

Natural environment means the physical conditions that 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.

Phased Development is a subdivision application and preliminary plat that, at the time of submission, consists of independently platted development phases that are reviewed on a schedule proposed by the subdivider.

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 that 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 regulations¹, 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 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.

¹ 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.

- (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 includes 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 all subdivision reviews and exemption reviews 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.

Sec. 21-10. Postal and Written Notices.

- A. Any postal notices required of the city by the Montana Subdivision and Platting Act and these regulations, unless otherwise specified, shall be deemed complete when deposited in a United States Post Office addressed to the applicant with proper postage attached.**
- B. Any written notices required by the Montana Subdivision and Platting Act and these regulations, unless otherwise specified, may be provided via electronic means or hard copies.**

Secs. 21-11 – 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; the subdivider shall be responsible for adhering to this requirement, and for phased developments, the City of Miles City interprets this provision of state law and these regulations to be referring to preliminary plat approval of the overall phased development, therefore this provision is generally not appropriate for phased developments, except for the phase(s) the subdivider will complete within two years of the preliminary plat approval;
- (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 information sufficient for a comprehensive review by the subdivision administrator, including 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 adequate to show the property and relevant information. The sketch and materials should include the following, as applicable, and sufficient for the subdivision administrator to guide the subdivider toward preparation of a preliminary plat application that appropriately addresses various city requirements:

(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 existing 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 with 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 forms or a comprehensive list of the following information required for the specific subdivision provided by the subdivision administrator, as applicable²:

(a) As supplements to the preliminary plat:

- A completed and signed subdivision application form;

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

- 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;
- A Phased Development plan if development is proposed to be completed in 2 or more phases including:
 - i. A time frame for each phase;
 - ii. 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;
- 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 minor or major subdivisions, including phased development, 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 (a)(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 or withdraw the application.

i. 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 A.5. above, as applicable.

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

(4) 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 5 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, 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. The subdivision administrator shall determine number of copies to be submitted and request submittal by electronic or hard copy.
 - v. 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.

7. *Applicable regulations.* Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a non-phased 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.

8. *Phased Developments – Special Provisions.*

a. *Overview.* This subsection details additional procedural requirements for subdivisions proposed as phased developments. As defined in Sec. 21-5 of these regulations, a “phased development” is a subdivision application and preliminary plat that, at the time of submission, consists of independently platted development phases that are reviewed on a schedule proposed by the subdivider. A phased subdivision includes three distinct review stages. The first stage review is of the overall preliminary plat for the entire project. At the end of this stage, the project’s overall plan and preliminary plat are approved, conditionally approved or denied by the governing body, with a timeframe of up to 20 years from the approval to obtain each phase’s independent one- to three-year preliminary approval/conditional approval of each phase. The second stage review of any independent phase occurs prior to final plat submittal for that phase; the second stage review is that of each independent phase, at the end of which, each phase obtains a review by the governing body to determine whether any changed primary criteria impacts or new information exist that create new potentially significant adverse impacts for the phase or phases at that time. The governing body then issues any changed findings and/or conditions of approval for that phase(s). Following the governing body decision on the independent phase(s) up for consideration in the second stage, the subdivider may submit the final plat application to “commence” that phase, which is intended to lead to final plat approval and filing the plat for each phase. Throughout these stages of reviews, there are certain activities which may occur to result in platting and development of the subdivision, such as installing subdivision improvements and meeting other conditions of preliminary plat approval, obtaining other approvals such as that from DEQ, and other steps typically involved in subdivisions. This section is intended to outline special provisions applicable to phased developments.

(b) *Phased Development Preliminary Plat Application - Overall Plan.* A subdivider applying for phased development review shall submit with the phased development preliminary plat application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development preliminary plat application must contain the information required pursuant to parts 5 and 6 of the MSPA and Sec. 21-14 A-5 of these regulations for

all phases of the development and a schedule for when the subdivider plans to submit for preliminary review each phase of the development.

- (1) The subdivider may change the schedule for review of each phase of the development upon written notice to and approval of the governing body after a public hearing as provided in subsection 10 below.
 - i. The governing body may approve a schedule change only if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

9. *Subsequent Review Stages for Independent Phases.*

An “independent phase”, for the purpose of this section, is any phase the subdivider intends to plat on a different final plat than the other phases.

- (a) Prior to the preliminary review of each independent phase, the subdivider shall provide written notice to the governing body of the intent to proceed with commencement of that phase. The governing body shall hold a public hearing pursuant to subsection 10 *Public Hearing* below.
- (b) A review of the preliminary plat(s) for proposed initial phase(s) may run concurrently with the Overall Plan review. This review shall be conducted in accordance with Sections 21-15 or 21-16, as appropriate, except for the special provisions listed in this section. Phase(s) following the preliminary application shall be reviewed under Section 21-16, except for the special provisions listed in this section.
- (c) The City of Miles City may impose a reasonable periodic fee for each review under subsections 8 and 9 of the phases in the phased development.

10. *Public Hearing.*

- (a) The governing body shall hold a public hearing on each phase and/or changes to an approved phasing schedule within 30 working days after receipt of the written notice from the subdivider pursuant to 8(b)(1) and 9(a) above. After the hearing, the governing body shall determine whether there are new potentially significant adverse impacts from:
 - (1) Changes to the primary criteria impacts (MCA 76-3-608(3)).
- (2) New information presented that was not available during overall plan review
 - i. The governing body’s public hearing will be held and noticed in the same manner as described in subsection 21-16 A-8 ‘*Subsequent public hearing*’,

with the exception that the governing body holds the hearing instead of the planning board and the hearing is scheduled within 20 working days in lieu of 45 days.

- ii. Regardless of the provisions of MCA 76-3-610(2), the governing body shall issue supplemental written findings of fact within 20 working days of the hearing and may impose only necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information. Any additional conditions must be met before preliminary plat approval for each particular phase and the approval, in accordance with MCA 76-3-611, is in force for not more than three calendar years or less than one calendar year within the maximum time frame provided in subsection 11.

11. *Timeframes of Preliminary Approvals for Phased Developments.*

- (a) Each phase of the phased development must be submitted for review and be approved, conditionally approved, or denied within 20 years of the date the overall phased development preliminary plat was approved by the governing body. Any phase of a phased development not approved by the governing body within 20 years of the date of the overall phased development preliminary plat approval shall be deemed dead and the preliminary approval applicable to that phase null and void.
- (b) Failure to meet the 20-year timeframe does not preclude a subdivider from beginning the preliminary subdivision approval process again under regulations and laws in effect on the new application date. The governing body may preliminarily approve phased developments that extend beyond the one to three calendar years set forth in 76-3-610, MCA, and Sec. 21-15 or Sec. 21-16 of these regulations, (c) Each phase of any phased development must be reviewed as provided in Sec 21-15 or 21-16, which is a separate process from overall preliminary plat review as described in 21-14-8-b above. The review of the overall preliminary plat and that of the initial phase or phases may occur concurrently, but notices and agenda items must distinguish between preliminary plat review of the overall phased development and the phase up for consideration.

12. *Additional Reviews of Phases and Phasing Schedule Changes.* The following applies to the phase review and/or changes to an approved phasing schedule:

- (a) Prior to the commencement of each phase, the subdivider shall provide written notice to the governing body through the subdivision administrator. For purposes of this section, “commencement” of a phase means submitting a final plat application for that phase.

- (b) The subdivider shall provide written notice to the governing body requesting changes to the approved schedule.

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 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);
- (14) City attorney review of title report; and
- (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.
- (16) Any other information or documents required by the condition of preliminary approval letter.

3. *Review by subdivision administrator.*

- (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 schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received.
- (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-8 below.

(e) 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. 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.

(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-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.

(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.

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 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);
 - (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.
5. 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.

6. 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:

- (a) The regular maintenance of the shared infrastructure;
- (b) A requirement for equitable payment of the cost of maintaining the shared infrastructure;
- (c) Allowed adjustments of assessments to meet changing needs;
- (d) A means of enforcing the terms of the declaration;
- (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
- (f) The modification of the declaration after obtaining the governing body's approval of the change.

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). 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.

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 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 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.

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 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 notify the subdivider in writing, stating the reason for denial. The governing body will return the final plat to the subdivider within 10 working days of the 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.

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.

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 (8), *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 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.*

(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 in writing.

(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 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), 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-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-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 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.

(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 (e) below.

(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. 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. 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.

- (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-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 review³ are those divisions of land containing six or more lots or recreational vehicle or mobile home sites (major subdivisions),

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).

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 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-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-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 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.

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.