

The City of Deer Lodge Subdivision Regulations



ADOPTED

June 20, 2016

RESOLUTION #151

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Chapter 1: General Provisions

1.1: TITLE

These regulations shall be known and cited as the “City of Deer Lodge Subdivision Regulations,” and hereinafter referred to as “these regulations.”

1.2: AUTHORITY

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

1.3: EFFECTIVE DATE AND APPLICABILITY

These regulations take effect upon being adopted by the City Council through Resolution 151 on June 20, 2016.

1.4: PURPOSE AND INTENT

1.4.A: Purpose

As identified in 76-3-102, MCA, the purposes of these regulations are:

1. To promote the public health, safety, and general welfare by regulating the subdivision of land;
2. To prevent the overcrowding of land;
3. To lessen congestion in the streets and highways;
4. To provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
5. To require development in harmony with the natural environment;
6. To promote preservation of open space;
7. To promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
8. To protect the rights of property owners; and
9. To require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

1.4.B: Intent

As required by 76-3-501, MCA, these regulations are intended to reasonably provide for:

1. The orderly development of the jurisdictional area;
2. The coordination of roads within subdivided land with other roads, both existing and planned;
3. The dedication of land for roadways and for public utility easements;
4. The improvement of roads;

5. The provision of adequate open spaces for travel, light, air, and recreation;
6. The provision of adequate transportation, water and storm-water drainage systems;
7. Regulation of sanitary facilities;
8. The avoidance or minimizing of traffic congestion;
9. The avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services that would necessitate an excessive expenditure of public funds for the supply of the services.

1.5: JURISDICTION

These regulations govern the subdivision of land within the jurisdictional area of the City Council of the City of Deer Lodge, including land proposed for subdivision outside the municipal boundaries that is proposed to be annexed into the municipal boundaries of the City of Deer Lodge.

These regulations supplement all other regulations applicable to the subdivision of land within the City of Deer Lodge, but are not intended to displace other applicable laws, regulations, ordinances or resolutions. Insofar as these regulations are more restrictive than any other law, these regulations shall be controlling, and if any other law is more restrictive, the higher standard shall take precedence over a standard set forth in these regulations. Other laws, regulations or ordinances that may apply include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

1.6: SEVERABILITY

Where any word, phrase, clause, sentence, paragraph, or section or other part of these regulations is held invalid by a court of competent jurisdiction by express inclusion in the decision to be invalid, such judgment shall affect only that part held invalid and such decision shall not affect, impair or nullify this title as a whole or any other part thereof.

1.7: AMENDMENT OF THESE REGULATIONS

Before the City Council amends these regulations it shall hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in Powell County not less than 15 days or more than 30 days before the date of the hearing.

1.8: ENFORCEMENT OF THESE REGULATIONS

Any person, corporation, or other entity that violates any of the provisions of the Act or these regulations shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment in a county jail. Each sale, lease, or transfer, or offer of sale, lease, or transfer of

each separate parcel of land in violation of any provision of the Act or these regulations shall be deemed a separate and distinct offense.

If land transfers are not made in accordance with the Act, as implemented by these regulations, the City Attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions.

1.9: RESPONSIBILITY FOR INTERPRETATION

In the event that any question arises concerning any provision or the application of any provision of these regulations, the Administrator, in consultation with the City of Deer Lodge Attorney's Office as may be necessary, shall be responsible for such interpretation and shall look to the overall intent of these regulations and the Act for guidance. The Administrator shall provide such interpretations in writing upon request.

1.10: CONFLICTS WITHIN THESE REGULATIONS

A more specific provision of these regulations shall be followed in lieu of a more general provision that may be more lenient than or in conflict with the more specific provision.

Chapter 2: Overview and Types of Subdivisions

2.1: OVERVIEW

This chapter identifies and discusses the type of land divisions that require subdivision review.

2.2: WHAT CONSTITUTES A SUBDIVISION

A subdivision is any division of land creating one or more parcels less than 160 acres that cannot be described as a aliquot part of a United States government section, and that does not qualify as an exemption as described in Chapter 7: Exemptions. In addition, the term “subdivision” includes condominiums and areas with multiple spaces for rent or lease for recreational camping vehicles or mobile homes as further described in this chapter.

2.3: SUBDIVISION CATEGORIES: MAJOR AND MINOR SUBDIVISIONS

All subdivision types shall be categorized and processed as either a major subdivision or minor subdivision.

2.3.A: Major Subdivisions

The following shall be reviewed as a major subdivision:

1. Any subdivision consisting of six or more lots;
2. Any subdivision with five or fewer lots that does not meet the definition of a first minor subdivision or a subsequent minor subdivision.

2.3.B: Minor Subdivisions

The following shall be reviewed as a minor subdivision:

2.3.B.1: First Minor Subdivision

According to 76-3-609(2), MCA, a first minor subdivision is any subdivision created from a tract of record that has never been subdivided or created by a subdivision or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973.

2.3.B.2: Subsequent Minor Subdivision

A subsequent minor subdivision is a proposed subdivision which is the second or subsequent minor subdivision that does not result in a total of more than five parcels created by subdivision and any combination of exemptions under 76-3-201 or 76-3-207 from a tract of record since July 1, 1973. Any subdivision meeting this definition of a subsequent minor subdivision will be reviewed as a first minor subdivision (figure 3).

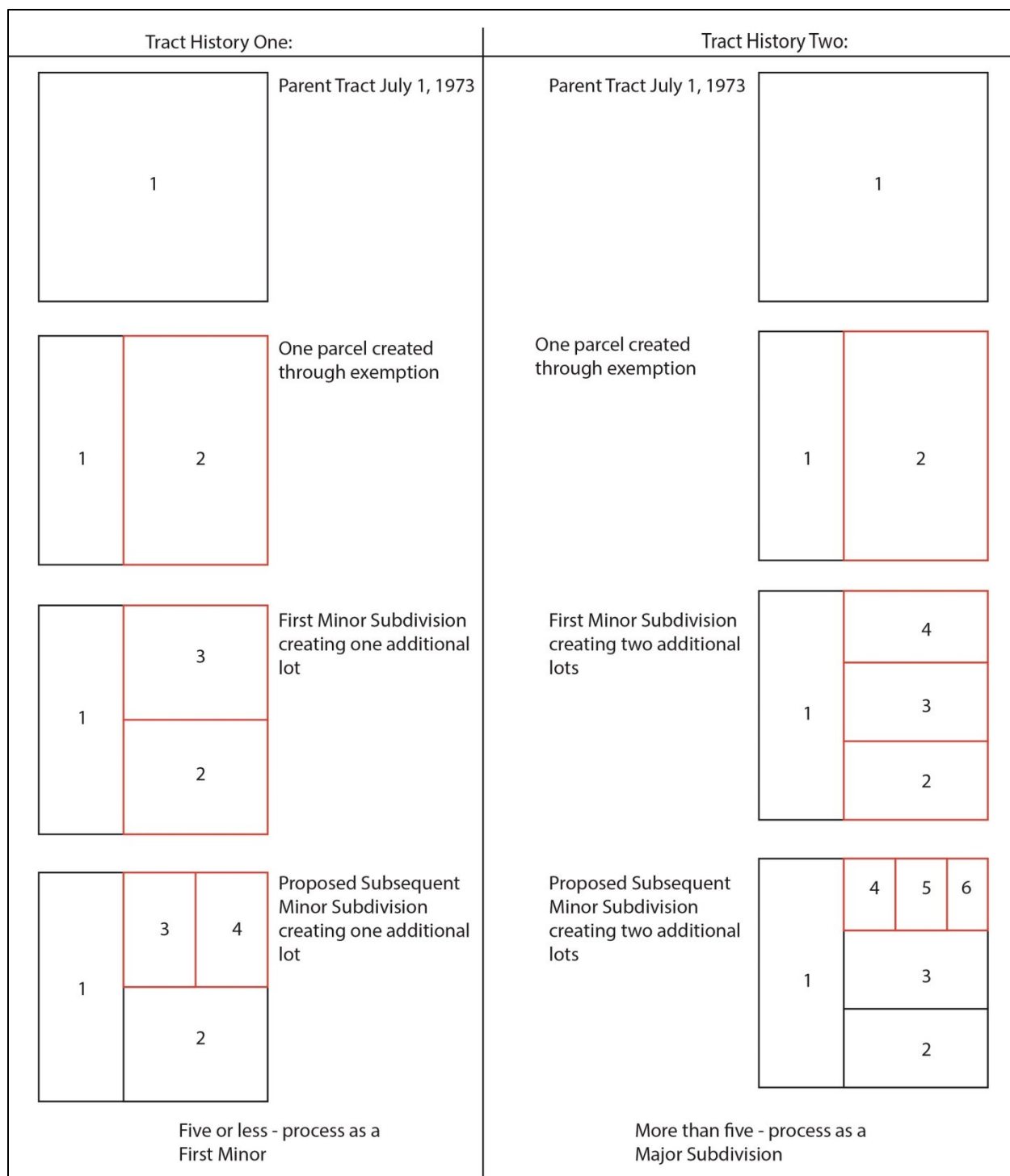


Figure 1: How tract history is used to identify the difference between subsequent minors and majors

2.3.C: General Procedural Differences for Major and Minor Subdivisions

There are general procedural differences between Major Subdivisions and Minor Subdivisions which are listed below. There additional differences which are identified in the appropriate Sections throughout these regulations.

2.3.C.1: Major Subdivision Process

1. Review period of 60 working days for subdivisions with less than 50 lots, and 80 working days for subdivision with 50 lots or more
2. Environmental Assessment, Community Impact Criteria Report, and a Summary of Probable Impacts are all required
3. A public hearing with the Planning Board requiring adjacent property notification is required

2.3.C.2: Minor Subdivision Process

1. Review period of 35 working days
2. Only a Summary of Probable Impacts is required
3. No public hearing with the Planning Board, no adjacent property notification

2.4: TYPES OF SUBDIVISIONS

The following sections describe the types of subdivisions with special provisions or review considerations.

2.4.A: Condominiums

A “condominium” is the ownership of single units with common elements held jointly by unit owners. All land in a condominium subdivision is jointly held with undivided interest. The unit owners own their individual units, not the land beneath the units. The term does not include a Townhome or Townhouse.

2.4.A.1: Procedures

All condominium subdivisions shall be reviewed as major or minor subdivisions based on the number of units and the history of divisions on the existing tract of record, except as provided below:

1. The approval of the original subdivision of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are complied with; or
2. The proposed condominium is in conformance with applicable City of Deer Lodge Zoning Regulations that are in effect;

When either of the above exceptions is met, the condominium development is exempt from the provisions of these regulations.

No construction may begin until the subdivision site plan has been approved as a final site plan (70-23-301(8), MCA) and all other applicable approvals have been received (e.g., DEQ, building permits, etc.).

i: Submittal Requirements

Applications for condominium subdivisions shall comply with Chapter 3: Preliminary Plat.

ii: Survey Requirements

The perimeter of the existing tract of record shall meet survey requirements of Title 76, Part 4. A final plat is required.

iii: Site Plan Requirements

For the condominiums, a site plan is required according to 70-23-306, MCA. Site plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access, including internal streets, parking and storage areas. The site plan shall identify the total number of units by type, dwelling units, commercial units or industrial units. The site plan shall be prepared by a registered architect, registered professional engineer, or registered professional land surveyor as required by 70-23-306, MCA.

iv: Final Plat/Site Plan Application

An application for the final plat of a condominium subdivision shall include all of the items required in Chapter 4: Final Plats, in addition to the following:

1. A final site plan meeting the requirements in Section iii. above;
2. The subdivider shall provide certification from a lawyer licensed in Montana that the condominium complies with the requirements of Title 70, Chapter 23 "Unit Ownership Act – Condominiums" The certification and supporting materials shall be filed with the final plan; and
3. All permits and approvals for construction including building permits.

1-1.A.1: Review Criteria

Condominium subdivisions must meet the applicable Review Criteria in Chapter 5 in addition to the following:

1. Condominiums must be designed in compliance with the requirements of Title 70, Chapter 23 "Unit Ownership Act – Condominiums;"
2. No creation of a parcel for condominiums may result in a parcel or parcels of less than 160 acres, unless the parcels are reviewed as lots in a subdivision or as a valid exemption under Title 76, Part 2, MCA; and
3. All condominiums must have DEQ approval per 76-4-102(16), MCA.

2.4.A.2: Access

Condominium subdivisions must meet the minimum requirements in Chapter 6: Design Standards. In addition, all units must be provided legal and physical access by dedicated public street(s) leading to the parking spaces for the units, which may also be provided by garages or other interior parking facilities. The parking spaces for each individual unit shall extend to within 100 feet of at least one exterior door to the unit, and the parking spaces and unit door must be connected by common element(s) that provide pedestrian access to the unit. The specified distance is a straight line measurement between the nearest point of the parking spaces to the exterior door of the unit.

2.4.B: Townhomes and Townhouses

“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.

2.4.B.1: Procedures

All Townhome and Townhouse subdivisions shall be reviewed as major or minor subdivisions, based on the number of units and the history of divisions on the existing tract of record, except as provided below:

1. The approval of the original subdivision of land expressly contemplated the construction of the townhomes and any applicable park dedication requirements in 76-3-621, MCA are complied with; or
2. The proposed townhomes are conformance with applicable City of Deer Lodge Zoning Regulations that is in effect.

When either of the above exceptions is met, the townhome or townhouse development is exempt from the provisions of these regulations.

The review procedure and requirements for townhomes not meeting the exceptions cited above shall be the same as Section 2-4.A “Condominiums” above.

Common areas must be jointly owned through a legal entity, such as an incorporated property owners’ association.

2.4.C: Recreational Vehicle (RV) and Mobile Home Parks

2.4.C.1: Overview

This section of the subdivision regulations establishes the criteria and requirements for mobile home parks and RV parks in addition to or different from other requirements in the subdivision regulations.

1. Mobile Home Park - A mobile home park, as used in these regulations, is land set aside for renting or leasing of two or more mobile homes.
2. RV Park - A RV park, as used in these regulations, is land set aside for renting or leasing two or more recreational camping vehicles.

2.4.C.2: Process

All RV and mobile home parks shall be reviewed as major or minor subdivisions, based on the number of spaces and the history of divisions on the existing tract of record.

2.4.C.3: Review Criteria

In addition to the applicable review criteria in Chapter 5, the following are required:

1. DPHHS approval is required prior to final plat application;
2. No creation of a parcel for an RV or mobile home park may result in a parcel or parcels of less than 160 acres, unless the parcels are reviewed as lots in a subdivision or as a valid exemption under Title 76, Part 2, MCA; and
3. DEQ approval is required per 76-4-102(16), MCA, even when the rental spaces are 20 acres or greater.

2.4.C.4: Submittal Requirement

The requirements of Chapter 3 apply, and the following clarifies other submittal requirements unique to RV and mobile home parks:

1. The exterior boundaries of the existing and proposed tract(s) of record shall meet survey requirements of the Montana Uniform Standards for Final Subdivision Plats; and
2. The delineation of the mobile home and RV spaces shall be shown on a site plan.

i: Site Plan

A detailed site plan drawn to scale is required. Site Plans requiring more than one page will be numbered and include total number of pages.

ii: Site Plan Contents

The Site plan shall include the following information:

1. Locations and dimensions of any service building, cabin, cooking shelter, or other structure that will be available for public use, including showers and restrooms;

2. Information required by ARM 37.111.205(1)(b), (2)(a) through(o),and (3). ARM 37.111.205 provides rules for the Layout Plan Review by the Department of Public Health and Human Services;
3. Location and ownership of existing utilities and roads in their true and correct location and location of proposed streets, roads, electrical lines, natural gas, cable, phone and any other utilities proposed to serve mobile home or RV spaces;
4. Location and dimensions of mobile home or RV pads, demonstrating compliance with the subdivision design standards; and
5. RV park areas and mobile home park areas shall be delineated if both are proposed.

2.4.C.5: Manufactured Home and Mobile Home Park Design Standards

All manufactured home and mobile home parks must comply with the City of Deer Lodge Zoning Ordinance. Mobile home parks are subject to the Design Standards in Chapter 6 of these regulations and applicable requirements of the City of Deer Lodge Zoning Ordinance.

2.4.C.6: RV Park Design Standards

All RV parks must comply with the Design Standards in Chapter 6 of these regulations and the City of Deer Lodge Zoning Ordinance, with the following exceptions and additions:

i: Street Requirements

1. There shall be no public right-of-way dedications required in RV parks. Streets shall be developed for the use of the RV Park renters and guests, and owned and maintained by the property owner.
2. The requirements for paving streets may be waived by the City Council if the subdivider demonstrates unpaved RV park roads will be maintained for dust suppression and provided with a durable, drivable surface in wet or other inclement conditions. In approving the waiver, the City Council shall consider overall context and surrounding uses.

ii: RV Space Standards

1. RV spaces shall be arranged to permit the safe and practical placement and removal of RVs.
2. The prohibition on through or double front lots in Chapter 6 does not apply to RV spaces as long as the access roads accommodate this through the use of one-way streets or wider streets to accommodate turns.
3. The boundary limits of each RV space shall be permanently marked on the ground.

4. An individual RV pad shall be provided in each RV space and sized to accommodate the proposed type of RV. The pads shall be constructed on at least six inches of gravel over a stabilized sub-base.
5. Notwithstanding the setbacks established by this section, all RVs shall be located at least 50 feet from the property line abutting upon a major arterial and at least 25 feet from all other public street rights-of-way.
6. No RV shall be located closer than 15 feet from all exterior boundaries of the RV Park.
7. No detached structures are allowed on RV spaces.
8. No RV or its attached structures, such as awnings and carports, may be located within 10 feet of any other RV or its attached structures.
9. Each driveway must be located to allow for convenient access to the RV, and be a minimum of 10 feet wide.

iii: Park Dedication

RV parks shall include land to be used as park or recreation area. The area to be dedicated shall be 11% of the total RV park area as surveyed for the plat (see requirements of preliminary plat above.) These areas shall remain in private ownership and shall not be dedicated to the public unless expressly accepted by the City Council. It shall be the responsibility of the RV park owner to maintain the park and recreation area. The City Council may accept cash-in-lieu of requiring the park area.

iv: Adjacent Land Buffer

RV parks located adjacent to industrial, commercial, or residential land uses shall provide screening such as fences or natural growth along the property boundary line separating the park from these adjacent uses.

v: Storage

The City Council may require that a common area be provided, which shall not be calculated as part of the parkland dedication, for storage or parking for boats, trailers, or other recreational vehicles. If such a common area is included, it shall be restricted for storage only and no structure, vehicle, boat or other container may be used for living in.

Chapter 3: Preliminary Plats

This chapter details the review process for preliminary plat applications (see figures 2 and 3 for the process for major and minor subdivisions).

The main steps in the preliminary plat review process are as follows; the following sections describe each of the steps in more detail:

Step 1: Pre-Application

Step 2: Application Submittal

Step 3: Element Review

Step 4: Sufficiency Review

Step 5: Soliciting Agency Comments

Step 6: Staff Report

Step 7: Public Review

Step 7: Planning Board Hearing and Recommendation (Major Subdivisions only)

Step 8: City Council Hearing and Decision

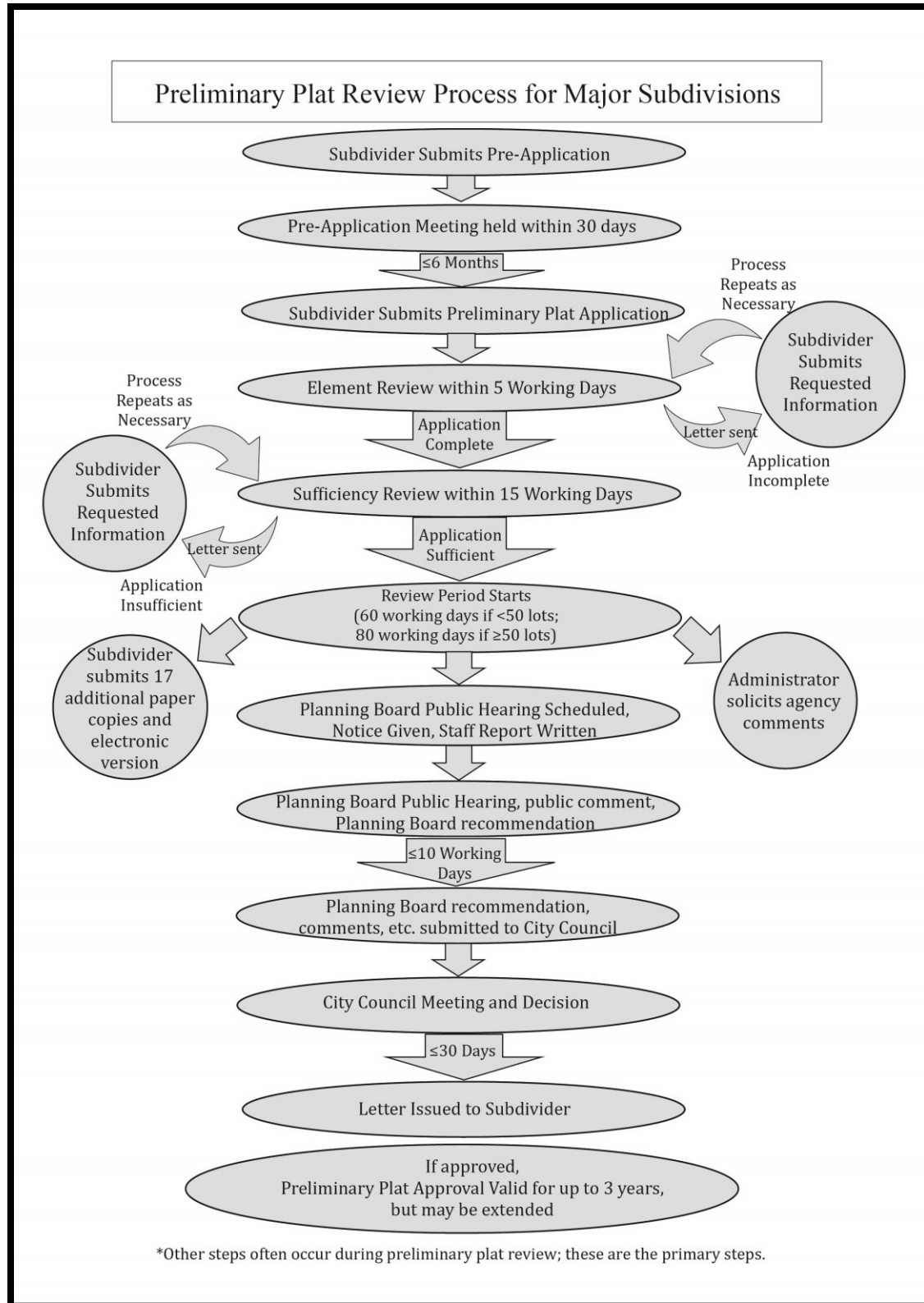


Figure 2: Flowchart of the process for Major Subdivisions

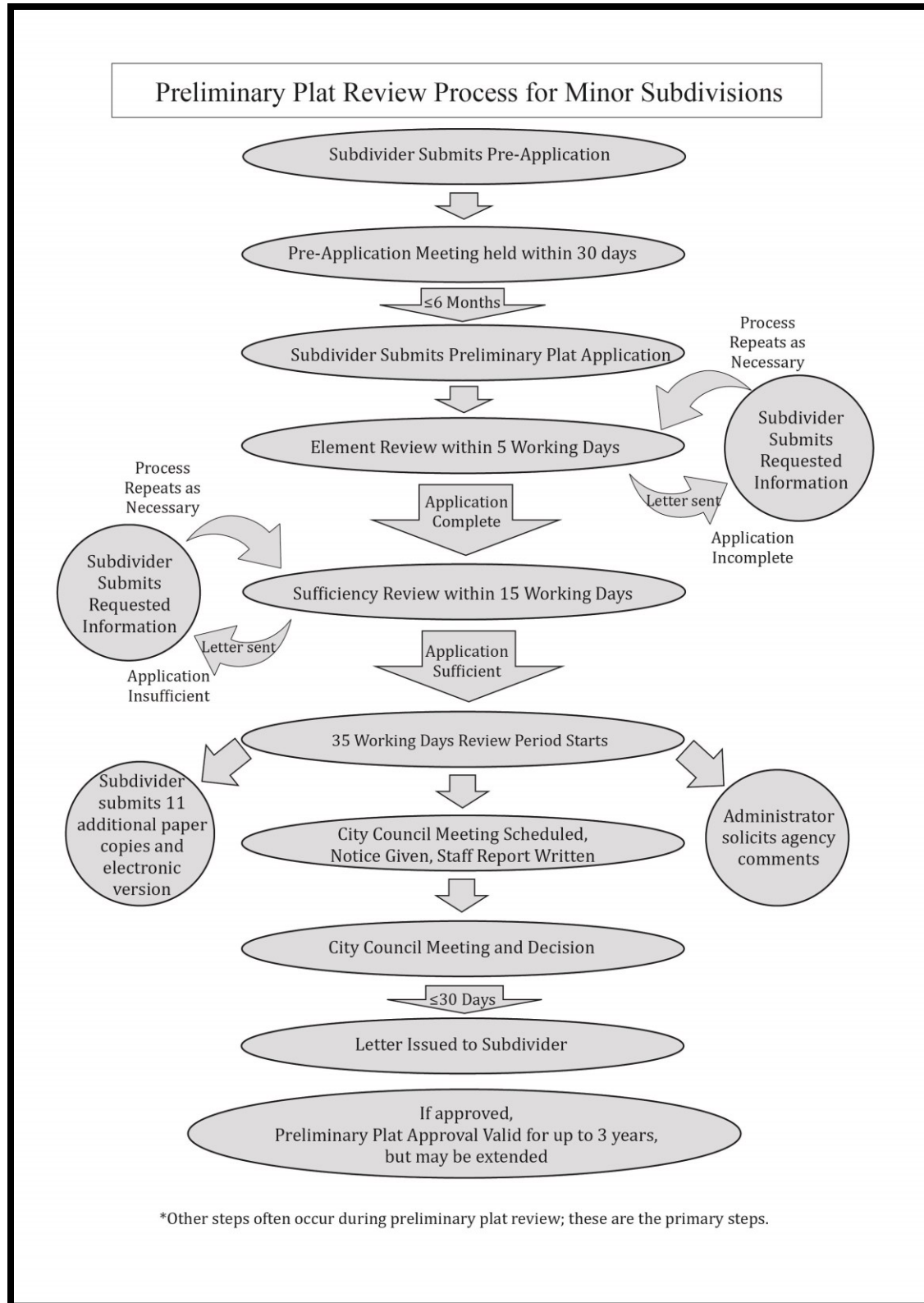


Figure 3: Flowchart of the process for Minor Subdivisions

3.1: PRE-APPLICATION

A pre-application meeting to explain the subdivision application and review process is required. The pre-application meeting is intended to provide an overview of what will be required for the subdivision application, as well as alerting the subdivider to potential issues and/or provide information that could affect design.

A pre-application meeting is scheduled with Administrator by the subdivider filling out and submitting a pre-application request form in addition to the required pre-application materials.

3.1.A: Pre-application Submittal

The subdivider shall submit a completed Pre-Application Form (refer to Administrative Materials A “Pre-Application Form” found in Supplemental Administrative Materials).

When a complete pre-application form has been submitted to the Administrator, the Administrator shall notify the subdivider of the date and time of the meeting. The meeting shall be held within 30 days of the subdivider submitting the required materials.

The Administrator may notify and invite to the pre-application meeting representatives of affected public utilities and review agencies at the local, state, and federal levels, including but not limited to the local sanitarian and/or DEQ reviewer, County Clerk and Recorder, Public Works Department, Fire Department, Law Enforcement, Emergency Services, etc. The role of these agencies is to provide comment relevant to their agency’s review. The contacted agencies may also submit written comments prior to the pre-application meeting.

3.1.B: Pre-application Meeting

The subdivider or their officially designated representative is required to be present at the pre-application meeting. At the pre-application meeting, the Administrator shall:

1. Identify the state laws, local regulations, and growth policy provisions that may apply to the subdivision review process;
2. Provide the subdivider with a comprehensive list of the information, documents, fees and other materials that shall be required in order to submit a preliminary plat application;
3. Provide to the subdivider a list of agencies that will be contacted during the review process and the timeframes that the public utilities, agencies and other entities are given to respond; and
4. Identify particular additional information the Administrator anticipates will be required for review of the subdivision application. However, the identification of this information by the Administrator at the pre-application stage does not in any way limit her/his ability to require additional or different information at a later time.

3.1.C: Pre-application Duration

Within six months of the pre-application meeting, the subdivider shall submit a preliminary plat application or a pre-application extension request. If a preliminary plat application or extension request is not received within six months, the pre-application is void and will need to be re-submitted if the subdivider wishes to proceed. Requests for extensions shall be addressed to the Administrator, who may approve an extension for up to six months. The Administrator shall notify the subdivider in writing of a decision to approve or deny an extension. If denied, the reasons for denial shall be included in the notice.

3.1.D: Restrictions on Improvements

By requesting the pre-application meeting, the subdivider agrees to the following provisions restricting construction and changes to the property. These provisions are intended to allow for a complete evaluation of the proposed subdivision compared to the pre-subdivision condition.

3.1.D.1: Construction Timing

Once a request for a pre-application meeting has been submitted, the subdivider shall not engage in construction of subdivision-related improvements prior to approval of the preliminary plat application. Subdivision-related improvements include water, wastewater, stormwater, and solid waste facilities; subdivision-related utilities; and roads, streets, and any improvement requiring grading or earth moving. All historic, cultural, archaeological and natural resources on the site shall remain unaltered. Riparian vegetation and wetlands may not be damaged or removed.

The following activities shall be allowed:

1. Work related to testing, analytical or monitoring activities that may be required by these regulations or are relevant to the development of the preliminary plat application; and
2. Activities approved in advance and in writing by the Administrator that qualify as actions that are not subdivision-related.

The City of Deer Lodge shall not be responsible if improvements or alterations have to be eradicated, moved, repaired or rebuilt due to a subdivider making property improvements prior to and/or not in accordance with conditions of preliminary approval.

3.1.D.2: Enforcement

A violation of the restrictions in this section subjects the subdivider to the enforcement provisions and penalties in Chapter 1, Section 1.8. Restoration of any resource alteration, as described above, may be required as a condition of subdivision approval.

3.2: PRELIMINARY PLAT APPLICATION SUBMITTAL

The subdivider is responsible for submitting the preliminary plat application and ensuring that the subdivision conforms to the design standards in Chapter 6, all applicable forms in the Supplemental Administrative Materials, and that it meets the review criteria in Chapter 5. The subdivider is advised to address in the application package comments and questions raised at the pre-application meeting.

3.2.A: Preliminary Plat Application Contents

The subdivider shall submit to the Administrator an application package consisting of one paper copy and one electronic copy in either a word or PDF file. The application package should include all of the elements listed below, as identified in the pre-application meeting:

1. Preliminary Plat Application Form - The form shall be signed by the property owner(s) and subdivider.
2. Preliminary Plat/Plan.
3. Review Fee.
4. Tract of Record - The application shall specify and provide documentation of the legal existence of the tract(s) of record being divided.
5. Proof of Minor Subdivision Eligibility - If the subdivision is proposed as a minor subdivision as defined in Chapter 2 of these regulations, documentation of the original tract of record as of July 1, 1973 and copies of each certificate of survey, subdivision plat(s), or other division pertaining to that tract of record since July 1, 1973.
6. Agricultural Covenants - If the subject property was created with an agricultural covenant per 76-3-207(1)(c), MCA, the application shall contain a written request to revoke the covenant.
7. Site Location Map (Vicinity Map).
8. Aerial Photo of property to be subdivided.
9. Lot Layout - Show existing structures, proposed building sites, riparian areas and ponds, lakes and other waterbodies.
10. Narrative Summary - One page narrative summary of the proposed subdivision.
11. Plan for Phased Development - If the subdivider does not intend to install all improvements, including roads and electricity to each lot in the subdivision by final plat, then a plan to phase the subdivision is required to be submitted with the preliminary plat application.
12. Preliminary Title Report or Commitment - Copies of all filed documents referenced in the title report shall be submitted with the application.
13. Existing and Proposed Easements - Shall be shown on the plat and identified as to purpose and with record references (e.g., book/page) for existing easements.
14. Legal and Physical Access - The subdivision plat shall include documentation of legal and physical access to the subdivision and each proposed lot.

15. Zoning Compliance - Information to demonstrate compliance with zoning regulations.
16. Request for Variance - A request for variance is required for any component of the subdivision that does not conform to the requirements of Chapter 6, "Design Standards."
17. Environmental Assessment or Summary of Probable Impacts - Refer to Chapter 2 "Overview and Types of Subdivisions" to determine if an environmental assessment or a summary is required.
18. Proposed Mitigation - Description of any proposed mitigation for significant impacts.
19. Agency Comment - A list of agencies contacted by subdivider and all correspondence.
20. Adjoining Property Owners - Names and addresses of all adjoining property owners.
21. Proposed Street or Road Plans.
22. Traffic Impact Study – Required where the subdivision will add more than 750 vehicle trips per day.
23. Grading Plan - For any areas proposed for surface disturbance, including roads.
24. Storm-water Drainage Plan - For any areas proposed for roads, for facilities (including swales or detention areas) that will serve more than one lot, and as required by the local public health office and/or DEQ.
25. Water and Sanitation as required in 76-3-622, MCA.
26. Solid Waste Management.
27. Irrigation - Information for existing and proposed irrigation on or adjacent to the subdivision, including any proposal to remove water rights from the property.
28. Utilities - Description of existing and proposed utilities.
29. Proposed Parkland - Proposal to meet parkland dedication requirement.
30. Fire Suppression Plan.
31. Mineral Rights - Status of existing mineral rights (as known) and proposed disposition of those rights.
32. Assessment of Cultural and Historic Characteristics.
33. Draft Property Owners' Association Documents, including draft articles of incorporation, declaration and bylaws, and covenants.
34. Mail delivery.

3.2.B: Preparing the Application

It is the subdivider's responsibility to provide sufficient information in the application to show that significant impacts can be mitigated.

3.2.B.1: Coordination with Agencies and Interested Parties

Prior to submitting an application, the subdivider is advised to coordinate with agencies and consider their comments in the design of the subdivision. The Administrator will have identified an initial list of relevant agencies at the pre-

application meeting. Correspondence with agencies should be submitted with the application. Contacting agencies does not preclude the Administrator from contacting the same agencies during preliminary plat application review.

3.2.B.2: Consideration for Installing Improvements

As part of the subdivision approval process, the subdivider may be required to install capital improvements such as but not limited to roads, sidewalks, street lights, water and sewer, or secure a financial guarantee for their installation. While preparing the application, the subdivider should be aware of these costs and plan for the expenditures prior to final plat approval.

3.2.C: Submitting the Application

The subdivider shall submit a complete application to the Administrator consisting of one paper copy and one electronic copy in either a Microsoft Word or PDF file.

3.2.C.1: When a Subdivision Lies Partly within an Incorporated Municipality and Partly in the County (also see 3.5.D below)

If the proposed subdivision lies partly within the City of Deer Lodge and partly within the unincorporated area of the Powell County, and a portion of the subdivision is proposed to remain in the county, the application and preliminary plat must be submitted to the Administrator for the city and to the Administrator for the county. Both the city and county governing bodies issue decisions on the application.

3.2.C.2: When a Subdivision is in an Unincorporated Area and Proposed to be Annexed (also see 3.5.D below)

If the subdivider proposes to annex a subdivision located in the unincorporated county into the City of Deer lodge, the subdivider shall submit the proposal to the Administrator of the municipality and the municipality shall proceed with review for annexation and subdivision.

3.2.D: Permission to Enter

The City Council, Planning Board, Administrator, or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider, and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission to enter for this purpose. This consent also applies to members of the public attending any noticed public meeting at the site of the proposed subdivision.

3.3: ELEMENT REVIEW

3.3.A: Process

Once the application is submitted to the Administrator, it is reviewed to determine if it contains all of the required elements according to following process:

1. A subdivision application is considered to be received on the date of delivery to the Administrator with the required review fee.
2. Within five working days of receiving the application and review fee, the Administrator shall determine if the application contains of the applicable materials.
3. The Administrator's determination shall be based on whether the required information is included in the application or is absent from the application.
4. The Administrator shall send written notice to the subdivider of the determination. If the application is missing elements, the letter shall identify the missing elements.
5. The subdivider shall correct deficiencies and submit the required elements.
6. This process shall be repeated until the subdivider submits an application containing all the required elements, at which point the application moves forward to sufficiency review.
7. If the subdivider does not respond to a request for additional information within six months of the issuance of the Administrator's letter, the Administrator shall send written notice to the subdivider that the application will be terminated if the items are not addressed within 30 days.

3.3.B: Amendments to the Application During Element Review

If the subdivider alters the application during element review, the application will be reviewed according to 5.5.A. If not determined to be material the application will be reviewed according the 3.3.A, which triggers an additional five day review period.

3.4: SUFFICIENCY REVIEW

3.4.A: Process

Once the Administrator determines an application contains the required elements, the Administrator reviews it to determine whether the information in the application is sufficient to make a decision to approve the application, deny it, or approve it with conditions according to the following process:

1. Within 15 working days after the Administrator determines that the application contains all of the required elements, the 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.
2. The Administrator's determination shall be based upon whether there is enough information in the application to determine whether the application meets applicable design criteria and if the subdivision will have a significant impact on

agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety and other applicable review criteria.

3. The Administrator shall send written notice to the subdivider of the determination. If the application is insufficient, the letter shall identify the deficiencies and information needed for a sufficient application.
4. The subdivider shall correct deficiencies and submit the required information.
5. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient to review the proposed subdivision under the provisions of these regulations.
6. If the subdivider does not respond to a request for additional information within six months of the issuance of the Administrator's letter, the Administrator shall send written notice to the subdivider that the application will be terminated if the items are not addressed within 30 days.

3.4.B: Amendments to the Application During Sufficiency Review

If the subdivider alters the application during sufficiency review, the application will be reviewed according to 5.5.A. If not determined to be material the application will be reviewed according the 3.4.A, which triggers an additional 15 day review period.

3.4.C: Effect of Determining an Application Sufficient

Once the application has been deemed sufficient, the local government's statutory deadlines for a decision begin. The statutory deadlines differ depending upon the type of subdivision and the number of lots. The first day of the time period begins on the day after the written notice is sent to the subdivider stating that the application is sufficient. The City Council's timeframe for decision to approve, approve with conditions, or deny the application is as follows:

1. 35 working days: Minor Subdivisions
2. 60 working days: Major subdivisions with fewer than 50 lots
3. 80 working days: Major subdivisions with 50 or more lots

The time period may be extended or suspended by up to one year upon mutual consent of the subdivider and the Administrator. Amending an application after it has been determined sufficient constitutes the subdivider's consent to an extension of the time period. The time period is also extended if a subsequent public hearing is required.

Once the application is declared sufficient by the Administrator, the subdivider shall submit the following paper copies of the application including additional materials for element and sufficiency reviews to the Administrator:

1. Minor Subdivisions: One electronic copy in either pdf or Microsoft Word format, and 11 paper copies in a three-ring binder with tabs for each section.

2. Major Subdivisions: One electronic copy in either pdf or Microsoft Word format, and 17 paper copies in a three-ring binder with tabs for each section.

3.4.D: Additional Information

A determination that an application contains sufficient information for review as provided in this section does not ensure that the proposed subdivision will be approved or conditionally approved by the City Council and does not limit the ability of the Administrator, Planning Board, or the City Council to request additional information during the review process.

3.5: AGENCY COMMENTS

Once the application is declared to have the required elements according to Section 3.3., the Administrator shall solicit agency comments.

3.5.A: Agencies to be Contacted

The Administrator shall contact the agencies according to 3.1.B., identified during the pre-application meeting.

If the Administrator contacts additional entities during the review process, the Administrator shall notify the subdivider of the contact and the timeframe for response.

3.5.B: Comments Received

The Administrator shall provide the subdivider with copies of comments received. The subdivider shall submit copies of any other comments received, including those from agencies and utilities, to the Administrator.

3.5.C: Limitations of Agency Comment

As required by 76-3-504(1)(i), MCA, review and comment by public agencies, utilities or those with a substantial interest may not delay the City Council's action on the subdivision application beyond the review period. Failure of any agency to complete a review of an application may not be a basis for rejection of the application by the City Council.

State or federal governmental entities that have been involved in an effort to acquire or assist others in acquiring an interest in the real property of the subdivision are required to disclose that information prior to submitting comments, opinions, or information.

3.5.D: Coordination between Counties and Incorporated Municipalities

State law identifies specific coordination between counties and municipalities. These requirements are addressed below:

1. When the Subdivision Lies Partly Within an Incorporated Municipality. If the proposed subdivision lies partly within the City of Deer Lodge and partly within the unincorporated area of Powell County, the application and preliminary plat must be submitted to and approved by both the city and county governing bodies. The

subdivider is responsible for submitting the application to both municipal and county governing bodies.

2. Municipalities – When Annexation is Proposed. If a subdivision or portion of a subdivision is proposed to be annexed into the city, the following process shall be followed.
 - a. If an entire existing parcel is proposed to be annexed and then subdivided, the subdivider shall submit the proposal to the municipality and the municipality shall proceed with review for annexation and subdivision. The municipality shall notify the county Administrator of the proposed annexation and subdivision. The municipality shall coordinate subdivision and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. The municipality shall not make an official determination to approve, approve with conditions or deny a subdivision until the area of the subdivision is annexed into the city.
 - b. If the area to be annexed includes only a portion of an existing tract of record and a portion in the unincorporated area of the county, the subdivision shall be reviewed by both the county and the municipality. The following is recommended to coordinate review:
 - i. Administrators for the county and municipality meet as early as possible to discuss the proposed subdivision, overlapping issues, and make a recommendation on coordination to the governing bodies.
 - ii. The governing bodies shall direct the Administrators as to the preferred method of coordination.
 - iii. The most coordinated approach is joint review for subdivision and annexation, with one staff report prepared for both jurisdictions, and with Planning Board meetings and/or hearings held jointly, and for the governing bodies to also meet jointly.
 - iv. An alternative approach is for each local government to conduct separate but concurrent reviews, the county for subdivision review and the municipality for annexation and subdivision. If this alternative is selected, the local governments shall share all reports and meeting/hearing notices. The municipality shall coordinate its subdivision and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.
 - v. If the governing bodies of the county and municipality approve of the subdivision to be annexed, the county shall first approve the subdivision with the condition of annexation; and the municipality shall then approve the annexation and the subdivision.

3.6: STAFF REPORT

This section discusses the report prepared by the Administrator to assess the proposed subdivision for compliance with the review criteria. The staff report also includes a recommendation for approval, approval with conditions, or denial. The staff report is submitted to the Planning Board for major subdivisions or City Council for minor subdivisions.

3.6.A: Contents

The Administrator shall prepare a recommendation and report evaluating the proposed subdivision and any requested variances for compliance with these regulations.

The staff report shall contain:

1. Recommendation for approval, conditional approval (see item 3.6.B. “Conditions of Approval”) including any conditions for mitigation measures, or denial of the subdivision application and preliminary plat;
2. Summary of the basis for the recommendation, including findings of fact which describe factual evidence and analysis of compliance with submittal requirements in Chapter 3 and the review criteria in Chapter 5;
3. Recommendation for approval or denial of any requested variances (based on review criteria for variances in Chapter 5) including any conditions of approval, and a summary of facts forming the basis of the recommendation;
4. Recommended time period of the preliminary plat approval of not less than one calendar year or more than three calendar years, and any recommendation regarding extensions. (refer to Chapter 5 for review criteria for determining time periods and extensions); and
5. Copies of agency comments and public comments received (not including those already in the subdivision application), including any public comments regarding water and sanitation information.

3.6.B: Conditions of Approval

Based on the findings of fact, the staff report may recommend conditions of approval. Conditions of approval must be based on the review criteria in Chapter 5.

3.6.C: Timeframe for Staff Reports

The Administrator shall submit the staff report to the subdivider and City Council or Planning Board at least seven days prior to the public meeting or hearing.

3.7: PUBLIC COMMENT

This section briefly describes general provisions for public comment with more detail provided in other steps, primarily those related to Planning Board and City Council review.

3.7.A: Public Information

Once the application is submitted to the Administrator, it is public information. Public comment and comments from public utilities, government agencies and others with a substantial interest in the subdivision are essential components of the review of the application, staff report, Planning Board recommendation, and City Council decision.

3.7.B: Timing of Comments

Although identified as a separate step in the process, in fact, public review may occur at any time during the preliminary plat review process. Establishing it as a separate process step highlights the importance of these comments but does not limit comment to one particular time period in the review process.

Comments received from the public at any time after the application is submitted will be included in the jurisdiction's files and records of the subdivision. Comments will be considered in the staff report, Planning Board recommendation, and City Council decision.

3.7.C: Soliciting Public Comments

Major subdivisions, except those exempted per 76-3-616, MCA, shall have a public hearing by the Planning Board. Such hearings shall be noticed as identified in Section 3.8.B.1. Any additional meetings of Planning Board or City Council will be noticed as meetings. Minor subdivisions shall be noticed as meetings of the City Council. Notice of meetings shall be made at least 48 hours in advance.

3.8: PLANNING BOARD REVIEW AND RECOMMENDATION

This section addresses how the Planning Board shall hold public meetings and hearings in order to review and make recommendations upon a subdivision application. The Planning Board review only applies to major subdivisions, delegating its responsibilities for minor subdivisions to the Administrator, as authorized under 76-1-107(2), MCA.

3.8.A: Planning Board Materials

The Administrator shall forward the application, staff report, agency comments, subdivider's preference for mitigation and any public comments to the Planning Board at least 7 days prior to the scheduled meeting.

3.8.B: Planning Board Public Hearing

3.8.B.1: Notice Requirements

The Planning Board shall hold a public hearing for all major subdivisions. The Administrator shall prepare the hearing notice and post the notice as follows:

1. 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.

2. The subdivider, each property owner of record whose property is immediately adjoining 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 must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.
3. The notices described above shall also include descriptions of any requests for variances that are being considered with the application.
4. At least 15 days prior to the public hearing, the Administrator shall post in a conspicuous place on the proposed subdivision site and/or adjacent right-of-way a notice of the meeting/hearing.
5. In the event that the Planning Board has completed the public hearing but needs additional time for review or making a recommendation, the discussion will follow the process for a meeting rather than a public hearing and the meeting shall be noticed at least 48 hours in advance.

3.8.B.2: Public Hearing

The public hearing, held by the City of Deer Lodge Planning Board, will be advertised as required by state law and these regulations. The public hearing will be conducted at the time and place as advertised. According to the meeting agenda, the public hearing is open for persons to speak for or against the project, or to seek additional information from the applicant or the Administrator. A time limit may be established for each speaker. The public is encouraged to provide a factual basis for their support or opposition to a proposed subdivision.

3.8.C: Planning Board Recommendation

3.8.C.1: Information to be Considered

The Planning Board's recommendation to approve, conditionally approve, or deny the proposed subdivision shall be based on review of the subdivision application, preliminary plat, applicable environmental assessment, public comment, staff report, and other additional information submitted or prepared in the review of the subdivision.

3.8.C.2: Review Criteria

The Planning Board shall base its recommendations on the same review criteria the City Council uses to make its decision (see Chapter 5), except that the Planning Board is making recommendations and the City Council is making decisions.

3.8.C.3: Planning Board Written Recommendation

Within 10 working days after the Planning Board's public hearing, the Planning Board shall submit in writing, to the subdivider and the City Council the following information:

1. Recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat;
2. Disclosure of any preferences for mitigation expressed by the subdivider to the Planning Board;
3. Recommended findings of fact based on review of the submittal requirements and analysis of the impacts in the review criteria (see Chapters 3 and 5);
4. Recommendation for approval or denial of any requested variances (based on review criteria for variances in Chapter 5), including any proposed conditions for approval, and a statement describing the facts and conditions upon which the approval, conditional approval or denial of the variance is based;
5. Recommended time period of the preliminary plat approval of not less than one calendar year or more than 3 calendar years, and any recommendation regarding extensions (See Chapter 5 for review criteria for determining time periods and extensions);
6. Summary of public comments received, including any public comments regarding water and sanitation information; and
7. Staff report as submitted to the Planning Board.
8. The Administrator shall compile the items listed above after the Planning Board hearing or meeting and submit to the Planning Board chair for approval. Once approved, the Administrator shall submit the package to the City Council on behalf of the Planning Board within the 10 working day deadline.

3.8.D: Amended Applications

If the subdivider amends the application prior to the Planning Board public hearing for major subdivisions, or prior to the City Council meeting for minor subdivisions, the procedures in Section 5.5 shall apply.

3.9: CITY COUNCIL MEETING AND DECISION

3.9.A: City Council Materials

The Administrator shall forward the application, staff report, agency comments, subdivider's preference for mitigation, public comments, and the Planning Board materials to the City Council.

Any comments and documents regarding the subdivision application that are received prior to the City Council meeting shall be submitted to the Administrator. The Administrator shall forward the comments and documents to the City Council and the subdivider prior to the public hearing/meeting.

3.9.B: New Information after the Planning Board Hearing

Only applicable to major subdivisions, this section explains what to do if new information is submitted after the Planning Board has held its public hearing, but prior to the City Council meeting.

3.9.B.1: Handling new information

If new and additional information is presented following the Planning Board's public hearing regarding the proposed major subdivision, the Administrator shall review the new information according to the following:

1. Any new Information or analysis of information that was presented at the Planning Board hearing on the subdivision application that the public has had a reasonable opportunity to examine, and on which the public has had a reasonable opportunity to comment, shall be forwarded to the City Council to proceed with the decision whether to approve, conditionally approve, or deny the proposed subdivision; or
2. If new information or analysis of information has never been submitted as evidence or considered by the Planning Board at a hearing on the subdivision application. The City Council shall then:
 - a. Approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the City Council determines that the information is either not relevant or not credible; or
 - b. Direct the Planning Board to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
3. In addition to 1 and 2 above, if the new information has been submitted by the applicant, the new information shall be reviewed according to Section 5.5. to determine if it is a material change.

3.9.B.2: Subsequent Public Hearing

If a subsequent public hearing is required, the review period (60 working days for subdivisions with less than 50 lots and 80 working days for 50 or more lots) is suspended. The new hearing shall be noticed per requirements of Section 3.8.B.1 and held within 45 days of the governing body's determination to schedule a new hearing. If a subsequent public hearing is determined to be required, the following shall occur:

1. The Administrator shall provide to the Planning Board a compilation of the new information, an addendum to the staff report that addresses only the new information, and any recommended changes to the Planning Board's

previous recommendation and findings of fact resulting from the new information.

2. The Planning Board shall hold a public hearing as described in Section 3.8.B, regarding only the new information. Within 10 working days after the Planning Board's public hearing, the Planning Board shall submit in writing to the subdivider and the City Council any changes to the following information previously submitted:
 - a. Changes to recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
 - b. Changes to recommended findings of fact based on review of the submittal requirements and analysis of the impacts in the review criteria (see Chapters 3 and 5);
 - c. Changes to recommendation for approval or denial of any requested variances (based on review criteria for variances in Chapter 5); including any proposed conditions for approval, and a statement describing the facts and conditions upon which the approval, conditional approval or denial of the variance is based;
 - d. Changes to the recommended time period of the preliminary plat approval of not less than one calendar year or more than 3 calendar years, and any recommendation regarding extensions;
 - e. Changes to the summary of public comments received at the subsequent public hearing, including any public comments regarding water and sanitation information; and
 - f. Staff report as submitted to the Planning Board.

3.10: CITY COUNCIL DECISION

3.10.A: Information to be Considered

The City Council's decision to approve, conditionally approve, or deny the proposed subdivision shall be based on review of the subdivision application, preliminary plat, applicable environmental assessment, public hearing, public comment, Planning Board recommendations, staff report, and other additional information submitted or prepared in the review of the subdivision.

3.10.B: Review Criteria

The basis for the City Council's decision to approve, conditionally approve, or deny the proposed subdivision shall be based on the criteria in Chapter 5.

3.10.C: Decision on Variances

If a variance is requested, the City Council shall review the request for compliance with the criteria in Chapter 5, taking into consideration the request for variance and information

submitted by the subdivider to support the request, public comment, Planning Board recommendation, staff report or additional information. The City Council should review the request for variance prior to finalizing a decision on the subdivision application because the decision on the variance may affect aspects of the subdivision.

3.10.D: Subdivider's Preference for Mitigation

The City Council must consult with the subdivider and give due weight and consideration to the subdivider's expressed preferences. The City Council is not, however, required to accept the subdivider's preferred mitigation. Any acceptable mitigation must reduce negative impacts to acceptable levels. If the subdivider's preference for mitigation appears to result in a substantial change in the application, it shall be reviewed according to Section 5.5.D.

3.10.E: City Council's Written Statement

Pursuant to 76-3-504(1)(r), MCA, the City Council must provide the subdivider a letter summarizing the decision and materials supporting the decision within 30 working days of the decision. The letter and materials shall include the following:

1. The decision to approve, approve with conditions or deny the subdivision, dated and with appropriate signature of the City Council;
2. Conditions that apply to preliminary plat approval that must be satisfied before the final plat may be approved;
3. Effective time period of the preliminary plat approval of not less than one calendar year or more than 3 calendar years, and any requirements regarding extensions;
4. Decision for approval or denial of any requested variances (based on review criteria for variances in Chapter 5), including any proposed conditions for approval, and a statement describing the facts and conditions upon which the approval, conditional approval or denial of the variance is based;
5. Information on the appeal process for denial or imposition of conditions;
6. Findings of fact that weigh the review criteria;
7. Identification of the regulations and statutes that were used in reaching the decision to deny or impose conditions and an explanation of how they apply to the decision to deny or impose conditions;
8. Any public comments related to water and sanitation that have not already been submitted to the subdivider; and
9. Notice to the subdivider that public comments related to water and sanitation must be included as part of the application for sanitation approval (as required by 76-3-604(7)(b), MCA).
10. The Administrator shall compile all required components of the letter for approval and signature by the City Council.

3.10.F: Appeals

A person who has filed with the City Council an application for a subdivision under this chapter may bring an action in district court to sue the City Council to recover actual

damages caused by a final action, decision, or order of the City Council or these regulations that is arbitrary or capricious.

A party identified in the following Section who is aggrieved by a decision of the City Council to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days from the date of the written decision, appeal to Powell County District Court. The petition must specify the grounds upon which the appeal is made.

1. The following parties may appeal under the provisions of the preceding section:
 - a. The subdivider;
 - b. A landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - c. The county commissioners of the county where the subdivision is proposed; and
 - d. Municipalities, as described in 7-1-4111, MCA if a subdivision is proposed within:
 - i. three (3) miles of a first-class municipality,
 - ii. two (2) miles of a second-class municipality, and
 - iii. one (1) mile of a third-class municipality

For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Chapter 4: Final Plats

This chapter details the review process for final plat applications. Once the final plat is approved, the subdivider can record the subdivision.

4.1: FINAL PLAT APPLICATION

4.1.A: Final Plat Application Submittal

The final plat application including all fees and supplementary documents must be submitted to the Administrator at least 30 working days prior to the expiration of preliminary plat approval (see figure 4 for the review process for all final plats).

A final plat application is not considered to be submitted until all supplementary documents and required review fees have been submitted to the Administrator.

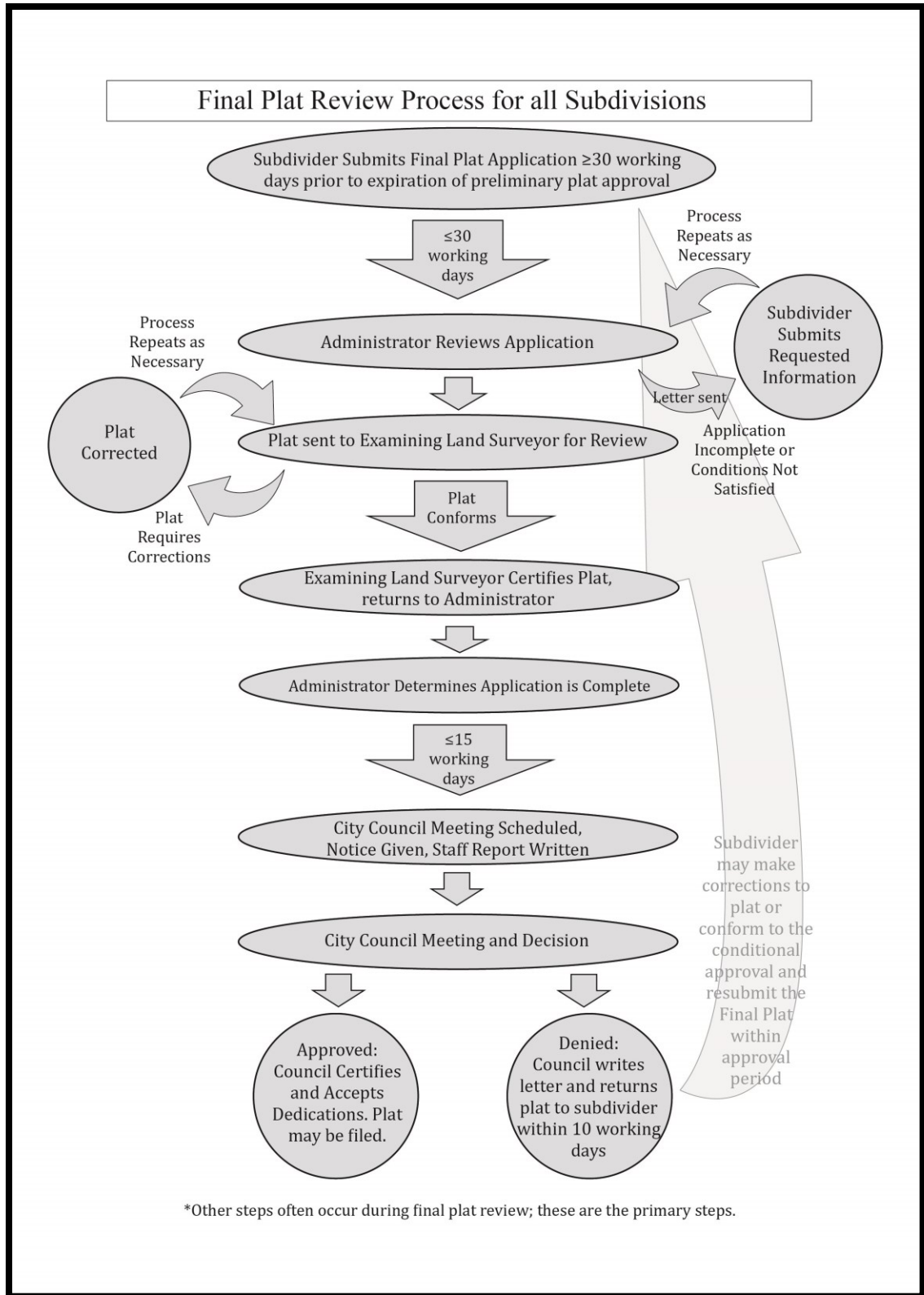


Figure 4: Flowchart for the review process for all Final Plats

4.1.A.1: Submittal Requirements

To file for final plat approval, a final plat application form, which can be obtained from the Administrator, and all supplementary documents, must be submitted to the Administrator. The submittal shall include the following, 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;
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;
6. The DEQ or local health department/sanitarian approval;
7. The final grading and drainage plan and engineering plans, including street plans and profiles (as required);
8. Any maintenance agreements, declarations of covenants, and property owner association documents, including bylaws;
9. A certificate of dedication of any public improvements and easements;
10. A copy of the approved state highway permits when a new road or driveway will intersect with a state highway;
11. When required, a weed management plan approved by the City Council, along with a description of what measures have been taken to implement the plan and fight noxious weed infestations;
12. A subdivision improvements agreement, financial guarantee and supporting documentation securing the future construction for all incomplete improvements to be installed (if applicable);
13. 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 as adopted by the City Council and as required by the County Clerk and Recorder's Office; and
14. Any other information or documents required by the preliminary plat approval letter.

4.1.B: Administrator Review

The Administrator shall complete a review of the final plat application according to the following:

1. Within 30 working days of the application being submitted, the Administrator shall complete a review of the final plat and supplemental documents to ensure that all conditions and requirements for final plat approval have been met.

2. Final plat applications will not be considered complete by the Administrator until information has been submitted demonstrating how all conditions of preliminary approval have been satisfied.
3. If the application is not complete, the Administrator will submit a written notice to the subdivider indicating the missing portions. The Administrator shall not schedule a meeting with the City Council until the application is complete.
4. If the Administrator determines the final plat differs materially from the approved or conditionally approved preliminary plat, the subdivider shall be required to submit the amendments pursuant to Section 5.5.C, or is required to correct final plat materials in accordance with preliminary plat approval.
5. The Administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.
6. Once the Administrator determines that the application is complete, the Administrator shall within 15 working days prepare a report documenting that the final plat application materials conform to the criteria in Chapter 5, and schedule a meeting with the City Council review. The Administrator shall forward the application, final plat, staff report and any other applicable material to the City Council.

4.2: CITY COUNCIL DECISION

4.2.A: City Council Review

The City Council will consider the final plat at a meeting for which notice has been posted at least two full working days prior to the meeting:

1. The City Council shall review the final plat according the review criteria in Section 5.2.
2. If the final plat is approved, the City Council shall certify its approval on the face of the final plat. When applicable, a certificate of the City Council's acceptance of any dedicated land, easements, or improvements shall be filed on the face of the final plat and/or on documents that accompany the final plat for recording.
3. If the final plat is denied for non-compliance with the conditional approval, the MSPA or these regulations, the City Council shall write a letter for the public record stating the reason(s) for denial and forward a copy to the subdivider. The City Council will return the final plat to the subdivider within 10 working days of the action. The subdivider may then make any necessary corrections to the plat or steps necessary to conform to the conditional approval and resubmit the final plat application for approval. The re-submission of the final plat application must still be submitted and approved within the original preliminary plat approval period.

4.2.B: Filing the Final Plat

After receiving approval, the final plat may not be altered in any manner prior to recording. The Powell County Clerk and Recorder may not accept any plat for filing that does not bear the City Council's approval in proper form or a plat that has been altered after final plat approval. The Clerk and Recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Final Subdivision Plats, contained in the Supplemental Administrative Materials.

4.3: AMENDING FINAL PLATS

4.3.A: Submittal Requirements

If the subdivider or subsequent lot owner proposes to change the subdivision after final plat approval, the proponent shall submit the proposed changes to the Administrator for review. The request to amend a final plat must contain the following.

1. Request to Amend Application Form (Refer to Supplemental Administrative Materials);
2. Review fee;
3. Narrative Summary - summary of the proposed changes, reason for the changes, and how they differ from what was previously submitted; and
4. Revisions to Plat, Site Plan, Other Documents - If the changes affect the plat, site plan or other documents previously submitted, these shall be included and identified as "Amended" in their title, along with the date of amendment.

4.3.B: Administrator Review

Within five working days of receiving the proposed changes, the Administrator shall review the changes pursuant to Section 5.6.

Chapter 5: Subdivision Review Criteria and Amendment Procedures

This chapter addresses review criteria for the following:

- Approval, conditional approval, or denial of preliminary plats

- Final plats

- Variances

- Extensions of preliminary plat approval

This chapter also addresses the amendment procedures for the following:

- Amending preliminary plat applications

- Amending preliminary plat approvals after final plat

5.1: CRITERIA FOR APPROVAL, CONDITIONAL APPROVAL, OR DENIAL OF PRELIMINARY PLAT APPLICATIONS

This section below describes the information to be considered by the City Council in making a decision. It also describes the information to be considered by the Administrator and Planning Board when making a recommendation.

5.1.A: Information to be Considered

In order to approve, conditionally approve, or deny the proposed subdivision the City Council shall review the subdivision application, preliminary plat, applicable environmental assessment, public hearing, public comment, Planning Board recommendations, staff report, and other additional information submitted or prepared in the review of the subdivision.

5.1.B: Review Criteria

The basis for the City Council's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, Planning Board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of 76-3-608, MCA and the criteria below. A City Council may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA. The City Council decision shall reflect the following criteria:

5.1.B.1: Impacts to Agriculture, Agricultural Water User Facilities, Local Services, Natural Environment, Wildlife, Wildlife Habitat, and Public Health and Safety (76-3-608(3)(a), MCA)

The City Council shall identify any impacts it determines to be potentially significant and adverse to agriculture, agricultural water user facilities, local services, natural environment, wildlife, wildlife habitat, and public health and safety. A description of these criteria are found in Appendix A, which are adopted in the City of Deer Lodge Growth Policy, as required by 76-1-601(3)(h), MCA.

5.1.B.2: Survey Requirements (76-3-608(3)(b)(i), MCA)

The subdivision shall comply with survey requirements in the Uniform Standards for Final Subdivision Plats.

5.1.B.3: Compliance with Local Subdivision Regulations (76-3-608(3)(b)(ii), MCA)

The review is based on the subdivision regulations in place at the time the application is determined to contain sufficient information for review. In addition, the subdivision regulations require compliance with local zoning and other applicable regulations. The considerations are:

1. Compliance with the design standards in Chapter 6 is required.
2. Special Provisions for Condominiums, Townhouses, Townhomes and RV and Mobile Home Parks: Condominiums, townhouses, townhomes and RV and mobile home parks shall meet the additional design standards and requirements primarily included in Chapter 2.
3. All subdivisions must demonstrate they are designed to comply with applicable zoning.
4. All subdivisions shall demonstrate compliance with other applicable regulations, such as the ARMs for sanitation and water supply, public health ordinances, floodplain regulations, etc.
5. Subdivisions should demonstrate conformance to adopted plans, such as the growth policy, transportation plans, capital improvements plans, pre-disaster mitigation plans or community wildfire protection plans. Because plans are not regulatory, no variance for non-conformance shall be required, nor can denial or a condition of approval be based solely on plan conformance.

5.1.B.4: Subdivision Review Procedure (76-3-608(3)(b)(iii), MCA)

All subdivisions shall demonstrate compliance with the subdivision review procedure, based on the subdivision regulations in place at the time the application is determined to contain sufficient information for review. The record shall demonstrate that the process and timelines in Chapter 3 were followed.

5.1.B.5: Utility Easements (76-3-608(c), MCA)

The subdivision shall provide easements within and to the proposed subdivision for the location and installation of any planned utilities.

5.1.B.6: Legal and Physical Access (76-3-608(d), MCA)

All subdivisions shall provide legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer containing the parcel.

5.1.C: Requiring Reasonable Mitigation

The City Council may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through evaluation of the review criteria identified in 5.1.B. The City Council shall issue written findings to justify the reasonable mitigation required. When requiring mitigation, the City Council shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

5.1.D: Cause for Denial

In reviewing a proposed subdivision and when requiring mitigation, a City Council may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

5.1.E: Special Consideration of Water and Sanitation Information

The City Council may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622, MCA or public comment received pursuant to 76-3-604, MCA on the information provided pursuant to 76-3-622, MCA only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the City Council has the authority to enforce.

5.1.F: Additional Provisions

5.1.F.1: Waiver of Right to Protest

A City Council may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a right to protest shall not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder.

5.1.F.2: Well Isolation Zone

A City Council may not approve a proposed subdivision if any of the features and improvements of the subdivision encroach onto adjoining private property in a

manner that is not otherwise provided for under 76-3 Part 4 MCA or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. The term "well isolation zone" has the meaning provided in 76-4-102, MCA.

5.1.F.3: Federal or State Comment

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 City Council's review, the comment or opinion may be included in the City Council's written statement under 76-3-620, MCA only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. 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.

5.2: CRITERIA FOR APPROVAL OR DENIAL OF FINAL PLATS

5.2.A: Information to be Considered

The City Council's decision to approve or deny the final plat application shall be based on review of the conditions of approval for the preliminary plat; final plat application submitted by the subdivider, including the final plat and supplements; the Administrator's written report, review of any legal agreements or contracts by the City Attorney or legal staff, and other additional information submitted or prepared in the review of the final plat application.

5.2.B: Review Criteria

Final plats shall not be approved for filing unless the subdivision final plat application demonstrates compliance with the following criteria.

1. There shall be no material changes to the preliminary plat and related materials unless approved under Section 5.5 of these regulations.
2. The subdivision shall comply with all conditions of approval.
3. The subdivider shall submit with the final plat a certificate of title abstracter dated at least 30 days prior to date of final plat submittal. The certificate shall show the names of owners of record and names of lienholders or claimants of record and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record.
4. All improvements required to be installed by final plat approval shall be completed and approved and/or certified. Improvements that are not essential to public health and safety may be secured with a Subdivision Improvements Agreement (SIA) and financial guarantee.

5. The final plat shall include the County Treasurer's certification that all real property taxes and assessments have been paid.
6. The City Council may require the final subdivision plat to be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Powell County Clerk and Recorder. No final plat that has been examined per this section shall be recorded unless the plat includes a certificate of compliance signed by the examining land surveyor.

5.3: VARIANCE REVIEW CRITERIA

This section explains how to process variances and the review criteria they should be reviewed by:

5.3.A: Variances Authorized

The City Council may grant variances from Chapter 6, Design Standards of these regulations when due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare.

5.3.B: Submittal Requirements

The subdivider shall include with the preliminary plat application a written statement describing and justifying the requested variance by addressing each of the review criteria. The subdivider shall include in the preliminary plat application a "request for variance" for each subdivision design standard that the proposed subdivision does not meet.

5.3.B.1: Contents

The "request for variance" shall include:

1. Request for variance application form;
2. Review fee;
3. Exact citation of the Design Standard for the variance requested; and
4. A summary of the reason for the variance request addressing each of the review criteria.

5.3.C: Review Criteria

The subdivider has the burden to prove the strict application of these regulations would result in an undue hardship upon the subdivider of the property according to the following:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
2. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self-imposed;
3. The variance will not cause a substantial increase in public costs; and
4. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

5.3.D: City Council Decision

The City Council shall review each variance request to the review criteria in 5.3.C. The City Council will not grant any variance to the requirements of Section 6.7 of these regulations.

5.3.D.1: Conditions

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

5.3.D.2: Findings of Fact

Upon granting any variance, the City Council shall provide a description of the variance and the facts and conditions upon which the issuance of the variance and any conditions of its approval is based.

5.4: EXTENSIONS OF PRELIMINARY PLAT

5.4.A: Information to be Considered

In considering whether to grant an extension to the approval period of an approved preliminary plat, the City Council shall consider the reasons for the request as explained in the subdivider's written request for extension and recommendations from the Administrator. The written request for extension must be received no later than 30 days prior to the end of the preliminary plat approval period.

5.4.B: Criteria

5.4.B.1: Significant Changes in Regulations

The City Council shall not issue extensions if the subdivision regulations or other relevant regulations (e.g., DEQ sanitation requirements) have changed significantly since preliminary plat approval. Significant changes constitute those that would render the subdivision non-compliant with design standards or where current mitigation requirements are more stringent than when the subdivision received approval.

5.4.B.2: 3-year Maximum Time for Each Extension

Extensions shall be for no longer than three-year increments.

5.4.C: Extensions to be in Writing

Any mutually agreed-upon extension must be in writing and dated and signed by the members of the City Council and the subdivider or subdivider's agent. The document must be dated within the timeframe of the preliminary plat approval.

5.5: AMENDING PRELIMINARY PLATS

5.5.A: Amending Preliminary Plat before Planning Board Hearing or City Council Meeting

This section is applicable to any changes made to an application before the Planning Board hearing for major subdivisions, and before the City Council meeting for minor subdivisions. If

changes are made to a major subdivision application following the Planning Board public hearing, see Section 5.5.B. If changes are made to minor subdivisions or major subdivisions following the City Council's decision, see Section 5.5.C.

If changes are made to a subdivision application or preliminary plat prior to the public hearing of major subdivisions and before the City Council meeting for minor subdivisions, the Administrator shall review the changes in the following manner:

1. Within five working days of receiving the amended application or preliminary plat, the Administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in Section 5.5.D.
2. The applicable review period is suspended while the Administrator considers the amended application or preliminary plat.
3. If the Administrator determines the changes are not material, the applicable review period resumes when the Administrator mails notice of the decision to the subdivider.
4. If the Administrator determines the changes are material, the Administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application or proceed with the review period upon confirmation that the application has the required elements and is sufficient for review.

5.5.B: Amending Preliminary Plat Following the Planning Board Hearing

This section is applicable only to changes made to major subdivisions following the Planning Board hearing but before the City Council decision. If changes are made to a subdivision application or preliminary plat, the Administrator shall review the changes in the following manner:

1. Make a determination if the material is considered new information and if a subsequent hearing will be required according to Section 3.9.B; and
2. Within 5 working days of receiving the amended application or preliminary plat, the Administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in Section 5.5.D.
3. The applicable review period is suspended while the Administrator considers the amended application or preliminary plat.
4. If the Administrator determines the changes are not material and not new information according to Section 3.9.B, the applicable review period resumes when the Administrator mails notice of the decision to the subdivider.
5. If the Administrator determines the changes are not material but constitutes new information, follow the procedures in 3.9.B to determine if a subsequent hearing is required.
6. If the Administrator determines the changes are material, the Administrator shall either require the subdivider to schedule a new pre-application meeting and

resubmit the application and preliminary plat as a new subdivision application, or proceed with a subsequent public hearing in according to Section 3.9.B. upon confirmation from the Administrator that the application has the required elements and is sufficient for review.

5.5.C: Amending an Approved Preliminary Plat

If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the Administrator for review. The Administrator should review the changes as follows:

1. Within 5 working days of receiving the proposed changes, the Administrator shall determine whether the changes to the preliminary plat are material pursuant to Section 5.5.D.
2. If the Administrator determines the changes are material, the Administrator may either require a public hearing with the applicable body for majors, or a meeting with the City Council for minors.
3. If the changes are extensive, the 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.
4. If the subdivider and 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 City Council through a properly noticed public meeting or hearing, as applicable, in order to determine if the condition may be waived or amended.

5.5.D: Determining a Material Change

5.5.D.1: Changes to a Preliminary Plat Application:

Changes made to a preliminary plat application may be considered material if:

1. If it is determined to impact the element or sufficiency of subdivision's preliminary plat application under Section 3.3 and Section 3.4 of these regulations.
2. If it has an impact on the primary review criteria in Section 5.1.
3. If it brings the proposal out of conformance with the zoning or the design standards in these regulations.
4. If the changes impact the accuracy of other information provided in support of a preliminary plat application.
5. If it changes any of the following information:
 - a. If the changes impact the configuration or number of lots;
 - b. If the changes impact the park land or open spaces;
 - c. If the changes impact the water and/or wastewater treatment system proposals;

- d. If the changes impact the easement provisions, access, and streets; and
- e. If the changes impact the proposed land uses or covenants.

5.5.D.2: Changes to an Approved Preliminary Plat:

Changes made to an approved preliminary plat application may be considered material if:

- 1. If the changes impact the configuration or number of lots;
- 2. If the changes impact the park land or open spaces;
- 3. If the changes impact the water and/or wastewater treatment system proposals;
- 4. If the changes impact the easement provisions, access, and streets
- 5. If it changes impact an approved variance;
- 6. If the changes impact the proposed land uses or covenants; or
- 7. If it changes impact the conditions of approval.

5.5.E: Administrative Appeals

A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the Administrator may appeal the Administrator's decision to the City Council. The subdivider may request a public meeting with the City Council for minor subdivisions, or a public hearing with the City Council for major subdivisions, and may submit additional evidence to show that the changes to the preliminary plat are not material.

- 1. The applicable review period is suspended until the City Council decision on the appeal is made.
- 2. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the City Council shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application, or proceed with a subsequent public hearing in according to Section 3.9.B. upon confirmation from the Administrator that the application has the required elements and is sufficient for review.
- 3. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are not material, the applicable review period resumes as of the date of the decision.
- 4. By appealing the decision of the Administrator, the subdivider agrees to suspension of the applicable review period.

5.6: AMENDING FINAL PLAT APPROVALS

5.6.A: Submittal Requirements

If the subdivider or subsequent lot owner proposes to change the subdivision or the terms of preliminary approval after final plat approval, the proponent shall submit the proposed changes to the Administrator for review according to Section 4.3.A.

5.6.B: Determining Material Change

Within five working days of receiving the proposed changes, the Administrator shall determine whether the changes are material pursuant to Section 5.5.D.

5.6.B.1: Exception

Once the final plat is approved, changing the proposed land use cannot be considered a material change. However, changing a proposed land use may impact the other criteria resulting in a material change.

5.6.C: Result of a Material Change

5.6.C.1: Material Changes Requiring Subdivision Review

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 as an amended subdivision plat and be reviewed according to Chapter 3.

5.6.C.2: Material Changes Requiring a Public Meeting or Hearing

Material changes not meeting 5.6.C.1 and other changes that are substantially contrary to any 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 line adjustments or aggregations of lots exempt under Chapter 7), its land divisions or improvements, must be reviewed and approved using the procedure described in Section 5.5.C.

5.6.C.3: Additional Requirements

1. The City Council 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.
2. The City Council may not approve an amendment that will place a lot in non-conformance with the design standards contained in Chapter 6 of these regulations unless the City Council holds a public meeting or public hearing (as applicable) and issues a written variance from the standards pursuant to Section 3.10.C and Section 5.3.
3. The City Council may not approve an amendment that will place a lot in non-conformance with zoning regulations unless the appropriate zoning board has granted a zoning variance to the applicable standard.
4. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Montana Uniform Standards for Final Subdivision Plats.

Chapter 6: Design Standards

6.1: COMPLIANCE WITH THIS CHAPTER

All subdivisions approved by the City Council must comply with the provisions of this chapter unless the City Council grants a variance to the applicable standard pursuant to Section 3.10.C and Section 5.3. The City Council may not grant variances from the provisions of Section 6.7, Floodplain Provisions, below. For additional, specific standards for subdivisions created by rent or lease, condominium, and townhouse/townhome subdivisions, refer also to Section 2.4 of these regulations.

6.2: CONFORMANCE WITH OTHER REGULATIONS

The design, improvements, and development of all subdivisions must conform to all other regulations.

6.3: IMPROVEMENT DESIGN

Engineering and survey plans, specifications, and reports required in connection with subdivision improvements required by the City Council 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.

6.4: RESPONSIBILITY FOR IMPROVEMENTS.

Subject to 76-3-510, MCA, the subdivider shall be responsible for completing the installation and construction of all infrastructure required by these regulations for final plat approval in compliance with the design standards contained in these regulations. The exceptions to this requirement is when the City of Deer Lodge or other public entity has adopted plans for improvements consistent with subdivision improvements, in which cases the City Council (or other public entity subject to approval with the City Council) and the subdivider may enter into an agreement with which the public entity and subdivider share in the costs and responsibilities for improvements.

6.5: NATURAL ENVIRONMENT

The design, improvements, and development of all subdivisions shall contain satisfactory building sites for the intended purposes of the lots which are properly related to topography and shall preserve the natural terrain, natural drainage, existing top soil, trees, native vegetation, wildlife, and fish habitats to the extent possible.

6.6: LANDS UNSUITABLE FOR SUBDIVISION

Lands on which there is evidence of hazards such as flooding, snow avalanches, rock falls, landslides, steep slopes in excess of 40 percent grade, subsidence, high hazard fire areas, high water table, polluted or non-potable water supply, high voltage lines, high pressure gas lines, air or vehicular traffic hazards or congestion, severe toxic or hazardous waste exposure or other features which may be detrimental to the health, safety or general welfare of existing or future occupants, or where development would place

unreasonable burdens on the general public including the requirements of excessive expenditure of public funds or environmental degradation shall not be subdivided for building or residential purposes unless the hazards are mitigated or will be overcome by approved design and construction plans.

6.7: FLOODPLAIN PROVISIONS

6.7.A: Purpose

The purpose of this section is to reduce risks to public health, safety and property damage from flood events that may impact or be impacted by new development associated with subdivisions.

6.7.B: Applicability

This section applies to subdivisions that are intended for placement of new buildings or other development in the vicinity of a 100-year floodplain. The 100-year floodplains are depicted on the adopted Flood Insurance Rate Maps (FIRMs) published by the Federal Emergency Management Agency (FEMA). As of the date of these regulations, the 100-year floodplains include both Approximate Zone A 100-year floodplains and other zones designated as 100-year floodplains by detailed study. The Approximate Zone A Base Flood Elevations (BFEs) have not been determined, while other 100-year floodplain zones designated by detailed study have BFEs that have been determined. It is the intent of this section that any subdivision containing areas within a 100-year floodplain include sufficient information to demonstrate the location of all development in relation to the actual delineated BFE.

6.7.C: General Provision

Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the City Council 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 regulations.

6.7.D: Determining Base Flood Elevations

6.7.D.1: For Areas Where BFE is Determined

For areas where the BFE has been identified as part of flood studies and maps adopted by the City Council that are within the jurisdiction of the local floodplain regulations:

1. The areas at and below the BFE shall be identified on the preliminary plat as a flood hazard area. The flood hazard area shall be identified on the final plat as a no build zone.
2. Any improvements within a flood hazard area, 100 year floodplain, or the floodway within the jurisdiction of the local floodplain regulations shall meet the requirements of the local floodplain regulations prior to final plat approval.

3. Interpretation of Floodplain Boundary: If the property owner believes the subject property has been inadvertently included in the 100-year floodplain, the property owner may provide information and request a determination from the floodplain Administrator, adhering to applicable provisions for such determinations in the floodplain regulations.

6.7.D.2: For Areas Where BFE is Not Determined

If any portion of a proposed subdivision is within 1,000 horizontal feet and 10 vertical feet of the ordinary high water mark of a watercourse draining an area of 25 square miles or more and no official floodway delineation or floodway studies of the watercourse have been made, or within 2,000 horizontal feet and 20 vertical feet of the ordinary high water mark of the Clark Fork River where no official floodway delineation or floodway studies have been made, the subdivider shall do one of the following:

1. Identify the area less than 1,000 horizontal feet and less than 10 vertical feet of the ordinary high water mark of a watercourse draining an area of 25 square miles or more as a flood hazard area on the preliminary plat. This area shall be shown on the final plat as a no build zone (figure 5);
2. If on the Clark Fork River, identify the area less than 2,000 horizontal feet and less than 20 vertical feet of the ordinary high water mark of the river as a flood hazard area on the preliminary plat. This area shall be shown on final plat as a no build zone; or
3. Complete an engineering study that identifies the BFE. This detailed evaluation must be performed by a professional engineer registered in the State of Montana experienced in this field of work.
 - a. A copy of the study identifying the BFE shall be submitted with the preliminary plat application to the local Administrator. The Administrator shall forward the study to the Floodplain Administrator and the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC) for comment. The City Council shall not delay the preliminary plat review process to wait for comments. Any comments received by the City of Deer Lodge shall be forwarded to the subdivider.
 - b. The areas at and below the BFE shall be identified as flood hazard areas. The flood hazard area shall be identified on the final plat as a no build zone.

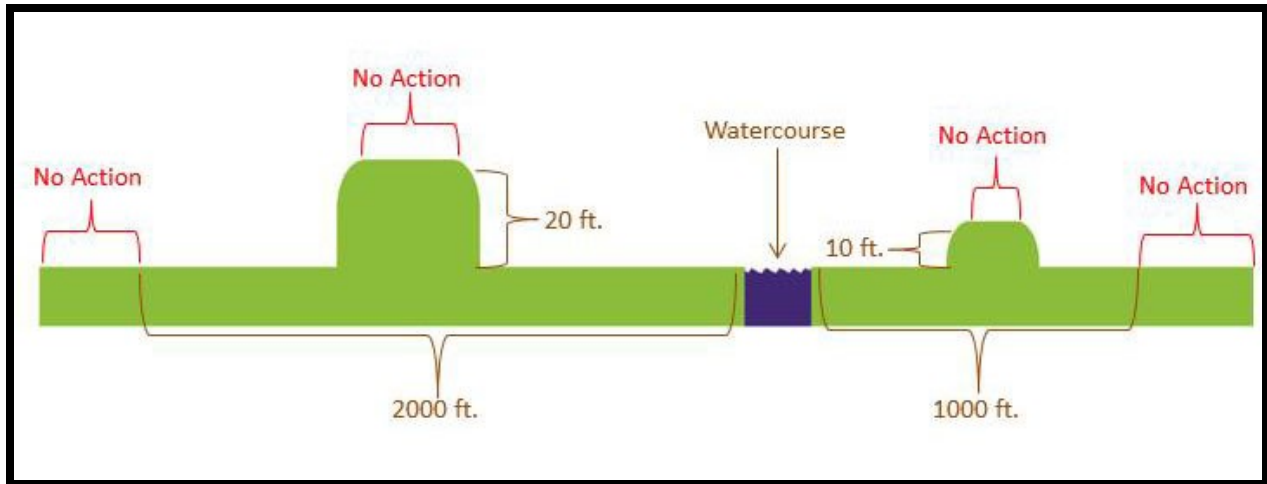


Figure 5: Diagram showing areas to be labeled as a no build zone according to Section 6.7.D.2

6.7.E: Standards

6.7.E.1: General Criteria:

1. When applicable, BFEs and the boundary of the 100-year floodplain must be considered during lot layout and building location design¹;
2. Locations for future structures and development must be reasonably safe from flooding²;
3. Streets, utilities and similar facilities such as sewer, gas, electrical and water systems must be located and constructed to minimize or eliminate flood damage³;
4. Adequate surface water drainage must be provided to reduce exposure to flood hazards⁴;
5. All subdivisions and development activities within the 100-year floodplain are subject to the City's Floodplain Regulations; and
6. Floodplain Development Permits must be obtained according to the City's Floodplain Regulations before development occurs within the 100-year floodplain⁵.

6.7.E.2: Design Standards

1. Lots: The desired design standard is lots for residential or building purposes shall include no portion of nor be immediately adjacent to the 100-year

¹ Derived from the US Code of Federal Regulations (CFR): 44CFR 60.3(b)(3)

² 44CFR 60.3(a)(4)

³ Derived from 44 CFR 60.3(a)(4)(ii)

⁴ 44 CFR 60.3 (a)(4)(iii)

⁵ 44 CFR 60.3(b)

floodplain. If that is not achievable due to site constraints, lots may contain areas in the 100-year floodplain, but each lot must have an area outside of the floodplain suitable for the lot's intended purposes.

2. Access: The subdivider shall demonstrate that safe access to the designated building site(s) is possible during a 100-year flood.
3. Infrastructure: Subdivisions should be designed to avoid placing subdivision-related infrastructure (streets, bridges, utilities, etc.) within the boundaries of the 100-year floodplain. Where there is no alternative to placement within the floodplain, streets and utilities such as sewer, gas, electrical and water systems that must be located in the 100-year floodplain shall be designed and installed so as to minimize or eliminate flood damage and not adversely affect public health and safety.
4. Bridges: Bridges within the 100-year floodplain shall be designed so the lowest horizontal chord of the bridge is at least two-feet above the BFE.

6.7.F: Final Plat and Noticing Requirements

The City Council may require final plats of subdivisions with areas located within a 100-year floodplain to provide notice of any or all of the following:

1. Locations of boundaries of the 100-year floodplain and floodway based on where the BFEs intersect surveyed ground elevations;
2. Elevation of the existing ground;
3. Flood water depths;
4. The required lowest floor elevation for each building site;
5. Lot owners' responsibility for obtaining a Floodplain Development Permit according to the City's Floodplain Regulations before development occurs within a 100-year floodplain;
6. Lot owners' responsibility for complying with any specific provisions of the City's Floodplain Regulations; and
7. Applicable information regarding flood insurance.

6.8: LOT DESIGN

Each lot intended for building purposes must contain a satisfactory building site and conform to applicable zoning regulations, other adopted codes and regulations, and these regulations. The following design standards apply to all lots intended for building purposes:

1. No single lot may be divided by a municipal boundary line.
2. No single lot may contain portions divided by another parcel or public right-of-way.
3. Each lot must abut and have direct access to a public or private street or road. When an alley is used to provide access, another primary access must be available to the lot.
4. Corner lots must be of sufficient area to provide acceptable visibility for traffic safety.
5. No lot may have an average depth greater than five times its average width.

6. Side lot lines must be at substantially right angles to street or road lines and radial to curved street or road lines.
7. Through lots (a.k.a. double-frontage lots) are prohibited except where essential to provide separation of development from traffic arteries or to overcome specific disadvantages of topography or orientation.
8. All lots shall be developable in compliance with the City of Deer Lodge Zoning Ordinance. The preliminary plat application shall demonstrate each lot can be developed with the intended purpose as allowed by the Zoning Ordinance and meet all standards of the Zoning Ordinance.

6.9: SUBDIVISION LAYOUTS

6.9.A: Blocks

Subdivisions creating a new area or neighborhood in the City of Deer Lodge shall be laid out using a development pattern with blocks similar to the City of Deer Lodge's current development pattern, which provides traffic control, safety, and circulation, as well as efficient development. To assure the City's development continues with an efficient pattern, the following design standards apply to all subdivisions containing blocks:

1. Block lengths shall not exceed 500 feet as measured from consecutive rights-of-ways.
2. Blocks must be wide enough to allow for two tiers of lots with alleys between the two tiers, except where essential to provide separation of residential development from traffic arteries with parks or open spaces between residential lots and the applicable street.

6.9.B: Relation to Existing Streets and Neighborhoods

The subdivider shall arrange new streets for their continuation to adjacent streets and neighborhoods when continuation is deemed necessary by the City Council for the convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and utilities.

6.9.C: Relation to Unsubdivided Areas.

When a proposed subdivision adjoins land that, in the estimation of the City Council, is likely to be subdivided in the future and has the ability to efficiently connect existing, currently separated streets or roads, the subdivider shall provide one or more easement for the logical continuation of the subdivision street(s) and utilities to the adjacent land. This requirement shall not apply when access is otherwise available in a manner adequate to provide for the future convenient dispersal and movement of traffic, connection of neighborhoods, effective provision of emergency services and provision of utilities. This requirement may be waived by the City Council when at least one of the following criteria is met:

1. Topography or other physical conditions would make it impractical to provide access to adjacent unsubdivided land; or

2. When the adjoining unsubdivided land is under public ownership, is subject to a conservation easement, deed restriction, or some other situation exists where the future subdivision and development of that land is unlikely.

6.10: SUBSTANDARD STREETS LEADING TO A SUBDIVISION

When a substandard street is used to access a subdivision, the City Council shall consider the two options below for improving the street(s) and choose the option that in its estimation is most likely to result in (A) improved safety and efficiency along the road(s) and (B) equitable distribution of the costs related to the extension of capital facilities. The most obvious travel route(s) due to convenience and destinations shall be used for determining traffic flows and counts.

1. Option 1 (generally for major subdivisions but may be applied to minors):
 - a. Where a subdivision is accessed by a substandard street, the subdivider shall be required to contribute to the local jurisdiction an amount equal to the proportional share of the improvements necessary to bring said street(s) up to City standards, or the standards for the relevant functional classification as identified in these subdivision regulations.
 - b. The cost of improvements shall be determined by a Montana licensed consulting engineer who shall identify the street deficiencies and estimate materials, labor and other cost items necessary to bring the street(s) to the determined standard. Costs of the engineering services shall be borne by the subdivider.
 - c. The subdivider's proportional cost shall be found by adding current traffic counts (average daily trips or ADT) from the street(s) to the projected traffic to be generated by the subdivision, then dividing the projected subdivision traffic count by the total. [See example below.] Traffic counts shall be determined by recent counts by the jurisdiction, if available, or by an independent agent to collect traffic count data over a one week period, and may be required to be adjusted for seasonal fluctuations. The independent agent shall be selected with approval from the Administrator and Public Works Department. Costs are to be paid by the subdivider. Traffic count location(s) shall be determined by the Administrator and Public Works Department.
 - d. As determined by the City Council, the subdivider's funds will either:
 - i. Be deposited into an account held by the city in a dedicated fund for the street improvements and will be used only for improvements to the substandard street(s); or
 - ii. The subdivider will use the funds to make the specified improvements to the substandard street(s) prior to final plat filing or under a public improvements agreement.

Example

Current ADT on First Street	500
Projected ADT increase from subdivision	+ 250
Total current and projected ADT	750

$250 \div 750 = .33$. Therefore, the subdivider is responsible for 33% of the cost of bringing First Street up to city standards.

2. Option 2 (generally for minor subdivisions but may be applied to majors): Where a subdivision is accessed by a substandard public street, as a condition of plat approval the City Council may require the future lot owners to waive their right to protest the formation of a Special Improvement District related to access and related drainage improvements that will benefit the future owners.

6.11: PAYBACK OR LATECOMERS AGREEMENT

For improvements that a subdivider constructs beyond those that are directly attributable to the subdivision, including those used to access other unsubdivided or subdivided lands, the subdivider may request a payback or latecomers agreement in order to provide a mechanism for reimbursement for a portion of the costs the subdivider incurs which are not directly attributable to impacts caused by the subdivision. Payback funds would be exacted from future subdividers and others who directly benefit from the capital improvements. (See Administrative Materials for a sample latecomers agreement)

6.12: MAINTENANCE OF SUBDIVISION IMPROVEMENTS

All public improvements that serve subdivisions shall be maintained by the owners of property served by the improvements, unless the improvements are dedicated to, accepted, and maintained by a public entity, such as the City of Deer Lodge. All dedications and maintenance of improvements to the City of Deer Lodge are subject to approval by the City Council, which reserves the right to reject any proposed dedication and maintenance requests and require another form of dedication and private maintenance.

Generally, streets in and serving new subdivisions shall be dedicated to the City of Deer Lodge. The primary exceptions to this requirement are shared residential drives that serve up to two single-family residential lots. Such shared residential drives may be maintained as governed by a legally enforceable private agreement between the two lot owners served by the improvements. Draft private agreement(s) for the shared improvements shall be submitted with the preliminary plat application, are subject to review and approval by the City of Deer Lodge, and shall be recorded along with the final plat. A sample shared maintenance agreement is included in the Administrative Materials of these regulations.

6.13: STREET DESIGN AND CONSTRUCTION STANDARDS

6.13.A: General Design

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.

6.13.B: Applicability

All off-site and on-site streets providing the primary access to a proposed subdivision and subdivision lots shall meet the standards contained herein, including those listed in Table 1, except as allowed by variance.

6.13.C: Half-streets

Half-streets are prohibited except when they are essential to the development of the subdivision and when the City Council is satisfied that the other half of the street will be dedicated to the public when the neighboring 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.

6.13.D: Frontage Accesses

Where a subdivision abuts or contains an existing or proposed arterial or collector street, the subdivider may be required to provide a frontage access with a reservation prohibiting access along the arterial or collector street right-of-way, with screening plantings or other such treatment as may be necessary for the protection of residential properties and to afford separation of through and local traffic.

6.13.E: Dead-end Streets

The following provisions apply to dead-end streets:

1. Dead-end streets are only allowed if they are shared residential drives (50-foot maximum length) or local streets (500-foot maximum length). Measurements shall be made from the edge of the intersecting street right-of-way to the end of the dead-end street or turnaround right-of-way.
2. Alleys are not allowed to dead-end and must be served by other streets at both ends.
3. Except for shared residential drives, no dead-end street shall be permitted without an approved turnaround. Where dead-end streets terminate, the developer shall provide either a cul-de-sac bulb or "T" turnaround at the terminus. Modified "T" turn-arounds are also allowed provided they allow for 3-point turnarounds for the largest Deer Lodge Fire Department vehicle. Shared residential drives that share an approach and drive for 50 linear feet or less as measured from the edge of the intersecting street are not subject to the requirement to provide a turnaround area.
4. Where it is planned that a dead-end street will be extended for a future phase or subdivision, a temporary cul-de-sac bulb or "T" turn-around shall be provided and a

right-of-way of appropriate width shall be shown on the preliminary and final plat to the adjoining phase or subdivision property.

5. Cul-de-sac bulbs and "T" turnarounds must also conform to the design specifications in Table 1 below.
6. Sufficient right-of-way for turnaround areas and associated storm water drainage facilities shall be provided, which at a minimum shall be consistent with the street right-of-way width.

6.13.F: Multiple Access Points Required

To facilitate access by emergency vehicles and to allow an escape route for occupants in emergency situations, all streets over 500 feet in length and all subdivisions located in high fire hazard areas as determined by the Deer Lodge Fire Department or other fire authority shall be designed such that the legal and physical access street(s) serving all lots provide multiple access points to the public transportation network.

6.13.G: Intersections

The following requirements shall apply to street intersections:

1. 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.
2. The intersection of more than two streets at one point shall be avoided, except as described in Section 6.13.G.3 below.
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 residential drives and 300 feet for collectors or arterials.
4. Where any gravel street intersects a hard surfaced street, the gravel street shall have a hard surface for a minimum of 30 feet from the hard surfaced street.
5. Intersection design must provide acceptable visibility for traffic safety as dictated by the designed operating speeds on the individual streets.

6.13.H: Street Construction

All streets shall be constructed to the latest edition of the Montana Public Works Standard Specifications.

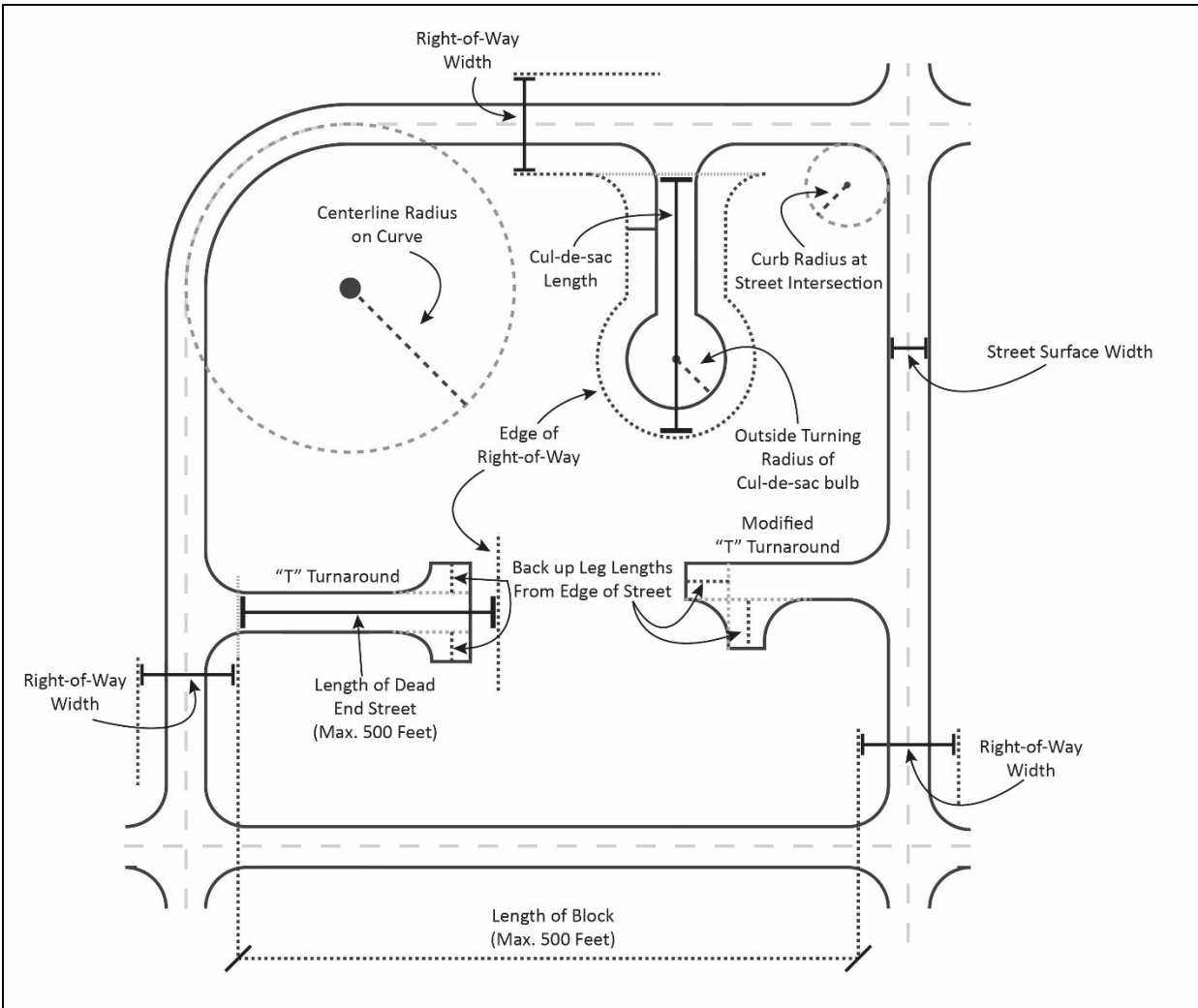


Figure 6: Street standards illustration

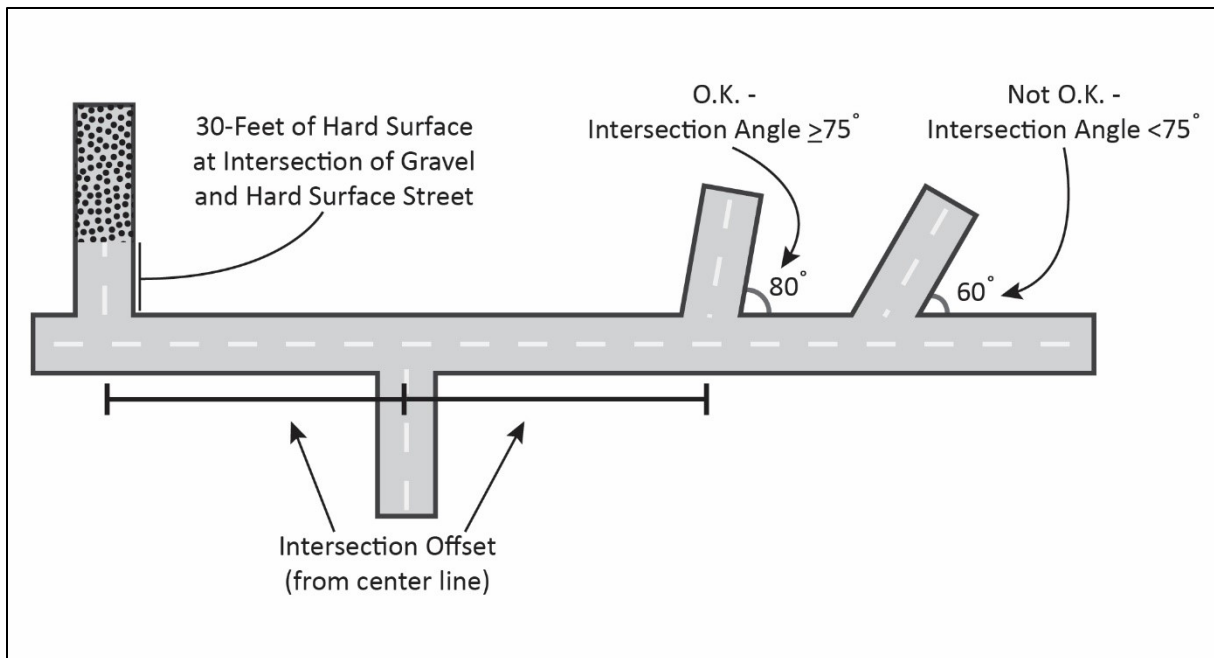


Figure 7: Intersection illustrations

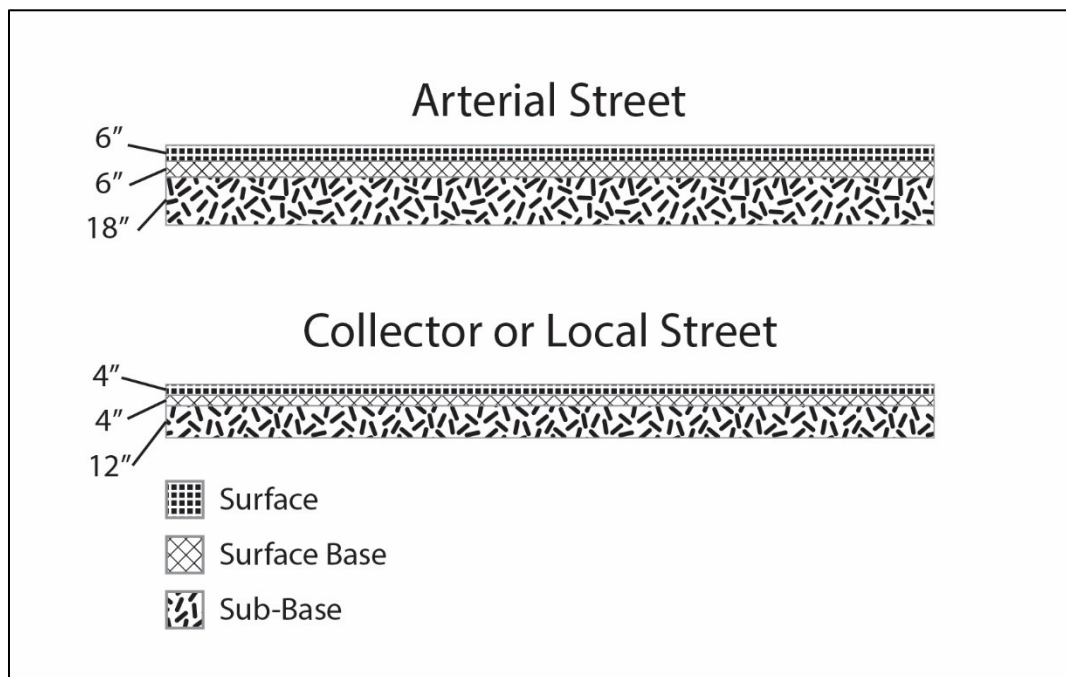


Figure 8: Street surface standard illustrations

6.13.I: Street Design Standards

Streets shall be designed and constructed to the standards outlined in Table 1 below, as applicable.

Table 1: Street Design Standards					
	STREET TYPE				
Design Criteria	Arterial	Collector and Local		Shared residential drive	Alley
		High density	Low density		
Minimum right-of-way width	80 feet	60 feet		30 feet ⁶	30 feet
Minimum street surface width	28 feet ⁷	38 feet	24 feet	16 feet	12 feet
Centerline radius on curves	300 feet	200 feet	100 feet	80 feet	80 feet
Curb radius of street at intersections	35 feet	25 feet		15 feet	15 feet
Maximum length of dead-end street	n/a	Collector: n/a		50 feet	n/a
		Local: 500 feet			
Minimum outside turning radius of cul-de-sac bulb	n/a	n/a	30 feet	n/a	n/a
Minimum backup leg lengths from edge of street	n/a	n/a	18 feet	n/a	n/a
Maximum length of blocks	500 feet	500 feet		n/a	500 feet
Maximum street grade	5%	8%	10%	12%	8%
Maximum grade within 100 feet of intersecting centerline	2%	3%		5%	3%
Sub-base depth	18 inches	12 inches		8 inches	8 inches
Surface base depth	6 inches	4 inches		n/a	n/a
Surface material (minimum)	Asphalt	Asphalt		Gravel	Gravel
Surface depth	6 inches	4 inches		3 inches	3 inches
Curb and gutter	Required	Required		n/a	n/a

⁶ Shared residential driveways are to be located within private easements, not publicly dedicated rights-of-way.

⁷ Where parking is to be allowed along arterials, additional surface width is required depending upon parking configuration (parallel, diagonal, perpendicular, etc.). A minimum of 8 feet of additional width is required on each side of the street where parking is allowed. If parking is not allowed along the arterial, it shall be signed with approved no parking signs.

6.13.J: Bridges and Culverts

1. Bridges or culverts shall be provided where drainage channels and waterways intersect any street right-of-way or approach. Guard rails shall also be installed on bridges. The subdivider shall be responsible for the costs of such improvements subject to 7-14-2204, MCA and other applicable statutes. For any improvements required to be constructed and/or maintained by the Board of Powell County Commissioners, the preliminary plat application shall include the subdivider's proposal to ensure the improvements are installed in accordance with state law and applicable regulations, along with comments on the proposal from the Board of Powell County Commissioners. All proposals for the installations and related improvements are subject to approval by the Board of Powell County Commissioners and Deer Lodge City Council prior to final plat approval.
2. Bridges and culverts shall be designed by a registered engineer to be appropriately sized in accordance with the drainage.
3. Bridges shall be constructed to HS25 load standards and shall be the same width as the street.
4. Bridges within the 100-year floodplain shall be designed so the lowest horizontal chord of the bridge is at least two-feet above the Base Flood Elevation.
5. All bridge and culvert installations shall be approved by the City of Deer Lodge, which may consult with contracted agents to ensure adequacy.
6. All bridges within the City of Deer Lodge are subject to review and approval by the Montana Department of Transportation and are subject to state standards for design and inspection.

6.14: STREET NAMES AND ADDRESSES

1. All street names must be approved by the City Council pursuant to the City of Deer Lodge's addressing system.
2. All lots and units shall be subject to the City of Deer Lodge's addressing system. Address numbers are assigned by the City of Deer Lodge and shall be visibly posted by the property owner.

6.15: STREET SIGNS/TRAFFIC CONTROL DEVICES

All traffic control devices, such as signs, which are required as a result of the subdivision, shall be installed by the subdivider. Traffic signs shall be of the size, shape, height, and placement in accordance with the Manual on Uniform Traffic Control Devices. Plans for traffic control devices shall be approved by the City Council during preliminary and final plat review.

6.16: SIDEWALKS AND TRAILS

All subdivisions with publicly dedicated rights-of-way shall be designed with sidewalks and/or trails. The intent is to ensure occupants of all lots are provided pedestrian and other non-motorized access to the City of Deer Lodge's public transportation network. A plan for sidewalks

and trails shall be submitted with the preliminary plat application, and is subject to review and approval by the City of Deer Lodge staff and City Council prior to final plat approval. The following minimum standards apply:

1. Sidewalks along both sides of collector and local streets shall be a minimum of 5 feet wide with a concrete surface unless an alternative design is proposed that meets the intent of this Section.
2. Sidewalks and trails shall be separated from the public street by a six foot wide landscaped boulevard. No street trees shall be located within 50 feet of a stop sign.
3. Where sidewalks along streets are impractical or an alternative design is proposed, trails shall be provided within adequate easements, and a gravel or hard surface a minimum of 8 feet in width shall be provided.
4. Sidewalks and trails shall be constructed to the latest edition of the Montana Public Works Standard Specifications and all other adopted city standards for sidewalks and trails.
5. Maintenance: Maintenance of all sidewalks along city streets are subject to Chapter 12.06 of the city codes. Where sidewalks or trails are not located along city streets or are otherwise not subject to Chapter 12.06 of the city codes, the preliminary plat application must address future maintenance of the sidewalks and trails, such as providing for maintenance by an owners' association or by individual lot owners along each lot's sidewalk frontage.

6.17: STREET LIGHTING

All subdivisions are subject to the requirement that street lighting be installed by the subdivider in accordance with the codes and policies of the City of Deer Lodge. Typically, a minimum of two street lights per block on each side of the street shall be required. All street lighting shall be downward-pointed and side-shielded to prevent glare and sky glow.

6.18: MAIL DELIVERY

All preliminary plat applications shall include a proposal to provide facilities for the dispersal and distribution of U.S. Mail in a secure lawful manner along with comments on the proposal from the United States Postal Service (USPS). The mail delivery plans are subject to approval by the City Council in consultation with the USPS and subdivider. The subdivider is responsible for ensuring all mail delivery improvements and associated easements are provided prior to final plat approval unless secured by a Subdivision Improvements Agreement.

6.19: DRAINAGE FACILITIES

1. The subdivider shall provide, along with the preliminary plat application, the information regarding the proposed subdivision's storm water facilities as specified in 76-3-622, MCA.

2. When any drainage facilities will rely upon property, right-of-way, easements or facilities owned by the City of Deer Lodge, the drainage plans for the subdivision are subject to approval by the City Council and Public Works Department.
3. Subdivisions containing lots less than 20 acres in size must be reviewed and approved under MCA Title 76, Chapter 4, by the DEQ, as applicable.

6.20: WATER SUPPLY

1. The subdivider shall provide, along with the preliminary plat application, the water supply information specified in 76-3-622, MCA.
2. All subdivisions within the City of Deer Lodge shall be served by municipal water facilities.
3. The City Council may require that any proposed subdivision provide adequate and accessible water for fire protection.
4. The subdivider must install complete water system facilities in accordance with the requirements of the City of Deer Lodge and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the City of Deer Lodge and to the DEQ, and must obtain their approvals prior to undertaking any construction. The City of Deer Lodge may consult with contracted agents to ensure adequacy.

6.21: WASTEWATER TREATMENT

1. The subdivider shall provide, along with the preliminary plat application, the sanitation information for wastewater treatment systems specified in 76-3-622, MCA.
2. All subdivisions within the City of Deer Lodge shall be served by municipal wastewater treatment facilities.
3. The subdivider must install complete wastewater treatment system facilities in accordance with the requirements of the City of Deer Lodge and the DEQ. The subdivider must submit plans and specifications for the proposed facilities to the City of Deer Lodge and to the DEQ, and must obtain their approvals prior to undertaking any construction. The City of Deer Lodge may consult with contracted agents to ensure adequacy.
4. Manholes associated with new and extended wastewater treatment system facilities shall not be placed more than 500 feet apart from the next manholes on the system and are preferably placed at intersections.

6.22: SOLID WASTE

The subdivider must provide for disposal of solid waste that meets the minimum standards of the DEQ, the City of Deer Lodge codes, and the City Public Works Department. The City Council in consultation with the Public Works Department may require central common facilities for collection of solid waste. The subdivider is responsible for making any necessary improvements for solid waste collection as required by the City Council.

6.23: UTILITIES

1. All subdivision lots shall be provided electrical and landline telephone utilities.
2. All new utility lines shall be placed underground.
3. The subdivider must provide adequate and appropriate easements for existing utilities and the construction of planned utilities within the subdivision. Where utility easements do not adequately abut the subdivision, the subdivider must obtain any easements necessary to extend utilities to the subdivision.
4. Utility facilities must be designed in accordance with the utility firms providing service, subject to all applicable laws and rules and regulations of any appropriate regulatory authority.
5. Utilities must be placed in accordance with utility service providers. 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.
6. Utility easements located between adjoining lots must be centered on lot lines or follow lot lines.
7. Utility easements must be a minimum of 15 feet wide unless otherwise specified by a utility company or the City Council.
8. Utilities placed in the street right-of-way shall be located between the street and the right-of-way line, except where utilities cross the streets at approximately right angles.
9. When a utility is to be located in an existing, dedicated right-of-way, permission must be obtained from the City Council, or local or state highway authority.
10. The subdivider shall describe, dimension, and show any new 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.
11. In addition to showing the location of any utility easement on the final plat, the following statement must be on any final plat with new utility easement(s):

"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, 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."

6.24: PARK LAND DEDICATION; CASH IN LIEU; WAIVERS; ADMINISTRATION

1. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the City of Deer Lodge a cash or land donation equal to:

- a. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - b. 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;
 - c. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
 - d. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
2. A park dedication is not required for:
 - a. Land proposed for subdivision into parcels larger than 5 acres;
 - b. Subdivision into parcels that are all nonresidential;
 - c. A subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, condominiums or townhomes/townhouses;
 - d. Subdivisions which will create only one additional parcel; or
 - e. Minor Subdivisions.
3. The City Council, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.
4. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
5. The City Council will waive the park dedication requirement if it determines that:
 - a. 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 Section 6.24.1 above;
 - b. 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 Section 6.24.1 above;
 - c. The area of the land proposed to be subdivided, by virtue of a combination of the provisions of Sections 6.24.5.a and 6.24.5.b above, is reduced by an amount equal to or exceeding the area of the dedication required under Section 6.24.1 above; or

- d. 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 Section 6.24.1 above.
- 6. The City Council may waive the park dedication requirement if:
 - a. 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
 - b. The area of the land to be subject to long-term protection, as provided in Section 6.24.6.a above, equals or exceeds the area of dedication required under Section 6.24.1.
- 7. Subject to the approval of the City Council and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under Section 6.24.1 to a school district, adequate to be used for school facilities or buildings.
- 8. The City Council will administer funds dedicated to the public under this section in accordance with 76-3-621(5), MCA.
- 9. For the purposes of this section, “cash donation” means the fair market value of the unsubdivided, unimproved land.

6.25: WATER COURSE AND IRRIGATION EASEMENTS

- 1. Except as noted in Section 6.25.2 below, the subdivider shall establish within the subdivision ditch easements that:
 - a. 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;
 - b. Are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - c. 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.
- 2. The subdivider need not establish irrigation easements as provided in Section 6.25.1 above if:
 - a. 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 City Council, 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

- b. 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
 - c. 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.
3. The subdivider shall, unless otherwise provided under separate written agreement or recorded easement, show on the preliminary and final plat, and record with the Powell 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.

6.26: DISPOSITION OF WATER RIGHTS

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

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 the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity that specifies administration and 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 being subdivided.

6.27: FIRE PROTECTION

1. 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.
2. All subdivisions in the City of Deer Lodge must be within the service area of the City of Deer Lodge Fire Department.
3. Subdivisions shall comply with the Uniform Fire Code and City fire codes.

4. The City Council 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. Fire hydrants shall not be placed more than 500 feet apart from the next fire hydrants on the City water system and are preferably placed at intersections.

Chapter 7: Exemptions

7.1: EXEMPTIONS, GENERALLY

The MSPA provides miscellaneous exemptions for some divisions of land, which are found in Part 2 of Title 76, Chapter 3, MCA. These divisions are exempt from local subdivision review and approval by the City of Deer Lodge and are therefore not subject to the review requirements or design standards of these regulations. However, pursuant to 76-3-504(1)(p), MCA local subdivision regulations, must, at a minimum, establish criteria that the City Council or reviewing authority will use to determine whether proposed methods of disposition, using the exemptions provided in 76-3-201, MCA or 76-3-207, MCA are attempts to evade the MSPA. This chapter establishes the criteria and the administrative processes for exempt divisions of land in the City of Deer Lodge.

7.2: GENERAL PROCEDURES FOR EXEMPTIONS

7.2.A: Advisory Examination

Landowners or their representatives are encouraged to meet with the Administrator to discuss whether a proposed exemption is in compliance with the MSPA and the criteria of this chapter prior to submitting documents claiming an exemption.

7.2.B: Submittal and Administration

1. Any person ("claimant" herein) claiming an exemption listed under Section 7.3 (Sections A through F) shall submit to the City of Deer Lodge for examination by the Administrator a draft certificate of survey, amended plat or, where a survey is not required, a draft instrument of conveyance and evidence of entitlement to the claimed exemption (see figure 9 for the general procedural steps). Additional submittal requirements specific to certain types of exemptions are listed in Section 7.3 (Sections A through F).
2. The Administrator shall review the document(s) and may consult with the City Attorney, Public Works Supervisor, and other staff and officials (e.g., the Powell County Clerk & Recorder, examining land surveyor, Montana DEQ, City Council, etc.). The exemption shall be examined within 30 calendar days of submittal to determine whether it complies with the requirements set forth in this chapter, the MSPA, and the Montana Sanitation in Subdivisions Act.
3. If the Administrator finds that the proposed use of the exemption complies with the statutes and applicable criteria, the Administrator shall advise the claimant and the Powell County Clerk and Recorder that the applicable documents may be filed. If the Administrator finds the proposed use of the exemption does not comply with the statutes and the criteria in this chapter, the Administrator shall advise the claimant and the Powell County Clerk and Recorder of the decision, return the original documents to the claimant, and may retain a copy of the documents.

4. After review and approval of the applicable documents by the Administrator and examining land surveyor (if applicable), and when all appropriate signatures are in place, the proper documents shall be filed with the Powell County Clerk and Recorder's Office within one calendar year of the notification from the Administrator that the applicable documents may be filed.
5. If the use of an exemption is denied, the landowner may initiate the process to apply for subdivision review subject to the requirements of these and other applicable regulations.
6. Any person whose proposed use of exemption has been denied by the Administrator may appeal the Administrator's decision to the City Council. The person may request a meeting with the City Council, 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 City Council concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or otherwise finds the exemption appropriate, the City Council may authorize the use of the exemption in writing. A survey claiming such an exemption from subdivision review (or an instrument of conveyance if no survey is required), which otherwise is in proper form and approved by the examining land surveyor (if applicable), may be filed if it is accompanied by written authorization of the City Council.

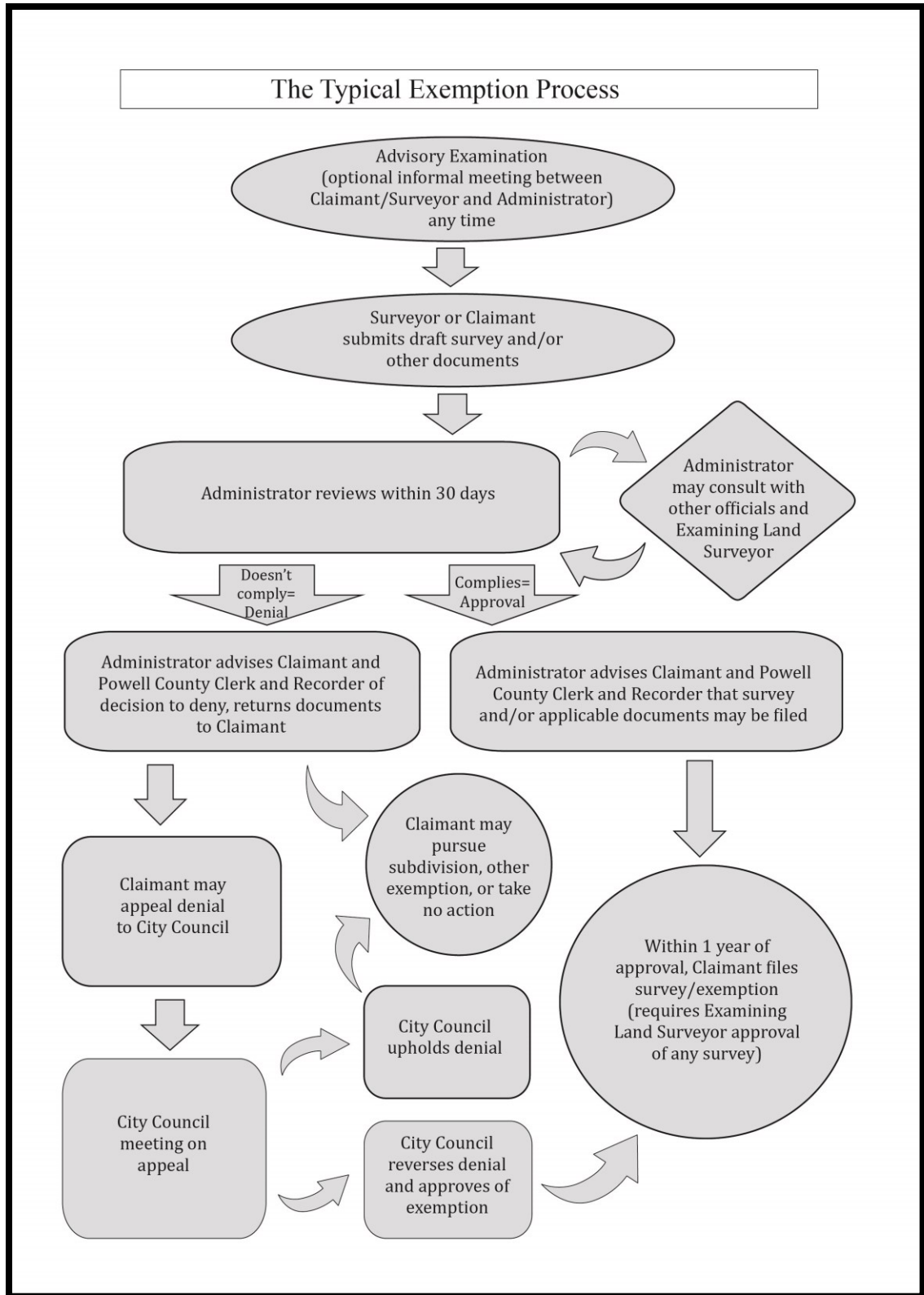


Figure 9: Flowchart for the typical exemption review process

7.2.C: Exemption Evasion Criteria

1. When determining whether an exemption is claimed for the purpose of evading the MSPA, the Administrator (and City Council when considering appeals), 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]
2. 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 Section 7.2.C.1, above.
3. When determining whether an exemption is claimed for the purpose of evading the MSPA, the Administrator (and City Council when considering appeals), shall consider the review criteria outlined for the specific exemptions listed in Section 7.3 below.

7.2.D: Requirements for Exemptions

1. All parcels and the use of all parcels created⁸ or amended through the use of an exemption shall comply with the City of Deer Lodge Zoning Ordinance, or the degree of non-conformity shall not be expanded. For example, a lot smaller than the zoning regulations' minimum lot size requirement may not be made smaller, but may maintain the non-conforming lot size or be made larger; similarly, a lot with a boundary that has a non-conforming structure within the required setback may not be altered in a manner that would cause the boundary to become closer to that structure.
2. The City of Deer Lodge may not require lots resulting from exempt divisions to comply with Chapter 6, Design 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. An exemption that seeks to alter a lot that was subject to the design and improvement standards of the subdivision regulations during subdivision review, which would place the lot(s) out of compliance with those standards, would require approval of a variance pursuant to Sections 3.10.C and 5.3 of these regulations.
3. To exempt divisions and/or remaining parcels of land resulting from the exemptions in 76-3-207, MCA from the survey requirements of 76-3-401, MCA the parcel(s) must be able to be described as a 1/32 or larger aliquot part of a United States Government section.
4. Subject to the following, a division of land exempt from subdivision review by 76-3-207, MCA (a gift or sale to a member of the immediate family, exemption for

⁸ For purposes of this chapter, a tract of record becomes "created" when a new tract of record becomes of record, such as when a single tract is divided into two tracts. Boundary line relocations that start with two tracts and result in two tracts do not "create" new tracts.

agricultural purposes, or relocation of common boundaries) may not be made unless the Powell 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 Powell County Treasurer may accept the amount of the tax prorated pursuant to the above Section 7.2.D.4.a as a partial payment of the total tax that is due.

7.3: SPECIFIC EXEMPTIONS

7.3.A: Family Transfers

Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family (76-3-207(1)(b) MCA).

7.3.A.1: Statement of Intent

The intent of this exemption is to allow a landowner to create one parcel for conveyance to each immediate family member without local subdivision review.

7.3.A.2: Requirements

1. This exempt division may only be made outside of any platted subdivision.
2. A single parcel may be conveyed to each immediate family member of the landowner under this exemption in each county where the landowner owns property.
3. For purposes of this exemption, "immediate family member" means a spouse, child by blood or adoption, and parent of the grantor.
4. 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.
5. Any certificate of survey that would use this exemption to create a parcel for conveyance to a family member shall be accompanied by the instrument of conveyance, such as a deed.

7.3.A.3: Review Criteria

1. Any proposed use of a family transfer exemption to divide a tract of record that was created⁹ through use of an exemption.
2. The use of the family transfer exemption to divide a tract that was 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.

7.3.B: Agricultural Exemptions

Divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the City Council and the property owner that the divided land will be used exclusively for agricultural purposes (76-3-207(1)(c) MCA).

7.3.B.1: Statement of Intent

The intent of this exemption is to allow a landowner to create a parcel without local subdivision review where the parcel will be used only for agricultural purposes.

7.3.B.2: Requirements

1. Agricultural purposes: For purposes of this exemption, the term “agricultural purposes” means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential, commercial, and industrial uses and structures, as well as any facilities for commercially or industrially processing agricultural products.
2. The division must be exempt from sanitation review by the MDEQ pursuant to 76-4-125(2)(c), MCA, as a division made for purposes other than the construction of water supply or sewage and solid waste disposal facilities. This sanitation exemption must be properly invoked by the property owner.
3. The landowner must enter into a covenant running with the land and revocable only by mutual consent of the City Council and the property owner, heirs, successors and assigns that the newly created agricultural parcel will be used exclusively for agricultural purposes as defined above. The covenant must be signed by the property owner and the City Council and acknowledge that any change in use of the newly created agricultural parcel for anything other than agricultural purposes subjects the parcel to subdivision review.
4. Any change in use of the newly created agricultural parcel for anything other than agricultural purposes subjects the parcel to subdivision review.

⁹ For purposes of this chapter, a tract of record becomes “created” when a new tract of record becomes of record, such as when a single tract is divided into two tracts. Boundary line relocations that start with two tracts and result in two tracts do not “create” new tracts.

5. The use of the agricultural exemption may not create more than one remaining parcel of less than 160 acres.

7.3.C: Relocation of Common Boundaries and Aggregation of Lots:

76-3-207(1)(a), (d),(e), and (f), MCA.

7.3.C.1: Statement of Intent

The intent of these exemptions 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 or to allow more than one parcel to be aggregated into fewer parcels.

7.3.C.2: Requirements

1. 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.
2. 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.
3. Certificates of survey, or amended plats for those altering platted subdivisions, claiming one of these exemptions must clearly distinguish between existing boundary locations and new boundary locations. This shall be accomplished by showing the existing boundaries with dashed lines and the new boundaries with solid lines. The appropriate certification set forth in ARM 24.183.1104(1)(f) must be included on the certificate of survey or amended plat.
4. When certificates of survey are filed with the Powell County Clerk and Recorder's Office with the purpose of relocating boundary lines or aggregation of lots, the certificate of survey must be accompanied by deed(s) or other conveyance document(s) to effectuate the exemption and describe the entire newly described parcel(s) or that portion of the parcel(s) being affected.

7.3.D: Exemption to Provide Security for a Construction Mortgage, Lien or Trust Indenture:

MCA 76-3-201(1)(b).

7.3.D.1: 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.

7.3.D.2: Requirements

1. These regulations do not require a certificate of survey or amended plat to invoke the use of the exemption claimed under 76-3-201(1)(b), MCA. 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).
2. When this exemption is to be used, the landowner shall submit the following along with an affidavit affirming entitlement to the claimed exemption to the Administrator:
 - a. A statement of how many parcels within the original tract would be created by use of the exemption;
 - b. 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);
 - c. 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;
 - d. 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; and
 - e. Documentation that the lending institution is a financial or lending institution registered to do business in the State of Montana.
3. The use of this exemption may be for the purpose of evading the MSPA if:
 - a. It will create more than one building site;
 - b. The financing is not for construction on the exempted parcel;
 - c. The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction;
 - d. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
 - e. 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.

7.3.E: Court Ordered Divisions:

76-3-201(1)(a), MCA.

7.3.E.1: Statement of Intent

The intent 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, MCA.

Pursuant to 6-3-201(2), MCA before a court of record orders a division of land, the court shall notify the City Council of the pending division and allow the City of Deer Lodge to present written comments on the division.

7.3.F: Condominiums, Townhomes, or Townhouses:

(76-3-203 MCA).

7.3.F.1: Statement of Intent

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

7.3.F.2: Exemption

Condominiums, townhomes or townhouses, as those terms are defined in 70-23-102, MCA are exempt from subdivision review if:

1. They are constructed on lots subdivided in compliance with these regulations and the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes or townhouses and any applicable park dedication requirements in 76-3-621, MCA and Section 6.24 of these regulations are complied with; or
2. The condominium, townhome or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

7.3.F.3: Requirements

1. To use the exemption, the Declaration of Unit Ownership must include an exhibit containing certification from the City of Deer Lodge that the condominiums are exempt from review under 76-3-203 MCA (*See 70-23-301 MCA*).
2. Only the City of Deer Lodge 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 Powell County Clerk and Recorder's Office accepted and recorded it.

3. To obtain City of Deer Lodge 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 Administrator, who will review the documents under Section 7.2 above; however, an exemption claimed pursuant to 76-3-203, MCA is not subject to examination under the Exemption Evasion Criteria of Section 7.2.C above.

7.3.G: Exemptions not requiring Action by the City Of Deer Lodge

The exemptions listed in this Section 7.3.G are presumed to not be intended for the purpose of evading the MSPA if properly invoked, and therefore do not require submittal of information to the City of Deer Lodge for examination under the General Procedures for Exemptions as outlined in Section 7.2 above. However, if a survey is to be filed with the Powell County Clerk and Recorder's Office to utilize the exemption, the survey is subject to examination by the examining land surveyor for compliance with the uniform standards.

1. 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. [76-3-205(1), MCA]
2. 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. [76-3-205(2), MCA]
3. 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. [76-3-206, MCA]
4. 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 60-2-209, MCA 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. Opinion 25 (1992)]
5. The following divisions in 76-3-201, MCA not previously included in this section:

- a. A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- b. A division of land that creates cemetery lots;
- c. A division of land that is created by the reservation of a life estate;
- d. A division of land that is created by lease or rental for farming and agricultural purposes;
- e. A division of land that is in a location over which the state does not have jurisdiction; and
- f. 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.

Chapter 8: Definitions

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

Access (legal and physical):

Legal access: Each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or the subdivider has obtained or will dedicate adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed within the easement. The easement relied upon for legal access must be dedicated for public use or for private use specific to the proposed subdivision prior to final plat review.

Physical access: A physical street or road within a legal access easement will provide vehicular access from a public road network to each lot in the subdivision.

Note: Legal and physical access must be provided to each parcel within any proposed subdivision. Preliminary and final plats and any instrument of transfer concerning the parcels are required to include notation of legal and physical access. No variance is allowed to the requirements that legal and physical access be provided to each parcel; only variance(s) to the applicable design standards for access may be granted.

Adjoining landowner (adjacent property owner):

The owner of record of a parcel of land that is contiguous at any point to a tract of interest, or land that is directly across a watercourse or right-of-way from the tract of interest (such as a property proposed for subdivision).

Agriculture:

Activities related to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, sod, ornamentals and nursery and horticultural crops that are raised, grown, or produced for commercial purposes on lands taxed as agricultural by the State of Montana.

Agricultural water user facilities:

Any part of an irrigation system historically used to produce an agricultural product on property used for agricultural purposes as defined in 15-7-202, MCA.

ARM:

The Administrative Rules of Montana.

Block:

A group of lots, tracts or parcels within well-defined and fixed boundaries. Such boundaries may include streets, railroads, irrigation ditches, streams, platted lands, or a combination thereof.

Certificate of survey:

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

Cluster development:

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

Condominium:

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

Covenant (restrictive covenant):

A limitation contained in a deed or other document that restricts or regulates the use of the real property.

Dedication:

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

DEQ:

The Montana Department of Environmental Quality.

Division of land:

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

Driveway (individual):

A vehicular access that serves only one lot, being the lot it is located within. Individual driveways are not streets for purposes of these regulations and are not subject to the street design standards, but are subject to the standards for driveways in the City of Deer Lodge Zoning Ordinance.

Dwelling unit:

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

Easement:

Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.

Engineer (professional engineer):

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

First Minor Subdivision:

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

Flood:

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

Flood of 100-year frequency:

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

Floodplain:

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

Floodway:

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

Governing Body:

The governing authority of a city or town organized pursuant to law. (76-3-103(7), MCA). In the jurisdictional area of the City of Deer Lodge, the Deer Lodge City Council is the governing body.

Growth policy:

A comprehensive development plan, master plan, or comprehensive plan that was adopted pursuant to MCA Title 76, Chapter 1 before October 1, 1999, or a policy that was adopted pursuant to MCA Title 76, Chapter 1 on or after October 1, 1999. (6-1-103(4), MCA)

Landowner:

All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms "property owner," "landowner," and "owner" mean both the seller and the purchaser under a contract for deed.

Local services:

Any and all services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation systems, educational systems and noxious weed control, as well as services that local government does not provide such as power, telephone, state highways, etc.

Lot:

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

Lot types:

Corner lot means a lot located at the intersection of two streets.

Interior lot means a lot other than a corner lot.

Through lot or double-frontage lot means a lot whose front and rear lines both abut streets (except alleys).

Lot frontage: The length of the front lot line along the street providing the lot its primary access.

Major subdivision:

A subdivision that creates six or more lots. Also, any subdivision with five or fewer lots that does not meet the definition of a first minor subdivision or a subsequent minor subdivision is reviewed as a major subdivision.

Manual on Uniform Traffic Control Devices:

The latest edition of the document entitled "Manual on Uniform Traffic Control Devices for Streets and Highways" published by and available from the Federal Highway Administration of the U.S. Department of Transportation.

Material (as in a material change or amendment to an application or plat):

A change or amendment that impacts the completeness or sufficiency of subdivision's preliminary plat application under Chapter 3 of these regulations, has a significant impact on any of the primary

review criteria (76-3-608(3)(a), MCA), brings the proposal out of conformance with the growth policy, zoning or subdivision regulations, or impacts the public's opportunity to provide meaningful comment. Examples of changes that may be considered material are outlined in Section 5.5. of these regulations.

Minor subdivision:

A subdivision that creates five or fewer lots. See also: First minor subdivision and subsequent minor subdivision.

Mobile (manufactured) home:

A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

Mobile (manufactured) home space:

A designated portion of a parcel of land designed for the accommodation of one mobile home or manufactured home and its accessory buildings, parking, yard and other area for the exclusive use of the occupants.

Mobile (manufactured) home park:

A tract of land that provides or will provide spaces for two or more mobile homes and/or manufactured homes.

Mobile (manufactured) home pad (or stand):

That area of a mobile home/manufactured home space which has been prepared for the placement of a mobile/manufactured home.

Montana Department of Environmental Quality Minimum Standards:

Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to MCA Title 76, Chapter 4, Part 1.

Monument (permanent monument):

Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference. (ARM 24.183.1101(1)(a)).

MSPA:

Montana Subdivision and Platting Act; MCA Title 76, Chapter 3.

Natural environment:

The physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.

Open space:

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

Phasing plan:

The design plan showing phases and timing for a subdivision proposed to be subdivided in stages.

Planned unit development (PUD):

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), MCA).

Planning Board:

A Planning Board formed pursuant to MCA Title 76, Chapter 1. In the jurisdictional area of the City of Deer Lodge, the Planning Board is the City of Deer Lodge Planning Board.

Plat:

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

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

A. Preliminary plat:

A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a City Council as more specifically set forth in these regulations and the MSPA. (76-3-103(12), MCA). A preliminary plat is the plat that is the basis of the preliminary plat application, so any decision on a preliminary plat application constitutes the decision on the preliminary plat.

B. Final plat:

The final drawing of the subdivision and dedication required to be prepared for filing for record with the county clerk and recorder containing all elements and requirements set forth in these regulations and the MSPA. (76-3-103(6), MCA).

C. Amended plat:

The final drawing of any change to a filed platted subdivision or any lots within a filed platted subdivision.

D. Vacated plat:

A plat which has been voided under the provisions of 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616, 7-14-2617, and 7-14-4114, MCA as applicable.

Preliminary plat application:

The subdivider's submittal consisting of the preliminary plat, the preliminary plat application form and supplemental information.

Pre-application sketch (or drawing):

A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision.

Private improvements:

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:

A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted.

Public health and safety:

The prevailing healthful, sanitary condition of wellbeing for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention, emergency services, environmental health, flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes and other natural hazards, high voltage lines or high pressure gas lines and air or vehicular traffic safety hazards.

Public improvement:

Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.

Public road or street:

A road or street is public if its right-of-way has been dedicated to the public or acquired for public use.

Public utility:

Public utility has the meaning provided in 69-3-101, MCA except that for the purposes of subdivision regulations, 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 City Council of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44. (76-3-103(13), MCA),

Recreational vehicle:

A vehicle, self-propelled or towed designed as a temporary dwelling for travel, recreation and vacation uses. Towed recreational vehicles shall not be more than eight (8) feet in body width.

Recreational Vehicle Park (RV Park):

Any area or tract or land rented or held out for rent to one or more persons or users for parking or placement of temporary recreational housing.

Recreational vehicle space:

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

Reviewing authority:

The DEQ or local board of health or sanitarian as authorized under MCA Title 76, Chapter 4.

Right-of-way:

A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, sidewalks, trails, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.

State:

The State of Montana.

Street:

A way for vehicular traffic designated as a street, highway, boulevard, thoroughfare, parkway, throughway, avenue, road or court. The term “street” may be used interchangeably with the term “road”.

Street types: For purposes of these subdivision regulations¹⁰, street types are defined as follows:

A. Arterial:

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 should provide only limited access to abutting property. Arterials in the City of Deer Lodge are the primary thoroughfares leading in and out of the city and those streets that serve as the primary connections between these thoroughfares. As of the date of these regulations, arterials include North Main Street, Main Street, Hollenbock Lane, Milwaukee

¹⁰ Other ordinances and regulations adopted by the City of Deer Lodge may assign conflicting definitions, classifications, and standards to streets; these definitions are for purposes of subdivision review only.

Avenue, West Milwaukee Avenue, and U.S. Interstate 90. Future arterials are determined by the City Council based on this definition when considering subdivision layouts.

B. Collector:

A street, road or highway having the equally important functions of moving traffic and providing access to adjacent land. Collector streets link neighborhoods to arterials or other neighborhoods. Collector streets connect to other streets at each end and do not dead end.

For purposes of these regulations and required design standards, a collector may be categorized as “high density” or “low density” depending upon the size of the lots served by the street. High density collector streets serve any lot less than 10,000 square feet in size and because less off-street parking is likely to be provided due to lot size, require area for on-street parking. Low density collector streets occur where all lots served by the street are 10,000 square feet or greater in size and where no on-street parking is allowed. Low density collector streets shall be signed with approved no parking signs and some design standards are relaxed.

C. Local:

A street with a primary function of providing access to adjacent land. Local streets may have the secondary function of connecting other streets in the public transportation network. Local streets may end at a cul-de-sac bulb or other turnaround, subject to design standards.

For purposes of these regulations and required design standards, a local street may be categorized as “high density” or “low density” depending upon the size of the lots served by the street. High density local streets serve any lot less than 10,000 square feet in size and because less off-street parking is likely to be provided due to lot size, require area for on-street parking. Low density local streets occur where all lots served by the street are 10,000 square feet or greater in size and where no on-street parking is allowed. Low density local streets shall be signed with approved no parking signs and some design standards are relaxed.

D. Shared residential drive:

A street shared by two single-family residences within a common access easement. Such shared accesses that share an approach for 50 linear feet or less as measured from the edge of the street are considered shared driveways and are not subject required to provide a turnaround area.

E. Alley:

A public or private way dedicated or reserved as a secondary means of access to the rear or side of lots and which is served by other streets at both ends.

F. Half-street:

A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.

G. Dead-end street:

A street having only one outlet for vehicular traffic.

H. Frontage access (street):

A local street, usually parallel and adjacent to an arterial street, which provides access to abutting properties and controls traffic access to the arterial street.

I. Primary access streets:

Streets comprising the network of streets, roads, and highways that provide the required access to a subdivision and the lots within.

Subdivider:

A person who causes land to be subdivided or who proposes a subdivision of land (76-3-103(14), MCA). When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the Administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.

Subdivision:

A division of land or land so divided 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. (76-3-103(15), MCA).

Administrator:

The person or persons authorized by the City Council to perform the duties of review and administration set forth in these regulations.

Subdivision Improvements Agreement:

A contractual agreement that may be required by the City Council to ensure the construction of improvements related to the subdivision as required by these subdivision regulations. The subdivision improvement agreement may require collateral to secure the construction of such improvements, such as the deposit of certified funds, irrevocable letters of credit, performance or property bonds, private or public escrow agreements, or similar financial guarantees.

Subsequent Minor Subdivision (or Second or Subsequent Minor Subdivision):

A proposed subdivision which is the second or subsequent minor subdivision that does not result in a total of more than five parcels created by subdivision and any combination of exemptions under 76-3-201, MCA or 76-3-207, MCA from a tract of record since July 1, 1973.

Surveyor (professional land surveyor):

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):

A registered land surveyor duly appointed by the City Council to review surveys and plats submitted for filing. (76-3-103(5), MCA).

Title report (abstract of title, subdivision guarantee, or platting report):

A report from a title 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:

The characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.

Townhome or Townhouse:

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. (70-23-102(14), MCA).

Townhouse lot:

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:

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

Traffic Impact Study:

A report prepared by a qualified professional that addresses the anticipated impacts of a subdivision on the existing and proposed transportation network based on traffic patterns, infrastructure conditions, and traffic expected to result from build out of the subdivision. Traffic impact studies must include findings and recommendations using nontechnical terminology to help public officials with their decision making on the subdivision and related infrastructure improvements.

Vicinity sketch:

A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of a proposed subdivision.

Wildlife:

Animals that are neither human, domesticated, nor feral descendants of commonly domesticated animals.

Wildlife habitat:

The place or type of habitat where wildlife naturally reside or travel through.

Appendix A: Description of Review Criteria

Agriculture

Activities related to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, sod, ornamentals and nursery and horticultural crops that are raised, grown, or produced for commercial purposes on lands taxed as agricultural by the State of Montana.

Agriculture water user facilities

Any part of an irrigation system historically used to produce an agricultural product on property used for agricultural purposes as defined in Section 15-7-202, MCA.

Local services

Any and all services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation systems, educational systems and noxious weed control, as well as services that local government does not provide such as power, telephone, state highways, etc.

The natural environment

The natural environment is defined as the physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic and aesthetic significance.

Wildlife

Wildlife means animals that are neither human, domesticated, nor feral descendant of commonly domesticated animals.

Wildlife Habitat

Wildlife habitat means the place or type of habitat where wildlife naturally reside or travel through.

Public health and safety

The prevailing healthful, sanitary condition of wellbeing for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention, emergency services, environmental health, flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes and other natural hazards, high voltage lines or high pressure gas lines and air or vehicular traffic safety hazards.

Appendix B: Supplemental Administrative Materials

Below is a list of the Supplemental Administrative Materials referenced in the City of Deer Lodge Subdivision Regulations. These forms and samples are available from the Subdivision Administrator.

- A. Pre-application Request Form
- B. Application Form
- C. Summary of Probable Impacts
- D. Environmental Assessment
- E. Final Plat Application Form
- F. Sample Certificates
- G. Sample Subdivision Improvements Agreement
- H. Traffic Impact Study
- I. Sample Latecomers Agreement
- J. Shared Residential Drive Use and Maintenance Declaration
- K. List of Agencies for Contact
- L. Variance Request Form
- M. Request to Amend a Recorded Final Plat Form