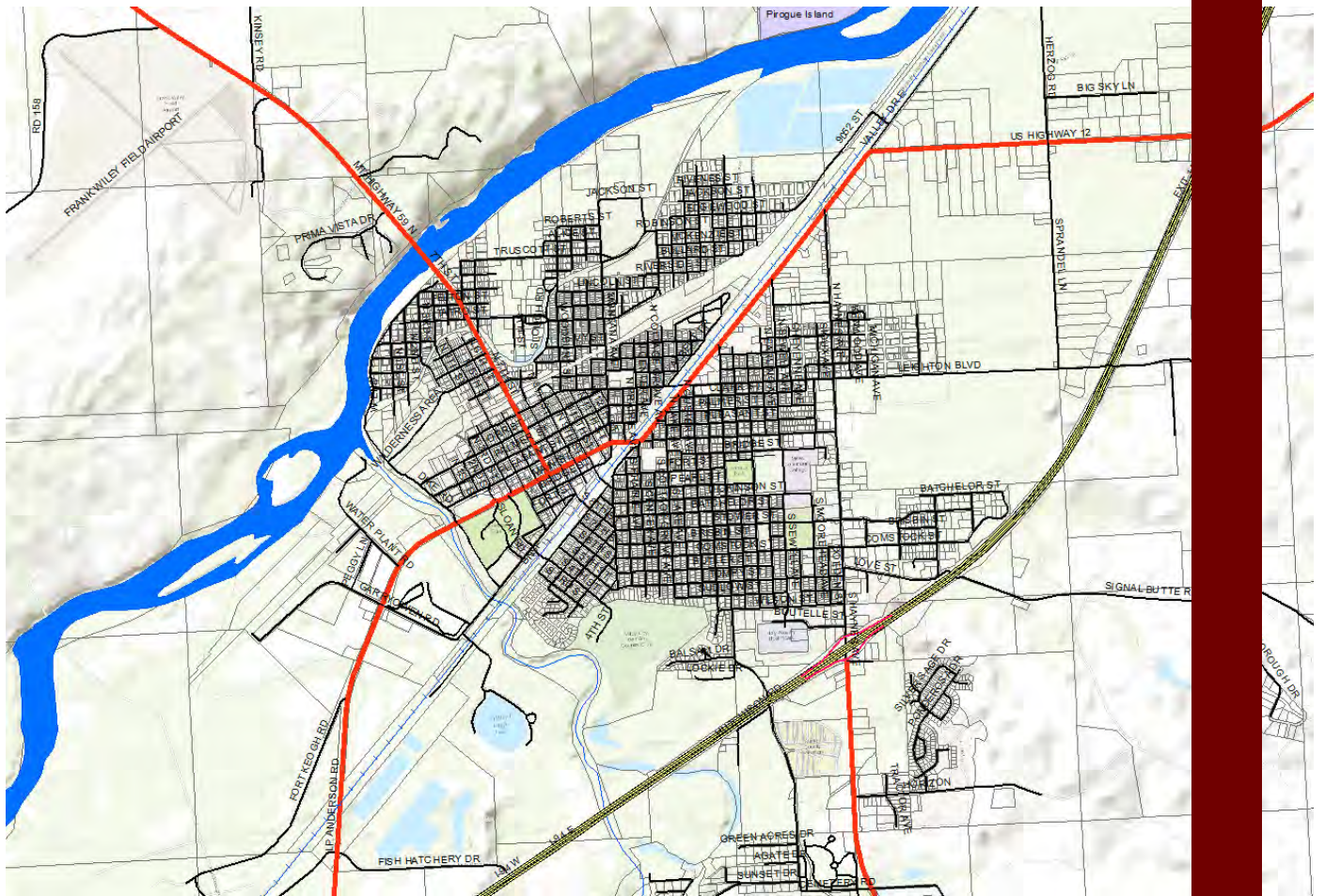


# Miles City Subdivision Regulations

City of Miles City, Montana



**Adopted by the Miles City Council on May 13, 2014**

**Ordinance No. 1267**

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## Sec. 21-1. Title of chapter.

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

## Sec. 21-2. Authority.

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

## 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 protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (See MCA 76-3-102).

These regulations are intended to comply with Part 5 of the MSPA and provide for the enforcement and administration of subdivision regulations reasonably providing for:

- 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 regulation of sanitary facilities;
- The avoidance or minimizing of congestion;
- The avoidance of subdivisions which would involve unnecessary environmental degradation;
- The avoidance of danger or injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public improvements;
- The avoidance of excessive expenditure of public funds for the supply of public services or that would necessitate an excessive expenditure of public funds for the supply of the services;
- The manner and form of making and filing of any plat for subdivided lands; and
- 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.

## Sec. 21-4. Jurisdiction.

These regulations govern the subdivision of land within the City of Miles City, including land proposed for subdivision outside the city limits officially proposed to be annexed into the city limits of Miles City.

## 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):*

- (1) *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 or is proposed to dedicate the easement for public use or for private use specific to the proposed subdivision.
- (2) *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 street or road constructed to local standards in the obtained easements which are dedicated to public use, or from a private road improved to local standards which has been dedicated to public use.

*Adjoining landowner (adjacent property owner)* means 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 or directly across watercourse or deeded right-of-way.

*Agriculture* means the direct use of land for grazing and cropping to produce food, feed, and fiber commodities. This includes crop cultivation and tillage of the soil; grazing for milk, egg, meat, and breeding animal production; and animal feed production. It does not include farm animal confinement facilities or structures associated with farming and ranching.

*Agricultural water user facilities* means those facilities which provide water for agricultural land or the production of agricultural crops or animals including, but not limited to, canals, ditches, pipes, water-control devices, springs, dams and dugouts with associated collection areas, and water-spreading systems.

*ARM* means the Administrative Rules of Montana.

*Block* means a group of lots, tracts or parcels within well-defined and fixed boundaries.

*Certificate of survey* means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations. (MCA 76-3-103(1)).

*Cluster development* means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped. (MCA 76-3-103(2)).

*Comprehensive plan:* See Growth Policy.

*Condominium* means the ownership of single units with common elements located on property submitted to the provisions of the Montana Unit Ownership Act, MCA Title 70, Chapter 23. The term does not include a townhome or townhouse. (MCA 70-23-102(5))

*Covenant (restrictive covenant)* means a limitation contained in a deed or other document that restricts or regulates the use of the real property.

*Dedication* means 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. (MCA 76-3-103(3)).

*DEQ* means the Montana Department of Environmental Quality.

*Division of land* means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the 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. (MCA 76-3-103(4)).

*Dwelling unit* means any structure or portion thereof providing complete, independent and permanent living facilities for one household.

*Easement* means 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)* means a person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (MCA Title 37, Chapter 67) to practice engineering in the State of Montana.

*First Minor Subdivision* means a proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under MCA 76-3-201 or 76-3-207 since July 1, 1973.(MCA 76-3-609).

*Flood* means the water of any watercourse or drainway that is above the bank or outside the channel and banks of the watercourse or drainway (MCA 76-5-103(8)).

*Flood of 100-year frequency* means a flood magnitude expected to recur on the average of once every 100 years or a flood magnitude that has a 1% chance of occurring in any given year. (MCA 76-5-103(9)).

*Floodplain* means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the Federal Emergency Management Agency. (MCA 76-5-103(10)).

*Floodway* means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainway. (MCA 76-5-103(11)).

*Governing body* means the governing authority of a county, city, or town organized pursuant to law. (MCA 76-3-103(7)). In the jurisdictional area of the City of Miles City, the governing body is the City Council.

*Growth policy* means a comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to MCA Title 76, Chapter 1 before October 1, 1999, or a policy that was adopted pursuant to MCA Title 76, Chapter 1 on or after October 1, 1999. (MCA 76-1-103(4))

*Improvement agreement* means 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* means all individuals, groups, or parties with a title interest in the property. For purposes of MCA 76-3-207, 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* means any and all services and facilities that local government entities are authorized to provide.

*Lot* means a parcel, plot, or other land area created by subdivision for sale, rent, or lease.

*Lot measurement:*

- (1) *Lot depth* means the horizontal distance between the front and the rear lot lines.
- (2) *Lot width* means the average width of the lot.
- (3) *Lot frontage* means the length of the front lot line.
- (4) *Lot area* means the area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

*Lot types:*

- (1) *Corner lot* means a lot located at the intersection of two streets.
- (2) *Interior lot* means a lot other than a corner lot.
- (3) *Through lot or double-frontage lot* means a lot whose front and rear lines both abut streets (except alleys).



(4) *Flag lot* means 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* means a subdivision that creates six or more lots.

*Material* (as in a material change or amendment to an application or plat) means a change or amendment that is significant, that substantially alters the proposal, has an impact on any of the primary review criteria (MCA 76-3-608(3)(a)), brings the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacts the public's opportunity to provide meaningful comment.

*Minor subdivision* means a subdivision that creates five or fewer lots.

*Mobile (manufactured) home* means 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* means 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* means a tract of land that provides or will provide spaces for two or more mobile homes.

*Mobile (manufactured) home pad* means 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* means minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to MCA Title 76, Chapter 4, Part 1.

*Monument (permanent monument)* means 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. (ARM 24.183.1101(1)(a)).

*MSPA* means Montana Subdivision and Platting Act, MCA Title 76, [Chapter 3](#).

*Natural environment* means the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sights, sound, and smells and objects of historic, aesthetic, or community significance.

*Open space* means land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.

*Phasing plan* means the design plan showing phases and timing for a subdivision proposed to be subdivided in stages.

*Planned unit development (PUD)* means 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. (MCA 76-3-103(10)).

*Planning board* means a planning board formed pursuant to MCA Title 76, [Chapter 1](#). In the jurisdictional area of the City of Miles City, the planning board is the Miles City Planning Board.

*Plat* means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications. (MCA 76-3-103(11)).

The term “plat” includes the following types of plats, with definitions:

(1) *Preliminary plat* means 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. (MCA 76-3-103(12)).

(2) *Final plat* means 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. (MCA 76-3-103(6)).

(3) *Amended plat* means the final drawing of any change to a filed platted subdivision or any lots within a filed platted subdivision.

(4) *Vacated plat* means 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, and 7-14-4114, as applicable.

*Pre-application sketch (or drawing)* means a legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision.

*Private improvements* are the same types of improvements as defined under public improvements, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.

*Private road* means 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* means a condition of optimal well-being, free from danger, risk, or injury for the community at large or for all people, not merely for the welfare of a specific individual or a small class of persons. Examples of 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* means 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* means a road or street is public if its right-of-way has been dedicated or acquired for public use.

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

*Recreational camping vehicle* means 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* means 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* means 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* means the DEQ or local board of health or sanitarian as authorized under MCA Title 76, [Chapter 4](#).

*Right-of-way* means 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* means the State of Montana.

*Street* means a way for vehicular traffic designated as a street, highway, boulevard, thoroughfare, parkway, throughway, avenue, road or court.

*Street types.* For purposes of these subdivision regulations<sup>1</sup>, street types are defined as follows:

- (1) *Alley* means 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.
- (2) *Arterial* means a street, road or highway having the primary function of moving traffic with emphasis on a high level of mobility for through movement and

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<sup>1</sup> Other ordinances and regulations adopted by Miles City may assign conflicting definitions, classifications, and standards to streets; these definitions are for purposes of subdivision review only.

the secondary function of providing access to adjacent land. Arterials carry more than 1,000 vehicle trips per 24-hour period. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.

(3) *Collector* means a street, road or highway 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. Collectors may be major or minor, as follows:

(a) *Major collectors.* Major collectors are roads that carry more than 300 but less than 1,000 vehicle trips per 24-hour period. Major collectors connect to other streets at each end and do not dead end.

(b) *Minor collectors.* Minor collectors are roads that carry more than 100 but less than 300 vehicle trips per 24-hour period. Minor collectors may or may not end at a cul-de-sac bulb or other turnaround, subject to design standards.

(4) *Minor street* means a street the primary function of providing access to adjacent land and a secondary function of moving traffic. Minor streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties. Minor streets carry less than 100 but more than 20 vehicle trips per 24-hour period.

(5) *Local street* means a street having the function of providing primary access to two or fewer lots and that is expected to carry less than 20 vehicle trips per 24-hour period.

(6) *Half-street* means 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.

(7) *Cul-de-sac* means a street having only one outlet for vehicular traffic and terminating in a turn-around area.

(8) *Frontage access (street)* means a local, minor, 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.

(9) *Primary access streets* are streets comprising the network of streets, roads, and highways that provide the public access to a subdivision and the lots within.

*Subdivider* means a person who causes land to be subdivided or who proposes a subdivision of land (MCA 76-3-103(14)). 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* means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will

provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. (MCA 76-3-103(15)).

*Subdivision administrator* means the person or persons authorized by the governing body to perform the duties of review and administration set forth in these regulations.

*Subsequent Minor Subdivision* (or Second or Subsequent Minor Subdivision) means any subdivision of five or fewer parcels that is not a first minor subdivision.

*Surveyor (professional land surveyor)* means a person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (MCA Title 37, Chapter 67) to practice surveying in the State of Montana.

*Surveyor (examining land surveyor)* means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing. (MCA 76-3-103(5)).

*Swale* means a drainage channel or depression designed to direct surface water flow.

*Title report (abstract of title, subdivision guarantee, or platting report)* means 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* is a general term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

*Townhome or townhouse* means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities. (MCA 70-23-102(14)).

*Townhouse lot* means an 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* means 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 (MCA 76-3-103(16)).

*Vicinity sketch* means 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.

*Vehicle trip calculation* means the number of vehicle trips anticipated to occur on a street, road, or highway, typically expressed in average trips per day or in a 24 hour period. For purposes of these regulations, vehicle trips generated by a residential 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. Vehicle trips for non-residential subdivisions such as commercial and industrial developments are determined through a traffic study that is completed by a registered engineer.

*Wildlife* means living creatures (e.g. mammals, birds, reptiles, fish) which are neither human nor domesticated.

*Wildlife habitat* geographic areas containing physical or biological features essential to wildlife for living, breeding, or nesting either permanently or seasonally, or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.

## **Sec. 21-6. Violations and penalties.**

Any person 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 \$100.00 nor more than \$500.00 or by imprisonment in a county jail for not more than three months or by both fine and imprisonment. Each 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.

## **Sec. 21-7. Amendment of regulations.**

These regulations may be amended by the City Council. Before the governing body adopts amended subdivision regulations, it shall hold a public hearing on the regulations and shall give public notice of its intent to adopt amendments to the regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 calendar days prior to the date of the hearing.

## **Sec. 21-8. Reserved.**

## **Sec. 21-9. Fees.**

Fees, charges and expenses to be paid by subdividers to defray the expenses of subdivision review and exemption review and any inspections necessary for plat approval shall be set from time to time by resolution of the City Council. Applications for subdivision review shall not be accepted unless accompanied by all applicable fees.

## **Secs. 21-10—21-13. Reserved.**

## **Sec. 21-14. General procedures.**

(a) *Pre-applications and Preliminary plats.*

(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, MCA 76-4-121, regulates subdivision activities.

(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 (MCA 76-3-303):

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

(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 pre-application or any other subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

(4) *Pre-application process.*

a. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator by submitting, along with required fees as adopted by the City Council, a pre-application form provided by the subdivision administrator. The meeting shall occur within 30 calendar 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 together with other relevant documents. 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 one inch to 400 feet or larger that is

adequate to show the property and to show relevant information. The sketch and materials must include the following:

1. Information on the current status of the site, including:
  - i. Site location;
  - ii. Approximate tract and lot boundaries of existing tracts of record;
  - iii. Description of general terrain;
  - iv. Natural features including water bodies, floodplains geologic hazards, and soil types;
  - v. Existing structures and improvements;
  - vi. Existing utility lines and facilities serving the area to be subdivided;
  - vii. Existing easements and rights-of-way;
  - viii. Existing zoning or development regulation standards;
  - ix. Existing conservation easements;
  - x. Existing covenants or deed restrictions.
2. Documentation on the current status of the site, including:
  - i. Ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
  - ii. For proposed minor subdivisions, a copy of each certificate of survey or subdivision plat(s) pertaining to the subject parcel since July 1, 1973
  - iii. Water rights, including location of agricultural water user facilities; and
  - iv. Any special improvement districts.
  - v. Any rights of first refusal for the property.
3. Information on the proposed subdivision, including:
  - i. Tract and proposed lot boundaries;
  - ii. Proposed public and private improvements;
  - iii. Location of utility lines and facilities;
  - iv. Easements and rights-of-way; and



v. Parks and open space and proposed conservation easements.

c. At the pre-application meeting:

1. The subdivision administrator shall identify, for informational purposes only, 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 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 one year of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application. The subdivision administrator has the discretion to extend this time period for up to one additional year upon written request if it is determined that the information required of preliminary plat submittal will be the same based on site and area specific conditions and the regulations in effect at the time of the request.

(5) *Subdivision application and preliminary plat submittal.* The subdivider shall submit to the Miles City Planning Department a subdivision application addressing the topics discussed at the pre-application meeting and containing the following materials, all described in in forms or a comprehensive list of the following information required for the specific subdivision provided by the subdivision administrator, as applicable<sup>2</sup>:

- a. As supplements to the preliminary plat:
- A completed and signed subdivision application form;
  - The required review fee;
  - A preliminary plat;
  - A vicinity sketch;
  - A topographic map;
  - A conceptual grading and drainage plan;
  - Engineering plans for all public and private improvements;

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<sup>2</sup> The original application materials are submitted at initial submittal. Once the application is determined sufficient for review, 15 copies of the complete and sufficient application shall be submitted to the subdivision administrator (within 3 working days of notification of a sufficient application).

- Overall phasing plan if development is proposed to be completed in 2 or more phases including:
  - a. A time frame for each phase;
  - b. An improvement plan showing which improvements will be completed with each phase;
- 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;
- Comment on the proposed subdivision from police department, fire department, school superintendent, utility companies, engineering department, public works department, post office, medical service providers (hospital, ambulance, etc.), floodplain administrator, Montana Department of Natural Resources & Conservation, state historic preservation office, Montana Fish, Wildlife, & Parks, United States Fish & Wildlife Service, and any other entity deemed applicable by the subdivision administrator;
- Copies of all correspondence with the public utilities, local, state and federal agencies and any other entities identified during the pre-application meeting;
- Proposed road plans and profiles;
- Encroachment permits and approach permits from Montana Department of Transportation or the local jurisdiction;
- Proposed easements;
- Proposed disposition of water rights;
- Proposed disposition of mineral rights;
- A list of lot sizes (spreadsheet format preferred) for the purpose of park land dedication calculations;
- Environmental assessment when required and 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;
- Flood hazard evaluation;
- Required water and sanitation information (MCA 76-3-622);
- A form of subdivision improvements agreement, if proposed;
- Letter requesting a revocation of agricultural covenant, if applicable;
- Letter indicating locations of cultural or historic resources;
- Variance request or approval;
- Re-zoning application or approval;
- 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.

b. Information That May Be Required to be Included On The Preliminary Plat or a Preliminary Plat Supplement

*Note: The plat must be drawn to scale on 24-inch by 36-inch paper. The plat may consist of one or more sheets.*

- A standard title block and information to include scale bar, north arrow, and date of preparation;
- A name for the subdivision (names cannot be duplicated, but amended plats may be entitled “the amended plat of [existing subdivision name]);
- The exterior boundaries of the tract and the approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- A metes and bounds or other legal description, or notation of previously recorded certificate of surveys or subdivision plats;
- All lots and blocks, designated by numbers and/or letters;
- The proposed lot boundaries;
- The gross and net acreage of each lot;
- All existing and proposed streets, alleys, avenues, roads and highways on, adjacent to, and serving the property, and the width of the rights-of-way, grades and curvature of each, existing and proposed street names, and proposed locations of intersections or other access points for any subdivision requiring access to arterial or collector highways;
- The location, boundaries, dimensions and areas of any parks, common grounds, or other grounds dedicated for public or private use;
- The portions of each lot with slopes greater than 25 percent;
- Proposed property line setbacks or any setbacks required by the applicable zoning regulations;
- Topographic ground contours at required intervals or as appropriate to easily identify grades;
- All surface waters, to include irrigation water, on the property and within 100-feet of the exterior boundaries of the subdivision;
- All federally recognized wetlands on the property and within 100-feet of the exterior boundaries of the subdivision;
- All known wetlands on the property and within 100-feet of the exterior boundaries of the subdivision as well as the sources of information upon which this is based (National Wetlands Inventory, US Army Corp of Engineer comments, etc.);
- The location of all 100-year flood plains;
- Structural setbacks and vegetated buffers along wetlands and waterways;
- The location of all existing and proposed fences, lighting, signage, sidewalks, paths, storage areas, and other existing or proposed man-made improvements;
- The locations and types of all existing and proposed traffic control devices and directional signs;

- Traffic study by a registered engineer for non-residential subdivisions;
- Existing and proposed landscape buffers;
- Any proposed or existing “no build zones” and/or building envelopes;
- Any existing and proposed utilities located on or adjacent to the property including:
  - a. The approximate location, size and depth of water mains, sanitary and storm sewers, and fire hydrants.
  - b. The approximate location of nearest water mains and sewer lines where none are located on or adjacent to the property;
  - c. The approximate location of gas, electric and telephone lines, and streetlights.
- The locations and identity of all existing easements and rights-of-way of record and proposed public and private easements and rights-of-ways, including descriptions of their width and purpose;
- The location of any existing or proposed easements for existing or proposed utility services to the proposed lots;
- The proposed driveways and approaches serving each lot;
- A building site on each proposed lot;
- The location of existing and/or potential buildings/building sites, structures and other improvements;
- Proposed locations of all stormwater management infrastructure;
- All existing and proposed primary and 100% replacement drainfields on the property and within 100-feet of the exterior boundaries of the subdivision;
- Locations of the soils test pits for data submitted with the subdivision application;
- All proposed or existing wells on the property and within 100-feet of the exterior boundaries of the subdivision;
- Such additional relevant information as identified by the subdivision administrator during the pre-application meeting that is pertinent to the review of the subdivision proposal; and
- Any other requirements of these regulations that does not appear on this list.

(6) *Review process.* For both minor and major subdivisions, the initial review process is as follows:

a. *Element review.* Within 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 (d)(5) above, and shall give written notice to the subdivider of the subdivision administrator's determination. A subdivision application is considered to be received on the date of delivery to the Miles City Planning Department and when accompanied by the required review fees (MCA 76-3-604(1)(a)).

1. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall notify the subdivider of the missing elements and identify those elements that are missing. No further action shall be taken on the application by the subdivision administrator until the missing elements are submitted.

2. The subdivider may correct the deficiencies and submit the missing elements.

3. If the subdivider corrects the deficiencies and submits the missing elements, the subdivision administrator shall have 5 working days to notify the subdivider whether the submitted information contains all the materials required by subsection (d)(5) above, as applicable.

4. This process shall be repeated until the subdivider submits an application containing all the materials required by subsection (d)(5) above, or the application is withdrawn.

5. If the missing elements are not corrected and submitted to the subdivision administrator within 60 days following the date of the deficiency letter, the subdivision administrator may terminate the application and file, and notify the subdivider within 5 working days of termination. The Miles City Planning Department may retain a reasonable portion of the review fees for processing the application and for the element review.

b. *Sufficiency review.* Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (6)(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 (written) 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 the notification and no further action shall be taken on the application by the subdivision administrator until the identified material is resubmitted.

2. The subdivider may correct the deficiencies and resubmit the identified material, or withdraw the application.

3. If the subdivider corrects the deficiencies and resubmits the identified material the subdivision administrator shall have 15 working days to notify the subdivider whether the additional information 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 under the provisions of these regulations, or the application is withdrawn.

i. 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.

ii. 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.

iii. Once the application is determined sufficient for review, 15 copies of the complete and sufficient application shall be submitted to the subdivision administrator within 3 working days of notification of a sufficient application. If the required copies are not submitted to the subdivision administrator within 3 working days, the review period is suspended until the proper copies are submitted.

iv. Upon determination of a sufficient application, the preliminary plat application proceeds to the review procedures for first minor subdivisions (Section 21-15) or the review procedures for major and subsequent minor subdivisions (Section 21-16), as applicable.

5. If the deficiencies are not corrected and submitted to the subdivision administrator within 60 calendar days following the date of the deficiency letter, the subdivision administrator may terminate the application and file, and notify the subdivider within 5 working days of termination. The Miles City Planning Department may retain a reasonable portion of the review fees for processing the application and for the element and sufficiency reviews.

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 sufficiency review, the determination of whether the application contains the required elements and sufficient information shall be based on the new regulations.

(b) *Final plats.*

(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 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.

(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 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 outlining how each condition of approval has been satisfied; (Administrative Note: Certain conditions of plat approval may be carried out over time and may be enforced through development permit processes and through ongoing compliance monitoring.)
4. A title report or updated abstract dated no older than 30 calendar days prior to the date of submittal of the final plat application;
5. A signed, dated and notarized statement from each landowner, if different from the subdivider, and each lien holder or claimant of record consenting to the platting of the subdivision dated no older than 30 calendar days prior to the date of submittal. The governing body hereby authorizes the subdivision administrator to provide for the review of the abstract or certificate of title of the land in question by the city attorney;
6. The DEQ or local health department/sanitarian approval;
7. The final grading and drainage plan, including all road plans and profiles and state or local encroachment or approach permits (as required);
8. All engineering plans;
9. Any property owner association documents, including bylaws, covenants, and declarations;
10. A certificate of dedication of public improvements;
11. A copy of the approved state highway permits when a new road or driveway will intersect with a state highway;
12. A subdivision improvements agreement, financial guarantee and supporting documentation securing the future construction for all incomplete improvements to be installed (if applicable);
13. City attorney review of title report; and
14. One 11" x 17" and four 24" x 36" versions (two mylar and two paper) of the final plat, completed in accordance with the Uniform

Standards for Final Subdivisions Plats set forth in [Section 21-62](#) and as required by the Custer County Clerk & Recorder's Office.

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 any review fee authorized by an adopted fee schedule and an amended application pursuant to subsection 21-14(b)(5) below.

3. The subdivision administrator or county clerk and recorder 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 land surveyor (as applicable) shall certify the compliance in a printed or stamped signed certificate on the plat.

4. If the subdivision administrator determines that the final plat and application comply with the conditions and requirements for final plat approval, the subdivision administrator will notice and schedule a meeting with the governing body for final plat approval per subsection 21-14(b)(6) below. Notice of the governing body's meeting for final plat approval shall consist of posting a brief description of the pending action(s) on a bulletin board at city hall for at least 2 full working days.

5. Some governing body actions related to final plat review, such as acceptance of streets or park dedication, or cash-in-lieu of park land amounts, require action by the governing body prior to or at the time of final plat approval. In these cases, the meetings will typically be consolidated, scheduled, and noticed by the subdivision administrator only as a meeting for final plat approval.

(3) *Restrictive covenants, approval, content and enforcement by governing body; maintenance of common and shared property or improvements.*

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 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 Miles City City Council."



b. The governing body may require restrictive covenants. The restrictive covenants that it has required as a condition of plat approval may be required to contain the following language: "The City of Miles City is a party to this restrictive covenant and may enforce its terms."

c. If common property or facilities are to be deeded to or managed by 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. The property owners' association bylaws shall be recorded with the Custer County Clerk and Recorder'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 MCA 76-3- 621(6)(a);
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 property owners.
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.

d. When a proposed subdivision is subject to existing covenants, deed restrictions or any other restrictions filed in the records of the Custer County Clerk and Recorder's Office that the governing body has the right to enforce, all lots shall conform to the restrictions. The governing body reserves the right to notify and seek comment from landowners or an association that is party to the covenants, deed restrictions or other restrictions prior to taking action on a preliminary plat application.

e. When physical improvements are shared by more than one lot within the subdivision, but a property owners' association is not to be formed to

manage the improvements, a declaration of shared use and maintenance agreement for any shared infrastructure shall be created and recorded with the Custer County Clerk and Recorder's Office. At a minimum, the document shall provide for:

1. The regular maintenance of the shared infrastructure;
2. A requirement for equitable payment of the cost of maintaining the shared infrastructure;
3. Allowed adjustments of assessments to meet changing needs;
4. A means of enforcing the terms of the declaration;
5. An allowance for placement of liens on the property of lot owners who are delinquent in the payment of maintenance fees and assessments; and
6. The modification of the declaration after obtaining the governing body's approval of the change.

(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 and installation of all required improvements (MCA 76-3-507). The governing body may require 50 percent of all improvements or 100 percent of any improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security for purposes of filing a final plat. The requirement is applicable to approved preliminary plats (MCA 76-3-507(4)). No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or firefighting 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 percent 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 certifying all public improvements have been installed in conformance with the approved 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 county clerk and recorder's office with reference to the final subdivision plat.

(5) *Amending approved preliminary plats before final plat approval.*

- a. If the subdivider proposes to change the subdivision or the terms of preliminary approval 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 (5)(b) below.

2. If the subdivision administrator determines the changes are material (see definition), the subdivision administrator may either require the changes to be reviewed by the planning board at a noticed public hearing for a 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 recommend approval of the changes to the governing body, notify the subdivider and the governing body of that recommendation, and the governing body shall review those changes in a public meeting for which notice has been given of non-material changes to the final plat. If the governing body determines the changes are material at the public meeting or before the changes are approved, it may direct the subdivision administrator to require the changes to be reviewed starting at any point contemplated by subsection (2) above.

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

1. Configuration or number of lots;
2. Street layout;
3. Water and/or wastewater treatment system proposals;
4. Configuration of park land or open spaces;
5. Easement provisions;
6. Designated access;
7. Changes to the proposed covenants; or
8. Necessary or proposed 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 with the governing body, 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, the condition may be reviewed by the governing body through a properly noticed public meeting or hearing, as applicable, in order to determine if the condition may be waived or amended.

(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 subsection (6)(a)(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.

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

(7) *Final plat filing.* 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](#).

(8) *Amending filed plats.*

a. Changes that will substantially alter the contents of the original approved subdivision application, do not comply with the conditions of preliminary plat approval, or will materially alter any portion of a filed plat (not to include minor boundary adjustments), its land divisions or improvements, that is determined by the subdivision administrator to have the potential to negatively impact one or more of the primary review criteria for subdivisions, or that will modify the approved use of land within the subdivision, must be reviewed and approved by the governing body using the procedure for material amendments described in subsection (5), *Amending approved preliminary plats before final plat approval*, above.

b. Any alteration which increases the number of lots, modifies six or more lots, or abandons or alters a public road right-of-way or park land dedication shall be reviewed and approved by the governing body pursuant

to subdivision review procedures or vacation or abandonment laws, as applicable.

c. An amended plat may be subject to the procedures for reviewing major or minor subdivisions, as appropriate.

d. The governing body reserves the right to require a current abstract of title for the impacted properties and 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.

e. The governing body may not approve an amendment that will place a lot in non-conformance with the design and improvement standards contained in [Section 21-18](#) of these regulations unless the governing body holds a public hearing on the amendment and issues a written variance from the standards pursuant to [subsection 21-22\(a\)](#), variances.

f. The governing body may not approve an amendment that will place a lot in non-conformance with zoning regulations unless the Miles City Board of Adjustment has granted a zoning variance to the applicable standard.

g. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Section [21-62](#)).

## **Sec. 21-15. Review procedures for first minor subdivisions.**

(a) First minor subdivisions containing five or fewer parcels shall be reviewed as set forth in this section. Subsequent minor subdivisions shall be reviewed as major subdivisions (Section 21-16). All processes and requirements set forth in Section 21-14, General Procedures, apply to this section. This section also applies to first minor subdivisions for the creation of five or fewer recreational vehicle or mobile home sites.

(1) *First minor subdivision review.* The pre-application process and initial review process set forth in [Section 21-14](#), general procedures, apply to this section.

(2) *First minor subdivision application and preliminary plat submittal.* The subdivider shall submit to the Miles City Planning Department a subdivision application and preliminary plat containing the materials identified in [subsection 21-14\(a\)\(5\)](#) and in the pre-application meeting. The application must include sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record.

(3) *First minor subdivision exceptions.* The following do not apply to first minor subdivisions:

- a. Preparation of an environmental assessment; and
- b. Public hearing requirements.

(4) *First minor subdivision review process.*

a. *Time period for approval, conditional approval, or denial.* Within 35 working days of the subdivision administrator determining the subdivision application and preliminary plat to be sufficient for review, the governing body shall approve, conditionally approve or deny the proposed subdivision according to subsection (a)(7) 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 the subdivision administrator notifies the subdivider or the subdivider's agent that the subdivision application is sufficient for review.

b. *Public agency, service provider, and utility review.*

i. Review and comment by public agencies, service providers, or utilities may not delay the governing body's action on the subdivision application beyond the 35 working day review period. The subdivision administrator 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 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.

ii. As per MCA 76-3-608(9), if a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under MCA 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion.

iii. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

c. *Annexation.* When a proposed subdivision is also proposed to be annexed into the city, the governing body shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. See MCA 76-3-601 and 605. This provision does not allow for public hearings on first minor subdivisions even if annexation requires a public hearing.

d. *Subdivider/Adjacent Landowner Notification.*

i. At least 15 calendar days prior to the scheduled meeting at which the governing body will consider the subdivision, the

subdivision administrator shall notify the subdivider, and the landowner if different from the subdivider, of the date and time of the meeting by first class mail.

ii. Also, at least 15 calendar days prior to the scheduled meeting of the governing body on the subdivision, the subdivision administrator shall notify adjacent landowners of the subdivision proposal by first class mail. At the discretion of the subdivision administrator, the subdivision administrator may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include, but are not limited to, those landowners who share a private road or easement, irrigation facilities (delivery point, ditch, etc.), are within 150 feet of the subject property, across a watercourse, etc.

(5) *First minor subdivision report, consideration and recommendation.*

a. As provided in MCA 76-1-107(2), the planning board delegates to the subdivision administrator its responsibility to advise the governing body on all proposed first minor subdivisions.

b. *Administrator Report.* After the subdivision administrator deems the subdivision application is sufficient for review, the subdivision administrator shall prepare a report for consideration by the governing body. No less than 5 working days prior to the scheduled meeting at which the governing body will consider the subdivision, the subdivision administrator shall submit the report, proposed findings of fact and recommendation to the subdivider and the governing body. The report shall include:

1. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
2. A description of any variance requests as well as the pertinent facts and conditions relating to the request;
3. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application, variance requests and preliminary plat;
4. All public and agency comment received; and
5. Any other information deemed pertinent by the subdivision administrator.

c. *Consideration—Standards.* In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the subdivision administrator shall base the recommendation on compliance of the subdivision application and preliminary plat with the following:

1. These regulations, including but not limited to the standards set forth in [Section 21-18](#);

2. Applicable zoning regulations;
3. The MSPA, including but not limited to MCA 76-3-608(3); and
4. Other applicable regulations.

d. *Consideration—Evidence.* In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the subdivision administrator shall consider, without limitation, the following (as applicable):

1. The subdivision application and preliminary plat;
2. The summary of probable impacts and proposed mitigation;
3. The growth policy;
4. Information and testimony provided by potentially impacted parties; and
5. Any additional information authorized by law.

e. *Water and sanitation information.* The subdivision administrator shall forward public comment regarding the water and sanitation information required by the MSPA and these regulations to the governing body.

(6) *Subdivider's preference for mitigation.*

a. No later than 2 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 subdivision administrator's recommendations, as well as any proposed mitigation measures not already discussed with the subdivision administrator.

b. The governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences regarding mitigation (MCA 76-3-608(5)(b)).

(7) *Governing body decision and documentation.*

a. *Prerequisites to approval.* The governing body will consider the preliminary plat application at a regularly scheduled meeting for which notice has been posted at least 2 full working days prior to the meeting. At the meeting the public may provide testimony. The governing body may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

1. Provides easements within and to the proposed subdivision 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 of transfer concerning 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 [subsection 21-14\(b\)\(4\)](#) of these regulations; and
4. Assures that the requirements of MCA 76-3-504(1)(j), regarding the disclosure and disposition of water rights as set forth in [subsection 21-18\(a\)\(15\)](#) have been considered and will be accomplished before the final plat is filed; and
5. Assures that the requirements of MCA 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in [subsection 21-18\(a\)\(14\)](#) have been considered and will be accomplished before the final plat is filed.
6. Provides for the appropriate park dedication or cash-in-lieu.

b. *Consideration—Standards.* Upon approving, conditionally approving, or denying a first minor subdivision application, preliminary plat and proposed mitigation, the governing body shall consider subsection (a)(7)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](#);
2. Applicable zoning regulations;
3. Other applicable regulations;
4. The MSPA, including but not limited to the following impacts:
  - i. Impact on agriculture;
  - ii. Impact on agricultural water user facilities;
  - iii. Impact on local services;
  - iv. Impact on the natural environment;
  - v. Impact on wildlife;
  - vi. Impact on wildlife habitat; and
  - vii. Impact on public health and safety.

c. *Consideration—Evidence.* In making its decision to approve, conditionally approve, or deny a proposed minor subdivision the governing body shall consider and weigh the following, as applicable:

1. The subdivision application and preliminary plat;
2. The MSPA;
3. The summary of probable impacts;
4. Proposed mitigation;
5. The growth policy;
6. The subdivision administrator's staff report and recommendations;
7. Information and testimony provided by potentially impacted parties; and
8. Any additional information authorized by law.
9. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.

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 written decision within 30 working days, with the appropriate signature, and make the letter available to the public. The letter shall:
  - i. Contain information regarding the appeal process for the denial or imposition of conditions;
  - ii. 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;
  - iii. 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

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

v. Set forth the time limit for final approval, pursuant to subsection (f) below.

f. *Subdivision application and preliminary plat approval period.*

1. Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for not more than three calendar years or less than one calendar year.

2. At the end of the approval period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension. See MCA 76-3-610.

3. After the application and preliminary plat are approved or conditionally approved, the governing body and its subdivisions 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, or if modifications to the preliminary plat are proposed by the subdivider.

4. 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.

(8) *First minor subdivisions—amended applications.*

a. If the subdivider materially changes the subdivision application or preliminary plat after the sufficiency determination but before the governing body makes its decision, the subdivider shall submit the amended information to the subdivision administrator for review along with a letter agreeing to the suspension of the 35 working day review period. This subsection refers to substantial or material changes, and does not preclude the subdivider from proposing mitigation measures to the governing body that are intended to lessen or eliminate impacts, as discussed in subsection 21-15(a)(6), above.

b. Within 10 working days of receipt of the amended information, the subdivision administrator shall determine whether the changes are material, as determined in subsection (f) below.

c. The 35 working day review period is suspended while the subdivision administrator considers the amended application or preliminary plat.

d. 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.

e. If the subdivision administrator determines the changes are material, within 5 calendar days of notification, the subdivider must submit a letter agreeing to the cancellation of the 35 working day review period if the subdivider wishes the changes to be considered. Within 15 working days of the determination, the subdivision administrator shall send an addendum (or update) to the original form or list of information required, given to the subdivider at the time of the pre-application meeting, reflecting the changes and requesting the information and any authorized fees needed to review the amended proposal. Upon the subdivision administrator's determination that the amended subdivision application is complete and sufficient for review, the first minor subdivision review process shall begin as detailed in subsection 21-15(a)(4). In extreme cases, where three or more of the changes listed in subsection (f), below are proposed, 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.

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

1. Configuration or number of lots;
2. Street or pedestrian/bicycle facilities;
3. Water and/or wastewater treatment system proposals;
4. Changes to park land or open spaces;
5. Easement provisions;
6. Designated access; or
7. Changes to proposed covenants.

g. 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 within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes are not material, subject to the following:

1. By appealing the decision of the subdivision administrator, the subdivider agrees to a suspension of the 35 working day review period.
2. The 35 working day review period is suspended until the governing body decision on the appeal is made. If the governing body concludes that the evidence and information demonstrate that

the changes are material, the provisions of subsection 21-15(a)(8)(e), above take effect.

3. If the governing body concludes that the evidence and information demonstrate that the changes are not material, the 35 working day review period resumes as of the date of the decision.

(9) *First minor subdivision final plat.* The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in [subsection 21-14\(b\)](#), final plats.

## **Sec. 21-16. Review procedures for major and subsequent minor subdivisions.**

(a) Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots or recreational vehicle or mobile home sites (major subdivisions), or subdivisions of five or fewer lots or sites that do not otherwise qualify for review as first minor subdivisions under MCA 76-3-609 and Section 21-15 of these regulations because they are second or subsequent minor subdivisions.

(1) *Major or subsequent minor subdivision review.* The pre-application process and initial review process set forth in [Section 21-14](#), general procedures, apply to this section.

(2) *Subdivision application and preliminary plat submittal.* The subdivider shall submit to the Miles City Planning Department a subdivision application containing the materials identified in [subsection 21-14\(a\)\(5\)](#) and in the pre-application meeting.

(3) *Major or subsequent minor subdivision review process.*

a. *Time period for approval, conditional approval, or denial.* Within 60 working days or 80 working days for subdivisions containing 50 or more lots, the governing body shall approve, conditionally approve or deny the proposed subdivision according to subsection (a)(8) below unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, not to exceed one year, or a subsequent public hearing is held pursuant to subsection (a)(7) below. The review period begins the day the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. *Public agency, service provider, and utility review.*

i. Review and comment by public agencies, service providers, or utilities may not delay the governing body's action on the subdivision application beyond the 60 or 80 working days review period. The subdivision administrator 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.

- ii. As per MCA 76-3-608(9), if a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under MCA 76-3-620 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion.
- iii. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as provided in this subsection.

c. *Annexation.* When a proposed subdivision is also proposed to be annexed into the city, the governing body shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. See MCA 76-3-601 and 605.

(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 subdivision administrator 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 calendar days prior to the date of the hearing.

2. At least 15 calendar days prior to the date of the hearing, the subdivision administrator shall give notice of the hearing by certified mail to the subdivider, the landowner if different from 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. At the discretion of the subdivision administrator, the subdivision administrator may also notify non-adjacent potentially affected parties of the proposal. Potentially affected parties include, but are not limited to, those landowners who share a private road or easement, irrigation facilities (delivery point, ditch, etc.), are within 150 feet of the subject property, across a watercourse, etc.

4. At least 15 calendar days prior to the date of the planning board hearing, the subdivider shall post a minimum of one notice at a conspicuous place on the site of the proposed subdivision. This notice shall be printed on laminated orange paper no smaller than 11" x 17" in size and be clearly visible from the most heavily traveled way(s) adjoining the property and include the information listed in subsection (5), below. It is the subdivider's obligation to maintain this information on the property until a determination has been made on the preliminary plat application.

5. At a minimum all notices shall include a general description of the property location, the legal description of the property, the number of lots or units proposed, the type of land use(s) proposed, a description of any variances requested, notification of where more information may be obtained, and the time, date and location of the hearing.

(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 hold a public hearing on the subdivision application. The subdivision administrator's report to the planning board shall include:

1. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
2. A description of any variance requests as well as the pertinent facts and conditions relating to the request, and a recommendation on the variance request;
3. All public and agency comment received by the subdivision administrator. As a matter of practice all comments and documents regarding the subdivision shall be submitted in writing to the subdivision administrator prior to the public hearing on the subdivision to be made part of the staff report to the planning board. However, all comments and documents which are presented directly to the planning board at the public hearing shall be included in the public record;
4. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
5. Any other information deemed pertinent by the subdivision administrator.

b. *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:

1. These regulations, including but not limited to the standards set forth in [Section 21-18](#);
2. Applicable zoning regulations;
3. The MSPA, including but not limited to MCA 76-3-608(3); and
4. Other applicable regulations.

c. *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):

1. The subdivision application and preliminary plat;
2. The environmental assessment;
3. The summary of probable impacts and proposed mitigation;
4. The growth policy;
5. Information and testimony provided by potentially impacted parties, including that provided at the public hearing(s);
6. Subdivision administrator's staff report and recommendation; and
7. Any additional information authorized by law.
8. The planning board is advised that water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.

d. *Written recommendation.* Within 10 working days after the public hearing, the subdivision administrator, working on behalf and with the consent of the planning board shall submit the following, in writing, to the subdivider and the governing body:

1. Planning board 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 MCA 76-3-608(3);
2. A recommendation for approval or denial of any requested variances;



3. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
4. Information and testimony provided by potentially impacted parties at or before the public hearing; and
5. Any other information deemed pertinent by the planning board and subdivision administrator.

e. *Water and sanitation information.* The subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The subdivision administrator shall forward all comments regarding water and sanitation to the governing body.

(5) *Subdivider's preference for mitigation.*

- a. No later than 2 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.
- b. The governing body shall consider all of this information and make findings whether or not the newly proposed mitigation measures should be considered material based on the criteria described in subsection (9) below, for Amended Applications.
- c. If the governing body determines the newly proposed mitigation measures to be material, the governing body shall either not consider the mitigation proposal or direct the subdivider to follow the procedures provided for under subsection (9) below, for Amended Applications.
- d. If newly proposed mitigation measures are determined not material, the governing body will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation prior to making the decision (MCA 76-3-608(5)(b)).

(6) *Governing body meeting.*

a. After the planning board makes its recommendation, the governing body shall hold a public meeting on the subdivision application. When a proposed subdivision is also proposed to be annexed into the city, the governing body shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. See MCA 76-3-601 and 605.

b. The governing body will consider the preliminary plat application at a regularly scheduled meeting for which notice has been posted at least 2 working days prior to the meeting. At the meeting the public may provide testimony.

c. As a matter of practice, all comments and documents regarding the subdivision shall be submitted to the subdivision administrator prior to or at the planning board public hearing on the subdivision to be made a part of the record. However, if comments and documents are presented directly to the governing body at a public meeting, the proceedings shall not be voided, unless as provided below.

d. As per MCA 76-3-615, the governing body shall determine whether public comments and/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's public 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 regarding the subdivision application 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)(e) below.

e. 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 or credible with regard to the governing body's decision, pursuant to subsections (a)(6)(f) and (a)(6)(g) 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

2. If the governing body determines the new information or analysis of information is relevant and credible, then the governing body shall direct the subdivision administrator to schedule a subsequent public hearing with the planning board 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.

f. 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.

g. 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.

(7) *Subsequent public hearing.*

a. If a subsequent public hearing is held pursuant to subsection (a)(6) above, it must be held within 45 calendar 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 calendar days prior to the date of the subsequent hearing.

2. At least 15 calendar 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 or 80 working day review period is suspended as of the date of the governing body's decision to schedule a subsequent hearing. After the subsequent hearing, the review period resumes at the governing body's next scheduled public meeting for which proper notice of the public meeting on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

(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 within and to the proposed subdivision 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 of transfer concerning 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 [subsection 21-14\(b\)\(4\)](#) of these regulations;
4. Assures that the requirements of MCA 76-3-504(1)(j), regarding the disclosure and disposition of water rights as set forth in [subsection 21-18\(a\)\(15\)](#) have been considered and will be accomplished before the final plat is filed;
5. Assures that the requirements of MCA 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in [subsection 21-18\(a\)\(14\)](#) have been considered and will be accomplished before the final plat is filed; 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 [Section 21-18](#);
2. Applicable zoning regulations;
3. Other applicable regulations;
4. The MSPA, including but not limited to the following impacts:
  - i. Impact on agriculture;
  - ii. Impact on agricultural water user facilities;
  - iii. Impact on local services;
  - iv. Impact on the natural environment;

- v. Impact on wildlife;
- vi. Impact on wildlife habitat; and
- vii. 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;
- 4. Proposed mitigation;
- 5. The growth policy;
- 6. Information and testimony provided by potentially impacted parties at or before the public hearing;
- 7. The planning board report and recommendations;
- 8. Comments, evidence and discussions at the governing body's meeting; and
- 9. Any additional information authorized by law.
- 10. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.
- 11. 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. *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 preceding subsections.

2. When the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a written decision within 30 working days, with the appropriate signature, and make the letter available to the public. The letter shall:

i. Contain information regarding the appeal process for the denial or imposition of conditions;

ii. 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;

iii. 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;

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

v. Set forth the time limit for final approval, pursuant to subsection (a)(8)(f) below.

e. *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 not more than three calendar years or less than one calendar year.

2. At the end of this period the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

3. Except as provided in MCA 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1) above.

4. 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.

(9) *Major and subsequent minor subdivisions—amended applications.*

a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to [subsection 21-14\(a\)\(6\)](#) but before the planning board public hearing, the subdivider shall submit the amended information to the subdivision administrator for review.

1. Within 10 working days of receiving the amended information, the subdivision administrator shall determine whether the changes are material, pursuant to subsection (a)(9)(d) below.

2. The 60 or 80 working day review period is suspended and public hearing is postponed (if necessary) 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 or 80 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, within 5 calendar days of notification, the subdivider must submit a letter agreeing to the cancellation of the 60 or 80 working day review period if the subdivider wishes the changes to be considered. Within 15 working days of the determination, the subdivision administrator shall send an addendum (or update) to the original form or list of information required, given to the subdivider at the time of the pre-application meeting, reflecting the changes and requesting the information and any authorized fees needed to review the amended proposal. Upon the subdivision administrator's determination that the amended subdivision application is complete and sufficient for review, the major or subsequent minor subdivision review process shall begin as detailed in subsection 21-16(a)(3). In extreme cases, where three or more of the changes listed in subsection (a)(9)(d) below are proposed, 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. Except as provided in subsection 21-16(a)(5) above, Subdivider's Preference for Mitigation, if the subdivider submits additional or modified information after the planning board's public hearing but before the governing body meeting:

1. Within 5 working days of receipt of the additional or modified information, the subdivision administrator shall determine whether the changes are material pursuant to subsection (a)(9)(d) below.

2. The 60 or 80 working day review period is suspended while the subdivision administrator considers whether the changes are material.

3. If the subdivision administrator determines the changes are not material, the 60 or 80 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 shall either:

i. In extreme cases, where three or more of the changes listed in subsection(a)(9)(d) below are proposed, 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

ii. Schedule a new planning board public hearing to take comment on the additional or modified information. Public notice shall be published, mailed and posted as provided as set forth in subsection (a)(3) above. A supplemental staff report shall be prepared to address the changes to the original application.

5. If a new planning board hearing is held pursuant to subsection (a)(9)(b)(4)(ii) above, the 60 or 80 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. Street or pedestrian/bicycle facilities;
3. Water and/or wastewater treatment system proposals;
4. Changes to park land or open spaces;
5. Easement provisions;
6. Designated access; or
7. Changes to proposed covenants.

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 are not material.

1. By appealing the decision of the subdivision administrator, the subdivider agrees to a suspension of the 60 or 80 working day review period.
2. The 60 or 80 working day review period is suspended until the governing body decision on the appeal is made.
3. If the governing body concludes that the evidence and information demonstrate that the changes are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for an additional hearing (rehearing) in front of the planning board.
4. If the governing body concludes that the evidence and information demonstrate that the changes are not material, the 60 or 80 working day review period resumes as of the date of the decision.

(b) *Major final plats.* The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in [subsection 21-14\(b\)](#), final plats.

## **Sec. 21-17. Divisions and aggregations of land exempt from subdivision review.**



(a) *Exemptions, generally.* The MSPA provides that certain divisions of land 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, MCA. Subdivision regulations, must, at a minimum, establish criteria that the governing body or reviewing authority will use to determine whether a proposed methods of disposition, using the exemptions provided in MCA 76-3-201 or 76-3-207, are attempts to evade comprehensive subdivision review.

(b) *General Procedures.*

(1) Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator a certificate of survey or, where a survey is not required, an instrument of conveyance and evidence of, and an affidavit affirming entitlement to the claimed exemption.

(2) When a certificate of survey, instrument of conveyance, and/or affidavit are submitted, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., subdivision administrator, city sanitarian, zoning administrator, city attorney). The agents shall review the proposed use of the exemptions within 30 calendar days of submittal to determine whether it complies with the requirements set forth in this section, the MSPA, and the Montana Sanitation in Subdivisions Act.

(3) If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, after appropriate review of the survey by

the examining land surveyor (if required by the subdivision administrator or county clerk and recorder) and when all appropriate signatures are in place, they shall advise the Custer County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find the proposed use of the exemption does not comply with the statutes and the criteria in this section, the subdivision administrator shall advise the clerk and recorder to not file or record the documents and return the documents to the landowner.

(4) Any person whose proposed use of exemption has been denied by the designated agents may appeal the agents' decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is appropriate and not intended to evade the MSPA, and, thereby overcome any presumption of evasion. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or is otherwise appropriate, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

If the use of an exemption is denied, the landowner may submit a subdivision application for the proposed land division.

(5) *Advisory Examination.* Landowners or their representatives are encouraged to meet with the city's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

(6) 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 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(s) is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review. (State ex rel. Dreher v. Fuller, 50 St. Rpt. 454, 1993)

(7) Exempt divisions of land that would result in a pattern of development equivalent to a subdivision may be presumed to be adopted for purposes of evading the MSPA based on the surrounding circumstances in subsection 21-17(b)(6), above.

(8) All parcels and the use of all parcels created or amended through the use of an exemption shall comply with the zoning regulations. This does not allow the City of Miles City to require lots resulting from exempt divisions to comply with Section 21-18, *Design and improvement standards*, unless the exemption seeks to alter a lot that was subject to the design and improvement standards of the subdivision regulations during subdivision review.

(9) To exempt divisions and/or remaining parcels of land resulting from the exemptions in MCA 76-3-207 from the survey requirements of MCA 76-3-401, the parcel(s) must be able to be described as a 1/32 or larger aliquot part of a United States Government section.

(10) Subject to the following, a division of land exempt from subdivision review by MCA 76-3-207 (a gift or sale to a member of the immediate family, exemption for agricultural purposes, or relocation of common boundaries) may not be made 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.

a. If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

b. The county treasurer may accept the amount of the tax prorated pursuant to the above subsection (10)(a) as a partial payment of the total tax that is due.

(c) *Specific Exemptions.*

(1) A gift or sale to a member of the immediate family (MCA 76-3-207(1)(b)).

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

b. Immediate family means a spouse, children by blood or adoption, and parents of the grantor.

c. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use 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.

d. The certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.

e. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this subsection. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.

f. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the MSPA. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.

g. The use of the family conveyance 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 shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

h. Owners of the newly created parcel(s) may be required to waive their right to sell their parcel(s) for a period of two years from the date of document recordation unless otherwise permitted by the governing body.

(2) Exemption for agricultural purposes (MCA 76-3-207(1)(c)).

a. *Statement of Intent.* The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial or industrial buildings will be built.

b. *Agricultural purpose.* For purposes of these evasion criteria, agricultural purpose means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. The parcel must meet Montana Department of Revenue criteria for agricultural land valuation. Agricultural lands are exempt from review by the MDEQ, provided the applicable exemption is properly invoked by the property owner.

c. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes 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 or open space. The covenant must be signed by the property owner, the buyer or lessee and 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 will be built (e.g., a statement signed by the buyer);

3. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision;

4. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked.

(3) Relocation of common boundaries and aggregation of lots (76-3-207(1)(a), (d),(e), and (f)).

a. *Statement of Intent.* The intended purpose of this exemption is to allow a change in the location of one or more boundary line between parcels and to allow transfer of the land without subdivision review.

b. Certificates of survey, or amended plats for those altering platted subdivisions, claiming one of these exemptions must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by showing the existing boundary with a dashed line and the new relocated boundary with a solid line. The appropriate certification set forth in ARM 24.183.1104(1)(f) must be included on the certificate of survey or amended plat.

c. When presented to the county clerk and recorder for filing, certificates of survey or amended plats showing the relocation of common boundary lines or aggregation of lots 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) being affected.

d. If the relocation of common boundaries would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.

e. If a change is made to a platted subdivision which results in a redesign or rearrangement of six or more lots in a platted subdivision, the division of land must be reviewed as a major subdivision.

f. The use of the boundary line exemption will be presumed to have been adopted for the purpose of evading the MSPA if the proposed relocation results in a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

(4) Exemption to provide security for a construction mortgage, lien or trust indenture (MCA 76-3-201(1)(b)).

a. *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 landowner 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. 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 smaller parcel of the tract because the smaller tract is required as security for a building construction loan.

b. These regulations do not require a certificate of survey or amended plat to invoke the use of the exemption claimed under MCA 76-3-201(1)(b). Surveys for this exemption are at the discretion of the claimants, lending

institutions, surveyors, etc., but are encouraged to provide proper legal descriptions in the event of default of the lien and creation of the tract(s).

c. When this exemption is to be used, the landowner shall submit with the affidavit affirming entitlement to the claimed exemption to the subdivision administrator:

1. A statement of how many parcels within the original tract will be created by use of the exemption;
2. The deed, trust indenture or mortgage for the exempt parcel (which states that the tract of land is being created only to secure a construction mortgage, lien or trust indenture);
3. A statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted parcel is conveyed; and
4. A signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

c. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

1. It will create more than one building site;
2. The financing is not for construction on the exempted parcel;
3. 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;
4. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
5. It appears that the principal reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.

(5) Court ordered divisions (MCA 76-3-201(1)(a)).

a. *Statement of intent.* The intended purpose of this exemption is to provide for divisions of land created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30.

b. Pursuant to MCA 76-3-201(2), 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.

(6) Remaining Parcels of Land.

a. *Statement of Intent.* A remaining parcel of land is only that portion of the original tract that is left following the segregation of other parcels from the tract created by the following exemptions from the MSPA:

1. A gift or sale to a member of the immediate family (subsection 21-17(c)(1) above);
2. Exemption for agricultural purposes (subsection 21-17(c)(2) above).

b. To exempt these remaining parcels of land from the survey requirements of MCA 76-3-401, the parcels must be able to be described as a 1/32 or larger aliquot part of a United States Government section.

c. A landowner claiming that a parcel is a remaining parcel must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel and building plans for a structure to be built by or for the landowner.

(7) Condominiums, Townhomes, or Townhouses (MCA 76-3-203).

a. *Statement of Intent.* Generally condominiums, townhomes, or townhouses, as those terms are defined in MCA 70-23-102 are subject to review as subdivisions as described in the MSPA, but under certain circumstances they may be exempt from review pursuant to MCA 76-3-203.

b. *Exemption.* Condominiums, townhomes, or townhouses, as those terms are defined in MCA 70-23-102 constructed on lots within the incorporated city limits of the City of Miles City are exempt from subdivision review if the condominium, townhome, or townhouse proposal is in conformance with all applicable zoning regulations.

c. To use the exemption, the Declaration of Unit Ownership must include an exhibit containing certification from the City of Miles City that the condominiums are exempt from review under MCA 76-3-203 (See MCA 70-23-301). Only the City of Miles City has the authority to determine whether a division of land is exempt from subdivision review. The act of recording a condominium declaration does not establish the declaration's validity simply because the county clerk and recorder's office accepted and recorded it.

d. To obtain City of Miles City certification that the condominiums, townhomes, or townhouses are exempt from review as a subdivision, the person seeking the use of the exemption shall submit evidence of and an affidavit affirming entitlement to the exemption to the subdivision administrator, who shall cause the documents to be reviewed by the designated agents.

e. Within 30 working days of the receipt of the affidavit and evidence, the designated agents shall render a decision certifying or denying the use of the exemption.

f. If the designated agents deny the use of the exemption, the person seeking the use of the exemption may appeal the decision to the governing body under subsection 21-17(b)(4).

(8) Exemptions not requiring action by the City of Miles City:

a. A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the subdivision review requirements of this chapter or the MSPA, 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. [See MCA 76-3-205(1)]

b. A division of state-owned land is not subject to the subdivision review requirements of this chapter or the MSPA 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. [See MCA 76-3-205(2)]

c. Subdivision review requirements of these regulations and the MSPA do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974. [See MCA 76-3-206]

d. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with MCA 60-2-209 and are exempted from the surveying and platting requirements of the MSPA and these regulations. 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. 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)]

e. The following divisions in MCA 76-3-201 not previously included in this section:

1. A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

2. A division of land that creates cemetery lots;

3. A division of land that is created by the reservation of a life estate;

4. A division of land that is created by lease or rental for farming and agricultural purposes;

5. A division of land that is in a location over which the state does not have jurisdiction; and



6. A division of land that is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

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

(a) All subdivisions approved by the governing body must comply with the provisions of this section; except where granted a variance pursuant to [subsection 21-22\(a\)](#), variances. The governing body may not grant variances from the provisions of subsection (4), floodplain provisions, below. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Sections [21-19](#), [21-20](#) and [21-21](#) of these regulations.

(1) *Conformance with regulations.* The design and development of a subdivision must conform with any applicable zoning or other regulations.

(2) *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.

(3) *Lands unsuitable for subdivision.* The governing body may find land to be unsuitable for subdivision because of potential natural or human caused hazards such as flooding, snow avalanches, rock falls, landslides, adverse soil types, steep slopes in excess of 25 percent, 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, 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.

(4) *Floodplain provisions.* Land located in the floodway of a 100-year flood event as defined by MCA Title 76, [Chapter 5](#), 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 obtained from the DNRC.

The subdivider shall be responsible to solicit comment on the detailed floodplain evaluation from the DNRC and if required obtain a floodplain delineation for the subject property reviewed and approved by the DNRC and the Miles City floodplain administrator which shall be submitted to the subdivision administrator along with the preliminary plat 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.

(5) *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.

(6) *Lots.* Each lot intended for building purposes must contain a satisfactory building site and conform to 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 or private 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. Corner lots must have driveway access to the same street or road as interior lots.
- e. Corner lots must be of sufficient area to provide acceptable visibility for traffic safety.
- f. 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.

(7) *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 1,600 feet.
- c. Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul-de-sacs.
- d. Rights-of-way for pedestrian walks, not less than 10 feet wide, must be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.

(8) *Streets.*

a. *General design.*

1. The arrangement, type, extent, width, grade, materials, and location of all streets shall be considered in their relation to existing and planned streets, topographical conditions, maintenance considerations, the delivery of emergency services, public convenience and safety, and the proposed uses of the land to be served by them.
2. *Relation to subdivided areas.* The subdivider shall arrange the streets to provide for the continuation of streets 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 subdivider shall provide legal rights-of-way and the access must be constructed in accordance with these standards.
4. *Separation of through and local traffic.* Where a subdivision abuts or contains an existing or proposed arterial or collector street, the subdivider may be required to provide frontage access, reverse frontage access 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 subdivider may be required to provide a street approximately parallel to such right-of-way at a distance suitable to allow for appropriate use of the intervening land. When a proposed internal road is parallel to a highway right-of-way, a reasonable distance between the two must be established by the subdivider in consultation with adjacent landowners, and approved by

the governing body. Such distances shall be determined with regard for the requirements of approach grades and future grades.

6. *Dead-end streets.* No dead-end streets shall be permitted without an approved turnaround. Where streets terminate, the developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Where it is planned that a dead-end street will be extended in the future, a temporary cul-de-sac or "T" turn-around 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. "T" turnarounds shall include two backup legs of a minimum of 30 feet each from the edge of the street width, with an inside turning radius of 25 feet.

7. *Half-streets.* Half-streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.

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

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

- i. Streets by easement;
- ii. Streets dedicated to the public;
- iii. City streets/alleys;
- iv. Streets within any special improvement districts.

10. *Street dedication and easements.* All streets serving a proposed subdivision or neighboring lands shall be dedicated to the public or shall have easements providing for public access.

b. *Street maintenance.* Street maintenance shall include, but is not limited to: sprinkling, chip sealing, seal coating, overlaying, treating, pothole repair, general cleaning, sweeping, flushing, snow removal, leaf and debris removal, the operation, maintenance and repair of traffic signal systems, the repair of traffic and street signs, the placement and maintenance of pavement markings, curb and gutter repair, and minor sidewalk repair that includes cracking, chipping, sinking, and replacement of not more than six feet of sidewalk in any 100-foot portion of sidewalk.

c. *Drainage channels and waterways.* Bridges and culverts shall be provided and installed by the subdivider where drainage channels and waterways intersect any street 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 street. Guard rails shall also be installed. All bridge installations shall be approved by the Miles City Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

d. *Intersections.* The following requirements shall apply to street intersections:

1. The intersection of more than two streets at one point shall be avoided, except as described in subsection (d)(3) below.

2. Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than a 75 degree angle.

3. Two streets meeting a third street from opposite sides shall meet at the same point or their centerlines shall be offset by a minimum of 125 feet for local streets and 300 feet for arterials or collectors.

4. Any street, which intersects a paved street, shall be paved for a minimum of 30 feet from the paved street.

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 streets.

7. Hilltop intersections are prohibited, except where no alternatives exist. Intersections on arterial and collector streets within 200 feet of a hilltop are prohibited.

8. Maximum grade of approaches to major highways, arterials, and major collectors must not exceed 2 percent or the applicable jurisdiction's standards, whichever is stricter.

e. *Street names.* New streets aligned with existing streets shall have the same name as the existing street. All street names must be approved by the governing body.

f. *Street signs.* All traffic signs shall be installed by the subdivider. 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 Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

g. *Addressing.* All subdivisions shall conform to the Miles City addressing system requirements. All street intersection and address number signs shall be installed by the subdivider. The addressing plan shall be approved by the Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

h. *Street-Related Improvements.*

1. All street 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. Street 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 must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.

4. Where access from a public street to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain 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 street accessing the property and allow vehicular travel on the street.

i. 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.

ii. The location of any street 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.

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 of the area and

postal facilities shall be included as part of the maintenance agreement for the streets or other maintenance agreement.

8. *Primary access standards.* All off-site and on-site streets providing primary access to the proposed subdivision and subdivision lots shall meet the standards in Table 1. The governing body shall approve all street designs and plans.

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

10. Primary access streets shall be dedicated to the public, or shall have a public easement which meets the criteria of these regulations.

11. When necessary to provide proper legal and physical access to the subdivision and subdivision lots, the subdivider shall be responsible for bringing all primary access streets which serve the subdivision up to the standards.

12. The subdivider may be required to pave all or parts of the primary access street network if the subdivision increases the traffic burden on the primary access street network to 100 or more vehicle trips per 24 hour period. Paving shall conform to respective paving standards.

TABLE 1  
STREET DESIGN STANDARDS

Design Criteria/Street Type	Arterial	Major Collector	Minor Collector	Minor Street	Local Street	Alley
Minimum right-of-way or easement width	80 ft.	60 ft.	60 ft.	50 ft.	40 ft.	30 ft.
Minimum street surface width	30 ft.	28 ft.	26 ft.	26 ft.	16 ft.	12 ft.
Centerline radius on curves	400 ft.	300 ft.	150 ft.	100 ft.	100 ft.	75 ft.
Tangent length between reverse curves	300 ft.	200 ft.	100 ft.	100 ft.	50 ft.	50 ft.
Stopping site distance	300 ft.	300 ft.	300 ft.	300 ft.	150 ft.	100 ft.
Minimum angle of intersecting centerlines	75°	75°	75°	75°	75°	75°
Curb radius at intersections	25 ft.	25 ft.	25 ft.	15 ft.	15 ft.	15 ft.
Maximum length of cul-de-sac	n/a	n/a	1,000 ft.	1,000 ft.	600 ft.	n/a
Maximum street grade	5%	6%	6%	7%	9%	7%
Maximum grade within 100 feet of intersecting centerline	2%	2%	2%	3%	3%	3%
Minimum in-slope	3:1	3:1	3:1	3:1	3:1	3:1
Minimum back-slope	3:1	3:1	3:1	3:1	3:1	3:1
Minimum round culvert diameter	18-inch	18-inch	18-inch	18-inch	15-inch	15-inch
*Sub-base depth	18-inches	18-inches	12-inches	12-inches	8-inches	8-inches
**Surface or surface base depth	6-inches	6-inches	4-inches	4-inches	3-inches	3-inches
***Surface material	Asphalt	Asphalt	Asphalt	Gravel or hard surface	Gravel or hard surface	Gravel or hard surface
Surface depth	6-inches	4-inches	3-inches	See above	See above	See above

\* Sub-base Construction Standards: The gravel base course shall consist of hard, durable stone, gravel or other similar materials mixed or blended with sand, stone dust or other binding or filler materials providing a uniform mixture and compacted into a dense and well-bonded base. Oversize stones, rocks and boulders shall be screened out pit run a maximum of 4 inches in diameter. Oversize material of acceptable quality may be crushed and used in the base material. The material shall be placed in uniform thickness and compacted to the prescribed depth. The base course shall be compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed to facilitate compaction and bonding of the material, it shall be applied. The subgrade shall be finished within a tolerance of 3/4 of an inch measured as a vertical ordinate from the face of a 10-foot straight edge.

\*\* Surface and Surface Base Gravel Construction Standard: The gravel shall consist of both fine and coarse fragments of hard, durable, crushed stone or crushed gravel blended with sand, finely crushed stone, crusher screenings or other similar materials. The material shall be placed in uniform thickness with a minimum compacted depth of 4 inches of ¾ inch minus crushed gravel compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed



to facilitate compaction and bonding of the material, it shall be applied. All surface base and surface gravel material shall have a tolerance of 5% by volume up to the next specified gradation (1" for 3/4" maximum size). All oversized material shall not be allowed in the top 2" and shall be removed from the street section.

\*\*\* Finished asphalt surfaces shall be constructed in accordance with Montana Public Works Standards.

(9) *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 MCA Title 76, [Chapter 4](#), by the DEQ.
- b. A grading and drainage plan as required by subsection 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.
- 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 including side slope toes; 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 provided with the diameters required by Table 1 and large enough to accommodate potential runoff from upstream drainage areas. Culvert material, type, gauge and depth of cover shall be included in the design. All culvert installations shall be approved by the City Planning Department, which may consult with other departments or contracted agents to ensure adequacy.
- 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 drainage facility must 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.

(10) Water supply.

- a. The subdivider shall provide, along with the preliminary plat application, the water supply information specified in MCA 76-3-622.
- b. All subdivisions within Miles City shall be served by municipal water facilities or systems managed by a public water district.
- c. The governing body may require that any proposed subdivision provide adequate and accessible water for fire protection.
- d. The subdivider must install complete water system facilities in accordance with the requirements of Miles City and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the Planning Department and to the DEQ, and must obtain their approvals prior to undertaking any construction. The Planning Department may consult with other departments or contracted agents to ensure adequacy.

(11) *Wastewater treatment.*

- a. The subdivider shall provide, along with the preliminary plat application, the sanitation information specified in MCA 76-3-622.
- b. All subdivisions within Miles City shall be served by municipal wastewater treatment facilities or systems managed by a public sewer district.
- c. The subdivider must install complete wastewater treatment system facilities in accordance with the requirements of Miles City and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the Planning Department and to the DEQ, and must obtain their approvals prior to undertaking any construction. The Planning Department may consult with other departments or contracted agents to ensure adequacy.

(12) *Solid waste.*

- a. The subdivider must provide for collection and disposal of solid waste that meet the minimum standards of the DEQ and the City of Miles City solid waste codes (Chapter 19).

(13) *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 street 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. Any 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 to all applicable laws and rules and regulations of any appropriate regulatory authority.
- e. Utility easements located between adjoining lots must be centered on lot lines.
- f. Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body.
- g. Utilities placed in the street right-of-way shall be located between the street and the right-of-way line.
- h. 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.
- i. 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."*
- j. The subdivider shall describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(14) *Water course and irrigation easements.*

- a. Except as noted in subsection (14)(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 lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
  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 subdivision or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat; 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 ten feet is required on each side of irrigation canals and ditches for maintenance purposes.

(15) *Disposition of water rights.*

- a. 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:
  1. Reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
  2. If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
  3. Reserved and severed all surface water rights from the land proposed for subdivision.

(16) *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:
  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. Land proposed for subdivision into parcels larger than 5 acres;
  2. Subdivision into parcels that are all nonresidential;

3. A subdivisions in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
  4. Subdivisions which will create only one additional parcel.
- c. When allowed by subsection (16)(b) above, in accordance with MCA 76-3-621(8)(a), the governing body requires park dedication for all minor subdivisions within the municipal boundaries.
  - d. The governing body, in consultation with the subdivider and the planning board or community parks advisory council and/or superintendent of city parks, 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.
  - e. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
  - f. 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 required under subsection (16)(a) above;
    2. The proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and by virtue of providing 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 (16)(a) above;
    3. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (16)(f)(1) and (2) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection (16)(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 (16)(a) above.

- g. The governing body may waive the park dedication requirement if:
  - 1. The subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
  - 2. The area of the land to be subject to long-term protection, as provided in subsection (g)(1) above, equals or exceeds the area of dedication required under subsection (16)(a).
- h. Subject to the approval of the governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection (16)(a) to a school district, adequate to be used for school facilities or buildings.
- i. The governing body will administer funds dedicated to the public under this section in accordance with MCA 76-3-621(5).
- j. For the purposes of this subsection (16), *cash donation* means the fair market value of the unsubdivided, unimproved land.

(17) Fire protection.

- a. 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.
- b. All subdivisions in Miles City fall in the service area of the Miles City Fire Department.
- c. Subdivisions shall comply with the Uniform Fire Code and city fire codes.
- d. The governing body may require that any proposed subdivision provide adequate and accessible water for fire protection, including installation of fire hydrants on the municipal water system designed to standards adopted by city codes.
- e. Special standards apply to subdivisions in high fire hazard areas. High fire hazard areas include heads of draws, excessive slopes, dense fuel growth or other hazardous components as determined by the Miles City Fire Department or the Forestry Division of the Montana Department of Natural Resources and Conservation. Subdivisions in high fire standards must meet the following standards:

1. Interior and exterior streets must 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.
2. Bridges providing access to the subdivision must be built to a design load of 20 tons and be constructed of non-flammable materials.
3. Street rights-of-way must be cleared of slash.
4. Residences and other structures must be placed in such a manner as to minimize the potential for flame spread and to permit efficient access for firefighting equipment.
5. Defensible space around structures and fire protection facilities must be provided and incorporated into subdivision covenants.
6. Purchasers of lots/units in the subdivision shall be provided copies of the Fire Protection Guidelines For Wildland Residential Interface Development, Montana Departments of Natural Resources and Conservation/Justice.

(18) Landscaping standards for commercial development.

- a. *Intent.* 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.
- b. *Landscaping.* The definition of landscaping shall mean a 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, edging, flower beds, 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.
- c. *Plant materials.* Selection of plant materials shall be based upon local climate, water restrictions, and soils. Site plans shall protect existing trees where feasible.
- d. *Irrigation.* Automated irrigation is required for all landscaping consisting of living plant materials. Irrigation plans will be reviewed as part of the landscaping review.



- e. *Preservation.* Landscaping which exists on any property or for any use, subject to the provisions of this subsection, shall not be altered or reduced below the minimum requirements of this subsection, unless suitable substitutions are made which meet the requirements of this subsection and a landscaping plan is first approved by the governing body.
- f. *Area.* The landscaping area shall be eight percent of the net land available (total area of the site minus the area occupied by all buildings).
- g. *Spacing.* 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 eight 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 [subsection 24-18\(b\)](#) of the Miles City Zoning Code.
- h. *Installation timing.* All approved landscaping shall be completed within 90 calendar days after the substantial completion of the buildings being 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. In the case of a delay due to weather, an improvements agreement acceptable to the City Council shall be submitted in the amount estimated for reasonable completion of the approved landscaping and released upon completion.
- i. *Maintenance.* All areas required to be landscaped in accordance with the provisions of this subsection shall, after completion, be maintained in an attractive and well-kept condition by the owner or occupant of the site.
- j. *Trash receptacles.* 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 from public ways and other properties. 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.
- k. *Ownership and use changes.* Any property having an approved landscaping plan pursuant to this subsection upon change of ownership or use of property must maintain existing landscaping or submit a new landscaping plan to the city for review and approval by the planning board and City Council, as applicable.

## Sec. 21-19. Subdivisions created by rent or lease.

- (a) *Definition.* A subdivision created by rent or lease, including a mobile home/manufactured home park or 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). Subdivisions created by rent or lease must comply with applicable zoning.

(b) *Subdivisions providing multiple spaces for recreational camping vehicles or mobile/manufactured homes.*

(1) *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.

(2) *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.

(3) *Subdivisions for lease or rent, generally.*

a. Land subdivision created by rent or lease will be reviewed under the procedures described in [Section 21-16](#) for major and subsequent minor subdivisions, or [Section 21-15](#) for first minor subdivisions, as may be appropriate.

b. Land subdivisions created by rent or lease are subject to [Section 21-18](#), design and improvement standards.

(c) *Procedures for review.*

(1) *Review and approval.* Subdivisions must be submitted for review and be 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 [Section 21-14](#).

b. *Review.* The procedure used to review subdivisions created by rent or lease will be as described in Section 21-15 for first minor subdivisions or Section 21-16 for major and subsequent minor subdivisions.

(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.

(3) *Final plat review.* The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in subsection 21-14(b), final plats

(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 MCA 50-52-102, 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 MCA Title 50, Chapter 52.

- (d) *Design standards for subdivisions created by rent or lease.*
- (1) *Design standards.* Subdivisions created by rent or lease must comply with the provisions of Section 21-18, design and improvement standards.
- (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.*
- (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 ten feet from the street that serves it.
  - d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
  - e. A mobile/manufactured home pad may not occupy more than one-third 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 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 ten feet wide.

j. One guest parking space must be provided for each ten mobile/manufactured home spaces. Group parking may be provided.

k. Each mobile/manufactured home must be skirted within 30 calendar days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

(2) *Streets.* Streets within a mobile/manufactured home park must meet the standards specified in subsection 21-18(a)(8), streets. Streets must be designed to allow safe placement and removal of mobile homes.

(3) *Electrical systems.* 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.

(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.*

(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.

(2) *Streets.* Streets within a recreational vehicle park must meet the standards specified in subsection 21-18(a)(8), streets. Streets must be designed to allow safe placement and removal of recreational vehicles.

(3) *Density.* The density of a recreational vehicle park must comply with the standards of the zoning district it is located in, but in no case shall the density of a recreational vehicle park exceed 20 recreational vehicle spaces per acre of gross site area.

## Sec. 21-20. Planned unit developments.

(a) *Definition.* MCA 76-3-103(10) 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." Planned Unit Developments (PUDs) are major subdivisions that obtain PUD designation during subdivision review of the overall development or the first phase of the development according to the review process described in subsection 21-20(f) below.

(b) *Purpose.* PUDs are intended to:

(1) Allow flexibility in specification and performance standards in exchange for community benefits and innovative, quality design;

(2) Encourage a complementary mixture of uses and developed in accordance with an approved plan, that protects adjacent properties;

(3) Encourage the preservation and enhancement of natural amenities, cultural resources and open space;

(4) Provide for a more efficient arrangement of land uses, buildings, circulation systems, and infrastructure; and,

(5) Encourage infill development, traditional neighborhood development, affordable housing, low-impact, energy efficient and innovative projects, and a variety of housing types and sizes to accommodate households of all ages, sizes and incomes.

(c) *Applicability.* A PUD may be approved in any zoning district.

(d) *Requirements.* No application for a PUD will be accepted or approved unless all of the property included in the application is under unified ownership or a single entity's control. In addition, PUDs must contain the following components:

- (1) An overall development size of at least 10 acres except for infill development, where the minimum size is 2.5 acres;
- (2) Pedestrian and bicycle facilities throughout and connecting to adjacent facilities;
- (3) A mixture of land uses and housing types;
- (4) Interconnected roads, preferably lots and blocks with alleys;
- (5) Architectural design standards to be implemented by a private party such as a property owners association;
- (6) A coordinated landscape plan;
- (7) Significant open spaces such as playground or park areas designed for active and passive users with the scale, type and natural features depending on the projected needs of the future users of the site; and
- (8) Community facilities in common or public ownership and use.

Larger scale projects are also encouraged to include:

- (9) A functional neighborhood center that is the focal point of the neighborhood with indoor and outdoor spaces and a mixture of uses, opportunities for civic engagement and public art; and
- (10) The majority of dwellings located within 2,000 feet of the neighborhood center.

(e) *Standards Eligible for Modification.* Unless otherwise expressly approved by the planning board and governing body, PUDs are subject to all applicable standards of the base zoning district regulations and the design standards of these regulations. A waiver of the standards does not require approval of the board of adjustment or a variance to subdivision design standards. The planning board and governing body may approve PUDs that deviate from specific standards if it is determined that the resulting development satisfies the approval criteria in subsection (g) below. The specific standards that may be modified include:

- (1) Allowed uses. Regardless of the underlying zoning, a PUD may include a complementary mix of use types and a broader range of housing types and affordable housing options. A list of uses to be allowed in a PUD must be approved by the planning board and governing body;
- (2) Park land dedication or cash donation requirements if open space such as playground or park areas within the development meet or exceeds the park land dedication requirements of these regulations and when the subdivider agrees to deed the open space land to the association in perpetuity for use as parks or playgrounds;
- (3) Minimum lot size, provided that parcels sizes are adequate to safely accommodate all proposed buildings and site features and are warranted to support the public benefit likely to result from the proposed development;

- (4) Setbacks, when determined to be warranted to support the public benefit likely to result from the proposed development;
- (5) Building height, when determined that such an increase is warranted to support the public benefit likely to result from the proposed development;
- (6) Maximum lot coverage, so long as erosion will be controlled and stormwater is determined likely to be contained in a manner that will not negatively impact surface water quality or downstream properties;
- (7) Parking and loading, when determined that such modifications are warranted to support the public benefit likely to result from the proposed development; and
- (8) Street and non-motorized transportation standards so long as such designs would better meet the purpose of this PUD section while still providing a safe and efficient traffic flow.

(f) *Review Process.* Planned Unit Development are established through the approval of a PUD master site plan in conjunction with the general procedures outlined in Section 21-14 of these regulations and the review procedures for major subdivisions as outlined in Section 21-16 of these regulations. At the option of the developer, the master site plan may also serve as a preliminary subdivision plat if such intention is declared at the pre-application meeting and if the site plan includes all information required for preliminary plats. If the master site plan contemplates distinct phased preliminary plats, the plat for the first phase shall be reviewed concurrently with the master site plan.

A PUD master site plan becomes final after being reviewed by the planning board and approved by the governing body. All subdivisions authorized under a PUD designation must become final within 10 years of PUD master site plan approval.

In addition to the requirements for subdivisions, each PUD application must include the following items:

- (1) A master site plan showing the location and area of lots and blocks, buildings, transportation facilities, parks, open space and other amenities, utilities and other pertinent features;
- (2) A list of the specific standards that are requested to be modified;
- (3) A list of land uses that are proposed in the PUD;
- (4) A written description of the community benefits of the proposed development and how it provides greater benefits to the city than would development under strict application of zoning and subdivision regulations;
- (5) Architectural standards; and
- (6) A description and draft documents indicating how common areas and facilities will be managed.

(g) *Review Criteria.* In reviewing and making decisions on proposed PUDs and site plans, the planning board and governing body shall consider and make findings on the following criteria:

- (1) Whether the proposed PUD would result in a greater benefit to the city than would development under strict application of zoning and subdivision regulations. Greater benefit may include implementation of the growth policy, natural resource preservation, innovative urban design, low-impact or energy efficient development, affordable, workforce or senior housing, neighborhood or community amenities or an overall level of development quality;
- (2) The proposal's consistency with the adopted plans for the area;
- (3) Compliance with this section; and
- (4) Primary review criteria for subdivisions.

### **Sec. 21-21. Condominiums.**

(a) *Procedures.* Unless exempted by MCA 76-3-203 and subsection 21-17(c)(7) of these regulations, all condominiums are subdivisions subject to the terms of the MSPA as follows:

(1) *Condominium subdivisions involving land divisions.* Proposed condominium subdivisions must be reviewed under the procedures contained in the following sections, as applicable:

Section 21-15, Review procedures for first minor subdivisions.

Section 21-16, Review procedures for major and subsequent minor subdivisions.

Subsection 21-16(b), applicable subsections for final plats.

Section 21-18, Design and improvement standards. All units must be provided legal and physical access by streets in a reasonable manner.

(3) *Unit Ownership Act.* Condominium developments must comply with all provisions of the Unit Ownership Act, MCA Title 70, Chapter 23.

### **Sec. 21-22. Administrative provisions.**

(a) *Variances.*

(1) *Variances authorized.* The governing body may grant variances from [Section 21-18](#), design and improvement standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations. The governing body will not approve a variance unless it finds that:

a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;

b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;



- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

(2) *Variances from floodway provisions not authorized.* The governing body will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by MCA Title 76, [Chapter 5](#)

(3) *Procedure.* The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The subdivision administrator and/or planning board, as applicable, will consider the requested variance and recommend its approval or denial to the governing body. The governing body may grant the variance(s) if it meets the specific variance criteria.

(4) *Conditions.* In granting variances, the governing body may impose reasonable conditions to secure the objectives of these regulations.

(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.*

(1) *Enforcement.* Except as provided in MCA 76-3-303 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 transferred in any manner. If unlawful transfers are made, the city 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.

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

d. The following municipalities:

1. A first-class municipality as described in MCA 7-1-4111, if a subdivision is proposed within three miles of its limits;

2. A second-class municipality, as described in MCA 7-1-4111, if a subdivision is proposed within two miles of its limits;

3. A third-class municipality, as described in MCA 7-1-4111, if a subdivision is proposed within one mile of its limits.

### **Sec. 21-23. Severability.**

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

### **Secs. 21-24 — 21-61. Reserved.**

### **Sec. 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 and Industry, as now established, and as hereafter amended:

- (1) Uniform Standards for Monumentation (ARM 24.183.1101);
- (2) Uniform Standards for Certificates of Survey (ARM 24.183.1104); and
- (3) Uniform Standards for Final Subdivision Plats (ARM 24.183.1107).