

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. Proposed findings of fact that consider the subdivision's compliance with and impact on the criteria described in these regulations and the MSPA;
 2. A description of any variance requests as well as the pertinent facts and conditions relating to the request, and a recommendation on the variance request;
 3. All public and agency comment received by the subdivision administrator. As a matter of practice all comments and documents regarding the subdivision shall be submitted in writing to the subdivision administrator prior to the public hearing on the subdivision to be made part of the staff report to the planning board. However, all comments and documents which are presented directly to the planning board at the public hearing shall be included in the public record;
 4. A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat; and
 5. Any other information deemed pertinent by the subdivision administrator.
- (b) *Consideration—Standards.* In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:
- (1) These regulations, including but not limited to the standards set forth in Section 21-18;
 - (2) Applicable zoning regulations;
 - (3) The MSPA, including but not limited to MCA 76-3-608(3); and
 - (4) Other applicable regulations.
- (c) *Consideration—Evidence.* In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- (1) The subdivision application and preliminary plat;
 - (2) The environmental assessment;
 - (3) The summary of probable impacts and proposed mitigation;
 - (4) The growth policy;
 - (5) Information and testimony provided by potentially impacted parties, including that provided at the public hearing(s);
 - (6) Subdivision administrator's staff report and recommendation; and
 - (7) Any additional information authorized by law.
 - (8) The planning board is advised that water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds that information provided in the application or information submitted during public review indicates the proposal does not comply with previously adopted subdivision, zoning, floodplain or other regulations that the governing body has the authority to enforce.
- (d) *Written recommendation.* Within 10 working days after the public hearing, the subdivision administrator, working on behalf and with the consent of the planning board shall submit the following, in writing, to the subdivider and the governing body:
- (1) Planning board recommended findings of fact based on the evidence in subsection A-4-b-2 above, that discuss and consider the subdivision's compliance with and impact on the items listed in MCA 76-3-608(3);
 - (2) A recommendation for approval or denial of any requested variances;
 - (3) A recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
 - (4) Information and testimony provided by potentially impacted parties at or before the public hearing; and
 - (5) Any other information deemed pertinent by the planning board and subdivision administrator.
- (e) *Water and sanitation information.* The subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and

these regulations. The subdivision administrator shall forward all comments regarding water and sanitation to the governing body.

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.
- (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 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)).

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-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 (f) and (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-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.

8. *Subsequent public hearing.*

- (a) If a subsequent public hearing is held pursuant to subsection 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.

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-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-15 have been considered and will be accomplished before the final plat is filed;
 - (5) Assures that the requirements of MCA 76-3-504(1)(k) regarding watercourse and irrigation easements as set forth in subsection 21-18 A-14 have been considered and will be accomplished before the final plat is filed; and
 - (6) Provides for the appropriate park dedication or cash-in-lieu.
- (b) *Consideration—Standards.* In approving, conditionally approving, or denying a subdivision application and preliminary plat, the governing body shall consider subsection A-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 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) 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 3 above.
- (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.

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-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 (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 (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-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 (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(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 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 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-2 and 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. *Major final plats.* The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in subsection 21-14 B, final plats.

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

A. *Exemptions, generally.* The MSPA provides that certain divisions of land are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3, MCA. Subdivision regulations, must, at a minimum, establish criteria that the governing body or reviewing authority will use to determine whether a proposed methods of disposition, using the exemptions provided in MCA 76-3-201 or 76-3-207, are attempts to evade comprehensive subdivision review.

B. *General Procedures.*

- (1) Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator a certificate of survey or, where a survey is not required, an instrument of conveyance and evidence of, and an affidavit affirming entitlement to the claimed exemption.
- (2) When a certificate of survey, instrument of conveyance, and/or affidavit are submitted, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the governing body (e.g., subdivision administrator, city sanitarian, zoning administrator, city attorney). The agents shall review the proposed use of the exemptions within 30 calendar days of submittal to determine whether it complies with the requirements set forth in this section, the MSPA, and the Montana Sanitation in Subdivisions Act.
- (3) If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, after appropriate review of the survey by the examining land surveyor (if required by the subdivision administrator or county clerk and recorder) and when all appropriate signatures are in place, they shall advise the Custer County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find the proposed use of the exemption does not comply with the statutes and the criteria in this section, the subdivision administrator shall advise the clerk and recorder to not file or record the documents and return the documents to the landowner.
- (4) Any person whose proposed use of exemption has been denied by the designated agents may appeal the agents' decision to the governing body. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in

question is appropriate and not intended to evade the MSPA, and, thereby overcome any presumption of evasion. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or is otherwise appropriate, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

(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-6, above.
8. All parcels and the use of all parcels created or amended through the use of an exemption shall comply with the zoning regulations. This does not allow the City of Miles City to require lots resulting from exempt divisions to comply with Section 21-18, *Design and improvement standards*, unless the exemption seeks to alter a lot that was subject to the design and improvement standards of the subdivision regulations during subdivision review.
9. To exempt divisions and/or remaining parcels of land resulting from the exemptions in MCA 76-3-207 from the survey requirements of MCA 76-3-401, the parcel(s) must be able to be described as a 1/32 or larger aliquot part of a United States Government section.
10. Subject to the following, a division of land exempt from subdivision review by MCA 76-3-207 (a gift or sale to a member of the immediate family, exemption for agricultural purposes, or relocation of common boundaries) may not be made unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

- a. If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.
- b. The county treasurer may accept the amount of the tax prorated pursuant to the above subsection 10-a as a partial payment of the total tax that is due.

C. *Specific Exemptions.*

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

- (a) *Statement of Intent.* The intention of this exemption is to allow a landowner to convey one parcel to each of member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
- (b) Immediate family means a spouse, children by blood or adoption, and parents of the grantor.
- (c) Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance.
- (d) The certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
- (e) One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this subsection. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.
- (f) Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the MSPA. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
- (g) The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or

promotional plan shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

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

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

- (a) *Statement of Intent.* The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial or industrial buildings will be built.
- (b) *Agricultural purpose.* For purposes of these evasion criteria, agricultural purpose means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. The parcel must meet Montana Department of Revenue criteria for agricultural land valuation. Agricultural lands are exempt from review by the MDEQ, provided the applicable exemption is properly invoked by the property owner.
- (c) The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading the MSPA:
 - (1) The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the governing body;
 - (2) The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer);
 - (3) Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision;
 - (4) Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked.

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

- (a) *Statement of Intent.* The intended purpose of this exemption is to allow a change in the location of one or more boundary line between parcels and to allow transfer of the land without subdivision review.
- (b) Certificates of survey, or amended plats for those altering platted subdivisions, claiming one of these exemptions must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by showing the existing boundary with a dashed line and the new relocated boundary with a solid line. The appropriate certification set forth in ARM 24.183.1104(1)(f) must be included on the certificate of survey or amended plat.
- (c) When presented to the county clerk and recorder for filing, certificates of survey or amended plats showing the relocation of common boundary lines or aggregation of lots must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) being affected.
- (d) If the relocation of common boundaries would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.
- (e) If a change is made to a platted subdivision which results in a redesign or rearrangement of six or more lots in a platted subdivision, the division of land must be reviewed as a major subdivision.
- (f) The use of the boundary line exemption will be presumed to have been adopted for the purpose of evading the MSPA if the proposed relocation results in a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

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

- (a) *Statement of Intent.* Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property. This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless:
 - (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title), and;

- (2) a lending institution requires the landowner to hold title to a smaller parcel of the tract because the smaller tract is required as security for a building construction loan.
- (b) These regulations do not require a certificate of survey or amended plat to invoke the use of the exemption claimed under MCA 76-3-201(1)(b). Surveys for this exemption are at the discretion of the claimants, lending institutions, surveyors, etc., but are encouraged to provide proper legal descriptions in the event of default of the lien and creation of the tract(s).
- (c) 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.
- (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 C-1 above);

(2) Exemption for agricultural purposes (subsection C-2 above).

i. 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.

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

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

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

(b) *Exemption.* Condominiums, townhomes, or townhouses, as those terms are defined in MCA 70-23-102 constructed on lots within the incorporated city limits of the City

of Miles City are exempt from subdivision review if the condominium, townhome, or townhouse proposal is in conformance with all applicable zoning regulations.

- (c) To use the exemption, the Declaration of Unit Ownership must include an exhibit containing certification from the City of Miles City that the condominiums are exempt from review under MCA 76-3-203 (*See* MCA 70-23-301). Only the City of Miles City has the authority to determine whether a division of land is exempt from subdivision review. The act of recording a condominium declaration does not establish the declaration's validity simply because the county clerk and recorder's office accepted and recorded it.
- (d) To obtain City of Miles City certification that the condominiums, townhomes, or townhouses are exempt from review as a subdivision, the person seeking the use of the exemption shall submit evidence of and an affidavit affirming entitlement to the exemption to the subdivision administrator, who shall cause the documents to be reviewed by the designated agents.
- (e) Within 30 working days of the receipt of the affidavit and evidence, the designated agents shall render a decision certifying or denying the use of the exemption.
- (f) If the designated agents deny the use of the exemption, the person seeking the use of the exemption may appeal the decision to the governing body under subsection 21-17 B-4

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

- (a) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the subdivision review requirements of this chapter or the MSPA, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities. [*See* MCA 76-3-205(1)]
- (b) A division of state-owned land is not subject to the subdivision review requirements of this chapter or the MSPA unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974. [*See* MCA 76-3-205(2)]
- (c) Subdivision review requirements of these regulations and the MSPA do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974. [*See* MCA 76-3-206]
- (d) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with MCA 60-2-209 and are exempted from the surveying and platting requirements of the MSPA and these regulations. If such parcels are not shown on

highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. 44 A.G. Op. 25 (1992)

- (e) The following divisions in MCA 76-3-201 not previously included in this section:
- (1) A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
 - (2) A division of land that creates cemetery lots;
 - (3) A division of land that is created by the reservation of a life estate;
 - (4) A division of land that is created by lease or rental for farming and agricultural purposes;
 - (5) A division of land that is in a location over which the state does not have jurisdiction; and
 - (6) A division of land that is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

Sec. 21-18. Design and improvement standards.

- (a) All subdivisions approved by the governing body must comply with the provisions of this section; except where granted a variance pursuant to subsection 21-22 A, Variances. The governing body may not grant variances from the provisions of subsection (4), floodplain provisions, below. For planned unit developments, subdivisions created by rent or lease, and condominiums, refer to Sections 21-19, 21-20 and 21-21 of these regulations.
1. **Conformance with regulations.** The design and development of a subdivision must conform with any applicable zoning or other regulations.
 2. **Natural environment.** The design and development of subdivisions must provide satisfactory building sites which are properly related to topography, and must, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and natural vegetation.
 3. **Lands unsuitable for subdivision.** The governing body may find land to be unsuitable for subdivision because of potential natural or human caused hazards such as flooding, snow avalanches, rock falls, landslides, adverse soil types, steep slopes in excess of 25 percent, high potential for wildfire, subsidence, high water table, polluted or non-potable

water supply, high voltage lines, high pressure gas lines, aircraft or vehicular traffic hazards or congestion, or severe toxic or hazardous waste exposure; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds, environmental degradation, or other features which may be detrimental to the health, safety, or general welfare of existing or future residents. These lands must not be subdivided for building or residential purposes unless the hazards are eliminated or will be mitigated by approved design and construction plans.

4. ***Floodplain provisions.*** Land located in the floodway of a 100-year flood event as defined by MCA Title 76, Chapter 5, or other land determined by the governing body to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.
 - (a) If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100-year frequency water surface elevations and the 100-year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The evaluation must follow the "guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas" which may be obtained from the DNRC.
 - (b) The subdivider shall be responsible to solicit comment on the detailed floodplain evaluation from the DNRC and if required obtain a floodplain delineation for the subject property reviewed and approved by the DNRC and the Miles City floodplain administrator which shall be submitted to the subdivision administrator along with the preliminary plat application.
 - (c) The above requirement is waived if the subdivider contacts the water resources division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.
5. ***Improvement design.*** Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision application required by the governing body must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

6. **Lots.** Each lot intended for building purposes must contain a satisfactory building site and conform to health board regulations, applicable zoning regulations, and these regulations.

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

7. **Blocks.**

- (a) Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- (b) Unless impractical, block length must not be more than 1,600 feet.
- (c) Blocks must be wide enough to allow for two tiers of lots except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation or unless the governing body approves the design of irregularly shaped blocks indented by cul-de-sacs.
- (d) Rights-of-way for pedestrian walks, not less than 10 feet wide, must be required where deemed essential to provide circulation or safe access to schools, playgrounds, shopping, transportation and other community facilities.

8. **Streets.**

- (a) *General design.*

- (1) The arrangement, type, extent, width, grade, materials, and location of all streets shall be considered in their relation to existing and planned streets, topographical conditions, maintenance considerations, the delivery of emergency services, public convenience and safety, and the proposed uses of the land to be served by them.
- (2) *Relation to subdivided areas.* The subdivider shall arrange the streets to provide for the continuation of streets between adjacent parcels when such continuation is necessary for the convenient movement of traffic, effective provision of emergency services, and the efficient provision of utility easements.
- (3) *Relation to adjoining lands.* Developing subdivisions shall provide access and utility easements to adjoining lands when access to those lands must pass through the subdivision. The subdivider shall provide legal rights-of-way and the access must be constructed in accordance with these standards.
- (4) *Separation of through and local traffic.* Where a subdivision abuts or contains an existing or proposed arterial or collector street, the subdivider may be required to provide frontage access, reverse frontage access with a reservation prohibiting access along the rear property line, with screen planting or other such treatment as may be necessary for the protection of residential properties and to afford separation of through and local traffic.
- (5) *Distance between parallel rights-of-way.* Where a subdivision borders on or contains a railroad, limited access highway, canal, ditch, or stream right-of-way, the subdivider may be required to provide a street approximately parallel to such right-of-way at a distance suitable to allow for appropriate use of the intervening land. When a proposed internal road is parallel to a highway right-of-way, a reasonable distance between the two must be established by the subdivider in consultation with adjacent landowners, and approved by the governing body. Such distances shall be determined with regard for the requirements of approach grades and future grades.
- (6) *Dead-end streets.* No dead-end streets shall be permitted without an approved turnaround. Where streets terminate, the developer shall provide either a cul-de-sac or "T" turnaround at the terminus. Where it is planned that a dead-end street will be extended in the future, a temporary cul-de-sac or "T" turn-around shall be provided. Cul-de-sacs and "T" turnarounds must also conform to the design specifications in *Table 1* and *Figure 2* below..
- (7) *Half-streets.* Half-streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied that the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be

subdivided, the other half of the street must be platted within the new subdivision.

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

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

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

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

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

(c) *Drainage channels and waterways.* Bridges and culverts shall be provided and installed by the subdivider where drainage channels and waterways intersect any street right-of-way or approach. Bridges and culverts shall be appropriately sized in accordance with the drainage area. Bridges and culverts shall be designed by a registered engineer. Bridges shall be constructed to HS25 load standards and shall be the same width as the street. Guard rails shall also be installed. All bridge installations shall be approved by the Miles City Planning Department, which may consult with other departments or contracted agents to ensure adequacy.

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

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

- (2) Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than a 75 degree angle.
 - (3) Two streets meeting a third street from opposite sides shall meet at the same point or their centerlines shall be offset by a minimum of 125 feet for local streets and 300 feet for arterials or collectors.
 - (4) Any street, which intersects a paved street, shall be paved for a minimum of 30 feet from the paved street.
 - (5) Intersection design shall conform to the specifications in *Table 1* below.
 - (6) Intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual streets.
 - (7) Hilltop intersections are prohibited, except where no alternatives exist. Intersections on arterial and collector streets within 200 feet of a hilltop are prohibited.
 - (8) Maximum grade of approaches to major highways, arterials, and major collectors must not exceed 2 percent or the applicable jurisdiction's standards, whichever is stricter.
- (e) *Street names.* New streets aligned with existing streets shall have the same name as the existing street. All street names must be approved by the governing body.
- (f) *Street signs.* All traffic signs shall be installed by the subdivider. Traffic signs shall be of the size, shape, height, and placement in accordance with the Manual of Uniform Traffic Control Devices. Traffic sign plans shall be approved by the Planning Department, which may consult with other departments or contracted agents to ensure adequacy.
- (g) *Addressing.* All subdivisions shall conform to the Miles City addressing system requirements. All street intersection and address number signs shall be installed by the subdivider. The addressing plan shall be approved by the Planning Department, which may consult with other departments or contracted agents to ensure adequacy.
- (h) *Street-Related Improvements.*
- (1) All street improvements including pavement, curbs, gutters, sidewalks, utilities, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations, using materials approved by the governing body.

- (2) Street subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, or other substandard materials. Subgrades must be properly rolled, shaped and compacted and subject to approval by the governing body.
- (3) Streets must be designed to ensure proper drainage, including but not limited to surface crown, culverts, curbs and gutters, drainage swales and storm drains.
- (4) Where access from a public street to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain easements, at least 60 feet wide, from each property owner or the appropriate administrator of public lands. Each easement must allow construction and perpetual maintenance of a street accessing the property and allow vehicular travel on the street.
 - i. Adequate and appropriate easements must be granted by each property owner through a signed and notarized document that grants the easement in conformance with the design.
 - ii. The location of any street easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.
- (5) Existing trees and other vegetation must be preserved whenever possible. Plantings may be required for buffering, screening, or soil erosion protection and are subject to approval by the governing body.
- (6) Street light installation may be required by the governing body on all streets within the subdivision or may be included as part of the public improvements agreement.
- (7) If postal service will not be provided to each individual lot within the subdivision, the subdivider must provide an off-street area for mail delivery within the subdivision in cooperation with the United States Post Office. Responsibility for maintenance of the area and postal facilities shall be included as part of the maintenance agreement for the streets or other maintenance agreement.
- (8) *Primary access standards.* All off-site and on-site streets providing primary access to the proposed subdivision and subdivision lots shall meet the standards in Table 1. The governing body shall approve all street designs and plans.
- (9) Right-of-way width and respective design and construction standards shall apply.
- (10) Primary access streets shall be dedicated to the public, or shall have a public easement which meets the criteria of these regulations.

- (11) When necessary to provide proper legal and physical access to the subdivision and subdivision lots, the subdivider shall be responsible for bringing all primary access streets which serve the subdivision up to the standards.
- (12) The subdivider may be required to pave all or parts of the primary access street network if the subdivision increases the traffic burden on the primary access street network to 100 or more vehicle trips per 24 hour period. Paving shall conform to respective paving standards.

TABLE 1
STREET DESIGN STANDARDS

Design Criteria/Street Type	Arterial	Major Collector	Minor Collector	Minor Street	Local Street	Alley
Average Daily Traffic (ADT) in 24-hr period	1,001 +	301-1000	101-300	21-100	1-20	N/A
Minimum right-of-way or easement width	80 ft.	60 ft.	60 ft.	50 ft.	40 ft.	30 ft.
Minimum street surface width	30 ft.	28 ft.	26 ft.	26 ft.	20 ft.	12 ft.
Centerline radius on curves	400 ft.	300 ft.	150 ft.	100 ft.	100 ft.	75 ft.
Tangent length between reverse curves	300 ft.	200 ft.	100 ft.	100 ft.	50 ft.	50 ft.
Stopping site distance	300 ft.	300 ft.	300 ft.	300 ft.	150 ft.	100 ft.
Minimum angle of intersecting centerlines	75°	75°	75°	75°	75°	75°
Curb radius at intersections	25 ft.	25 ft.	25 ft.	15 ft.	15 ft.	15 ft.
Maximum length of cul-de-sac	n/a	n/a	750 ft.	750 ft.	600 ft.	n/a
Maximum street grade	5%	6%	6%	7%	9%	7%
Maximum grade within 100 feet of intersecting centerline	2%	2%	2%	3%	3%	3%
Minimum in-slope	3:1	3:1	3:1	3:1	3:1	3:1
Minimum back-slope	3:1	3:1	3:1	3:1	3:1	3:1
Minimum round culvert diameter	18-inch	18-inch	18-inch	18-inch	15-inch	15-inch
*Sub-base depth	18-inches	18-inches	12-inches	12-inches	8-inches	8-inches
**Surface or surface base depth	6-inches	6-inches	4-inches	4-inches	3-inches	3-inches
***Surface material	Asphalt	Asphalt	Asphalt	Gravel or hard surface	Gravel or hard surface	Gravel or hard surface
Surface depth	6-inches	4-inches	3-inches	See above	See above	See above

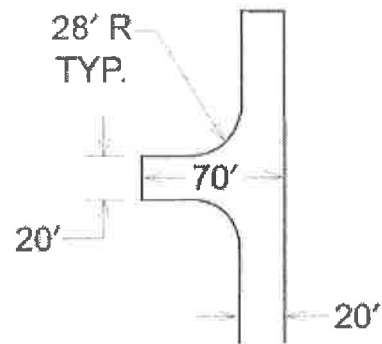
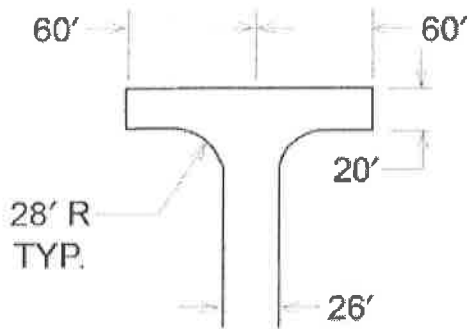
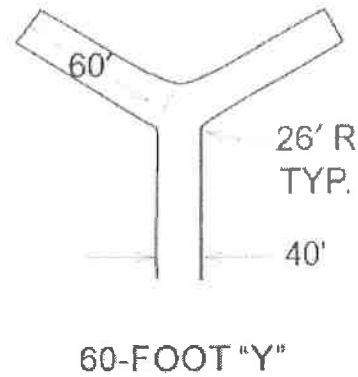
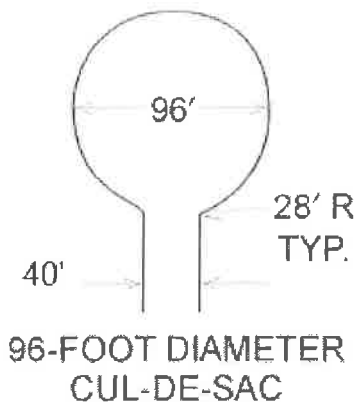
* Sub-base Construction Standards: The gravel base course shall consist of hard, durable stone, gravel or other similar materials mixed or blended with sand, stone dust or other binding or filler materials providing a uniform mixture and compacted into a dense and well-bonded base. Oversize stones, rocks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

** Surface and Surface Base Gravel Construction Standard: The gravel shall consist of both fine and coarse fragments of hard, durable, crushed stone or crushed gravel blended with sand, finely crushed stone, crusher screenings or other similar materials. The material shall be placed in uniform thickness with a minimum compacted depth of 4 inches of 3/4 inch minus crushed gravel compacted to 95% of the maximum dry density as determined by AASHTO Designation T99. If water is needed to facilitate compaction and bonding of the material, it shall be applied. All surface base and surface gravel material shall have a tolerance of 5% by volume up to the next specified gradation (1" for 3/4" maximum size). All oversized material shall not be allowed in the top 2" and shall be removed from the street section.

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

Figure 2*

(Measurements shown are minimums - See Table 1 for actual street width.)



*From International Fire Code Appendix D103.1

Table 2

REQUIREMENTS FOR DEAD-END FIRE APPARATUS ACCESS ROADS

LENGTH (FT)	WIDTH (FT)	TURNAROUNDS REQUIRED
0 – 150	20	None required
151 – 500	20	120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure 2
501 – 750	26	120-foot Hammerhead, 60-foot "Y" or 96-foot diameter cul-de-sac in accordance with Figure 2
Over 750		Special Approval of Miles City Fire & Rescue required

9. Drainage facilities.

- a. The drainage system and facilities required for storm run-off affecting the subdivision are subject to approval by the governing body. Subdivisions containing lots less than 20 acres in size also must be reviewed and approved under MCA Title 76, Chapter 4, by the DEQ.

- b. A grading and drainage plan as required by subsection 21-14 A-5 is subject to approval by the governing body.
- c. Curbs and gutters or swales will be required as determined by the governing body according to the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended according to current specifications of local and state authorities.
- d. Culverts or bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts must extend at least across the entire width of the base of the fill including side slope toes; the amount of backfill to be placed over the culvert and the culvert's capacity must be determined by a professional engineer. The plan must include arrangements for driveway culverts. Culverts shall be provided with the diameters required by Table 1 and large enough to accommodate potential runoff from upstream drainage areas. Culvert material, type, gauge and depth of cover shall be included in the design. All culvert installations shall be approved by the City Planning Department, which may consult with other departments or contracted agents to ensure adequacy.
- e. The subdivider must provide suitable drainage facilities for any surface runoff affecting the subdivision; these facilities must be located in street rights-of-way or in perpetual easements of appropriate widths and are subject to approval by the governing body.
- f. Each drainage facility must accommodate potential runoff from upstream drainage areas.
- g. Drainage systems must not discharge into any sanitary sewer facility.
- h. The grading and drainage system must be designed and certified by a professional engineer.
- i. The governing body may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be drawn on the plat and a signed statement granting the easements must appear on the plat.

10. *Water supply.*

- a. The subdivider shall provide, along with the preliminary plat application, the water supply information specified in MCA 76-3-622.
- b. All subdivisions within Miles City shall be served by municipal water facilities or systems managed by a public water district.

- c. The governing body may require that any proposed subdivision provide adequate and accessible water for fire protection.
- d. The subdivider must install complete water system facilities in accordance with the requirements of Miles City and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the Planning Department and to the DEQ, and must obtain their approvals prior to undertaking any construction. The Planning Department may consult with other departments or contracted agents to ensure adequacy.

11. *Wastewater treatment.*

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

12. *Solid waste.*

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

13. *Utilities.*

- a. The subdivider must provide adequate and appropriate easements for existing utilities and the construction of planned utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in the street right-of-way, must be located between the street and the right-of-way line to simplify location and repair of lines. Such underground facilities must be installed after the street has been brought to grade and before it is surfaced, to eliminate disturbance of the surfacing for the connection of individual services.
- c. Any overhead utility lines must be located at the rear property line, where practical.

- d. Utility facilities must be designed by utility firms in cooperation with the subdivider, subject to all applicable laws and rules and regulations of any appropriate regulatory authority.
- e. Utility easements located between adjoining lots must be centered on lot lines.
- f. Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the governing body.
- g. Utilities placed in the street right-of-way shall be located between the street and the right-of-way line.
- h. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway authority.
- i. In addition to showing the location of the utility easement on the plat with dashed lines, the following statement must be on the final plat:
"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, telecommunications, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."
- j. The subdivider shall describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

14. *Water course and irrigation easements.*

- a. Except as noted in subsection 14-b below, the subdivider shall establish within the subdivision ditch easements that:
 - 1. Are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - 2. Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

3. Prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
- (1) The average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - (2) The water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat; and
 - (3) The fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the county clerk and recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of ten feet is required on each side of irrigation canals and ditches for maintenance purposes.

15. *Disposition of water rights.*

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

entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

3. Reserved and severed all surface water rights from the land proposed for subdivision.

16. Park land dedication; cash in lieu; waivers; administration.

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the governing body a cash or land donation equal to:
 1. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 2. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
 3. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
 4. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
- b. A park dedication is not required for:
 1. Land proposed for subdivision into parcels larger than 5 acres;
 2. Subdivision into parcels that are all nonresidential;
 3. A subdivisions in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
 4. Subdivisions which will create only one additional parcel.
- c. When allowed by subsection 16(b) above, in accordance with MCA 76-3-621(8)(a), the governing body requires park dedication for all minor subdivisions within the municipal boundaries.
- d. The governing body, in consultation with the subdivider and the planning board or community parks advisory council and/or superintendent of city parks, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both.

When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

- e. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- f. The governing body will waive the park dedication requirement if it determines that:
 - 1. The preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection 16-a above;
 - 2. The proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and by virtue of providing this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection 16-a above;
 - 3. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections 16-f-1 and f-2 above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection 16-a above; or
 - 4. The subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection 16-a above.
- g. The governing body may waive the park dedication requirement if:
 - 1. The subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
 - 2. The area of the land to be subject to long-term protection, as provided in subsection g-1 above, equals or exceeds the area of dedication required under subsection 16-a.
- h. Subject to the approval of the governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection 16-a to a school district, adequate to be used for school facilities or buildings.

- i. The governing body will administer funds dedicated to the public under this section in accordance with MCA 76-3-621(5).
- j. For the purposes of this subsection, *cash donation* means the fair market value of the unsubdivided, unimproved land.

17. Fire protection.

- a. All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, grazing lands, and forested areas.
- b. All subdivisions in Miles City fall in the service area of the Miles City Fire Department.
- c. Subdivisions shall comply with the Uniform Fire Code and city fire codes.
- d. The governing body may require that any proposed subdivision provide adequate and accessible water for fire protection, including installation of fire hydrants on the municipal water system designed to standards adopted by city codes.
- e. Special standards apply to subdivisions in high fire hazard areas. High fire hazard areas include heads of draws, excessive slopes, dense fuel growth or other hazardous components as determined by the Miles City Fire Department or the Forestry Division of the Montana Department of Natural Resources and Conservation. Subdivisions in high fire standards must meet the following standards:
 - 1. Interior and exterior streets must provide two entrances/exits to assure more than one escape route for residents and access routes by emergency vehicles and fire suppression equipment. Fire suppression equipment includes, but is not limited to, wildland fire engines, structural fire engines, water tenders, heavy equipment, and trucks used for hauling heavy equipment.
 - 2. Bridges providing access to the subdivision must be built to a design load of 20 tons and be constructed of non-flammable materials.
 - 3. Street rights-of-way must be cleared of slash.
 - 4. Residences and other structures must be placed in such a manner as to minimize the potential for flame spread and to permit efficient access for firefighting equipment.
 - 5. Defensible space around structures and fire protection facilities must be provided and incorporated into subdivision covenants.

6. Purchasers of lots/units in the subdivision shall be provided copies of the Fire Protection Guidelines For Wildland Residential Interface Development, Montana Departments of Natural Resources and Conservation/Justice.

18. *Landscaping standards for commercial development.*

- a. *Intent.* The intent of landscaping is to enhance, conserve and stabilize property values by encouraging pleasant and attractive surroundings; to encourage preservation of existing trees on proposed building sites; and to contribute to the relief of noise, wind, glare through the proper placement of living plants and trees. Allowances for non-living landscaping, i.e., gravel sculptures, art, desert type landscaping shall be taken into consideration.
- b. *Landscaping.* The definition of landscaping shall mean a combination of planted living trees, shrubs, hedges, vines ground cover, flowers and lawns suitable for the climate, exposure, and site conditions. In addition, the design may include bark, mulch, edging, flower beds, rock and such structural features as fountains, pools, art works, screens, walls, fences, or benches. The selected combinations of materials and plants for landscaping purposes shall be arranged in a harmonious manner compatible with the building and its surroundings.
- c. *Plant materials.* Selection of plant materials shall be based upon local climate, water restrictions, and soils. Site plans shall protect existing trees where feasible.
- d. *Irrigation.* Automated irrigation is required for all landscaping consisting of living plant materials. Irrigation plans will be reviewed as part of the landscaping review.
- e. *Preservation.* Landscaping which exists on any property or for any use, subject to the provisions of this subsection, shall not be altered or reduced below the minimum requirements of this subsection, unless suitable substitutions are made which meet the requirements of this subsection and a landscaping plan is first approved by the governing body.
- f. *Area.* The landscaping area shall be eight percent of the net land available (total area of the site minus the area occupied by all buildings).
- g. *Spacing.* Trees will be planted no closer to each other or site structures than the mature drip line. Trees must be pruned to provide at least eight feet of clearance over sidewalks parking areas and streets. The use of elevated earth berms to accomplish such landscaping is encouraged. Landscaping between parking bays with appropriate ground cover and trees is encouraged. This subsection shall complement subsection 24-49 Landscaping of the Miles City Zoning Code.
- h. *Installation timing.* All approved landscaping shall be completed within 90 calendar days after the substantial completion of the buildings being constructed on the lot. If weather conditions do not permit the completion of the approved landscaping, then