivery within the subdivision in cooperation with the United States Post Office. Responsibility for maintenance may be included as part of the public improvements agreement.

### i. Definitions and Design Standards

1. Arterial Roads  
An arterial road has the primary function of moving traffic with emphasis on high level of mobility for through movement and the secondary function of providing limited access to adjacent land. Arterial roads are generally state secondary highways. Primary and community arterial roads shall have a minimum of 80 foot wide right-of-way and meet other design standards as may be required by the governing body.
2. Major Collectors  
Major collectors are roads that carry more than 300 vehicle trips per 24 hour period. Major collector roads have equally important functions of moving traffic and providing access to adjacent land.

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### 3. Minor Collectors

Minor collectors are roads that carry more than 100 but less than 300 vehicle trips per 24 hour period. Minor collector roads have equally important functions of moving traffic and providing access to adjacent land.

### 4. Minor Roads

Minor roads are local roads that carry less than 100 but more than 20 vehicle trips per 24 hour period. Minor roads have the primary function of providing access to adjacent land and a secondary function of moving traffic.

### 5. Local Roads

Local roads are those roads that carry less than 20 vehicle trips per 24 hour period. Local roads have the function of providing access within an individual subdivision lot.

### 6. Primary Access Roads

Primary access roads are the major access to a subdivision.

### 7. Vehicle Trip Calculation

The number of vehicle trips generated by a subdivision shall be calculated on the basis of eight trips per household per day. Actual official traffic counts or a certified traffic study may be used for traffic loads. Commercial developments shall submit to the governing body a traffic study that is completed by a certified traffic engineer.

### j. Primary Access Standards

All off site roads providing primary access to the proposed subdivision shall meet the following standards. The governing body shall approve all road designs and plans.

1. Right-of-way width and respective construction standards shall apply.
2. Primary access roads shall be dedicated to the public, or shall have a public easement which meets the criteria of these regulations.
3. The subdivider shall be responsible for bringing all private, public, and county primary access roads which serve the subdivision, up to the standards.
4. The subdivider may be required to pave the primary access road if the subdivision increases the traffic burden on the primary access to 100 or more trips per 24 hour period. Paving shall conform to respective paving standards.

### k. Collector Roads Standards within the Subdivision

1. Right-of-way width and respective construction standards shall apply.

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2. Collector roads shall be dedicated to the public, or shall have a public easement which meets the criteria of these regulations.

3. The subdivider shall construct collector roads to respective road standards.

1. Local Road Standards

Local rural roads serving a single lot must be constructed and maintained to county road standards and these regulations. Lot access plans shall be a part of the road plans which are submitted for review and approval.

m. Timing Requirements for Paving Roads

1. Roads designated for pavement shall meet one of the following options:

- a. the roads shall be paved prior to final plat approval, or
- b. the subdivider shall enter into an improvements agreement with the governing body.

2. Improvements Agreement

An improvements agreement signed by the developer and the governing body specifying the terms and conditions of the paving shall be a condition of final plat approval. The improvements shall meet the following requirements:

- a. the term of the agreement shall not exceed three years from the date of preliminary plat approval, or one year from the time 50 percent of the lots within the subdivision are sold or transferred, whichever comes first.
- b. Security in an amount equal to 125% percent of the total cost of the paving shall be included. Such security shall be in the form of a surety bond, certificate of deposit, irrevocable letter of credit, or cash.



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TABLE 1  
ROADWAY DESIGN STANDARDS

	Arterial	Major Collector	Minor Collector	Minor Road	Local Road
Design Criteria / Roadway Type	80ft	60ft	60/50 ft	60/50 ft	50ft
Minimum Road Surface	30ft	28ft	26ft	26ft	16ft
Centerline Radius on Curves	400ft	300ft	150ft	100ft	100ft
Tangent length Between Reverse Curves	300ft	200ft	100ft	100ft	50ft
Stopping Site Distance	300ft	300ft	300ft	300ft	150ft
Minimum Angle of Intersecting Centerlines	75°	75°	75°	75°	75°
Curb Radius at Intersections	25ft	25ft	25ft	15ft	15ft
Maximum Length of Cul-De-Sac			1000 ft	1000 ft	
Maximum Road Grade	5%	6%	6%	7%	9%
Maximum Grade within 100 Feet of Intersecting Centerline	1%	2%	2%	3%	3%
Minimum In-Slope	3:1	3:1	3:1	3:1	3:1
Minimum Back-Slope	3:1	3:1	3:1	3:1	3:1
Minimum Round Culvert Size	18 inch	18 inch	18 inch	8 inch	15 inch

*L Drainage Facilities*

- a. The drainage system and facilities required for storm run-off affecting the subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size also must be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- b. A grading and drainage plan as required by Sec, 21-14 A-5 is subject to approval by the governing body.
- c. Curbs and gutters or swales will be required as determined by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities.

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- d. Culverts or bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts must extend at least across the entire width of the base of the fill; the amount of backfill to be placed over the culvert and the culvert's capacity must be determined by a professional engineer. The plan must include arrangements for driveway culverts.

Culverts shall be a minimum of 18 inches in diameter and shall extend across the entire width of the roadway including side slope toes. Culvert material, type, gauge and depth of cover shall be included in the design. All culvert installations shall be approved by the respective governing body.

- e. The subdivider must provide suitable drainage facilities for any surface runoff affecting the subdivision; these facilities must be located in street rights-of-way or in perpetual easements of appropriate widths and are subject to approval by the governing body.
- f. Each culvert or other drainage facility must be large enough to accommodate potential runoff from upstream drainage areas.
- g. Drainage systems must not discharge into any sanitary sewer facility.
- h. The grading and drainage system must be designed and certified by a professional engineer.
- i. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat.

### *J. Water Supply Systems*

- a. All water systems are subject to approval by the governing body. Systems for subdivision lots less than 20 acres in size also must meet the minimum standards of the DEQ which are incorporated into and made a part of these regulations by this reference. If the lots are 20 acres or greater in size, the subdivider shall demonstrate that there is an adequate water source on each lot prior to final plat approval.
- b. The governing body may require that any proposed central system provide adequate and accessible water for fire protection.
- c. Where the subdivision is within the service area of a public water supply system, the subdivider must install complete water system facilities in accordance with the requirements of the jurisdiction involved and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the

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jurisdiction involved and to the DEQ, and must obtain their approvals prior to undertaking any construction.

### *K. Sewage Treatment Systems*

- a. All sewage treatment systems are subject to the approval of the governing body. Systems for subdivision lots less than 20 acres in size also must meet the minimum standards of the DEQ which are incorporated into and made a part of these regulations by this reference. If the lots are 20 acres or greater in size the subdivider shall demonstrate that there is at least one area for a septic system and a replacement drain field for each lot, prior to final plat approval.
- b. Where the subdivision is within the service area of a public sanitary sewer system, the subdivider must install complete sanitary sewer system facilities in accordance with the requirements of the jurisdiction involved and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the jurisdiction involved and to the DEQ, and must obtain their approvals prior to undertaking any construction.

### *L. Solid Waste*

The subdivider must provide for collection and disposal of solid waste that meet the regulations and minimum standards of the DEQ and the governing body.

### *M. Utilities*

- a. The subdivider must provide adequate and appropriate easements for existing utilities and the construction of planned utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in the street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Such underground facilities must be installed after the street has been brought to grade and before it is surfaced, to eliminate disturbance of the surfacing for the connection of individual services.
- c. Overhead utility lines must be located at the rear property line, where practical.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider, subject, however, to all applicable laws and all rules and regulations of any appropriate regulatory authority having jurisdiction over such facilities.
- e. Utility easements must be centered along side and rear lot lines wherever necessary, and, if placed in the street, be located between the roadway and the right-of-way line.

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- f. Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway authority.
- h. In addition to showing the location of the utility easement on the plat with dashed lines, the following statement must be on the final plat:

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, telecommunications, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

### *N. Water Course and Irrigation Easements*

- a. Except as noted in subsection N(b), below, the subdivider shall establish within the subdivision ditch easements that:
  - 1. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
  - 2. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - 3. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
  - 1. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
  - 2. the water rights have been removed from the land within the

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subdivision or the process has been initiated to remove the water rights from the subdivided land; and

3. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. 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.

*O. Disposition of Water Rights*

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.

*P. Park Land Dedication; Cash in Lieu;      Waivers;  
Administration*

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:

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1. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
  2. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
  3. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
  4. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- b. A park dedication is not required for:
1. minor subdivisions;
  2. subdivision lots larger than five acres;
  3. nonresidential subdivision lots;
  4. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  5. subdivisions which will create only one additional parcel.
- c. 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. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- d. The governing body will waive the park dedication requirement if it determines that:
1. 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;
  2. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values;

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and the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection P(a) above;

3. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections P(d)(1) and (2), above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection P(a), above; or
  4. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection P(a), above.
- e. The local governing body may waive the park dedication requirement if:
1. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
  2. The area of land to be subject to long-term protection, as provided in subsection P(e)(1), above, equals or exceeds the area of dedication required under subsection P(a).
- f. Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection P(a) to a school district, adequate to be used for school facilities or buildings.
- g. The governing body will administer funds dedicated to the public under this section in accordance with 76-3-621, MCA.
- h. For the purposes of this park dedication requirement:
1. "cash donation" means the fair market value of the unsubdivided, unimproved land; and
  2. "dwelling unit" means a residential structure in which a person or persons reside.

***Q. Fire Protection***

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, grazing lands, and forested areas. Subdivisions within established fire service areas or fire districts shall comply

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with the Uniform Fire Code and local fire codes. Subdivisions outside fire service areas or fire districts shall provide for:

- a. interior and exterior roads that provide two entrances/exits to assure more than one escape route for residents and access routes by emergency vehicles and fire suppression equipment. Fire suppression equipment includes, but is not limited to, wildland fire engines, structural fire engines, water tenders, heavy equipment, and trucks used for hauling heavy equipment;
- b. roads, bridges, culverts, and auto gates which are designed to allow access by fire equipment;
- c. the placement of residences and other structures in such a manner as to minimize the potential for flame spread and to permit efficient access for fire fighting equipment;
- d. provisions for defensible space around structures and fire protection facilities. (See Fire Protection Guidelines For Wildland Residential Interface Development, Montana Departments of Natural Resources and Conservation/Justice);
- e. for remote rural subdivisions, the presence of adequate fire fighting facilities on site, including an adequate water supply and water distribution system to fight fires on site. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by the appropriate local fire protection authority. In absence of such standards, a water supply of sufficient volume for effective fire control must at a minimum provide as follows:
  - 1. A central water system with a minimum flow of 1,000 gallons per minute; or
  - 2. Where no central water system exists, cisterns, reservoirs or fill ponds with dry hydrants must be provided at appropriate locations:
    - a. For single family dwellings: minimum capacity of 2,500 gallons per dwelling;
    - b. For five or more dwellings: minimum capacity of 500 gallons per dwelling;
    - c. Water storage facilities must be all-season and accessible by fire equipment. On level ground, fire engines must be able to get within 10 feet of the water source; turn-arounds on all weather roads must be provided for continuous forward movement of fire engines; and
    - d. Dry hydrants must be a minimum of six inch diameter with appropriate attachment fixtures for fire engines, portable pumps, and other pumping apparatus. Enclosed cisterns must be properly vented.



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- f. The availability, through a fire protection district, fire service area, or other means, of fire protection services adequate to respond to fires that may occur within a subdivision.
- g. Alternative backup power source for water sources that are dependent on electric power for pumping.
- h. Domestic water wells with a minimum capacity of 10 gallons per minute when used in a fire suppression plan. Water hydrants must be located near each structure. Subdivisions located outside established fire service areas are considered High Fire Hazard Areas and must comply with the Uniform Fire Code and subsection R of these Regulations, below.

R. *Special Standards for Subdivisions Proposed in High Fire Hazard Areas*

High fire hazard areas include heads of draws, excessive slopes, dense fuel growth or other hazardous components. Areas not under the protection of a fire district or a fire service area are considered High Fire Hazard Areas. For subdivisions proposed in areas subject to high wildfire hazard as determined by the Commission, the local fire protection authority, U.S. Forest Service or the Forestry Division of the Montana Department of Natural Resources and Conservation, the following standards apply (also see the Uniform Fire Code and the Fire Protection Guidelines For Wildland Residential Interface Development, Montana Departments of Natural Resources and Conservation/Justice):

- a. At least two entrance-exit roads must be provided to assure more than one escape route for residents and access routes for fire fighting vehicles.
- b. Road rights-of-way must be maintained free of slash, trees, tall grass/weeds and other fire fuels.
- c. Roads, bridges, culverts, and auto gates must be designed to allow access by fire equipment.
- d. Building sites must be prohibited on slopes greater than 25 percent and at the apex of "fire chimneys" (topographic features, usually drainage ways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. Densities in areas of steep slopes or dense forest growth must be reduced through minimum lot standards as follows:

Minimum Lot Size (Acres)		
% Slope	Open Grass	Forest & Brush
0-10	1	2
10-20	2	3
20-25	3	4
over 25	5	not permitted

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- f. Open space, park land and recreation areas (including green belts, riding or hiking buildings from densely forested areas.
- g. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by the appropriate local fire protection authority. In the absence of such standards, a water supply of sufficient volume for effective fire control must at a minimum provide as follows:
  - 1. A central water system with a minimum flow of 1,000 gallons per minute; or
  - 2. Where no central water system exists, cisterns, reservoirs or fill ponds with dry hydrants must be provided at appropriate locations:
    - a. For single family dwellings: minimum capacity of 3,500 gallons per dwelling;
    - b. For 5 or more dwellings per unit: minimum capacity of 700 gallons per dwelling;
    - c. Water storage facilities must be all-season and accessible by fire equipment. On level ground, fire engines must be able to get within 10 feet of the water source; turn-arounds in all weather roads must be provided for continuous forward movement of fire engines at all draft sites; and
    - d. Dry hydrants must be a minimum of six inch diameter with appropriate attachment fixtures for fire engines, portable pumps, and other pumping apparatus. Enclosed cisterns must be properly vented.
- h. Water sources that are dependent on electric power for pumping must have an alternative backup source of power.
- 1. Domestic water wells must have a minimum capacity of 10 gallons per minute when used in a fire suppression plan. Water hydrants must be located near each structure.
- j. Defensible space shall be provided around structures and fire protection facilities. (See Fire Protection Guidelines For Wildland Residential Interface Development.)

### *S. Restrictive Covenants*

Restrictive covenants may be required in a subdivision to ensure that the subdivision remains attractive to all lot owners and that the subdivision does not become a burden to surrounding property owners. Enforcement of restrictive covenants is the responsibility of the homeowners association, but may also include the governing body, if specifically provided as a condition of approval. Violation of restrictive covenants is considered a violation of the Montana Subdivision and Platting Act under which the subdivision was

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approved. Restrictive covenants must include an enforcement/penalty clause.

- a. For rural residential subdivisions, restrictive covenants should include prohibitions against:
  1. at-large-dogs or other animals that are not compatible with livestock or wild game animals;
  2. noxious weeds; and
  3. infringement on established water rights.
- b. For rural residential subdivisions that are 40 acres and smaller, restrictive covenants may include prohibitions against:
  1. junk vehicles;
  2. domestic farm or pleasure animals;
  3. exotic animals;
  4. housing without permanent foundations, unless the subdivision is specifically for mobile homes;
  5. activities that produce sights, sounds, and odors that may be offensive to neighbors;
  6. activities that may harm the natural environment, including ground cover, trees, soils, and water;
  7. further reductions in lot sizes; and
  8. overhead utilities.
- c. Restrictive covenants may be used to encourage a desired atmosphere. Such covenants may include:
  1. landscaping requirements;
  2. lot maintenance standards;
  3. screening of unsightly storage areas; and
  4. design and construction standards for the primary structure and any supplementary structures.

### *T. Noxious Weeds*

A weed control plan should be developed and implemented for every new subdivision in cooperation with the Custer County Weed Control Board. A noxious weed control plan may be required by the governing body.

### *U. Fences*

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Residential subdivision shall provide exterior boundary fencing to adequately exclude domestic and exotic livestock from the subdivision. The covenants of the subdivision shall provide for the maintenance and replacement of the fences.

*V. Landscaping Standards for Commercial Development*

The intent of landscaping is to enhance, conserve and stabilize property values by encouraging pleasant and attractive surroundings; to encourage preservation of existing trees on proposed building sites; and to contribute to the relief of noise, wind, glare through the proper placement of living plants and trees. Allowances for non-living landscaping, i.e., gravel sculptures, art, desert type landscaping shall be taken into consideration.

- a. The definition of landscaping shall mean some combination of planted living trees, shrubs, hedges, vines ground cover, flowers and lawns suitable for the climate, exposure, and site conditions. In addition, the design may include bark, mulch edgers flower tubs, rock and such structural features as fountains, pools, art works, screens walls, fences, or benches. The selected combinations of materials and plants for landscaping purposes shall be arranged in a harmonious manner compatible with the building and its surroundings.
- b. Selection of plant materials shall be based upon local climate, water restrictions, and soils. Site plans shall protect existing trees where feasible.
- c. Automated irrigation is required for all landscaping consisting of living plant materials. Irrigation plans will be reviewed as part of the landscaping review.
- d. Landscaping which exists on any property or for any use, subject to the provisions of this section, shall not be altered or reduced below the minimum requirements of this section, unless suitable substitutions are made which meet the requirements of this section and a site plan is first approved by the governing body.
- e. The landscaping area shall be 8% of the net land available (total area of the site minus the area occupied by all buildings).
- f. Trees will be planted no closer to each other or site structures than the mature drip line. Trees must be pruned to provide at least 8 feet of clearance over sidewalks parking areas and streets. The use of elevated earth berms to accomplish such landscaping is encouraged. Landscaping between parking bays with appropriate ground cover and trees is encouraged. This subsection shall complement Section 24-18(b) of the Miles City Zoning Code.
- g. All approved landscaping shall be completed within 90 days after the substantial completion of the buildings being

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constructed on the lot. If weather conditions do not permit the completion of the approved landscaping, then such landscaping shall be completed as soon thereafter as weather conditions permit.

- h. All areas to be landscaped in accordance with the provisions of this section shall, after completion, be maintained in a sightly and well-kept condition by the owner or occupant of the site.
- i. Trash receptacles and refuse storage areas must be surrounded on four sides by a decorative or painted wall or fence with a gate, to adequately screen the facility from view. The occupant of the site must also provide an adequate number of appropriate receptacles to prevent trash and refuse spreading about or away from the property.
- j. Any property having an approved landscaping plan pursuant to this section upon change of ownership or use of property must maintain existing landscaping or submit a new site plan to the governing body."

Section 15. There is added a Section 21-19 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-19. Land subdivisions created by rent or lease.

### *A. Definition*

A subdivision created by rent or lease, including a mobile home/manufactured home, recreational vehicle park or campground, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one parcel under single ownership (including property held in common). Plans are submitted to the subdivision administrator for review. The plan must comply with applicable zoning.

### *B. Subdivisions Providing Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes*

#### *a. Recreational Camping Vehicles*

Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under subsection F, Recreational Vehicle Park Standards, below.

#### *b. Mobile/Manufactured Homes*

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under subsection E, Mobile/Manufactured Home Park Standards, below.

#### *c. Subdivisions for Lease or Rent, Generally*

- 1. Land subdivision created by rent or lease will be reviewed under the procedures described in Sec 21-16, Major

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Subdivisions, or Sec. 21-15, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit a final plan drawn to scale, following the Final Plat procedure in Sec. 21-14.

2. Land subdivisions created by rent or lease are subject to Sec. 21-18 Design and Improvement Standards.

### *C. Procedures for Review*

#### *C-1. Review and Approval*

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. However, these subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased.

##### *a. Submittal*

The subdivider shall submit a completed application in accordance with Sec. 21-14 A-S and a plan of the proposed development, conforming to the requirements for preliminary plats.

##### *b. Review*

The procedure used to review subdivisions for rent or lease will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Sec. 21-16 of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section 21-15 of these regulations. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

#### *C-2. Improvements*

The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The governing body or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

#### *C-3. Final Plan Review*

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats in Sec. 21-14. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the office of the city clerk, clerk and recorder, planning or other designated office.

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*C-4. DPHHS License*

If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in section 50-52-102, MCA, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

*D. Design Standards for Subdivision Spaces Created by Rent or Lease*

*D-1. Design Standards*

Subdivisions created by rent or lease must comply with the provisions of Sec. 21-18 Design and Improvement Standards.

*D-2. Additional Provisions*

The governing body may require provision for:

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

*E. Mobile/Manufactured Home Park Standards*

*E-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.

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- 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. 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.

### *E-2. Streets*

Streets within a mobile/manufactured home park must meet the standards specified in Sec. 21-18 H Streets and Roads. Streets must be designed to allow safe placement and removal of mobile homes.

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

### *E-3. Electrical Systems*



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Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

*E-4. Gas Systems*

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the "National Fuel Gas Code" (NFPA Pamphlet 54-1981) and the "Standard for the Storage and Handling of Liquefied Petroleum Gases" (NFPA Pamphlet 58-1981).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- c. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

*F. Recreational Vehicle Park Standards*

*F-1. Recreational Vehicle Spaces*

- 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 15 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.

*F-2. Density*

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

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Section 16. There is added a Section 21-20 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-20. Planned unit developments.

### *A. Purpose*

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider creativity in subdivision design. Section 76-3-103(10), MCA defines a planned unit development as "a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use."

### *B. Procedures*

If the governing body designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures contained in the following Sections:..

### *C Standards*

#### *C-1. Design and Improvement Standards*

PUDs must comply with the standards contained in Sec. 21-18. Design and Improvement Standards. However, the governing body may modify the design and improvement standards addressing lots, blocks, streets and roads, and park land dedication upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space. In such cases, no application for a variance under Sec. 21-22 A Variances of these regulations is necessary.

#### *C-2. Streets*

The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.

#### *C-3. Open Space*

Each PUD must comply with the requirements of Sec, 21,18 Q of these regulations. The open space 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(a) and (b) above.

The governing body may waive dedication or cash donation

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requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and deed to the association land to be held in perpetuity for use as parks or playgrounds."

Section 17. There is added a Section 21-21 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec.21-21. Condominiums.

### *A. Procedures*

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

#### *A-1. Review Where Land Will Not be Divided*

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Sec. 21-19, Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Sec. 21-14 B-4 Public Improvements Agreement; Guaranty.

#### *A-2. Condominium Subdivisions Involving Land Divisions*

If a proposed condominium development will involve a division of land, the subdivision must be reviewed under the procedures contained in the following Sections:

Sec. 21-16 A, Review and Approval Procedures for Major Subdivisions  
Sec. 21-16 B, Applicable sections for Final Plats.  
Sec. 21-18, Design and Improvement Standards

#### *A-3. Unit Ownership Act*

Condominium developments must comply with all provisions of the Unit Ownership Act, Sections 70-23-102 through 70-23-703, MCA."

Section 18. There is added a Section 21-22 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec.21-22. Administrative provisions.

### *A. Variances*

#### *A-1. Variances Authorized*

The governing body may grant variances from Sec. 21-18, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance

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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.

*A-2. Variances from Floodway Provisions Not Authorized*

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

*A-3. Procedure*

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

*A-4. Conditions*

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

*A-5. Statement of Facts*

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.

*B. Administration*

*B-1. Enforcement*

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

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transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

### *B-2. Appeals*

A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious. A party who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made. For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

The following parties may appeal under the provisions of subsection B-2 above:

- a. the subdivider;
- b. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- c. the county commission of the county where the subdivision is proposed; and
- d. one of the following municipalities:
  1. a first-class municipality as described in 7-1-4111 MCA, if a subdivision is proposed within three miles of its limits;
  2. a second-class municipality, as described in 7-1-4111 MCA, if a subdivision is proposed within two miles of its limits;
  3. a third-class municipality, as described in 7-1-4111 MCA, if a subdivision is proposed within one mile of its limits"

Section 19. There is added a Section 21-23 to Chapter 21 of the Miles City Code of Ordinances to read as follows:

"Sec. 21-23. Severability.

If a court of competent jurisdiction holds any word, phrase, clause,

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sentence, paragraph, section or other part of any provision of Chapter 21 invalid, that judgment will affect only the part held invalid."

**Section 20.** There is added to Chapter 21 of the Miles City Code of Ordinances, an Article IV to read as follows:

**"ARTICLE IV. UNIFORM STANDARDS FOR  
MONUMENTATION, CERTIFICATES OF SURVEY, AND FINAL  
SUBDIVISION PLATS.**

**Section 21-62. Adoption of uniform standards.**

The City of Miles City hereby adopts, by reference, the following regulations and standards of the Montana Department of Labor & Industry, as now established, and as hereafter amended:

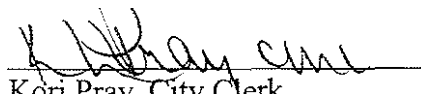
- A. Uniform Standards for Monumentation (ARM 24.183.1101);
- B. Uniform Standards for Certificates of Survey (ARM 24.183.1104); and
- C. Uniform Standards for Final Subdivision Plats (ARM 24.183.1107)."

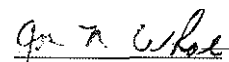
**Section 21.** A public hearing shall be held upon the adoption of these regulations on the 23rd day of September, 2008 at 7:00p.m. in the City Council chambers at City Hall, 17 S. 8th Street, Miles City, Montana. The City Clerk shall cause notice of the intent to adopt these regulations and the time and place of the public hearing thereon to be published in the Miles City Star, a newspaper of general circulation in Custer County, Montana, not less the 15 nor more than 30 days prior to the date of the hearing.

**Section 22.** This ordinance shall become effective thirty (30) days subsequent to its final passage.

Said ordinance read and put on its passage this 26th day of August, 2008.


ATTEST:

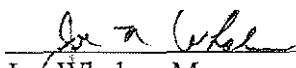
  
Kori Pray, City Clerk

  
Joe Whalen, Mayor  
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**FINALLY PASSED AND ADOPTED** this 23rd day of September, 2008.

ATTEST:

  
Kori Pray, City Clerk

  
Joe Whalen, Mayor