

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 not less than 30 days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- (1.) The final plat application;
- (2.) The final plat review fee;
- (3.) A statement— 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 maintenance agreements, 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.—(14) City attorney review of title report; and

14. ~~(15)~~ 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(16) Any other information or documents required by the condition of preliminary approval letter.

3. *Review by subdivision administrator.*

1. ~~The(a)~~ A final plat application is not considered to be submitted to and received by the subdivision administrator until delivered to the subdivision administrator accompanied by all required review fees.

(b) Within 20 working days of receipt of a final plat, the subdivision administrator shall review the final plat and application to ascertain that all conditions and requirements for final plat approval have been met and the plat conforms with the requirements of MCA 76-3-611.

(1) 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.(c) If the final plat and application does not contain required information or demonstrate compliance with the applicable preliminary approval, written notice shall be given identifying the defects within 20 working days of receipt. During re-review, the subdivision administrator may review subsequent submissions of the final plat material only for information found to be deficient during the original review of the final plat. This does not preclude the subdivision administrator from noting deficiencies during subsequent reviews; nor do such deficiencies not raised by the subdivision administrator bind the governing body to approve a final plat application if an element of the final plat or associated application material does not demonstrate compliance with an applicable requirement.

(1) The subdivider and the governing body may mutually agree to extend the review periods provided for in this section.

(d) 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) B-8 below.

3.(e) The subdivision administrator or county clerkCounty Clerk and recorderRecorder 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. The subdivision administrator shall notify the subdivider of the requirement. 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.(f) 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 within 20 working days of the Administrator's determination per subsection 21-14(b)(6) B-9 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.(g) The subdivider and the governing body may mutually agree to extend the review periods provided for in Sections 21-14 B-3-c-ii.

(h) 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)4. *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." of Miles City."

(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); ~~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.

d5. 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.

e6. 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.(a) The regular maintenance of the shared infrastructure;

2.(b) A requirement for equitable payment of the cost of maintaining the shared infrastructure;

3.(c) Allowed adjustments of assessments to meet changing needs;

4.(d) A means of enforcing the terms of the declaration;

5.(e) 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.(f) The modification of the declaration after obtaining the governing body's approval of the change.

(4)7. *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). (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)~~)(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)8. Amending approved preliminary plats before final plat approval.

(a.) If the subdivider proposes, in writing, 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)(8-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)8-a 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)9. 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)(9-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 for non-compliance with the conditional approval, the MSPA or these regulations, the governing body shall write a letter to notify the subdivider in writing, 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 decision. The subdivider may then make any necessary corrections and resubmit the final plat for approval. The re-submission of the final plat application must still be submitted and approved within the original preliminary plat approval period, or within an agreed-upon extension to the approval period pursuant to these regulations.

(3) The subdivider and the governing body may mutually agree to extend the review periods provided for in this section.

(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) **10.** *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) **11.** *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 (58), *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 minor or 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 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) **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)(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)(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.*

(1) 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.

(2) As per ~~MCA 76-3-608(9)~~, 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~~ MCA 76-3-620 only if the

comment or opinion provides scientific information or a published study that supports the comment or opinion.

- (3) 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. ~~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.(1) 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 in writing.

ii.(2) 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 in writing. 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),~~ (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:

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

~~B.~~(2) 2. Applicable zoning regulations;

~~C.~~(3) 3. The MSPA, including but not limited to MCA 76-3-608(3); and

~~D.~~(4) 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):

a.(1) _____ The subdivision application and preliminary plat;

b.(2) _____ The summary of probable impacts and proposed mitigation;

c.(3) _____ The growth policy;

d.(4) _____ Information and testimony provided by potentially impacted parties; and

e.(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) B-7 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) (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) (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)(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 approval, 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.(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 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.(e) 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.* All requests for extensions shall consider the following criteria and the subdivider should provide appropriate supporting documentation, if any, to address these criteria:

- ii. 3. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
- iii. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
- iv. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision noncompliant with current design standards, such as road design, wildfire, or flood standards.
- v. Consistency with adopted comprehensive planning documents, including but not limited to, the jurisdiction's growth policy, annexation policy, capital improvements plan, transportation plan, etc.
- vi. Impacts to public health, safety and general welfare.
- vii. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.

(3) Prior to granting any extension of a preliminary plat approval for a minor subdivision, the governing body shall hold a public meeting noticed in accordance with the Miles City Code of Ordinances.

(4) After the public meeting, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request.

(5) Any mutually agreed-upon extension must be approved by resolution of the City Council, dated and signed by the Mayor or Council President and the subdivider or subdivider's agent.

(6) 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.(7) 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)(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)(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)(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), B, final plats.

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

1.A. (a) Subdivisions that qualify for major subdivision review³ 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~~ *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 and in subsection 21-14 A-5.

(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)A-9 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)(A-7) below.

(1) 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.*

(1) 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.

(2) 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

³ The term "major subdivision review" refers to the distinction of major and subsequent minor subdivisions requiring Planning Board review, a public hearing(s), a longer review period (60 or 80 working days), and typically being subject to requirements not applicable to first minor subdivisions (e.g., preparation of an Environmental Assessment and parkland dedication).

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.

(3.) 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) 4. *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) **5.** *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.~~(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.~~(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.~~(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.~~(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.~~(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)(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) 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 planning board's recommendations as well as any proposed mitigation measures not already discussed with the planning board.

1. — 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.

(b) 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)11 below, for Amended Applications.

(c) 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)7. 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)A-7 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)A-8 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)8. Subsequent public hearing.

(a.) If a subsequent public hearing is held pursuant to subsection (a)(6)7-e-2 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)~~ **9.** *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) B-7 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)(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)(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)A-5-b 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)(B-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.—(3) 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, not to exceed 3 years. The governing body may issue more than one extension. See MCA 76-3-610. All requests for extensions shall consider the following criteria and the subdivider should provide appropriate supporting documentation, if any:
 - i. Progress to date in completing or demonstration and evidence of good faith efforts to satisfy the required conditions of preliminary plat approval.
 - ii. Duration of the required extension and the ability of the subdivider to meet the required conditions of preliminary plat approval within the requested extension period.
 - iii. Significant changes in the vicinity of the subdivision that have occurred or are planned to occur within the requested extension period and whether the preliminary plat conditions adequately mitigate the significant changes. Significant changes constitute changes that may render the subdivision noncompliant with current design standards, such as road design, wildfire, or flood standards.
 - iv. Consistency with adopted comprehensive planning documents, including but not limited to, the jurisdiction's growth policy, annexation policy, capital improvements plan, transportation plan, etc.
 - v. Impacts to public health, safety and general welfare.
 - vi. Planning and provisions of public facilities and services in the vicinity of the subdivision and whether the requested extension conforms to those plans and provisions.
- (4) Prior to granting any extensions of preliminary plat approval for a major subdivision, the governing body shall hold a public hearing. Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing.
- (5) After the public hearing, the governing body shall determine the extent to which the request meets the criteria for extension, including whether or not any changes to the primary criteria impacts identified in the original subdivision approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request.
- (6) 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 (4)3 above.
- 4.(7) 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) **11.** *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) A-8 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) A-6 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) 21-16.A.4.(b) 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-11-a)(9)(a)(-2) and (a)(9)(A-11-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) **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); B, final plats.

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

(a) **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) **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.

(a) 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)(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.(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-(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) **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-(a) 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.(b) *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.(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.(c) If a parcel of land divided by this exemption was conveyed by the landowner to another party without foreclosure prior to October 1, 2003, the remaining parcel may be conveyed without subdivision review. MCA 76-3-201(4)

(d) 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.(e) 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)(C-1) above);
 - (2.) Exemption for agricultural purposes (subsection 21-17(c)(C-2) above).
- bi. 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.